

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN THE MATTER OF: :  
: :  
E. H., : C.M. # 19691-N-SEM  
: :  
a person with a disability. :

**ORDER REGARDING FEES**

WHEREAS, on June 25, 2021, D. H. (“Petitioner”) filed an emergency petition for appointment of a guardian of the person and property of her daughter, E. H.;<sup>1</sup> Petitioner was appointed interim guardian on June 25, 2021 for a period of thirty (30) days;

WHEREAS, the matter was scheduled to be heard on July 22, 2021, at a routine hearing, but that hearing was cancelled when the attorney *ad litem*, Melanie George Smith (the “AAL”), advised on July 16, 2021 that E. H. was opposed to the petition and her mother being her guardian;<sup>2</sup>

WHEREAS, on July 27, 2021, the AAL filed a report recommending the Office of the Public Guardian be appointed successor interim guardian and the matter be referred to mediation;<sup>3</sup>

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<sup>1</sup> Docket Item (“D.I.”) 1.

<sup>2</sup> See D.I. 5-6.

<sup>3</sup> D.I. 9.

WHEREAS, at the request of the AAL, and with the consent of E. H. and the Petitioner, the Office of the Public Guardian was appointed interim guardian on July 29, 2021 for a period of thirty (30) days;<sup>4</sup>

WHEREAS, on August 11, 2021, I issued a minute order directing the AAL to advise if E. H.’s best interests diverge from her wishes by August 20, 2021, such that I could determine if appointment of a second attorney *ad litem* would be appropriate;<sup>5</sup>

WHEREAS, on August 20, 2021, the AAL recommended such appointment and I appointed Elle Van Dahlgren (the “Second AAL”);<sup>6</sup>

WHEREAS, on August 26, 2021, the Second AAL filed a report recommending the interim guardianship be terminated; I directed any party wishing to extend the interim guardianship beyond its terms to file an appropriate motion by August 27, 2021; Petitioner so moved but I denied the request on August 27, 2021, at which time the interim order expired;<sup>7</sup>

WHEREAS, the AAL has requested \$4,750.00 for her services to E. H.; the AAL incurred fees and expenses of \$2,675.00 in connection with her initial report;<sup>8</sup>

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<sup>4</sup> See D.I. 13.

<sup>5</sup> D.I. 18.

<sup>6</sup> D.I. 19-20.

<sup>7</sup> See D.I. 27-30.

<sup>8</sup> See D.I. 9, 32-33.

the Second AAL requests \$11,641.35; the Second AAL billed \$1,995.00 for preparing the report she filed on August 26, 2021;<sup>9</sup>

WHEREAS, Petitioner objects to the fees as unreasonably excessive and requests they be reduced prior to approval by the Court;

WHEREAS, under Court of Chancery Rule 176:

In all cases in which the Court has appointed an attorney *ad litem* or fact finder under this rule, the attorney shall file a report and recommendation with the Court as directed in the Order of the Court. The attorney shall also file an affidavit of time expended on the matter and a request for a fee and costs. The fee and costs shall not exceed \$ 750 unless the attorney requests and supports a greater fee and the Court finds that payment of a fee great than \$ 750 is in the best interest of the person with an alleged disability.

WHEREAS, this Court will approve fees above the \$750 cap when, for example, a guardianship matter is contested or the attorney *ad litem* goes above and beyond the Court’s expectations to provide services to the person with an alleged disability and such extraordinary efforts produce a tangible benefit;

WHEREAS, generally speaking, when the Court is asked to approve attorneys’ fees and expenses, it will “evaluate the reasonableness of fees under the standards of Rule 1.5(a) of the Delaware Lawyers’ Rules of Professional Conduct, and normally exclude excessive, redundant, duplicative, or otherwise unnecessary hours[;]<sup>10</sup> in applying this standard the Court considers the following factors:

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<sup>9</sup> See D.I. 34.

<sup>10</sup> *Carpenter v. Dinneen*, 2008 WL 2950765, at \*1 (Del. Ch. Jul. 3, 2008).

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.<sup>11</sup>

WHEREAS, under Court of Chancery Rule 176, the party petitioning for guardianship pays the attorney *ad litem* fees “unless the Court finds that such fee and costs should be paid by the person with an alleged disability[;]” the Court will also cover certain attorney *ad litem* fees when doing so serves the public interest; in determining whether to utilize the Court’s fund for payment of attorney *ad litem* fees, the Court looks at the resources available to the petitioning party and the person with an alleged disability and considers the totality of the circumstances presented to determine whether and how much of any fee should be paid by the Court; fees incurred by an attorney *ad litem* appointed to represent the wishes of a person with an alleged disability, who already has an attorney representing their best interests, may appropriately be paid from the Court’s fund, in a reasonable amount and if warranted under the totality of the circumstances;

IT IS HEREBY ORDERED, this 10th day of December 2021, as follows:

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<sup>11</sup> Del. Lawyer’s Rules of Prof1 Conduct R. 1.5(a)(1).

1. The AAL is awarded fees of \$2,825.00, payable by Petitioner. This fee was calculated by capping the fees incurred in preparation of the AAL's initial report at \$750.00 under Court of Chancery Rule 176, but granting the post-report fees in full. I find these fees are reasonable under the Rules of Professional Conduct and that the AAL has provided sufficient support for exceeding the cap in Rule 176.

2. The Second AAL is awarded fees of \$9,737.35, which shall be split evenly between the Petitioner (\$4,868.67) and the Court (\$4,868.68). This fee was calculated by capping the fees incurred in preparation of the Second AAL's report at \$750.00 under Court of Chancery Rule 176, excluding "estimated time" and time incurred for potential power of attorney documentation,<sup>12</sup> but granting the remaining post-report fees in full. I find these fees are reasonable under the Rules of Professional Conduct and that the Court should cover 50% as a recognition of the public service provided by the Second AAL.

3. This is a final report under Court of Chancery Rule 143 and exceptions may be filed under Court of Chancery Rule 144.

/s/ Selena E. Molina  
Selena E. Molina  
Magistrate in Chancery

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<sup>12</sup> The Second AAL reflected estimated time in the amount of \$525.00 and incurred fees of \$309.00 in drafting a durable power of attorney and advanced healthcare directive and meeting with her client about those documents. These fees have been removed as outside the limited scope of the Second AAL's appointment in connection with these proceedings.