
UNFINISHED BUSINESS

Bill No: SB 1279
Author: Ochoa Bogh (R)
Amended: 8/15/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-0, 5/3/22
AYES: Umberg, Borgeas, Caballero, Durazo, Gonzalez, Hertzberg, Jones, Laird, Stern, Wiener
NO VOTE RECORDED: Wieckowski

SENATE FLOOR: 39-0, 5/25/22
AYES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Hertzberg

ASSEMBLY FLOOR: 77-0, 8/22/22 - See last page for vote

SUBJECT: Guardian ad litem appointment

SOURCE: California Lawyers Association, Executive Committee of the Trusts and Estates Section

DIGEST: This bill modifies the definition of a person who lacks legal capacity to make decisions, for purposes of when the court should appoint a guardian ad litem in a civil case; requires, when a party in a civil case already has a guardian or conservator of the estate, that an application to have a guardian ad litem appointed for that party satisfy specified requirements; and requires a proposed guardian ad litem to disclose any known or actual conflicts of interests in advance of the appointment.

Assembly Amendments add requirements for appointing a guardian ad litem for a party who already has a guardian or conservator; remove provisions relating to the

compensation of a guardian ad litem, the requirement that a guardian ad litem file annual reports with the court, and specifications relating to the scope of a guardian ad litem's authority; remove the definition of "a person who lacks legal capacity to make decisions in the action" from Probate Code section 1003; add provisions relating to the disclosure of conflicts of interest for a guardian ad litem under Probate Code section 1003; and remove provisions relating to when a guardian ad litem is appointed for a minor, in response to stakeholder concerns.

ANALYSIS:

Existing law:

- 1) Provides that when a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party in a civil action, that person shall appear through a guardian or conservator of the estate, or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. (Code Civ. Proc., § 372(a)(1).)
- 2) Provides that a guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, 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 Civ. Proc., § 372(a)(1).)
- 3) 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 shall have 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. (Code Civ. Proc., § 372(a)(1).)
- 4) Does not define, for purposes of a guardian ad litem, "a person lacking legal consequence to make decisions," but includes in the term "a person for whom a conservator may be appointed." (Code Civ. Proc., § 372(a)(2).)
- 5) Provides specific exceptions to the requirement that a minor who appears through a guardian ad litem. (Code Civ. Proc., §§ 372(b), (c); 373.)

- 6) Provides that, in an action under the Probate Code, the court may, on its own motion or at the request of a personal representative, guardian, trustee, or other interested person, appoint a guardian ad litem at any stage of the proceeding to represent the interest of any of the following persons, if the court determines that the representation of that person's interest would otherwise 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.
 - f) A designated class of persons who are not ascertained or are not in being. (Prob. Code, § 1003(a).)
- 7) Provides that, if not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests under 6). (Prob. Code, § 1003(b).)
- 8) Provides that the reasonable expenses of a guardian ad litem appointed under 6), including compensation and attorney fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved, by the petitioner, or from such other source as the court orders. (Prob. Code, § 1003(c).)

This bill:

- 1) Provides that, if an application is made for the appointment of a guardian ad litem for a person in a civil case who is a minor, who lacks legal capacity to make decisions, or for whom a conservator has been appointed, and that person already has a guardian or conservator of the estate, the application may be granted only if all of the following occur:
 - a) The applicant gives notice and a copy of the application to the guardian or conservator of the estate upon filing the application.
 - b) The application discloses the existence of the guardian or conservator of the estate.

- c) The application sets 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) Defines “a purposes who lacks legal capacity to make decisions” for purposes of the appointment of a guardian ad litem in a civil case to include all of the following:
 - a) A person who lacks capacity to understand the nature or consequences of the action or proceeding; or
 - b) A person who lacks capacity to assist the person’s attorney in the preparation of the case.
 - c) A person for whom a conservator may be appointed pursuant to section 1801 of the Probate Code.
 - 3) Deletes an obsolete requirement that the Judicial Court adopt certain forms by July 1, 1999.
 - 4) Provides that, before a guardian ad litem is appointed in a civil case, the proposed guardian ad litem must disclose to the court and all parties any known potential or actual conflicts of interest arising from appointment in and any familial or affiliate relationship of the guardian ad litem to any of the parties.
 - 5) Requires a guardian ad litem in a civil case, if they become aware that a potential conflict of interest has become an actual conflict of interest or that a new potential or actual conflict exists, to promptly disclose the conflict of interest to the court.
 - 6) Modifies, for purposes of the appointment of a guardian ad litem pursuant to Probate Code section 1003, the list of persons for whom a guardian may be appointed by replacing “an incapacitated person” with “a person who lacks legal capacity to make decisions.”
 - 7) Provides that, before a guardian ad litem is appointed pursuant to Probate Code section 1003, the proposed guardian ad litem must disclose to the court and all parties to the action any known potential or actual conflicts of interest arising from appointment and any familial or affiliate relationship of the guardian ad litem to any of the parties.
 - 8) Requires a guardian ad litem appointed pursuant to Probate Code section 1003, if they become aware that a potential conflict of interest has become an actual

conflict of interest or that a new potential or actual conflict exists, to promptly disclose the conflict of interest to the court.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/22/22)

California Lawyers Association, Executive Committee of the Trusts and Estates Section (source)

OPPOSITION: (Verified 8/22/22)

None received

ARGUMENTS IN SUPPORT: According to the sponsor of the bill, the Executive Committee of the Trusts and Estates Section of the California Lawyers Association:

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 court will better ensure that those provided a guardian ad litem are properly represented and protected in pending litigation.

Although the purpose of a guardian ad litem is to ensure the rights of the ward (the person whose interests are being represented by the guardian ad litem) are protected in litigation, often guardians ad litem are appointed by the court without clear parameters around their powers or what their reporting responsibilities are to the court. In addition, although the Judicial Council form requires disclosure of conflicts of interest by the proposed guardian ad litem, that is not currently required by statute. These ambiguities have led to uneven practice across the state, confusion among litigants, and abuses by guardians ad litem.

ASSEMBLY FLOOR: 77-0, 8/22/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris,

Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon
NO VOTE RECORDED: Bigelow, Davies, Levine

Prepared by: Allison Meredith / JUD. / (916) 651-4113
8/22/22 19:59:38

**** **END** ****