

Guardian Ad Litem

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There are several types of filings in which an attorney can serve as a Guardian Ad Litem (GAL) in Probate Court. Those include Adult Guardianship proceedings, Minor Guardianship proceedings, Developmentally Disabled Persons guardianship reviews, and even Estate and Conservatorship proceedings. Typically, you will hear the judges refer to Guardians Ad Litem as the “eyes and ears of the court.” The court relies upon our Guardians Ad Litem to provide information about the proceeding that, many times, the court would have no other way of obtaining.

In general, prior to a hearing date, the GAL must conduct an investigation on the particular petition filed and provide a written report to the court. In Oakland County, the GAL is also required to attend the hearing unless otherwise directed by the court. For processing purposes, unless under time restraints, Oakland County requires the written report to be filed as early as possible but, minimally, at least one to two days before the hearing.

The most common Probate Court proceeding in which a GAL is appointed is an Adult Guardianship proceeding. MCLA 700.5305 outlines the duties of a GAL. Typical duties include:

- Personally visiting the individual.
- Explaining to the individual the nature, purpose and legal effects of the guardianship appointment.
- Explaining the individual’s rights in the hearing procedure, including the right to:
 - contest the petition,
 - limit the guardian’s power,

- object to a particular person being appointed,
- be present at the hearing, and
- be represented by counsel.

- The GAL must also advise the court if there are more appropriate alternatives to the appointment of a Full Guardian. The GAL must consider the appropriateness of the appointment of a Limited Guardian; the appointment of a Conservator or another Protective Order; and the execution of a Patient Advocate Designation, Do Not Resuscitate Declaration or Durable Power of Attorney.

The GAL’s appointment typically terminates when the Petition has been granted or denied (unless the court requests that the GAL stay on the file). It may also terminate if the court appoints a lawyer for the alleged ward.

A frequently asked question from attorneys regarding the appointment of GALs is the issue of immunity from civil liability. Please note that MCLA 691.1407(6) states: “A Guardian Ad Litem is immune from civil liability for injuries to persons or damages to property whenever he or she is acting within the scope of his or her authority as Guardian Ad Litem.” A GAL should also review MCR 5.121(E), which speaks to the privilege and subsequent appointment of Guardian Ad Litem as counsel for the allegedly legally incapacitated individual.

While the GAL performs many functions before the court, the determination and appointment of a guardian for an adult is perhaps one of the most important. If you have any questions with respect to the above, please contact either Jill Koney Daly or me. Stay tuned!