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SENATE BILL NO. 292

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 64.2-2003 of the Code of Virginia, relating to guardianship and conservatorship; report of guardian ad litem.

Patron—Roem

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 64.2-2003 of the Code of Virginia is amended and reenacted as follows:****§ 64.2-2003. Appointment of guardian ad litem.**

A. On the filing of every petition for guardianship or conservatorship, the court shall appoint a guardian ad litem to represent the interests of the respondent. The guardian ad litem shall be paid a fee that is fixed by the court to be paid by the petitioner or taxed as costs, as the court directs.

B. Duties of the guardian ad litem include (i) personally visiting the respondent; (ii) advising the respondent of rights pursuant to §§ 64.2-2006 and 64.2-2007 and certifying to the court that the respondent has been so advised; (iii) recommending that legal counsel be appointed for the respondent, pursuant to § 64.2-2006, if the guardian ad litem believes that counsel for the respondent is necessary; (iv) notifying the court as soon as practicable if the respondent requests counsel regardless of whether the guardian ad litem recommends counsel; (v) investigating the petition and evidence, requesting additional evaluation if necessary, considering whether a less restrictive alternative to guardianship or conservatorship is available, including the use of an advance directive, supported decision-making agreement, or durable power of attorney, and filing a report pursuant to subsection C; (vi) making a good faith effort to consult directly with the respondent's primary health care provider, if any, unless the evaluation report required by § 64.2-2005 is prepared in whole or in part by such provider; and (vii) personally appearing at all court proceedings and conferences. If the respondent is between 17 and a half and 21 years of age and has an Individualized Education Plan (IEP) and transition plan, the guardian ad litem shall review such IEP and transition plan and include the results of his review in the report required by clause (v).

C. In the report required by clause (v) of subsection B, the guardian ad litem shall address the following major areas of concern: (i) whether the court has jurisdiction; (ii) whether a guardian or conservator is needed based on evaluations and reviews conducted pursuant to subsection B; (iii) the extent of the duties and powers of the guardian or conservator; (iv) the propriety and suitability of the person selected as guardian or conservator after consideration of (a) the person's geographic location, (b) the person's familial or other relationship with the respondent, (c) the person's ability to carry out the powers and duties of the office, (d) the person's commitment to promoting the respondent's welfare, (e) any potential conflicts of interests, (f) whether the person works as a professional guardian on a full-time basis, (g) the person's expected capacity as a guardian, (h) the wishes of the respondent, and (i) the recommendations of relatives, and (j) whether the person is named as a perpetrator in any substantiated adult protective services complaint involving the respondent; (v) a recommendation as to the amount of surety on the conservator's bond, if any; and (vi) consideration of proper residential placement of the respondent. The report shall also contain an explanation by the guardian ad litem as to any (a) decision not to recommend the appointment of counsel for the respondent, (b) determination that a less restrictive alternative to guardianship or conservatorship is not advisable, and (c) determination that appointment of a limited guardian or conservator is not appropriate. If the guardian ad litem was unable to consult directly with the respondent's primary health care provider, such information shall also be included in such report.

D. Any individual or entity with information, records, or reports relevant to a guardianship or conservatorship proceeding, including any (i) health care provider, local school division, or local department of social services; (ii) criminal justice agency as that term is defined in § 9.1-101, unless the disclosure of such information, records, or reports would impede an ongoing criminal investigation or proceeding; and (iii) financial institution as that term is defined in § 6.2-100, investment advisor as that term is defined in § 13.1-501, or other financial service provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. The request from the guardian ad litem shall be accompanied by a copy of the court order (a) appointing the guardian ad

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59 litem for the respondent and (b) that allows the release of the respondent's nonpublic personal
60 information to the guardian ad litem. All such information, records, and reports shall be provided to the
61 guardian ad litem at no charge. Disclosures, records, and reports can be provided in electronic form to
62 the guardian ad litem and may be accompanied by a statement of expenses or an invoice, which shall be
63 filed with the report of the guardian ad litem to be considered by the court when awarding costs among
64 the parties pursuant to § 64.2-2008. Absent gross negligence or willful misconduct, the person or entity
65 making disclosures, and their staff, shall be immune from civil or criminal liability for providing
66 information or records to a court-appointed guardian ad litem pursuant to this section.