



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB1555

Introduced 1/31/2023, by Rep. Terra Costa Howard

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/506

from Ch. 40, par. 506

Amends the Illinois Marriage and Dissolution of Marriage Act. Removes language providing that in a proceeding involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare of a minor or dependent child, a guardian ad litem appointed by the court shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interests of the child. Provides instead that a guardian ad litem shall investigate the facts of the case and interview the child and the parties and, unless the court directs otherwise, the guardian ad litem shall submit to the court and the parties a written report, written recommendations, or a proposed parenting plan not less than 30 days before a final hearing or trial. Requires a guardian ad litem to be available for deposition before a final hearing or trial notwithstanding any other discovery cutoff. Allows a guardian ad litem to: (i) be present for all proceedings, including in camera examinations of the child; (ii) issue subpoenas for records as part of the guardian ad litem's investigation; and (iii) file pleadings relating to procedural matters.

LRB103 00073 LNS 45073 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

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

6 (750 ILCS 5/506) (from Ch. 40, par. 506)

7 Sec. 506. Representation of child.

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

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

19 (2) Guardian ad litem. The guardian ad litem shall  
20 investigate the facts of the case and interview the child  
21 and the parties. Unless the court directs otherwise, the  
22 guardian ad litem shall submit to the court and the  
23 parties a written report, written recommendations, or a

1 proposed parenting plan not less than 30 days before a  
2 final hearing or trial. The guardian ad litem's written  
3 report or written recommendations shall be admitted into  
4 evidence without the need for foundation. The guardian ad  
5 litem shall be available for deposition before a final  
6 hearing or trial notwithstanding any other discovery  
7 cutoff. ~~The guardian ad litem shall testify or submit a~~  
8 ~~written report to the court regarding his or her~~  
9 ~~recommendations in accordance with the best interest of~~  
10 ~~the child. The report shall be made available to all~~  
11 ~~parties.~~ The guardian ad litem may be called as a witness  
12 for purposes of cross-examination regarding the guardian  
13 ad litem's report or recommendations. At the discretion of  
14 the court, the guardian ad litem:

15 (i) may be present for all proceedings, including  
16 in camera examinations of the child;

17 (ii) may issue subpoenas for records as part of  
18 the guardian ad litem's investigation; and

19 (iii) may file pleadings relating to procedural  
20 matters. ~~The guardian ad litem shall investigate the~~  
21 ~~facts of the case and interview the child and the~~  
22 ~~parties.~~

23 (3) Child representative. The child representative  
24 shall advocate what the child representative finds to be  
25 in the best interests of the child after reviewing the  
26 facts and circumstances of the case. The child

1 representative shall meet with the child and the parties,  
2 investigate the facts of the case, and encourage  
3 settlement and the use of alternative forms of dispute  
4 resolution. The child representative shall have the same  
5 authority and obligation to participate in the litigation  
6 as does an attorney for a party and shall possess all the  
7 powers of investigation as does a guardian ad litem. The  
8 child representative shall consider, but not be bound by,  
9 the expressed wishes of the child. A child representative  
10 shall have received training in child advocacy or shall  
11 possess such experience as determined to be equivalent to  
12 such training by the chief judge of the circuit where the  
13 child representative has been appointed. The child  
14 representative shall not disclose confidential  
15 communications made by the child, except as required by  
16 law or by the Rules of Professional Conduct. The child  
17 representative shall not render an opinion,  
18 recommendation, or report to the court and shall not be  
19 called as a witness, but shall offer evidence-based legal  
20 arguments. The child representative shall disclose the  
21 position as to what the child representative intends to  
22 advocate in a pre-trial memorandum that shall be served  
23 upon all counsel of record prior to the trial. The  
24 position disclosed in the pre-trial memorandum shall not  
25 be considered evidence. The court and the parties may  
26 consider the position of the child representative for

1 purposes of a settlement conference.

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

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

17 In no event is this Section intended to or designed to  
18 abrogate the decision making power of the trier of fact. Any  
19 appointment made under this Section is not intended to nor  
20 should it serve to place any appointed individual in the role  
21 of a surrogate judge.

22 (b) Fees and costs. The court shall enter an order as  
23 appropriate for costs, fees, and disbursements, including a  
24 retainer, when the attorney, guardian ad litem, or child's  
25 representative is appointed. Any person appointed under this  
26 Section shall file with the court within 90 days of his or her

1 appointment, and every subsequent 90-day period thereafter  
2 during the course of his or her representation, a detailed  
3 invoice for services rendered with a copy being sent to each  
4 party. The court shall review the invoice submitted and  
5 approve the fees, if they are reasonable and necessary. Any  
6 order approving the fees shall require payment by either or  
7 both parents, by any other party or source, or from the marital  
8 estate or the child's separate estate. The court may not order  
9 payment by the Department of Healthcare and Family Services in  
10 cases in which the Department is providing child support  
11 enforcement services under Article X of the Illinois Public  
12 Aid Code. Unless otherwise ordered by the court at the time  
13 fees and costs are approved, all fees and costs payable to an  
14 attorney, guardian ad litem, or child representative under  
15 this Section are by implication deemed to be in the nature of  
16 support of the child and are within the exceptions to  
17 discharge in bankruptcy under 11 U.S.C.A. 523. The provisions  
18 of Sections 501 and 508 of this Act shall apply to fees and  
19 costs for attorneys appointed under this Section.

20 (Source: P.A. 99-90, eff. 1-1-16.)