

Effective 5/13/2014

78A-2-705 Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

- (1) The court may appoint an attorney as a private attorney guardian ad litem to represent the best interests of the minor in any district court action when:
 - (a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the court has made a finding that an adult party is not indigent, as defined by Section 77-32-202; or
 - (b) the custody of, or parent-time with, a child is at issue.
- (2)
 - (a) The court shall consider the limited number of eligible private attorneys guardian ad litem, as well as the limited time and resources available to a private attorney guardian ad litem, when making an appointment under Subsection (1) and prioritize case assignments accordingly.
 - (b) The court shall make findings regarding the need and basis for the appointment of a private attorney guardian ad litem.
 - (c) A court may not appoint a private attorney guardian ad litem in a criminal case.
- (3)
 - (a) If the parties stipulate to a private attorney guardian ad litem, the office shall assign the stipulated private attorney guardian ad litem to the case in accordance with this section.
 - (b) If, under Subsection (3)(a), the parties have not stipulated to a private attorney guardian ad litem, or if the stipulated private attorney guardian ad litem is unable to take the case, the court shall appoint a private attorney guardian ad litem in accordance with Subsection (3)(c).
 - (c) The court shall state in an order that the court is appointing a private attorney guardian ad litem, to be assigned by the office, to represent the best interests of the child in the matter.
 - (d) The court shall send the order described in Subsection (3)(c) to the office, in care of the Private Attorney Guardian ad Litem program.
- (4) The court shall:
 - (a) specify in the order appointing a private attorney guardian ad litem the specific issues in the proceeding that the private attorney guardian ad litem shall be involved in resolving, which may include issues relating to the custody of the child and a parent-time schedule;
 - (b) to the extent possible, bifurcate the issues described in Subsection (4)(a) from the other issues in the case in order to minimize the time constraints placed upon the private attorney guardian ad litem; and
 - (c) except as provided in Subsection (6), issue a final order within one year after the day on which the private attorney guardian ad litem is appointed in the case:
 - (i) resolving the issues described in Subsection (4)(a); and
 - (ii) terminating the private attorney guardian ad litem from the appointment to the case.
- (5) The court shall issue an order terminating the appointment of a private attorney guardian ad litem made under this section if:
 - (a) after receiving input from the private attorney guardian ad litem, the court determines that the minor no longer requires the services of the private attorney guardian ad litem; or
 - (b) there has been no activity in the case for a period of six consecutive months.
- (6) A court may issue an order extending the one-year period described in Subsection (4)(c) for a specified amount of time if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (4)(c) within the one-year period.
- (7) When appointing a private attorney guardian ad litem under this section, a court may appoint the same private attorney guardian ad litem who represents the minor in another proceeding,

or who has represented the minor in a previous proceeding, if that private attorney guardian ad litem is available.

- (8)
 - (a) Upon receipt of the court's order, described in Subsections (3)(c) and (d), the office shall assign the case to a private attorney guardian ad litem, if available, in accordance with this section.
 - (b)
 - (i) If, after the initial assignment of a private attorney guardian ad litem, either party objects to the assigned private attorney guardian ad litem, that party may file an objection with the court within seven days after the day on which the party received notice of the assigned private attorney guardian ad litem.
 - (ii) If, after the initial assignment of a private attorney guardian ad litem, either attorney for a party discovers that the private attorney guardian ad litem represents an adverse party in a separate matter, that attorney may file an objection with the court within seven days after the day on which the attorney received notice of the private attorney guardian ad litem's representation of an adverse party in a separate matter.
 - (iii) Upon receipt of an objection, the court shall determine whether grounds exist for the objection, and if grounds exist, the court shall order, without a hearing, the office to assign a new private attorney guardian ad litem, in consultation with the parties and in accordance with this section.
 - (iv) If no alternative private attorney guardian ad litem is available, the office shall notify the court.
- (9)
 - (a) When appointing a private attorney guardian ad litem, the court shall:
 - (i) assess all or part of the private attorney guardian ad litem fees, court costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just; and
 - (ii) designate in the order whether the private attorney guardian ad litem shall, as established by rule under Subsection (17):
 - (A) be paid a set fee and initial retainer;
 - (B) not be paid and serve pro bono; or
 - (C) be paid at a rate less than the set fee established by court rule.
 - (b) If a party claims to be impecunious, the court shall follow the procedure and make a determination, described in Section 78A-2-302, to set the amount that the party is required to pay, if any, toward the private attorney guardian ad litem's fees and expenses.
 - (c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer to an amount less than what was ordered by the court at any time before being released from representation by the court.
- (10) Upon accepting the court's appointment, the assigned private attorney guardian ad litem shall:
 - (a) file a notice of appearance with the court within five business days of the day on which the attorney was assigned; and
 - (b) represent the best interests of the minor until released by the court.
- (11) The private attorney guardian ad litem:
 - (a) shall be certified by the director of the office as meeting the minimum qualifications for appointment; and
 - (b) may not be employed by, or under contract with, the office unless under contract as a conflict private attorney guardian ad litem in an unrelated case.
- (12) The private 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.
- (13)
- (a) The private attorney guardian ad litem shall represent the best interests of a minor.
 - (b) If the minor's intent and desires differ from the private attorney guardian ad litem's determination of the minor's best interests, the private attorney guardian ad litem shall communicate to the court the minor's intent and desires and the private attorney guardian ad litem's determination of the minor's best interests.
 - (c) A difference between the minor's intent and desires and the private attorney guardian ad litem's determination of best interests is not sufficient to create a conflict of interest.
 - (d) The private attorney guardian ad litem shall disclose the intent and desires of the minor unless the minor:
 - (i) instructs the private attorney guardian ad litem to not disclose the minor's intent and desires; or
 - (ii) has not expressed an intent and desire.
 - (e) The court may appoint one private attorney guardian ad litem to represent the best interests of more than one child of a marriage.
- (14) In every court hearing where the private attorney guardian ad litem makes a recommendation regarding the best interest of the minor, the court shall require the private attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

- (15) A private 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 private attorney guardian ad litem.
- (16) The office and the Guardian ad Litem Oversight Committee shall compile a list of attorneys willing to accept an appointment as a private attorney guardian ad litem.
- (17) Upon the advice of the director and the Guardian ad Litem Oversight Committee, the Judicial Council shall establish by rule:
 - (a) the minimum qualifications and requirements for appointment by the court as a private attorney guardian ad litem;
 - (b) the standard fee rate and retainer amount for a private attorney guardian ad litem;
 - (c) the percentage of cases a private attorney guardian ad litem may be expected to take on pro bono;
 - (d) a system to:
 - (i) select a private attorney guardian ad litem for a given appointment; and
 - (ii) determine when a private attorney guardian ad litem shall be expected to accept an appointment pro bono; and
 - (e) the process for handling a complaint relating to the eligibility status of a private attorney guardian ad litem.
- (18)
 - (a) Any savings that result from assigning a private attorney guardian ad litem in a district court case, instead of an office guardian ad litem, shall be applied to the office to recruit and train attorneys for the private attorney guardian ad litem program.
 - (b) After complying with Subsection (18)(a), the office shall use any additional savings to reduce caseloads and improve current practices in juvenile court.

Renumbered and Amended by Chapter 267, 2014 General Session