STANDARDS TO GOVERN THE APPOINTMENT OF GUARDIANS AD LITEM FOR INCAPACITATED PERSONS PURSUANT TO CHAPTER 20 OF TITLE 64.2, CODE OF VIRGINIA

The Standards

The Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, sets forth the following standards to govern the appointment of attorneys as guardians ad litem pursuant to Chapter 20 of Title 64.2, Code of Virginia.[1] These standards are intended to foster and maintain vigorous, effective, and competent representation of incapacitated persons' interests and welfare.

I. Initial Qualification Requirements

To qualify for appointment as guardian ad litem pursuant to § 64.2-2003, a person shall:

A. Be an active member in good standing of the Virginia State Bar.

B. Within the 2-year period immediately prior to the date requesting initial qualification as a guardian ad litem, comply with the following provisions:

1. Complete the six-hour MCLE approved continuing legal education program, "Representation of Incapacitated Persons as a Guardian Ad Litem," which encompasses the following topics:

   a. Overview of the laws concerning guardianship of incapacitated persons

   b. Roles, responsibilities, and duties of guardian ad litem representation

   c. Roles and responsibilities of guardians and conservators

   d. Overview of the physical and mental conditions that result in incapacity due to aging and disability and that can necessitate guardianship

   e. Available community resources to assist incapacitated persons

   f. Ethics of serving incapacitated clients as a guardian ad litem

The applicant attorney completing this program must attend the live course, or a video replay of the live course, as offered by Virginia CLE.

Certification of attendance at this course shall be submitted to the Office of the Executive Secretary, Supreme Court of Virginia, on the required form in accordance with Standard I.B.4.d hereof.

[1] Adopted by the Judicial Council of Virginia in accordance with 1997 Va. Act c. 921.

2. Demonstrate familiarity with the court system and a general background in guardianship law by completion of one of the following:

    a. Provision of assistance to one qualified guardian ad litem for an incapacitated person who is an active member in good standing of the Virginia State Bar in two cases in the circuit court; or

    b. Service as counsel for the petitioner in two cases involving an incapacitated person in the circuit court; or

    c. Appointment by the circuit court as a guardian or conservator for an incapacitated person in two cases.

The attorney seeking qualification shall provide the case types and approximate time frames of the attorney's participation in the cases referenced, as well as the circuit court(s) in which the attorney appeared.

COMMENT:

Standard I.B.2.a
The requirement to "assist" one qualified guardian ad litem in two cases in the circuit court may be met by the applicant attorney associating with the qualified guardian ad litem who serves as a mentor for those two cases. The purpose of this association is to afford the applicant the opportunity to learn from the qualified guardian ad litem how to effectively handle these cases. In addition, such an association provides the mentor guardian ad litem an opportunity to effectively measure the applicant's progress in handling these cases.

3. Demonstrate proficiency in the representation of incapacitated adults by:

    (i) Submission of a required Nomination Certificate from the qualified guardian ad litem whom the applicant assisted pursuant to Standard I.B.2.a above, or

    (ii) In lieu of compliance with Standard I.B.2.b or I.B.2.c, submission of a Nomination Certificate from one circuit court judge before whom the attorney has appeared.

4. File with the Office of the Executive Secretary, Supreme Court of Virginia, 100 North Ninth Street, Richmond, Virginia, 23219, a letter which:

    a. Requests qualification as a guardian ad litem.

    b. States the judicial circuits in which the attorney wishes to accept appointments as guardian ad litem.

    c. If not previously submitted, includes the specified form certifying attendance at the MCLE approved continuing legal education program specified in paragraph I.B.1.

d. Includes the applicant's written certification of compliance with paragraph I.B.2.a, I.B.2.b, or I.B.2.c. Such certification must specifically state the language of paragraph. Case information which identifies the parties is not required nor to be provided. If certifying to Standard I.B.2.a, submit the Nomination Certificate required by Standard I.B.3.(i).

e. In lieu of compliance with Standard I.B.2.b or I.B.2.c, forward a certificate of nomination as required by Standard I.B.3.(ii).

Upon successful completion of the requirements outlined in Standard I, the Office of the Executive Secretary, Supreme Court of Virginia, will provide the applicant attorney a date of qualification for purposes of completing the biennial continuing education requirements outlined in Standard II. Qualification dates provided are January 1, April 1, July 1, and October 1.

The names of applicants who meet these requirements will be included on a list of attorneys qualified as guardians ad litem to be published by the Office of the Executive Secretary, Supreme Court of Virginia, and distributed electronically to the circuit courts in the Commonwealth no less than monthly, on or about the 1st day of each month.

II. Continuing Education Requirements

To maintain qualification for appointment as a guardian ad litem, an attorney shall fulfill the following requirements:

A. Complete six hours of approved continuing education every two years from the date of original qualification on any topic related to the representation of incapacitated persons as a guardian ad litem. Credit for repeating the basic training class, "Representation of Incapacitated Persons as a Guardian Ad Litem," will be approved once within a six-year period.

B. To receive credit for completing this biennial continuing education requirement, submit to the Office of the Executive Secretary, Supreme Court of Virginia, the required Certificate of Attendance form certifying attendance at the required program hours. Such certification may be submitted by mail, facsimile or electronically.

COMMENT:

Standard II.A
The continuing education requirement of six hours every two years may be successfully fulfilled by attendance at a qualified MCLE approved program or any other non-MCLE approved program, which assists an attorney in better representing incapacitated persons as a guardian ad litem. Such topics may include, but are not limited to, elder law; basic estate planning and estate administration; fiduciary issues, including administration, litigation, and ethics; and the areas listed in items a through f of Standard I.B.1 above, which may be

offered in continuing education programs subsequent to the required six-hour program.

In addition, non-MCLE courses which may qualify for continuing education credit include but are not limited to: training by local departments of social services concerning adult protective services and Medicaid; training by Area Agencies on Aging concerning Medicaid, Medicare, long term care insurance, and facility evaluation and selection; and training in the medical community on issues such as gerontology, dementia, closed head injury, mental retardation, and mental illness. Failure to complete and file evidence of meeting this requirement with the Office of the Executive Secretary, Supreme Court of Virginia, will result in the attorney's name being removed from the list of qualified guardians ad litem.

III. Removal from the List of Qualified Guardians Ad Litem for Incapacitated Persons

A. An attorney will be removed from the list of qualified guardians ad litem under the following circumstances:

1. Receipt of a request from the attorney, in writing, that their name be removed from the list of qualified guardians ad litem.

2. Failure to complete the biennial continuing education requirements outlined in Standard II above.

3. Suspension or revocation by the Virginia State Bar of the attorney's license to practice law in the Commonwealth. Removal under this circumstance will occur upon the Executive Secretary receiving notice of such license suspension or revocation. If an attorney's name is removed from the qualified list because of a license suspension and the attorney would like to again accept appointments as a guardian ad litem, the attorney must contact the Office of the Executive Secretary at the end of the license suspension term and request reinstatement in writing and complete the continuing education required by Standard III.B.

B. An attorney removed from the list of qualified guardians ad litem pursuant to Standard III.A.1, Standard III.A.2 or Standard III.A.3, as it relates to a license suspension, must submit the following to the Office of the Executive Secretary to again be included on the list of attorneys eligible for appointment as a guardian ad litem in the Commonwealth:

1. Within five years of being removed from the list, certification(s) of attendance indicating completion of the required six hours of continuing education and that such continuing education was completed within the past two years.

2. If more than five years pass since removal from the list, the attorney shall complete the initial qualification process as outlined in Standard I above.

Upon successful completion of the requirements of Standard III.B.1, the Office of the Executive Secretary, Supreme Court of Virginia, will provide the applicant

attorney a date of qualification for purposes of completing the biennial continuing education requirements outlined in Standard II. Qualification dates are January 1, April 1, July 1, or October 1 of each year.

IV. Extensions of Time

The Office of the Executive Secretary may grant extensions to the time periods within which an attorney must complete the requirements to become qualified or to maintain qualification for appointment during a period of declared judicial emergency upon a reasonable request by the attorney.

V. Approval of Continuing Education Programs for Guardians Ad Litem for Incapacitated Persons

The Office of the Executive Secretary, Supreme Court of Virginia, approves programs for continuing education credit for guardians ad litem. Programs may be submitted by a sponsoring group/organization ("program sponsor") or by a member of the Virginia State Bar. Programs submitted to the Office of the Executive Secretary may carry or may not carry MCLE credit, which is provided by the Virginia State Bar.

A. To request approval of a program for guardian ad litem continuing education credit, submit to the Office of the Executive Secretary, Supreme Court of Virginia, 100 N. 9th Street, 3rd Floor, Richmond Virginia 23219, the following information:

   1. Name of sponsoring group/organization.

   2. Program date(s) and location(s).

   3. Detailed program agenda with session times clearly identified.

   4. Identification of the program session(s) for which GAL credit is being sought.

   5. Presenter biographies.

   6. Substantive written materials.

B. Program sponsors should submit the information referenced in Standard V.A at least ten business days prior to the first scheduled presentation. Programs approved for continuing education credit will receive a Certification of Attendance form for the dates and locations identified. Copies of this Certification of Attendance should be made available to program participants at the time the program is held.

   Continuing education program approval is valid for one year from the date of approval. However, if a previously approved program is to be held on a date different from the date(s) identified in the initial request for continuing education approval, the program sponsor shall notify the Office of the Executive Secretary, Supreme Court of Virginia, of the additional program date(s) and provide a copy of any substantive change in program materials.

C. Members of the Virginia State Bar who wish to request credit approval for an upcoming program that the attorney is planning to attend should submit the information referenced in Standard V.A at least ten business days prior to the scheduled presentation, or as soon as possible after the program has been presented. Programs approved for continuing education credit will receive a Certification of Attendance form to be completed by the attorney requesting program approval.

Revisions effective January 1, 2002
Revisions effective January 1, 2007
Revisions effective January 1, 2009
Revisions effective January 1, 2015
Revisions effective July 1, 2023
Revisions effective July 1, 2026