

CIVIL COURT OF THE CITY OF NEW YORK

ADVISORY NOTICE

Subject: Default Judgments in GAL Cases

Class: AN-8


Category: LT-10

Effective Date: March 8, 2007

Please be advised that pursuant to CPLR §§ 1201 and 1203, if it appears that a respondent is incapable of adequately defending against a proceeding, the court should appoint a guardian ad litem and any default judgment entered prior to the appointment in most instances should be vacated. Failure to vacate the default judgement maybe reversible error. Oneida v. Unczur, 37 A.D.2d 480, 326 N.Y.S.2d 458 (4th Dep't 1971); State of New York v. Getelman, Sept. 7, 1993, NYLJ, pg. 25 at 6 (Sup. Ct. Albany Co.); Sarfaty v. Sarfaty, 83 A.D.2d 748, 443 N.Y.S.2d 506 (4th Dep't 1981); Barone v. Cox, 51 A.D.2d 115, 379 N.Y.S.2d 881 (4th Dep't 1976); Glick v. Quintana, Nov. 30, 1992, NYLJ, pg. 27 at 4 (Civ. Ct. NY Co.); New York Life v. V.K., Mar. 3, 1999, NYLJ, pg. 27 at 5 (Civ. Ct. N.Y. Co.); Hotel Preservation v. Byrne, Mar. 12, 1999, NYLJ, pg 26 at 1 (AT 1st Dept.); Roe Corp. v. Jane Doe, Jan.15, 2003 NYLJ, pg. 21 at 5 (Richmond Co. Dist. Ct.).

Subsequent to the appointment of a Guardian Ad Litem, no default judgment maybe entered until 20 days after the appointment of the Guardian. Any default judgment entered in cases where a GAL has already been appointed should be entered only after the Judge is aware of the circumstances and the welfare of the incapable adult is considered. In cases where the 20 days have elapsed and neither the Guardian nor the respondent has appeared on a court date, all efforts should be taken to discern on the record the cause of the Guardian's default. If the Guardian's default is a result of derelict of responsibilities, the Guardian should be removed and a new Guardian appointed. In the latter event, a copy of the order removing a GAL for this reason or any other reason must be sent to the Administrative Judge immediately.

March 7, 2007
Date



Fern A. Fisher
Administrative Judge