

TABLE OF CONTENTS

I. DISTINGUISHING BETWEEN AN ATTORNEY AD LITEM AND A GUARDIAN AD LITEM	1
II. ATTORNEY AD LITEM IN THE CONTEXT OF GUARDIANSHIP	1
A Who is an Attorney Ad Litem?	1
B How Does One Become Eligible to Serve as an Ad Litem in Probate Court?	1
C What Are the Duties of an Attorney Ad Litem?	1
1 Interview the Proposed Ward	2
2 Review and Evaluate Medical Records and Doctor's Letter	2
3 Review Court's File	4
a Personal Service	4
b Notice by Certified Mail	4
1 File an Answer	5
2 Evaluate the Applicant for Issues of Standing and Qualification	5
a File a Motion in Limine if the Applicant Lacks Standing	5
b Move to Disqualify the Applicant if He or She Does Not Meet the Statutory Requirements	5
c Presumed Unsuitability	6
d Proposed Ward's Preference	6
1 Request an Independent Medical Examination, if Necessary	7
2 Arrange for the Ward to be Present at the Hearing, if Feasible	7
3 Assist the Court in Determining the Proper Amount of the Bond or Consider Moving for the Creation of a Management Trust	7
a Amount of Bond	7
b Safekeeping Agreement Can Reduce Bond	8
9. Consider Deposit Into Court Registry	8
10. Consider Section 867 Management Trust	8
11. Explore Whether Less Restrictive Alternatives Are Available	8
a Alternatives to Guardian of the Estate	9
1 Durable Power of Attorney	9
2 Spousal Management of Community Property	9
3 Payment to the Clerk	9
4 Veterans Benefits Fiduciary	9
5 Representative Payee	9
6 Medicaid Qualified Trust [Miller Trust]	9
7 Section 142 Trust	9
a Alternatives to Guardian of the Person	9
1 Medical Power of Attorney	9
2 Directive to Physicians ("Living Will")	10
3 Out of Hospital Do Not Resuscitate Order	10
4 Rights and Duties of a Parent	10
5 Support for a Minor or Adult Disabled Child	10
12. Request the Appointment of a Guardian Ad Litem, if Necessary	10
13. Advocate for a Finding of Partial Incapacity to Allow the Ward to Continue To Perform Certain Tasks	10
D The Contested Guardianship	10
1 Demand for Jury Trial?	10
2 Discovery	11
3 Issue of Applicant or Contestant's Standing	11
4 Issue of Applicant's Qualification	12

5	Medical Evidence Issues	12
a	The Doctor's Form Letter	12
b	The Guardianship "Miranda" Warning	12
c	The Expert's Qualifications and Relevance and Reliability of Testimony	12
1	Be Aware of the Different Burdens of Proof	13
a	Clear and Convincing	13
b	Preponderance of the Evidence	13
1	Appeal the Judgment, if Necessary	14
D	Temporary Guardianships	14
1	Overview of the Process	14
2	The Hearing	14
3	Motion to Dismiss	14
4	Burden of Proof at Hearing	14
5	Power of Temporary Guardian; Duration	15
6	Order Appointing Temporary Guardian Not Adjudication of Incapacity	15
7	Fees and Costs	15
8	Considerations for the Attorney Ad Litem	15
D	Other Guardianship Matters Necessitating Appointment of Attorney Ad Litem	15
1	Restoration or Modification Proceeding	15
2	Guardian's Final Accounting	16
D	Issue of Proposed Ward's Right to Private Counsel	16

III GUARDIAN AD LITEM IN THE CONTEXT OF A GUARDIANSHIP 17

IV ALTERNATIVE DISPUTE RESOLUTION 17

A	Reasons to Mediate	17
1	Addresses Parties' Privacy Concerns	18
2	Salvages Family Relationships and Defuses Emotional Fireworks	18
3	Allows the Parties to Fashion Their Own Agreement	18
4	Reduces the Cost to the Ward's Estate	19
A	Mediation Rules and Guidelines	19
1	Good Faith Effort	19
2	Confidentiality	19
3	Civility	19
4	Control	19
A	Mediation Procedures	
1	Opening	19
2	Stating the Case	19
3	Private Meetings	20
4	Exploring Further Options	20
5	Continuation	20
6	Resolution	20
7	Impasse	20

V COSTS AND ATTORNEY'S FEES

A	Costs	20
B	Attorney's Fees	20
1	Attorney Ad Litem	20
2	Guardian Ad Litem	20
3	Applicant for Guardianship	20
4	Ward's Private Attorney	21

VI CONCLUSION 21

FORMS

- A. Original Answer of Proposed Ward 22**
- B. Proposed Ward's Contest to Guardianship Application 23**
- C. Motion in Limine and to Dismiss Application 25**
- D. Motion for Independent Mental Examination and Proposed Order 27**
- E. Report of Guardian Ad Litem 30**