

Effective until 5/13/2014

78A-2-228 Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

- (1)
 - (a) The court may appoint a private attorney as guardian ad litem to represent the best interests of the minor in any district court action in which the custody of or visitation with a minor is at issue. The attorney guardian ad litem shall be certified by the Director of the Office of Guardian Ad Litem as having met the minimum qualifications for appointment, but may not be employed by or under contract with the Office of Guardian Ad Litem.
 - (b) When appointing an attorney guardian ad litem for a minor under this section, a court may appoint the same attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that attorney guardian ad litem is available.
 - (c) If, after appointment of the attorney guardian ad litem, an allegation of abuse, neglect, or dependency of the minor is made the court shall:
 - (i) determine whether it is in the best interests of the minor to continue the appointment; or
 - (ii) order the withdrawal of the private attorney guardian ad litem and appoint the Office of Guardian Ad Litem.
- (2)
 - (a) The court shall assess all or part of the attorney guardian ad litem fees, courts costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just.
 - (b) If the court finds a party to be impecunious, under the provisions of Section 78A-2-302, the court may direct the impecunious party's share of the assessment to be covered by the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).
- (3) The attorney guardian ad litem appointed under the provisions of this section shall:
 - (a) represent the best interests of the minor from the date of the appointment until released by the court;
 - (b) conduct or supervise an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;
 - (c) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;
 - (d)
 - (i) personally meet with the minor, unless:
 - (A) the minor is outside of the state; or
 - (B) meeting with the minor would be detrimental to the minor;
 - (ii) personally interview the minor, unless:
 - (A) the minor is not old enough to communicate;
 - (B) the minor lacks the capacity to participate in a meaningful interview; or
 - (C) the interview would be detrimental to the minor;
 - (iii) to the extent possible, determine the minor's goals and concerns regarding custody or visitation; and
 - (iv) to the extent possible, and unless it would be detrimental to the minor, keep the minor advised of:
 - (A) the status of the minor's case;
 - (B) all court and administrative proceedings;
 - (C) discussions with, and proposals made by, other parties;
 - (D) court action; and

- (E) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;
 - (e) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the best interests of the minor;
 - (f) identify community resources to protect the best interests of the minor and advocate for those resources; and
 - (g) participate in all appeals unless excused by the court.
- (4)
- (a) The attorney guardian ad litem shall represent the best interests of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interests, the attorney guardian ad litem shall communicate to the court the minor's wishes and the attorney's determination of the minor's best interests. A difference between the minor's wishes and the attorney's determination of best interests is not sufficient to create a conflict of interest.
 - (b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.
- (5) An attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the attorney guardian ad litem.
- (6)
- (a) Upon the advice of the Director of the Office of Guardian Ad Litem and the Guardian Ad Litem Oversight Committee, the Judicial Council shall by rule establish the minimum qualifications and requirements for appointment by the court as an attorney guardian ad litem.
 - (b) An attorney guardian ad litem may be required to appear pro bono in one case for every five cases in which the attorney is appointed with compensation.