

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Probate Act of 1975 is amended by changing Section 11a-10 as follows:

(755 ILCS 5/11a-10) (from Ch. 110 1/2, par. 11a-10)

Sec. 11a-10. Procedures preliminary to hearing.

(a) Upon the filing of a petition pursuant to Section 11a-8, the court shall set a date and place for hearing to take place within 30 days. The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for persons with developmental disabilities, the mentally ill, persons with physical disabilities, the elderly, or persons with a disability due to mental deterioration, depending on the type of disability that is alleged in the petition. The court may allow the guardian ad litem reasonable compensation.

The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, persons with mental illness, persons with physical disabilities, or persons with a disability due to mental deterioration, depending on the type of disability that is alleged. The guardian ad litem shall personally observe the respondent prior to the hearing and shall inform him orally and in writing of the contents of the petition and of his rights under Section 11a-11. The guardian ad litem shall also attempt to elicit the respondent's position concerning the adjudication of disability, the proposed guardian, a proposed change in residential placement, changes in care that might result from the guardianship, and other areas of inquiry deemed appropriate by the court. Notwithstanding any provision in the Mental Health and Developmental Disabilities Confidentiality Act or any other law, a guardian ad litem shall have the right to inspect and copy any medical or mental health record of the respondent which the guardian ad litem deems necessary, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the respondent, the responses of the respondent to any of the inquiries detailed in this Section, the opinion of the guardian ad litem or other professionals with whom the

guardian ad litem consulted concerning the appropriateness of guardianship, and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify as to any issues presented in his or her report.

(b) The court (1) may appoint counsel for the respondent, if the court finds that the interests of the respondent will be best served by the appointment, and (2) shall appoint counsel upon respondent's request or if the respondent takes a position adverse to that of the guardian ad litem. The respondent shall be permitted to obtain the appointment of counsel either at the hearing or by any written or oral request communicated to the court prior to the hearing. The summons shall inform the respondent of this right to obtain appointed counsel. The court may allow counsel for the respondent reasonable compensation.

(c) The allocation of guardian ad litem fees and costs is within the discretion of the court. No legal fees, appointed counsel fees, guardian ad litem fees, or costs shall be assessed against the Office of the State Guardian, the public guardian, an adult protective services agency, the Department of Children and Family Services, or the agency designated by the Governor under Section 1 of the Protection and Advocacy for Persons with Developmental Disabilities Act. ~~If the respondent is unable to pay the fee of the guardian ad litem or appointed counsel, or both, the court may enter an order for~~

~~the petitioner to pay all such fees or such amounts as the respondent or the respondent's estate may be unable to pay. However, in cases where the Office of State Guardian is the petitioner, consistent with Section 30 of the Guardianship and Advocacy Act, where the public guardian is the petitioner, consistent with Section 13-5 of this Act, where an adult protective services agency is the petitioner, pursuant to Section 9 of the Adult Protective Services Act, or where the Department of Children and Family Services is the petitioner under subparagraph (d) of subsection (1) of Section 2-27 of the Juvenile Court Act of 1987, no guardian ad litem or legal fees shall be assessed against the Office of State Guardian, the public guardian, the adult protective services agency, or the Department of Children and Family Services.~~

(d) The hearing may be held at such convenient place as the court directs, including at a facility in which the respondent resides.

(e) Unless he is the petitioner, the respondent shall be personally served with a copy of the petition and a summons not less than 14 days before the hearing. The summons shall be printed in large, bold type and shall include the following notice:

NOTICE OF RIGHTS OF RESPONDENT

You have been named as a respondent in a guardianship petition asking that you be declared a person with a disability. If the court grants the petition, a guardian will

be appointed for you. A copy of the guardianship petition is attached for your convenience.

The date and time of the hearing are:

The place where the hearing will occur is:

The Judge's name and phone number is:

If a guardian is appointed for you, the guardian may be given the right to make all important personal decisions for you, such as where you may live, what medical treatment you may receive, what places you may visit, and who may visit you. A guardian may also be given the right to control and manage your money and other property, including your home, if you own one. You may lose the right to make these decisions for yourself.

You have the following legal rights:

(1) You have the right to be present at the court hearing.

(2) You have the right to be represented by a lawyer, either one that you retain, or one appointed by the Judge.

(3) You have the right to ask for a jury of six persons to hear your case.

(4) You have the right to present evidence to the court and to confront and cross-examine witnesses.

(5) You have the right to ask the Judge to appoint an independent expert to examine you and give an opinion about your need for a guardian.

(6) You have the right to ask that the court hearing be closed to the public.

(7) You have the right to tell the court whom you prefer to have for your guardian.

You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the Judge finds that a guardian would be of benefit to you. The hearing will not be postponed or canceled if you do not attend. If you are unable to attend the hearing in person or you will suffer harm if you attend, the Judge can decide to hold the hearing at a place that is convenient. The Judge can also follow the rule of the Supreme Court of this State, or its local equivalent, and decide if a video conference is appropriate.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN. IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND TELL THE JUDGE.

Service of summons and the petition may be made by a private person 18 years of age or over who is not a party to the action.

(f) Notice of the time and place of the hearing shall be given by the petitioner by mail or in person to those persons, including the proposed guardian, whose names and addresses appear in the petition and who do not waive notice, not less than 14 days before the hearing.

Public Act 102-0191

HB0842 Enrolled

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(Source: P.A. 99-143, eff. 7-27-15; 99-642, eff. 7-28-16;
100-201, eff. 8-18-17; 100-427, eff. 1-1-18.)