

APPLYING FOR A GUARDIAN AD LITEM

A Guardian ad Litem (GAL) is a type of temporary, limited guardian who is appointed by the court to protect a party's best interests in a court case. A GAL can appear for, assist, and act on behalf of a party only in that specific court case.

Important Contact Information

Oregon Judicial Department – www.courts.oregon.gov

Oregon State Bar Lawyer Referral Service - www.oregonstatebar.org

Phone: 503.684.3763 or toll-free in Oregon at 800.452.7636



If you are deployed or about to be deployed, contact the Oregon State Bar Military Assistance Panel (www.osbar.org/docs/ris/militaryflier.pdf) for information about special rights and rules that may apply to you.



Information about GALs

A GAL is *not* the party's lawyer, even if the person serving as GAL happens to be a lawyer. A GAL's role is to protect the party's best interests, not necessarily to advance the party's wishes.

A GAL has authority only to take actions directly related to the case. In some cases, a GAL can agree to a settlement, sign contracts or other documents in the case, receive and distribute funds related to the case, and receive service of documents on behalf of the person. If you have questions about authority in your case, contact a lawyer. Court staff cannot give legal advice.

The court must appoint a GAL under certain circumstances regardless of whether anyone requests a GAL. A court may appoint a GAL if the court decides that a party is "incapacitated¹ or financially incapable²" or "a person with a disability³" as the law defines those terms.

¹ ORS 125.005(5) - "Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person presently lacks the capacity to meet the essential requirements for the person's physical health or safety. "Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

² ORS 125.005(3) - "Financially incapable" means a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to, mental illness, mental retardation, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by a foreign power or disappearance. "Manage financial resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

³ ORS 124.005 (through ORS 410.040 and 410.715) – "person with a disability" means ...a person with a physical or mental impairment that substantially limits one or more major life activities" or "...any person experiencing an injury defined as an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral or physiological function for a sufficient time to affect that person's ability to perform activities of daily living..."

Minors (under 18) must be represented by a GAL in any case in which they are a party and do not already have a legally appointed guardian⁴. Minors who are age 14 or older may apply for appointment of a GAL if the minor is a plaintiff or petitioner. Note that parents under age 18 are not considered 'minors' by the court for purposes of family cases involving their children.

Minors who are defendants or respondents can apply for a GAL if they are 14 or older. If no application is filed by the minor, any party, interested person, relative, or friend can apply.

STEP 1: FILLING OUT AND FILING FORMS



Filling Out The Forms

- Fill out the *Motion to Appoint Guardian ad Litem and Declaration in Support* and the *Order Appointing Guardian ad Litem*
 - The case caption (party names and case number) must be the same as the caption in the main case
 - Use the form that has the same caption style as the case, either:
 - In the Matter of
 - or
 - Petitioner/Plaintiff v. Respondent/Defendant



Reviewing documents

You may have a lawyer review your documents before you file. For information about how to find a lawyer, call the Oregon State Bar at the number on Page 1. If you are low-income, you may get your documents reviewed for a smaller fee through the Oregon State Bar's Modest Means program, or call your local Legal Aid office.

Some courts may have a facilitator who can review your forms. Call your court or go to www.courts.oregon.gov to see if your court has a facilitator available for your case type. Court facilitators are free.



Making copies

Make one copy of **all** of the completed forms for your records. See Step 2 for additional copies you will need.



File your forms

File your forms with the court where the case was filed. Filing is free.

⁴ Sexual Abuse Prevention Order cases may not require a GAL.

STEP 2: NOTICE

No later than 7 days after you file, you must provide notice to other parties

WAIVER: If you have good cause to waive (cancel) or modify (change) the notice requirements, you can file a *Motion to Waive or Modify Notice re: Guardian Ad Litem* and *Order on Motion to Waive or Modify Notice re: Guardian ad Litem* forms.

Send the *Notice of Motion Seeking Appointment of Guardian ad Litem* and an exact copy of the *Motion and Declaration* by first class mail as below. If the court waived or modified the notice requirements, follow the court order.

If the person needing a GAL is a minor, send notice to all of the following:

- the minor (if 14 years old or older)
- the parents of the minor
- all persons having custody of the minor
- the person who has principal responsibility for the care and custody of the minor during the 60 day period before filing the *Motion to Appoint Guardian ad Litem*
 - This may include the Department of Human Services (DHS) if DHS has legal custody of the minor
- if the minor has no living parents, to the person nominated to act as fiduciary for the minor in a will or other instrument prepared by the minor's parent

If the person needing a GAL is not a minor, send notice to all of the following:

- the person to be protected
- the person's spouse, parents, and adult children
- all persons most closely related to the person
- anyone cohabiting with the person who is interested in the person's affairs or welfare
- any person nominated or appointed as fiduciary for the person by any court; any trustee for a trust established by or for the person; any person appointed as a health care representative under ORS 127.505 to 127.660; and any person acting under a power of attorney
- if the person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, to the Veterans Affairs regional office with responsibility for the payments to the person
- if the person is receiving moneys paid or payable for public assistance provided under ORS chapter 411 by the State of Oregon through the Department of Human Services, to a representative of the department
- if the person is receiving moneys paid or payable for medical assistance provided under ORS chapter 414 by the State of Oregon through the Oregon Health Authority, to a representative of the authority
- if the person is in the custody of the Department of Corrections, to the Attorney General and the superintendent or other officer in charge of the facility where the person is confined
- if the person is a foreign national, to the consulate for the person's country
- any other person that the court requires

CERTIFICATE OF MAILING

Keep a copy of each *Notice* you send and complete the *Certificate of Mailing* at the bottom after you mail it. File the completed copies with the court.

HEARING

If any objections to the appointment are filed, the court will hold a hearing. You will receive notice of the hearing date, time, and location. Make sure the court always has current contact information for you.

ADA ACCOMMODATION

If you need an ADA accommodation, complete the appropriate form (available at www.courts.oregon.gov/forms) and submit it to the court at least 4 days before your hearing

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of:

Case No: _____

**MOTION TO APPOINT
GUARDIAN AD LITEM and
DECLARATION IN SUPPORT**

_____ a minor child

Applicant Name (First, Middle, Last): _____

Person needing Guardian ad Litem (First, Middle, Last): _____

Applicant is the:

- minor child (age 14 or older)
 proposed Guardian ad Litem
 other (name and relationship to the person to be protected): _____

Motion

FOR APPLICATIONS RE: A MINOR CHILD:

- I am 14 years old or older. I am asking that an adult be appointed as a GAL.
OR
 I ask the court to appoint a GAL to represent a minor party in this case

FOR APPLICATIONS RE: ADULT PARTIES:

- I ask the court to appoint a GAL for the person named above

FOR ALL APPLICATIONS:

- I am willing to serve as GAL in this case
➤ I propose the following person as GAL

Name (first, middle last): _____

Relationship: _____

Statement of Points and Authorities

Oregon Rules of Civil Procedure, Rule 27 requires that any minor party or any party who is incapacitated or financially incapable appear by Guardian ad Litem if the party does not already have a court-appointed guardian or conservator.

Appointment is to be made upon request of the minor party if the minor is 14 years old or older, or by request of another interested person if the minor is under 14 or is a defendant/respondent and does not apply within the time allowed. Appointment on behalf of an adult party must be made by a friend, relative, or interested person.

Declaration

FOR APPLICATIONS RE: A MINOR CHILD:

- I am the minor party. I am _____ years old.
➤ I do not have a legally appointed guardian or conservator

or

- I am not the minor child, nor the guardian or conservator for the minor child
➤ I am the child's parent
➤ other (*explain your relationship to the minor child*): _____

FOR APPLICATIONS RE: ADULT PARTIES:

The person needing a GAL: (*check all that apply*)

- does not already have a legally appointed guardian or conservator
 is incapacitated or financially incapable as defined by ORS 125.005 (*explain below*)
 is a person with a disability as defined by ORS 124.005 (*explain below*)

Explain: _____

I believe the proposed GAL is suitable because: _____

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature of Applicant

Name (printed)

Contact Address

City, State, ZIP

Contact Phone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

To:

Date: _____

Re (case name): _____

Case #: _____

Person needing a Guardian ad Litem (name): _____

NOTICE OF MOTION SEEKING APPOINTMENT OF GUARDIAN AD LITEM

A motion has been filed to appoint a Guardian ad Litem (GAL) in this case. The motion was filed by (name, address, and phone number of applicant): _____

Applicant's relationship to the person needing a GAL:

self parent other: _____

Objections to the appointment of a Guardian ad Litem may be filed with the court no later than 14 days from the date of this Notice

The person needing a GAL can object to the appointment by notifying the clerk of the court in writing of the objection

See the attached *Motion to Appoint Guardian ad Litem and Declaration in Support* for more information

Certificate of Mailing

I certify that on (date): _____ I sent a true and complete copy of this Notice and the *Motion to Appoint Guardian ad Litem and Declaration in Support* by first class mail to the person named above at the address above.

Date

Signature

Name (printed)

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of:

Case No: _____

**ORDER RE:
GUARDIAN AD LITEM**

_____ a minor child

A *Motion to Appoint Guardian ad Litem* was filed by:

- a minor child 14 years old or older
- the proposed Guardian ad Litem (GAL)
- other: _____

The court finds:

The minor child is:

- 14 years old or older and **requested** appointment of the proposed GAL
- under 14 years** of age *or* is a **defendant or respondent** in this case and did not request appointment of a GAL

The adult needing a GAL:

- is **incapacitated or financially incapable** as defined in ORS 125.005
- has a **disability** as defined in ORS 124.005 and the appointment will assist the person in prosecuting or defending this action

Suitability

The proposed GAL is is not suitable

Notice

Notice of the *Motion* was provided as required *or* Notice of the *Motion* is waived

Other findings: _____

The court orders: No GAL is appointed at this time

(Name of GAL): _____ is appointed Guardian ad Litem for (party name) _____ in this case

Other orders: _____

Judge Signature: _____

Certificate of Readiness

This proposed order is ready for judicial signature because (*check all that apply*):

- Service is not required under UTCR 5.100 because this judgment is submitted **ex parte** as allowed by statute or rule; or in **open court** with all parties present
- I have **served** a copy of this order and written notice of the 7-day objection period set out in UTCR 5.100 on all parties entitled to service (*complete service information below*) **And:**
 - No objection has been served on me within that time frame
 - I received objections that I could not resolve with the other party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.
 - After conferring about objections, the other party agreed to file any remaining objection with the court

Certificate of Service under UTCR 5.100

I certify that on (*date*): _____ I placed a true and complete copy of this proposed *Order* in the United States mail to (*name*) _____ at (*address*) _____

Submitted by Applicant

Signature

Print Name

Date

Signature of Applicant

Name (printed)

Contact Address

City, State, ZIP

Contact Phone