

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO PROBATE PRACTICE - LIMITED GUARDIANSHIP AND
GUARDIANSHIP OF ADULTS

Introduced By: Senators Conley, Jabour, Lynch Prata, Doyle, and McCaffrey

Date Introduced: March 15, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 33-15-7 of the General Laws in Chapter 33-15 entitled "Limited
2 Guardianship and Guardianship of Adults" is hereby amended to read as follows:

3 **33-15-7. Guardians ad litem -- Duties -- Legally incapacitated respondents right to**
4 **counsel -- Termination of appointment of guardian ad litem.**

5 (a) Upon filing with the probate court clerk of a petition for the appointment of a
6 guardian, a guardian ad litem shall be appointed for each respondent only in the proceeding for
7 guardianship of an adult.

8 (b) The guardian ad litem need not be an attorney but shall have sufficient experience
9 and/or training in dealing with elderly persons and persons with incapacities and/or disabilities
10 and understanding of his or her role as guardian ad litem to be able to properly discharge such
11 duties under subsection (c) below. Each probate court shall maintain a list of persons deemed
12 qualified to serve as a guardian ad litem and shall appoint from that list on a rotating basis. Any
13 guardian ad litem appointed for a respondent shall be ineligible to serve as legal counsel,
14 temporary guardian or permanent guardian for that respondent.

15 (c) The duties of a guardian ad litem shall include all of the following:

16 (1) Personally visiting the respondent;

17 (2) Explaining to the respondent the nature, purpose, and legal effect of the appointment
18 of a guardian;

1 (3) Explaining to the respondent the hearing procedure, including, but not limited to, the
2 right to contest the petition, to request limits on the guardian's powers, to object to a particular
3 person being appointed guardian, to be present at the hearing, and to be represented by legal
4 counsel;

5 (4) Informing the respondent of the name of the person known to be seeking appointment
6 as guardian;

7 (5) Reviewing the decision making assessment tool(s), petition for guardianship/limited
8 guardianship, and the notice;

9 (6) Interviewing the prospective guardian by telephone or in person; and

10 (7) Making determinations, and informing the court of those determinations, on all of the
11 following:

12 (i) Whether the respondent wishes to be present at the hearing.

13 (ii) Whether the respondent wishes to contest the petition.

14 (iii) Whether the respondent wishes limits placed on the guardian's powers; and

15 (iv) Whether the respondent objects to a particular person being appointed guardian;

16 (v) Whether the respondent wishes to be represented by legal counsel.

17 Unless waived by the court, at least three (3) days prior to the hearing, the guardian ad
18 litem shall file a report substantially in the form as set forth in § 33-15-47 with the court and shall
19 mail or hand deliver a copy to each attorney of record.

20 (d) If the respondent wishes to contest the petition, to have limits placed on the guardian's
21 powers, or to object to a particular person being appointed guardian, and, if legal counsel has not
22 been secured, the court shall appoint legal counsel.

23 (e) If the respondent requests legal counsel, or if the guardian ad litem determines it is in
24 the best interest of the respondent to have legal counsel, and if legal counsel has not been secured,
25 the court shall appoint legal counsel.

26 (f) If the respondent has legal counsel independently or appointed pursuant to subsection
27 (d) or (e), the appointment of a guardian ad litem shall terminate except insofar as informing the
28 court of the respondent's wishes and objections determined pursuant to subsection (c) above.

29 (g) The guardian ad litem shall not interfere with interested parties and their counsel in
30 gathering and presenting evidence according to court orders and rules of discovery and evidence.
31 The guardian ad litem may be called and confronted as a witness regarding his or her conclusions
32 as submitted by report and the extent of his or her personal knowledge concerning the respondent.

33 (h) Court awarded guardian ad litem fees shall not exceed ~~four hundred dollars (\$400)~~
34 eight hundred dollars (\$800) which shall be paid by the petitioner for guardianship if a permanent

1 guardian is not appointed for the respondent or by the guardian of the ward's estate if a permanent
2 guardian is appointed. The court has discretion to award guardian ad litem fees in excess of the
3 cap if the circumstances warrant.

4 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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1 This act would increase the maximum fee for guardian ad litem in proceedings for
2 guardianship/limited guardianship from four hundred dollars (\$400) to eight hundred dollars
3 (\$800).

4 This act would take effect upon passage.

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