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HOUSE BILL 2461

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State of Washington                      62nd Legislature                      2012 Regular Session

By Representative Moeller

Read first time 01/16/12. Referred to Committee on Judiciary.

1            AN ACT Relating to background and qualifications statements for  
2 guardians ad litem; 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 2008 c 6 s 804 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

1 from mediation and such mediation would likely result in overall  
2 reduced costs to the estate, upon the motion of any interested person,  
3 the court may:

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

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

7 (c) Allocate the cost of the mediation (~~pursuant to RCW~~  
8 ~~11.96.140~~)).

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

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

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

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

1 authority to assess to the moving party, attorneys' fees and costs  
2 related to the motion. The court shall assess attorneys' fees and  
3 costs for frivolous motions.

4 (5) No guardian ad litem need be appointed when a parent is  
5 petitioning for a guardian or a limited guardian to be appointed for  
6 his or her minor child and the minority of the child, as defined by RCW  
7 11.92.010, is the sole basis of the petition. The order appointing the  
8 guardian ad litem shall recite the duties set forth in subsection  
9 ~~((+5+))~~ (7) of this section. The appointment of a guardian ad litem  
10 shall have no effect on the legal competency of the alleged  
11 incapacitated person and shall not overcome the presumption of  
12 competency or full legal and civil rights of the alleged incapacitated  
13 person.

14 ~~((+4+))~~ (6)(a) The superior court of each county shall develop and  
15 maintain a registry of persons who are willing and qualified to serve  
16 as guardians ad litem in guardianship matters. The court shall choose  
17 as guardian ad litem a person whose name appears on the registry in a  
18 system of consistent rotation, except in extraordinary circumstances  
19 such as the need for particular expertise. The court shall develop  
20 procedures for periodic review of the persons on the registry and for  
21 probation, suspension, or removal of persons on the registry for  
22 failure to perform properly their duties as guardian ad litem. In the  
23 event the court does not select the person next on the list, it shall  
24 include in the order of appointment a written reason for its decision.

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

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

- 29 (A) Level of formal education;
- 30 (B) Training related to the guardian ad litem's duties;
- 31 (C) Number of years' experience as a guardian ad litem;
- 32 (D) Number of appointments as a guardian ad litem and the county or  
33 counties of appointment;

34 (E) The results of an examination of state and national criminal  
35 identification data. The examination must consist of a background  
36 check as allowed through the Washington state criminal records privacy  
37 act under RCW 10.97.050, the Washington state patrol criminal  
38 identification system under RCW 43.43.832 through 43.43.834, and the

1 federal bureau of investigation. The background check must be done  
2 through the Washington state patrol criminal identification section and  
3 must include a national check from the federal bureau of investigation  
4 based on the submission of fingerprints;

5 (F) Criminal history, as defined in RCW 9.94A.030; and

6 ((+F)) (G) Evidence of the person's knowledge, training, and  
7 experience in each of the following: Needs of impaired elderly people,  
8 physical disabilities, mental illness, developmental disabilities, and  
9 other areas relevant to the needs of incapacitated persons, legal  
10 procedure, and the requirements of chapters 11.88 and 11.92 RCW.

11 The written statement of qualifications shall include the names of  
12 any counties in which the person was removed from a guardian ad litem  
13 registry pursuant to a grievance action, and the name of the court and  
14 the cause number of any case in which the court has removed the person  
15 for cause; and

16 (ii) Complete the training as described in (e) of this subsection.  
17 The training is not applicable to guardians ad litem appointed pursuant  
18 to special proceeding Rule 98.16W.

19 (c) Superior court shall remove any person from the guardian ad  
20 litem registry who misrepresents his or her qualifications pursuant to  
21 a grievance procedure established by the court.

22 (d) The background and qualification information shall be updated  
23 annually.

24 (e) The department of social and health services shall convene an  
25 advisory group to develop a model guardian ad litem training program  
26 and shall update the program biennially. The advisory group shall  
27 consist of representatives from consumer, advocacy, and professional  
28 groups knowledgeable in developmental disabilities, neurological  
29 impairment, physical disabilities, mental illness, domestic violence,  
30 aging, legal, court administration, the Washington state bar  
31 association, and other interested parties.

32 (f) The superior court shall require utilization of the model  
33 program developed by the advisory group as described in (e) of this  
34 subsection, to assure that candidates applying for registration as a  
35 qualified guardian ad litem shall have satisfactorily completed  
36 training to attain these essential minimum qualifications to act as  
37 guardian ad litem.

1           (~~(5)~~) (7) The guardian ad litem appointed pursuant to this  
2 section shall have the following duties:

3           (a) To meet and consult with the alleged incapacitated person as  
4 soon as practicable following appointment and explain, in language  
5 which such person can reasonably be expected to understand, the  
6 substance of the petition, the nature of the resultant proceedings, the  
7 person's right to contest the petition, the identification of the  
8 proposed guardian or limited guardian, the right to a jury trial on the  
9 issue of his or her alleged incapacity, the right to independent legal  
10 counsel as provided by RCW 11.88.045, and the right to be present in  
11 court at the hearing on the petition;

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

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

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

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

22           (d) To consult as necessary to complete the investigation and  
23 report required by this section with those known relatives, friends, or  
24 other persons the guardian ad litem determines have had a significant,  
25 continuing interest in the welfare of the alleged incapacitated person;

26           (e) To investigate alternate arrangements made, or which might be  
27 created, by or on behalf of the alleged incapacitated person, such as  
28 revocable or irrevocable trusts, durable powers of attorney, or blocked  
29 accounts; whether good cause exists for any such arrangements to be  
30 discontinued; and why such arrangements should not be continued or  
31 created in lieu of a guardianship;

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

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

36           (ii) A description of the needs of the incapacitated person for  
37 care and treatment, the probable residential requirements of the

1 alleged incapacitated person and the basis upon which these findings  
2 were made;

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

7 (iv) A description of any alternative arrangements previously made  
8 by the alleged incapacitated person or which could be made, and whether  
9 and to what extent such alternatives should be used in lieu of a  
10 guardianship, and if the guardian ad litem is recommending  
11 discontinuation of any such arrangements, specific findings as to why  
12 such arrangements are contrary to the best interest of the alleged  
13 incapacitated person;

14 (v) A description of the abilities of the alleged incapacitated  
15 person and a recommendation as to whether a guardian or limited  
16 guardian should be appointed. If appointment of a limited guardian is  
17 recommended, the guardian ad litem shall recommend the specific areas  
18 of authority the limited guardian should have and the limitations and  
19 disabilities to be placed on the incapacitated person;

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

23 (vii) Any expression of approval or disapproval made by the alleged  
24 incapacitated person concerning the proposed guardian or limited  
25 guardian or guardianship or limited guardianship;

26 (viii) Identification of persons with significant interest in the  
27 welfare of the alleged incapacitated person who should be advised of  
28 their right to request special notice of proceedings pursuant to RCW  
29 11.92.150; and

30 (ix) Unless independent counsel has appeared for the alleged  
31 incapacitated person, an explanation of how the alleged incapacitated  
32 person responded to the advice of the right to jury trial, to  
33 independent counsel and to be present at the hearing on the petition;

34 (g) To advise the court of the need for appointment of counsel for  
35 the alleged incapacitated person within five court days after the  
36 meeting described in (a) of this subsection unless (i) counsel has  
37 appeared, (ii) the alleged incapacitated person affirmatively  
38 communicated a wish not to be represented by counsel after being

1 advised of the right to representation and of the conditions under  
2 which court-provided counsel may be available, or (iii) the alleged  
3 incapacitated person was unable to communicate at all on the subject,  
4 and the guardian ad litem is satisfied that the alleged incapacitated  
5 person does not affirmatively desire to be represented by counsel.

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

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

35 ~~((6))~~ (9) If the petition is brought by an interested person or  
36 entity requesting the appointment of some other qualified person or  
37 entity and a prospective guardian or limited guardian cannot be found,  
38 the court shall order the guardian ad litem to investigate the

1 availability of a possible guardian or limited guardian and to include  
2 the findings in a report to the court pursuant to subsection ~~((+5))~~  
3 (7)(f) of this section.

4 ~~((+7))~~ (10) The parties to the proceeding may file responses to  
5 the guardian ad litem report with the court and deliver such responses  
6 to the other parties and the guardian ad litem at any time up to the  
7 second day prior to the hearing. If a guardian ad litem fails to file  
8 his or her report in a timely manner, the hearing shall be continued to  
9 give the court and the parties at least fifteen days before the hearing  
10 to review the report. At any time during the proceeding upon motion of  
11 any party or on the court's own motion, the court may remove the  
12 guardian ad litem for failure to perform his or her duties as specified  
13 in this chapter, provided that the guardian ad litem shall have five  
14 days' notice of any motion to remove before the court enters such  
15 order. In addition, the court in its discretion may reduce a guardian  
16 ad litem's fee for failure to carry out his or her duties.

17 ~~((+8))~~ (11) The court appointed guardian ad litem shall have the  
18 authority, in the event that the alleged incapacitated person is in  
19 need of emergency life-saving medical services, and is unable to  
20 consent to such medical services due to incapacity pending the hearing  
21 on the petition to give consent for such emergency life-saving medical  
22 services on behalf of the alleged incapacitated person.

23 ~~((+9))~~ (12) The court-appointed guardian ad litem shall have the  
24 authority to move for temporary relief under chapter 7.40 RCW to  
25 protect the alleged incapacitated person from abuse, neglect,  
26 abandonment, or exploitation, as those terms are defined in RCW  
27 74.34.020, or to address any other emergency needs of the alleged  
28 incapacitated person. Any alternative arrangement executed before  
29 filing the petition for guardianship shall remain effective unless the  
30 court grants the relief requested under chapter 7.40 RCW, or unless,  
31 following notice and a hearing at which all parties directly affected  
32 by the arrangement are present, the court finds that the alternative  
33 arrangement should not remain effective.

34 ~~((+10))~~ (13) The guardian ad litem shall receive a fee determined  
35 by the court. The fee shall be charged to the alleged incapacitated  
36 person unless the court finds that such payment would result in  
37 substantial hardship upon such person, in which case the county shall  
38 be responsible for such costs: PROVIDED, That the court may charge



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

7 ~~((+11+))~~ (14) 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 ~~((+12+))~~ (15) 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 ~~((+13+))~~ (16) 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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