

**Superseded 5/8/2018**

**78A-6-902 Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.**

- (1)
  - (a) The court:
    - (i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and
    - (ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.
  - (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a finding that establishes the necessity of the appointment.
- (2) An attorney guardian ad litem shall represent the best interest of each child who may become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the day that:
  - (a) the child is removed from the child's home by the division; or
  - (b) the petition is filed.
- (3) The director shall ensure that each attorney guardian ad litem employed by the office:
  - (a) represents the best interest of each client of the office in all venues, including:
    - (i) court proceedings; and
    - (ii) meetings to develop, review, or modify the child and family plan with the Division of Child and Family Services in accordance with Section 62A-4a-205;
  - (b) prior to representing any minor before the court, be trained in:
    - (i) applicable statutory, regulatory, and case law; and
    - (ii) nationally recognized standards for an attorney guardian ad litem;
  - (c) conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;
  - (d)
    - (i) personally meets 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 interviews 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; and
    - (iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:
      - (A) to the extent possible, determines the minor's goals and concerns regarding placement; and
      - (B) personally assesses or supervises an assessment of the appropriateness and safety of the minor's environment in each placement;
  - (e) personally attends all review hearings pertaining to the minor's case;
  - (f) participates in all appeals, unless excused by order of the court;
  - (g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to:
    - (i) maintain a minor in the minor's home; or
    - (ii) reunify a child with the child's parent;

- (h) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:
    - (i) the status of the minor's case;
    - (ii) all court and administrative proceedings;
    - (iii) discussions with, and proposals made by, other parties;
    - (iv) court action; and
    - (v) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor; and
  - (i) in cases where a child and family plan is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and family plan and any dispositional orders to:
    - (i) determine whether services ordered by the court:
      - (A) are actually provided; and
      - (B) are provided in a timely manner; and
    - (ii) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services.
- (4)
- (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court.
  - (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.
- (5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.
- (6)
- (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:
    - (i) all costs resulting from the appointment of an attorney guardian ad litem; and
    - (ii) the costs of volunteer, paralegal, and other staff appointment and training.
  - (b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).
- (c)
- (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the child's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate, taking into consideration costs already borne by the parents, parent, or legal guardian, including:
    - (A) private attorney fees;
    - (B) counseling for the child;
    - (C) counseling for the parent, if mandated by the court or recommended by the Division of Child and Family Services; and
    - (D) any other cost the court determines to be relevant.
  - (ii) The court may not assess those fees or costs against:
    - (A) a legal guardian, when that guardian is the state; or
    - (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.
- (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the court shall:

- (i) require that person to submit an affidavit of impecuniosity as provided in Section 78A-2-302; and
  - (ii) follow the procedures and make the determinations as provided in Section 78A-2-304.
- (e) The child's parents, parent, or legal guardian may appeal the court's determination, under Subsection (6)(c), of fees, costs, and expenses.
- (7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.
- (8)
  - (a) An attorney guardian ad litem shall represent the best interest of a minor.
  - (b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest.
  - (c) A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.
  - (d) The guardian ad litem shall disclose the wishes of the child unless the child:
    - (i) instructs the guardian ad litem to not disclose the child's wishes; or
    - (ii) has not expressed any wishes.
  - (e) The court may appoint one attorney guardian ad litem to represent the best interests of more than one child of a marriage.
- (9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.
- (10)
  - (a) An attorney guardian ad litem shall conduct an independent investigation regarding the minor at issue, the minor's family, and what constitutes the best interest of the minor.
  - (b) An attorney guardian ad litem may interview the minor's Division of Child and Family Services caseworker, but may not:
    - (i) rely exclusively on the conclusions and findings of the Division of Child and Family Services; or
    - (ii) except as provided in Subsection (10)(c), conduct a visit with the client in conjunction with the visit of a Division of Child and Family Services caseworker.
  - (c) A guardian ad litem may meet with a client during a team meeting, court hearing, or similar venue when a Division of Child and Family Services caseworker is present for a purpose other than the guardian ad litem's visit with the client.
- (11)
  - (a) An attorney guardian ad litem shall maintain current and accurate records regarding:
    - (i) the number of times the attorney has had contact with each minor; and
    - (ii) the actions the attorney has taken in representation of the minor's best interest.
  - (b) In every hearing where the guardian ad litem makes a recommendation regarding the best interest of the child, the court shall require the guardian ad litem to disclose the factors that form the basis of the recommendation.
- (12)
  - (a) Except as provided in Subsection (12)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:

- (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and
  - (ii) shall be released to the Legislature.
- (c)
- (i) Except as provided in Subsection (12)(c)(ii), records released in accordance with Subsection (12)(b) shall be maintained as confidential by the Legislature.
  - (ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in its audits and reports to the Legislature.
- (d)
- (i) Subsection (12)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:
    - (A) the unique role of an attorney guardian ad litem described in Subsection (8); and
    - (B) the state's role and responsibility:
      - (I) to provide a guardian ad litem program; and
      - (II) as *parens patriae*, to protect minors.
  - (ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.