

Guardian Ad Litem

by **Rebecca A. Schnelz**
Probate Court Administrator



“Guardian ad what?” That’s a question we frequently hear from parties involved in a probate case following the appointment of a GAL. Explaining the purpose of a GAL as the “eyes and ears of the court” usually helps a party to understand. In fact, GALs play a very important (and sometimes quite challenging) role in assisting the probate court to obtain information necessary for decision-making in a variety of cases.

In Oakland County, GALs are appointed by the judge assigned to the matter. Authority for the appointment of GALs is provided through a number of statutes within the Estates and Protected Individuals Code (EPIC). For example, MCL 700.1403(d) states that:

[a]t any point in a proceeding, the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated individual, an unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate.

More specifically, in proceedings for the appointment of a guardian of an adult, EPIC requires the appointment of a GAL unless the alleged incapacitated individual has legal counsel of his or her own choice.¹ When a petition is filed for appointment of a conservator for an adult, the court must appoint a GAL unless the person to be protected has chosen counsel, or is mentally competent but aged or physically infirm.²

In matters regarding minors, MCL 700.5213(6) states that the court may appoint a GAL to assist in determining a child’s best interests. MCL 700.5213(4) and (5) provide that a lawyer-guardian ad litem with all the duties of a L-GAL under MCL 712A.17d may be appointed at any point during a proceeding if the court determines that the minor’s interests are or may be inadequately represented.

The duties of a GAL are varied. In general, the GAL

must provide a written report to the court no later than 24 hours prior to the hearing.³ It is preferred in Oakland County that the reports be filed at least 2-3 days prior to the hearing. A drop-off box is provided for GAL reports next to the cashier’s station at our front counter. GALs are expected to attend the hearing in Oakland County. [Practice tip: getting the GAL report in on time before the hearing can help reduce time spent in line to get the file for court on motion call mornings.]

In a conservatorship, after meeting with the individual to be protected, a GAL must report to the court on whether there is an appropriate alternative to a conservatorship. If a conservatorship is appropriate, then the GAL must consider and make a recommendation as to the desirability of limiting the scope and duration of a conservator’s authority.⁴ A recommendation to the judge regarding bond is also of assistance to the court.

MCL 700.5305 lays out in detail the duties of a GAL for an alleged incapacitated individual. These include, but are not limited to, personally visiting with the individual, explaining the nature and legal effects of a guardian’s appointment, and explaining the individual’s rights in regard to the hearing.

These are just some highlights regarding the duties of a GAL. Attorneys interested in acting as a GAL in Oakland County should contact Kristen Bennett at the OCBA at 248-334-3400 regarding GAL training. The cost to members is \$110 and for non-members the fee is \$140. The training session is now available for viewing on videotape at the OCBA, or keep your eye on *LACHES* for announcements regarding upcoming training sessions.

Footnotes

- 1 MCL 700.5303(3).
- 2 MCL 700.5406(2).
- 3 MCR 5.121(C).
- 4 MCL 700.5406(4).