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SENATE BILL NO. 245

Offered January 18, 1996

A BILL to amend and reenact § 8.01-9 of the Code of Virginia, relating to persons under a disability; appointment of guardian.

Patron—Gartlan

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-9 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-9. Guardian ad litem for persons under disability; when guardian ad litem need not be appointed for person under disability.

A. A suit wherein a person under a disability is a party defendant shall not be stayed because of such disability, but the court in which the suit is pending, or the clerk thereof, shall appoint ~~some~~ a discreet and competent attorney-at-law as guardian ad litem to such defendant, whether ~~such~~ the defendant ~~shall have~~ has been served with process or not; ~~or, if~~ If no such attorney ~~be~~ is found willing to act, the court shall appoint some other discreet and proper person as guardian ad litem. Any guardian ad litem so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the estate or other interest of the person under a disability for whom he is appointed, and it shall be the duty of the court to see that the interest of ~~such~~ the defendant is so represented and protected. ~~And the court, whenever~~ Whenever the court is of opinion that the interest of ~~such person~~ the defendant so requires, it, shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court is satisfied that the guardian ad litem has rendered substantial service in representing the interest of the person under a disability, it may allow ~~such~~ the guardian reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of ~~such person~~; ~~provided, if such~~ the defendant. However, if the defendant's estate is inadequate for the purpose of paying ~~such~~ compensation and expenses, all, or any part thereof, may be taxed as costs in the proceeding or, in the case of proceedings to adjudicate a person under a disability as an habitual offender pursuant to § 46.2-351.2 or § 46.2-352, shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges.

B. Notwithstanding the provisions of subsection A or the provisions of any other law to the contrary, in any suit wherein a person under a disability is a party defendant and is represented by an attorney-at-law duly licensed to practice in this Commonwealth, who shall have entered of record an appearance for such person, no guardian ad litem need be appointed for such person unless the court determines that the interests of justice require such appointment; or unless a statute applicable to such suit expressly requires an answer to be filed by a guardian ad litem. The court may, in its discretion, appoint the attorney of record for the person under a disability as his guardian ad litem, in which event the attorney shall perform all the duties and functions of guardian ad litem.

Any judgment or decree rendered by any court against a person under a disability without a guardian ad litem, but in compliance with the provisions of this subsection B, shall be as valid as if the guardian ad litem had been appointed.

INTRODUCED

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