

PROBATE CODE OF 1939 (EXCERPT)
Act 288 of 1939

712A.17d Lawyer-guardian ad litem; powers and duties.

Sec. 17d.

(1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

- (a) The obligations of the attorney-client privilege.
- (b) To serve as the independent representative for the child's best interests, and be entitled to fully and actively participate in all aspects of the litigation and access to all relevant information regarding the child.
- (c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. The agency case file must be reviewed before disposition and before the hearing for termination of parental rights. Updated material must be reviewed as provided to the court and parties. The supervising agency shall provide documentation of progress that relates to all aspects of the last court ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time not later than 5 business days before the scheduled hearing.
- (d) To meet with or observe the child and assess the child's needs and wishes with regard to the representation and the issues in the case in the following instances:
 - (i) Before the pretrial hearing.
 - (ii) Before the initial disposition, if held more than 91 days after the petition has been authorized.
 - (iii) Before a dispositional review hearing.
 - (iv) Before a permanency planning hearing.
 - (v) Before a post-termination review hearing.
 - (vi) At least once during the pendency of a supplemental petition.
 - (vii) At other times as ordered by the court. Adjourned or continued hearings do not require additional visits unless directed by the court.
- (e) The court may allow alternative means of contact with the child if good cause is shown on the record.
- (f) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.
- (g) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.
- (h) To attend all hearings and substitute representation for the child only with court approval.
- (i) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court of the child's wishes and preferences.
- (j) To monitor the implementation of case plans and court orders and to determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.
- (k) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter through consultation with the child's parent, foster care provider, guardian, and caseworker.
- (l) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment.
- (m) To participate in early childhood, child, and adolescent development training.
- (n) To participate in trauma-informed training if provided by the state court administrative office.
- (2) If, after discussion between the child and his or her lawyer-guardian ad litem, the lawyer-guardian ad litem determines that the child's interests as identified by the child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian ad litem shall communicate the child's position to the court. If the court considers the appointment appropriate considering the child's age and maturity and the nature of the inconsistency between the child's and the lawyer-guardian ad litem's identification of the child's interests, the court may appoint an attorney for the child. An attorney appointed under this subsection serves in addition to the child's lawyer-guardian ad litem.
- (3) The court or another party to the case shall not call a lawyer-guardian ad litem as a witness to testify

regarding matters related to the case. The lawyer-guardian ad litem's file of the case is not discoverable.

History: Add. 1998, Act 480, Eff. Mar. 1, 1999 ;-- Am. 2004, Act 475, Imd. Eff. Dec. 28, 2004 ;-- Am. 2012, Act 115, Imd. Eff. May 1, 2012 ;-- Am. 2022, Act 201, Imd. Eff. Oct. 7, 2022

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