

KERRY R. PECK\*\*\*  
KENNETH M. BLOOM  
RAY J. KOENIG III  
PETER S. COORLAS  
MARISA T. CIPOLLA  
JEANINE M. CUNNINGHAM  
CAMERON R. DEGUERRE  
TIMOTHY J. RITCHEY

OF COUNSEL  
AURORA ABELLA-AUSTRIACO  
RUSSELL G. MILLER - RETIRED  
D. REBECCA MITCHELL  
JOSEPH PECK\*\*\*  
ROBERT S. SMITH, JR.



**PECK, BLOOM, AUSTRIACO & MITCHELL, LLC**

ATTORNEYS AT LAW

105 WEST ADAMS STREET  
THIRTY-FIRST FLOOR  
(ENTER BUILDING AT 210 S. CLARK ST.)  
CHICAGO, ILLINOIS 60603

CHICAGO OFFICE:  
TEL: (312) 201-0900  
FAX: (312) 201-0803

DEERFIELD OFFICE:  
TEL: (847) 509-1099

\*\*\*ALSO ADMITTED  
IN FLORIDA

[www.peckbloom.com](http://www.peckbloom.com)

**Guardianship Proceedings in the Probate Court for Disabled Adults  
by Kerry R. Peck, Esq.**

**The Illinois Probate Act, Article Xia, entitled “Guardians for Disabled Adults,” provides the practitioner with a remedy for the increasingly common dilemma of what action can be taken within the law to care for an alleged disabled person. The problem can arise in many ways. A frequent occurrence is when an attorney is approached by his client, requesting prompt assistance with an elderly parent who may be receiving social security checks and hiding them and/or is forgetful, confused, does not pay his/her bills and, is wasting his assets. Often, the alleged disabled person resides alone and may even wander away at times forgetting his/her residence’s location. How should an attorney proceed?**

**The Probate Act provides for the appointment of a guardian whether the underlying cause is mental incapacity, i.e., Alzheimer’s Disease or senile dementia and/or physical incapacity, i.e., heart disease and/or incontinence as to bowels and bladder, Article Xia-2 provides the definition of a disabled person.**

**The Probate Division of Cook County has jurisdiction over all guardianship proceedings. Judge Michael F. Czaja and Associate Judge Richard E. Dowdle are assigned to hear the disabled estates call, where they hear cases from their inception to closing. According to Judge Czaja, “before filing a petition for the appointment of a guardian (plenary and/or temporary), the attorney should establish in his or her own mind that the alleged disabled person really is disabled. Question the family as to the person’s conduct before you seek an adjudication of disability.”**

**The Probate Act allows for the appointment of plenary guardian and a temporary guardian. Judge Czaja points out that the appointment of a temporary guardian should be sought when emergency action must be taken to protect the alleged disabled person. “Often the appointment of a temporary guardian is sought by a hospital whose staff has determined the patient cannot give informed consent to the amputation of a limb, electrical shock therapy, or other life threatening procedures.”**

**The petition for appointment of a temporary guardian should be filed simultaneously with the petition for appointment of a plenary guardian. Remember, the temporary guardian’s power terminates by law within sixty (60) days after appointment or the appointment of a plenary guardian, whichever occurs first.**

**The petition for plenary guardian normally seeks the appointment of a guardian of the estate and person of the alleged disabled adult. Upon filing of the petition, a hearing date is set for thirty (30) days in the future and thereafter the alleged disabled person must be served with summons and a copy of the petition. The petition, which is available from the probate clerk, contains critical information regarding the alleged disabled person and the proposed**

guardian of the alleged disabled person (respondent).

The attorney for the petitioner should thereafter present the petition to the clerk with an order for the appointment of a guardian ad litem. The court will appoint an attorney as guardian ad litem. The guardian ad litem's functions include interviewing and observing the alleged disabled person, in addition to advising the respondent in great detail, of his or her rights, both orally and in writing. Additional guardian ad litem's duties include meeting with medical personnel and/or the administrative staff of a hospital or nursing home if the respondent is confined in an institution. Thereafter, the guardian ad litem prepares a written report for the court, presents an oral report in open court at the hearing date and is subject to the court's examination. According to Judge Czaja, "The guardian ad litem is the eyes and ears of the judge. He or she should present the facts to the court and carefully explain to the respondent his or her rights."

The rights of the alleged disabled person include the choice of counsel, if they desire, or the appointment of counsel by the court, the right to a jury trial in the adjudication process, the right to have and/or by court appointment, obtain expert witnesses, i.e., psychiatrists, if desired. "Remember," emphasizes Judge Czaja, "this process takes away all freedoms of the disabled person to make financial and personal decisions. Consequently, it is imperative the respondent, if possible, understand his or her rights."

Judge Czaja points out that "Guardians ad litem are often faced with a hostile, uncooperative and even violent respondent; nevertheless, the guardian ad litem must explain the rights to the respondent, obtain a response and report to the court." The hearing on a petition for the appointment of a plenary guardian is held in open court unless the respondent requests otherwise. At the hearing the petition's attorney should present to the court a typed medical report, on the probate provided form regarding the respondent's alleged disabilities.

"The court," according to Judge Czaja, "must generally consider two (2) issues, should the person be adjudicated disabled, and, who should be the disabled person's guardian. Both issues may require testimony of medical personnel, family members, attorneys, or even neighbors. The family should, at all costs, cooperate with each other regarding the selection of a guardian."

The Act allows any person to file a cross petition seeking the appointment of themselves or others as guardian, and unless an agreement can be reached, the court will entertain all petitions seeking the appointment of a guardian. "These contested proceedings are very traumatic and emotional," says Judge Czaja. "Try to agree on the proposed guardian, if possible."

The court also has the option of denying all petitions and appointing a state agency as guardian. The state guardian may be appointed in estates of over fifteen (15) thousand dollars and the public guardian in estates of less than fifteen (15) thousand dollars. Judge Czaja emphatically stated, "Litigants often forget the court is here to protect the interests of the alleged disabled person."

In conclusion, guardianship proceedings are replete with emotion, law, medicine, and financial issues. Detailed analysis of the Probate Act and Rules of Probate Practice is recommended.