

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SB 1279 (Ochoa Bogh) – As Amended June 23, 2022

PROPOSED CONSENT

**SENATE VOTE:** 39-0

**SUBJECT:** GUARDIAN AD LITEM APPOINTMENT

**KEY ISSUE:** BEFORE A GUARDIAN AD LITEM IS APPOINTED IN A CIVIL OR PROBATE PROCEEDING, SHOULD THE PROPOSED GUARDIAN AD LITEM BE REQUIRED TO DISCLOSE ANY ACTUAL OR POTENTIAL CONFLICTS OF INTEREST?

**SYNOPSIS**

*A guardian ad litem is appointed by the court to represent the best interest of an individual (called a ward) who cannot properly represent themselves. A guardian ad litem is typically appointed for a minor or other individual who either lacks the capacity to make legal decisions or who cannot assist counsel in the case. The guardian ad litem typically stands in the shoes of the person they are representing and is required to make decisions in that person's best interest.*

*This bill, sponsored by the Trust & Estates Section of the California Lawyers Association, strengthens existing law by setting clear rules on actual or potential conflicts of interest between guardians ad litem and their wards. It also provides notice requirements when a guardian ad litem is requested for a person who already has a guardian or conservator of the estate. This bill has no reported opposition.*

**SUMMARY:** Provides new requirements for the appointment of a guardian ad litem in civil and probate cases, including disclosure of actual or potential conflict of interest. Specifically, **this bill:**

- 1) Expands the requirements before a guardian ad litem may be appointed for a party in a civil case who has a guardian or conservator of the estate to include:
  - a) Providing notice of the guardian ad litem application to the guardian or conservator of the estate upon the filing of the application to be appointed as guardian ad litem;
  - b) Requiring the application to disclose the existence of a guardian or conservator of the estate; and
  - c) Requiring the application to set forth the reasons why the guardian or conservator of the estate is inadequate to represent the interests of the proposed ward in the action.
- 2) Allows the guardian or conservator of the estate five court days from receiving the notice in 1a) to file any opposition to the application.
- 3) Requires a proposed guardian ad litem, before their appointment by a civil or probate court, to disclose both of the following to the court and all parties to the action or proceeding:

- a) Any known actual or potential conflicts of interest that would or might arise from the appointment.
  - b) Any familial or affiliate relationship the proposed guardian ad litem has with any of the parties.
- 4) If a guardian ad litem becomes aware that a potential conflict of interest has become an actual conflict of interest or that a new potential or actual conflict of interest exists, the guardian ad litem shall promptly disclose the conflict of interest to the court.

**EXISTING LAW:**

- 1) Provides that a guardian ad litem may be appointed in any case when it is deemed by the court expedient to appoint a guardian ad litem to represent the minor, person lacking legal capacity to make decisions, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. (Code of Civil Procedure (CCP) Section 372 (a).)
- 2) Provides that the guardian ad litem appearing for any minor, person who lacks legal capacity to make decisions, or person for whom a conservator has been appointed has power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. (*Ibid.*)
- 3) Provides exceptions to allow minors, in certain situations, to appear in court without a guardian ad litem. (CCP Section 372 (b), (c).)
- 4) Permits a probate court, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, to appoint a guardian ad litem at any stage of a proceeding under the Probate Code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate: (a) a minor; (b) an incapacitated person; (c) an unborn person; (d) an unascertained person; (e) a person whose identity or address is unknown; or (f) a designated class of persons who are not ascertained or are not in being. (Probate Code Section 1003.)
- 5) Provides that, if not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests under 4). (*Ibid.*)
- 6) Provides that the reasonable expenses of a guardian ad litem appointed under 4), shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from such other source as the court orders. (*Ibid.*)
- 7) Allows a court to appoint a guardian of the person, the estate, or both for a child under 18 years of age, or 18 to 21 years of age as specified, taking into consideration the best interest of the proposed ward. (Probate Code Sections 1510, 1510.1.)
- 8) Permits a court to appoint a conservator of the person for a person who is unable to provide properly for their personal needs for physical health, food, clothing, or shelter, as provided.

Permits a court to appoint a conservator of the estate for a person who is substantially unable to manage their own financial resources or resist fraud or undue influence, except as provided. Provides that a conservatorship cannot be granted unless the court makes an express finding that the conservatorship is the least restrictive alternative needed for protection of the conservatee. (Probate Code Sections 1800.3, 1801.)

**FISCAL EFFECT:** As currently in print this bill is keyed non-fiscal.

**COMMENTS:** A guardian ad litem is appointed by the court to represent the best interest of an individual (called a ward) who cannot properly represent themselves. A guardian ad litem is typically appointed for a minor or other individual who either lacks the capacity to make legal decisions or who cannot assist counsel in the case. The guardian ad litem typically stands in the shoes of the person they are representing and is required to make decisions in that person's best interest. This bill strengthens existing law by setting clear rules on actual or potential conflicts of interest between guardians ad litem and their wards. It also provides notice requirements when a guardian ad litem is requested for a person who already has a guardian or conservator of the estate.

In support of the bill, the author states:

SB 1279 will strengthen and codify several aspects of guardian ad litem appointments that often occur without clear guidance for litigants and their lawyers. This bill will also resolve ambiguities in the statutes as to who constitutes an "incapacitated person" for whom a guardian ad litem may be appointed. Through these clarifications, the courts will better ensure that those provided a guardian ad litem are properly represented and protected in pending litigation. Not only will this bill enhance the transparency of guardian ad litem appointments, but it will allow for judges, counsel, and litigants alike to determine when a guardian ad litem is truly required. This modification to the current code reduces the chances of a guardian ad litem abusing their power. SB 1279 will protect all parties involved through greater clarification of the code sections and enhancing the accountability of those appointed to represent litigants as a guardian ad litem.

***Appointment of a guardian ad litem.*** A guardian ad litem is appointed by the court to represent the best interest of an individual who cannot properly represent themselves. A court in a civil case may appoint a guardian ad litem for a minor (there are limited exceptions for certain minors, including those 12 and over in restraining order proceedings, who may speak for themselves), a person who lacks legal capacity to make decisions, or a conservatee. (CCP Section 372.) The court may also appoint a guardian ad litem when it appears that the civil case implicates a person or class of persons whose identities are unknown or have yet to be ascertained. (CCP Section 373.5.) The Probate Code specifically allows a court to appoint a guardian ad litem to represent, in addition to a child, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown or not yet in being. (Probate Code Section 1003.) A probate court can appoint a guardian ad litem on its own motion, or on request of a personal representative, guardian, conservator, trustee, or other interested person, at any stage of a probate proceeding if the court determines that representation of that person's interest otherwise would be inadequate. The Probate Code specifically provides that a guardian ad litem's reasonable expenses are to be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from such other source as the court orders. (*Ibid.*)

***The role of the guardian ad litem.*** A guardian ad litem is more than an attorney, but less than a

party. (*Carachure v. Scott* (2021) Cal.App.5<sup>th</sup> 16, 31.) As an appointed officer of the court, a guardian ad litem appears on behalf of the minor or person lacking capacity and represents their interests in the case. (*Willimas v. Superior Court* (2007) 147 Cal.App.4<sup>th</sup> 36, 47.) A guardian ad litem's powers are broad: a guardian ad litem may, with the approval of the court, settle a suit on behalf of the person, agree to orders and judgments in the suit, satisfy any judgment or order in favor of the person, and release or discharge any claim of the person pursuant to a settlement. (CCP Section 372 (a).) "The guardian may make tactical and even fundamental decisions affecting the litigation but always with the interest of the guardian's charge in mind. Specifically, the guardian may not compromise fundamental rights ... without some countervailing and significant benefit." (*Carachure, supra*, 70 Cal.App.5<sup>th</sup> at 31 [citations and internal quotations omitted].)

Because of the significant power granted to a guardian ad litem, the role is closely supervised by the court. This supervisory obligation includes preventing the appointment of a guardian ad litem with conflicts of interests that would prevent them from serving faithfully in their role. (*Willimas, supra*, 147 Cal.App.4<sup>th</sup> at 50.) Courts are also tasked with approving certain significant acts taken by the guardian ad litem on behalf of their ward, such as settling a case or agreeing to the release of claims. (CCP Section 372 (a).) Despite the court's important role in appointing and supervising a guardian ad litem, the CCP and the Probate Code are largely silent on many aspects of the guardian ad litem process, including requiring disclosures of conflicts of interest.

***This bill creates uniform conflict rules and adds certain notice requirements.*** This bill seeks to create uniform rules for courts regarding the guardian ad litem appointment and oversight process. First, this bill spells out in statute conflict rules under both the CCP and the Probate Code. Before appointment by a civil or probate court, a proposed guardian ad litem is required to disclose both of the following to the court and all parties to the action or proceeding:

- Any known actual or potential conflicts of interest that would or might arise from the appointment.
- Any familial or affiliate relationship the proposed guardian ad litem has with any of the parties.

This should ensure that the court and the parties are aware of any conflicts, and allow the court to make a decision as to the appointment based on real information. Also, to ensure that any late arising conflict is reported, the bill requires a guardian ad litem, once they become aware that a potential conflict of interest has become an actual conflict of interest or that a new potential or actual conflict of interest exists, to promptly disclose the conflict of interest to the court. That will once again ensure that the court has up-to-date information on conflicts, and allow the court, if it deems it appropriate, to remove a guardian ad litem with a conflict or make other actions to protect the interest of the ward.

This bill also clarifies a process for appointment of a guardian ad litem for a party in a civil case who has a guardian or conservator of the estate. Under the bill, the application of appointment of a guardian ad litem for someone who already has a guardian or conservator of the estate must disclose the existence of the guardian or conservator of the estate and set forth the reasons why the guardian or conservator of the estate is inadequate to represent the interests of the proposed ward in the action. The guardian or conservator of the estate must also be provided with notice of

the filing of the application to be appointed as guardian ad litem. The guardian or conservator of the estate then has five court days from when they receive notice of the filing of the application to file any opposition to the application. This is a short period of time, but hopefully sufficient to allow the conservator to quickly raise any objections.

***ARGUMENTS IN SUPPORT:*** The sponsor of the bill, the California Lawyers Association, Trusts and Estates Section, writes in support:

SB 1279 will strengthen and codify several aspects of guardian ad litem appointments that often occur informally or without clear guidance for litigants and their lawyers. This bill will also resolve ambiguities in the statutes as to when appointment of a guardian ad litem is appropriate. Through these clarifications, the courts will better ensure that those provided a guardian ad litem are properly represented and protected in pending litigation. . . .

SB 1279 will clarify the circumstances under which a guardian ad litem can be appointed and increase the transparency of an appointment, ensuring that there is increased accountability for the actions taken on behalf of the ward. Through delineating the powers of the guardian [ad] litem, the ward will be further protected from potential abuse.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Lawyers Association, Trusts & Estates Section (sponsor)

**Opposition**

None on file

**Analysis Prepared by:** Leora Gershenzon / JUD. / (916) 319-2334