

Appointment of Guardians ad Litem in Private Custody and Visitation Actions Fact Sheet

This document provides a brief overview of the appointment process. It also addresses some commonly asked questions regarding guardian ad litem appointments in private custody and visitation actions.

Appointments of attorney and non-attorney guardians ad litem in private custody and visitation actions are governed by The South Carolina Guardian ad Litem Reform Act. In addition to meeting other qualifications set forth in the statute, individuals desiring to serve as guardians ad litem in private custody and visitation actions must comply with certain statutory training requirements. The Children's Law Center offers trainings which meet these statutory training requirements pursuant to a grant from The South Carolina Bar Foundation.

South Carolina Code Annotated § 63-3-820 sets forth qualifications and training requirements for private guardians ad litem. Training for both attorneys and non-attorneys must be approved by the Commission on Continuing Legal Education and Specialization. Attorneys must obtain six hours of training every year in the areas of child custody and visitation. The attorney training requirement may be waived by a family court judge. Non-attorneys must meet an initial twelve hour training requirement in order to become qualified to serve as a guardian ad litem in a private custody and visitation action. Nine hours of this initial training must relate to custody and visitation and three hours must relate to substantive law and procedure in family court. Additionally, non-attorneys who wish to serve as guardians ad litem must observe three contested custody merits hearings prior to receiving a guardian ad litem appointment. After becoming qualified to serve, non-attorney guardians ad litem must annually complete six hours of continuing education courses in the areas of custody and visitation.

S.C. Code Annotated § 63-3-830 details the responsibilities and duties of private guardians ad litem. The guardian ad litem is charged by statute to conduct a fair and balanced investigation to assist the family court in determining the best interests of the child. Responsibilities and duties include but are not limited to maintaining a complete file including notes and providing reports to the court. The guardian's final report to the court must be in writing and comply with certain time deadlines for its submission. A report from a private guardian ad litem may not contain recommendations as to custody unless the court makes specific findings in the court record stating the reasons the guardian ad litem should provide such a recommendation. A private guardian ad litem may make suggestions for evaluation, services, and treatment for the child and the child's family.

All guardians ad litem in private custody and visitation actions are accountable to the family court. Guardians ad litem are appointed by court order (appointment order) and can be removed or otherwise directed by a family court judge. The appointment order or an additional supplemental order sets out the responsibilities and duties of the guardian ad litem as well as establishing the guardian ad litem's rate of compensation.

There is no oversight body for non-attorney guardians ad litem. However, complaints against non-attorney guardians ad litem who hold professional licenses issued by the State of South Carolina may be reported through the appropriate board of the South Carolina Department of Labor, Licensing, and Regulation (LLR). Complaints regarding attorney guardians that may violate the Rules of Professional Responsibility can be made to the South Carolina Office of Disciplinary Counsel.

There is no “master list” of current qualified private attorney or non-attorney guardians ad litem and there is no statutorily mandated system of rotating appointments among qualified guardians ad litem. Some counties maintain a list in the family court clerk’s office. Others do not. Some judges maintain their own lists. Guardians ad litem are most often agreed upon by the parties who then submit the guardian ad litem’s name to the court for its approval in the appointment order. Upon receipt of the appointment order, the guardian ad litem should submit an affidavit attesting to the guardian ad litem’s qualifications to the parties and the court.

Although it can be difficult for any qualified private guardian ad litem to begin receiving appointments, non-attorney guardians ad litem likely may find it more difficult than attorneys. Use of non-attorney guardians ad litem varies from county to county. Some counties have a sufficient number of attorney guardians ad litem and some attorneys and judges may prefer to use attorney guardians ad litem. While non -attorney guardians ad litem must comply with the statutory training requirements in order to be eligible for appointments, completing training does not guarantee that an individual will receive appointments. The Children’s Law Center provides training which complies with the statutory requirements but makes no representations to any individual that he or she will receive private guardian ad litem appointments after completion of Children’s Law Center trainings.