History of Senate Bill 126

SENATE BILL 126

An Act to repeal 767.115 (1) (b) and 767.115 (4); to renumber 767.265 (6) (a); to renumber and amend 767.045 (6), 767.115 (1) (a) and 767.115 (2); to amend 20.921 (2) (a), 102.27 (2) (a), 767.07 (1), 767.11 (8) (c), 767.115 (title), 767.115 (1m), 767.115 (3), 767.24 (1m), 767.265 (4), 767.265 (6) (c), 814.615 (1) (b) and 814.615 (3); and to create 767.045 (6) (b), 767.085 (2) (c), 767.085 (2m) (a) 3., 767.115 (1) (a) 1., 767.115 (1) (a) 2., 767.115 (1) (a) 3., 767.115 (1) (a) 4., 767.115 (1) (a) 5., 767.115 (1) (a) 6., 767.115 (1) (a) 7., 767.115 (1) (a) 8., 767.115 (1) (bm), 767.115 (2) (b), 767.115 (2) (c), 767.265 (3j) and 767.265 (6) (a) 2. of the statutes; relating to: guardians ad litem, parent education, and parenting plans in actions affecting the family.

2001

04-04. S. Introduced by JOINT LEGISLATIVE COUNCIL.

04-04. S. Read first time and referred to committee on Judiciary, Consumer Affairs, and Campaign Finance Reform 141

2002

02-13. S. Public hearing held.

02-20. S. LRB correction 577

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Wisconsin Counties Association

MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform

FROM: Sarah Diedrick-Kasdorf, Legislative Associate

DATE: February 13, 2002

SUBJECT: Opposition to Senate Bill 126

The Wisconsin Counties Association (WCA) opposes Senate Bill 126 relating to guardians ad litem, parent education and parenting plans in actions affecting the family. Specifically, there are two provisions included in the bill that are of concern to county government: compensation of guardians of litem for indigent parties and parenting plans.

Compensation of guardians ad litem for indigent parties

Under current law, the court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem. If both parties are indigent, the court may order the county of venue to pay the compensation of the guardian ad litem. Under provisions included in Senate Bill 126, if either party is indigent, the court may direct that the county of venue pay the compensation and fees for that party.

Requiring counties to pay a portion of costs associated with guardian ad litem services in cases where only one party is indigent will have a significant fiscal impact on county government, with the potential of forcing service cuts in the office of the clerk of circuit courts. **Counties are currently being asked to cut their budgets and are facing cuts in their shared revenue appropriation. Now is not the time to request counties to take on additional fiscal responsibilities.**

If the legislature feels it is appropriate to pass Senate Bill 126, WCA respectfully requests an increase in the guardian ad litem appropriation paid to counties. The guardian ad litem appropriation, as well as county circuit court support grants, are funded from a court support services fee assessed to individuals at the time of filing an action with the court. This fee generates approximately $3 million more than what is returned to county government to fund the costs associated with operating the state court system. The increased GAL costs to counties could be funded through fee revenue. (The Governor has recommended increasing this fee in the deficit reduction bill to fund state court operations and the state public defender. It is anticipated that the fee increase will generate $8 million.)

100 River Place, Suite 101 ◆ Monona, Wisconsin 53716 ◆ 608/224–5330 ◆ 800/922–1993 ◆ Fax 608/224–5325

Mark D. O'Connell, Executive Director

Craig M. Thompson, Legislative Director

Lynda L. Bradstreet, Administrative Director

Rossmiller, Dan

From: Sappenfield, Anne
Sent: Monday, February 11, 2002 9:33 AM
To: Rossmiller, Dan
Subject: GAL bill

Hi Dan!

You had mentioned a possible amendment to SB 126 that would require mediators to use the factors under s. 767.24 instead of the best interests of the child standard. We had a draft to that effect, but the committee decided not to go forward with it. My notes indicate that the members felt that it would be contrary to the goals of mediation to bring up factors of litigation and that the point of mediation is for the parents to define the issues so that they may come up with an agreement. Judge Kirk suggested that, at most, he would consider adding the phrase "consistent with s. 767.24", but leave the best interests of the child as the standard.

I have no idea what the co-chairs' position would be on an amendment to this effect. I just wanted to let you know the arguments we heard.

Anne Sappenfield
Senior Staff Attorney
WI Legislative Council Staff

STATE BAR of WISCONSIN®
5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Members of the Senate Judiciary, Consumer Affairs and Campaign Finance Reform Committee

From: Atty. Tom Glowacki, Family Law Section

Date: February 13, 2002

Re: Support of Senate Bill 126 – GALs

The Family Law Section supports Senate Bill 126, legislation recommended by the Joint Legislative Council's Special Committee on Guardians ad Litem.

The Special Committee on GALs was directed in 2000 to study the appointment, role, supervision, training and compensation of guardians ad litems. Senate Bill 126 is one outgrowth of the Special Committee's recommendations and includes provisions on GALs and parent education among others.

As participants on the Special Committee and as family law practitioners who work in counties across Wisconsin, the Family Law Section believes the changes outlined in SB 126 will go a long way in clarifying certain issues in current law and assist individuals and their children who find themselves in family law courts.

Major provisions in SB 126 include:

- **Clarifications to Current Law on Guardian ad Litems**. SB 126 includes provisions clarifying how the GAL is to be paid. SB 126 provides the court discretion to direct the GAL to be paid directly, to put payment into an escrow account or to reimburse the county if the county has paid for the GAL.

  The Special Committee discovered that judges and family court commissioners were interpreting current law to require that the GAL collect his/her own fees. However, since the GAL works for the best interest of the child and not for the interests of either party to the action, the Special Committee felt this puts GALs in a difficult position, particularly in situations where one of the parties may not be happy with the end result. The Special Committee recommended that the court be allowed discretion in determining the most appropriate payment mechanism for GAL fees. In addition, some judges will disqualify a guardian ad litem from being reappointed when a case returns to court when the GAL has filed collections proceedings against a parent. That, in turn allows a parent, usually the one who has caused most of the problem, to leverage the replacement of the guardian ad litem.

- **GAL Compensation in Indigent Cases**. Current law, as interpreted by a recent Court of Appeals decision, allows the court to direct the county of venue to pay GAL fees only if *both* parties to an action are indigent. The Special Committee recommended the court be allowed to order the county of venue to pay GAL fees if *either* of the parties are indigent. [Olmsted v. Circuit Court, 2000 Wi. App. 261, 2000 Wisc. App. LEXIS 1111(2000).]

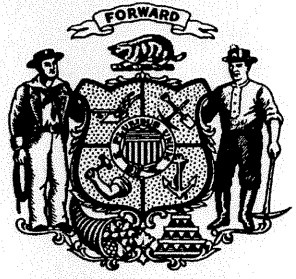
  The Family Law Section believes this change will help in three respects. First, current law imposes a heavy burden on the working poor. When one parent is marginally over the indigency line, that parent is held responsible for the *entire* guardian ad litem fee. This parent, by definition, is either not getting child support from the other parent, or is paying child support to the other parent. Secondly, this may allow the indigent parent to run up guardian ad litem fees as a litigation tactic, knowing that the other parent will feel the full brunt of the GAL fees. Finally, if qualified guardians ad litems are to serve in difficult cases, they do not need additional barriers to being paid. The more experienced GALs often take appointments below their customary hourly rates and additional uncompensated time in collecting lowers the effective hourly rate even more.

- **Income Withholding to Pay Fees.** Current law does not allow the court to order income withholding to reimburse the county or GAL for fees/compensation. SB 126 allows the court to order income withholding to collect GAL or family court counseling fees. It is believed that by allowing the court to order income withholding, the counties will be better able to recoup costs in these situations.

- **Parent Education**. SB 126 includes changes to parent education during the pendency of an action affecting the family in which a minor child is involved. Currently, the court or a family court commissioner ***may*** require such education or training. SB 126 will ***require*** the court to order parties to attend a program which provides training on any number of family law issues. SB 126 allows the court to **not** require parties to attend an educational program if it would cause undue hardship or endanger the health or safety of one of the parties. The court must consider certain factors in making such a determination. Current law also provides these educational programs to be ***up to*** 4 hours. SB 126 provides that these programs must provide ***at least*** 4 hours of instruction.

The Family Law Section believes Senate Bill 126 goes a long way at clarifying current law on Guardian ad Litems and other important issues. The Section believes the above changes will provide more instruction and assistance to individuals who are involved in actions affecting the family and provide judges and family court commissioners better mechanisms to make their decisions.

State of Wisconsin
JOINT LEGISLATIVE COUNCIL



TO: MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY, CONSUMER AFFAIRS, AND CAMPAIGN FINANCE REFORM

FROM: Terry C. Anderson, Director

RE: Hearing on 2001 Senate Bill 126

DATE: February 5, 2002

Enclosed, for your information, is a copy of Wisconsin Legislative Council Report to the Legislature, *Legislation and Petition to Wisconsin Supreme Court on Guardians Ad Litem in Actions Affecting the Family*, RL 2001-04, dated May 7, 2001.

The following recommendation of the Special Committee has been referred to your committee:

> ***2001 Senate Bill 126***, relating to guardians ad litem, parent education, and parenting plans in actions affecting the family.

2001 Senate Bill 126 is scheduled to be considered by your committee at its meeting which will be held on ***Wednesday, February 13, 2002, beginning at 10:30 a.m., in Room 300 Southeast, State Capitol.***

If you have any questions relating to the above report or bill, please feel free to contact Pam Shannon, Senior Staff Attorney, at 266-2680, or Anne Sappenfield, Senior Staff Attorney, at 267-9485.

TCA:wu;jal
Enclosure

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WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE

Legislation and Petition to Wisconsin Supreme Court on Guardians Ad Litem in Actions Affecting the Family

- Senate Bill 126, Relating to Guardians Ad Litem, Parent Education, and Parenting Plans in Actions Affecting the Family
- Petition to the Wisconsin Supreme Court to Amend Rules Relating to Eligibility for Appointment as a Guardian Ad Litem for a Minor

May 7, 2001

RL 2001-04

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LEGISLATION AND PETITION TO THE WISCONSIN SUPREME COURT ON GUARDIANS AD LITEM IN ACTIONS AFFECTING THE FAMILY

Prepared by:
Anne Sappenfield and Pam Shannon, Senior Staff Attorneys
May 7, 2001

CONTENTS

PART I

KEY PROVISIONS OF RECOMMENDATIONS

This part of the report summarizes the key provisions of the two proposals recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council. The following bill was approved for introduction in the 2001-02 Session of the Legislature:

A. SENATE BILL 126, RELATING TO GUARDIANS AD LITEM, PARENT EDUCATION, AND PARENTING PLANS IN ACTIONS AFFECTING THE FAMILY

Key Provisions

1. Clarifies the current statutory provision governing guardian ad litem (GAL) compensation to provide that when parties are ordered to pay GAL compensation, they may be ordered to pay the GAL directly, pay into an escrow account from which the GAL will be paid, or reimburse the county if it has paid the GAL's compensation. Also, allows the court to order the county to pay a GAL's compensation for an indigent party if either party is indigent.

2. Permits a court to order income withholding to collect GAL fees or fees for mediation and custody and physical placement studies.

3. Requires the clerk of court to provide parties with instructions for completing and filing a parenting plan when the parties file a petition or receive a summons for an action affecting the family. Also, provides that a mediator must review the nonfinancial provisions of the parenting plan at the initial session of mediation.

4. Requires parties to file a parenting plan with the court within 60 days after the court waives the requirement that the parties attend mediation or within 60 days after the mediator notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

5. Requires parties to an action affecting the family in which a minor child is involved to attend a parent education program that includes at least four hours of instruction or training on the effects of divorce on a child; working together in the best interest of the child; parenting or coparenting skills; the consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court; available mediation; current law relating to custody and physical placement; current law relating to the duties and responsibilities of a GAL; and the potential costs associated with an action affecting the family.

6. Provides that a court or family court commissioner (FCC) may elect not to order attendance at a parent education program or may order the parties to attend separate sessions of the program if the court or FCC determines that attending the program or attending the program with the other party would cause undue hardship or endanger the health or safety of one of the parties.

7. Provides that the court or FCC may require attendance as a condition to the granting of a final judgment or order in the action, if attendance at the program is ordered. In addition, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend the program.

B. Petition to the Wisconsin Supreme Court to Amend Rules Relating to Eligibility for Appointment as a GAL for a Minor

Key Provisions

1. Requires attorneys who accept appointments as a GAL in actions affecting the family to have received six hours of approved GAL education during the combined current biennial continuing legal education reporting period and the immediately preceding reporting period. Three of the required six hours would be in family court GAL education. In addition, a court could appoint an attorney who has not met this requirement if the court finds that the action or proceeding presents exceptional or unusual circumstances for which the attorney is otherwise qualified by experience or expertise.

2. Specifies that family court GAL education must be on the subjects of: actions affecting the family; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence; and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socioeconomic diversity.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee by a May 18, 2000 mail ballot and appointed the cochairs by a June 13, 2000 mail ballot. The Special Committee was directed to study the GAL system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The review of the appointment of GALs was to include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as GALs. The committee was directed to prepare a report of any recommended legislation and to petition the Wisconsin Supreme Court to consider rules for the reform of the GAL system in actions affecting the family based on the committee's recommendations that are more appropriate for Supreme Court rules.

The membership of the Special Committee, appointed by August 14 and October 12, 2000 mail ballots, consisted of four Senators, three Representatives and 12 Public Members.

A membership list of the Joint Legislative Council is included as **Appendix 2.** A list of the committee membership is included as **Appendix 3.**

B. SUMMARY OF MEETINGS

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

September 13, 2000
October 24, 2000
November 14, 2000
December 12, 2000
January 12, 2001

At the September 13, 2000 meeting, the Special Committee received testimony from J. Denis Moran, Director of State Courts, and Attorney Gretchen Viney, Baraboo. Mr. Moran, accompanied by Pam Radloff, fiscal officer for the Director of State Courts, discussed his office's role in training GALs, the "Through the Eyes of a Child" training program and the Board of Bar Examiners' approval of continuing legal education courses for GALs. Mr. Moran also explained his office's administration of grants to counties for GAL expenditures and answered questions regarding how GALs are reimbursed when parents do not pay. Attorney Viney described her work as a contract GAL in Sauk County. She explained circumstances in which GALs are appointed and noted that each county has its own system for appointing and compensating GALs. Ms. Viney outlined the statutory requirements for GALs in family law cases and the steps she goes through as a GAL in a typical proceeding.

The Special Committee also briefly reviewed a staff brief on GALs in family law cases.

At the October 24, 2000 meeting, the Special Committee received testimony from Judge Gary Carlson and Jean Nuernberger, Coordinator, Family and Juvenile Services, Taylor County Circuit Court, Medford; Attorney Charles Senn, Thorp; Judge Daniel Noonan, Milwaukee County Circuit Court, Milwaukee; Attorney Margaret Wrenn Hickey, Milwaukee; Kathleen Jeffords, Director, Dane County Family Court Counseling Services, Madison; Judge John Albert, Dane County Circuit Court, Madison; and Diane Wolff, Director, Waukesha County Family Court Counseling Services, Waukesha. Judge Carlson explained how he works as a team with Ms. Nuernberger and Attorney Senn in contested family law cases. He explained what he requires of the parties and attorneys in a custody case and distributed materials concerning the median cost of a GAL for a litigated case in Taylor County. Ms. Nuernberger described her work as coordinator of a parenting program on divorce and as a mediator in contested cases. She also explained her role in developing parenting plans, recommending whether GALs are needed in certain cases and conducting home studies. Attorney Senn discussed the need for ongoing training of GALs who are handling family court cases. He also addressed the need for parties to be educated regarding the role of the GAL and the costs of litigation. He also discussed the evaluation of GALs. Judge Noonan discussed the large volume of divorce cases in Milwaukee County, about 50% of which are *pro se* cases. He explained the system for appointing GALs in Milwaukee County and the arrangement the county has with the Legal Aid Society of Milwaukee County for appointing GALs in low-income cases. Attorney Hickey discussed her role as a family law attorney in Milwaukee County and the importance of GALs being attorneys, since the law requires them to be advocates for the best interests of children. Ms. Jeffords explained the parent education program and mediation and custody and placement study services provided by the Dane County Family Court Counseling Services program. She emphasized the importance of GALs being attorneys and recommended additional funding for family court counseling services. Judge Albert discussed his role as a circuit judge handling divorce cases. He noted his opposition to having trained volunteers, rather than attorneys, acting as GALs. He stated the importance of GAL training including training in child development and the need for more accountability for GALs. Ms. Wolff discussed the family court counseling services provided in Waukesha County. She noted the importance of GALs bringing a legal perspective, as opposed to a social work perspective, and their trial advocacy skills, to a case.

The Special Committee also discussed Memo No. 1, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (October 13, 2000).

At the November 14, 2000 meeting, the Special Committee received testimony from Kenneth Waldron, psychologist, Waldron, Kriss and Associates, Middleton; Jan Raz, President, Wisconsin Fathers for Children and Families, Hales Corners; Carol Medaris, staff attorney, Wisconsin Council on Children and Families, Madison; and Attorney Marjorie Schuett, Lathrop and Clark, LLP and Chair, Family Law Section, State Bar of Wisconsin, Madison. Mr. Waldron discussed his work with divorcing families as a psychologist. He stated that GALs would benefit from increased knowledge in several areas, including: child development; understanding the effects of conflict on children, recognizing parents' character disorders; working with mental health professionals, learning how children express preferences; and developing child-focused plans for divorcing families. Mr. Raz cited a number of concerns, including that parenting plans are not used early enough in the court process and that the best interests of the child standard conflicts with the requirement to

maximize placement with each parent. He suggested that GALs not be appointed unless there are special concerns for the welfare of the child and that parents be required to file a parenting plan earlier in the process. He also suggested requiring courts to determine allocation of periods of physical placement by considering the parenting plans and requiring GALs and mediators to use the same legal standards for resolving custody and placement disputes as do court commissioners and judges. Ms. Medaris stated that GALs are very important in contested custody proceedings and that they must be attorneys to balance the representation of the parents' interests with those of their children. She recommended that GALs receive additional training focusing on child development, family systems and trial advocacy, as well as domestic abuse training to heighten GALs' awareness and sensitivity to the effect of domestic abuse on family dynamics. She also recommended that financial and other costs of custody disputes be explained to parents early in the case and that the "best interests of the *poor* child" should be taken into consideration. Ms. Schuett discussed the Family Law Section's efforts on behalf of children and the Section's perspective on the importance of maintaining high standards for GALs. She described various areas in which the Section has supported the Legislature's and the Supreme Court's initiatives to improve the quality of GAL representation and to try to ensure fair results in family law disputes. She noted that the Family Law Section supports continuing education and training for GALs as well as adequate compensation.

The Special Committee discussed the recommendations that had been made to the committee to date, summarized in Memo No. 2, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (November 7, 2000). The committee eliminated some recommendations from further consideration and agreed to discuss others at a subsequent meeting.

At the December 12, 2000 meeting, the Special Committee received testimony from Jennifer Ortiz, Supervising Attorney, Guardian ad Litem Division, and James Brennan, Chief Staff Attorney, Legal Aid Society of Milwaukee, Inc., Milwaukee; Amy O'Neil, Task Force on Family Violence, Milwaukee; and Laurie Jorgensen, Cochair, Justice Committee, Governor's Council on Domestic Abuse, Wausau. Ms. Ortiz discussed the GAL Division's work in representing low-income individuals in family court cases, including serving as GALs for minor teen parents from Milwaukee County. She explained the in-house training provided for GALs by Legal Aid in order to try to address the many different cultural needs of individuals represented. She recommended continuing the practice of using attorneys as GALs and providing training to GALs relating to cultural sensitivity. Mr. Brennan discussed Legal Aid's employment of social workers and training of attorneys to investigate cases and conduct home studies. Ms. O'Neil explained her role as a victim advocate for children in court cases and assisting families in obtaining restraining orders and advocating for children who have been abused or have witnessed abuse. She discussed the importance of GALs in custody cases and the particularly vital role of GALs when domestic abuse or child abuse is present. She emphasized the need for GALs to recognize the dynamics of a child's home life in domestic abuse situations and the importance of training GALs to recognize and understand warning signs of domestic abuse. Ms. Jorgensen explained the work of the Justice Committee in advising the Governor's Council on Domestic Abuse regarding issues in the courts across the state as they relate to victims of domestic abuse. She emphasized the need for GALs to have training in and understanding of the dynamics of domestic violence and the profound impact it has on children, as well as the need for GALs to take threats of violence seriously.

She also addressed the need for a mechanism for accountability when GALs do not fulfill their responsibilities adequately.

The Special Committee discussed Memo No. 3, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (December 5, 2000). The committee discussed issues relating to training for GALs and agreed to include a number of suggested training topics in a letter to the State Bar. The committee also discussed Memo No. 4, *Three Draft Letters* (December 5, 2000), which contained three draft letters prepared at the committee's request. The first letter, addressed to the Cochairs of the Joint Legislative Audit Committee, requested that the Legislative Audit Bureau be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services. The second letter, to Chief Justice Shirley Abrahamson, in her capacity as Chair of the Supreme Court's Judicial Education Committee, requested that that Judicial Education Committee consider including several items relating to GALs in its judicial education program. The third letter, to George Brown, Executive Director, State Bar of Wisconsin, requested that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs. The committee suggested a number of changes in the draft letters to be reviewed at the next meeting of the committee.

The committee also discussed a bill draft, WLCS: 0019/1, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family. The draft: (1) clarified current law to provide that parties ordered to pay GAL compensation may be ordered to pay the GAL directly, pay into an escrow fund from which the GAL will be paid, or reimburse the county if it is paid the GAL's compensation; (2) added a requirement that the four-hour educational program for parties in family law cases on the effects of marriage dissolution must include the viewing of a videotape that addresses the financial and other consequences of contesting legal custody or physical placement and the effects of conflict on children; and (3) required parties to file a parenting plan with the court prior to attending the first session of mediation, with certain exceptions. The committee asked for a redraft of this proposal to include language proposed in a memo from Judge Kirk for items to be covered in parent education. The committee also asked staff to prepare a draft requiring a GAL to describe to the court what he or she considered in making the recommendation regarding the best interest of a child.

At the January 12, 2001 meeting, the Special Committee discussed the three draft letters that were revised following the previous meeting to incorporate members' suggestions. The committee agreed to make additional modifications in the three letters and gave final approval to sending the letters, as modified. The committee then discussed WLCS: 0019/2, a redraft of a previous draft. The committee made a number of modifications to the draft and gave final approval to recommending the draft, as amended and renumbered WLC: 0019/3, to the Joint Legislative Council for introduction. The committee considered WLCS: 0057/1, agreed to incorporate a portion of it in WLC: 0019/3 and rejected the remainder of the draft. The committee also considered a draft petition to the Wisconsin Supreme Court asking for modifications to the Supreme Court's rules regarding GAL training. The committee made a modification and approved the petition, as amended, for submission to the Joint Legislative Council for approval and subsequently, to the Wisconsin Supreme Court. The committee

reviewed and decided not to send a letter to Representative Carol Owens, Chair of the Assembly Family Law Committee, and Senator Gary George, Chair of the Senate Judiciary Committee, regarding child support.

PART III

RECOMMENDATIONS

This part of the report provides background information on, and a description of, the two proposals recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council.

A. SENATE BILL 126

1. Reimbursement of GAL Costs

Background

Current law relating to GAL compensation provides that the court must order either or both parties in an action affecting the family to pay all or any part of the compensation of the GAL. The Special Committee determined that many judges and FCCs are interpreting this provision to require the GAL to collect his or her own fees although many counties prefer to collect the fees for GALs and reimburse them, to eliminate the pressure that a party who is paying the GAL directly may exert. The Special Committee concluded that judges and FCCs should be permitted to require parties to place funds into an escrow account to reimburse the GAL or to order the county to pay the GAL directly and then have the parties reimburse the county.

2. Description of the Bill

The bill specifies that a court order to pay the compensation of a GAL may direct either or both parties to pay the GAL directly, to pay into an escrow fund from which the GAL is reimbursed, or to reimburse the county of venue for payments made by the county to the GAL.

3. Compensation of GALs for Indigent Parties

Background

Under current law relating to GAL compensation, if both parties to an action affecting the family are indigent, the court may direct that the county of venue pay the compensation and fees. Prior to the enactment of 1995 Wisconsin Act 27, the 1995-97 Biennial Budget Act, the court was permitted to direct the county of venue to pay compensation and fees of a GAL if either or both parties were unable to pay. In addition, the court was permitted to direct that any or all parties reimburse the county in whole or in part, for the payment. A recent Court of Appeals decision held that the current statute does not permit a court to order the county to pay a GAL's compensation when only one party to an action affecting the family proceeding is found to be indigent. The court stated that the change in the wording of the statute under Act 27 is a clear signal that the Legislature intended to decrease the number of cases in which counties are ordered to pay for GALs. The court concluded that, as currently drafted, the statute provides that when one party is indigent and the other is not, the court's only option is

to order the nonindigent party to pay the GAL's fees. [*Olmsted v. Circuit Court*, 2000 Wi. App. 261, 2000 Wisc. App. LEXIS 1111 (2000).]

The Special Committee concluded that a court should be permitted to order the county to pay GAL compensation if *either* party is indigent.

The Bill

Under the bill, if either party is indigent, the court may direct that the county of venue pay the GAL compensation and fees for that party.

4. Income Withholding to Pay Fees

Background

Under current law, the court is not permitted to order an income withholding, or "wage assignment," in order to reimburse the county or a GAL for GAL compensation or to collect fees for mediation services or custody and placement studies.

The Special Committee concluded that allowing courts to order income withholding to collect GAL or family court counseling service fees would help counties collect costs they are owed.

The Bill

Under the bill, the court may order an income withholding for the amount of GAL reimbursement in favor of the county or the GAL and against a party or parties responsible for the reimbursement. In addition, a court or FCC may order income withholding for one or both parties in order to collect fees for mediation or a custody and placement study.

5. Parenting Plans

Background

Under current law, in an action affecting the family in which legal custody or physical placement of a child is contested, a party seeking sole or joint legal custody or periods of physical placement must file a parenting plan with the court before any pretrial conference. Unless cause is shown, a party required to file a parenting plan who does not timely file the plan waives the right to object to the other party's plan.

A parenting plan must provide information about questions such as what legal custody or physical placement the parent is seeking, where the parent lives, where the parent works and what hours he or she works, who will provide necessary child care, where the child will go to school, how the child's medical care will be provided and what the child's religious commitment will be, if any. In addition, the parenting plan must discuss how the child's time is proposed to be divided between the two parents and how the parent proposes to resolve disagreements related to matters over which the court orders joint decision-making. Finally, the parenting plan should discuss what child support, family support, maintenance or other income transfer there will be.

Under current law, the parenting plan must be filed with the court before any pretrial conference. Testimony to the Special Committee indicated that there is no definition of pretrial conference and the term is interpreted differently across the state. Also, in some counties, the pretrial conference is considered to be a conference that is held in preparation for a scheduled trial.

The Special Committee discussed that the parenting plan appears to be a good tool in helping parties come to a mutually satisfactory agreement outside of court about custody and placement arrangements. The committee concluded, therefore, that parties should receive information on the parenting plan soon after commencing an action affecting the family.

The Bill

Under the bill, the clerk of court must provide, without charge, to each person filing a petition in an action affecting the family instructions for completing and filing a parenting plan. In addition, a summons in any action affecting the family must be accompanied by instructions, provided without charge by the clerk of court, for completing and filing a parenting plan.

The bill also provides that at the parties' initial session of mediation in an action affecting the family, the mediator must review with the parties the nonfinancial provisions of the parenting plan.

Finally, under the bill, the parenting plan must be filed with the court within 60 days after the court waives the requirement for the parties to attend mediation or within 60 days after the mediator for the parties notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

6. Parent Education

Background

Under current law, at any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or FCC determines that it is appropriate and in the best interests of the child, the court or FCC, on its own motion, may order the parties to attend a program specified by the court or FCC concerning the effects on a child of a dissolution of the marriage. In addition, at any time during the pendency of an action to determine paternity of a child, the court or FCC may order either or both of the parties to attend a program specified by the court or FCC that provides training in parenting or coparenting skills or both.

Current law provides that these programs must be educational rather than therapeutic in nature and may not exceed a total of four hours in length. The parties are responsible for the costs, if any, of attendance at the program.

Under current law, the court or FCC may require the parties to attend an educational program as a condition to the granting of a final judgment or order in the action affecting the family that is pending. A party who fails to attend an educational program as ordered or who fails to pay for the educational program may be proceeded against for contempt of court.

Also under current law, at any time during the pendency of a divorce or paternity action, the court or FCC may order the parties to attend a class as approved by the court or FCC and that addresses such issues as child development, family dynamics, how parental separation affects child development and what parents can do to make raising a child in a separated situation less stressful for the child. The court or FCC may not require the parties to attend such a class as a condition to the granting of the final judgment or order in the divorce or paternity action. However, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend such a class. The parties are responsible for any costs of attending such a class. However, if the court or FCC finds that a party is indigent, any costs that would be the responsibility of that party are paid by the county.

During its deliberations, the Special Committee discussed the importance of educating parties on the effects and consequences of litigation in family court, the financial costs of protracted litigation and the roles and responsibilities of the parties, GALs and attorneys in the cases. The Special Committee concluded that certain changes should be made to current law relating to education programs to better prepare parties for litigation and coparenting after a divorce or other action affecting the family.

The Bill

Under the bill, during the pendency of an action affecting the family in which a minor child is involved, the court or FCC ***must*** order the parties to attend a program specified by the court or FCC that provides instruction on or training in any of the following that the court or FCC determines is appropriate in the particular case:

a. The effects of divorce on a child.

b. Working together in the best interest of the child.

c. Parenting or coparenting skills, or both.

d. The consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court.

e. Available mediation.

f. Current law relating to custody and placement.

g. The provisions of current law relating to the role and responsibilities of the GAL and the duties and responsibilities of a GAL in representing the best interest of a child.

h. The potential costs of an action affecting the family, including the cost of representation by an attorney; mediation fees; legal custody and physical placement study fees; GAL fees and expenses and the fees and expenses of any expert witness ordered to assist the GAL; the costs of mental or physical examinations of a party, if applicable, including the costs for preparing a written report or court testimony; and any other costs, fees or expenses that may be incurred during litigation.

Under the bill, in the discretion of the court or FCC, the parties may not be required to attend an educational program or may be required to attend separate sessions of the program if the court or FCC finds that attending such a program or attending such a program with the other party would cause undue hardship or endanger the health or safety of one of the parties. When making a determination of whether attending a program or attending the program with the other party would endanger the health or safety of one of the parties, the court or FCC must consider evidence that a party engaged in abuse of the child, evidence of interspousal battery or domestic abuse, evidence that either party has a significant problem with alcohol or drug abuse, and any other evidence indicating that a party's health or safety will be in danger by attending a program or by attending the program with the other party.

Under the bill, the educational program must include ***at least*** four hours of instruction or training.

The bill provides that the court or FCC may require the parties to an action affecting the family in which a minor child is involved to attend an educational program as a condition to granting a final judgment or order in an action affecting a family. If the parties were not ordered to attend a program because the court or FCC found that attending the program would cause undue hardship or endanger the health or safety of one of the parties, the court or FCC may not condition the granting of the final judgment or order in the action affecting the family on attending the program.

The bill also provides that the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend an educational program.

B. Petition to the Wisconsin Supreme Court

1. Background

Under current law, a GAL must be an attorney admitted to practice in this state. Current Supreme Court rules govern GAL qualifications. Specifically, under the current rules, a lawyer may not accept an appointment by a court as a GAL unless one of the following conditions has been met: (a) the lawyer has attended 30 hours of approved GAL education at any time since January 1, 1995; (b) the lawyer has attended six hours of approved GAL education during the combined current reporting period at any time he or she accepts an appointment and the immediately preceding reporting period; and (c) the appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

These rules apply to attorneys who accept GAL appointments in proceedings under ch. 48 (the Children's Code), ch. 767 (actions affecting the family) or ch. 938 (the Juvenile Justice Code), Stats. GAL education is approved by the Board of Bar Examiners. The Board approves continuing legal education that the Board determines relates to the role and responsibility of a GAL for a minor in various court proceedings and that is designed to increase professional competence to act as a GAL for a minor.

Various individuals provided testimony to the Special Committee that GALs practicing in family court do not receive adequate training relating to issues that children and

their parents are experiencing during a divorce or other actions affecting the family. The Special Committee concluded that, due to the level of conflict in family law cases, a GAL practicing in family court who has knowledge about child development and family dynamics can better formulate a recommendation to serve a child's best interests. In addition, the Special Committee discussed the importance of such GALs receiving ongoing relevant education in order to effectively represent the best interests of children in family law disputes.

2. The Petition

Under the petition, the Joint Legislative Council, on the unanimous recommendation of the Special Committee on Guardians Ad Litem in Actions Affecting the Family, petitions the Wisconsin Supreme Court to amend current rules relating to eligibility for appointment as a GAL for a minor. The requested modifications only relate to GALs who are appointed in actions affecting the family under ch. 767, Stats. Under the proposed rule change, commencing on July 1, 2002, a lawyer may not accept an appointment by a court as a GAL for a minor in an action or proceeding under ch. 767, Stats., unless one of the following conditions has been met:

a. The lawyer has attended six hours of GAL education during the combined current reporting period at the time he or she accepts an appointment and the immediately preceding reporting period. At least three of the six hours must be in family court GAL education.

b. The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

The proposed rules would also require the Board of Bar Examiners to approve courses of instruction or continuing legal education activities as family court GAL education that are on the subject of proceedings under ch. 767, Stats.; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence, and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socioeconomic diversity.

The petition was filed with the Clerk of the Wisconsin Supreme Court on April 5, 2001. A copy of the petition is included as **Appendix 5**.

C. Other Recommendations

As noted, the Special Committee voted that the Cochairs of the Special Committee send letters to the Cochairs of the Joint Legislative Audit Committee, Chief Justice Shirley Abrahamson, and the State Bar of Wisconsin, as follows:

Item 1 - Letter to Representative Joseph Leibham and Senator Gary George, Cochairs, Joint Legislative Audit Committee, requesting that the Legislative Audit Committee be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services.

Representative Joseph Leibham
Cochair, Joint Legislative Audit Committee
Room 123 West, State Capitol
Madison, WI 53701

Senator Gary George
Cochair, Joint Legislative Audit Committee
Room 118 South, State Capitol
Madison, WI 53701

Dear Representative Leibham and Senator George:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family, which recently concluded its work. The Special Committee was directed to study issues and develop recommendations relating to the appointment, role, supervision, training and compensation of guardians ad litem (GALs) in family law cases. The committee membership list is attached.

Invited speakers testified concerning the adequacy of compensation for GALs, methods of payment for their services and the extent to which counties recoup their costs from parties who are able to pay for GAL services. Some speakers also expressed concerns about variations among the counties in the provision of family court counseling services and noted that inadequate family court counseling services result in greater reliance on GAL appointments than might otherwise be necessary.

At its final meeting on January 12, 2001, the Special Committee voted unanimously to request an audit by the Legislative Audit Bureau on the following subjects:

1. State compensation to counties for the cost of GAL services to persons who are unable to pay, as provided in s. 758.19 (6), Stats.;

2. Recoupment by counties of payments for GAL services from persons who are responsible for those costs and costs that are not reimbursed due to:

   a. Insufficient collection efforts; and

   b. Waiver of reimbursement due to the parties' indigency.

3. Implementation and funding of family court counseling services under s. 767.11, Stats.

COMPENSATION OF GAL COSTS WHERE PARTIES UNABLE TO PAY

Under current law, general purpose revenue is appropriated for grants to counties for costs of GAL compensation incurred by counties in actions affecting the family (under ch. 767, Stats.) that the counties have final legal responsibility to pay or that they are unable to recover from another person. The GAL grant funds are distributed to counties based on the formula in s. 758.19 (6) (c), Stats.

An audit could examine whether the current statutory formula results in compensation to counties that reflects actual costs incurred by the counties in paying for GAL services where the parties are unable to pay.

RECOUPMENT OF COUNTY GAL COSTS WHERE PARTIES ABLE TO PAY

Testimony before the Special Committee indicated that there is variation among the counties in how payments to GALs are handled when the parties are able to pay. Some counties require that GALs collect their fees directly from the parties, without any county involvement. Other counties collect the GAL fees from the parties and then pay the GAL for services provided. Some counties pay the GAL directly and collect money from the parties to recoup their costs. However, it appears that such counties only reimburse GALs at a rate of between $40 and $70 per hour and require GALs who charge a higher fee to collect the fees themselves.

There is some concern that requiring a GAL, who is appointed by the court, to collect his or her own fees from the parties places the GAL in an awkward position, particularly if one or both parties is disgruntled with the GAL's decisions regarding the child or children whose interests the GAL represents. On the other hand, there is concern about the administrative burden on counties of collecting from the parties and paying the GALs, as well as the possibility that counties are not recouping all of their costs from the parties.

An audit could review:

a. How counties currently handle GAL compensation where the parties are able to pay.

b. Whether counties fully recoup payments they make to GALs from parties who are able to pay.

c. Variations in the rate and method of compensation of GALs among the counties.

FAMILY COURT COUNSELING SERVICES

Mediation and custody and placement studies must be made available to families pursuant to s. 767.11, Stats. The services are partially funded by a $20 filing fee to commence an action affecting the family and $25 of the filing fee to show cause for the revision of a legal custody or physical placement order or objection to a parent's move.

Testimony before the Special Committee indicated that counties vary in the provision of family court counseling services and that a number of counties have not established an in-

house family court counseling office, but instead contract with others to provide mediation and conduct custody and placement studies. Inadequate funding for family court counseling services was cited as the primary reason for opting not to offer services directly to parties. The Director of Dane County Family Court Counseling estimated that the current fee structure for family court counseling provides only about 25% of the cost to provide services in Dane County and noted that the $300 statutory fee for a custody study has not been increased since the inception of family court counseling services in 1989.

One of the primary concerns the committee discussed is the extent to which the mediation component of family court counseling services is provided in a timely fashion to all parties, regardless of ability to pay. The committee was interested in whether the provision of timely mediation services reduces the need for custody studies and GAL services and, conversely, whether failure to provide early and efficient mediation leads to increased family court counseling and GAL costs. The committee was particularly concerned that, because of inadequate funding for mediation and custody and placement studies, some parties may wait a long time for services, making it more difficult to resolve disputes without protracted litigation.

An audit could review:

a. Variations in the level and types of family court counseling services provided by the counties.

b. The extent to which counties are using parenting plans [see s. 767.24 (1m)], what form they take and whether use of the plans has resulted in a savings in family court counseling and GAL costs, as compared to the period before use of parenting plans was mandated.

c. A comparison of amounts expended by counties to provide mediation and custody and placement studies to the amounts received by counties from the filing fees described above and state reimbursement, to determine the extent of any funding shortfall experienced by counties in providing these services.

d. The extent, if any, to which the provision of early mediation services has an impact on the number of custody and placement studies ordered and GALs appointed and associated cost savings, if any.

e. The extent, if any, to which timely custody and placement studies impact on the number of GAL's appointed and the associated cost savings of fewer GAL appointments or reduced GAL costs, if any.

f. The extent, if any, to which a county's cost savings associated with fewer GAL appointments affect the total funds expended by that county on family court counseling services.

g. The efficacy of replacing the current flat fees of $200 for mediation (after an initial free session) and $300 for a custody study and instead permitting each county to establish a sliding fee scale based on the parties' ability to pay.

h. The association between early access to mediation and the resolution of disputes in a manner that is cost-effective, timely and likely to avoid post-judgment action.

i. Whether the practice in some counties of requiring payment before mediation occurs precludes low-income parties from obtaining timely mediation.

Thank you for considering the Special Committee's audit request. We would be happy to answer any questions you may have about this request and to testify in favor of the proposed audit before the Joint Legislative Audit Committee.

Sincerely,

Representative Mark Gundrum, Cochair
Special Committee on Guardians Ad Litem
in Actions Affecting the Family

Senator Kim Plache, Cochair
Special Committee on Guardians Ad Litem
in Actions Affecting the Family

Attachment

cc: Janice Mueller, State Auditor

Item 2 - Letter to Chief Justice Abrahamson, Chair of the Wisconsin Supreme Court's Judicial Education Committee, requesting that the Judicial Education Committee consider including several items relating to GALs in its judicial education program.

The Honorable Shirley S. Abrahamson
Chief Justice, Wisconsin Supreme Court
119 Martin Luther King, Jr. Blvd., Suite 101
Madison, WI 53701

Dear Chief Justice Abrahamson:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family. The Special Committee met from September 2000 to January 2001, to study issues and develop recommendations relating to the appointment, role, supervision, training and compensation of guardians ad litem (GALs) in family law cases. The committee membership list is enclosed.

In testimony before the committee, several speakers expressed concern that judges do not always make clear to GALs their expectations of the GAL at the outset of a case. Speakers also noted that the parties in a family law action may not fully understand the role and responsibilities of the GAL and the interests that the GAL represents, namely the best interests of the child or children of the divorcing parties. Finally, speakers and committee members discussed the need for assurances that GALs are performing the work expected of them throughout the course of their representation of a child.

Following discussion of these issues at its final meeting on January 12, 2001, the Special Committee voted unanimously to correspond with you as Chair of the Wisconsin Supreme Court's Judicial Education Committee, to recommend that the committee include in its judicial education programs information on the importance of the judge or family court commissioner: (1) communicating clearly the court's expectations to the GAL at the earliest opportunity in every case; (2) ensuring that the parties understand that the GAL is appointed by the court to represent and advocate for the child's best interests; (3) inquiring of the GAL, during court proceedings, about actions taken and work performed in the matter; and (4) providing feedback on the GAL's performance where the court or family court commissioner deems it appropriate, recognizing the need to respect the rules regarding *ex parte* communications.

We would be happy to discuss this request with you or members or staff of the Judicial Education Committee at your convenience.

Thank you for your consideration of these recommendations.

Sincerely,

Representative Mark Gundrum, Cochair
Special Committee on Guardians Ad Litem
in Actions Affecting the Family

Senator Kim Plache, Cochair
Special Committee on Guardians Ad Litem
in Actions Affecting the Family

Enclosure

cc: Mr. David H. Hass, Director of Judicial Education, and Wisconsin Supreme Court Justices, Wisconsin Supreme Court

Item 3 – Letter to George Brown, Executive Director, State Bar of Wisconsin, requesting that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs.

Mr. George Brown, Executive Director
State Bar of Wisconsin
P.O. Box 7158
Madison, WI 53707-7158

Dear Mr. Brown:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family, which recently concluded its work. The Special Committee was directed to study the guardian ad litem (GAL) system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The committee membership list is attached.

At its final meeting on January 12, 2001 meeting, the Special Committee voted unanimously to correspond with you to request that the State Bar consider several issues in offering services to and providing continuing legal education for attorneys who serve as GALs in family law cases. These issues relate to training, education of parties on the role of the GAL and the experience of a custody or placement dispute, and possible mentoring for new attorneys who accept GAL appointments in family court.

TRAINING OF GALS

Many individuals who testified before the Special Committee offered suggestions for areas in which the training of GALs could be developed or expanded. Because the State Bar offers a great deal of the required continuing legal education specifically targeted at practice as a GAL, we ask that you consider offering training, or in some cases, more training, on the following subjects:

1. Maintaining Impartiality: Although a party may not agree with a GAL's recommendation, he or she should believe that the GAL acted independently and gathered information impartially to assess what is in a child's best interest. The Special Committee recommends that the State Bar offer training that addresses actions that a GAL may take or avoid to assure parties that the GAL is acting independently and avoiding assessing the facts of the case or taking a position based upon personal biases such as gender, socio-economics, religion or race.

2. Issues for children and families experiencing divorce: Concerns were raised to the Special Committee that current training offered to GALs does not offer adequate information on issues affecting children and families during a divorce, including mental health issues. Although committee members recognize that training in trial

advocacy skills is also very important for attorneys who act as GALs, the committee recommends that the State Bar offer further training in areas such as:

- Child development, including how children of different ages process and report information; how children of different ages experience divorce; the needs of children of varying ages to spend time with each parent; and the role of each parent based upon the stage in a child's development.

- How children are affected by conflict and parental alienation.

- How to work with a mental health professional in a case and how and when to recommend that parties or children be assessed by a mental health professional.

- Understanding and appreciating the dynamics and impact of family violence and ensuring safety and maintaining confidentiality in cases in which family violence is an issue.

- Understanding and appreciating the implications of a child's religious background and racial or ethnic heritage and issues of cultural and socio-economic diversity.

- Conflict resolution.

3. Interviewing children: As discussed above, the Special Committee heard testimony regarding the ways children process and report information based upon their age and the effects of any conflict on them. Based on this information, the Special Committee believes it is important that all GALs who practice in family court receive training specific to interviewing children in developmentally appropriate ways.

EDUCATION OF PARTIES

The Special Committee heard testimony from several individuals expressing the concern that parties in a family law dispute are not fully aware of the costs, both financial and psychological, of protracted litigation. In addition, attorneys and judges indicated that many parties do not have an accurate understanding of the role of the GAL and what the GAL may and may not do. It was the consensus of committee members that if parties were better educated in these areas, they would be more likely to resolve disputes early in the process and reduce costs to the parties and taxpayers. In addition, there would be less confusion about and resentment of the legal process and the GAL. Also, parties would be better able to distinguish between proper representation by a GAL, even if they disagree with the GAL's recommendation, and instances in which a GAL is acting improperly.

In response to those concerns, we have corresponded with Chief Justice Shirley Abrahamson in her capacity as chair of the Supreme Court's Judicial Education Committee to request that judicial education programs include information on the importance of judges and family court commissioners ensuring that the parties understand the role and responsibilities of the GAL.

In addition, we request that the State Bar coordinate the production of a videotape that parties would view during their initial parent education session. This video could inform parties of the steps in a contested custody or placement case, the role of the GAL, and what they can expect financially. In addition, the video could describe how the conflict inherent in a custody or placement dispute may affect the parties and their children.

We would also request that the State Bar more widely disseminate the Bar's pamphlet setting forth similar information so that it is available to parties when they file for divorce or attend the initial session of mediation or parent education.

MENTORING

Another issue that judges in particular raised to the Special Committee is that GALs are often young, inexperienced attorneys. Although we believe that additional training would increase the competency of such attorneys, it seems that mentoring by a more experienced GAL would be very beneficial for new attorneys who are planning to accept GAL appointments. Perhaps local bar associations would be in a better position to actually arrange mentors for new attorneys, but we would appreciate any efforts by the State Bar to coordinate mentoring.

Thank you for your consideration of these requests.

Sincerely,

Representative Mark Gundrum, Cochair Special Committee on Guardians Ad Litem in Actions Affecting the Family	Senator Kim Plache, Cochair Special Committee on Guardians Ad Litem in Actions Affecting the Family

Attachment

cc: Marjorie Schuett, Chair, Family Law Section, State Bar of Wisconsin

APPENDIX 1

Committee and Joint Legislative Council Votes

At its January 12, 2001 meeting, the Special Committee voted to recommend WLC: 0019/3 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. At that meeting, the Special Committee also voted to recommend that the Joint Legislative Council petition the Wisconsin Supreme Court to amend current Supreme Court Rules relating to eligibility for GAL appointments. The votes on the draft and the draft petition were as follows:

- WLC: 0019/3, relating to guardians ad litem, parent education and parenting plans in actions affecting the family: Ayes, 13 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek and Screnock); Noes, 0; and Absent, 6 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney, Gemignani and Serlin).

- Petition to the Wisconsin Supreme Court to amend rules relating to eligibility for appointment as a GAL for a minor: Ayes, 14 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek, Screnock and Serlin); Noes, 0; and Absent, 5 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney and Gemignani).

At its March 14, 2001 meeting, the Joint Legislative Council voted to introduce WLC: 0019/3 on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sens. Chvala and Panzer; and Reps. Black and Krug).

The Joint Legislative Council also voted to approve and send the petition to the Wisconsin Supreme Court on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sen. Chvala and Panzer; and Reps. Black and Krug).

WLC: 0019/3 was subsequently introduced as 2001 Senate Bill 126 on April 4, 2001 and was referred to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

The petition was filed with the Clerk of the Wisconsin Supreme Court on April 5, 2001.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL
s. 13.81, Stats.

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This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

APPENDIX 3

GUARDIANS AD LITEM IN ACTIONS AFFECTING THE FAMILY, SPECIAL COMMITTEE ON

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Child Psychologist, Family Therapy Center of Madison, Inc.
700 Rayovac Drive
Madison, WI 53711-2479

STUDY ASSIGNMENT: The Committee is directed to study the guardian ad litem system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of guardians ad litem. The review of the appointment of guardians ad litem shall include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as guardians ad litem. The Committee shall prepare a report of any recommended legislation and shall petition the Wisconsin Supreme Court to consider rules for the reform of the guardian ad litem system in actions affecting the family based on the Committee's recommendations that are more appropriate for supreme court rules. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

19 MEMBERS: 4 Senators; 3 Representatives and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney; Pam Shannon, Senior Staff Attorney; and Julie Learned, Support Staff.

[1] Appointed as a Public Member of the Special Committee by an October 12, 2000 mail ballot.

APPENDIX 4

Committee Materials List

September 13, 2000 Meeting

Staff Brief 00-2, Guardians Ad Litem in Actions Affecting the Family (9-6-00)

October 24, 2000 Meeting

Memo No. 1, Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (10-13-00)

Material submitted by Jan Raz, President, Wisconsin Fathers for Children and Family (10-6-00)

Letter from Robert and Rosemary Albrecht (10-10-00)

November 14, 2000 Meeting

Memo No. 2, Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (11-7-00)

December 12, 2000 Meeting

Memo No. 3, Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family (12-5-00)

Memo No. 4, Three Draft Letters (12-5-00)

WLCS: 0019/1, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family

Draft petition to the Wisconsin Supreme Court

Letter from Joseph Vaughn (11-17-00)

January 12, 2001 Meeting

Memo No. 5, Revised Draft Letters (1-5-01)

WLCS: 0019/2, relating to guardians ad litem, parent education and parenting plans in actions affecting the family

WLCS: 0057/1, relating to mediation and parenting plans in actions affecting the family

Draft letter to Representative Carol Owens and Senator Gary George, relating to child support legislation

Memorandum from Representative Tony Staskunas, WLCS: 0019/1 (1-4-01)

Petition to the Wisconsin Supreme Court

The Joint Legislative Council, on the unanimous recommendation of the Special Committee on Guardians Ad Litem in Actions Affecting the Family, hereby petitions the court to amend SCR 35.01 and create SCR 35.015 and SCR 35.03 (1m) relating to eligibility for appointment as guardian ad litem for a minor.

First, the amendments create new eligibility requirements for attorneys who accept appointments as a guardian ad litem in proceedings under ch. 767, Stats. As amended, the rules would require an attorney to have received six hours of approved guardian ad litem education during the combined continuing legal education reporting period and the immediately preceding reporting period. Three of the required six hours would be in family court guardian ad litem education, as described below. In addition, as under current rules, a court could also determine that an attorney is qualified for a guardian ad litem appointment. The provision under which an attorney may accept appointments if he or she had attended 30 hours of guardian ad litem education would, therefore, apply only to attorneys accepting guardian ad litem appointments in proceedings under ch. 48 or 938, Stats. This change is requested because the Special Committee concluded that attorneys practicing as guardians ad litem should receive ongoing relevant education in order to effectively represent the best interests of children in family law disputes.

The second amendment would specify the elements of guardian ad litem education that an attorney acting as a guardian ad litem in family court must receive. The rationale for this change is that, due to the level of conflict in family law cases for which a guardian ad litem is appointed, the committee concluded that a guardian ad litem with knowledge about child development and family dynamics could better formulate a recommendation to serve a child's best interests.

The committee requests that SCR 35.01 (intro.) be amended to read:

> Commencing on July 1, 1999, a lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 48~~, 767~~ or 938 of the statutes unless one of the following conditions has been met:

The committee requests that SCR 35.015 be created to read:

> Commencing on July 1, 2002, a lawyer may not accept an appointment by a court as a guardian ad litem for a minor in an action or proceeding under chapter 767 of the statutes unless one of the following conditions has been met:
>
> (1) The lawyer has attended 6 hours of guardian ad litem education approved under SCR 35.03 during the combined current reporting period specified in SCR 31.01 (7) at the time he or she accepts an appointment and the immediately preceding reporting period. At

least 3 of the 6 hours shall be family court guardian ad litem education approved under SCR 35.03 (1m).

(2) The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

The committee requests that SCR 35.03 (1m) be created to read:

(1m) The board of bar examiners shall approve courses of instruction or continuing legal education activities as family court guardian ad litem education that are on the subject of proceedings under chapter 767 of the statutes; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence; and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socio-economic diversity. The board of bar examiners may only approve courses of instruction or continuing legal education activities that are conducted after July 1, 2001.

Respectfully submitted this day of April 5, 2001

Fred A. Risser

Senator Fred A. Risser, Co-Chair
Joint Legislative Council

Kitty Rhoades

Representative Kitty Rhoades, Co-Chair
Joint Legislative Council

SUMMARY OF TESTIMONY BEFORE THE SENATE COMMITTEE ON JUDICIARY ON 2001 SENATE BILL 126, FEBRUARY 13, 2002

Michael D. Onheiber, Family Court Commissioner (Jefferson County)
Barbara McCroy, Family Court Commissioner (Rock County)

We appear individually and on behalf of the Wisconsin Family Court Commissioners' Association (WFCCA), both to communicate the formal action taken by the WFCCA on the recommendations of the Special Committee On Guardians *Ad Litem* in Actions Affecting the Family (now before you in the form SB 126) and to provide our individual views of the key provisions of the bill. Commissioner Onheiber, having served as a member of the Special Committee, formally presented the committee report to our 87 member organization at our 2001 Spring Conference in Wausau. Following that presentation, and discussion of the committee report, the WFCCA voted its overwhelming support for the passage of this legislation. The WFCCA recognizes and supports the invaluable role of the G.A.L. in the family court system. The above-noted vote of support evinces a statewide consensus among commissioners, who on a daily basis deal directly with the myriad problems faced by family court litigants, that the recommendations contained in the committee report will preserve and enhance the important function of the G.A.L., and improve provisions for training and supervision of attorneys practicing as G.A.L.

- **The Role and Responsibility of the G.A.L.**

Section 767.045(4) clearly defines the nature of the G.A.L. role, setting out its scope and limitations. The G.A.L. must function as an independent attorney for a party, on behalf of the child's best interests. The G.A.L. has no greater powers than any other attorney (but no lesser either) and is not a "decision maker" nor granted any dispensation from the rules of ethics and conduct governing all attorneys. The G.A.L. dose not have any of the powers of a general guardian. SB 126 does not seek to radically alter the core concept of a G.A.L.

We, and the WFCCA strongly endorse the clear consensus of the Special Committee concerning the definition of a G.A.L. It has been recognized and developed in case law and statute over many decades. We believe that maintaining a high standard and providing for continued improvement in G.A.L. practice lies in adherence to the rules and principles developed by the courts and legislature over generations, not in redefining the G.A.L.

There are several essential functions the G.A.L. must perform in carrying out his or her duties as an independent lawyer for the best interests of the child. First, the G.A.L. must determine what investigation of the case is needed, and then conduct that investigation. As an attorney, the G.A.L. must assess the information obtained and witnesses interviewed, to make an informed judgment of the disposition that will best serve the child's interests. The effective G.A.L. then shares that analysis, and the essential material upon which it is based, with the other attorneys (or pro se parties) in a constructive (and often successful) effort to settle or narrow the dispute. When issues remain for trial or hearing, the G.A.L. can be effective only by preparing and presenting evidence.

Testimony was presented to the Special Committee based on individual unsatisfactory experiences with guardians *ad litem.* These experiences ranged from insufficient attention to the case, to excessive time spent on a case, to just plain poor performance in a variety of ways. Such anecdotes are undoubtedly based on actual experiences. Attorneys serving as G.A.L. are human beings - not perfect beings, and some will do excellent work, many very good work, and a few may perform below standard. The best solution in any individual case to poor legal work by the G.A.L., however, is good legal work by the other attorneys (or pro se parties) involved. For example, if key evidence of the child's adjustment to school and each parent's role with regard to it has been ignored by the G.A.L., when such evidence is presented in court by the others involved, it is not likely to be missed by the judge or court commissioner. Nor is such poor performance likely to result in future appointments of that individual. Beyond that, behaviors meriting the G.A.L.'s removal can be brought to the attention of the court by motion, and behaviors meriting professional discipline may be pursued through the appropriate channel. The existence of this reality, however, does not establish that the vast majority of attorneys serving throughout this state are guilty of such conduct. Much less does it merit revamping the long established Wisconsin law providing independent legal advocacy for children whose welfare and interests are directly and sometimes dramatically affected by the decisions the court is called upon to make.

Having stated our strong support for the core concept of a G.A.L. under longstanding Wisconsin law - we do not (nor does the membership of the WFCCA) believe there is no room for improvement. The specific measures recommended by the Special Committee and contained in SB 126 make important contributions in that direction. They should be enacted, in our view. We add, however, that no legislation, however well conceived and crafted, can by itself result in effective and efficient performance in individual cases. There is simply no substitute for the court's exercise of sound discretion in making appointments, and requiring, by its rulings, the G.A.L. to comply with high standards of performance.

- **Commencement and Termination of the Appointment**

Whenever the welfare and best interests of the child will be directly and seriously affected by the outcome of the issues placed before the court, such as legal and physical custody, and paternity of a marital child, appointment of a G.A.L. is required. However, it need not be made immediately upon the appearance of each issue. For example, in custody and physical placement cases, the appointment need not be made until mediation efforts required under sec. 767.11(12) have been tried and have been unsuccessful. It is then required (with limited exceptions). Earlier appointment, if appropriate, is not precluded.

Under sec. 767.045(5), the appointment terminates, automatically, upon entry of a final order or upon termination of an appeal in which the G.A.L. elects or is ordered to participate. The court may continue the appointment for a period of time beyond entry of the final orders, but if so must specify the scope of responsibility during that extended appointment.

SB 126 does not seek to prescribe or limit the time for commencement and termination of the appointment. We concur with the Special Committee that current law is well balanced. It requires the court to determine, based on the individual case, whether an early appointment may be urgently needed or in any event may be more cost effective than deferring the appointment. By permitting an early appointment if needed, but otherwise deferring the appointment until mediation is concluded, the law allows the court to address the needs of the individual case, rather than impose "cookie cutter" orders that may be either too late or premature.

- **Qualifications, Training and Supervision**

The only statutory requirements are that the G.A.L. must be admitted to the practice of law and may not be a party or relative of party and may not represent a party in the proceeding. The requirement of admission to practice law goes to the core definition of the G.A.L., and we clearly support its continuation for the reasons noted above. Although the other recommendations of the Special Committee as to qualifications, training and supervision were directed to the Supreme Court and the State Bar and therefore are not directly entailed in SB 126 - we note our agreement with those recommendations, and are pleased that the Supreme Court has amended SCR 35 accordingly. (Effective July 1, 2003, a lawyer accepting G.A.L. appointments must have completed 6 hours of G.A.L. continuing education, at least 3 of which must be family court G.A.L. programs approved under SCR 35.03(1m) (with limited exceptions). The Board of Bar Examiners is required to approve G.A.L. law school courses and CLE programs addressing G.A.L. education and training on specified topics particulary pertinent to family law.

- **Compensation**

Compensation is addressed generally in sec. 767.045(6). The rate of G.A.L. compensation is governed by *Friedrich v. Dane County Circuit,* under which public defender rates apply, subject to the higher rate established by Supreme Court Rule (presently, $70 per hour) if required to retain qualified and effective counsel. Under the combined effect of the 1995 amendment of sec. 767.045(6) and the recent case of *Olmsted v. Circuit Court for Dane County,* the court may not order payment by the county of venue for an indigent party unless the other party is also indigent. Some counties read *Olmsted* to also preclude advancement of funds, in any form, by the county even if subject to ongoing reimbursement from the parties. SB 126 would cure problems for the courts and unfairness for the parties resulting from the *Olmsted* case.

The legislation would allow counties a variety of options in structuring the method of G.A.L. compensation. The court could order the parties to pay the G.A.L. directly, and fully, depositing the required retainer and paying outstanding balances as due. The court could also require such full, immediate payment, but into an escrow fund, thus insulating the G.A.L. from collection requirements and disputes. This would eliminate an unnecessary opportunity for inappropriate pressure on the G.A.L., potentially compromising impartiality or at least its appearance, and thus undermining the important settlement role of the G.A.L. Moreover, placing the G.A.L. in the role

of collector will probably dissuade well-qualified attorneys otherwise willing to serve in this difficult and essential role at the very much sub-standard rate of $50-$70 per hour.

Under current law, if a party is indigent, the entire cost of the G.A.L. is automatically shifted to the other party. This provides the non-paying party with an incentive to litigate, and to do so in ways that increase the paying party's burden. Similarly, if the costs at issue include, in addition to a substantial retainer for the G.A.L., significant deposits for the custody study and other substantial costs associated with it (such as psychological evaluation fees) the sums involved may be beyond the party's immediate ability to pay from ongoing income and assets. In such cases, a party who may well be able to pay some deposit and significant monthly payments to reimburse county outlays may have to be found "indigent" and the entire financial burden is thus shifted to the public, with no reimbursement allowed, even though it is financially feasible for the parties to pay in that fashion. While the 1995 amendment to sec. 767.045(6) was clearly intended to reduce county outlays for G.A.L. fees, we doubt that the above noted effects were either foreseen or intended. We strongly urge their correction by adoption of the Special Committees' proposal to allow the court to order payment by the county for an indigent party. We similarly agree that the term "payment" should not be so rigidly defined as to prohibit advancement of fees and costs by the county subject to ongoing reimbursement from the parties, through wage assignment.

- **Parent Education**

We support the SB 126 provisions requiring the court (rather than just permitting it) to order parent education, and empowering the court to deny a final hearing until parent education requirements have been fulfilled. We further support the SB 126 proposed change to make the four hours for such programs a minimum, rather than a maximum. These programs are inexpensive and have been well received by most litigants and attorneys. They are an effort to reduce initial and post-judgment custody litigation, thereby reducing the need for G.A.L. appointments.

- **Parenting Plans**

Presently, parenting plans must be filed with the court prior to any pre-trial conference. That term is nether well defined nor is there an inherent reason to delay the parenting plan that long. Rather, its intent - to encourage settlement and in any event to encourage detailed planning by each parent (as opposed to general posturing on custody issues) - will be well served by moving the requirement up in time.

- **Family Court Counseling Services**

Payment of FCCS custody study and mediation fees is not currently authorized by income withholding. SB 126 permits this. We support it.

STATE BAR of WISCONSIN®
5302 Eastpark Blvd.
P.O. Box 7158
Madison, WI 53707-7158

MEMORANDUM

To: Members of the Senate Judiciary, Consumer Affairs and Campaign Finance Reform Committee

From: Atty. Tom Glowacki, Family Law Section

Date: February 13, 2002

Re: Support of Senate Bill 126 – GALs

The Family Law Section supports Senate Bill 126, legislation recommended by the Joint Legislative Council's Special Committee on Guardians ad Litem.

The Special Committee on GALs was directed in 2000 to study the appointment, role, supervision, training and compensation of guardians ad litems. Senate Bill 126 is one outgrowth of the Special Committee's recommendations and includes provisions on GALs and parent education among others.

As participants on the Special Committee and as family law practitioners who work in counties across Wisconsin, the Family Law Section believes the changes outlined in SB 126 will go a long way in clarifying certain issues in current law and assist individuals and their children who find themselves in family law courts.

Major provisions in SB 126 include:

- **Clarifications to Current Law on Guardian ad Litems**. SB 126 includes provisions clarifying how the GAL is to be paid. SB 126 provides the court discretion to direct the GAL to be paid directly, to put payment into an escrow account or to reimburse the county if the county has paid for the GAL.

  The Special Committee discovered that judges and family court commissioners were interpreting current law to require that the GAL collect his/her own fees. However, since the GAL works for the best interest of the child and not for the interests of either party to the action, the Special Committee felt this puts GALs in a difficult position, particularly in situations where one of the parties may not be happy with the end result. The Special Committee recommended that the court be allowed discretion in determining the most appropriate payment mechanism for GAL fees. In addition, some judges will disqualify a guardian ad litem from being reappointed when a case returns to court when the GAL has filed collections proceedings against a parent. That, in turn allows a parent, usually the one who has caused most of the problem, to leverage the replacement of the guardian ad litem.

- **GAL Compensation in Indigent Cases.** Current law, as interpreted by a recent Court of Appeals decision, allows the court to direct the county of venue to pay GAL fees only if *both* parties to an action are indigent. The Special Committee recommended the court be allowed to order the county of venue to pay GAL fees if *either* of the parties are indigent. [Olmsted v. Circuit Court, 2000 Wi. App. 261, 2000 Wisc. App. LEXIS 1111(2000).]

  The Family Law Section believes this change will help in three respects. First, current law imposes a heavy burden on the working poor. When one parent is marginally over the indigency line, that parent is held responsible for the *entire* guardian ad litem fee. This parent, by definition, is either not getting child support from the other parent, or is paying child support to the other parent. Secondly, this may allow the indigent parent to run up guardian ad litem fees as a litigation tactic, knowing that the other parent will feel the full brunt of the GAL fees. Finally, if qualified guardians ad litems are to serve in difficult cases, they do not need additional barriers to being paid. The more experienced GALs often take appointments below their customary hourly rates and additional uncompensated time in collecting lowers the effective hourly rate even more.

- **Income Withholding to Pay Fees.** Current law does not allow the court to order income withholding to reimburse the county or GAL for fees/compensation. SB 126 allows the court to order income withholding to collect GAL or family court counseling fees. It is believed that by allowing the court to order income withholding, the counties will be better able to recoup costs in these situations.

- **Parent Education**. SB 126 includes changes to parent education during the pendency of an action affecting the family in which a minor child is involved. Currently, the court or a family court commissioner ***may*** require such education or training. SB 126 will ***require*** the court to order parties to attend a program which provides training on any number of family law issues. SB 126 allows the court to **not** require parties to attend an educational program if it would cause undue hardship or endanger the health or safety of one of the parties. The court must consider certain factors in making such a determination. Current law also provides these educational programs to be ***up to*** 4 hours. SB 126 provides that these programs must provide ***at least*** 4 hours of instruction.

The Family Law Section believes Senate Bill 126 goes a long way at clarifying current law on Guardian ad Litems and other important issues. The Section believes the above changes will provide more instruction and assistance to individuals who are involved in actions affecting the family and provide judges and family court commissioners better mechanisms to make their decisions.

Patricia Wathen
538 Evergreen Ave.
Madison. WI 53704

February 13, 2002

Re SB126

Dear Committee Members:

I am very disappointed that SB 126 does not address the abuses by GALs. I attented some of the Leg Council's public hearings and I know the abuses were brought forward. I have included some information about how these problems have been handled in other states. I would hope that Wisconsin would address this issues as well.

Patricia Wathen

Guardian ad Litem Grievance Procedures (Cite as WCGAL)

To print the Guardian ad Litem Grievance Procedures Rules, click here.

WCGAL 7.1
Guardian ad Litem Advisory Committee

The Court's Guardian ad Litem Advisory Committee, hereinafter referred to as the "Committee," will administer complaints about guardians ad litem.

[Effective 9/1/00]

WCGAL 7.2
Submission of Complaints

All complaints must be in writing and must be submitted to the Superior Court Administrator. All complaints must bear the signature, name and address of the person filing the complaint.

[Effective 9/1/00]

WCGAL 7.3
Review of Complaint

Upon receipt of a written complaint, the Court Administrator shall convene the Committee to review the complaint. Upon review of the complaint, the Committee shall either:

(a) Make a finding that the complaint is with regard to a case then pending in the court and decline to review the complaint and so inform the complainant. In such instances the Committee shall advise the complainant that the complaint may only be addressed in the context of the case at bar, either by seeking the removal of the guardian ad litem or by contesting the information or recommendation contained in the guardian ad litem's report or testimony. In such cases the Committee and its members shall perform its role in such a manner as to assure that the trial judge remains uninformed as to the complaint; or

(b) Make a finding that the complaint has no merit on its face, and decline to review the complaint and so inform the complainant; or

(c) Make a finding that the complaint appears to have merit and request a written response from the Guardian ad Litem within 10

business days, detailing the specific issues in the complaint to which the Committee desires a response. The Committee shall provide the Guardian ad Litem with a copy of the original complaint. In considering whether the complaint has merit, the Committee shall consider whether the complaint alleges the Guardian ad Litem has:

(1) Violated a code of conduct;

(2) Misrepresented his or her qualifications to serve as a Guardian ad Litem;

(3) Breached the confidentiality of the parties;

(4) Falsified information in a report to the court or in testimony before the court;

(5) Failed, when required, to report abuse of a child;

(6) Communicated with a judicial officer ex-parte concerning a case for which he or she is serving as a guardian ad litem;

(7) Violated state or local laws or court rules; or,

(8) Taken or failed to take any other action which would reasonably place the suitability of the person to serve as a Guardian ad Litem in question.

[Effective 9/1/00]

WCGAL 7.4
Response and Findings

(a) Upon receipt of a written response to a complaint from the Guardian ad Litem, the Committee shall make a finding as to each of the specific issues in the complaint to which the Committee desires a response, as delineated in the Committee's letter to the Guardian ad Litem. Such findings shall state that either there is no merit to the issue based upon the Guardian ad Litem's response or that there is merit to the issue.

(b) The Committee shall have the authority to issue a written admonishment, a written reprimand, refer the Guardian ad Litem to additional training, or recommend to the Presiding Judge that the Court suspend or remove the Guardian ad Litem from the registry. In considering a response, the Committee shall take into consideration any prior complaints that resulted in an admonishment, reprimand, referral to training, or suspension or removal from a registry. If a Guardian ad Litem is listed on more than one registry, the suspension or removal may apply to each registry the Guardian ad Litem is listed on, at the discretion of the Committee.

(c) The complainant and the Guardian ad Litem shall be notified in writing of the Committee's decision following receipt of the Guardian ad Litem's response.

[Effective 9/1/00]

WCGAL 7.5
Confidentiality

(a) A complaint shall be deemed confidential for all purposes unless the committee has determined that it has merit under WCGAL 7.4, above.

(b) Any record of complaints filed which are not deemed by the committee to have merit shall be confidential and shall not be disclosed except by court order.

[Effective 9/1/00]

WCGAL 7.6
Complaint Processing Time Standards

(a) Complaints shall be resolved within twenty-five (25) days of the date of receipt of the written complaint if a case is pending.

(b) Complaints shall be resolved within sixty (60) days of the date of receipt of the written complaint if the complaint is filed subsequent to the conclusion of a case.

[Effective 9/1/00]

WCGAL 7.7
Removal from Registry

(a) When a guardian ad litem is removed from the court's registry pursuant to the disposition of a grievance hereunder, the Court Administrator shall send a notice of such removal to the Office of the Administrator for the Courts.

(b) When the Court Administrator receives notice from the Office of the Administrator for the Courts that a guardian ad litem on the court's registry has been removed from the registry of any other Washington Superior Court the Administrator shall advise the Presiding Judge of such removal.

[Effective 9/1/00]

Superior Court; Courthouse Suite 301, 311 Grand Avenue, Bellingham, WA 98225 USA
Telephone: (360) 676-6777; Fax for judge's copies: (360) 676-6693
(Fax filing of legal documents is not authorized).