



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2816

by Rep. Terra Costa Howard

SYNOPSIS AS INTRODUCED:

755 ILCS 5/11a-10

from Ch. 110 1/2, par. 11a-10

Amends the Adult Guardianship Article of the Probate Act of 1975. Deletes language providing that if the respondent is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court may enter an order for the petitioner to pay all such fees or such amounts as the respondent or the respondent's estate may be unable to pay. Provides instead that the allocation of guardian ad litem fees is within the discretion of the court.

LRB101 08686 LNS 53771 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing
5 Section 11a-10 as follows:

6 (755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)

7 Sec. 11a-10. Procedures preliminary to hearing.

8 (a) Upon the filing of a petition pursuant to Section
9 11a-8, the court shall set a date and place for hearing to take
10 place within 30 days. The court shall appoint a guardian ad
11 litem to report to the court concerning the respondent's best
12 interests consistent with the provisions of this Section,
13 except that the appointment of a guardian ad litem shall not be
14 required when the court determines that such appointment is not
15 necessary for the protection of the respondent or a reasonably
16 informed decision on the petition. If the guardian ad litem is
17 not a licensed attorney, he or she shall be qualified, by
18 training or experience, to work with or advocate for persons
19 with developmental disabilities, the mentally ill, persons
20 with physical disabilities, the elderly, or persons with a
21 disability due to mental deterioration, depending on the type
22 of disability that is alleged in the petition. The court may
23 allow the guardian ad litem reasonable compensation. The

1 guardian ad litem may consult with a person who by training or
2 experience is qualified to work with persons with a
3 developmental disability, persons with mental illness, persons
4 with physical disabilities, or persons with a disability due to
5 mental deterioration, depending on the type of disability that
6 is alleged. The guardian ad litem shall personally observe the
7 respondent prior to the hearing and shall inform him orally and
8 in writing of the contents of the petition and of his rights
9 under Section 11a-11. The guardian ad litem shall also attempt
10 to elicit the respondent's position concerning the
11 adjudication of disability, the proposed guardian, a proposed
12 change in residential placement, changes in care that might
13 result from the guardianship, and other areas of inquiry deemed
14 appropriate by the court. Notwithstanding any provision in the
15 Mental Health and Developmental Disabilities Confidentiality
16 Act or any other law, a guardian ad litem shall have the right
17 to inspect and copy any medical or mental health record of the
18 respondent which the guardian ad litem deems necessary,
19 provided that the information so disclosed shall not be
20 utilized for any other purpose nor be redisclosed except in
21 connection with the proceedings. At or before the hearing, the
22 guardian ad litem shall file a written report detailing his or
23 her observations of the respondent, the responses of the
24 respondent to any of the inquiries detailed in this Section,
25 the opinion of the guardian ad litem or other professionals
26 with whom the guardian ad litem consulted concerning the

1 appropriateness of guardianship, and any other material issue
2 discovered by the guardian ad litem. The guardian ad litem
3 shall appear at the hearing and testify as to any issues
4 presented in his or her report.

5 (b) The court (1) may appoint counsel for the respondent,
6 if the court finds that the interests of the respondent will be
7 best served by the appointment, and (2) shall appoint counsel
8 upon respondent's request or if the respondent takes a position
9 adverse to that of the guardian ad litem. The respondent shall
10 be permitted to obtain the appointment of counsel either at the
11 hearing or by any written or oral request communicated to the
12 court prior to the hearing. The summons shall inform the
13 respondent of this right to obtain appointed counsel. The court
14 may allow counsel for the respondent reasonable compensation.

15 (c) The allocation of guardian ad litem fees is within the
16 ~~discretion of the court. If the respondent is unable to pay the~~
17 ~~fee of the guardian ad litem or appointed counsel, or both, the~~
18 ~~court may enter an order for the petitioner to pay all such~~
19 ~~fees or such amounts as the respondent or the respondent's~~
20 ~~estate may be unable to pay.~~ However, in cases where the Office
21 of State Guardian is the petitioner, consistent with Section 30
22 of the Guardianship and Advocacy Act, where the public guardian
23 is the petitioner, consistent with Section 13-5 of this Act,
24 where an adult protective services agency is the petitioner,
25 pursuant to Section 9 of the Adult Protective Services Act, or
26 where the Department of Children and Family Services is the

1 petitioner under subparagraph (d) of subsection (1) of Section
2 2-27 of the Juvenile Court Act of 1987, no guardian ad litem or
3 legal fees shall be assessed against the Office of State
4 Guardian, the public guardian, the adult protective services
5 agency, or the Department of Children and Family Services.

6 (d) The hearing may be held at such convenient place as the
7 court directs, including at a facility in which the respondent
8 resides.

9 (e) Unless he is the petitioner, the respondent shall be
10 personally served with a copy of the petition and a summons not
11 less than 14 days before the hearing. The summons shall be
12 printed in large, bold type and shall include the following
13 notice:

14 NOTICE OF RIGHTS OF RESPONDENT

15 You have been named as a respondent in a guardianship
16 petition asking that you be declared a person with a
17 disability. If the court grants the petition, a guardian will
18 be appointed for you. A copy of the guardianship petition is
19 attached for your convenience.

20 The date and time of the hearing are:

21 The place where the hearing will occur is:

22 The Judge's name and phone number is:

23 If a guardian is appointed for you, the guardian may be
24 given the right to make all important personal decisions for
25 you, such as where you may live, what medical treatment you may
26 receive, what places you may visit, and who may visit you. A

1 guardian may also be given the right to control and manage your
2 money and other property, including your home, if you own one.
3 You may lose the right to make these decisions for yourself.

4 You have the following legal rights:

5 (1) You have the right to be present at the court
6 hearing.

7 (2) You have the right to be represented by a lawyer,
8 either one that you retain, or one appointed by the Judge.

9 (3) You have the right to ask for a jury of six persons
10 to hear your case.

11 (4) You have the right to present evidence to the court
12 and to confront and cross-examine witnesses.

13 (5) You have the right to ask the Judge to appoint an
14 independent expert to examine you and give an opinion about
15 your need for a guardian.

16 (6) You have the right to ask that the court hearing be
17 closed to the public.

18 (7) You have the right to tell the court whom you
19 prefer to have for your guardian.

20 You do not have to attend the court hearing if you do not
21 want to be there. If you do not attend, the Judge may appoint a
22 guardian if the Judge finds that a guardian would be of benefit
23 to you. The hearing will not be postponed or canceled if you do
24 not attend. If you are unable to attend the hearing in person
25 or you will suffer harm if you attend, the Judge can decide to
26 hold the hearing at a place that is convenient. The Judge can

1 also follow the rule of the Supreme Court of this State, or its
2 local equivalent, and decide if a video conference is
3 appropriate.

4 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO
5 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE
6 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.
7 IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER
8 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND
9 TELL THE JUDGE.

10 Service of summons and the petition may be made by a
11 private person 18 years of age or over who is not a party to the
12 action.

13 (f) Notice of the time and place of the hearing shall be
14 given by the petitioner by mail or in person to those persons,
15 including the proposed guardian, whose names and addresses
16 appear in the petition and who do not waive notice, not less
17 than 14 days before the hearing.

18 (Source: P.A. 99-143, eff. 7-27-15; 99-642, eff. 7-28-16;
19 100-201, eff. 8-18-17; 100-427, eff. 1-1-18.)