



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

TO: MEMBERS OF THE STUDY COMMITTEE ON MINOR GUARDIANSHIPS

FROM: Steve McCarthy and Amber Otis, Staff Attorneys

RE: Potential Discussion Points for August 28, 2018 Meeting

DATE: August 24, 2018

Below are some discussion points identified by Legislative Council committee staff regarding the most recent State Bar working group bill draft, LRB-0921/P5, that the committee may wish to consider at its August 28 meeting. The list below is not intended to be exhaustive, but rather, is intended to serve as a vehicle for directing committee discussion.

COMMITTEE SCOPE

The committee may want to consider whether any action it takes or legislation it recommends falls within the Study Committee's charge.

- The bill draft makes changes to types of guardianships other than private minor guardianships. Is this the committee's intent? Does the committee's charge authorize such changes?
- The bill draft places private minor guardianships in ch. 48, Stats. In order to avoid unintended application of any committee legislation, should the committee consider whether placement of the private minor guardianship laws is more appropriate in another part of the statutes, such as ch. 54, Stats., or a subchapter within ch. 48, Stats.?
- The bill draft adds several cross-references to the Wisconsin Indian Child Welfare Act throughout ch. 48, Stats., including some provisions that do not apply to private minor guardianships. Do such changes fall within the committee's scope? Are these changes better suited for the Special Committee on State-Tribal Relations?

MINOR GUARDIANSHIP PROCEDURES AND STANDARDS CREATED BY THE BILL DRAFT

Section 25 of the bill draft provides new standards and procedures for private minor guardianships and, therefore, contains much of the new material proposed by the State Bar

working group. The committee may want to consider whether any clarifying changes should be made to those proposed procedures and standards.

- The bill draft's language for certain notice requirements generally mirrors current law, except that it does not include any consequences for failing to comply with notice requirements. Is this consistent with the committee's intent?
- Under the bill draft, a court has the discretion to order an investigation to determine whether the child is a proper subject for guardianship and whether the proposed guardian is suitable. The bill draft provides that the parents of the child and the proposed guardian must reimburse the person conducting the investigation based on their ability to pay. Should the committee retain this language? Could any modifications be made to the language, such as requiring a petitioner to acknowledge that they may be required to reimburse the person conducting the investigation?
- Should the results of the investigation be added to the list of dispositional factors the court must consider?
- The bill draft creates language relating to modification of guardianship orders that does not exist under current law. Is the language in the bill draft consistent with the committee's intent?

INCORPORATION OF *BARSTAD* STANDARD

The committee may want to consider whether the bill draft adequately incorporates the constitutional principles applicable to minor guardianships.

- *Barstad* included a nonexhaustive list of "compelling reasons" that "drastically affect the welfare of the child," and give cause to appointing a guardian in a contested case. Should this language be incorporated into the bill draft?
- *Barstad* requires a bifurcated procedure in which the court must first find either parental unfitness or inability, or the existence of "compelling reasons" before it may consider whether appointing a guardian is in a child's best interest. The committee could consider whether the bill draft adequately incorporates this procedure.
- The Legislative Council Study Committee Memorandum titled "Information in Response to Members' Requests at Meeting on July 24, 2018" discusses the application of the *Barstad* standard in proceedings to terminate a guardianship. The committee could consider whether to modify the bill draft based on the arguments presented in the memorandum.
- The bill draft requires a parent petitioning for termination of a guardianship to allege certain facts that are not required to be alleged under *Barstad*. Though the bill draft requires these additional facts to be alleged, it does not require the court to make a finding other than whether the parent is unfit, unable, or whether compelling reasons

exist why the guardianship should not be terminated. Is this consistent with the committee's intent?

- It appears that the bill draft does not require a finding of parental unfitness or inability, or the existence of "compelling reasons" before it may appoint a limited or temporary guardian. Does *Barstad* require such a finding be made before a limited or temporary guardian may be appointed?

GUARDIAN AD LITEM (GAL) DUTIES

Based on presentations and discussion at the committee's first meeting, the committee may want to discuss whether any changes should be made to the bill draft's treatment of the role and duties of the GAL.

- Does the bill draft properly outline the role and duties of the GAL in a private minor guardianship?
- The Legislative Council Study Committee Memorandum titled "Information in Response to Members' Requests at Meeting on July 24, 2018" discusses GAL appointment and duties in private minor guardianships in other states. Are there any provisions under other states' laws that should be implemented in Wisconsin?

SM:AO:ksm