

## CIVIL COURT OF THE CITY OF NEW YORK

**Legal/Statutory Memorandum**

**Subject: Housing Part Guardian Ad Litem**

**Class: LSM 153 (Revised)**

**Category: LT-10**

**Eff. Date: September 30, 2005**

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The section of law dealing with the appointment of a guardian ad litem is:

CPLR, Rule 1202 of Article 12, entitled “Infants, Incompetents and Conservatees.”

The rules provided in this directive apply to proceedings in the Housing Part of the Civil Court.

**1) General**

In any proceeding triable before a judge of the Housing Part of the Civil Court of the City of New York, the court may appoint a guardian ad litem, either on its own initiative or upon a motion by:

- a) an infant party over the age of fourteen; or
- b) a relative, friend or a guardian, committee of the property, or conservator;  
or
- c) any other party to the proceeding if a motion has not been made under subsections (a) or (b) within ten days after completion of service.

The notice of motion must be served upon the person to be represented if such person is over fourteen years of age and has not been judicially declared to be incompetent. Where such declaration has been made, the notice of motion must be served upon the guardian of the property, committee, conservator or, in the absence of a guardian, committee or conservator, upon the person with whom the person to be represented resides.

**Part 36 Applicability**

Guardians ad litem appointed in Housing Part proceedings are exempt from Part 36 of the Rules of the Chief Judge §36.4(a) requiring the filing of a notice of appointment. Housing Court judges shall not be required to submit form OCA 872.5. Those portions of Part 36.2 (c) disqualifying from appointment active judges and judicial hearing officers of the Unified Court System, their spouses, parents or children shall be applicable to the Housing Court. The Civil Court will maintain its own list of persons certified to serve as guardians ad litem in the Housing Part. Appointments must be made exclusively from this list except as noted.

**Designation of a Guardian Ad Litem**

Upon determination of a need for appointment of a guardian ad litem, the court should contact the GAL Coordinator, at (646) 386-5400. The GAL Coordinator shall maintain, by county, the list of individuals qualified to act as a guardian ad litem. The list is to be maintained on a rotating basis. The court shall appoint a guardian from the pool of two or three names that shall be provided, except as noted. Proceedings involving highly complex issues should be pointed out to ensure recommendation of more experienced candidates or candidates with special expertise.

### **Exceptions**

Housing Judges may appoint a family member or friend of the party in appropriate circumstances. Such appointments should be very circumscribed and carefully considered. Where the party is a client of a social services agency and has a preexisting relationship with a therapist, social worker, or appropriately trained professional, then the Housing Judge may appoint the professional as a guardian. Where the party is represented by an attorney from a legal services/legal aid type agency that provides legal services to the elderly or mentally disabled, that agency may provide to the Judge for appointment the name of a pro bono attorney, therapist, or social worker as a guardian. Appointees under this exception, as a condition of the appointment, must participate in training specified by the Administrative Judge. The provisions of Part 36 as set forth herein apply to these appointees.

### **Guardian Ad Litem Written Consent**

Pursuant to CPLR 1202 (c), *“No order appointing a guardian ad litem shall be effective until a written consent of the proposed guardian has been submitted to the court together with an affidavit stating facts showing his ability to answer for any damage sustained by his negligence or misconduct.”* Accordingly, Judges must insure that such an affidavit is filed.

### **Post-Appointment**

The appointing judge shall provide the guardian ad litem with an Order Appointing Guardian Ad Litem, CIV-LT-56 (12/03). A copy of said order shall be furnished to the GAL Coordinator within five days of the appointment.

### **2) Adult Protective Services**

The Adult Protective Services (“APS”) of the Human Resources Administration no longer maintains a list of individuals willing to serve as guardians ad litem. APS will continue to compensate the guardian ad litem of an individual determined to be eligible for APS intervention and assistance. The criteria for APS eligibility are:

- a) individuals with a physical or mental impairment,
- b) unable to take care of or to protect themselves, and
- c) who have no one willing and able to assist them responsibly.

The fee for attorney and non-attorney guardians ad litem is \$600. Orders appointing a guardian ad litem for an APS-eligible ward should contain a provision directing payment of the fee.

Dated:

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Fern A. Fisher  
Administrative Judge, Civil Court