



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0842

Introduced 2/10/2021, 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 and costs is within the discretion of the court. Provides that no legal fees, appointed counsel fees, guardian ad litem fees, or costs shall be assessed against the Office of the State Guardian, the public guardian, an adult protective services agency, the Department of Children and Family Services, or the agency designated by the Governor under the Protection and Advocacy for Persons with Developmental Disabilities Act.

LRB102 12539 LNS 17877 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
15 not necessary for the protection of the respondent or a
16 reasonably informed decision on the petition. If the guardian
17 ad litem is not a licensed attorney, he or she shall be
18 qualified, by training or experience, to work with or advocate
19 for persons with developmental disabilities, the mentally ill,
20 persons with physical disabilities, the elderly, or persons
21 with a disability due to mental deterioration, depending on
22 the type of disability that is alleged in the petition. The
23 court may allow the guardian ad litem reasonable compensation.

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

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

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

17 (c) The allocation of guardian ad litem fees and costs is
18 within the discretion of the court. No legal fees, appointed
19 counsel fees, guardian ad litem fees, or costs shall be
20 assessed against the Office of the State Guardian, the public
21 guardian, an adult protective services agency, the Department
22 of Children and Family Services, or the agency designated by
23 the Governor under Section 1 of the Protection and Advocacy
24 for Persons with Developmental Disabilities Act. ~~If the~~
25 respondent is unable to pay the fee of the guardian ad litem or
26 appointed counsel, or both, the court may enter an order for

1 ~~the petitioner to pay all such fees or such amounts as the~~
2 ~~respondent or the respondent's estate may be unable to pay.~~
3 ~~However, in cases where the Office of State Guardian is the~~
4 ~~petitioner, consistent with Section 30 of the Guardianship and~~
5 ~~Advocacy Act, where the public guardian is the petitioner,~~
6 ~~consistent with Section 13-5 of this Act, where an adult~~
7 ~~protective services agency is the petitioner, pursuant to~~
8 ~~Section 9 of the Adult Protective Services Act, or where the~~
9 ~~Department of Children and Family Services is the petitioner~~
10 ~~under subparagraph (d) of subsection (1) of Section 2-27 of~~
11 ~~the Juvenile Court Act of 1987, no guardian ad litem or legal~~
12 ~~fees shall be assessed against the Office of State Guardian,~~
13 ~~the public guardian, the adult protective services agency, or~~
14 ~~the Department of Children and Family Services.~~

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

18 (e) Unless he is the petitioner, the respondent shall be
19 personally served with a copy of the petition and a summons not
20 less than 14 days before the hearing. The summons shall be
21 printed in large, bold type and shall include the following
22 notice:

23 NOTICE OF RIGHTS OF RESPONDENT

24 You have been named as a respondent in a guardianship
25 petition asking that you be declared a person with a
26 disability. If the court grants the petition, a guardian will

1 be appointed for you. A copy of the guardianship petition is
2 attached for your convenience.

3 The date and time of the hearing are:

4 The place where the hearing will occur is:

5 The Judge's name and phone number is:

6 If a guardian is appointed for you, the guardian may be
7 given the right to make all important personal decisions for
8 you, such as where you may live, what medical treatment you may
9 receive, what places you may visit, and who may visit you. A
10 guardian may also be given the right to control and manage your
11 money and other property, including your home, if you own one.
12 You may lose the right to make these decisions for yourself.

13 You have the following legal rights:

14 (1) You have the right to be present at the court
15 hearing.

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

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

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

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

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

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

3 You do not have to attend the court hearing if you do not
4 want to be there. If you do not attend, the Judge may appoint a
5 guardian if the Judge finds that a guardian would be of benefit
6 to you. The hearing will not be postponed or canceled if you do
7 not attend. If you are unable to attend the hearing in person
8 or you will suffer harm if you attend, the Judge can decide to
9 hold the hearing at a place that is convenient. The Judge can
10 also follow the rule of the Supreme Court of this State, or its
11 local equivalent, and decide if a video conference is
12 appropriate.

13 IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO
14 NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE
15 PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN.
16 IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER
17 PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND
18 TELL THE JUDGE.

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

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

1 (Source: P.A. 99-143, eff. 7-27-15; 99-642, eff. 7-28-16;
2 100-201, eff. 8-18-17; 100-427, eff. 1-1-18.)