
SENATE BILL 5017

State of Washington 60th Legislature 2007 Regular Session

By Senators Jacobsen and Shin

Read first time 01/08/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to guardianship fees and costs; and amending RCW
2 11.88.090 and 11.92.180.

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

4 **Sec. 1.** RCW 11.88.090 and 2000 c 124 s 1 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~~) to the substantially prevailing party, if any. Otherwise,
9 each party shall pay its own costs and attorneys' fees.

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

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

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

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

1 litem is not removed, the court has the authority to assess to the
2 moving party, attorneys' fees and costs related to the motion. The
3 court shall assess attorneys' fees and costs for frivolous motions.

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

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

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

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

28 (A) Level of formal education;

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

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

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

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

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

1 The written statement of qualifications shall include the names of
2 any counties in which the person was removed from a guardian ad litem
3 registry pursuant to a grievance action, and the name of the court and
4 the cause number of any case in which the court has removed the person
5 for cause; and

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

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

12 (d) The background and qualification information shall be updated
13 annually.

14 (e) The department of social and health services shall convene an
15 advisory group to develop a model guardian ad litem training program
16 and shall update the program biennially. The advisory group shall
17 consist of representatives from consumer, advocacy, and professional
18 groups knowledgeable in developmental disabilities, neurological
19 impairment, physical disabilities, mental illness, domestic violence,
20 aging, legal, court administration, the Washington state bar
21 association, and other interested parties.

22 (f) The superior court shall require utilization of the model
23 program developed by the advisory group as described in (e) of this
24 subsection, to assure that candidates applying for registration as a
25 qualified guardian ad litem shall have satisfactorily completed
26 training to attain these essential minimum qualifications to act as
27 guardian ad litem.

28 (5) The guardian ad litem appointed pursuant to this section shall
29 have the following duties:

30 (a) To meet and consult with the alleged incapacitated person as
31 soon as practicable following appointment and explain, in language
32 which such person can reasonably be expected to understand, the
33 substance of the petition, the nature of the resultant proceedings, the
34 person's right to contest the petition, the identification of the
35 proposed guardian or limited guardian, the right to a jury trial on the
36 issue of his or her alleged incapacity, the right to independent legal
37 counsel as provided by RCW 11.88.045, and the right to be present in
38 court at the hearing on the petition;

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

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

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

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

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

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

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

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

25 (ii) A description of the needs of the incapacitated person for
26 care and treatment, the probable residential requirements of the
27 alleged incapacitated person and the basis upon which these findings
28 were made;

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

33 (iv) A description of any alternative arrangements previously made
34 by the alleged incapacitated person or which could be made, and whether
35 and to what extent such alternatives should be used in lieu of a
36 guardianship, and if the guardian ad litem is recommending
37 discontinuation of any such arrangements, specific findings as to why

1 such arrangements are contrary to the best interest of the alleged
2 incapacitated person;

3 (v) A description of the abilities of the alleged incapacitated
4 person and a recommendation as to whether a guardian or limited
5 guardian should be appointed. If appointment of a limited guardian is
6 recommended, the guardian ad litem shall recommend the specific areas
7 of authority the limited guardian should have and the limitations and
8 disabilities to be placed on the incapacitated person;

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

12 (vii) Any expression of approval or disapproval made by the alleged
13 incapacitated person concerning the proposed guardian or limited
14 guardian or guardianship or limited guardianship;

15 (viii) Identification of persons with significant interest in the
16 welfare of the alleged incapacitated person who should be advised of
17 their right to request special notice of proceedings pursuant to RCW
18 11.92.150; and

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

23 Within forty-five days after notice of commencement of the
24 guardianship proceeding has been served upon the guardian ad litem, and
25 at least fifteen days before the hearing on the petition, unless an
26 extension or reduction of time has been granted by the court for good
27 cause, the guardian ad litem shall file its report and send a copy to
28 the alleged incapacitated person and his or her counsel, spouse, all
29 children not residing with a notified person, those persons described
30 in (f)(viii) of this subsection, and persons who have filed a request
31 for special notice pursuant to RCW 11.92.150. If the guardian ad litem
32 needs additional time to finalize his or her report, then the guardian
33 ad litem shall petition the court for a postponement of the hearing or,
34 with the consent of all other parties, an extension or reduction of
35 time for filing the report. If the hearing does not occur within sixty
36 days of filing the petition, then upon the two-month anniversary of
37 filing the petition and on or before the same day of each following

1 month until the hearing, the guardian ad litem shall file interim
2 reports summarizing his or her activities on the proceeding during that
3 time period as well as fees and costs incurred;

4 (g) To advise the court of the need for appointment of counsel for
5 the alleged incapacitated person within five court days after the
6 meeting described in (a) of this subsection unless (i) counsel has
7 appeared, (ii) the alleged incapacitated person affirmatively
8 communicated a wish not to be represented by counsel after being
9 advised of the right to representation and of the conditions under
10 which court-provided counsel may be available, or (iii) the alleged
11 incapacitated person was unable to communicate at all on the subject,
12 and the guardian ad litem is satisfied that the alleged incapacitated
13 person does not affirmatively desire to be represented by counsel.

14 (6) If the petition is brought by an interested person or entity
15 requesting the appointment of some other qualified person or entity and
16 a prospective guardian or limited guardian cannot be found, the court
17 shall order the guardian ad litem to investigate the availability of a
18 possible guardian or limited guardian and to include the findings in a
19 report to the court pursuant to subsection (5)(f) of this section.

20 (7) The parties to the proceeding may file responses to the
21 guardian ad litem report with the court and deliver such responses to
22 the other parties and the guardian ad litem at any time up to the
23 second day prior to the hearing. If a guardian ad litem fails to file
24 his or her report in a timely manner, the hearing shall be continued to
25 give the court and the parties at least fifteen days before the hearing
26 to review the report. At any time during the proceeding upon motion of
27 any party or on the court's own motion, the court may remove the
28 guardian ad litem for failure to perform his or her duties as specified
29 in this chapter, provided that the guardian ad litem shall have five
30 days' notice of any motion to remove before the court enters such
31 order. In addition, the court in its discretion may reduce a guardian
32 ad litem's fee for failure to carry out his or her duties.

33 (8) The court appointed guardian ad litem shall have the authority,
34 in the event that the alleged incapacitated person is in need of
35 emergency life-saving medical services, and is unable to consent to
36 such medical services due to incapacity pending the hearing on the
37 petition to give consent for such emergency life-saving medical
38 services on behalf of the alleged incapacitated person.

1 (9) The court-appointed guardian ad litem shall have the authority
2 to move for temporary relief under chapter 7.40 RCW to protect the
3 alleged incapacitated person from abuse, neglect, abandonment, or
4 exploitation, as those terms are defined in RCW 74.34.020, or to
5 address any other emergency needs of the alleged incapacitated person.
6 Any alternative arrangement executed before filing the petition for
7 guardianship shall remain effective unless the court grants the relief
8 requested under chapter 7.40 RCW, or unless, following notice and a
9 hearing at which all parties directly affected by the arrangement are
10 present, the court finds that the alternative arrangement should not
11 remain effective.

12 (10) The guardian ad litem shall receive a fee determined by the
13 court. The fee shall be charged to the alleged incapacitated person
14 unless the court finds that such payment would result in substantial
15 hardship upon such person, in which case the county shall be
16 responsible for such costs: PROVIDED, That the court may charge such
17 fee to the petitioner, the alleged incapacitated person, or any person
18 who has appeared in the action; or may allocate the fee, as it deems
19 just. If the petition is found to be frivolous or not brought in good
20 faith, the guardian ad litem fee shall be charged to the petitioner.
21 The court shall not be required to provide for the payment of a fee to
22 any salaried employee of a public agency.

23 (11) Upon the presentation of the guardian ad litem report and the
24 entry of an order either dismissing the petition for appointment of
25 guardian or limited guardian or appointing a guardian or limited
26 guardian, the guardian ad litem shall be dismissed and shall have no
27 further duties or obligations unless otherwise ordered by the court.
28 If the court orders the guardian ad litem to perform further duties or
29 obligations, they shall not be performed at county expense.

30 (12) The guardian ad litem shall appear in person at all hearings
31 on the petition unless all parties provide a written waiver of the
32 requirement to appear.

33 (13) At any hearing the court may consider whether any person who
34 makes decisions regarding the alleged incapacitated person or estate
35 has breached a statutory or fiduciary duty.

36 **Sec. 2.** RCW 11.92.180 and 1995 c 297 s 8 are each amended to read
37 as follows:

1 A guardian or limited guardian shall be allowed such compensation
2 for his or her services as guardian or limited guardian as the court
3 shall deem just and reasonable. In the case of a professional
4 guardian, as defined in RCW 11.88.008, petitioning the court to be
5 appointed as the guardian or limited guardian or in an action to modify
6 or terminate a guardianship or limited guardianship, neither the
7 professional guardian nor any attorney employed by the professional
8 guardian shall be compensated by the alleged incapacitated person for
9 time spent bringing or opposing a petition or action to modify or
10 terminate the guardianship unless the professional guardian is the
11 substantially prevailing party. Guardians and limited guardians shall
12 not be compensated at county or state expense. Additional compensation
13 may be allowed for other administrative costs, including services of an
14 attorney and for other services not provided by the guardian or limited
15 guardian. Where a guardian or limited guardian is an attorney, the
16 guardian or limited guardian shall separately account for time for
17 which compensation is requested for services as a guardian or limited
18 guardian as contrasted to time for which compensation for legal
19 services provided to the guardianship is requested. In all cases,
20 compensation of the guardian or limited guardian and his or her
21 expenses including attorney's fees shall be fixed by the court and may
22 be allowed at any annual or final accounting; but at any time during
23 the administration of the estate, the guardian or limited guardian or
24 his or her attorney may apply to the court for an allowance upon the
25 compensation or necessary expenses of the guardian or limited guardian
26 and for attorney's fees for services already performed. If the court
27 finds that the guardian or limited guardian has failed to discharge his
28 or her duties as such in any respect, it may deny the guardian any
29 compensation whatsoever or may reduce the compensation which would
30 otherwise be allowed. Where the incapacitated person is a department
31 of social and health services client residing in a nursing facility or
32 in a residential or home setting and is required by the department of
33 social and health services to contribute a portion of their income
34 towards the cost of residential or supportive services then the
35 department shall be entitled to notice of proceedings as described in
36 RCW 11.92.150. The amount of guardianship fees and additional

1 compensation for administrative costs shall not exceed the amount
2 allowed by the department of social and health services by rule.

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