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## GUARDIANS AD LITEM

House Bill 4974 as introduced  
First Analysis (10-7-93)

Sponsor: Rep. Sandra Hill  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

The Revised Probate Code authorizes the probate court to appoint a guardian ad litem to appear for a minor or legally incapacitated person, to represent the person in any matter pending before the court, or to pursue any matter or proceeding in the person's behalf. However, reports are that occasionally, a guardian ad litem comes to court without even having met with the ward, much less having made any meaningful attempt to explain matters to the person. It has been suggested that the law specifically require a guardian ad litem to meet with and explain matters to the ward.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Revised Probate Code to require a guardian ad litem to meet with a minor or legally incapacitated person before the commencement of proceedings in which the guardian ad litem is to represent the person. The guardian ad litem would have to explain the nature of the proceedings to the person to the extent that he or she could comprehend. The court would not order compensation for the guardian ad litem until he or she had complied with the bill's requirements and had filed a signed statement describing the consultation. The court could waive the consultation requirement in the case of a child under six years old who was unable to adequately understand the nature of the proceedings.

MCL 700.24

### ***FISCAL IMPLICATIONS:***

There is no fiscal information at present. (10-5-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would create a specific statutory requirement for guardians ad litem to meet with the people they are supposed to represent. Although

evidently most guardians ad litem do this, reports are that occasionally guardians ad litem fail to perform this basic duty, and, that although some judges will require a guardian ad litem to meet with the ward before proceeding with a hearing, others will at least occasionally allow proceedings to go forward even if no meeting has taken place. Under the bill, such occurrences would not be countenanced. A guardian ad litem who failed to meet the fundamental obligation to meet with a ward would not be paid.

#### ***Response:***

While there is nothing wrong with imposing a statutory requirement for a guardian ad litem to meet with a ward, it is unclear how there can be much of a problem with guardians ad litem failing to do so now. For one thing, current law requires a guardian ad litem to file a report of his or her investigation and recommendation concerning the matters for which he or she was appointed, and it is hard to see how such a report can be developed without meeting the ward. In addition, probate code provisions on legally incapacitated adults already require guardians ad litem to meet with wards.

#### ***Rebuttal:***

Although guardianship reform legislation of 1988 specified certain duties for guardians ad litem, including the duty to meet with the ward and explain matters, that law dealt with adults who were alleged to be incapacitated and thus faced guardianship proceedings. (It is relevant here to note that a guardian ad litem functions as a person's representative in court, not as a guardian.) The bill, however, amends a section of law that deals with adults who have already been found incapacitated, and with minors; both groups are outside the scope of the 1988 guardianship reforms.

#### ***Against:***

Although committee testimony indicated that a guardian ad litem is to be required to meet with the ward only before the first court appearance, and not

before each court appearance, the bill is not explicit on this point. It says that the guardian is to meet with the ward "before proceedings begin in which the guardian is to represent the individual." There could be several hearings on a matter, each of which could be considered to be "proceedings," and it may or may not be appropriate to require the guardian ad litem to meet with the individual each time. There should be a determination of what is desired, and the bill should be clarified to reflect that aim.

***Against:***

For children under six years old, the bill proposes to place the requirement to meet with the ward at the discretion of the court. Any age cutoff is inevitably somewhat arbitrary, but it is unclear why a small child should not have the same right to a meeting and explanation that a profoundly incapacitated adult would have.

***POSITIONS:***

The Michigan Probate Judges Association has no formal position at present, but does not oppose the bill. (10-5-93)