

[§587A-16] Guardian ad litem. (a) The court shall appoint a guardian ad litem for a child to serve throughout the pendency of child protective proceedings under this chapter.

(b) The court may appoint a guardian ad litem for an incapacitated adult party, as set forth below:

- (1) Upon the request of any party or sua sponte, the court may order a professional evaluation of an adult party to determine the party's capacity to substantially:
 - (A) Comprehend the legal significance of the issues and nature of the proceedings under this chapter;
 - (B) Consult with counsel; and
 - (C) Assist in preparing the party's case or strategy;
- (2) If the court orders a professional evaluation, the party shall be examined by a physician, psychologist, or other individual appointed by the court who is qualified to evaluate the party's alleged impairment:
 - (A) Unless otherwise directed by the court, the examiner shall promptly file with the court a written report which shall contain:
 - (i) A description of the nature, type, and extent of the party's specific cognitive and functional capabilities and limitations;
 - (ii) An evaluation of the party's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;
 - (iii) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
 - (iv) The dates of any assessments or examinations upon which the report is based;
 - (B) Upon the request of any party or sua sponte, and after such hearing as the court deems appropriate, the court may appoint a guardian ad litem for an adult party only after a determination, by clear and convincing evidence, that:
 - (i) The party is an incapacitated person; and
 - (ii) The party's identified needs cannot be met by less restrictive means, including the use of appropriate and reasonably available assistance.
- (c) A guardian ad litem shall, unless otherwise ordered by the court:
 - (1) Have access to the child or incapacitated adult;

- (2) Have the authority to inspect and receive copies of any records, notes, and electronic recordings concerning the child or incapacitated adult that are relevant to the proceedings filed under this chapter. This authority shall exist even without the consent of the child, incapacitated adult, or individuals and authorized agencies that have control of the child or incapacitated adult; provided that nothing in this section shall override any attorney-client or attorney work product privilege;
 - (3) Be given notice of all hearings and proceedings involving the child or incapacitated adult, whether civil or criminal, including grand juries, and shall protect the best interests of the child or incapacitated adult;
 - (4) Make face-to-face contact with the child or incapacitated adult in the child's or incapacitated adult's family or resource family home at least once every three months;
 - (5) Report to the court and all parties in writing at six-month intervals, or as ordered by the court, regarding such guardian ad litem's actions taken to ensure the child's or incapacitated adult's best interest, and recommend how the court should proceed in the best interest of that child or incapacitated adult; and
 - (6) Inform the court of the child's opinions and requests. If the child's opinions and requests differ from those being advocated by the guardian ad litem, the court shall evaluate and determine whether it is in the child's best interests to appoint an attorney to serve as the child's legal advocate concerning such issues and during such proceedings as the court deems to be in the best interests of the child.
- (d) The court shall, for an incapacitated adult:
- (1) Grant a guardian ad litem only those powers necessitated by the incapacitated adult's limitations and demonstrated needs; and
 - (2) Make appointive and other orders that will encourage the development of the incapacitated adult's maximum self-reliance and independence.
- (e) Unless otherwise ordered by the court, the attorney for an incapacitated adult shall take instructions from the incapacitated adult's guardian ad litem. The guardian ad litem for an incapacitated adult shall inform the court of the incapacitated adult's opinions and requests and may recommend how the court should proceed in the best interest of the incapacitated adult.

(f) The fees and costs of a guardian ad litem appointed pursuant to this section may be paid by the court, unless the party for whom counsel is appointed has an independent estate sufficient to pay such fees and costs. The court may order the appropriate parties to pay or reimburse the fees and costs of the guardian ad litem and any attorney appointed for the child. [L 2010, c 135, pt of §1]

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