

§1555. Appointment of guardians ad litem in Title 18-C and Title 19-A cases

1. Appointment of guardian ad litem. In proceedings to determine parental rights and responsibilities and guardianship of a minor under Title 18-C and in contested proceedings pursuant to Title 19-A, section 904, 1653 or 1803 in which a minor child is involved, the court may appoint a guardian ad litem for the child when the court has reason for special concern as to the welfare of the child. The court may appoint a guardian ad litem on the court's own motion, on the motion of one of the parties or upon agreement of the parties.

A. A court may appoint, without any findings, any person listed on the roster. In addition, when a suitable guardian ad litem included on the roster is not available for appointment, a court may, for good cause shown and after consultation with the parties, appoint an attorney admitted to practice in this State who, after consideration by the court of all of the circumstances of the particular case, in the opinion of the appointing court has the necessary skills and experience to serve as a guardian ad litem. For the purposes of this paragraph, good cause may include the appointment of a guardian ad litem on a pro bono basis. [PL 2013, c. 406, §1 (NEW).]

B. In determining whether to make an appointment, the court shall consider:

- (1) The wishes of the parties;
- (2) The age of the child;
- (3) The nature of the proceeding, including the contentiousness of the hearing;
- (4) The financial resources of the parties;
- (5) The extent to which a guardian ad litem may assist in providing information concerning the best interests of the child;
- (6) Whether the family has experienced a history of domestic abuse;
- (7) Abuse of the child by one of the parties; and
- (8) Other factors the court determines relevant. [PL 2013, c. 406, §1 (NEW).]

[PL 2017, c. 402, Pt. C, §11 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

2. Order. An appointment of a guardian ad litem must be by court order.

A. The appointment order must be written on a court-approved form and must specify the guardian ad litem's length of appointment, the specific duties for the particular case, including the filing of a written report, and fee arrangements. [PL 2013, c. 406, §1 (NEW).]

B. The guardian ad litem has no authority to perform and may not be expected to perform any duties beyond those specified in the appointment order, unless subsequently ordered to do so by the court. [PL 2013, c. 406, §1 (NEW).]

C. If, in order to perform any specified duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The court order may specify that the guardian ad litem must be allowed access to the child by the caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers. [PL 2013, c. 406, §1 (NEW).]

D. When appointment of the guardian ad litem or the fee arrangements for payment of the guardian ad litem are not agreed to by the parties, the court shall state in the appointment order its findings, based on the criteria stated in this section, supporting the appointment of the guardian ad litem and the fee payment order. [PL 2013, c. 406, §1 (NEW).]

[PL 2013, c. 406, §1 (NEW).]

3. Payment for services; fees and billing; enforcement. The order under subsection 2 must specify that payment for the services of the guardian ad litem is the responsibility of the parties, with the terms of payment specified in the order.

A. The fee arrangements in the order must specify hourly rates or a flat fee, the timing of payments to be made and by whom and the maximum amount of fees that may be charged for the case without further order of the court. If the payments ordered to be made before the guardian ad litem commences the investigation, if any, are not paid as ordered, the guardian ad litem shall notify the court, and the court may vacate the appointment order or take such other action it determines appropriate under the circumstances. [PL 2013, c. 406, §1 (NEW).]

B. In determining the responsibility for payment, the court shall consider:

- (1) The income of the parties;
- (2) The marital and nonmarital assets of the parties;
- (3) The division of property made or anticipated as part of the final divorce or separation;
- (4) Which party requested appointment of a guardian ad litem; and
- (5) Other factors considered relevant by the court, which must be stated with specificity in the appointment order. [PL 2013, c. 406, §1 (NEW).]

C. The guardian ad litem shall use standardized billing, itemization requirements and time reporting processes as established by the division. The guardian ad litem may collect fees, if a collection action is necessary, pursuant to Title 14 and may not pursue collection in the action in which the guardian ad litem is appointed. [PL 2013, c. 406, §1 (NEW).]

[PL 2013, c. 406, §1 (NEW).]

4. Best interests of the child. In performance of duties specified in the appointment order, the guardian ad litem shall use the standard of the best interests of the child.

[PL 2013, c. 406, §1 (NEW).]

5. Wishes of the child. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

[PL 2013, c. 406, §1 (NEW).]

6. Report. The guardian ad litem shall provide a copy of each report ordered by the court to the parties and the court at least 14 days before each report is due. A guardian ad litem shall provide a copy of the final written report to the parties and the court at least 14 days in advance of the final hearing. Reports are admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party. Any objections to a report must be filed at least 7 days before the applicable hearing.

[PL 2013, c. 406, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 406, §1 (NEW). PL 2017, c. 402, Pt. C, §11 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF). RR 2019, c. 1, Pt. A, §3 (COR).

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