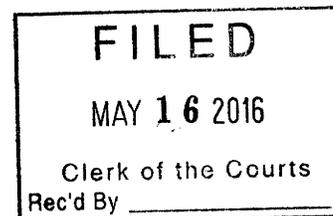


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE PROPOSED AMENDMENT TO RULE 40A,
RULES OF THE TENNESSEE SUPREME COURT

No. ADM2016-01004



ORDER

Rule 40A of the Rules of the Supreme Court governs the appointment of guardians ad litem in child custody proceedings. Section 1(a) of Rule 40A defines “custody proceeding” as follows:

“Custody proceeding” means a court proceeding, other than an abuse or neglect proceeding, in which legal or physical custody of, access to, or visitation or parenting time with a child is at issue, including but not limited to divorce, post divorce, paternity, domestic violence, contested adoptions, and *contested private guardianship cases*.

(Emphasis added).

Because “contested private guardianship cases” are included in the Rule’s definition of “custody proceeding,” the other portions of Rule 40A necessarily apply to such cases, including Section 6 (“Role of Guardian Ad Litem”). Rule 40A(6)(b) provides that “[t]he guardian ad litem shall not function as a special master for the court or perform any other judicial or quasi-judicial responsibilities.” It has come to the Court’s attention that Rule 40A(6)(b) appears to conflict with Tennessee Code Annotated section 34-1-107 (2015), which governs the appointment of guardians ad litem in guardianship and conservatorship proceedings. In particular, section 34-1-107(d)(1) provides: “The guardian ad litem owes a duty to the court to impartially investigate the facts and make a report and recommendations to the court. The guardian ad litem serves as an agent of the court, and is not an advocate for the respondent or any other party.”

For the foregoing reasons, the Court proposes amending Rule 40A(1)(a) as follows (with deleted text indicated by overstriking and new text indicated by underlining):

(a) “Custody proceeding” means a court proceeding, other than an abuse or neglect proceeding, in which legal or

physical custody of, access to, or visitation or parenting time with a child is at issue, including but not limited to divorce, post divorce, paternity, domestic violence, and contested adoptions, ~~and contested private guardianship cases.~~

The Court hereby solicits written comments regarding the proposed amendment from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Friday, July 15, 2016. Written comments should be addressed to:

James M. Hivner, Clerk
Re: Tenn. Sup. Ct. R. 40A
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM