



Rep. Maurice A. West, II

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10200HB4121ham001

LRB102 19262 LNS 31917 a

1 AMENDMENT TO HOUSE BILL 4121

2 AMENDMENT NO. _____. Amend House Bill 4121 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, 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

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 or submit a written report to the court regarding
5 his or her recommendations in accordance with the best
6 interest of the child. The report shall be made available
7 to all parties. The guardian ad litem may be called as a
8 witness for purposes of cross-examination regarding the
9 guardian ad litem's report or recommendations. The
10 guardian ad litem shall investigate the facts of the case
11 and interview the child and the parties.

12 (3) Child representative. The child representative
13 shall advocate what the child representative finds to be
14 in the best interests of the child after reviewing the
15 facts and circumstances of the case. The child
16 representative shall meet with the child and the parties,
17 investigate the facts of the case, and encourage
18 settlement and the use of alternative forms of dispute
19 resolution. The child representative shall have the same
20 authority and obligation to participate in the litigation
21 as does an attorney for a party and shall possess all the
22 powers of investigation as does a guardian ad litem. The
23 child representative shall consider, but not be bound by,
24 the expressed wishes of the child. A child representative
25 shall have received training in child advocacy or shall
26 possess such experience as determined to be equivalent to

1 such training by the chief judge of the circuit where the
2 child representative has been appointed. The child
3 representative shall not disclose confidential
4 communications made by the child, except as required by
5 law or by the Rules of Professional Conduct. The child
6 representative shall not render an opinion,
7 recommendation, or report to the court and shall not be
8 called as a witness, but shall offer evidence-based legal
9 arguments. The child representative shall disclose the
10 position as to what the child representative intends to
11 advocate in a pretrial ~~pre-trial~~ memorandum that shall be
12 served upon all counsel of record prior to the trial. The
13 position disclosed in the pre-trial memorandum shall not
14 be considered evidence. The court and the parties may
15 consider the position of the child representative for
16 purposes of a settlement conference.

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

26 (a-5) Appointment considerations. In deciding whether to

1 make an appointment of an attorney for the minor child, a
2 guardian ad litem, or a child representative, the court shall
3 consider the nature and adequacy of the evidence to be
4 presented by the parties and the availability of other methods
5 of obtaining information, including social service
6 organizations and evaluations by mental health professions, as
7 well as resources for payment.

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

13 (b) Fees and costs. The court shall enter an order as
14 appropriate for costs, fees, and disbursements, including a
15 retainer, when the attorney, guardian ad litem, or child's
16 representative is appointed. Any person appointed under this
17 Section shall file with the court within 90 days of his or her
18 appointment, and every subsequent 90-day period thereafter
19 during the course of his or her representation, a detailed
20 invoice for services rendered with a copy being sent to each
21 party. The court shall review the invoice submitted and
22 approve the fees, if they are reasonable and necessary. Any
23 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 cases in which the Department is providing child support
2 enforcement services under Article X of the Illinois Public
3 Aid Code. Unless otherwise ordered by the court at the time
4 fees and costs are approved, all fees and costs payable to an
5 attorney, guardian ad litem, or child representative under
6 this Section are by implication deemed to be in the nature of
7 support of the child and are within the exceptions to
8 discharge in bankruptcy under 11 U.S.C.A. 523. The provisions
9 of Sections 501 and 508 of this Act shall apply to fees and
10 costs for attorneys appointed under this Section.

11 (c) Responsibilities. The appointment of a guardian ad
12 litem or child representative for a child in a case involving
13 custody or visitation issues requires, at a minimum, the
14 following activity by any individual serving in the role of
15 guardian ad litem or child representative:

16 (1) Meeting with both parties within 90 days of
17 receiving retainer fees or within 90 days of appointment
18 if both parties have fee waivers.

19 (2) Interviewing the child, the parents, and any
20 prospective custodians. Investigating any other matter
21 designated by the court at the time of appointment.
22 Reviewing relevant court pleadings and materials from the
23 parties that identify the custody and visitation issues.

24 (3) If an issue concerning the adequacy of the home
25 environment has been raised by a party or if the guardian
26 ad litem or child representative has cause to believe that

1 the home environment is relevant to the recommendations of
2 the guardian ad litem or child representative, visiting
3 the child's current or proposed dwelling.

4 (4) If the Department of Children and Family Services
5 is involved, obtaining records from the Department of
6 Children and Family Services and speaking to appropriate
7 Department of Children and Family Services
8 representatives, obtaining parental consent as necessary.

9 (5) Interviewing the child's educational and mental
10 health providers, only if the guardian ad litem or child
11 representative determines that such interviews are
12 essential to the issues before the court.

13 (6) Issuing a concise written report summarizing the
14 investigation, findings, and any recommendations of the
15 guardian ad litem or child representative. With the
16 court's approval, the guardian ad litem or child
17 representative may skip this activity if the issues are
18 simple and a report is not justified.

19 (7) Taking calls from the child, as necessary.

20 (8) Preparing for and testifying at the temporary or
21 final custody hearing if ordered by the court or requested
22 by a party and approved by the court.

23 (9) Appearing in court if ordered by the court or
24 requested by a party and approved by the court.

25 If guardian ad litem or child representative activities
26 are essential to the guardian ad litem's or child

1 representative's investigation, such as in a situation
2 involving child safety, and circumstances make it impractical
3 or impossible to obtain prior court approval, the guardian ad
4 litem or child representative may proceed to undertake the
5 activities but shall seek approval of them from the court as
6 soon as practicable.

7 Within 30 days of the entry of an order appointing a
8 guardian ad litem or child representative, any party wishing
9 to suggest a particular interview or other activity on the
10 part of the guardian ad litem or child representative shall
11 submit a request in writing to the guardian ad litem or child
12 representative with copies to opposing parties and the court.
13 The request shall make clear why the interview or other
14 activity is necessary to the guardian ad litem's or child
15 representative's investigation and evaluation. The request
16 should be considered by the guardian ad litem or child
17 representative but is not binding on the guardian ad litem or
18 child representative.

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