**CHAPTER FIVE**

**DUTIES AND RESPONSIBILITIES OF THE GUARDIAN *AD LITEM***

S.C. Code Ann. § 62-5-106 sets forth the duties and responsibilities of the guardian *ad litem* (GAL). For the full text of the statute, see the Appendix. Responsibilities and duties of the GAL include, but are not limited to:

1. *Acting in the best interest of the alleged incapacitated individual (A.I.I.).* The best interest of A.I.I. means taking any action or steps the GAL believes to be the most advantageous to the A.I.I.’s welfare under the circumstances.
2. *Conducting an independent investigation to determine relevant facts and filing a written report* with recommendations at least 48 hours prior to the hearing, unless excused or required earlier by the court.

1. *Advocating for the best interests of the A.I.I.* by making specific recommendations regarding resources as may be appropriate and available to benefit the A.I.I., the appropriateness of the appointment of a guardian or conservator, the appropriateness of the person(s) nominated for those roles, and any limitations to be imposed.
2. *Avoiding conflicts of interest, impropriety, or self-dealing.*  A GAL shall not accept or maintain appointment if the performance of his duties may be materially limited by responsibilities to another person or by his own interests.
3. *Maintaining confidentiality unless the court requires disclosure.* The relationship between the GAL and the A.I.I. is a professional relationship and one of utmost confidentiality.
4. *Participating in all court proceedings* including discovery and mediation, unless all parties waive the requirement to appear or the court otherwise excuses participation.
5. *Filing with the court and delivering to each party a copy of the GAL report.*
6. *Moving for any necessary temporary or emergency relief* to protect the A.I.I. from abuse, neglect, abandonment, or exploitation, or to address other emergency needs of the A.I.I.[[1]](#footnote-1) For more information about emergency or temporary relief, see the end of this chapter.

The GAL serves as the “eyes and ears” of the court and provides an objective view of the best interests of the A.I.I. The GAL must investigate, independently assess the facts of the case, represent the best interests of the A.I.I. to the court, and advocate for those interests in the Report of the GAL and/or by oral testimony.[[2]](#footnote-2) The GAL should attend all court hearings and provide information directly to the court, as well as maintain his or her own file regarding the matter. One way this duty is carried out is through the report the GAL submits to the court. It is also possible the GAL will be asked to investigate matters that are unforeseen at the inception of the case.

The goal of the GAL investigation and recommendations is to always to put the A.I.I. in the best possible position. The first question a GAL must investigate and answer is the most crucial — whether or not a guardian or conservator is needed. If a guardianship and/or conservatorship is needed, is the proposed fiduciary qualified to serve? Does the A.I.I. approve or disapprove of this person? The answers to these questions are paramount because, first and foremost, the court has been asked to take away an adult’s rights, the same rights any citizen of the United States has the day they turn eighteen years old. Moreover, once a guardian is appointed, the guardian is then responsible for ensuring the A.I.I. (the “ward” after a determination of incapacity) has a clean, safe, comfortable, and appropriate residence and for making sure the ward receives appropriate medical and health care. Conservators are responsible for managing and protecting the property and assets of the A.I.I. (the “protected person after a determination of incapacity). The GAL must be certain that the proposed fiduciary is the appropriate person to take on either or both of these roles.

**Conflicts of Interest and Confidentiality**[[3]](#footnote-3)

Before agreeing to undertake the role of a GAL, a proposed GAL must ensure he or she has no prior or current relationship with any of the parties or their family members that might call the GAL’s impartiality into question or affect his or her ability to be an independent investigator. Lawyers call this a “conflicts check.”

Issues of confidentiality preclude a potential GAL from taking a case if he or she has a relationship with a party, or even a family member of a party. (A conflict might exist if there is a relationship with someone not actually a party, *e.g.*, the petitioner is the spouse of the GAL’s employer.) In small communities this may be difficult but is probably even more important, and in any community the avoidance of a conflict of interest is essential for the protection of both the A.I.I. and the GAL, and to ensure the independence of the court and the integrity of the legal process.

After being contacted to serve, the GAL should very quickly obtain the names of the parties and determine if he or she has a personal interest in the matter. If so, he or she must inform the court as soon as possible that he or she is disqualified because of the conflict so that another GAL may be appointed. This should be done before speaking with anyone or undertaking any investigation of the case.

If there is no initial conflict, GALs should continue to avoid any actions that would create a conflict of interest or even the appearance of a conflict of interest. For example, GALs in sales professions may not give suggestions or recommendations from which their associates could profit. GALs associated with service industries or the long term care industries should be particularly careful to avoid circumstances that might create a conflict of interest.

It is also important that non-attorney GALs do not give the impression that they are lawyers or have any special knowledge of the law.

The GAL will learn very personal things about the A.I. I. and other parties and must keep this information absolutely confidential. It must not be discussed with the GAL’s family or friends. It may be discussed with court staff, and if an occasion arises where the GAL must discuss a case with a third party for purposes of the investigation, the GAL should avoid using the A.I.I.’s name or any unique identifying information. Often the A.I.I. or the proposed fiduciary will ask if what they are telling the GAL is confidential. The GAL may respond by saying: “yes, unless I’m required by law and the judge to inform the court as part of my duties.” The GAL may assure them that the GAL takes the task very seriously and will do everything in his or her power to keep the information private and confidential. The GAL should also tell them that the judge takes measures to protect the privacy of the information to the extent legally possible.

Information collected by the GAL should not be used for any purpose except to complete the duties required by statute. A GAL may not apply anything learned in the course of his or her investigation to a future situation from which he or she may profit, nor may the GAL accept any gifts or loans from the A.I.I. or other parties, or make gifts or loans. This will result in removal from the court’s GAL roster.

**Investigation by the GAL**

Section 62-5-106(A)2 sets forth mandatory and optional actions for the investigation by the GAL.

1. **Required Actions**
   * + 1. ***Obtaining and reviewing relevant documents.***

Always start by reviewing the petition. The petition will provide basic information about the A.I.I. including his or her age, address, relationship to proposed guardian or conservator, family information, and some details about the nature and degree of the A.I.I.’s alleged incapacity.

Examine all medical records, financial records, and reports from friends and family to help develop an understanding of the case. You should also check for health insurance available to the individual including Medicaid, Medicare, and possible VA benefits.

*Note: You may use the court order appointing the GAL to obtain this information or you may need to ask the court for a specific order for the documents you need to review.*

* + - 1. ***Meeting with the A.I.I.***

The GAL must meet with the A.I.I. at least once within 30 days following appointment, or within such time as the court may direct. Review the form for the Report of GAL before you begin so that you know what information you will need to include.

The GAL should speak privately with the A.I.I., who may be easily influenced by family and friends. Observe behavior, demeanor, attire, health, and attitude of the A.I.I. An important interview technique is letting the A.I.I. tell his or her own story — and then compare to the facts. If possible, try to meet with the A.I.I. at his or her residence. The goal is to interview the A.I.I. in a comfortable setting to maximize the quality of the interview. Interviewing in an attorney’s office or other professional setting may cause the A.I.I. to become nervous, worried, or disoriented in unfamiliar surroundings.

If an individual refuses to allow you to interview him or her or will not let you in the door, you may need to seek guidance from the court. Interviewing the A.I.I. will likely be the most difficult portion of the investigative process. If you have never been into a nursing home or around people who are in the later stages of life, interviewing an A.I.I. can seem daunting. Some of your questions may not get answered if the A.I.I. suffers from dementia or intellectual disability. The A.I.I. may forget who you are halfway through the conversation. Relax. Often, you will find that an A.I.I. simply wants to talk about off-topic material. Indulge him or her, if your time permits. You may find that valuable information can be gleaned from casual conversation. If the A.I.I. is elderly, imagine you are talking to your grandparent.

*Tips for Meeting with the A.I.I.:*

* Some elderly people have hearing loss, so be sure the A.I.I. can hear you.
* Be aware of any possible communication barriers and utilize any necessary accommodations that may assist your interview (*e.g.*, sign language interpreter, translator, tablet, picture board).
* Find a quiet place to conduct the interview. Some places, such as hospitals, nursing homes, or assisted living facilities can be noisy.
* Observe the room. The room can give you a great deal of insight into the living situation of the A.I.I. Is it clean and well-maintained? Are there pictures of family members on the walls or other decorations? Is there an unpleasant odor?
* Observe the A.I.I.’s physical state. Is he or she clean and dressed appropriately for season and occasion? What is his or her mood or affect?
* People are more likely to give honest answers when they are relaxed and comfortable. Remember the A.I.I. may not have talked to anyone in a while. Take your time and try not to rush the interview. It may take a long time to get the answers to your questions.
* If the A.I.I. resides in a facility, arrange the interview with a social worker. Ask ahead of time for a conference room or a private room, if available.
* Pointers for your safety:
* Try to make your visit during the day, if possible.
* Conduct a search before going to the home to determine its location.
* Consider not bringing your laptop or tablet into the home with you.
* Let someone know when and where you are going to make a visit.
* Be aware that there might be dogs or other animals on the property.
* Be aware of your surroundings.
* If you feel an area is particularly unsafe, it is acceptable to:
* Return later;
* Attempt to arrange a meeting outside of the home setting; or
* Inform the court that you were unable to conduct the visit.
* If your instincts tell you it would be unsafe/inappropriate to enter the home, conduct the interview on the porch/front steps.
* In some homes you may feel safe, but the conditions could be extremely unsanitary. If the home appears unsafe and/or the A.I.I. is disheveled, unclean, etc., consider calling DSS Adult Protective Services. Also remember to note these items in your report.

*Note: After conducting your interview, you may need a second visit, especially if the A.I.I. is non-responsive or not having a good day.*

*Suggested Questions:*

1. John Doe petitioned the court to be your guardian and now the court has sent me to find out how you are doing. Tell me a little bit about yourself. Where did you grow up? What did you do for a living?
2. Tell me a little bit about your family. Were you ever married? Do you have any children? Do you have any brothers or sisters? Do you see your family members?
3. Are you having a good day?
   1. If not: Why not?
   2. When was the last good day you had?
4. How do you feel?
5. Any health problems?
6. Do you have any hobbies?
7. How long have you lived here?
8. Do you like it here?
9. What do you like to do here?
10. Are there problems living here?
11. Do you the see the doctor? What for?
12. Who are your doctors?
13. Do you take medication? For what? How often? Does anyone help you with that?
14. Who takes you to the doctor [if not in-house]?
15. Do you have health insurance? Medicare? Medicaid?
16. What property do you own (*e.g.*, house, car, bank account)?
17. What bills do you have? Do you pay them yourself?
18. Who comes to visit you? Who do you talk to?
19. Do you remember John Doe? How often do you see him or her?
20. [If they don’t see them often] How often to you communicate with him or her?
21. Is there anything you’re not allowed to do?
22. Is there anything you’d like to do more of?
23. Is there anything worrying you?
24. Does anything hurt?
25. Are you a veteran? (If so, look into whether they are getting VA benefits.)
26. Are there things you need?
27. [If a guardianship petition has been filed] Do you know what a guardian is? How do you feel about John Doe asking the court to be appointed your guardian?
28. [If a conservatorship petition has been filed] Do you know what a conservator is? How do you feel about John Doe asking the court to be appointed your conservator?
29. Is there anything you would like me to tell the court?
30. Is there anything you’d like to tell me?
    * + 1. ***Investigating the residence or proposed residence of the A.I.I.***

Investigation should include observations of residence exterior and interior. Determine if the utilities are working. Is the residence clean and free of fire hazards? Is there any plan for moving the A.I.I.? If so, you will need to review the proposed residence as well to determine its suitability.

***4. Interviewing all parties.***

Review the Petition to identify the parties. Keep an open mind as to whether someone other than the proposed guardian or conservator may be a better choice for the roles.

*Interviewing the proposed guardian and/or conservator (G/C):*

Remember that part of your role is providing an opinion as to whether the proposed G/C is the right person for the role, if a guardian or conservator is ultimately appointed. Try to determine if he or she is capable and has the temperament to handle the responsibilities of a guardian or conservator. Breaking the ice can help people to relax and open up. Try starting off with questions like: “How are you doing?” or “Where are you from?” Adjust to the situation. Each case is different and your process for handling each case should be different. Sometimes it will be best to interview the proposed G/C first. Other times it will be better to interview the proposed G/C last. Sometimes you will need to interview the proposed G/C in person, other times a phone call will be adequate.

*Considerations in Determining When to Interview the Proposed G/C:*

1. Out-of-state proposed G/Cs should probably be interviewed first by telephone. Interviewing the proposed G/C first allows you to gather information relevant to your future interview of the A.I.I.
2. Home visits: You may want to interview the proposed G/C first if he or she lives with the A.I.I. This will give you insight into your interview with the A.I.I.
3. Use your judgment. If the file indicates that the A.I.I.is incapacitated to the extent that he or she will not be able to communicate with you, or may be combative, it may be better to interview the proposed G/C first so that you can get more information about the the A.I.I. before you interview him or her.
4. Generally it is better to interview the proposed G/C last because you will have adequate information beforehand to guide you as to whether or not you need to visit the proposed G/C, or whether your interview can be conducted over the phone.
5. If the A.I.I. is in a nursing facility, it may be better to visit the A.I.I. first. Assess the situation, and then decide whether you need to visit or call the proposed G/C. If nothing is of concern about the A.I.I.’s residence in the facility, a home visit may not be necessary (usually when the A.I.I. does not live with the proposed G/C). However, if anything causes you concern, a home visit can give you greater insight into what may be going on behind the scenes with a particular case. If you are having a conversation with a proposed G/C rather than just asking them questions, you are likely to gain more information. The GAL’s Report Form should be your guide on what questions to ask. However, it can be difficult to get used to a form rather than simply knowing what questions to ask. The following is a list of suggested questions. Keep in mind that all of them may not be appropriate for the person you are interviewing.

*Suggested Questions for the Proposed G/C:*

1. Tell me a little bit about yourself. Where are you from? Where did you grow up?
2. Where do you live now?
3. How old are you?
4. Are you employed?
5. If so, what do you do?
6. Did you go to college? High school?
7. How long have you been caring for the A.I.I.? How frequently do you see him/her?
8. What’s your relationship to the A.I.I.?
9. Can you tell me what the A.I.I. does on a typical day?
10. Does he or she participate in any social or religious activities or attend any day programs?
11. What services does the A.I.I. receive (*e.g.,* administration of medications, help with dressing, recreational activities, 24-hour supervision, help with grooming, physical therapy, nursing care, help using the restroom, day care program, help with banking, help with feeding)?
12. What assets does the A.I.I. own (*e.g.,* real estate, bank accounts, vehicles, retirement accounts, personal property)?
13. What is the A.I.I.’s income and what is the source of his or her income (*e.g.*, employment, Social Security, retirement)?
14. What medical conditions does the A.I.I. have?
15. What medical providers does the A.I.I. see?
16. What type of physician/medical professionals are they?
17. How often does the A.I.I. go to the doctor?
18. Does the A.I.I have health insurance? Medicare? Medicare supplement? Medicaid? Long-term care insurance? If Medicaid, what kinds?
19. What medications does the A.I.I. take? How many? Is the A.I.I. able to take medications independently?
20. Has the A.I.I. ever been treated for mental illness or chemical dependency? Does he or she take any medication specifically for mental illness?
21. Does the A.I.I. have any conditions that might impede communication with him or her?
22. What is your opinion of the quality of care at the nursing home/assisted living where the A.I.I. is living? Have there been any problems?
23. How long has the A.I.I. been at this facility?
24. Where was the A.I.I. before that?
25. What are your plans for the A.I.I. in the coming year?
26. Do you expect any major changes in residence for the A.I.I. in the next year? Does A.I.I. still require nursing home care? Are there other options you have explored?
27. What activities can the A.I.I. do independently?
28. Are the funds of the A.I.I. sufficient for the current living arrangement/any needed medical care/needed social services?
29. Do you believe the condition of A.I.I. has changed in the past year? If so, how?
30. Has his or her mental capacity increased or declined in the past year?
31. Does A.I.I. have any unmet needs?
32. Why do you think the A.I.I. needs a guardian or conservator?
33. Is there anyone else you would like me to talk to about the A.I.I. or about your service as proposed G/C for the A.I.I.?
34. Have you ever filed for bankruptcy?
35. Do you have a criminal record?
36. Are there any judgments or liens against you?
37. Why are you the best choice to serve as guardian or conservator for the A.I.I.?
38. Do you have any questions or comments for the court?

*Note:* *One of your goals is to make sure that the proposed G/C is properly caring for the A.I.I. or has appropriate plans for the care of the A.I.I. Sometimes it is good to ask a proposed G/C a question to which you already know the answer simply to see if* he or she *knows the answer to it. This way you can determine how much they know about the A.I.I.’s life, health problems, and doctor, and therefore how active they are in their relationship with the A.I.I.*

*Interviewing Staff in Facilities*

Interviewing the staff at facilities can be as important as interviewing the A.I.I., especially if the prospective G/C lives in another state. Often the A.I.I. may have trouble communicating or answering questions, so a staff member may provide valuable insight into the A.I.I.’s daily life and relationship with the proposed guardian or conservator. It will typically be easier to interview the staff member separately from the A.I.I., but certain situations may arise where a staff member is needed as a “go-between” with the GAL and the A.I.I. The appropriate staff member to speak with may depend on the type of facility, whether it is a hospital, nursing home, group home or other type of assisted living facility.

*Suggested Questions for Facility Staff:*

1. How often do you see or communicate with the proposed G/C? How often does he or she visit?
2. When was the last time he or she visited?
3. Have you had any problems with the proposed G/C?
4. Does anyone else visit the A.I.I. besides the proposed G/C?
5. Does the facility consult with anyone other than the A.I.I. about his or her care? If so, who?
6. Have you had any trouble with the A.I.I.?
7. Is there anything special I need to know about the A.I.I.?
8. Does the A.I.I. have any insurance? If so, what type? Is the A.I.I. on Medicare? Medicaid? Which type?
9. What doctor does the A.I.I. see?
10. Does the A.I.I. leave the facility? How often?
11. Who takes the A.I.I. out?
12. How does the A.I.I. interact with others?
13. Does the A.I.I. seem to be active?
14. How long has the A.I.I. been here?
15. How do you think that the A.I.I. likes being here?
16. Does the A.I.I. take care of himself/herself? What sort of ADLs (Activities of Daily Life) can the A.I.I. perform independently or with assistance?

***5. Discerning the wishes of the A.I.I.***

During your interview(s) with the A.I.I., find out what he or she desires and how he or she feels about the proposed guardianship or conservatorship. What concerns does he or she have? Does he or she think help is needed? What is his or her opinion as to the quality of the relationship with the proposed guardian or conservator?

***6.* *Identifying Less Restrictive Alternatives to Guardianship and Conservatorship.[[4]](#footnote-4)***

Some alternatives to examine include:

* Power of Attorney (POA). Does the A.I.I. have the mental capacity to name an agent and execute a POA? The A.I.I. needs what is termed “contractual capacity.” An example would be whether the A.I.I. has the mental capacity to buy a car or enter into a lease. If not, then the A.I.I. probably does not have capacity to execute the POA.
* Joint accounts. Is there a trusted spouse, family member, or caregiver that has joint access to the bank account and can assist with paying bills and other necessities?
* Monitoring accounts online.
* Health Care Power of Attorney.
* SC Adult Healthcare Consent Act.
* Other “Stay-at-Home” alternatives can include:
  + Shopping services
  + Home delivered meals
  + Home Health care
  + Housekeeping
  + Bill paying assistance
  + Pet care help
  + Handyman Services
  + Volunteer transportation

***7.******Reviewing a criminal background check of the proposed guardian or conservator.***

These reports are mandatory and will be available as supplemental documentation filed with the court. You should bring any concerns regarding information contained in these documents to the court’s attention.

***8.******Reviewing a credit report on the proposed conservator.***

The Probate Code requires that the proposed conservator file a credit report with the court that you should review. As this is a confidential document, the court will likely require that you review the credit report in person, rather than providing you with a copy. Look for any indications that the conservator may not be the appropriate person to handle another person’s finances and share any concerns you may have with the court. The GAL may also consider conducting a judgment and bankruptcy search of the proposed conservator.

***9.******Interviewing the person whose appointment is sought to ascertain: knowledge of the required duties, requirements, and limitations; and the steps the proposed fiduciary intends to take or has taken to identify and meet the needs of the A.I.I.***

*Note:* *The level of skill necessary for a proposed guardian or conservator will vary depending on the needs of the A.I.I. and the amount and type of assets involved.*

**B. Optional Investigative Steps**

**1. *Consulting with persons who have a significant interest in the welfare of the A.I.I. or knowledge relevant to the case.***

Persons, other than parties, who may have a significant interest include anyone known to have provided care for the A.I.I. within the past 6 months of filing the petition, social worker, neighbors, etc.

* + - 1. ***Contacting the Department of Social Services (DSS) to investigate any action concerning the A.I.I. or the proposed fiduciary.***[[5]](#footnote-5)

**3. *Determining the financial capabilities and integrity of the proposed conservator*** including, but not limited to:

(a) previous experience in managing assets similar to the type and value of the A.I.I.’s assets;

(b) plans to manage the A.I.I.’s assets; and

(c) whether the proposed conservator has previously borrowed funds or received financial assistance or benefits from the A.I.I.

If the proposed conservator is inexperienced, can he or she hire someone to assist? This is something the GAL should raise in his or her report. For example, the A.I.I. may trust only proposed conservator, but conservator may not have the requisite experience and there is no one else.

With regard to the conservator’s plans, how sophisticated does a person need to be to handle a consumer bank account? When interviewing, find out if the proposed conservator has any financial expertise, or at leastexperience balancing a checkbook and paying monthly household expenses.

**4. *Interviewing any persons known to the GAL having knowledge of the A.I.I.’s financial circumstances or the integrity and financial capabilities of the conservator, or both, and reviewing pertinent documents.***

Examples of “any persons” would include spouse, business partners (of the A.I.I. or proposed conservator), accountants, financial consultants, or Social Security Representative Payee. You may wish to review bank statements, tax returns, or other relevant documents, as appropriate.

**THE GAL REPORT**

The GAL must submit a written report and a specific form is required for this purpose.[[6]](#footnote-6) A narrative report with any additional information may be attached to the form. The Report must include:

1. Date and place of the meeting with the A.I.I.;
2. Description of the A.I.I.;
3. Known medical diagnoses of the A.I.I., including the nature, cause, and degree of the incapacity and the basis for the findings;
4. Description of the condition of the A.I.I.’s residence including address and factors affecting safety;
5. Identification of persons with significant interest in the welfare of the A.I.I.;
6. Any prior action by DSS or law enforcement concerning the A.I.I. or the proposed fiduciary of which the GAL is aware;
7. A statement as to any prior relationship between the GAL and the petitioner, the A.I.I., or other party to the action;
8. A description of the current care and treatment needs of the A.I.I.; and
9. Other information relevant to the matter.
10. Recommendations regarding:

(a) whether a guardian or conservator is needed;

(b) the creditworthiness and suitability of the proposed fiduciary;

(c) the A.I.I.’s approval or disapproval of the proposed fiduciary;

(d) an evaluation of the future care and treatment needs of the A.I.I.;

(e) whether a proposed residential plan is in the best interest of the A.I.I.;

(f) any rights that should be retained by the A.I.I.;

(g) whether a formal hearing should be held even if all parties are in agreement; and

(h) any other recommendations relevant to the matter.

**EMERGENCY AND TEMPORARY RELIEF[[7]](#footnote-7)**

**EMERGENCY RELIEF:** if the GAL becomes aware of an issue which should be addressed quickly by the probate court, the GAL may wish to file a motion for emergency relief. Emergency relief should be sought only if there is a risk of immediate or irreparable injury to the health, safety or welfare of the A.I.I., or of substantial economic loss of the A.I.I.’s assets. Because the filing of a motion on behalf of another is the practice of law, the GAL must inform the court of the situation so that the probate judge may appoint an attorney to represent the GAL. There must be allegations of a true emergency, usually in the form of an affidavit from a physician or other third party professional, to convince the judge that an ex parte order is necessary to protect the A.I.I. (Ex parte means the order is issued without notice to adverse parties.) A hearing will be held very quickly after the filing of the motion, but the person appointed by ex parte order to be the guardian or conservator is legally entitled to take action prior to the hearing.

Examples of emergencies may include: inability of the A.I.I. to give informed consent to emergency medical procedures, unauthorized transfer of the A.I.I.’s assets, imminent need for discharge or admission to a care facility or hospital, or the immediate possibility of unauthorized transport of the A.I.I. out of state.

**TEMPORARY RELIEF:** there may also be issues which arise which require a temporary appointment where harm is not imminent but action on behalf of the A.I.I. is needed before a hearing for the permanent appointment can be held. This is also addressed by S.C. Code Ann. §62-5-108, and the GAL will need an attorney to file the necessary motion and other documents for temporary relief.

Examples may include situations where incapacity is expected to be of limited duration, the currently serving fiduciary is not adequately performing his/her duties (neglect or wasting of assets), or the action required is limited in scope.

*NOTE: Emergency relief is an extraordinary remedy. It is more likely that temporary relief will be adequate to protect the A.I.I. and his or her assets, but if it is a true emergency exists, the GAL should act promptly.*

**EXAMINER’S APPOINTMENTS:** although only one physician-examiner is required for both guardianship and conservatorship proceedings, if the GAL has concerns about whether the examiner’s report adequately addresses the incapacity of the A.I.I., he or she may request the appointment of a second examiner. The second examiner is not *required* to to be a doctor, but may be a doctor, nurse, social worker or psychologist.

1. S.C. Code Ann. § 62-5-108. [↑](#footnote-ref-1)
2. Portions of the material are excerpted from A Practical Guide to Elder and Special Needs Law in South Carolina, 4th Ed. Principal Author and editor: Franchelle C. Millender.  Reprinted with permission by the SC Bar-CLE Division.  To order please contact the CLE Division at 803-771-0333/800-768-7787. [↑](#footnote-ref-2)
3. Special thanks to Pamela D. Robinson of the University of South Carolina School of Law for sharing the manual she wrote as a guide for law students serving as volunteers in guardianship and conservatorship cases. [↑](#footnote-ref-3)
4. For more information about alternatives to guardianship and conservatorship, see Chapter 2. [↑](#footnote-ref-4)
5. See Chapter 7 for more information about abuse, neglect, and exploitation. [↑](#footnote-ref-5)
6. The GAL Report (Form 531GC) is included in the Appendix and is also available at [www.sccourts.org/forms](http://www.sccourts.org/forms). [↑](#footnote-ref-6)
7. S.C. Code Ann. § 62-5-108. [↑](#footnote-ref-7)