



Rep. Dennis M. Reboletti

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LRB097 08939 AJ0 53884 a

1 AMENDMENT TO HOUSE BILL 2833

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 2833 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 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, education, parentage, property interest,  
10 or general welfare of a minor or dependent child, the court  
11 may, on its own motion or that of any party, only for good  
12 cause shown, appoint an individual ~~attorney~~ to serve in one of  
13 the 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

1 of undivided loyalty, confidentiality, and competent  
2 representation as are due an adult client.

3 (2) Guardian ad litem. The guardian ad litem shall  
4 testify and ~~or~~ submit a written report to the court  
5 regarding his or her recommendations in accordance with the  
6 best interest of the child. The report shall be made  
7 available to all parties at least 30 days prior to the  
8 trial. The report shall set forth the guardian ad litem's  
9 findings, the names and telephone numbers of all  
10 individuals interviewed, and the guardian's conclusions  
11 and recommendations. The guardian ad litem may be called as  
12 a witness for purposes of cross-examination regarding the  
13 guardian ad litem's report or recommendations. The  
14 guardian ad litem shall investigate the facts of the case  
15 and interview the child and the parties and others  
16 possessing special knowledge of the child's circumstance.  
17 However, the guardian ad litem shall not communicate with  
18 any expert witness or other court appointee without prior  
19 approval from the court. The guardian ad litem shall  
20 conduct his or her own independent investigation. The  
21 guardian ad litem's testimony and recommendations may be  
22 used as one factor in rendering a custody decision or in  
23 determining the child's best interests, subject to  
24 cross-examination. The guardian ad litem is not a court's  
25 witness but rather a fiduciary who owes the duties of  
26 undivided loyalty and competent investigation exclusively

1       to the minor child. The guardian ad litem shall not file  
2       any petition or pleading and shall not attend any court  
3       hearing unless the guardian ad litem is expected by the  
4       court to testify.

5           (3) Child representative. The child representative  
6       shall be an attorney and shall advocate what the child  
7       representative finds to be in the best interests of the  
8       child after reviewing the facts and circumstances of the  
9       case. The child representative shall meet with the child  
10      and the parties, investigate the facts of the case, and  
11      encourage settlement and the use of alternative forms of  
12      dispute resolution. The child representative shall have  
13      the same authority and obligation to participate in the  
14      litigation as does an attorney for a party and shall  
15      possess all the powers of investigation as does a guardian  
16      ad litem. The child representative shall consider, but not  
17      be bound by, the expressed wishes of the child. A child  
18      representative shall have received training in child  
19      advocacy or shall possess such experience as determined to  
20      be equivalent to such training by the chief judge of the  
21      circuit where the child representative has been appointed.  
22      The child representative shall not disclose confidential  
23      communications made by the child, except as required by law  
24      or by the Rules of Professional Conduct. The child  
25      representative owes the duties of competent legal  
26      representation and undivided loyalty exclusively to the

1        minor child. The child representative shall not  
2        communicate ex-parte with any expert witness or other court  
3        appointee without prior approval from the court. The child  
4        representative shall not render an opinion,  
5        recommendation, or report to the court and shall not be  
6        called as a witness, but shall offer evidence-based legal  
7        arguments. The child representative shall disclose the  
8        position as to what the child representative intends to  
9        advocate in a pre-trial memorandum that shall be served  
10       upon all counsel of record prior to the trial. The position  
11       disclosed in the pre-trial memorandum shall not be  
12       considered evidence. The court and the parties may consider  
13       the position of the child representative for purposes of a  
14       settlement conference.

15       (a-3) Additional appointments. During the proceedings the  
16       court may appoint an additional attorney to serve in the  
17       capacity described in subdivision (a)(1) or the capacity ~~an~~  
18       ~~additional attorney to serve in another of the capacities~~  
19       described in subdivision ~~(a)(2) or~~ (a)(3) on the court's own  
20       motion or that of a party only for good cause shown and when  
21       the reasons for the additional appointment are set forth in  
22       specific written findings.

23       (a-5) Appointment considerations. In deciding whether to  
24       make an appointment of an attorney for the minor child, a  
25       guardian ad litem, or a child representative, the court shall  
26       consider the nature and adequacy of the evidence to be

1 presented by the parties and the availability of other methods  
2 of obtaining information, including social service  
3 organizations and evaluations by mental health professions, as  
4 well as resources for payment.

5 In no event is this Section intended to or designed to  
6 abrogate the decision making power of the trier of fact. Any  
7 appointment made under this Section is not intended to nor  
8 should it serve to place any appointed individual in the role  
9 of a surrogate judge.

10 (b) Fees and costs. The court shall enter an order as  
11 appropriate for costs, fees, and disbursements, including a  
12 retainer, when the attorney, guardian ad litem, or child's  
13 representative is appointed. Any person appointed under this  
14 Section shall file with the court within 90 days of his or her  
15 appointment, and every subsequent 90-day period thereafter  
16 during the course of his or her representation, a detailed  
17 invoice for services rendered with a copy being sent to each  
18 party. Failure to submit a detailed invoice for each 90-day  
19 period in the required time period shall preclude collection of  
20 costs, fees, and disbursements for services rendered in said  
21 90-day period. An attorney, guardian ad litem, or child  
22 representative shall not bill the parties any fees for the  
23 preparation and presentation of his or her invoice. The court  
24 shall review the invoice submitted and approve the fees, if  
25 they are reasonable and necessary. The court shall not award  
26 lump sum fees to the attorney, guardian ad litem, or child

1 representative. The court shall not authorize payment of bills  
2 that are not properly itemized. Compensation for the attorney,  
3 guardian ad litem, or child representative may be paid at a  
4 reasonable rate, not to exceed \$150 per hour. Any order  
5 approving the fees shall require payment by either or both  
6 parents, ~~by any other party or source,~~ or from the marital  
7 estate or the child's separate estate. ~~The court may not order~~  
8 ~~payment by the Department of Healthcare and Family Services in~~  
9 ~~cases in which the Department is providing child support~~  
10 ~~enforcement services under Article X of the Illinois Public Aid~~  
11 ~~Code. Unless otherwise ordered by the court at the time fees~~  
12 ~~and costs are approved, all fees and costs payable to an~~  
13 ~~attorney, guardian ad litem, or child representative under this~~  
14 ~~Section are by implication deemed to be in the nature of~~  
15 ~~support of the child and are within the exceptions to discharge~~  
16 ~~in bankruptcy under 11 U.S.C.A. 523.~~ The provisions of Sections  
17 501 and 508 of this Act shall apply to fees and costs for  
18 attorneys appointed under this Section.

19 (c) Beginning in 2012, every January 20, the statutory rate  
20 described in subsection (b) shall be automatically increased or  
21 decreased, as applicable, by a percentage equal to the  
22 percentage change in the consumer price index-u during the  
23 preceding 12-month calendar year. "Consumer price index-u"  
24 means the index published by the Bureau of Labor Statistics of  
25 the United States Department of Labor that measures that  
26 average change in prices of goods and services purchased by all

1 urban consumers, United States city average, all items,  
2 1982-84=100. The new rate resulting from each annual adjustment  
3 shall be made available to the Chief Judge of each judicial  
4 circuit.

5 (Source: P.A. 94-640, eff. 1-1-06; 95-331, eff. 8-21-07.)".