

Attorney *ad litem* checklist for Capacity Disputes

- Visit the person whose capacity is in dispute (the “Subject Person”) at least once in their home setting or facility where they are living either in person or remotely through audiovisual technology.
- Unless the Subject Person is unconscious:
 - inform the Subject Person of the contents of the petition (unless the Subject Person is the petitioner);
 - advise the Subject Person of the standard for proving incapacity, the consequences of a judicial determination of incapacity, and the date of the capacity hearing;
 - if the Subject Person is not the petitioner, then (1) make sure that the Subject Person receives a copy of the petition, and (2) indicate the Subject Person’s position regarding capacity in your report.
- Investigate the Subject Person’s circumstances (*e.g.*, names and relationships of other persons living in the home, work situation, social life).
- Review the determination of incapacity and all relevant medical history.
- If the Subject Person is residing in a facility, such as a hospital, skilled nursing facility, rehabilitation center, or group home, and the facility is not the petitioner, inform the facility about the petition and invite the facility to disclose any objection or concerns; confirm such notification and any response in your report.
- Interview the person who determined the Subject Person lacked capacity and all interested parties.
- File your report with your recommendation on whether the Subject Person lacks capacity with the Court by the noon deadline and serve a copy of your report on the petitioner(s) and any respondent/objector. Include in your report your fee request and attach to your report (1) a fee affidavit per Rule 88 and (2) a certificate of service.