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Guardians and Guardians Ad Litem in New York

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GUARDIANS AND GUARDIANS AD LITEM IN NEW YORK

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Introduction

On April 1, 1993, New York enacted Article 81 of the Mental Hygiene Law (MHL) as a mechanism to appoint guardians for allegedly incapacitated persons (AIP). Representative of New York’s shift to more flexible guardianships for incapacitated persons, Article 81 abandoned the former Articles 77 and 78’s terms “conservator,” “committee,” and “incompetent” and replaced them with “guardian” and “incapacitated person.” The Legislature left intact Article 17-A of the Surrogate’s Court Procedure Act (SCPA), originally promulgated in 1969 and revised in 1989. Like MHL Article 81, SCPA Article 17-A provides a mechanism to appoint guardians for the incapacitated. Confusion arises between Article 81 guardians and Article 17-A guardians because of the fiduciaries’ overlapping duties and responsibilities and the bar’s reference to each as “guardian.” A court’s appointment of a guardian ad litem (GAL) under Article 12 of the Civil Practice Law and Rules (CPLR) to aid wards — “infant[s or] adult[s] incapable of adequately prosecuting or defending [their] rights” or persons already declared incompetent — creates further confusion. Unlike Article 81 and Article 17-A, which govern surrogate decision making for AIPs, courts appoint GALs to assist an infant or a disabled adult’s interests for one specific proceeding, assuming that the ward has no guardian of the property, parent, person or agency with legal custody, or adult spouse, and then give them powers vastly less broad than those conferred on guardians.

This article describes Article 81 and Article 17-A guardians and GALs to highlight some of the similarities and differences of those fiduciary relationships. The goal is to help the bar make informed decisions about which type of guardianship is relevant under particular circumstances, all to promote the best practices in guardianship proceedings.

Article 81 Guardians

Article 81 creates “a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person.” It “takes into account the personal wishes, preferences and desires of the person” for whom a guardian is needed and gives “th[at] person the greatest amount of independence and self-determination and participation in all the decisions affecting such person’s life.”

An Article 81 guardian appointment divests individuals of control over their personal needs, their property, or both. An “AIP’s liberty interest to manage his or her property and/or control his or her own person is involved.” To comport with due process, Article 81 prescribes a specific procedure and a heightened evidentiary standard to appoint guardians.

Article 81 permits a broad range of individuals and entities to petition to appoint an Article 81 guardian for an AIP — from the AIP personally to a chief executive officer or designee of a facility, such as a hospital or nursing home where the AIP resides.

The petitioner must serve the AIP with a petition containing a “description of the alleged incapacitated person’s functional level including that person’s ability to manage the activities of daily living, behavior, and understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living.” To further Article 81’s goal to endow guardians with the least restrictive means, or powers, over their AIPs — “only those powers necessary to assist the incapacitated person to compensate for any limitations,” the petition must state the specific powers the petitioner seeks over the AIP.

AIPs have the right to counsel throughout the Article 81 proceeding. If they are unable to retain private counsel, the court will appoint counsel.
The court may also appoint an independent court evaluator to investigate the petition’s allegations, the AIP’s functional limitations, and the AIP’s functional level.21

The proceeding culminates in a formal hearing in which the parties offer documentary evidence and testimony.22 AIPs have the right to a jury trial if issues of fact arise about the need to appoint an Article 81 guardian and if they demand a jury.23 With limited exceptions, the “hearing must be conducted in the presence of the person alleged to be incapacitated, either at the courthouse or where the person alleged to be incapacitated resides, so as to permit the court to obtain its own impression of the person’s capacity.”24 The MHL requires the court to conduct the hearing within twenty-eight days of the filing of the petition unless the court, “for good cause shown, orders otherwise.”25 To succeed, the petitioner must prove, by clear and convincing evidence,26 that the AIP “is likely to suffer harm because” (1) the AIP is “unable to provide for personal needs and/or property management”27 and because (2) the AIP “cannot adequately understand and appreciate the nature and consequences of such inability.”28 In making its determination, “the court must undertake a detailed analysis, on the record, of the physical, mental, and financial health of the” AIP.29

An Article 81 “court may, for good cause shown, waive the rules of evidence.”30 But Article 81 does not require “medical testimony in a guardianship proceeding”;31 an AIP’s “disease or underlying medical condition is only one factor to be considered by the court since the focus of Article 81 is on one’s functional limitations.”32 Thus, “[i]t is often possible for a non-medical person to determine whether or not an individual is capable of dressing, shopping, cooking, managing their assets, and performing other similar activities.”33 The court must place its findings on the record.34

Once appointed, the guardian is vested with the authority to act in the AIP’s stead in accord with the court’s appointment order, even over the AIP’s objection. Article 81 requires appointed guardians to file with the court an initial report35 and an annual report36 detailing the guardian’s activity on the AIP’s behalf.

Attorneys wishing to serve as a court-appointed Article 81 guardian, an attorney for an AIP in the Article 81 proceeding, or a court-evaluator in an Article 81 proceeding must qualify under Part 36 of the Rules of the Chief Judge.37 Upon completing a mandatory six-hour course, attorneys are placed on an eligibility list and selected by the presiding judge according to merit. Part 36, designed to assure impartiality in the appointment process,38 governs an attorney’s ability to accept an appointment.

In Staten Island, like the rest of New York City, only Supreme Court may appoint an Article 81 guardian for an AIP.39 This “limitation as to jurisdiction of the courts that can hear [Article 81] ‘competency’ cases results in a disparity in the treatment of citizens of this state.”40 The disparity arises because “[r]esidents of counties outside of New York City have the option of bringing an Article 81 action in more than one court, while residents of New York City, where there is no County Court, are limited to only one.”41

An Article 81 guardianship proceeding is a special proceeding in Supreme Court requiring the purchase of an index number (currently $210.00) and a Request for Judicial Intervention (currently $95.00). Supreme Court Justices Anthony I. Giacobbe (355 Front Street, Staten Island, New York 10301) and Thomas P. Aliotta (18 Richmond Terrace,
Staten Island, New York 10301) currently preside over Article 81 proceedings in Richmond County.

**SCPA Article 17-A Guardians**

New York’s SCPA authorizes Surrogate’s Court or Supreme Court “to appoint a guardian of the person or of the property or of both” for infants,42 individuals who are “mentally retarded,”43 and individuals who are “developmentally disabled.”44 Surrogate’s Court may not hear Article 81 cases involving guardians of the person, but, concurrently with Supreme Court, it may hear Article 81 cases for the guardian of the property in limited cases under MHL § 81.04(b), such as when an incapacitated person is the beneficiary of an estate or is entitled to proceeds in a wrongful-death action or on behalf of an infant for personal injuries.

In Richmond County, SCPA guardianship petitions are directed to Surrogate’s Court (Surrogate Robert J. Gigante, 18 Richmond Terrace, Staten Island, New York 10301). The diagnosis-driven SCPA Article 17 governs appointments of SCPA guardians for infants,45 and SCPA Article 17-A governs appointments of SCPA guardians for “mentally retarded persons”46 and “developmentally disabled persons.”47 SCPA Article 17-A provides that Article 17’s provisions apply to Article 17-A proceedings.48 Article 17-A guardians of mentally retarded and developmentally disabled persons often overlap with Article 81 guardians. For ease of reference, this article uses the Article 81 term “AIP” to refer to those whom Article 17-A concerns (i.e., “mentally retarded persons” and “developmentally disabled persons”). Like Article 81, SCPA Article 17-A permits a broad range of individuals and entities to petition a court to appoint an SCPA guardian for an AIP. An AIP’s parent, any interested person at least eighteen years old, a qualified corporation, or an AIP at least eighteen years old may petition the court to appoint an SCPA guardian.49 Regarding the petitioner’s qualifications, neither the SCPA nor the MHL provides any advantage over the other. Lawyers should nevertheless confirm that the contemplated petitioner qualifies under the respective statute.

The SCPA guardianship petition must “be filed with the court on forms to be prescribed by the state chief administrator of the courts.”50 Richmond County Surrogate’s Court accepts the statewide petition form available at the New York State Office of Court Administration’s Web site.51 For proceedings outside Richmond County, practitioners should contact the specific county’s guardianship clerk or the county’s Surrogate’s Court to obtain the petition form; some courts have altered the statewide form. Petitioners must also submit the mandatory “Request for Information Guardian Form” (OCFS-3909 form).52 Although not required, the better practice is to submit that form simultaneously with the petition to permit the court to conduct the necessary background check on the proposed guardian.

In Richmond County, after the petitioner has filed the petition and OCFS-3909 form, Surrogate’s Court will schedule the proposed guardian for fingerprinting. The availability and proliferation of court-approved forms makes it easier and quicker for attorneys and pro se petitioners alike to file an SCPA guardianship than to file an Article 81 guardianship.

An SCPA guardianship petition in Surrogate’s Court requires a filing fee of $20.00. Attorney fees in an Article 81 proceeding are usually greater than those in an SCPA guardianship proceeding because of an Article 81 proceeding’s formalities and representation requirements. The use of standardized forms and the likelihood of avoiding a formal hearing in an SCPA guardian proceeding reduce attorney fees, assuming that the petitioner retains counsel for an SCPA guardian proceeding.
The petition must be served on the AIP’s parent or parents, the AIP’s adult children and siblings (if the petitioner is someone other than a parent), the AIP’s spouse (if married), the person or entity having custody of the AIP or with whom the AIP resides (if not the same as the parent or spouse), and the AIP (if at least fourteen years old). Depending on the AIP’s circumstance and who petitions the court, the petitioner must serve additional parties with a notice of petition by certified mail.

Article 17-A provides that “the court shall conduct a hearing” to determine whether the appointment of a guardian is in the person’s “best interest.” The AIP has the right to a jury trial, although a jury is waived if the AIP or the petitioner does not demand a jury.

The statute does not require a hearing “where the petition is made by or on consent of both parents or the survivor.” Unlike in an Article 81 guardianship proceeding, an Article 17-A hearing may go forward in an AIP’s absence if the court is satisfied, based on physician certifications, that the AIP’s attendance “is likely to result in physical harm to” or “under such other circumstances which the court finds would not be in the best interest of” the AIP. Unlike an Article 81 guardianship proceeding, an Article 17-A proceeding gives the court considerable discretion to make a determination without a hearing or at a hearing conducted without an AIP. Unlike an Article 81 proceeding, in which a court must make detail the specific powers granted to the guardian under MHL § 81.15, an Article 17-A court merely makes a decree appointing a guardian of the person or the property, or both, under SCPA § 1754(5). Courts have nevertheless found that Article 17-A affords AIPs due process.

Article 17-A defines a “mentally retarded person” “as being incapable to manage him or herself and/or his or her affairs by reason of mental retardation and that such condition is permanent in nature or likely to continue indefinitely.” SCPA § 1750-a(1) defines a “developmentally disabled person” “as having an impaired ability to understand and appreciate the nature and consequences of decisions which result in such person being incapable of managing himself or herself and/or his or her affairs by reason of developmental disability and that such condition is permanent in nature or likely to continue indefinitely.” The alleged developmental disability must derive from cerebral palsy, epilepsy, neurological impairment, autism, traumatic head injury, or another condition “closely related to mental retardation.” Additionally, the disability must originate before the age of twenty-two, except in cases of traumatic head injury. Article 17-A requires that “one licensed physician and one licensed psychologist” or “two licensed physicians” certify to the court that the AIP meets the statute’s criteria. Unlike MHL’s Article 81, which does not require medical testimony, the appointment of an SCPA guardian requires and is decided by medical evidence of the individual’s incapacity.

Once the court determines that the AIP is “mentally retarded” or developmentally disabled as defined by Article 17-A, the court is “authorized to appoint a guardian of the person and/or property of such person, and then only if such appointment is in the best interest” of the AIP. Although MHL Article 81 imposes a clear-and-convincing evidentiary burden on the petitioner, SCPA Article 17-A imposes a lesser “best interests” burden on the petitioner; in fact, Article 17-A is silent as to the petitioner’s burden of proof, and therefore it likely is the preponderance standard.

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Unlike Article 81, moreover, Article “17-A provides no gradations and no described or circumscribed powers” of the appointed guardian. An SCPA guardian “is appointed with seemingly unlimited power, much like the old conservator and committee” that Article 81 guardians replaced.

Although SCPA § 1719, incorporated into Article 17-A by SCPA § 1761, requires annual reports by guardians of the property, the SCPA does not require an SCPA guardian of the person to file reports with the court. Attorneys should therefore consider the lasting effects a SCPA guardian appointment with plenary powers will have on the AIP and the absence of court supervision over the SCPA guardian of the person.

CPLR Guardians Ad Litem

Practitioners should readily distinguish GALs, appointed by courts under CPLR Article 12, from MHL and SCPA guardians. CPLR Article 12’s GAL provisions apply in all civil courts except Surrogate’s Court, where the SCPA’s GAL provisions apply. The GAL appointment process entails “a far less restrictive intervention” into a person’s autonomy than an Article 81 and Article 17-A guardian appointment. Although “New York courts have not yet defined the exact parameters of an Article 12 guardian’s authority, it is universally accepted that their powers are limited.” Many, but not all, authorities agree that GALs, unlike MHL and SCPA guardians, may not waive a ward’s fundamental rights without the ward’s consent, even if the GAL and the court find that waiving the ward’s rights is in the ward’s best interests. A GAL’s authority, moreover, is restricted to the pending action proceeding. The Latin phrase “ad litem” translates to “for the suit,” meaning that a GAL’s powers do not extend beyond the case. The GAL’s function is to protect and advocate for infants or adults “incapable of adequately protecting or defending” their rights within the confines of a particular action or proceeding in which the person is, or should be, a party to that action or proceeding.

CPLR § 1201 requires judicially declared incapacitated parties to “appear in civil actions by their court appointed fiduciaries, such as committees, conservators or guardians,” if any. Only when the AIP’s appointed Article 81 or SCPA guardian is in “default” or “for good cause shown” should an AIP appear “by a guardian ad litem appointed by the court in which the action is pending pursuant to CPLR § 1202.”

A court’s appointment of “a guardian ad litem is justified when, based on a preponderance of the evidence, the court concludes that a party’s condition impedes her ability to protect her rights.” Article 12 permits a court to “appoint a guardian ad litem at any stage in the action upon its own initiative or on the motion of “a relative, friend, a guardian or committee of the property or conservator” or “any other party to the action.” A movant must serve a notice of the motion seeking to appoint a GAL on a proposed ward over fourteen; on an existing Article 81 or SCPA guardian; or, if there is no guardian, on the person with whom the subject person resides.

The appointment of a GAL does not equate to a judicial declaration of the subject person’s incapacitation. Unlike Article 81 and Article 17-A, the Article 12 appointment procedure does not necessarily inquire into the wards’ functional ability. Rather, the inability to help themselves that precipitates the need for a GAL can derive from a “cultural, linguistic, physical, intellectual, or physiological” or other reason and, in some cases, because of a temporary inability to help themselves. Although the proposed ward may object to the appointment of a GAL, the court may appoint a GAL over the ward’s objection. Article 12 requires the proposed GAL to consent to the appointment in writing and to file an affidavit showing an ability to compensate the ward for the GALs negligence or misconduct. When a lawyer moves to have a specific person appointed as a GAL, the lawyer should include an affidavit from the proposed GAL indicating a willingness to serve. Article 12 does not require that a GAL be an attorney. Attorneys interested in serving as an Article 12 GAL must, however, qualify under Part 36 of the Rules of the Chief Judge. The appointing judge selects a GAL from a list of qualified candidates.

Article 12 permits GALs to receive “a reasonable compensation for [their] services.” The court may direct the GAL’s compensation to be paid from the ward’s recovery in the action or proceeding in which the GAL served, from the ward’s other property, or from “any other party.” The court fixes a GAL’s compensation “with due regard to the responsibility, time and attention required in the performance of [the GAL’s] duties.” GALs should therefore keep accurate and detailed records of their services as GAL. In Housing court, Adult Protective Services (APS) pays GALs appointed for wards who are APS clients.

Conclusion

Distinguishing between the purpose and scope of guardian and GAL relationships helps determine what guardianship an attorney should or must seek. When an attorney’s intent is to gain surrogate decision-making powers for an AIP, an attorney must consider the differences and similarities between an Article 81 and Article 17-A guardianships.

The primary consideration in choosing between these two statutes in the case of the mentally retarded and the developmentally disabled — when either MHL Article 81 or SCPA Article 17-A might apply — is the AIP’s functional ability. If the AIP is unable to function or participate in decisions, an SCPA guardian is probably more appropriate. The SCPA guardian will have plenary powers to act in the AIP’s interest, and the SCPA appointment procedure in Surrogate’s Court is believed to be simpler, less expensive, faster, and more pro se friendly than an Article 81 proceeding: serving process is easier, the forms are simpler, and the burden of proof is lower.

If the AIP can function and participate in decisions, Article 81 is likely more appropriate; an Article 81 guardianship, although more difficult to secure than an Article 17-a guardianship, potentially grants AIP’s greater autonomy than does Article 17-A. Unlike Article 17-A, Article 81 permits the court to tailor the guardianship to meet the AIP’s needs while preserving as much of the AIP’s autonomy as possible. Cases between these two extremes require a case specific analysis. Attorneys should seek the input of the proposed petitioner, the proposed guardian, medical personnel, and, where possible, the AIP.

When an attorney’s intent is to protect the interests of infants or adults somehow unable to protect themselves in a particular action or proceeding, a GAL is appropriate, even though the GAL lacks the powers of a guardian.
Endnotes

1. See MHL § 81.01; Leona Beane, Outside Counsel, The New Adult Guardian — Mental Hygiene Law Article 81, N.Y.L.J., Apr. 20, 1993, at 1, col. 1 (“As of April 1, [1993], there are no more conservatorship or committee proceedings. Instead, there will be only proceedings to appoint a ‘guardian.”)

2. See MHL Article 81.01.
3. See SCPA § 1750 et seq.
4. CPLR § 1201.
5. See Leona Beane, Outside Counsel, “Guardians” and “Guardians Ad Litem”: What are the Differences, N.Y.L.J., Sept. 4, 1997, at 1, col 1 (“When a guardian ad litem . . . is appointed, his or her authority relates only to the litigation and controversy before the court.”) (hereinafter “Guardians”); see also CPLR 1201 et seq.
6. CPLR § 1201.
7. Practitioners should note the existence of “law guardians,” a topic beyond the scope of this article. On November 14, 2007, the Rules of the Chief Judge were amended to provide that a “law guardian” is now known as an “attorney for the child” and to define their roles better. See 22 NYCRR 7.2. Family Court under Family Court Act § 249 et seq. and, in matrimonial cases, Supreme Court appoint attorneys for the child to represent children whose rights will be affected by the action or proceeding.
9. MHL § 80.01.
10. Id.
14. See MHL § 81.06(a)(1).
15. See id. § 81.06(a)(7); accord In re Q.E.J., 14 Misc. 3d 448, 449 824 N.Y.S.2d 882, 882 (Sup. Ct. Kings County 2006).
16. MHL § 81.08(a)(3).
17. Id § 81.03, Law Revision Commission Commentary; MHL § 81.03(d) (defining “least restrictive form of intervention” as providing “the powers granted by the court to the guardian with respect to the incapacitated person represent only those powers which are necessary to provide for that person’s personal needs and/or property management”).
18. See MHL § 81.08(6).
19. See id. § 81.10(a).
20. See id. § 81.10(c).
21. See id. § 81.09.
22. See id. § 81.11(b).
23. See id. § 81.11(f).
24. See id. § 81.11(c).
25. Id. § 81.13; accord § 81.07(b).
26. See id. § 81.12(a).
27. Id. § 81.02(b)(1).
28. Id. § 81.02(b)(2); see also In re Daniel TT., 39 A.D.3d 94, 98, 830 N.Y.S.2d 827, 830 (3d Dep’t 2007) (“[A] determination of incapacity must be based, ultimately, on clear and convincing evidence that the person is likely to suffer harm because of an inability to provide for personal needs and/or property management, and that the person possesses an inadequate ability to understand and appreciate the consequences of such inability.”).
30. MHL § 81.12.
31. In re Harriet R., 224 A.D.2d 625, 626, 639 N.Y.S.2d 390, 392 (2d Dep’t), lv. denied, 88 N.Y.2d 805, 670 N.E.2d 226, 646 N.Y.S.2d 985 (1996); accord In re Ardelia R., 28 A.D.3d 485, 486, 812 N.Y.S.2d 140, 141 (2d Dep’t 2006) (“Supreme Court’s finding that [AIP] was an incapacitated person requiring a guardian was proper notwithstanding the lack of medical testimony regarding her medical condition.”); In re Marie H., 25 A.D.3d 704, 710, 811 N.Y.S.2d 708, 713 (2d Dep’t 2006) (“Article 81 does not require medical testimony for the appointment of a guardian.”) (Skelos, J., concurring) (citing MHL §§ 81.02(a)(2), 81.03(e)).
33. Id., 622 N.Y.S.2d at 210.
34. See MHL § 81.15.
35. See id. § 81.30.
36. See id. § 81.31.
37. See id. § 81.30.
38. See id. NYCRR 36.0 et. seq.
39. See id. NYCRR 36.0.
40. See MHL § 81.04(a) (“The supreme court, and the county courts outside the city of New York, shall have the power to provide the relief set forth in this article . . . .”).
42. Id., 760 N.Y.S.2d at 297. According to the court, “The difference in filing fees between the Supreme Court and the Civil Court in the City of New York is substantial and the additional costs of bringing a proceeding in Supreme Court might have a ‘chilling effect’ on the ability of persons to make such an application. If such a disparity in filing fees also exists between Supreme Court and County Court, then residents of the City are at a disadvantage. In the City of New York only the more expensive forum is available.” Id. at 502-03, 760 N.Y.S.2d at 297.
43. See SCPA § 1701.
44. See id. § 1750.
45. See id. § 1750-a.
46. See id. § 1701 et seq.
47. See id. § 1750.
48. See id. § 1761.
49. See id. § 1751.
50. Id. § 1752.
51. See www.courts.state.ny.us/forms/surrogates/guardianship.shtml (last visited Sept. 8, 2009).
52. See SCPA § 1706(2) (“The court shall inquire of the office of children and family services and such office shall inform the court whether or not a person nominated to be a guardian of such infant, or any individual eighteen years of age or over who resides in the home of the proposed guardian is a subject of an indicated report or in a report which is under investigation at the time of the inquiry . . . .”).
53. See www.courts.state.ny.us/forms/surrogates/omni/OCFS3909.pdf (last visited Sept. 8, 2009).
54. See SCPA § 1753(1).
55. See id. § 1753(2).
56. Id. § 1754(1).
57. Id. § 1754(1).
58. Id. § 1754(1).
60. SCPA § 1754(3).
61. Id. § 1754(3).
64. SCPA § 1750(1).
65. Id. § 1750-a(1).
66. See id. § 1750-a(1)(a).
67. See id. § 1750-a(1)(b).
68. See id. § 1750-a(1)(d).
69. Id. §§ 1750(1), 1750-a(1).
71. Chaim A.K., supra note 62; see also SCPA 1750 (“mentally retarded persons”); SCPA 1750-a(1) (“developmentally disabled persons”).
73. Id. (footnote omitted).
74. See CPLR § 101 (applying CPLR to all civil proceedings, “except where the procedure is regulated by inconsistent statute”).
75. See SCPA § 403.
76. N.Y. Life Ins. Co. v. V.K., 184 Misc. 2d 727, 733, 711 N.Y.S.2d 50, 94 (Civ. Ct. N.Y. County 1999) (citing Tudorov v. Collazo, 215 A.D.2d 750, 750, 627 N.Y.S.2d 419, 419 (2d Dep’t 1995) (“The Supreme Court lacked the authority to authorize the plaintiff’s guardian ad litem to settle her personal injury claim over her objection and to receive the proceeds of the settlement on her behalf.”)).
77. See Jeanette Zelhof, Andrew Goldberg & Hina Shamsi, Protecting the Rights of Litigants With Diminished Capacity in the New York City Housing Courts, 3 CARDozo PUB L. POL’y & ETHICS J 733, 762 (2006) (“New York jurisprudence has long been clear that the powers of a guardian ad litem are limited by law and the instructions of the court by which he or she is appointed.”); see also Honadle v. Stafford, 265 N.Y. 354, 356, 193 N.E. 172, 173 (1934) (“A guardian ad litem is an officer of the court, and his powers and duties are strictly limited by law. He can only act in accordance with the instructions of the court and within the law under which appointed.”).
80. See Guardians, supra note 6 (“The guardian ad litem’s role is limited to that specific action or proceeding, and is not meant to be an intrusion on the person’s life or other activities.”).
82. Id., 627 N.Y.S.2d at 536.
83. V.K., 184 Misc. 2d at 734, 711 N.Y.S.2d at 96; see also Guardians, supra note 6 (“The only requirement for appointment of a [GAL] is that the court conclude the party is incapable of adequately protecting his or her rights (in the action or proceeding before the court) based upon the motion of a party or on the court’s own initiative, which may also include the court’s observation of the litigant.”).
84. CPLR § 1202(a).
85. Id. § 1202(a)(2).
86. Id. § 1202(a)(3).
87. Id. § 1202(b).
90. See Guardians, supra note 6 (stating that GALs “are appointed for various types of parties under disability . . . . which can and does include a very large number of people with different types of disabilities, some of which may only be temporary”).
91. CPLR § 1202(c).
92. Bolsinger v. Bolsinger, 144 A.D.2d 320, 320-21, 533 N.Y.S.2d 934 (2d Dep’t 1988); but see SCPA § 403(A)(2) (requiring GALs appointed under SCPA to be attorneys admitted to practice in New York).
93. See 22 NYCRR 36.1 et seq.
94. See CPLR § 1204.
95. Id.