

SECTION 63-3-810. Private guardians ad litem; appointment.

(A) In a private action before the family court in which custody or visitation of a minor child is an issue, the court may appoint a guardian ad litem only when it determines that:

(1) without a guardian ad litem, the court will likely not be fully informed about the facts of the case and there is a substantial dispute which necessitates a guardian ad litem; or

(2) both parties consent to the appointment of a guardian ad litem who is approved by the court;

(B) The court has absolute discretion in determining who will be appointed as a guardian ad litem in each case. A guardian ad litem must be appointed to a case by a court order.

SECTION 63-3-820. Qualifications; affidavit attesting to qualifications; appointment of attorney for lay guardian.

(A) A guardian ad litem may be either an attorney or a layperson. A person must not be appointed as a guardian ad litem pursuant to Section 63-3-810 unless he possesses the following qualifications:

(1) a guardian ad litem must be twenty-five years of age or older;

(2) a guardian ad litem must possess a high school diploma or its equivalent;

(3) an attorney guardian ad litem must annually complete a minimum of six hours of family law continuing legal education credit in the areas of custody and visitation; however, this requirement may be waived by the court;

(4) for initial qualification, a lay guardian ad litem must have completed a minimum of nine hours of continuing education in the areas of custody and visitation and three hours of continuing education related to substantive law and procedure in family court. The courses must be approved by the Supreme Court Commission on Continuing Legal Education and Specialization;

(5) a lay guardian ad litem must observe three contested custody merits hearings prior to serving as a guardian ad litem. The lay guardian must maintain a certificate showing that observation of these hearings has been completed. This certificate, which shall be on a form approved by Court Administration, shall state the names of the cases, the dates and the judges involved and shall be attested to by the respective judge; and

(6) lay guardians ad litem must complete annually six hours of continuing education courses in the areas of custody and visitation.

(B) A person shall not be appointed as a guardian ad litem pursuant to Section 63-3-810 who has been convicted of any crime listed in Chapter 3 of Title 16, Offenses Against the Person; in Chapter 15 of Title 16, Offenses Against Morality and Decency; in Chapter 25 of Title 16, Criminal Domestic Violence; in Article 3 of Chapter 53 of Title 44, Narcotics and Controlled Substances; or convicted of the crime of contributing to the delinquency of a minor, provided for in Section 16-17-490.

(C) No person may be appointed as a guardian ad litem pursuant to Section 63-3-810 if he is or has ever been on the Department of Social Services Central Registry of Abuse and Neglect.

(D) Upon appointment to a case, a guardian ad litem must provide an affidavit to the court and to the parties attesting to compliance with the statutory qualifications. The affidavit must include, but is not limited to, the following:

(1) a statement affirming that the guardian ad litem has completed the training requirements provided for in subsection (A);

(2) a statement affirming that the guardian ad litem has complied with the requirements of this section, including a statement that the person has not been convicted of a crime enumerated in subsection (B); and

(3) a statement affirming that the guardian ad litem is not nor has ever been on the Department of Social Services Central Registry of Child Abuse and Neglect pursuant to Subarticle 13, Article 3, Chapter 7.

(E) The court may appoint an attorney for a lay guardian ad litem. A party or the guardian ad litem may petition the court by motion for the appointment of an attorney for the guardian ad litem. This appointment may be by consent order. The order appointing the attorney must set forth the reasons for the appointment and must establish a method for compensating the attorney.

SECTION 63-3-830. Responsibilities and duties; submission of briefs.

(A) The responsibilities and duties of a guardian ad litem include, but are not limited to:

- (1) representing the best interest of the child;
- (2) conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family. An investigation must include, but is not limited to:
 - (i) obtaining and reviewing relevant documents, except that a guardian ad litem must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian ad litem shall have access to the child's school records and medical records. The guardian ad litem may petition the family court for the medical records of the parties;
 - (ii) meeting with and observing the child on at least one occasion;
 - (iii) visiting the home settings if deemed appropriate;
 - (iv) interviewing parents, caregivers, school officials, law enforcement, and others with knowledge relevant to the case;
 - (v) obtaining the criminal history of each party when determined necessary; and (vi) considering the wishes of the child, if appropriate;
- (3) advocating for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services, and treatment for the child and the child's family. Evaluations or other services suggested by the guardian ad litem must not be ordered by the court, except upon proper approval by the court or by consent of the parties;
- (4) attending all court hearings related to custody and visitation issues, except when attendance is excused by the court or the absence is stipulated by both parties. A guardian must not be compensated for attending a hearing related solely to a financial matter if the matter is not relevant to the suitability of the parents as to custody, visitation, or child support. The guardian must provide accurate, current information directly to the court, and that information must be relevant to matters pending before the court;
- (5) maintaining a complete file, including notes. A guardian's notes are his work product and are not subject to subpoena; and
- (6) presenting to the court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child's best interest. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the court, but in no event later than ten days prior to the merits hearing. The ten-day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the guardian ad litem make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The guardian ad litem is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses, and telephone numbers of those interviewed during the investigation.

(B) A guardian ad litem may submit briefs, memoranda, affidavits, or other documents on behalf of the child. A guardian ad litem may also submit affidavits at the temporary hearing. Any report or recommendation of a guardian ad litem must be submitted in a manner consistent with the South Carolina Rules of Evidence and other state law.

SECTION 63-3-840. Guardian ad litem as mediator.

A guardian ad litem must not mediate, attempt to mediate, or act as a mediator in a case to which he has been appointed. However, nothing in this section shall prohibit a guardian ad litem from participating in a mediation or a settlement conference with the consent of the parties.

SECTION 63-3-850. Compensation; factors considered in determining reasonableness; submission of itemized bill; review.

(A) At the time of appointment of a guardian ad litem, the family court judge must set forth the method and rate of compensation for the guardian ad litem, including an initial authorization of a fee based on the facts of the case. If the guardian ad litem determines that it is necessary to exceed the fee initially authorized by the judge, the guardian must provide notice to both parties and obtain the judge's written authorization or the consent of both parties to charge more than the initially authorized fee.

(B) A guardian appointed by the court is entitled to reasonable compensation, subject to the review and approval of the court. In determining the reasonableness of the fees and costs, the court must take into account:

- (1) the complexity of the issues before the court;
- (2) the contentiousness of the litigation;
- (3) the time expended by the guardian;
- (4) the expenses reasonably incurred by the guardian;
- (5) the financial ability of each party to pay fees and costs; and
- (6) any other factors the court considers necessary.

(C) The guardian ad litem must submit an itemized billing statement of hours, expenses, costs, and fees to the parties and their attorneys pursuant to a schedule as directed by the court.

(D) At any time during the action, a party may petition the court to review the reasonableness of the fees and costs submitted by the guardian ad litem or the attorney for the guardian ad litem.

SECTION 63-3-860. Disclosure.

A guardian ad litem appointed by the family court in a custody or visitation action must, upon notice of the appointment, provide written disclosure to each party:

- (1) of the nature, duration, and extent of any relationship the guardian ad litem or any member of the guardian's immediate family residing in the guardian's household has with any party;
- (2) of any interest adverse to any party or attorney which might cause the impartiality of the guardian ad litem to be challenged;
- (3) any membership or participation in any organization related to child abuse, domestic violence, or drug and alcohol abuse.

SECTION 63-3-870. Removal.

A guardian ad litem may be removed from a case at the discretion of the court.