

SENATE BILL NO. 359

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR COLEMAN.

1360S.01I

KRISTINA MARTIN, Secretary

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Section A. Section 452.423, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.423 and 484.355, to read as follows: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

[Disqualification of a guardian ad litem shall be ordered in any legal proceeding only pursuant to this chapter, upon the filing of a written application by any party within ten days of appointment, or within ten days of August 28, 1998, if the appointment occurs prior to August 28, 1998. Each party shall be entitled to one disqualification of a guardian ad litem appointed under this subsection in each proceeding, except a party may be entitled to additional disqualifications of a guardian ad litem for good cause shown.]

2. The court shall appoint a guardian ad litem in any proceeding in which child abuse or neglect is alleged. **Such allegation shall be made by a custodial parent or guardian under oath and with specificity. Such appointment shall be**

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 a limited purpose appointment only, for the purpose of
20 investigating and substantiating the existence of any abuse
21 or neglect. The guardian ad litem shall complete the
22 investigation as soon as practicable and, upon completion,
23 shall file a written report with the court that shall be
24 made available to all parties. If the guardian ad litem,
25 following the investigation, determines the allegations of
26 abuse or neglect are not substantiated, the guardian ad
27 litem shall be discharged by the court forthwith, and any
28 guardian ad litem fees shall be paid by the party who made
29 the unsubstantiated allegations of abuse or neglect and all
30 other fees shall be allocated at the court's discretion.

31 3. (1) An appointment under this section may be for a
32 limited purpose when made on the court's own motion, the
33 motion of a party, by agreement of the parties, or in
34 accordance with the provisions of subsection 2 of this
35 section. Such limited purpose shall be specified in the
36 court's appointment order and the guardian ad litem shall
37 not have authority to address matters outside that limited
38 purpose.

39 (2) For any guardian ad litem appointed under this
40 section for reasons other than a limited purpose, the court
41 shall make a written order when making the appointment that
42 names the specific attorney to be appointed as the guardian
43 ad litem and state the grounds upon which the guardian ad
44 litem is appointed.

45 (3) The appointment shall be accomplished as soon as
46 practical and once complete, the guardian ad litem shall
47 file with the court a written report stating his or her
48 recommendations for disposition of the case, which shall be
49 made available to all parties. Thereafter, the guardian ad
50 litem shall be discharged from the case.

51 4. Within twenty-one days of appointment, the guardian
52 ad litem shall meet face-to-face with the custodial parents
53 or guardians and the child and provide a copy of the
54 Missouri supreme court standards governing guardians ad
55 litem. The meeting with the child shall occur in a private
56 setting at a time and place that allows the guardian ad
57 litem to observe the child and gather the unobstructed input
58 of the child, free of coercion and manipulation, as to the
59 child's custodial arrangement, safety, and needs, to the
60 extent reasonably possible, and the need for further
61 meetings and investigation. Such initial meeting shall take
62 place away from the courthouse. The guardian ad litem shall
63 continue to maintain regular contact with the child for the
64 duration of and pursuant to the confines of the
65 appointment. This duty shall not be designated to any
66 volunteer advocate or other person; however, nothing in this
67 subdivision shall be construed to prohibit a volunteer
68 advocate from meeting with the child.

69 5. All parties shall be notified by the court of the
70 parties' rights to request, without cause, one
71 disqualification of a guardian ad litem within thirty days
72 of appointment. Outside of the thirty-day period or after
73 one disqualification has been made by a party, a party may
74 make a written in camera motion to the court alleging the
75 reason for disqualifying a guardian ad litem. Causes for
76 which a guardian ad litem may be disqualified include, but
77 are not limited to, the following:

78 (1) Failure to communicate with the court, other
79 attorneys, or custodial parents or guardians in the same
80 manner as an attorney for a party;

81 (2) Failure to present information on relevant issues
82 through the presentation of evidence or in other appropriate
83 ways;

84 (3) Failure to follow up on or investigate reasonable
85 issues of child abuse or neglect of which the guardian ad
86 litem has been informed or to gather nonrepetitive
87 information that the guardian ad litem does not already
88 possess from a witness, health care provider, child care
89 provider, or any other person who may hold information of
90 which the guardian ad litem has been made aware relating to
91 allegations of abuse or neglect;

92 (4) Failure to meet with the custodial parents or
93 guardians and child within the required twenty-one days of
94 appointment under subsection 4 of this section;

95 (5) Failure to provide a copy of the Missouri supreme
96 court standards governing guardians ad litem to custodial
97 parents or guardians within twenty-one days of the
98 appointment;

99 (6) Failure to respond to requests for communications
100 within seven calendar days, unless given timely and prior
101 notice of an event such as vacation, holiday, family time or
102 other event;

103 (7) Failure to provide, every thirty days, a statement
104 reflecting each date services were rendered, a generalized
105 description of services, the hourly rate charged, and the
106 time spent on the date services were rendered;

107 (8) Failure to accomplish the appointment as soon as
108 practicable;

109 (9) Failure to provide the court with a written report
110 stating his or her recommendations for disposition of the
111 appointment; and

112 (10) Any coercion or manipulation of the child or
113 parties.

114 6. A guardian ad litem appointed under this section
115 shall be awarded a reasonable fee for services, as set by
116 the court. Every thirty days throughout the appointment and
117 prior to each hearing, the guardian ad litem shall provide
118 the parties to the proceeding with a statement reflecting
119 each date services were rendered, a generalized description
120 of services, the hourly rate charged, and the time spent on
121 the date services were rendered. The court, in its
122 discretion and subject to the provisions of subsection 2 of
123 this section, may:

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

125 (2) Allocate reasonable costs and fees for services
126 provided by the guardian ad litem to the parties to the
127 proceeding. Upon motion of the court or the guardian ad
128 litem, the court may order one or both parties to pay the
129 guardian ad litem a deposit to be applied to such fees and
130 costs; or

131 (3) Award such fees as a judgment to be paid by any
132 party to the proceedings or from public funds. Such an
133 award of guardian ad litem fees shall constitute a final
134 judgment in favor of the guardian ad litem. Such final
135 judgment shall be enforceable against the parties in
136 accordance with chapter 513.

137 In the event a guardian ad litem is disqualified pursuant to
138 this section, any outstanding guardian ad litem fees shall
139 be paid by the county in which the action is pending. Local
140 courts shall be responsible for utilizing lists of
141 available, reputable, and qualified guardians ad litem.

142 7. The guardian ad litem [shall]:

143 (1) **Shall** be the legal representative of the child at
144 the hearing, and may examine, cross-examine, subpoena
145 witnesses, and offer testimony **in the context of the**
146 **guardian ad litem's appointment;**

147 (2) **Shall**, prior to the hearing, conduct all necessary
148 interviews with persons having contact with or knowledge of
149 the child in order to **[ascertain the child's wishes]** **gather**
150 **the unobstructed input of the child, free of coercion and**
151 **manipulation, as to the child's custodial arrangement,**
152 feelings, attachments, and attitudes. If appropriate, the
153 child should be interviewed;

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

158 (4) **Shall respond to all requests for communications**
159 **within seven calendar days; and**

160 (5) **May make informal recommendations during the**
161 **pendency of a matter pursuant to this section that shall be**
162 **presented in a written notice to the court, signed by the**
163 **guardian ad litem, and noticed for hearing. The**
164 **recommendation shall not become effective until and unless**
165 **ruled upon by the court.**

166 **[4. The appointing judge shall require the guardian ad**
167 **litem to faithfully discharge such guardian ad litem's**
168 **duties, and upon failure to do so shall discharge such**
169 **guardian ad litem and appoint another. The judge in making**
170 **appointments pursuant to this section shall give preference**
171 **to persons who served as guardian ad litem for the child in**
172 **the earlier proceeding, unless there is a reason on the**
173 **record for not giving such preference.**

174 5. The guardian ad litem shall be awarded a reasonable
175 fee for such services to be set by the court. The court, in
176 its discretion, may:

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

180 (2) Award such fees as a judgment to be paid by any
181 party to the proceedings or from public funds. Such an
182 award of guardian fees shall constitute a final judgment in
183 favor of the guardian ad litem. Such final judgment shall
184 be enforceable against the parties in accordance with
185 chapter 513]

186 8. A guardian ad litem shall provide, within thirty
187 days of a written request by a party, an itemized accounting
188 of all time expended in the case by the guardian ad litem up
189 to the date of the request. The guardian ad litem may
190 redact personally identifying information contained in such
191 accounting provided to the requesting party.

192 9. Any party aggrieved by a guardian ad litem's
193 failure to satisfy the duties and standards enumerated in
194 this section or section 484.355 may apply by in camera
195 motion for appointment of a substitute guardian ad litem for
196 cause shown.

197 10. On or before January 1, 2024, the office of chief
198 disciplinary counsel within the Missouri supreme court shall
199 establish and maintain a complaint procedure for parties
200 dissatisfied with the services of a guardian ad litem,
201 including allegations that the guardian ad litem did not
202 properly behave under the rules of professional conduct or
203 the standards governing guardians ad litem, including, but
204 not limited to, timely communication, as set forth by the

205 Missouri supreme court. The complaint procedure shall be in
206 writing and made available to the public.

484.355. All family and juvenile courts and guardians
2 ad litem appointed by those courts shall adhere to the
3 following standards in accordance with section 452.375 and
4 those developed by Missouri supreme court rule under section
5 484.350:

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

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

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

29 (4) The guardian ad litem and the child shall have
30 access to each other at reasonable times and places, and

31 this access shall not be restricted or limited by any agency
32 or person without good cause. To ensure proper access, the
33 guardian ad litem shall have the obligation to ascertain the
34 location of the child, to initiate communication with the
35 child, and to provide the child with contact information for
36 the guardian ad litem promptly. The child's legal custodian
37 shall provide the guardian ad litem with timely information
38 regarding the current residence of the child and shall
39 notify the guardian ad litem promptly of any change in
40 placement of the child;

41 (5) The guardian ad litem shall be entitled to all
42 relevant reports and shall have access to all relevant
43 records relating to the child, the placement of the child,
44 or the child's family members;

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

51 (7) The guardian ad litem shall review the progress of
52 a child's case through the court process and advocate for
53 timely hearings, provision of necessary services, and
54 compliance with court orders;

55 (8) The guardian ad litem shall explain, when
56 appropriate, the court process and the role of the guardian
57 ad litem to the child. The guardian ad litem shall ensure
58 that the child is informed of the purpose of each court
59 proceeding;

60 (9) The guardian ad litem shall participate, when
61 appropriate, in the development and negotiation of any
62 service plans, parenting plans, proposed orders, and

63 staffings that affect the best interests of the child as
64 they relate to the case at hand. He or she shall monitor
65 implementation of service plans and court orders during his
66 or her appointment to determine whether services ordered by
67 the court are being provided in a timely manner;

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

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

79 (12) The guardian ad litem shall present a
80 recommendation to the court when authorized by law or
81 requested by the court on the basis of evidence presented
82 and consistent with the best interests of the child.

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