
SUBSTITUTE HOUSE BILL 1525

State of Washington 56th Legislature 1999 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Dickerson, Constantine and Lambert)

Read first time 03/02/1999.

1 AN ACT Relating to authorizing mediation in guardianship
2 proceedings; and amending RCW 11.88.090.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 11.88.090 and 1996 c 249 s 10 are each amended to read
5 as follows:

6 (1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010
7 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and
8 11.92.180 shall affect or impair the power of any court to appoint a
9 guardian ad litem to defend the interests of any incapacitated person
10 interested in any suit or matter pending therein, or to commence and
11 prosecute any suit in his or her behalf.

12 (2) Prior to the appointment of a guardian or a limited guardian,
13 whenever it appears that the incapacitated person or incapacitated
14 person's estate could benefit from mediation and such mediation would
15 likely result in overall reduced costs to the estate, upon the motion
16 of the alleged incapacitated person or the guardian ad litem, or
17 subsequent to such appointment, whenever it appears that the
18 incapacitated person or incapacitated person's estate could benefit
19 from mediation and such mediation would likely result in overall

1 reduced costs to the estate, upon the motion of any interested person,
2 the court may:

3 (a) Require any party or other person subject to the jurisdiction
4 of the court to participate in mediation;

5 (b) Establish the terms of the mediation; and

6 (c) Allocate the cost of the mediation pursuant to RCW 11.96.140.

7 (3) Upon receipt of a petition for appointment of guardian or
8 limited guardian, except as provided herein, the court shall appoint a
9 guardian ad litem to represent the best interests of the alleged
10 incapacitated person, who shall be a person found or known by the court
11 to:

12 (a) Be free of influence from anyone interested in the result of
13 the proceeding; and

14 (b) Have the requisite knowledge, training, or expertise to perform
15 the duties required by this section.

16 The guardian ad litem shall within five days of receipt of notice
17 of appointment file with the court and serve, either personally or by
18 certified mail with return receipt, each party with a statement
19 including: His or her training relating to the duties as a guardian ad
20 litem; his or her criminal history as defined in RCW 9.94A.030 for the
21 period covering ten years prior to the appointment; his or her hourly
22 rate, if compensated; whether the guardian ad litem has had any contact
23 with a party to the proceeding prior to his or her appointment; and
24 whether he or she has an apparent conflict of interest. Within three
25 days of the later of the actual service or filing of the guardian ad
26 litem's statement, any party may set a hearing and file and serve a
27 motion for an order to show cause why the guardian ad litem should not
28 be removed for one of the following three reasons: (i) Lack of
29 expertise necessary for the proceeding; (ii) an hourly rate higher than
30 what is reasonable for the particular proceeding; or (iii) a conflict
31 of interest. Notice of the hearing shall be provided to the guardian
32 ad litem and all parties. If, after a hearing, the court enters an
33 order replacing the guardian ad litem, findings shall be included,
34 expressly stating the reasons for the removal. If the guardian ad
35 litem is not removed, the court has the authority to assess to the
36 moving party, attorneys' fees and costs related to the motion. The
37 court shall assess attorneys' fees and costs for frivolous motions.

38 No guardian ad litem need be appointed when a parent is petitioning
39 for a guardian or a limited guardian to be appointed for his or her

1 minor child and the minority of the child, as defined by RCW 11.92.010,
2 is the sole basis of the petition. The order appointing the guardian
3 ad litem shall recite the duties set forth in subsection (~~((+4))~~) (5) of
4 this section. The appointment of a guardian ad litem shall have no
5 effect on the legal competency of the alleged incapacitated person and
6 shall not overcome the presumption of competency or full legal and
7 civil rights of the alleged incapacitated person.

8 (~~((+3))~~) (4)(a) The superior court of each county shall develop and
9 maintain a registry of persons who are willing and qualified to serve
10 as guardians ad litem in guardianship matters. The court shall choose
11 as guardian ad litem a person whose name appears on the registry in a
12 system of consistent rotation, except in extraordinary circumstances
13 such as the need for particular expertise. The court shall develop
14 procedures for periodic review of the persons on the registry and for
15 probation, suspension, or removal of persons on the registry for
16 failure to perform properly their duties as guardian ad litem. In the
17 event the court does not select the person next on the list, it shall
18 include in the order of appointment a written reason for its decision.

19 (b) To be eligible for the registry a person shall:

20 (i) Present a written statement outlining his or her background and
21 qualifications. The background statement shall include, but is not
22 limited to, the following information:

23 (A) Level of formal education;

24 (B) Training related to the guardian ad litem's duties;

25 (C) Number of years' experience as a guardian ad litem;

26 (D) Number of appointments as a guardian ad litem and the county or
27 counties of appointment;

28 (E) Criminal history, as defined in RCW 9.94A.030; and

29 (F) Evidence of the person's knowledge, training, and experience in
30 each of the following: Needs of impaired elderly people, physical
31 disabilities, mental illness, developmental disabilities, and other
32 areas relevant to the needs of incapacitated persons, legal procedure,
33 and the requirements of chapters 11.88 and 11.92 RCW.

34 The written statement of qualifications shall include a statement
35 of the number of times the guardian ad litem has been removed for
36 failure to perform his or her duties as guardian ad litem; and

37 (ii) Complete the model training program as described in (d) of
38 this subsection.

1 (c) The background and qualification information shall be updated
2 annually.

3 (d) The department of social and health services shall convene an
4 advisory group to develop a model guardian ad litem training program
5 and shall update the program biennially. The advisory group shall
6 consist of representatives from consumer, advocacy, and professional
7 groups knowledgeable in developmental disabilities, neurological
8 impairment, physical disabilities, mental illness, aging, legal, court
9 administration, the Washington state bar association, and other
10 interested parties.

11 (e) The superior court shall require utilization of the model
12 program developed by the advisory group as described in (d) of this
13 subsection, to assure that candidates applying for registration as a
14 qualified guardian ad litem shall have satisfactorily completed
15 training to attain these essential minimum qualifications to act as
16 guardian ad litem.

17 (~~(4)~~) (5) The guardian ad litem appointed pursuant to this
18 section shall have the following duties:

19 (a) To meet and consult with the alleged incapacitated person as
20 soon as practicable following appointment and explain, in language
21 which such person can reasonably be expected to understand, the
22 substance of the petition, the nature of the resultant proceedings, the
23 person's right to contest the petition, the identification of the
24 proposed guardian or limited guardian, the right to a jury trial on the
25 issue of his or her alleged incapacity, the right to independent legal
26 counsel as provided by RCW 11.88.045, and the right to be present in
27 court at the hearing on the petition;

28 (b) To obtain a written report according to RCW 11.88.045; and such
29 other written or oral reports from other qualified professionals as are
30 necessary to permit the guardian ad litem to complete the report
31 required by this section;

32 (c) To meet with the person whose appointment is sought as guardian
33 or limited guardian and ascertain:

34 (i) The proposed guardian's knowledge of the duties, requirements,
35 and limitations of a guardian; and

36 (ii) The steps the proposed guardian intends to take or has taken
37 to identify and meet the needs of the alleged incapacitated person;

38 (d) To consult as necessary to complete the investigation and
39 report required by this section with those known relatives, friends, or

1 other persons the guardian ad litem determines have had a significant,
2 continuing interest in the welfare of the alleged incapacitated person;

3 (e) To investigate alternate arrangements made, or which might be
4 created, by or on behalf of the alleged incapacitated person, such as
5 revocable or irrevocable trusts, or durable powers of attorney; whether
6 good cause exists for any such arrangements to be discontinued; and why
7 such arrangements should not be continued or created in lieu of a
8 guardianship;

9 (f) To provide the court with a written report which shall include
10 the following:

11 (i) A description of the nature, cause, and degree of incapacity,
12 and the basis upon which this judgment was made;

13 (ii) A description of the needs of the incapacitated person for
14 care and treatment, the probable residential requirements of the
15 alleged incapacitated person and the basis upon which these findings
16 were made;

17 (iii) An evaluation of the appropriateness of the guardian or
18 limited guardian whose appointment is sought and a description of the
19 steps the proposed guardian has taken or intends to take to identify
20 and meet current and emerging needs of the incapacitated person;

21 (iv) A description of any alternative arrangements previously made
22 by the alleged incapacitated person or which could be made, and whether
23 and to what extent such alternatives should be used in lieu of a
24 guardianship, and if the guardian ad litem is recommending
25 discontinuation of any such arrangements, specific findings as to why
26 such arrangements are contrary to the best interest of the alleged
27 incapacitated person;

28 (v) A description of the abilities of the alleged incapacitated
29 person and a recommendation as to whether a guardian or limited
30 guardian should be appointed. If appointment of a limited guardian is
31 recommended, the guardian ad litem shall recommend the specific areas
32 of authority the limited guardian should have and the limitations and
33 disabilities to be placed on the incapacitated person;

34 (vi) An evaluation of the person's mental ability to rationally
35 exercise the right to vote and the basis upon which the evaluation is
36 made;

37 (vii) Any expression of approval or disapproval made by the alleged
38 incapacitated person concerning the proposed guardian or limited
39 guardian or guardianship or limited guardianship;

1 (viii) Identification of persons with significant interest in the
2 welfare of the alleged incapacitated person who should be advised of
3 their right to request special notice of proceedings pursuant to RCW
4 11.92.150; and

5 (ix) Unless independent counsel has appeared for the alleged
6 incapacitated person, an explanation of how the alleged incapacitated
7 person responded to the advice of the right to jury trial, to
8 independent counsel and to be present at the hearing on the petition.

9 Within forty-five days after notice of commencement of the
10 guardianship proceeding has been served upon the guardian ad litem, and
11 at least fifteen days before the hearing on the petition, unless an
12 extension or reduction of time has been granted by the court for good
13 cause, the guardian ad litem shall file its report and send a copy to
14 the alleged incapacitated person and his or her counsel, spouse, all
15 children not residing with a notified person, those persons described
16 in (f)(viii) of this subsection, and persons who have filed a request
17 for special notice pursuant to RCW 11.92.150. If the guardian ad litem
18 needs additional time to finalize his or her report, then the guardian
19 ad litem shall petition the court for a postponement of the hearing or,
20 with the consent of all other parties, an extension or reduction of
21 time for filing the report. If the hearing does not occur within sixty
22 days of filing the petition, then upon the two-month anniversary of
23 filing the petition and on or before the same day of each following
24 month until the hearing, the guardian ad litem shall file interim
25 reports summarizing his or her activities on the proceeding during that
26 time period as well as fees and costs incurred;

27 (g) To advise the court of the need for appointment of counsel for
28 the alleged incapacitated person within five court days after the
29 meeting described in (a) of this subsection unless (i) counsel has
30 appeared, (ii) the alleged incapacitated person affirmatively
31 communicated a wish not to be represented by counsel after being
32 advised of the right to representation and of the conditions under
33 which court-provided counsel may be available, or (iii) the alleged
34 incapacitated person was unable to communicate at all on the subject,
35 and the guardian ad litem is satisfied that the alleged incapacitated
36 person does not affirmatively desire to be represented by counsel.

37 ((+5+)) (6) If the petition is brought by an interested person or
38 entity requesting the appointment of some other qualified person or
39 entity and a prospective guardian or limited guardian cannot be found,

1 the court shall order the guardian ad litem to investigate the
2 availability of a possible guardian or limited guardian and to include
3 the findings in a report to the court pursuant to subsection (~~((4))~~)
4 (5)(f) of this section.

5 (~~((6))~~) (7) The parties to the proceeding may file responses to the
6 guardian ad litem report with the court and deliver such responses to
7 the other parties and the guardian ad litem at any time up to the
8 second day prior to the hearing. If a guardian ad litem fails to file
9 his or her report in a timely manner, the hearing shall be continued to
10 give the court and the parties at least fifteen days before the hearing
11 to review the report. At any time during the proceeding upon motion of
12 any party or on the court's own motion, the court may remove the
13 guardian ad litem for failure to perform his or her duties as specified
14 in this chapter, provided that the guardian ad litem shall have five
15 days' notice of any motion to remove before the court enters such
16 order. In addition, the court in its discretion may reduce a guardian
17 ad litem's fee for failure to carry out his or her duties.

18 (~~((7))~~) (8) The court appointed guardian ad litem shall have the
19 authority, in the event that the alleged incapacitated person is in
20 need of emergency life-saving medical services, and is unable to
21 consent to such medical services due to incapacity pending the hearing
22 on the petition to give consent for such emergency life-saving medical
23 services on behalf of the alleged incapacitated person.

24 (~~((8))~~) (9) The court-appointed guardian ad litem shall have the
25 authority to move for temporary relief under chapter 7.40 RCW to
26 protect the alleged incapacitated person from abuse, neglect,
27 abandonment, or exploitation, as those terms are defined in RCW
28 74.34.020, or to address any other emergency needs of the alleged
29 incapacitated person. Any alternative arrangement executed before
30 filing the petition for guardianship shall remain effective unless the
31 court grants the relief requested under chapter 7.40 RCW, or unless,
32 following notice and a hearing at which all parties directly affected
33 by the arrangement are present, the court finds that the alternative
34 arrangement should not remain effective.

35 (~~((9))~~) (10) The guardian ad litem shall receive a fee determined
36 by the court. The fee shall be charged to the alleged incapacitated
37 person unless the court finds that such payment would result in
38 substantial hardship upon such person, in which case the county shall
39 be responsible for such costs: PROVIDED, That if no guardian or

1 limited guardian is appointed the court may charge such fee to the
2 petitioner or the alleged incapacitated person, or divide the fee, as
3 it deems just; and if the petition is found to be frivolous or not
4 brought in good faith, the guardian ad litem fee shall be charged to
5 the petitioner. The court shall not be required to provide for the
6 payment of a fee to any salaried employee of a public agency.

7 (~~(10)~~) (11) Upon the presentation of the guardian ad litem report
8 and the entry of an order either dismissing the petition for
9 appointment of guardian or limited guardian or appointing a guardian or
10 limited guardian, the guardian ad litem shall be dismissed and shall
11 have no further duties or obligations unless otherwise ordered by the
12 court. If the court orders the guardian ad litem to perform further
13 duties or obligations, they shall not be performed at county expense.

14 (~~(11)~~) (12) The guardian ad litem shall appear in person at all
15 hearings on the petition unless all parties provide a written waiver of
16 the requirement to appear.

17 (~~(12)~~) (13) At any hearing the court may consider whether any
18 person who makes decisions regarding the alleged incapacitated person
19 or estate has breached a statutory or fiduciary duty.

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