

## **CHAPTER 28-03 GUARDIANS AD LITEM**

### **28-03-01. Appointment of guardian ad litem for infant plaintiff.**

When an infant is plaintiff, a guardian ad litem may be appointed upon the application of the infant if the infant is at least fourteen years of age. If the infant is under that age, the application may be made by the infant's guardian or conservator, if the infant has one, or by a relative or friend of the infant. If the application is made by a relative or friend, notice thereof must be given to the guardian or conservator, if there is one, and if not, then to the person with whom the infant resides.

### **28-03-02. Appointment of guardian ad litem for infant defendant - Resident.**

When an infant is defendant and resides in this state, a guardian ad litem may be appointed upon the application of the infant if the infant is at least fourteen years of age and applies within twenty days after the service of the summons. If the infant is under the age of fourteen years or neglects so to apply, then the application may be made by any other party to the action or by a relative or friend of the infant. If the application is not made by the infant, notice thereof must be given to the infant's guardian or conservator, if the infant has either, and if not, then to the infant if the infant is at least fourteen years of age, and if the infant is under that age, then to the person with whom such infant resides.

### **28-03-03. Appointment of guardian ad litem for infant defendant - Nonresident.**

In actions for the partition of real property or for the foreclosure of a mortgage or other lien, and in all actions affecting the title to real property, and in all other actions wherein an infant is a proper or necessary party and such infant resides out of this state, a guardian ad litem may be appointed upon application of the plaintiff. In such case, the court shall make its order designating some suitable person to be the guardian for the infant defendant for the purposes of the action unless the infant, or someone on the infant's behalf, shall procure the appointment of another guardian for such infant within such time after the service of the order as the court therein may fix. The order must contain special directions for the manner of its service, which may be upon the infant or upon any relative or other person with whom the infant resides, and may be either by mail or by personal service upon the person designated.

### **28-03-04. Appointment of guardian ad litem for person of unsound mind.**

When the defendant, at the time the action is commenced, is a person of unsound mind, and no guardian or conservator has been appointed, the court shall appoint a guardian for the defendant for the purposes of the action. If during the pendency of an action either party becomes or proves to be of unsound mind, the action may be prosecuted or defended by the party's guardian or conservator in like manner as if it had been commenced after the appointment of the guardian or conservator, or the court may appoint a guardian for the action as the case may require. Such guardian for the action may be appointed upon the application of any party thereto or any relative or friend of the person of unsound mind after at least five days' notice of such application first has been given to such person personally, if a resident of this state, and if not a resident, in such manner as the court shall direct. Upon the hearing of such application, the court, if deemed desirable and practicable, may order such person of unsound mind to appear personally or to be brought in by the sheriff.

### **28-03-05. Guardian ad litem not to receive ward's money or property until security is given - Exception.**

No guardian appointed for an infant or for a person of unsound mind under the provisions of this chapter may be permitted to receive any money or other property of the ward except costs and expenses allowed to the guardian by the court, or recovered by the ward in the action, until the guardian has given sufficient security approved by the judge of the court to account for and apply the same under the direction of the court.

**28-03-06. Liability for costs of guardian ad litem appointed for a defendant.**

No person appointed a guardian for the purpose of defending an action brought against an infant or person of unsound mind is liable for the costs of such action, unless specially charged by order of the court resulting from a personal misfeasance by the guardian.