

FIRST REGULAR SESSION

HOUSE BILL NO. 390

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MURPHY.

1276H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 452.423, RSMo, and to enact in lieu thereof two new sections relating to guardians ad litem.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 452.423, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.423 and 484.355, to read as follows:

452.423. 1. **(1)** In all proceedings for child custody or for dissolution of marriage or legal separation where custody, visitation, or support of a child is a contested issue, the court may appoint a guardian ad litem. **Such appointment may be for a limited purpose if made on the court's own motion, the motion of a party, or by agreement of the parties. Such limited purpose shall be specified in the court's appointment order, and the guardian ad litem does not have authority to address matters outside that limited purpose. If a guardian ad litem is not appointed for a limited purpose, the court shall make a written order when making the appointment that names the specific attorney to be appointed as guardian ad litem and state the grounds upon which the guardian ad litem is appointed. The appointment shall be accomplished as soon as practicable, and once complete, the guardian ad litem shall file with the court a written report stating his or her recommendations for disposition of the case, which shall be made available to all parties. The guardian ad litem shall be discharged from the case after the written report has been filed with the court.**

(2) Within twenty-one days of appointment, the guardian ad litem shall meet face-to-face with the custodial guardians and the child and provide the custodial guardians a copy of the Missouri supreme court standards governing guardians ad

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **litem. The meeting with the child shall occur in a private setting at a time and place that**
19 **allows the guardian ad litem to observe the child and gather the unobstructed input of**
20 **the child, free of coercion and manipulation, as to the child's custodial arrangement,**
21 **safety, and needs, to the extent reasonably possible, and the need for further meetings**
22 **and investigation. Such initial meeting shall take place away from the courthouse. The**
23 **guardian ad litem shall continue to maintain regular contact with the child for the**
24 **duration of and under the confines of the appointment. Such duty shall not be**
25 **designated to any volunteer advocate or other person; however, nothing in this**
26 **subdivision shall be construed to prohibit a volunteer advocate from meeting with the**
27 **child.**

28 **(3) All parties shall be notified by the court of the parties' rights to request**
29 **without cause one** disqualification of a guardian ad litem ~~[shall be ordered in any legal~~
30 ~~proceeding only pursuant to this chapter, upon the filing of a written application by any party~~
31 ~~within ten days of appointment, or within ten days of August 28, 1998, if the appointment~~
32 ~~occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a~~
33 ~~guardian ad litem appointed under this subsection in each proceeding, except a party may be~~
34 ~~entitled to additional disqualifications of a guardian ad litem for good cause shown]~~ **within**
35 **thirty days of appointment. Outside of the thirty-day period or after one**
36 **disqualification has been made by a party, a party may make a written, in camera**
37 **motion to the court alleging the reason for disqualifying a guardian ad litem. Causes for**
38 **which a guardian ad litem may be disqualified include, but are not limited to:**

39 **(a) Failure to communicate with the court, other attorneys, or custodial**
40 **guardians in the same manner as an attorney for a party;**

41 **(b) Failure to present information on relevant issues through the presentation of**
42 **evidence or in other appropriate ways;**

43 **(c) Failure to follow up on or investigate reasonable issues of child abuse or**
44 **neglect that the guardian ad litem has been informed of or to gather nonrepetitive**
45 **information that the guardian ad litem does not already possess from a witness, medical**
46 **professional, child care provider, or any other person who may hold information of**
47 **which the guardian ad litem has been made aware about allegations of abuse or neglect;**

48 **(d) Failure to meet with the custodial guardians and child within the required**
49 **twenty-one days of appointment;**

50 **(e) Failure to provide the custodial guardians within twenty-one days of**
51 **appointment a copy of the Missouri supreme court standards governing guardians ad**
52 **litem;**

53 **(f) Failure to respond to requests for communications within one hundred sixty-**
54 **eight hours unless given timely and prior notice of an event including, but not limited to,**
55 **vacation, holiday, family time, or other event;**

56 **(g) Failure to provide every thirty days a statement reflecting each date services**
57 **were rendered, a generalized description of services, the hourly rate charged, and the**
58 **time spent on the date services were rendered;**

59 **(h) Failure to accomplish the appointment as soon as practicable;**

60 **(i) Failure to provide the court with a written report stating his or her**
61 **recommendations for disposition of the appointment; and**

62 **(j) Any coercion or manipulation of the child or parties.**

63 **2. The court shall appoint a guardian ad litem in any proceeding in which child abuse**
64 **or neglect is alleged. Such allegation shall be made by a custodial guardian under oath**
65 **with specificity. Such appointment shall be a limited purpose appointment and shall be**
66 **limited to the purpose of investigating and substantiating or not substantiating the**
67 **existence of abuse or neglect subject to subsection 2 of section 452.375. The guardian ad**
68 **litem shall complete the investigation as soon as practicable and, upon completion, file a**
69 **written report with the court that shall be made available to all parties. If the guardian**
70 **ad litem's investigation determines the allegations of abuse or neglect are not**
71 **substantiated, the guardian ad litem shall be discharged by the court immediately.**
72 **Any guardian ad litem fees shall be paid by the party that made the unsubstantiated**
73 **allegations of abuse or neglect. All other fees shall be allocated at the court's discretion.**
74 **The provisions of subsection 1 of this section shall apply to this subsection.**

75 **3. The guardian ad litem shall be awarded a reasonable fee for his or her such**
76 **services. Such fee shall be set by the court. Every thirty days during the appointment**
77 **and prior to each hearing, the guardian ad litem shall provide the parties to the**
78 **proceeding with a statement reflecting each date services were rendered, a generalized**
79 **description of services, the hourly rate charged, and the time spent on the date services**
80 **were rendered. In its discretion and subject to subsection 2 of this section, the court**
81 **may:**

82 **(1) Issue a direct payment order to the parties;**

83 **(2) Allocate reasonable costs and fees for services provided by the guardian ad**
84 **litem to the parties to the proceeding. Upon motion of the court or the guardian ad**
85 **litem, the court may order one or both parties to pay the guardian ad litem a deposit to**
86 **be applied to such fees and costs; or**

87 **(3) Award such fees as a judgment to be paid by any party to the proceedings or**
88 **from public funds.**

89

90 **The award of guardian fees shall constitute a final judgment in favor of the guardian ad**
91 **litem. The final judgment shall be enforceable against the parties in accordance with**
92 **chapter 513. In the event a guardian ad litem is disqualified under subdivision (3) of**
93 **subsection 1 of this section, any outstanding guardian ad litem fees shall be paid by the**
94 **county in which the action is pending. Local courts are responsible for utilizing lists of**
95 **available, reputable, and qualified guardians ad litem.**

96 **4. The guardian ad litem ~~shall~~:**

97 **(1) Shall be the legal representative of the child at the hearing, and may examine,**
98 **cross-examine, subpoena witnesses and offer testimony as it pertains to his or her**
99 **appointment;**

100 **(2) Shall prior to the hearing[;] conduct all necessary interviews with persons having**
101 **contact with or knowledge of the child in order to ~~ascertain the child's wishes,~~ gather the**
102 **unobstructed input of the child, free of coercion and manipulation, as to the child's**
103 **custodial arrangement, feelings, attachments, and attitudes. If appropriate, the child should**
104 **be interviewed;**

105 **(3) Shall request the juvenile officer to cause a petition to be filed in the juvenile**
106 **division of the circuit court if the guardian ad litem believes the child alleged to be abused or**
107 **neglected is in danger;**

108 **(4) Shall respond to all requests for communication within one hundred sixty-**
109 **eight hours in accordance with subdivision (3) of subsection 1 of this section; and**

110 **(5) May make informal recommendations during the pendency of a matter**
111 **under this section, which shall be presented in a written motion to the court, signed by**
112 **the guardian ad litem, and noticed for hearing. Until such time as ruled upon by the**
113 **court, the recommendations shall not take effect.**

114 **5. Upon written request by a party, a guardian ad litem shall provide within**
115 **thirty days of such written request an itemized accounting of all time expended in the**
116 **case by the guardian ad litem up to the date of the request. The guardian ad litem may**
117 **redact certain personally identifying information contained in such accounting provided**
118 **to the requesting party.**

119 **6. Any party aggrieved by a guardian ad litem's failure to satisfy the duties**
120 **enumerated under this section or section 484.355 may apply by in camera motion for**
121 **appointment of a substitute guardian ad litem for cause shown.**

122 **7. On or before January 1, 2024, the office of chief disciplinary counsel (OCDC)**
123 **shall establish and maintain a complaint procedure for parties dissatisfied with the**
124 **services of a guardian ad litem, including allegations that the guardian ad litem did not**
125 **properly behave under the rules of professional conduct or guidelines for guardians ad**

126 **litem as set forth by the Missouri supreme court. The complaint procedure shall be in**
127 **writing and made available to the public.**

128 ~~[4.]~~ **8.** The appointing judge shall require the guardian ad litem to faithfully discharge
129 such guardian ad litem's duties, and upon failure to do so shall discharge such guardian ad
130 litem and appoint another. The judge in making appointments pursuant to this section shall
131 give preference to persons who served as guardian ad litem for the child in the earlier
132 proceeding, unless there is a reason on the record for not giving such preference.

133 ~~[5. The guardian ad litem shall be awarded a reasonable fee for such services to be set~~
134 ~~by the court. The court, in its discretion, may:~~

135 ~~(1) Issue a direct payment order to the parties. If a party fails to comply with the~~
136 ~~court's direct payment order, the court may find such party to be in contempt of court; or~~

137 ~~(2) Award such fees as a judgment to be paid by any party to the proceedings or from~~
138 ~~public funds. Such an award of guardian fees shall constitute a final judgment in favor of the~~
139 ~~guardian ad litem. Such final judgment shall be enforceable against the parties in accordance~~
140 ~~with chapter 513.]~~

484.355. All family and juvenile courts and guardians ad litem appointed by
2 **those courts shall adhere to the following standards in accordance with subsection 2 of**
3 **section 452.375 and in addition to those developed by Missouri supreme court rule**
4 **under section 484.350:**

5 **(1) The guardian ad litem shall have a duty to notify the court if his or her**
6 **caseload reaches a level bearing upon his or her ability to meet these standards or to**
7 **comply with the ethical standards of the rules of professional conduct developed by**
8 **Missouri supreme court rule;**

9 **(2) The guardian ad litem shall be guided by the best interests of the child and**
10 **shall exercise judgment on behalf of the child in all matters;**

11 **(3) The guardian ad litem shall provide factual information to the court and**
12 **diligently advocate a position in the best interests of the child. He or she shall be**
13 **prepared to participate fully in any proceedings and not merely defer to the other**
14 **parties. He or she may examine, cross-examine, subpoena witnesses, and offer**
15 **testimony as it relates to the appointment. He or she, when appropriate to represent the**
16 **best interests of the child, shall file petitions, motions, parenting plans, responses, or**
17 **objections. The court shall ensure a guardian ad litem maintains independent**
18 **representation of the best interests of the child. The court shall require a guardian ad**
19 **litem to perform his or her duties faithfully and, upon failure to do so, shall discharge**
20 **the guardian ad litem and appoint another;**

21 **(4) The guardian ad litem and the child shall have access to each other at**
22 **reasonable times and places, and such access shall not be restricted or limited by any**

23 agency or person without good cause. To ensure proper access, the guardian ad litem
24 shall have the obligation to ascertain the location of the child, to initiate communication
25 with the child, and to provide the child with contact information for the guardian ad
26 litem promptly. The child's legal custodian shall provide the guardian ad litem with
27 timely information regarding the current residence of the child and shall notify the
28 guardian ad litem promptly of any change in placement of the child;

29 (5) The guardian ad litem shall be entitled to all reports relevant to the case and
30 shall have access to all relevant records relating to the child, the placement of the child,
31 or the child's family members;

32 (6) The guardian ad litem shall comply with all statutes, rules, and regulations
33 relating to the receipt of confidential or privileged information received as guardian ad
34 litem. He or she shall not disclose any confidential or privileged information without a
35 valid court order or as required by law or Missouri supreme court rule;

36 (7) The guardian ad litem shall review the progress of his or her appointment
37 through the court process and advocate for timely hearings, provision of necessary
38 services, and compliance with court orders;

39 (8) The guardian ad litem shall explain, when appropriate, the court process and
40 the role of the guardian ad litem to the child. The guardian ad litem shall ensure that
41 the child is informed of the purpose of each court proceeding;

42 (9) The guardian ad litem shall participate, when appropriate, in the
43 development and negotiation of any service plans, parenting plans, proposed orders,
44 and staffings that affect the best interests of the child as such service plans, parenting
45 plans, proposed orders, and staffings relate to the appointment. He or she shall monitor
46 implementation of service plans and court orders during his or her appointment to
47 determine whether services ordered by the court are being provided in a timely manner;

48 (10) The guardian ad litem shall appear at all court proceedings in which he or
49 she is appointed. He or she shall not waive the presence of the child at court proceedings
50 without good cause;

51 (11) The guardian ad litem shall protect the interests of the child who is a witness
52 in any judicial proceeding in which he or she has been appointed. In matters for which
53 he or she has been appointed, the guardian ad litem shall be present during any
54 conferences between the counsel for a party and the child. He or she shall be notified of
55 all proceedings or meetings involving the child; and

56 (12) The guardian ad litem shall present a recommendation to the court if
57 authorized by law or requested by the court on the basis of evidence presented and
58 consistent with the best interests of the child.