

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1279 (Ochoa Bogh)
Version: April 27, 2022
Hearing Date: May 3, 2022
Fiscal: No
Urgency: No
AWM

SUBJECT

Guardian ad litem appointment

DIGEST

This bill recasts the provision in the Code of Civil Procedure for the appointment of a guardian ad litem; adds a person with a disability, as defined, to the list of persons for whom a guardian ad litem may be appointed, provided that the court determines, by clear and convincing evidence, that there is good cause for the appointment, that the representation of the interest would otherwise be inadequate, and that there is no other suitable alternative to protect the proposed ward's interests; requires a proposed guardian ad litem to disclose any known or actual conflicts of interests in advance of the appointment and to make reports at least annually on all actions taken on the ward's behalf that affect the wards interests; and requires an order appointing a guardian ad litem to set forth the specific powers of the guardian, thereby prohibiting the guardian ad litem from exercising any powers not set forth in the order.

EXECUTIVE SUMMARY

Current law authorizes a court in a civil case to appoint a guardian ad litem to represent the interests of certain persons in court. A guardian ad litem – literally a guardian “for the suit” – is distinct from a party's attorney in that an attorney can only carry out the wishes of their client, whereas a guardian ad litem is empowered to make the underlying decisions in a case on their ward's behalf. Existing law generally authorizes the appointment of a guardian ad litem for a minor or an incapacitated person – two categories generally not found to be competent to make legal decisions at law – with additional categories being covered in estate matters under the Probate Code. A guardian ad litem has significant power over their ward's case and interest, including being able to settle cases and waive claims, but there are no statutory provisions granting the court specific oversight powers into a guardian ad litem's appointment or authority.

This bill implements several oversight requirements into the guardian ad litem process. First, the bill requires that, prior to the appointment of a guardian ad litem, the proposed guardian must disclose to the court all known potential or actual conflicts arising from the appointment, including any potential or affiliate relationships the proposed guardian has to any of the parties. The bill next requires that an order appointing a guardian ad litem specify the powers being granted, and provides that the guardian ad litem has only the powers granted in the order. Third, the bill provides that, unless ordered otherwise by the court, the guardian ad litem must provide annual reports to the court containing all of the actions taken on behalf of the ward that affect the ward's interests. Finally, the bill requires that the guardian ad litem's reasonable expenses, including attorney fees and costs, must be determined by the court. The author has agreed to technical amendments to clarify some of these provisions.

The bill also recasts a portion of the Code of Civil Procedure section that authorizes the appointment of a guardian ad litem in civil cases. As currently drafted, the bill expands the categories of persons for whom a guardian ad litem may be appointed, to include persons with disabilities, provided that the court determines, by clear and convincing evidence, that there is good cause for the appointment, that the representation of the interest would otherwise be inadequate, and that there is no other suitable alternative to protect the proposed ward's interests. This expansion originates with an error on a form propounded by the Judicial Council of California (Judicial Council). The bill also mandates the appointment of a guardian ad litem for a minor, which appears to conflict with existing law regarding the option to appoint a guardian ad litem for parties 14 years of age and older in some circumstances. The author has agreed to amendments to resolve these issues by, among other things, removing the reference to persons with disabilities and replacing it with the two-part test from case law for persons who lack legal capacity for purposes of participating in a legal action, which is less stringent than the bar for the establishment of a conservatorship.

This bill is sponsored by the Executive Committee of the Trusts and Estates Section of the California Lawyers Association. This bill is opposed by Disability Rights California.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that when a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party in a civil action, that person shall appear through a guardian or conservator of the estate, or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. (Code Civ. Proc., § 372(a)(1).)
- 2) Provides that a guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof,

expedient to appoint a guardian ad litem to represent the minor, person lacking legal capacity to make decisions, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. (Code Civ. Proc., § 372(a)(1).)

- 3) Provides that the guardian ad litem appearing for any minor, person who lacks legal capacity to make decisions, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. (Code Civ. Proc., § 372(a)(1).)
- 4) Does not define, for purposes of a guardian ad litem, “a person lacking legal consequence to make decisions,” but includes in the term “a person for whom a conservator may be appointed.” (Code Civ. Proc., § 372(a)(2).)
- 5) Provides specific exceptions to the requirement that a minor who appears through a guardian ad litem. (Code Civ. Proc., §§ 372(b), (c); 373.)
- 6) Provides that, in an action under the Probate Code, the court may, on its own motion or at the request of a personal representative, guardian, trustee, or other interested person, appoint a guardian ad litem at any stage of the proceeding to represent the interest of any of the following persons, if the court determines that the representation of that person’s interest would otherwise be inadequate:
 - a) A minor.
 - b) An incapacitated person.
 - c) An unborn person.
 - d) An unascertained person.
 - e) A person whose identity or address is unknown.
 - f) A designated class of persons who are not ascertained or are not in being.(Prob. Code, § 1003(a).)
- 7) Provides that, if not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests under 6). (Prob. Code, § 1003(b).)
- 8) Provides that the reasonable expenses of a guardian ad litem appointed under 6), including compensation and attorney fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved, by the petitioner, or from such other source as the court orders. (Prob. Code, § 1003(c).)
- 9) Establishes the Guardianship-Conservatorship Law, which provides for the requirements and procedures for establishing a conservatorship or guardianship

and includes provisions for the resolution of suits, including the payment or delivery of money or property to, a minor or person with a disability. (Prob. Code, div. 4, §§ 1400 et seq. & div. 4, pt. 8, ch. 4, §§ 3600-3613.)

- 10) Defines a “person with a disability,” for purposes of the payment or delivery of money or property under the Probate Code pursuant to 9), to include the following:
 - a) A person for whom a conservator may be appointed.
 - b) A person who meets certain definitions of disability as defined in the federal Social Security Act (42 U.S.C., §§ 410 et seq.) and the implementing regulations.
 - c) A minor who meets the definition of disability, as set forth in part 416.906 of Title 20 of the Federal Code of Regulations.
 - d) A person with a developmental disability, as defined in section 4512 of the Welfare and Institutions Code. (Prob. Code, § 3603.)

This bill:

- 1) Recasts Code of Civil Procedure section 372(a)(1), which provides for the appointment of a guardian ad litem in a civil suit.
- 2) Adds, to list of persons for whom a court may appoint a guardian ad litem in a proceeding under the Probate Code, a person with a disability as set forth in Probate Code section 3603.
- 3) Provides that, for appointments of a guardian ad litem for a minor or incapacitated person, the appointment is mandatory where there is no existing guardian or conservator of the estate.
- 4) Provides that, for appointments of a guardian ad litem for a person with a disability as set forth in 2), the court shall only appoint a guardian ad litem if the court finds, by clear and convincing evidence, that there is good cause that the representation of the interest would otherwise be inadequate and there is no other suitable alternative to protect the proposed ward’s interest in the litigation.
- 5) Provides that, when a minor or a person for whom a guardian or conservator has been appointed is a party to an action, that person shall appear either by a guardian or conservator of the estate.
- 6) Requires the Judicial Council to adopt forms by January 1, 2024, to facilitate the appointment of a guardian ad litem pursuant to the new requirements of this bill.
- 7) Provides that the reasonable expenses of a guardian ad litem, including compensation and attorney fees, shall be determined by the court and paid as the

court orders, either out of the property of the estate involved or by the petitioner or from any other source as the court orders.

- 8) Provides that, before a guardian ad litem is appointed, the proposed guardian ad litem must disclose to the court and all interested persons and any known potential or actual conflicts of interest arising from appointment in the matter, including any familial or affiliate relationship of the guardian ad litem to any of the parties.
- 9) Requires an order appointing a guardian ad litem to specify the powers of the guardian ad litem, and limits the guardian ad litem's powers to those specified in the order.
- 10) Requires, unless otherwise ordered by the court, a guardian ad litem to report, at least annually, all actions taken by the guardian ad litem on behalf of the ward that affect the ward's interests.

COMMENTS

1. Author's comment

According to the author:

SB 1279 will strengthen and codify several aspects of guardian ad litem appointments that often occur without clear guidance for litigants and their lawyers. This bill will also resolve ambiguities in the statutes as to who constitutes an "incapacitated person" for whom a guardian ad litem may be appointed. Through these clarifications, the courts will better ensure that those provided a guardian ad litem are properly represented and protected in pending litigation. Not only will this bill enhance the transparency of guardian ad litem appointments, but it will allow for judges, counsel, and litigants alike to determine when a guardian ad litem is truly required. This modification to the current code reduces the chances of a guardian ad litem abusing their power. SB 1279 will protect all parties involved through greater clarification of the code sections and enhancing the accountability of those appointed to represent litigants as a guardian ad litem.

2. The procedures for appointing a guardian ad litem and an inconsistency on the Judicial Council form

Current law authorizes a court in a civil case to appoint a guardian ad litem for a minor or other person who lacks legal capacity to make decisions.¹ The court may also appoint

¹ Code Civ. Proc., § 372(a). If the person lacking capacity has already had a conservator appointed for them, the person may appear through their conservator. (*Ibid.*) The Probate Code authorizes the

a guardian ad litem when it appears that the civil case implicates a person or class of persons whose identities are unknown or have yet to be ascertained.² “A guardian ad litem’s role is more than an attorney’s but less than a party’s.”³ As an appointed officer of the court, a guardian ad litem appears on behalf of the minor or person lacking capacity and represents their interests in the case.⁴ A guardian ad litem’s powers are broad: a guardian ad litem may, with the approval of the court, settle a suit on behalf of the ward, agree to orders and judgments in the suit, satisfy any judgment or order in favor of the ward, and release or discharge any claim of the ward pursuant to a settlement.⁵ But the guardian ad litem must make decisions “always with the fundamental interest of the guardian’s charge in mind. Specifically, the guardian may not compromise fundamental rights...without some countervailing and significant benefit.”⁶

Because of the significant power granted to a guardian ad litem, the role is closely supervised by the judge.⁷ This supervisory obligation includes preventing the appointment of a guardian ad litem with conflicts of interests that would prevent them from serving faithfully in their role.⁸ The courts are also tasked with approving certain significant acts taken by the guardian ad litem on behalf of the ward, such as settling a case or agreeing to the release of claims.⁹ Despite the court’s important role in appointing and supervising a guardian ad litem, the Code of Civil Procedure is largely silent on the procedures for how the court should select and oversee a guardian.

The sponsors of the bill have noted that there is currently an inconsistency between the statutory categories of persons for whom a guardian ad litem may be appointed and the Judicial Council form to petition for the appointment of a guardian ad litem in a case under the Probate Code. The form indicates that a person may petition for the appointment of a guardian ad litem for a person with a disability, as described in Probate Code section 3603.¹⁰ The Probate Code itself, however, does not authorize the appointment of a guardian ad litem for such a person.¹¹ Probate Code section 3603’s definition of a person with a disability incorporates physical, developmental, and mental impairments, and the definition is not intended to be interchangeable with the

appointment of a guardian ad litem for a broader range of persons or categories of persons for proceedings under that Code, because of the unique nature of estate cases. (See Prob. Code, § 1003(a).)

² *Id.*, § 373.5.

³ *Carachure v. Scott* (2021) 70 Cal.App.5th 16, 31 (internal alterations and quotation marks omitted).

⁴ Code Civ. Proc., § 372(a); *Williams v. Superior Court* (2007) 147 Cal.App.4th 36, 47.

⁵ Code Civ. Proc., § 372(a).

⁶ *Carachure, supra*, 70 Cal.App.5th at p. 31 (ellipses in original, internal quotation marks omitted).

⁷ *Williams, supra*, 147 Cal.App.5th at p. 50.

⁸ *See id.* at p. 50 (trial court properly refused to appoint guardian ad litem with conflict of interest).

⁹ Code Civ. Proc., § 372(a).

¹⁰ *See* Judicial Council of California, Petition for Appointment of Guardian Ad Litem – Probate, Form DE-350/GC-100 (rev. Jan. 1, 2008), available at <https://www.courts.ca.gov/documents/gc100.pdf> (last visited Apr. 22, 2022).

¹¹ *See* Prob. Code, § 1003(a).

concept of a person who lacks capacity.¹² It should go without saying that not all disabled persons lack the capacity to make their own choices.

It is deeply problematic to conflate a person with a disability with a person who lacks capacity, to say nothing of doing so on a form without statutory authorization. The Judicial Council is aware of the error, agrees that the form is improper, and has promised to correct it as soon as practicable, consistent with any relevant changes made through this bill.

3. This bill modifies the procedures for appointing a guardian ad litem and authorizes the appointment of a guardian ad litem for disabled persons, as defined

This bill would implement checks on a guardian ad litem's appointment and their execution of their authority, so as to clarify and routinize courts' important oversight over guardians ad litem. Specifically, the bill:

- Requires, prior to the appointment of a guardian ad litem, the proposed guardian ad litem to disclose any known potential or actual conflicts of interest arising from appointment in the matter, including any familial or affiliate relationships with any of the parties.
- Requires an order appointing a guardian ad litem to specify the powers of the guardian ad litem, and provides that the guardian has only the powers specified in the order.
- Requires a guardian ad litem to report to the court all actions taken on behalf of the ward that affect the ward's interests at least annually, unless otherwise specified by the court.
- Requires that a guardian ad litem's reasonable expenses, including compensation and attorney fees, be determined by the court and from the source ordered by the court.

These straightforward requirements should help ensure that courts are receiving the information they need both before the appointment and during the tenure of a guardian ad litem to conduct effective oversight. The author has agreed to accept minor technical amendments to clarify these provisions.

The bill also recasts a portion of the Civil Code section 372, which establishes the court's authority to appoint a guardian ad litem in specified circumstances. The recast portion expands the list of persons for whom a guardian ad litem may be appointed to include a person with a disability under Probate Code section 3603, provided that the court may appoint a guardian ad litem for such a disabled person only if the court finds, by clear and convincing evidence, that the representation of the interest would otherwise be inadequate and that there is no other suitable alternative to the proposed ward's interest in the litigation. The sponsors have explained that they believe there is a

¹² See *id.*, § 3603.

category of disabled persons for whom it is appropriate to appoint a guardian ad litem despite the fact that they do not lack capacity, making it appropriate to codify a portion of the Judicial Council's erroneous inclusion on the form and expand it to all civil cases, not just probate cases. Disability Rights California (DRC) strongly objects to authorizing the appointment of a guardian ad litem for persons with a disability, explaining:

Adding "disability" as a category of people who would qualify for a [guardian ad litem] is concerning for a couple of reasons. As the language is currently written, this could result in people with any type of disability qualifying for a [guardian ad litem], which could make life-changing decisions on behalf of the disabled person...

The use of the term "disability" is unnecessary. There is already a section for people who are incapacitated, and although there are occasions when people might be temporarily incapacitated or otherwise unable to make decisions for themselves or process the impact of a [guardian ad litem], we do not believe that adding the category of disability is the best way to do it. There are circumstances where someone can be in a coma or experiencing a traumatic situation. These circumstances can be explained in ways where the term "disability" is not necessary.

The author has agreed to amendments removing the "disability" category and replacing it with more precise language from existing case law, discussed below at Part 4.

The recast provision also requires the appointment of a guardian ad litem when the party is a minor, which may conflict with existing provisions for the optional appointment when a party is 14 years of age or older.¹³ The author has also agreed to amendments that will remove the improper reference to persons with a disability and the conflict relating to the appointment of a guardian ad litem for a minor.

4. Amendments

After discussions with stakeholders, including DRC, the author has agreed to several amendments to clarify and strengthen the bill, most notably by removing the bill's authorization for the appointment of a guardian ad litem for a person with a disability as defined in Probate Code section 3603. In lieu of that authorization, the amendments modify the statute's provision for appointment of a guardian ad litem for "a person who lacks legal capacity to make decisions" to clarify that the term applies to any of three conditions: (1) a person who lacks legal capacity to understand the nature or consequences of the proceeding; (2) a person who lacks capacity to assist the person's attorney in preparing a case; or (3) a person for whom a conservator may be appointed pursuant to section 1801 of the Probate Code. While item (3) is already in the statute,

¹³ See Code Civ. Proc., § 373.

items (1) and (2) are not; these come from case law interpreting the circumstances in which guardian ad litem may be appointed.¹⁴ The goal of codifying that test is to make clear that a person need not be incapacitated to the point of qualifying for a conservatorship before a court may appoint a guardian ad litem, but rather that the court should examine the person's capacity to understand and participate in the case before the court in deciding whether to make an appointment.

In addition to modifying the "legal incapacity" terminology, the amendments, among other things, return the format of Code of Civil Procedure section 372 to its current format, while splitting the current paragraph (a)(1) into two paragraphs for ease of comprehension. While the amendments appear to dramatically change the section, they in fact largely return the section to its current format rather than as broken up in the current version of this bill. The amendments to paragraph (a)(1) also incorporate certain provisions of the bill that are currently in other parts of the bill. The amendments also add and/or remove references to avoid conflicts with existing law and make clarifications to certain of the transparency provisions.

While the amendments remove the "disability" category that DRC objected to in its opposition letter, DRC has indicated that it may have additional concerns about the bill and therefore has not removed its opposition at this time. The author and sponsor have pledged to continue working with DRC and other stakeholders as the bill progresses.

The complete list of amendments is set forth below. A full mock-up of the bill as amended is set forth at the end of this analysis; the amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

5. Arguments in support

According to the sponsor of the bill, the Executive Committee of the Trusts and Estates Section of the California Lawyers Association:

SB 1279 will strengthen and codify several aspects of guardian ad litem appointments that often occur informally or without clear guidance for litigants and their lawyers. This bill will also resolve ambiguities in the statutes as to when appointment of a guardian ad litem is appropriate. Through these clarifications, the court will better ensure that those provided a guardian ad litem are properly represented and protected in pending litigation.

Although the purpose of a guardian ad litem is to ensure the rights of the ward (the person whose interests are being represented by the guardian ad litem) are protected in litigation, often guardians ad litem are appointed by the court without clear parameters around their powers or what their reporting responsibilities are to the court. In addition, although the Judicial Council form

¹⁴ E.g., *In re Sara D.* (2001) 87 Cal.App.4th 661, 667.

requires disclosure of conflicts of interest by the proposed guardian ad litem, that is not currently required by statute. These ambiguities have led to uneven practice across the state, confusion among litigants, and abuses by guardians ad litem.

In addition, existing Probate Code section 1003 and Code of Civil Procedure section 372 do not set forth clear reporting requirements for guardians ad litem and also conflict in their designations of people for whom a guardian ad litem may be appointed, in those circumstances where the situation would otherwise be the same. This can lead to confusion.

SB 1279 will clarify the circumstances under which a guardian ad litem can be appointed and increase the transparency of an appointment, ensuring that there is increased accountability for the actions taken on behalf of the ward. Through delineating the powers of the guardian ad litem, the ward will be further protected from potential abuse.

SUPPORT

California Lawyers Association, Executive Committee of the Trusts and Estates Section (sponsor)

OPPOSITION

Disability Rights California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2185 (Chiu, Ch. 817, Stats. 2018) authorized a court to appoint a guardian ad litem in a civil case under a pseudonym.

AB 1846 (Chesbro, Ch. 144, Stats. 2014) modified the terminology for persons for whom guardians ad litem may be appointed, replacing "incompetent person" with "a person lacking legal competence to make decisions."

Amended Mock-up for SB 1279 (Ochoa Bogh)

Mock-up based on Version Number 97 - Amended Senate 4/27/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 372 of the Code of Civil Procedure is amended to read:

372. (a) (1) When a minor, a person who lacks legal capacity to make decisions, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. When a guardian of the estate or conservator of the estate has been appointed for a party to an action, that party shall appear either by the guardian of the estate or conservator of the estate. A guardian ad litem may be appointed in any other case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, person who lacks legal capacity to make decisions, or person for whom a conservator may be appointed. ~~The court, on its own motion or upon request of an interested person, shall appoint a guardian ad litem at any stage of a proceeding under this code to represent the interest of any of the following persons:~~

~~(A) A minor.~~

~~(B) An incapacitated person.~~

~~(C) A person with a disability, as described in Section 3603 of the Probate Code.~~

(2) The guardian or conservator of the estate or guardian ad litem so appearing for any minor, person who lacks legal capacity to make decisions, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, person lacking legal capacity to make decisions, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code. ~~For appointments of a guardian ad litem under subparagraphs (A) and (B) of paragraph (1), the appointment of a guardian ad litem is mandatory when there is no existing guardian or conservator of the estate.~~

(3) Where reference is made in this chapter to “a person who lacks legal capacity to make decisions,” the reference shall be deemed to include: For appointments of a guardian ad litem under subparagraph (C) of paragraph (1), the court shall only appoint a guardian ad litem if the court finds, by clear and convincing evidence, that there is good cause that the representation of the interest would otherwise be inadequate and there is no other suitable alternative to protect the proposed ward’s interest in the litigation.

(A) A person who lacks capacity to understand the nature or consequences of the action or proceeding;

(B) A person who lacks capacity to assist the person’s attorney in the preparation of the case; or

(C) A person for whom a conservator may be appointed pursuant to Section 1801 of the Probate Code.

(4) When a minor or a person for whom a guardian or conservator has been appointed is a party to an action, that person shall appear either by a guardian or conservator of the estate.

(5) The guardian or conservator of the estate or guardian ad litem shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor or person for whom a conservator or guardian ad litem has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.

(46) Nothing in this section, or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of the minor’s constitutional rights in a proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(b) (1) Notwithstanding subdivision (a), a minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

(A) An injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6.

(B) An injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8.

(C) A protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(D) A protective order pursuant to Sections 7710 and 7720 of the Family Code.

(2) The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, if the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.

(3) For purposes of this subdivision only, upon the issuance of an order pursuant to paragraph (1), if the minor initially appeared in court seeking an order without a guardian or guardian ad litem, and if the minor is residing with a parent or guardian, the court shall send a copy of the order to at least one parent or guardian designated by the minor, unless, in the discretion of the court, notification of a parent or guardian would be contrary to the best interest of the minor. The court is not required to send the order to more than one parent or guardian.

(4) The Judicial Council shall adopt forms by July 1, 1999, to facilitate the appointment of a guardian ad litem pursuant to this subdivision.

(c) (1) Notwithstanding subdivision (a), a minor may appear in court without a guardian ad litem in the following proceedings if the minor is a parent of the child who is the subject of the proceedings:

(A) Family court proceedings pursuant to Part 3 (commencing with Section 7600) of Division 12 of the Family Code.

(B) Dependency proceedings pursuant to Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(C) Guardianship proceedings for a minor child pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code.

(D) Any other proceedings concerning child custody, visitation, or support.

(2) If the court finds that the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case, the court shall, upon its own

motion or upon a motion by the minor parent or the minor parent's counsel, appoint a guardian ad litem.

(d) **Except in cases arising under the Probate Code or Section 373.5 of this code, the** ~~The~~ reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved, ~~or~~ by the petitioner, or from any other source as the court orders.

(e) Before a guardian ad litem is appointed **pursuant to this chapter**, the proposed guardian ad litem shall disclose to the court and all **parties to the action or proceeding interested persons**:

(1) **Any** ~~any~~ known potential or actual conflicts of interests **that might or would arise arising** from ~~the~~ appointment ~~in the matter;~~ **and**

(2) **Any** ~~including any~~ familial or affiliate relationship ~~of~~ the **proposed** guardian ad litem **has with to** any of the parties.

(f) An order appointing a guardian ad litem shall specify the powers of the guardian ad litem **in the action**. A guardian ad litem **shall not exceed the authority provided for only has the powers specified** in the order.

(g) Unless otherwise ordered by the court, ~~a~~ ~~the appointed~~ guardian ad litem shall, at least annually, report all actions taken by the guardian ad litem on behalf of the ward **pursuant to their appointment since their appointment or their previous report, whichever is later that affect the ward's interests.**

SEC. 2. Section 373 of the Code of Civil Procedure is amended to read:

When a guardian ad litem is appointed, **the guardian ad litem he or she** shall be appointed as follows:

(a) If the minor is the plaintiff the appointment must be made before the summons is issued, upon the application of the minor, if the minor is 14 years of age or older, or, if under that age, upon the application of a relative or friend of the minor.

(b) If the minor is the defendant, upon the application of the minor, if the minor is 14 years of age or older, and the minor applies within 10 days after the service of the summons, or, if under that age or if the minor neglects to apply, then upon the application of a relative or friend of the minor, or of any other party to the action, or by the court on its own motion.

(c) If the person ~~who lacks~~~~lacking~~ legal ~~capacity~~ ~~competence~~ to make decisions is a party to an action or proceeding, upon the application of a relative or friend of the person ~~who lacks~~~~lacking~~ legal ~~capacity~~~~competence~~ to make decisions, or of any other party to the action or proceeding, or by the court on its own motion.

SEC. 32. Section 1003 of the Probate Code is amended to read:

1003. (a) The court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding under this code to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

(1) A minor.

(2) A person who lacks legal capacity to make decisions~~n incapacitated person.~~

~~(3) A person with a disability, as described in Section 3603.~~

(4) An unborn person.

(5) An unascertained person.

(6) A person whose identity or address is unknown.

(7) A designated class of persons who are not ascertained or are not in being.

(b) For purposes of this section, a person who lacks legal capacity to make decisions includes:

(1) A person who lacks capacity to understand the nature or consequences of the proceeding;

(2) A person who lacks capacity to assist the person's attorney in the preparation of the case; or

(3) A person for whom a conservator has been or may be appointed pursuant to Section 1801 of this code.

~~**(b) For appointments of a guardian ad litem under paragraph (3) of subdivision (a), the court shall only appoint a guardian ad litem if the court finds by clear and convincing evidence that there is good cause that the representation of the interest would otherwise be inadequate and that there is no other suitable alternative to protect the proposed ward's interest in the litigation.**~~

(c) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(d) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner or from any other source as the court orders.

(e) Before a **court appoints a** guardian ad litem ~~is appointed~~ pursuant to this ~~chapter section~~, ~~at the~~ proposed guardian ad litem shall disclose to the court and all **parties to the action or proceeding interested persons:**

(1) Anyany known potential or actual conflicts of interests **that might or would arise arising** from ~~the~~ appointment ~~in the matter;~~ **and**

(2) including any Any familial or affiliate relationship ~~of the~~ **proposed** guardian ad litem ~~has with to~~ any of the parties.

(f) An order appointing a guardian ad litem pursuant to this section shall specify the powers of the guardian ad litem **in the action**. A guardian ad litem **shall not exceed the authority provided for only has the powers specified** in the order.

(g) Unless otherwise ordered by the court, the guardian ad litem ~~shall, appointed pursuant to this section shall,~~ at least annually, report all actions taken by the guardian ad litem on behalf of the ward **pursuant to their appointment since their appointment or their previous report, whichever is later that affect the ward's interests.**