



Sen. Richard J. Winkel Jr.

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09400HB0360sam001

LRB094 02474 LCB 45260 a

1 AMENDMENT TO HOUSE BILL 360

2 AMENDMENT NO. _____. Amend House Bill 360 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Sections 506 and 608 as
6 follows:

7 (750 ILCS 5/506) (from Ch. 40, par. 506)

8 Sec. 506. Representation of child.

9 (a) Duties. In any proceedings involving the support,
10 custody, visitation, education, parentage, property interest,
11 or general welfare of a minor or dependent child, the court
12 may, on its own motion or that of any party, ~~and subject to the~~
13 ~~terms or specifications the court determines,~~ appoint an
14 attorney to serve in one of the following capacities to address
15 the issues the court delineates:

16 (1) Attorney. The attorney shall provide independent
17 legal counsel for the child and shall owe the same duties
18 of undivided loyalty, confidentiality, and competent
19 representation as are due an adult client. ~~as an attorney~~
20 ~~to represent the child;~~

21 (2) Guardian ad litem. The guardian ad litem shall
22 testify or submit a written report to the court regarding
23 his or her recommendations in accordance with the best
24 interest of the child. The report shall be made available

1 to all parties. The guardian ad litem may be called as a
2 witness for purposes of cross-examination regarding the
3 guardian ad litem's report or recommendations. The
4 guardian ad litem shall investigate the facts of the case
5 and interview the child and the parties. ~~as a guardian ad~~
6 ~~litem to address issues the court delineates;~~

7 (3) Child representative. The child representative
8 ~~shall as a child's representative whose duty shall be to~~
9 advocate what the child representative finds to be in the
10 best interests of the child after reviewing the facts and
11 circumstances of the case. The child representative shall
12 meet with the child and the parties, investigate the facts
13 of the case, and encourage settlement and the use of
14 alternative forms of dispute resolution. The child ~~child's~~
15 representative shall have the same ~~power and~~ authority and
16 obligation to participate ~~take part~~ in the ~~conduct of the~~
17 litigation as does an attorney for a party and shall
18 possess all the powers of investigation ~~and recommendation~~
19 as does a guardian ad litem. The child ~~child's~~
20 representative shall consider, but not be bound by, the
21 expressed wishes of the child. A child ~~child's~~
22 representative shall have received training in child
23 advocacy or shall possess such experience as determined to
24 be equivalent to such training by the chief judge of the
25 circuit where the child ~~child's~~ representative has been
26 appointed. The child ~~child's~~ representative shall not
27 disclose confidential communications made by the child,
28 except as required by law or by the Rules of Professional
29 Conduct. The child ~~child's~~ representative shall not render
30 an opinion, recommendation, or report to the court and
31 shall not be called as a witness, but shall offer
32 evidence-based legal arguments ~~regarding the issues set~~
33 ~~forth in this subsection.~~ The child representative shall
34 disclose the position as to what the child representative

1 intends to advocate in a pre-trial memorandum that shall be
2 served upon all counsel of record prior to the trial. The
3 position disclosed in the pre-trial memorandum shall not be
4 considered evidence. The court and the parties may consider
5 the position of the child representative for purposes of a
6 settlement conference.

7 (a-3) Additional appointments. During the proceedings the
8 court may appoint an additional attorney to serve in the
9 capacity described in subdivision (a)(1) or an additional
10 attorney to serve in another of the capacities described in
11 subdivision ~~subdivisions~~ (a)(1), (a)(2), or (a)(3) on the
12 court's ~~its~~ own motion or that of a party only for good cause
13 shown and when the reasons for the additional appointment are
14 set forth in specific findings.

15 (a-5) Appointment considerations. In deciding whether to
16 make an appointment of an attorney for the minor child, a
17 guardian ad litem, or a child representative, the court shall
18 consider the nature and adequacy of the evidence to be
19 presented by the parties and the availability of other methods
20 of obtaining information, including social service
21 organizations and evaluations by mental health professions, as
22 well as resources for payment.

23 In no event is this Section intended to or designed to
24 abrogate the decision making power of the trier of fact. Any
25 appointment made under this Section is not intended to nor
26 should it serve to place any appointed individual in the role
27 of a surrogate judge.

28 (b) Fees and costs. The court shall enter an order as
29 appropriate for costs, fees, and disbursements, including a
30 retainer, when the attorney, guardian ad litem, or child's
31 representative is appointed, ~~and thereafter as necessary.~~ Any
32 person appointed under this Section shall file with the court
33 within 90 days of his or her appointment, and every subsequent
34 90-day period thereafter during the course of his or her

1 representation, a detailed invoice for services rendered with a
2 copy being sent to each party. The court shall review the
3 invoice submitted and approve the fees, if they are reasonable
4 and necessary. Any order approving the fees ~~Such orders~~ shall
5 require payment by either or both parents, by any other party
6 or source, or from the marital estate or the child's separate
7 estate. The court may not order payment by the Illinois
8 Department of Public Aid in cases in which the Department is
9 providing child support enforcement services under Article X of
10 the Illinois Public Aid Code. Unless otherwise ordered by the
11 court at the time fees and costs are approved, all fees and
12 costs payable to an attorney, guardian ad litem, or child
13 ~~child's~~ representative under this Section are by implication
14 deemed to be in the nature of support of the child and are
15 within the exceptions to discharge in bankruptcy under 11
16 U.S.C.A. 523. The provisions of Sections 501 and 508 of this
17 Act shall apply to fees and costs for attorneys appointed under
18 this Section.

19 (Source: P.A. 91-410, eff. 1-1-00; 92-590, eff. 7-1-02.)

20 (750 ILCS 5/608) (from Ch. 40, par. 608)

21 Sec. 608. Judicial Supervision.

22 (a) Except as otherwise agreed by the parties in writing at
23 the time of the custody judgment or as otherwise ordered by the
24 court, the custodian may determine the child's upbringing,
25 including but not limited to, his education, health care and
26 religious training, unless the court, after hearing, finds,
27 upon motion by the noncustodial parent, that the absence of a
28 specific limitation of the custodian's authority would clearly
29 be contrary to the best interests of the child.

30 (b) If both parents or all contestants agree to the order,
31 or if the court finds that in the absence of agreement the
32 child's physical health would be endangered or his emotional
33 development significantly impaired, the court may order the

1 Department of Children and Family Services to exercise
2 continuing supervision over the case to assure that the
3 custodial or visitation terms of the judgment are carried out.
4 Supervision shall be carried out under the provisions of
5 Section 5 of the Children and Family Services Act.

6 (c) The court may order individual counseling for the
7 child, family counseling for one or more of the parties and the
8 child, or parental education for one or more of the parties,
9 when it finds one or more of the following:

10 (1) both parents or all parties agree to the order;

11 (2) the court finds that the child's physical health is
12 endangered or his or her emotional development is impaired
13 including, but not limited to, a finding of visitation
14 abuse as defined by Section 607.1; or

15 (3) the court finds that one or both of the parties
16 have violated the joint parenting agreement with regard to
17 conduct affecting or in the presence of the child.

18 (d) If the court finds that one or more of the parties has
19 violated an order of the court with regards to custody,
20 visitation, or joint parenting, the court shall assess the
21 costs of counseling against the violating party or parties.
22 Otherwise, the court may apportion the costs between the
23 parties as appropriate.

24 (e) The remedies provided in this Section are in addition
25 to, and shall not diminish or abridge in any way, the court's
26 power to exercise its authority through contempt or other
27 proceedings.

28 (f) All counseling sessions shall be confidential. The
29 communications in counseling shall not be used in any manner in
30 litigation nor relied upon by any expert appointed by the court
31 or retained by any party.

32 (Source: P.A. 87-824.)".