



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

**HB3481**

Introduced 2/24/2011, by Rep. Dennis M. Reboletti

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/506

from Ch. 40, par. 506

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that in a case involving a minor child, the court may appoint, only for good cause shown, (instead of appoint) an individual (instead of an attorney) to serve as independent legal counsel for the child or as guardian ad litem. Provides that the guardian ad litem shall testify and (instead of or) submit a written report, which shall be made available before trial, to the court regarding his or her recommendations. Provides that the guardian ad litem shall not communicate with any expert witness or court appointee. Provides that the guardian ad litem shall not file any pleading in the case and shall not attend court hearings unless he or she is expected to testify by the court and all parties. Provides that a child representative shall be an attorney and shall not communicate ex-parte with any expert witness or court appointee. Provides that the court shall enter an order as appropriate for costs, fees, and disbursements when the attorney for the child or the guardian ad litem (instead of attorney, guardian ad litem, or child's representative) is appointed. Provides that the failure to timely submit the required detailed invoice (which may not include a fee for the preparation of the invoice) shall preclude the collection of that invoice. Provides that a guardian ad litem or child representative may be paid at a reasonable rate not to exceed \$150 per hour, subject to an annual consumer price index adjustment. Deletes provision prohibiting the court from ordering payment by the Department of Healthcare and Family Services in cases in which the Department is providing child support enforcement services. Deletes provision that states that unless otherwise ordered by the court at the time that the fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy. Makes other changes.

LRB097 06340 AJO 46420 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, 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  
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 testify and ~~or~~ submit a written report to the court  
21 regarding his or her recommendations in accordance with the  
22 best interest of the child. The report shall be made  
23 available to all parties at least 30 days prior to the

1 trial. The report shall set forth the guardian ad litem's  
2 findings, the names and telephone numbers of all parties  
3 interviewed, and the guardian's conclusions and  
4 recommendations. The guardian ad litem may be called as a  
5 witness for purposes of cross-examination regarding the  
6 guardian ad litem's report or recommendations. The  
7 guardian ad litem shall investigate the facts of the case  
8 and interview the child and the parties and others  
9 possessing special knowledge of the child's circumstance.  
10 However, the guardian ad litem shall not communicate with  
11 any expert witness or other court appointee such as a  
12 Section 604(b) custody evaluator. The guardian ad litem  
13 shall conduct his or her own independent investigation. The  
14 guardian ad litem's testimony and recommendations may be  
15 used as one data point in rendering a custody decision or  
16 in determining the child's best interests, subject to  
17 cross-examination. The guardian ad litem is not a court's  
18 witness but rather a fiduciary who owes the duties of  
19 undivided loyalty and competent investigation exclusively  
20 to the minor child. The guardian ad litem shall not file  
21 any petition or pleading and shall not attend any court  
22 hearing unless the guardian ad litem is expected by the  
23 court and all parties to testify.

24 (3) Child representative. The child representative  
25 shall be an attorney and shall advocate what the child  
26 representative finds to be in the best interests of the

1 child after reviewing the facts and circumstances of the  
2 case. The child representative shall meet with the child  
3 and the parties, investigate the facts of the case, and  
4 encourage settlement and the use of alternative forms of  
5 dispute resolution. The child representative shall have  
6 the same authority and obligation to participate in the  
7 litigation as does an attorney for a party and shall  
8 possess all the powers of investigation as does a guardian  
9 ad litem. The child representative shall consider, but not  
10 be bound by, the expressed wishes of the child. A child  
11 representative shall have received training in child  
12 advocacy or shall possess such experience as determined to  
13 be equivalent to such training by the chief judge of the  
14 circuit where the child representative has been appointed.  
15 The child representative shall not disclose confidential  
16 communications made by the child, except as required by law  
17 or by the Rules of Professional Conduct. The child  
18 representative owes the duties of competent legal  
19 representation and undivided loyalty exclusively to the  
20 minor child. The child representative shall not  
21 communicate ex-parte with any expert witness or other court  
22 appointee such as a Section 604(b) custody evaluator. The  
23 child representative shall not render an opinion,  
24 recommendation, or report to the court and shall not be  
25 called as a witness, but shall offer evidence-based legal  
26 arguments. The child representative shall disclose the

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

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

16 (a-5) Appointment considerations. In deciding whether to  
17 make an appointment of ~~an attorney for the minor child,~~ a  
18 guardian ad litem<sup>7</sup> or a child representative, the court shall  
19 consider the nature and adequacy of the evidence to be  
20 presented by the parties and the availability of other methods  
21 of obtaining information, including social service  
22 organizations and evaluations by mental health professions, as  
23 well as resources for payment.

24 In no event is this Section intended to or designed to  
25 abrogate the decision making power of the trier of fact. Any  
26 appointment made under this Section is not intended to nor

1 should it serve to place any appointed individual in the role  
2 of a surrogate judge.

3 (b) Fees and costs. The court shall enter an order as  
4 appropriate for costs, fees, and disbursements, including a  
5 retainer, when the attorney, guardian ad litem, or child's  
6 representative is appointed. Any person appointed under this  
7 Section shall file with the court within 90 days of his or her  
8 appointment, and every subsequent 90-day period thereafter  
9 during the course of his or her representation, a detailed  
10 invoice for services rendered with a copy being sent to each  
11 party. Failure to submit a detailed invoice for each 90-day  
12 period in the required time period shall preclude collection of  
13 costs, fees, and disbursements for services rendered in said  
14 90-day period. A guardian ad litem or child representative  
15 shall not bill the parties any fees for the preparation and  
16 presentation of his or her invoice. The court shall review the  
17 invoice submitted and approve the fees, if they are reasonable  
18 and necessary. The court shall not award lump sum fees to the  
19 guardian ad litem or child representative. The court shall not  
20 authorize payment of bills that are not properly itemized.  
21 Compensation for a guardian ad litem or child representative  
22 may be paid at a reasonable rate, not to exceed \$150 per hour.  
23 Any order approving the fees shall require payment by either or  
24 both parents, ~~by any other party or source,~~ or from the marital  
25 estate or the child's separate estate. ~~The court may not order~~  
26 ~~payment by the Department of Healthcare and Family Services in~~

1 ~~eases in which the Department is providing child support~~  
2 ~~enforcement services under Article X of the Illinois Public Aid~~  
3 ~~Code. Unless otherwise ordered by the court at the time fees~~  
4 ~~and costs are approved, all fees and costs payable to an~~  
5 ~~attorney, guardian ad litem, or child representative under this~~  
6 ~~Section are by implication deemed to be in the nature of~~  
7 ~~support of the child and are within the exceptions to discharge~~  
8 ~~in bankruptcy under 11 U.S.C.A. 523.~~ The provisions of Sections  
9 501 and 508 of this Act shall apply to fees and costs for  
10 attorneys appointed under this Section.

11 (c) Beginning in 2012, every January 20, the statutory rate  
12 described in subsection (b) shall be automatically increased or  
13 decreased, as applicable, by a percentage equal to the  
14 percentage change in the consumer price index-u during the  
15 preceding 12-month calendar year. "Consumer price index-u"  
16 means the index published by the Bureau of Labor Statistics of  
17 the United States Department of Labor that measures that  
18 average change in prices of goods and services purchased by all  
19 urban consumers, United States city average, all items,  
20 1982-84=100. The new rate resulting from each annual adjustment  
21 shall be made available to the Chief Judge of each judicial  
22 circuit.

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