

**1977 Assembly Bill 1078**

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**CHAPTER 299, Laws of 1977**

AN ACT to amend 48.02 (8), 55.06 (6), 247.045, 256.48 (1), 803.01 (3) (a) and 880.33 (2) (a); and to repeal and recreate 879.23 (4) of the statutes, relating to the appointment of guardians ad litem when a minor or incompetent has an interest in an estate that is unlikely to exceed \$1,000 in value.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 48.02 (8) of the statutes is amended to read:

48.02 (8) "Guardian ad litem" means a person appointed to protect the interest of a minor or an incompetent in a particular court proceeding under this chapter. ~~He~~ The guardian ad litem has none of the rights of a general guardian. ~~He~~ The guardian ad litem shall be an attorney admitted to practice in this state, shall be appointed in the manner provided for appointment of guardians ad litem in county court, and shall be allowed reasonable compensation to be paid by the county in which the proceeding is held, on order of the court.

SECTION 2. 55.06 (6) of the statutes is amended to read:

55.06 (6) Section 880.33 (2) applies to all hearings under this chapter except for transfers of placement under sub. (9) (b), (c) and (e). A person to be protected shall have a guardian ad litem who is an attorney appointed in accordance with s. 256.48 (1) present at all hearings under this chapter if the person does not have full legal counsel. The court may, however, excuse a personal appearance by a guardian ad litem based on information contained in a written report by ~~such person~~ the guardian ad litem to the court. If the person is indigent, the county of legal settlement shall be liable for guardian ad litem fees. The subject individual, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including any person making an evaluation or review under sub. (8) (c).

SECTION 3. 247.045 of the statutes, as affected by chapter 105, laws of 1977, is amended to read:

**247.045 Guardian ad litem for minor children.** In any action for an annulment, divorce, legal separation or other action affecting marriage, when the court has reason for special concern as to the future welfare of the minor children, and in all actions affecting marriage where the custody of such children is contested, the court shall appoint ~~a~~ an attorney admitted to practice in this state as guardian ad litem to represent such children as to custody, support and visitation. The guardian ad litem shall be an advocate for the child and consider the factors under s. 247.24. If a guardian ad litem is appointed, the court shall direct either or both parties to pay the fee of the guardian ad litem, the amount of which fee shall be approved by the court. In the event of inability to pay on the part of either or both parties the court, in its discretion, may direct that the fee of the guardian ad litem, in whole or in part, be paid by the county of venue, and may direct either party to reimburse the county, in whole or in part, for such payment.

SECTION 4. 256.48 (1) of the statutes is amended to read:

256.48 (1) ~~In~~ Except as provided in s. 879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state and shall be allowed reasonable compensation for ~~his~~ the services, reasonable compensation to be such as is customarily charged by attorneys in this state for comparable services. If the attorney of record is also the guardian ad litem, ~~he~~ the attorney shall be entitled only to attorney fees and shall receive no compensation for ~~his~~ services as guardian ad litem.

SECTION 5. 803.01 (3) (a) of the statutes is amended to read:

803.01 (3) (a) *Appearance by guardian or guardian ad litem.* If a party to an action or proceeding is a minor, or if the court has reason to believe that a party is mentally incompetent to have charge of the party's affairs, the party shall appear by an attorney, by the general guardian of the party's property who may appear by attorney or by a guardian ad litem who is may appear by an attorney. A guardian ad litem shall be appointed in all cases where the minor or incompetent has no general guardian of property, or where the general guardian fails to appear and act on behalf of the ward or incompetent, or where the interest of the minor or incompetent is adverse to that of the general guardian. Except as provided in s. 807.10, if the general guardian does appear and act and the interests of the general guardian are not adverse to the minor or incompetent, a guardian ad litem shall not be appointed. ~~Where~~ Except as provided in s. 879.23 (4), where the interests of the minor or

mentally incompetent person are represented by an attorney of record the court shall, except upon good cause stated in the record, appoint that attorney as the guardian ad litem.

SECTION 6. 879.23 (4) of the statutes is repealed and recreated to read:

879.23 (4) WHO MAY SERVE. (a) Except as provided in par. (b) or (c), the guardian ad litem appointed under this section shall be either an attorney admitted to practice in this state or a parent or child of the minor or incompetent to be represented by the guardian ad litem. A parent or child of the person to be represented may be appointed the guardian ad litem under this section only if the court finds either that the prospective guardian ad litem is an attorney admitted to practice in this state or is otherwise suitably qualified to perform the functions of the guardian ad litem.

(b) In matters relating to the probate of an estate in which a minor has an interest that is unlikely to exceed \$1,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If no parent of the minor is qualified and willing to serve as guardian ad litem, the guardian ad litem shall be an attorney as provided in par. (a).

(c) In matters relating to the probate of an estate in which an incompetent has an interest that is unlikely to exceed \$1,000 in value, the guardian ad litem shall be a surviving parent, unless the court finds that no surviving parent is qualified and willing to serve as the guardian ad litem. If the court finds that no surviving parent is qualified and willing to serve, the guardian ad litem shall be an adult child of the incompetent, unless the court finds that no adult child of the incompetent is qualified and willing to serve as the guardian ad litem. If the court finds that neither a parent nor an adult child of the incompetent is qualified and willing to serve as the guardian ad litem, the court shall appoint an attorney as provided in par. (a).

(d) The guardian ad litem may be allowed reasonable compensation and may be allowed reimbursement for necessary disbursements, the amount of which shall be set by the court and paid out of the estate.

SECTION 7. 880.33 (2) (a) of the statutes, as affected by chapters 29 and 187, laws of 1977, is amended to read:

880.33 (2) (a) The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of a an attorney as guardian ad litem in accordance with s. 256.48 (1) and may in addition require representation by full legal counsel if the guardian ad litem or the proposed incompetent requests or if the interests of justice so require. If the person requests but is unable to obtain counsel, the court shall refer the person to the state public defender for an indigency determination and appointment of counsel under ch. 977. If the person is indigent, the county of legal settlement shall be liable for guardian ad litem fees if any. The proposed ward shall have the right to a trial by a jury of 6 persons, if demanded by the person, attorney or guardian ad litem. The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal to the court of appeals on proper application.