



Complaints about GAL fees and billing practices were supported by testimony of hourly billing rates, excessive final bills, absence of monthly statements or statements which did not provide enough detail about GAL activity on the case, and GALs churning the case to incur larger fees. In some cases, large GAL fees were billed, but a written report was never prepared.

Many of the concerns voiced have a legitimate factual foundation. Certainly, every practice area has its own brand of horror stories. The lack of accountability is attributable to the lack of a "system" to oversee GAL activity.

In keeping with legislative intent to make improvements to protect vulnerable populations, the new legislation set requirements for guardians ad litem relating to mandatory education, study of the feasibility and desirability of GAL certification, investigation of the problems and concerns about the role of GALs in RCW Titles 11, 13 and 26 and study of the feasibility of statewide use of CASA (Court Appointed Special Advocate)<sup>7</sup> programs, including private funding sources. Fulfilling legislative mandate, the Office of the Administrator for the Courts (OAC) issued a 65-page report on these topics dated August 1997. The report provides definitions, reviews issues for guardianship and family law GALs, outlines curriculum for GAL education and makes further recommendations. The recently released report supports the importance of the judiciary's role in maintaining public confidence and details the court's oversight, ensuring fairness and impartiality and prohibiting *ex parte* communication.

#### **New Guardianship Rules**

Under RCW 11.88.090(2)(b), GALs are now required to file and serve, within five days of appointment, each party with a statement which includes (1) the GAL's education related to GAL duties; (2) previous 10 years' criminal history, per RCW 9.94A.030; (3) hourly rate, if compensated; (4) whether the GAL has had contact with a party before appointment; and (5) whether there is an apparent conflict of interest. Within three days, any party may file and serve a motion for order to show cause why the GAL should not be removed for one of the following reasons: (1) lack of necessary expertise; (2) hourly rate higher than reasonable; or (3) conflict of interest. If the GAL is removed in the noticed hearing on the motion, the court must state the reasons for removal in the order. If the GAL is not removed, the moving party may be assessed fees/sanctions.<sup>8</sup>

A new section, RCW 11.88.045(5), allows any person to request court protection for an alleged incapacitated person subject to various kinds of abuse/exploitation or for emergency needs. An "alternative arrangement" (such as a power of attorney), executed before the petition for guardianship was filed, "shall remain effective unless the court" determines otherwise. A GAL may also move the court for this action.<sup>9</sup>

Parties to a guardianship proceeding now

... may file responses to the GAL report with the court ... at any time ... the court may remove the GAL for failure to perform (the GAL's) duties as specified in this chapter, provided that the GAL shall have five days' notice of any motion to remove before the court enters such an order. In addition, the court in its discretion may reduce a guardian ad litem's fee for failure to carry out (the GAL's) duties.<sup>10</sup>

Guardianship GALs are now required to investigate and report on other . . . arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary.<sup>11</sup>

Under RCW 11.88.090(4)(e), the GAL's duties include

. . . to investigate alternate arrangements made, or which might be created, by or on behalf of the alleged incapacitated person, such as revocable or irrevocable trusts, or durable powers of attorney; whether good cause exists for any such arrangements to be discontinued; and why such arrangements should not be continued or created in lieu of a guardianship.

Under RCW 11.88.090(4)(f)(iv), the GAL's report must include

. . . a description of any alternative arrangements previously made by the alleged incapacitated person or which could be made, and whether and to what extent such alternatives should be used in lieu of guardianship, and if the guardian ad litem is recommending discontinuation of such arrangements, specific findings as to why such arrangements are contrary to the best interest of the alleged incapacitated person.

Under Title 11 as amended, the GAL may request continuation of the hearing date on the petition. If the hearing does not occur within sixty (60) days of the petition filing date, however, the GAL

shall file interim reports summarizing [the GAL's] activities on the proceeding during the time period as well as fees and costs incurred.<sup>12</sup>

Lastly, the GAL must now attend all hearings in person unless there is a written waiver by all parties,<sup>13</sup> and the

court may consider whether any person who makes decisions regarding the alleged incapacitated person or estate has breached a statutory or fiduciary duty.<sup>14</sup>

The superior courts, in addition to requiring mandatory education as described elsewhere in this article, are required to maintain a registry of persons willing and qualified to serve as GALs in Title 11 matters. The court selection for appointment shall be "in a system of rotation" unless there is a need for "particular expertise." The court was further mandated to

develop procedures for periodic review of the persons on the registry and for probation, suspension or removal of persons on the registry for failure to perform properly their duties as guardian ad litem. In the event the Court does not select a person next on the list, it shall include in the order of appointment a written decision explaining its decision.<sup>15</sup>

Eligibility for the GAL registry includes the following added specifics: (1) written

statement of background, including (a) level of formal education, (b) training related to GAL's duties, (c) number of years' experience as GAL, (d) number of appointments as GAL and the county or counties of appointment, (e) criminal history, as defined in RCW 9.94A.030 and (f) evidence of knowledge in areas previously listed in the statute (such as developmental disabilities). The written statement is also to include how many times a GAL has been removed for failure to perform GAL duties. Further, the background and qualification statement is to be updated annually; and (2) completion of the model training program.<sup>16</sup>

An attorney now may not serve as a superior court judge *pro tempore* or a superior court commissioner *pro tempore* in a judicial district while appointed to serve on a case in that judicial district as a paid GAL under Title 11, 13 or 26 RCW if that judicial district is contained within Division I or II of the Court of Appeals and has a population of more than one hundred thousand.<sup>17</sup>

#### Title 13 GALs

Under RCW 13.34.100(3)(e), the guardian ad litem statement of qualifications does not need to include identifying information that may be used to harm a GAL.

When a CASA or volunteer GAL is requested, the program will give the court the name of the person it recommends and appointment is effective immediately. If a party reasonably believes the CASA is inappropriate or unqualified, the party may request review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party is not satisfied, the party may file a motion with the court for removal of the CASA on the grounds the advocate or volunteer is inappropriate or unqualified.<sup>18</sup>

#### Family Law GALs

RCW 26.12.11175(1)(b) states that the "court may require the GAL to provide periodic reports to the parties regarding the status of [the GAL's] work. The GAL shall file . . . report at least sixty days prior to trial." Furthermore, GALs who are not volunteers must provide the parties with an itemized accounting of their time and billing for services each month.<sup>19</sup>

RCW 26.12.175(3)(e) and RCW 26.12.175(4) require background information from Title 26 GALs similar to that required for other types of GALs.

The statutes now require:

[E]ach GAL program for compensated GALs shall establish a rotational registry system for the appointment of GALs. If a judicial district does not have a program the court shall establish the rotational registry system. GALs shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry. RCW 13.34 . . . (2)(a) and RCW 26.12 . . . (2)(a).

Further,

[I]n judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information . . . including hourly rates for services. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name next appears on the registry shall be appointed. RCW 13.34 . . . (2)(b) and RCW 26.12 . . . (2)(b).

Then,

if a party reasonably believes that the appointed GAL lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed GAL by filing a motion with the court. RCW 13.34(2)(c) and RCW 26.12(3).

Finally, the "rotational registry system shall not apply to CASA programs." RCW 13.34(3) and RCW 26.12(3).

#### **Mandatory GAL Education**

The OAC recommendations for training and education of GALs to assure a minimum standard of competency include 30 hours of instruction for Juvenile Court GALs, 28 hours of instruction for family law GALs and a requirement new to those in law, a six-month practicum for all new GALs. The practicum is designed to pair a new GAL with a "mentor" GAL, who will review reports, help answer questions and provide direction to the new GAL as the GAL gains skills. It is as yet unclear who will pay the costs associated with the mentor's time. The committee, however, has recommended public financing of GALs in indigence cases, which may stretch to fit this additional short-term expense.

The OAC recommends against "grandfathering" GALs by exempting them from training and ongoing education requirements set in place in the 1996 legislative session. The committee reasoned that the benefit of training is to assure minimum standards of practice in this very important area. By exempting those who have been doing this work, continuation of uneven work product is likely. OAC recommends that "all persons applying to become a GAL or CASA after January 1, 1998" should be required to complete training in the curriculum or an OAC approved program before accepting their first GAL case.

The OAC recommendations for training distinguish between acquiring knowledge, building skills and developing the abilities necessary to make complex decisions, such as adhering to ethical standards and performing self-evaluations. The report also acknowledges the differences between juvenile dependency and family laws. Recommendations for training identify those legal areas and recommend training in those areas be taught separately by experts in the area of practice. In other areas of training that share a common body of knowledge, such as child development and substance abuse treatment, GALs applying for juvenile dependency and family law cases may be taught together, although by no means is that a requirement.

The OAC recommends that CASA programs not be mandated by the state in Chapter 13 and 26 actions, but rather recommends the state to encourage the use

of CASA programs in Chapter 13 cases by funding new programs and maintaining and expanding existing programs. In Chapter 26 actions, the judges of the state are encouraged to review their GAL policies and to consider use of CASAs. The OAC also acknowledges the cost of supporting a CASA program and the difficulty of obtaining private funding, and therefore recommends continued public funding of CASA programs.

OAC also recommends creation of a central registry through OAC for all GALs who are removed from any state court listing as a result of a grievance process. A registry will allow courts to track GALs more carefully, while preserving GALs' due-process rights.

The committee also recommends changes be made to the GAL order of appointment, urges adoption of court rules by our Supreme Court to standardize GAL practice, and it recommends the judiciary take steps to regain the public's confidence in the use of GALs. The OAC report recommends discontinuation of a rotational policy because of the constitutional problems contained therein and the inconsistency of application by state courts.

### **Recommendations**

Concerns notwithstanding, court appointment of GALs in this state is a benefit and in most cases results in a better-informed court. The GAL acts as the "eyes and ears of the court," a role unique in our adversarial legal system. Ideally, the GAL acts as a neutral information gatherer and reporter. The role is necessarily flexible due to the fact-driven nature of most legal proceedings. Given our state court's continued use of GALs as well as the intention of the 1996 legislation to address the public's concerns, we propose that the strengths of this practice be enhanced and weaknesses addressed beginning with the following suggestions.

Adoption of OAC recommendations is a solid beginning. It would create a "system" in family law and dependencies where none has existed. Stronger court involvement in each case, however, would complement the OAC recommendations and address the concerns by the public of GAL overreaching. We recommend the courts continue to develop and clarify policy regarding the role of GALs in family law cases within the state as well as enhanced supervision of GAL practice, including selection. For example, court review of final GAL reports with final pleadings in all cases, even agreed cases, could be conducted so that the court approves the GAL report (and thereby the investigation). The GAL work product is thus formalized and a record is preserved.

Court review of qualifications for GALs in their county and clear procedures for complaints against GAL practice should also be implemented and updated regularly. Required training curricula have now been developed by legislatively mandated committees for both guardianship and family law GALs; courts should assure that all GALs who are appointed have completed the required training.

Private attorneys can improve GAL practice, too, by litigating issues and not personalities, maintaining perspective, educating themselves about factual issues which occur (e.g., mental health and drug/alcohol abuse and treatment), encouraging more CLEs to deal with difficult cases and becoming involved with the family law section of the bar association.

The population seen by the court and served by GALs is the most difficult in terms of facts, procedures and personalities. Some courts, the OAC and the legislature began dealing with the problems and issues of GAL practice several

years ago with good result. In 1995, concerned by the lack of oversight for compensated GALs, the King County Judges and Court Commissioners formed a joint bench-bar work group, which developed guidelines, administrative policies and a code of ethics. In March 1996, the King County Superior Court judges adopted these policies. The policies include selection, qualifications, training, a complaint process and a code of ethics and were a useful tool for the OAC.

Efforts continue to help GALs solve commonly encountered problems. The Washington State Bar Association sponsored the first GAL inter-county forum this year in Seattle to provide a means for GALs around the state to meet, confer about commonly encountered problems and encourage self-evaluation and peer consultation, with a second annual forum scheduled for March 20, 1998.

In the vast majority of cases, children and alleged incapacitated persons have been well served by the appointment of GALs. With the collaboration of the judiciary, OAC, GALs and attorneys, service to these vulnerable and tender populations will continue to be improved.

### *Endnotes*

<sup>1</sup>Chapter 26.09 RCW, Chapter 26.26 RCW, and Chapter 26.10 RCW.

<sup>2</sup>Title 11 RCW.

<sup>3</sup>ESSB 6257 (1996).

<sup>4</sup>RCW 2.56.030.

<sup>5</sup>Chapter 11.88 RCW

<sup>6</sup>Title 26 RCW cases, including dissolution of marriage, paternity, and third-party cases.

<sup>7</sup>CASA programs originated here in Washington state, and in 1984 the national CASA Association was founded, with its headquarters in Seattle. Although primarily interested with volunteers in juvenile dependency cases, the National CASA Association also supports the work of volunteers in family law cases.

<sup>8</sup>RCW 11.88.090(2)(b).

<sup>9</sup>RCW 11.88.090(8).

<sup>10</sup>RCW 11.88.090(6).

<sup>11</sup>RCW 11.88.030(h)(i).

<sup>12</sup>RCW 11.88.090(v)(ix).

<sup>13</sup>RCW 11.8.090(11).

<sup>14</sup>RCW 11.88.090(2).

<sup>15</sup>RCW 11.88.090(3)(a).

<sup>16</sup>RCW 11.88.090(3)(b).

<sup>17</sup>RCW 2.08; currently the only county which comes within this exception is King County.

<sup>18</sup>RCW 13.34.100(8)

<sup>19</sup>RCW 26.12.75(1)(c).

\* \* \*

*Meredith Lynn Hardy , MSW, J.D., is a 1972 graduate of the University of Southern California School of Social Work and a 1983 graduate of Loyola University Law School. A former guardian ad litem, she is co-founder and 1996-97 chair of the Guardian Ad Litem Section of the King County Bar Association and served as member and chair of the WSBA Continuing Legal Education Committee. A pro tem family law commissioner with King County Superior Court, she was a member of the DSHS Advisory Group for the establishment of model training and handbook for Guardianship GALs.*

*Nancy Bradburn-Johnson , J.D., is a 1983 graduate of Seattle University School of Law. Since 1991, she has served as program attorney for the CASA Family Law Program in King County Superior Court. She received the 1996 King County Washington Women Lawyers Award for Special Contribution to the Judiciary.*

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2-08-02

RE: 2001 Senate Bill 126

Dear Senator George:

I am writing in support of Wis. Stat. Sec. 767.045 (6) (b) as it relates to a Guardian ad Litem. I often act as a GAL (Guardian ad Litem) in CHIPS/JIPs, as well as family law cases.

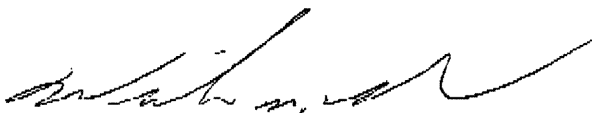
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I frequently am appointed on severe cases. Clearly there is a need for GAL's, that is not the issue. Instead what often happens is one or more parties refuse or pay, or only pay a token amount. I personally will not withdraw from a case for non-payment, that is not in the best interest of my wards. However being in sole practice it is extremely difficult to stay in practice at times under those circumstances.

This proposed legislation allows several new options for enforcing payments. A losing party often will refuse to pay, or once the case is resolved payment becomes virtually impossible.

This legislation would create options not only for the GAL, but also for the Counties to pursue repayment or reimbursement options and opportunities.

I would ask you to support this legislation, not to 'line my pockets' but to allow me to continue to provide needed protection for children often lost or harmed by an adult world.



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FACSIMILE COVER LETTER

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TIME: 1:45pm

FROM: Thomas J. Awen, Esq., The Law Offices of Thomas J. Awen

TOTAL NUMBER OF PAGES INCLUDING COVER: 2

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RE: 2001 Senate Bill 126

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February 8, 2002

VIA FACSIMILE AND U.S. MAIL  
Senator Gary George, District 6  
Room 118 South  
State Capitol  
P.O. Box 7882  
Madison WI 53707-7882

RE: 2001 Senate Bill 126

Dear Senator George:

It is my understanding that you are the Chairperson of the Senate Committee on Judiciary, Consumer Affairs and Campaign Finance Reform. On today's date I learned that on February 13, 2002 there will be a public hearing at the State Capitol to receive input and discussion as to the proposed changes in renumbering and amending Wis. Stat. Sec. 767.045 (6) (a) and create Wis. Stat. Sec. 767.045 (6) (b) as it relates to the payment of Guardian ad Litem. While I would want to appear and provide your committee with my input, I am unable to do so because of pre-existing court commitments.

First of all, let me introduce myself. I am an attorney practicing in Milwaukee and Waukesha Counties with a primary emphasis in criminal defense but in a secondary emphasis as a collection counsel for attorneys and attorney receivables. Included within this group, I represent nine (9) attorneys who have been, are or will continue to be Guardian ad Litem appointed by the various family court judges and commissioners in custody disputes in the family courts for Milwaukee County. These attorneys are my clients, having contracted with me to pursue and enforce payment of unpaid Guardian ad Litem bills which they themselves have been unable to pursue or enforce. From my own review, I have, on average 30-35 cases involving unpaid Guardian ad Litem fees, requiring court or other action.

I have reviewed the proposed merits of Sec. 767.045 (6) (b) (Section 4 of the Bill) and I believe it would prove to be a useful vehicle to assist Guardian ad Litem in enforcing payment of the services they provide.

I have no doubt that there are opponents to any piece of legislation and it would be folly for me, as a resident, attorney and voter, to think otherwise as it comes to this piece of proposed legislation. Nor do I have doubts that there are critics who believe that this proposed legislation is unnecessary or inappropriate in light of the laws already in existence as it relates to the

appointment, employment and payment of Guardian ad Litem.

My goal here today is not to address whether the process and the role Guardian ad Litem serve in the family courts is or is not flawed. My goal is to assist you, the Chairperson of the Senate Judiciary Committee, with sharing some insight from a person who "is in the trenches". One of the major concerns I have is the shrinking pool of good, qualified attorneys who are willing to accept an appointment as a Guardian ad Litem. One of the causes for this shrinking pool is the fact that those attorneys who accept said appointments are not being paid for the services rendered.

No matter what precautions the appointing court can take, at the end of a divorce or custody dispute, there will be outstanding fees owed to the Guardian ad Litem. Individual parties (the Petitioner and Respondent) often are unwilling to pay (because they were aggrieved) or not inclined to do so (because of other distractions, other "priorities", etc.). If the parties do not willingly pay, then the Guardian ad Litem is confronted with one of two choices. Either do nothing and let the account go dormant or take action in compelling payment through the courts.

Of the attorneys I have known in my career (not my clients) who have been or are Guardian ad Litem as well as those who are my clients, almost all of them are either sole practitioners or belong to a firm of three persons or less. In short, they belong to a category I can best describe as "small business" people. Due to the small size of their offices (or firms) these attorneys do not have the support staff or resources to prosecute, on their own, to carefully monitor and follow up these unpaid accounts and should they take these nonpaying parties back to Court to have these people held accountable.

One of the remedies available is to have the Court issue a judgment against the nonpaying party(ies). It is then left to the Guardian ad Litem to enforce the judgment. Commonly, enforcement of judgments can be done by wage garnishment as codified under Chapter 812 of the Statutes. Unfortunately, if the nonpaying party(ies) is already paying child support (ranging from 17% to 34%, or more, of his gross income) then the garnishment cannot be implemented since it does not allow for the deduction of a maximum of 25% of the person's *net* income. So that leaves a Guardian ad Litem the unsavory prospect of considering whether to use the Execution process by bonding the Sheriff and go out to attach property.

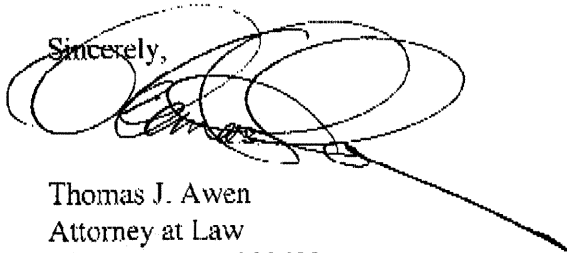
Is it important to have Guardian ad Litem? I believe so, based upon nearly fourteen years of experience in the family courts of Milwaukee County. Is it important that Guardian ad Litem be paid for their time and services? Absolutely. Is it important to give them (and the courts) the necessary vehicle to ensure they are paid? Without question. What will be the consequences if nothing is done by the legislature to assist Guardian ad Litem in being paid for their duties? Disaster.

I say "disaster" because I am thinking of the old maxim "the bad drives out the good". If good, experienced, knowledgeable attorneys no longer will accept Guardian ad Litem appointments because they will not get paid then the Court is left to appointing those attorneys who are neither experienced nor qualified to assume a very difficult, yet important role in the family courts.

Attorneys who are neither experienced nor qualified will only pose a detriment and impediment in resolving a difficult custody/visitation case.

Accordingly, and after reviewing at least this tiny provision of Bill 126, I would only hope that your Committee will approve said Bill, as it relates to the payment of Guardian ad Litem fees.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Awen", with a long horizontal line extending to the right.

Thomas J. Awen  
Attorney at Law  
State Bar No. 1000602

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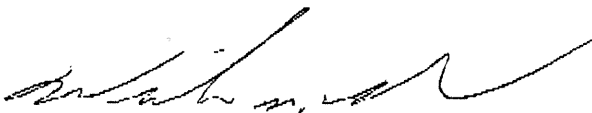
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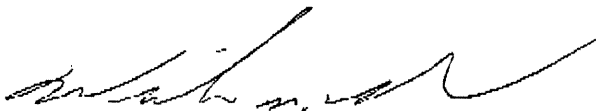
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**Law Offices of William M. Binder**

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VIA FACSIMILE ONLY 1-(608)-266-7381  
Senator Gary George, District 6  
Room 118 South  
State Capitol  
P.O. Box 7882  
Madison, WI. 53707-7882

2-08-02

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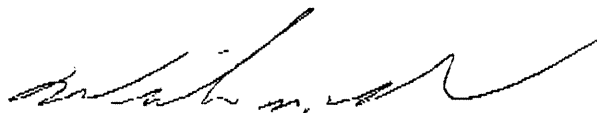
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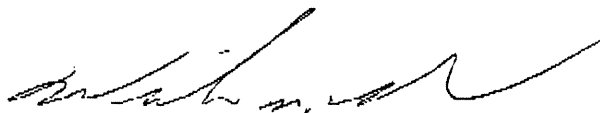
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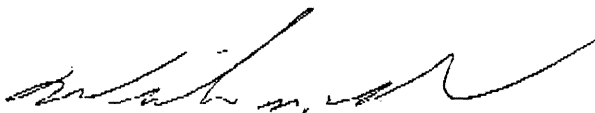
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**WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE**

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**Legislation and Petition to Wisconsin Supreme Court on  
Guardians Ad Litem in Actions Affecting the Family**

- Senate Bill 126, Relating to Guardians Ad Litem, Parent Education, and Parenting Plans in Actions Affecting the Family
- Petition to the Wisconsin Supreme Court to Amend Rules Relating to Eligibility for Appointment as a Guardian Ad Litem for a Minor

May 7, 2001

RL 2001-04

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**LEGISLATION AND PETITION TO THE WISCONSIN SUPREME COURT ON  
GUARDIANS AD LITEM IN ACTIONS AFFECTING THE FAMILY**

Prepared by:  
Anne Sappenfield and Pam Shannon, Senior Staff Attorneys  
May 7, 2001

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## **PART I**

### **KEY PROVISIONS OF RECOMMENDATIONS**

This part of the report summarizes the key provisions of the two proposals recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council. The following bill was approved for introduction in the 2001-02 Session of the Legislature:

#### **A. SENATE BILL 126, RELATING TO GUARDIANS AD LITEM, PARENT EDUCATION, AND PARENTING PLANS IN ACTIONS AFFECTING THE FAMILY**

##### **Key Provisions**

1. Clarifies the current statutory provision governing guardian ad litem (GAL) compensation to provide that when parties are ordered to pay GAL compensation, they may be ordered to pay the GAL directly, pay into an escrow account from which the GAL will be paid, or reimburse the county if it has paid the GAL's compensation. Also, allows the court to order the county to pay a GAL's compensation for an indigent party if either party is indigent.
2. Permits a court to order income withholding to collect GAL fees or fees for mediation and custody and physical placement studies.
3. Requires the clerk of court to provide parties with instructions for completing and filing a parenting plan when the parties file a petition or receive a summons for an action affecting the family. Also, provides that a mediator must review the nonfinancial provisions of the parenting plan at the initial session of mediation.
4. Requires parties to file a parenting plan with the court within 60 days after the court waives the requirement that the parties attend mediation or within 60 days after the mediator notifies the court that the parties have not reached an agreement, unless the court orders otherwise.
5. Requires parties to an action affecting the family in which a minor child is involved to attend a parent education program that includes at least four hours of instruction or training on the effects of divorce on a child; working together in the best interest of the child; parenting or coparenting skills; the consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court; available mediation; current law relating to custody and physical placement; current law relating to the duties and responsibilities of a GAL; and the potential costs associated with an action affecting the family.
6. Provides that a court or family court commissioner (FCC) may elect not to order attendance at a parent education program or may order the parties to attend separate sessions of the program if the court or FCC determines that attending the program or attending the program with the other party would cause undue hardship or endanger the health or safety of one of the parties.

7. Provides that the court or FCC may require attendance as a condition to the granting of a final judgment or order in the action, if attendance at the program is ordered. In addition, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend the program.

**B. PETITION TO THE WISCONSIN SUPREME COURT TO AMEND RULES RELATING TO ELIGIBILITY FOR APPOINTMENT AS A GAL FOR A MINOR**

**Key Provisions**

1. Requires attorneys who accept appointments as a GAL in actions affecting the family to have received six hours of approved GAL education during the combined current biennial continuing legal education reporting period and the immediately preceding reporting period. Three of the required six hours would be in family court GAL education. In addition, a court could appoint an attorney who has not met this requirement if the court finds that the action or proceeding presents exceptional or unusual circumstances for which the attorney is otherwise qualified by experience or expertise.

2. Specifies that family court GAL education must be on the subjects of: actions affecting the family; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence; and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socioeconomic diversity.

**PART II**  
**COMMITTEE ACTIVITY**

**A. ASSIGNMENT**

The Joint Legislative Council established the Special Committee by a May 18, 2000 mail ballot and appointed the cochairs by a June 13, 2000 mail ballot. The Special Committee was directed to study the GAL system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The review of the appointment of GALs was to include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as GALs. The committee was directed to prepare a report of any recommended legislation and to petition the Wisconsin Supreme Court to consider rules for the reform of the GAL system in actions affecting the family based on the committee's recommendations that are more appropriate for Supreme Court rules.

The membership of the Special Committee, appointed by August 14 and October 12, 2000 mail ballots, consisted of four Senators, three Representatives and 12 Public Members.

A membership list of the Joint Legislative Council is included as **Appendix 2**. A list of the committee membership is included as **Appendix 3**.

**B. SUMMARY OF MEETINGS**

The Special Committee held five meetings at the State Capitol in Madison on the following dates:

September 13, 2000	December 12, 2000
October 24, 2000	January 12, 2001
November 14, 2000	

At the September 13, 2000 meeting, the Special Committee received testimony from J. Denis Moran, Director of State Courts, and Attorney Gretchen Viney, Baraboo. Mr. Moran, accompanied by Pam Radloff, fiscal officer for the Director of State Courts, discussed his office's role in training GALs, the "Through the Eyes of a Child" training program and the Board of Bar Examiners' approval of continuing legal education courses for GALs. Mr. Moran also explained his office's administration of grants to counties for GAL expenditures and answered questions regarding how GALs are reimbursed when parents do not pay. Attorney Viney described her work as a contract GAL in Sauk County. She explained circumstances in which GALs are appointed and noted that each county has its own system for appointing and compensating GALs. Ms. Viney outlined the statutory requirements for GALs in family law cases and the steps she goes through as a GAL in a typical proceeding.



The Special Committee also briefly reviewed a staff brief on GALs in family law cases.

At the October 24, 2000 meeting, the Special Committee received testimony from Judge Gary Carlson and Jean Nuernberger, Coordinator, Family and Juvenile Services, Taylor County Circuit Court, Medford; Attorney Charles Senn, Thorp; Judge Daniel Noonan, Milwaukee County Circuit Court, Milwaukee; Attorney Margaret Wrenn Hickey, Milwaukee; Kathleen Jeffords, Director, Dane County Family Court Counseling Services, Madison; Judge John Albert, Dane County Circuit Court, Madison; and Diane Wolff, Director, Waukesha County Family Court Counseling Services, Waukesha. Judge Carlson explained how he works as a team with Ms. Nuernberger and Attorney Senn in contested family law cases. He explained what he requires of the parties and attorneys in a custody case and distributed materials concerning the median cost of a GAL for a litigated case in Taylor County. Ms. Nuernberger described her work as coordinator of a parenting program on divorce and as a mediator in contested cases. She also explained her role in developing parenting plans, recommending whether GALs are needed in certain cases and conducting home studies. Attorney Senn discussed the need for ongoing training of GALs who are handling family court cases. He also addressed the need for parties to be educated regarding the role of the GAL and the costs of litigation. He also discussed the evaluation of GALs. Judge Noonan discussed the large volume of divorce cases in Milwaukee County, about 50% of which are *pro se* cases. He explained the system for appointing GALs in Milwaukee County and the arrangement the county has with the Legal Aid Society of Milwaukee County for appointing GALs in low-income cases. Attorney Hickey discussed her role as a family law attorney in Milwaukee County and the importance of GALs being attorneys, since the law requires them to be advocates for the best interests of children. Ms. Jeffords explained the parent education program and mediation and custody and placement study services provided by the Dane County Family Court Counseling Services program. She emphasized the importance of GALs being attorneys and recommended additional funding for family court counseling services. Judge Albert discussed his role as a circuit judge handling divorce cases. He noted his opposition to having trained volunteers, rather than attorneys, acting as GALs. He stated the importance of GAL training including training in child development and the need for more accountability for GALs. Ms. Wolff discussed the family court counseling services provided in Waukesha County. She noted the importance of GALs bringing a legal perspective, as opposed to a social work perspective, and their trial advocacy skills, to a case.

The Special Committee also discussed Memo No. 1, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (October 13, 2000).

At the November 14, 2000 meeting, the Special Committee received testimony from Kenneth Waldron, psychologist, Waldron, Kriss and Associates, Middleton; Jan Raz, President, Wisconsin Fathers for Children and Families, Hales Corners; Carol Medaris, staff attorney, Wisconsin Council on Children and Families, Madison; and Attorney Marjorie Schuett, Lathrop and Clark, LLP and Chair, Family Law Section, State Bar of Wisconsin, Madison. Mr. Waldron discussed his work with divorcing families as a psychologist. He stated that GALs would benefit from increased knowledge in several areas, including: child development; understanding the effects of conflict on children, recognizing parents' character

disorders; working with mental health professionals, learning how children express preferences; and developing child-focused plans for divorcing families. Mr. Raz cited a number of concerns, including that parenting plans are not used early enough in the court process and that the best interests of the child standard conflicts with the requirement to maximize placement with each parent. He suggested that GALs not be appointed unless there are special concerns for the welfare of the child and that parents be required to file a parenting plan earlier in the process. He also suggested requiring courts to determine allocation of periods of physical placement by considering the parenting plans and requiring GALs and mediators to use the same legal standards for resolving custody and placement disputes as do court commissioners and judges. Ms. Medaris stated that GALs are very important in contested custody proceedings and that they must be attorneys to balance the representation of the parents' interests with those of their children. She recommended that GALs receive additional training focusing on child development, family systems and trial advocacy, as well as domestic abuse training to heighten GALs' awareness and sensitivity to the effect of domestic abuse on family dynamics. She also recommended that financial and other costs of custody disputes be explained to parents early in the case and that the "best interests of the poor child" should be taken into consideration. Ms. Schuett discussed the Family Law Section's efforts on behalf of children and the Section's perspective on the importance of maintaining high standards for GALs. She described various areas in which the Section has supported the Legislature's and the Supreme Court's initiatives to improve the quality of GAL representation and to try to ensure fair results in family law disputes. She noted that the Family Law Section supports continuing education and training for GALs as well as adequate compensation.

The Special Committee discussed the recommendations that had been made to the committee to date, summarized in Memo No. 2, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (November 7, 2000). The committee eliminated some recommendations from further consideration and agreed to discuss others at a subsequent meeting.

At the December 12, 2000 meeting, the Special Committee received testimony from Jennifer Ortiz, Supervising Attorney, Guardian ad Litem Division, and James Brennan, Chief Staff Attorney, Legal Aid Society of Milwaukee, Inc., Milwaukee; Amy O'Neil, Task Force on Family Violence, Milwaukee; and Laurie Jorgensen, Cochair, Justice Committee, Governor's Council on Domestic Abuse, Wausau. Ms. Ortiz discussed the GAL Division's work in representing low-income individuals in family court cases, including serving as GALs for minor teen parents from Milwaukee County. She explained the in-house training provided for GALs by Legal Aid in order to try to address the many different cultural needs of individuals represented. She recommended continuing the practice of using attorneys as GALs and providing training to GALs relating to cultural sensitivity. Mr. Brennan discussed Legal Aid's employment of social workers and training of attorneys to investigate cases and conduct home studies. Ms. O'Neil explained her role as a victim advocate for children in court cases and assisting families in obtaining restraining orders and advocating for children who have been abused or have witnessed abuse. She discussed the importance of GALs in custody cases and the particularly vital role of GALs when domestic abuse or child abuse is present. She emphasized the need for GALs to recognize the dynamics of a child's home life in domestic abuse situations and the importance of training GALs to recognize and understand

warning signs of domestic abuse. Ms. Jorgensen explained the work of the Justice Committee in advising the Governor's Council on Domestic Abuse regarding issues in the courts across the state as they relate to victims of domestic abuse. She emphasized the need for GALs to have training in and understanding of the dynamics of domestic violence and the profound impact it has on children, as well as the need for GALs to take threats of violence seriously. She also addressed the need for a mechanism for accountability when GALs do not fulfill their responsibilities adequately.

The Special Committee discussed Memo No. 3, *Issues Raised for Consideration by the Special Committee on Guardians Ad Litem in Actions Affecting the Family* (December 5, 2000). The committee discussed issues relating to training for GALs and agreed to include a number of suggested training topics in a letter to the State Bar. The committee also discussed Memo No. 4, *Three Draft Letters* (December 5, 2000), which contained three draft letters prepared at the committee's request. The first letter, addressed to the Cochairs of the Joint Legislative Audit Committee, requested that the Legislative Audit Bureau be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services. The second letter, to Chief Justice Shirley Abrahamson, in her capacity as Chair of the Supreme Court's Judicial Education Committee, requested that that Judicial Education Committee consider including several items relating to GALs in its judicial education program. The third letter, to George Brown, Executive Director, State Bar of Wisconsin, requested that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs. The committee suggested a number of changes in the draft letters to be reviewed at the next meeting of the committee.

The committee also discussed a bill draft, WLCS: 0019/1, relating to compensation of guardians ad litem, parent education and parenting plans in actions affecting the family. The draft: (1) clarified current law to provide that parties ordered to pay GAL compensation may be ordered to pay the GAL directly, pay into an escrow fund from which the GAL will be paid, or reimburse the county if it is paid the GAL's compensation; (2) added a requirement that the four-hour educational program for parties in family law cases on the effects of marriage dissolution must include the viewing of a videotape that addresses the financial and other consequences of contesting legal custody or physical placement and the effects of conflict on children; and (3) required parties to file a parenting plan with the court prior to attending the first session of mediation, with certain exceptions. The committee asked for a redraft of this proposal to include language proposed in a memo from Judge Kirk for items to be covered in parent education. The committee also asked staff to prepare a draft requiring a GAL to describe to the court what he or she considered in making the recommendation regarding the best interest of a child.

At the January 12, 2001 meeting, the Special Committee discussed the three draft letters that were revised following the previous meeting to incorporate members' suggestions. The committee agreed to make additional modifications in the three letters and gave final approval to sending the letters, as modified. The committee then discussed WLCS: 0019/2, a redraft of a previous draft. The committee made a number of modifications to the draft and gave final approval to recommending the draft, as amended and renumbered WLC: 0019/3, to

the Joint Legislative Council for introduction. The committee considered WLCS: 0057/1, agreed to incorporate a portion of it in WLC: 0019/3 and rejected the remainder of the draft. The committee also considered a draft petition to the Wisconsin Supreme Court asking for modifications to the Supreme Court's rules regarding GAL training. The committee made a modification and approved the petition, as amended, for submission to the Joint Legislative Council for approval and subsequently, to the Wisconsin Supreme Court. The committee reviewed and decided not to send a letter to Representative Carol Owens, Chair of the Assembly Family Law Committee, and Senator Gary George, Chair of the Senate Judiciary Committee, regarding child support.

## **PART III**

### **RECOMMENDATIONS**

This part of the report provides background information on, and a description of, the two proposals recommended by the Special Committee on Guardians Ad Litem in Actions Affecting the Family and approved by the Joint Legislative Council.

#### **A. SENATE BILL 126**

##### **1. Reimbursement of GAL Costs**

###### **Background**

Current law relating to GAL compensation provides that the court must order either or both parties in an action affecting the family to pay all or any part of the compensation of the GAL. The Special Committee determined that many judges and FCCs are interpreting this provision to require the GAL to collect his or her own fees although many counties prefer to collect the fees for GALs and reimburse them, to eliminate the pressure that a party who is paying the GAL directly may exert. The Special Committee concluded that judges and FCCs should be permitted to require parties to place funds into an escrow account to reimburse the GAL or to order the county to pay the GAL directly and then have the parties reimburse the county.

##### **2. Description of the Bill**

The bill specifies that a court order to pay the compensation of a GAL may direct either or both parties to pay the GAL directly, to pay into an escrow fund from which the GAL is reimbursed, or to reimburse the county of venue for payments made by the county to the GAL.

##### **3. Compensation of GALs for Indigent Parties**

###### **Background**

Under current law relating to GAL compensation, if both parties to an action affecting the family are indigent, the court may direct that the county of venue pay the compensation and fees. Prior to the enactment of 1995 Wisconsin Act 27, the 1995-97 Biennial Budget Act, the court was permitted to direct the county of venue to pay compensation and fees of a GAL if either or both parties were unable to pay. In addition, the court was permitted to direct that any or all parties reimburse the county in whole or in part, for the payment. A recent Court of Appeals decision held that the current statute does not permit a court to order the county to pay a GAL's compensation when only one party to an action affecting the family proceeding is found to be indigent. The court stated that the change in the wording of the statute under Act 27 is a clear signal that the Legislature intended to decrease the number of cases in which counties are ordered to pay for GALs. The court concluded that, as currently drafted, the statute provides that when one party is indigent and the other is not, the court's only option is

to order the nonindigent party to pay the GAL's fees. [*Olmsted v. Circuit Court*, 2000 Wi. App. 261, 2000 Wisc. App. LEXIS 1111 (2000).]

The Special Committee concluded that a court should be permitted to order the county to pay GAL compensation if *either* party is indigent.

### **The Bill**

Under the bill, if either party is indigent, the court may direct that the county of venue pay the GAL compensation and fees for that party.

## **4. Income Withholding to Pay Fees**

### **Background**

Under current law, the court is not permitted to order an income withholding, or "wage assignment," in order to reimburse the county or a GAL for GAL compensation or to collect fees for mediation services or custody and placement studies.

The Special Committee concluded that allowing courts to order income withholding to collect GAL or family court counseling service fees would help counties collect costs they are owed.

### **The Bill**

Under the bill, the court may order an income withholding for the amount of GAL reimbursement in favor of the county or the GAL and against a party or parties responsible for the reimbursement. In addition, a court or FCC may order income withholding for one or both parties in order to collect fees for mediation or a custody and placement study.

## **5. Parenting Plans**

### **Background**

Under current law, in an action affecting the family in which legal custody or physical placement of a child is contested, a party seeking sole or joint legal custody or periods of physical placement must file a parenting plan with the court before any pretrial conference. Unless cause is shown, a party required to file a parenting plan who does not timely file the plan waives the right to object to the other party's plan.

A parenting plan must provide information about questions such as what legal custody or physical placement the parent is seeking, where the parent lives, where the parent works and what hours he or she works, who will provide necessary child care, where the child will go to school, how the child's medical care will be provided and what the child's religious commitment will be, if any. In addition, the parenting plan must discuss how the child's time is proposed to be divided between the two parents and how the parent proposes to resolve disagreements related to matters over which the court orders joint decision-making. Finally,

the parenting plan should discuss what child support, family support, maintenance or other income transfer there will be.

Under current law, the parenting plan must be filed with the court before any pretrial conference. Testimony to the Special Committee indicated that there is no definition of pretrial conference and the term is interpreted differently across the state. Also, in some counties, the pretrial conference is considered to be a conference that is held in preparation for a scheduled trial.

The Special Committee discussed that the parenting plan appears to be a good tool in helping parties come to a mutually satisfactory agreement outside of court about custody and placement arrangements. The committee concluded, therefore, that parties should receive information on the parenting plan soon after commencing an action affecting the family.

### **The Bill**

Under the bill, the clerk of court must provide, without charge, to each person filing a petition in an action affecting the family instructions for completing and filing a parenting plan. In addition, a summons in any action affecting the family must be accompanied by instructions, provided without charge by the clerk of court, for completing and filing a parenting plan.

The bill also provides that at the parties' initial session of mediation in an action affecting the family, the mediator must review with the parties the nonfinancial provisions of the parenting plan.

Finally, under the bill, the parenting plan must be filed with the court within 60 days after the court waives the requirement for the parties to attend mediation or within 60 days after the mediator for the parties notifies the court that the parties have not reached an agreement, unless the court orders otherwise.

## **6. Parent Education**

### **Background**

Under current law, at any time during the pendency of an action affecting the family in which a minor child is involved and in which the court or FCC determines that it is appropriate and in the best interests of the child, the court or FCC, on its own motion, may order the parties to attend a program specified by the court or FCC concerning the effects on a child of a dissolution of the marriage. In addition, at any time during the pendency of an action to determine paternity of a child, the court or FCC may order either or both of the parties to attend a program specified by the court or FCC that provides training in parenting or coparenting skills or both.

Current law provides that these programs must be educational rather than therapeutic in nature and may not exceed a total of four hours in length. The parties are responsible for the costs, if any, of attendance at the program.

Under current law, the court or FCC may require the parties to attend an educational program as a condition to the granting of a final judgment or order in the action affecting the family that is pending. A party who fails to attend an educational program as ordered or who fails to pay for the educational program may be proceeded against for contempt of court.

Also under current law, at any time during the pendency of a divorce or paternity action, the court or FCC may order the parties to attend a class as approved by the court or FCC and that addresses such issues as child development, family dynamics, how parental separation affects child development and what parents can do to make raising a child in a separated situation less stressful for the child. The court or FCC may not require the parties to attend such a class as a condition to the granting of the final judgment or order in the divorce or paternity action. However, the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend such a class. The parties are responsible for any costs of attending such a class. However, if the court or FCC finds that a party is indigent, any costs that would be the responsibility of that party are paid by the county.

During its deliberations, the Special Committee discussed the importance of educating parties on the effects and consequences of litigation in family court, the financial costs of protracted litigation and the roles and responsibilities of the parties, GALs and attorneys in the cases. The Special Committee concluded that certain changes should be made to current law relating to education programs to better prepare parties for litigation and coparenting after a divorce or other action affecting the family.

### **The Bill**

Under the bill, during the pendency of an action affecting the family in which a minor child is involved, the court or FCC *must* order the parties to attend a program specified by the court or FCC that provides instruction on or training in any of the following that the court or FCC determines is appropriate in the particular case:

- a. The effects of divorce on a child.
- b. Working together in the best interest of the child.
- c. Parenting or coparenting skills, or both.
- d. The consequences of stipulating to a custody and placement arrangement and of resolution of disputes by the court.
- e. Available mediation.
- f. Current law relating to custody and placement.
- g. The provisions of current law relating to the role and responsibilities of the GAL and the duties and responsibilities of a GAL in representing the best interest of a child.
- h. The potential costs of an action affecting the family, including the cost of representation by an attorney; mediation fees; legal custody and physical placement study



fees; GAL fees and expenses and the fees and expenses of any expert witness ordered to assist the GAL; the costs of mental or physical examinations of a party, if applicable, including the costs for preparing a written report or court testimony; and any other costs, fees or expenses that may be incurred during litigation.

Under the bill, in the discretion of the court or FCC, the parties may not be required to attend an educational program or may be required to attend separate sessions of the program if the court or FCC finds that attending such a program or attending such a program with the other party would cause undue hardship or endanger the health or safety of one of the parties. When making a determination of whether attending a program or attending the program with the other party would endanger the health or safety of one of the parties, the court or FCC must consider evidence that a party engaged in abuse of the child, evidence of interspousal battery or domestic abuse, evidence that either party has a significant problem with alcohol or drug abuse, and any other evidence indicating that a party's health or safety will be in danger by attending a program or by attending the program with the other party.

Under the bill, the educational program must include *at least* four hours of instruction or training.

The bill provides that the court or FCC may require the parties to an action affecting the family in which a minor child is involved to attend an educational program as a condition to granting a final judgment or order in an action affecting a family. If the parties were not ordered to attend a program because the court or FCC found that attending the program would cause undue hardship or endanger the health or safety of one of the parties, the court or FCC may not condition the granting of the final judgment or order in the action affecting the family on attending the program.

The bill also provides that the court or FCC may refuse to hear a custody or physical placement motion of a party who refuses to attend an educational program.

## **B. PETITION TO THE WISCONSIN SUPREME COURT**

### **1. Background**

Under current law, a GAL must be an attorney admitted to practice in this state. Current Supreme Court rules govern GAL qualifications. Specifically, under the current rules, a lawyer may not accept an appointment by a court as a GAL unless one of the following conditions has been met: (a) the lawyer has attended 30 hours of approved GAL education at any time since January 1, 1995; (b) the lawyer has attended six hours of approved GAL education during the combined current reporting period at any time he or she accepts an appointment and the immediately preceding reporting period; and (c) the appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

These rules apply to attorneys who accept GAL appointments in proceedings under ch. 48 (the Children's Code), ch. 767 (actions affecting the family) or ch. 938 (the Juvenile Justice Code), Stats. GAL education is approved by the Board of Bar Examiners. The Board

approves continuing legal education that the Board determines relates to the role and responsibility of a GAL for a minor in various court proceedings and that is designed to increase professional competence to act as a GAL for a minor.

Various individuals provided testimony to the Special Committee that GALs practicing in family court do not receive adequate training relating to issues that children and their parents are experiencing during a divorce or other actions affecting the family. The Special Committee concluded that, due to the level of conflict in family law cases, a GAL practicing in family court who has knowledge about child development and family dynamics can better formulate a recommendation to serve a child's best interests. In addition, the Special Committee discussed the importance of such GALs receiving ongoing relevant education in order to effectively represent the best interests of children in family law disputes.

## **2. The Petition**

Under the petition, the Joint Legislative Council, on the unanimous recommendation of the Special Committee on Guardians Ad Litem in Actions Affecting the Family, petitions the Wisconsin Supreme Court to amend current rules relating to eligibility for appointment as a GAL for a minor. The requested modifications only relate to GALs who are appointed in actions affecting the family under ch. 767, Stats. Under the proposed rule change, commencing on July 1, 2002, a lawyer may not accept an appointment by a court as a GAL for a minor in an action or proceeding under ch. 767, Stats., unless one of the following conditions has been met:

a. The lawyer has attended six hours of GAL education during the combined current reporting period at the time he or she accepts an appointment and the immediately preceding reporting period. At least three of the six hours must be in family court GAL education.

b. The appointing court has made a finding in writing or on the record that the action or proceeding presents exceptional or unusual circumstances for which the lawyer is otherwise qualified by experience or expertise to represent the best interests of the minor.

The proposed rules would also require the Board of Bar Examiners to approve courses of instruction or continuing legal education activities as family court GAL education that are on the subject of proceedings under ch. 767, Stats.; child development and the effects of conflict and divorce on children; mental health issues in divorcing families; the dynamics and impact of family violence, and sensitivity to various religious backgrounds, racial and ethnic heritages and issues of cultural and socioeconomic diversity.

The petition was filed with the Clerk of the Wisconsin Supreme Court on April 5, 2001. A copy of the petition is included as **Appendix 5**.

**C. OTHER RECOMMENDATIONS**

As noted, the Special Committee voted that the Cochairs of the Special Committee send letters to the Cochairs of the Joint Legislative Audit Committee, Chief Justice Shirley Abrahamson, and the State Bar of Wisconsin, as follows:

**Item 1** - Letter to Representative Joseph Leibham and Senator Gary George, Cochairs, Joint Legislative Audit Committee, requesting that the Legislative Audit Committee be directed to audit various items relating to the compensation of GALs and the provision of family court counseling services.

Representative Joseph Leibham  
Cochair, Joint Legislative Audit Committee  
Room 123 West, State Capitol  
Madison, WI 53701

Senator Gary George  
Cochair, Joint Legislative Audit Committee  
Room 118 South, State Capitol  
Madison, WI 53701

Dear Representative Leibham and Senator George:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family, which recently concluded its work. The Special Committee was directed to study issues and develop recommendations relating to the appointment, role, supervision, training and compensation of guardians ad litem (GALs) in family law cases. The committee membership list is attached.

Invited speakers testified concerning the adequacy of compensation for GALs, methods of payment for their services and the extent to which counties recoup their costs from parties who are able to pay for GAL services. Some speakers also expressed concerns about variations among the counties in the provision of family court counseling services and noted that inadequate family court counseling services result in greater reliance on GAL appointments than might otherwise be necessary.

At its final meeting on January 12, 2001, the Special Committee voted unanimously to request an audit by the Legislative Audit Bureau on the following subjects:

1. State compensation to counties for the cost of GAL services to persons who are unable to pay, as provided in s. 758.19 (6), Stats.;
2. Recoupment by counties of payments for GAL services from persons who are responsible for those costs and costs that are not reimbursed due to:
  - a. Insufficient collection efforts; and
  - b. Waiver of reimbursement due to the parties' indigency.
3. Implementation and funding of family court counseling services under s. 767.11, Stats.

### **COMPENSATION OF GAL COSTS WHERE PARTIES UNABLE TO PAY**

Under current law, general purpose revenue is appropriated for grants to counties for costs of GAL compensation incurred by counties in actions affecting the family (under ch. 767, Stats.) that the counties have final legal responsibility to pay or that they are unable to recover from another person. The GAL grant funds are distributed to counties based on the formula in s. 758.19 (6) (c), Stats.

An audit could examine whether the current statutory formula results in compensation to counties that reflects actual costs incurred by the counties in paying for GAL services where the parties are unable to pay.

### **RECOUPMENT OF COUNTY GAL COSTS WHERE PARTIES ABLE TO PAY**

Testimony before the Special Committee indicated that there is variation among the counties in how payments to GALs are handled when the parties are able to pay. Some counties require that GALs collect their fees directly from the parties, without any county involvement. Other counties collect the GAL fees from the parties and then pay the GAL for services provided. Some counties pay the GAL directly and collect money from the parties to recoup their costs. However, it appears that such counties only reimburse GALs at a rate of between \$40 and \$70 per hour and require GALs who charge a higher fee to collect the fees themselves.

There is some concern that requiring a GAL, who is appointed by the court, to collect his or her own fees from the parties places the GAL in an awkward position, particularly if one or both parties is disgruntled with the GAL's decisions regarding the child or children whose interests the GAL represents. On the other hand, there is concern about the administrative burden on counties of collecting from the parties and paying the GALs, as well as the possibility that counties are not recouping all of their costs from the parties.

An audit could review:

- a. How counties currently handle GAL compensation where the parties are able to pay.
- b. Whether counties fully recoup payments they make to GALs from parties who are able to pay.
- c. Variations in the rate and method of compensation of GALs among the counties.

### **FAMILY COURT COUNSELING SERVICES**

Mediation and custody and placement studies must be made available to families pursuant to s. 767.11, Stats. The services are partially funded by a \$20 filing fee to commence an action affecting the family and \$25 of the filing fee to show cause for the revision of a legal custody or physical placement order or objection to a parent's move.

Testimony before the Special Committee indicated that counties vary in the provision of family court counseling services and that a number of counties have not established an in-house family court counseling office, but instead contract with others to provide mediation and conduct custody and placement studies. Inadequate funding for family court counseling services was cited as the primary reason for opting not to offer services directly to parties. The Director of Dane County Family Court Counseling estimated that the current fee structure for family court counseling provides only about 25% of the cost to provide services in Dane County and noted that the \$300 statutory fee for a custody study has not been increased since the inception of family court counseling services in 1989.

One of the primary concerns the committee discussed is the extent to which the mediation component of family court counseling services is provided in a timely fashion to all parties, regardless of ability to pay. The committee was interested in whether the provision of timely mediation services reduces the need for custody studies and GAL services and, conversely, whether failure to provide early and efficient mediation leads to increased family court counseling and GAL costs. The committee was particularly concerned that, because of inadequate funding for mediation and custody and placement studies, some parties may wait a long time for services, making it more difficult to resolve disputes without protracted litigation.

An audit could review:

- a. Variations in the level and types of family court counseling services provided by the counties.
- b. The extent to which counties are using parenting plans [see s. 767.24 (1m)], what form they take and whether use of the plans has resulted in a savings in family court counseling and GAL costs, as compared to the period before use of parenting plans was mandated.
- c. A comparison of amounts expended by counties to provide mediation and custody and placement studies to the amounts received by counties from the filing fees described above and state reimbursement, to determine the extent of any funding shortfall experienced by counties in providing these services.
- d. The extent, if any, to which the provision of early mediation services has an impact on the number of custody and placement studies ordered and GALs appointed and associated cost savings, if any.
- e. The extent, if any, to which timely custody and placement studies impact on the number of GAL's appointed and the associated cost savings of fewer GAL appointments or reduced GAL costs, if any.
- f. The extent, if any, to which a county's cost savings associated with fewer GAL appointments affect the total funds expended by that county on family court counseling services.

- g. The efficacy of replacing the current flat fees of \$200 for mediation (after an initial free session) and \$300 for a custody study and instead permitting each county to establish a sliding fee scale based on the parties' ability to pay.
- h. The association between early access to mediation and the resolution of disputes in a manner that is cost-effective, timely and likely to avoid post-judgment action.
- i. Whether the practice in some counties of requiring payment before mediation occurs precludes low-income parties from obtaining timely mediation.

Thank you for considering the Special Committee's audit request. We would be happy to answer any questions you may have about this request and to testify in favor of the proposed audit before the Joint Legislative Audit Committee.

Sincerely,

---

Representative Mark Gundrum, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

---

Senator Kim Plache, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

Attachment

cc: Janice Mueller, State Auditor

**Item 2** - Letter to Chief Justice Abrahamson, Chair of the Wisconsin Supreme Court's Judicial Education Committee, requesting that the Judicial Education Committee consider including several items relating to GALs in its judicial education program.

The Honorable Shirley S. Abrahamson  
Chief Justice, Wisconsin Supreme Court  
119 Martin Luther King, Jr. Blvd., Suite 101  
Madison, WI 53701

Dear Chief Justice Abrahamson:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family. The Special Committee met from September 2000 to January 2001, to study issues and develop recommendations relating to the appointment, role, supervision, training and compensation of guardians ad litem (GALs) in family law cases. The committee membership list is enclosed.

In testimony before the committee, several speakers expressed concern that judges do not always make clear to GALs their expectations of the GAL at the outset of a case. Speakers also noted that the parties in a family law action may not fully understand the role and responsibilities of the GAL and the interests that the GAL represents, namely the best interests of the child or children of the divorcing parties. Finally, speakers and committee members discussed the need for assurances that GALs are performing the work expected of them throughout the course of their representation of a child.

Following discussion of these issues at its final meeting on January 12, 2001, the Special Committee voted unanimously to correspond with you as Chair of the Wisconsin Supreme Court's Judicial Education Committee, to recommend that the committee include in its judicial education programs information on the importance of the judge or family court commissioner: (1) communicating clearly the court's expectations to the GAL at the earliest opportunity in every case; (2) ensuring that the parties understand that the GAL is appointed by the court to represent and advocate for the child's best interests; (3) inquiring of the GAL, during court proceedings, about actions taken and work performed in the matter; and (4) providing feedback on the GAL's performance where the court or family court commissioner deems it appropriate, recognizing the need to respect the rules regarding *ex parte* communications.

We would be happy to discuss this request with you or members or staff of the Judicial Education Committee at your convenience.

Thank you for your consideration of these recommendations.

Sincerely,

---

Representative Mark Gundrum, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

---

Senator Kim Plache, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

Enclosure

cc: Mr. David H. Hass, Director of Judicial Education, and Wisconsin Supreme Court Justices, Wisconsin Supreme Court



**Item 3** – Letter to George Brown, Executive Director, State Bar of Wisconsin, requesting that the Bar provide continuing legal education for GALs that focuses on issues that arise in family law disputes; develop a videotape that addresses the consequences to parties of contesting legal custody or physical placement; and coordinate mentoring for new GALs.

Mr. George Brown, Executive Director  
State Bar of Wisconsin  
P.O. Box 7158  
Madison, WI 53707-7158

Dear Mr. Brown:

We are writing in our capacity as Cochairs of the Joint Legislative Council's Special Committee on Guardians Ad Litem in Actions Affecting the Family, which recently concluded its work. The Special Committee was directed to study the guardian ad litem (GAL) system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of GALs. The committee membership list is attached.

At its final meeting on January 12, 2001 meeting, the Special Committee voted unanimously to correspond with you to request that the State Bar consider several issues in offering services to and providing continuing legal education for attorneys who serve as GALs in family law cases. These issues relate to training, education of parties on the role of the GAL and the experience of a custody or placement dispute, and possible mentoring for new attorneys who accept GAL appointments in family court.

### **TRAINING OF GALs**

Many individuals who testified before the Special Committee offered suggestions for areas in which the training of GALs could be developed or expanded. Because the State Bar offers a great deal of the required continuing legal education specifically targeted at practice as a GAL, we ask that you consider offering training, or in some cases, more training, on the following subjects:

1. Maintaining Impartiality: Although a party may not agree with a GAL's recommendation, he or she should believe that the GAL acted independently and gathered information impartially to assess what is in a child's best interest. The Special Committee recommends that the State Bar offer training that addresses actions that a GAL may take or avoid to assure parties that the GAL is acting independently and avoiding assessing the facts of the case or taking a position based upon personal biases such as gender, socio-economics, religion or race.
2. Issues for children and families experiencing divorce: Concerns were raised to the Special Committee that current training offered to GALs does not offer adequate information on issues affecting children and families during a divorce, including mental health issues. Although committee members recognize that training in trial

advocacy skills is also very important for attorneys who act as GALs, the committee recommends that the State Bar offer further training in areas such as:

- Child development, including how children of different ages process and report information; how children of different ages experience divorce; the needs of children of varying ages to spend time with each parent; and the role of each parent based upon the stage in a child's development.
  - How children are affected by conflict and parental alienation.
  - How to work with a mental health professional in a case and how and when to recommend that parties or children be assessed by a mental health professional.
  - Understanding and appreciating the dynamics and impact of family violence and ensuring safety and maintaining confidentiality in cases in which family violence is an issue.
  - Understanding and appreciating the implications of a child's religious background and racial or ethnic heritage and issues of cultural and socio-economic diversity.
  - Conflict resolution.
3. Interviewing children: As discussed above, the Special Committee heard testimony regarding the ways children process and report information based upon their age and the effects of any conflict on them. Based on this information, the Special Committee believes it is important that all GALs who practice in family court receive training specific to interviewing children in developmentally appropriate ways.

### **EDUCATION OF PARTIES**

The Special Committee heard testimony from several individuals expressing the concern that parties in a family law dispute are not fully aware of the costs, both financial and psychological, of protracted litigation. In addition, attorneys and judges indicated that many parties do not have an accurate understanding of the role of the GAL and what the GAL may and may not do. It was the consensus of committee members that if parties were better educated in these areas, they would be more likely to resolve disputes early in the process and reduce costs to the parties and taxpayers. In addition, there would be less confusion about and resentment of the legal process and the GAL. Also, parties would be better able to distinguish between proper representation by a GAL, even if they disagree with the GAL's recommendation, and instances in which a GAL is acting improperly.

In response to those concerns, we have corresponded with Chief Justice Shirley Abrahamson in her capacity as chair of the Supreme Court's Judicial Education Committee to request that judicial education programs include information on the importance of judges and family court commissioners ensuring that the parties understand the role and responsibilities of the GAL.

In addition, we request that the State Bar coordinate the production of a videotape that parties would view during their initial parent education session. This video could inform parties of the steps in a contested custody or placement case, the role of the GAL, and what they can expect financially. In addition, the video could describe how the conflict inherent in a custody or placement dispute may affect the parties and their children.

We would also request that the State Bar more widely disseminate the Bar's pamphlet setting forth similar information so that it is available to parties when they file for divorce or attend the initial session of mediation or parent education.

**MENTORING**

Another issue that judges in particular raised to the Special Committee is that GALs are often young, inexperienced attorneys. Although we believe that additional training would increase the competency of such attorneys, it seems that mentoring by a more experienced GAL would be very beneficial for new attorneys who are planning to accept GAL appointments. Perhaps local bar associations would be in a better position to actually arrange mentors for new attorneys, but we would appreciate any efforts by the State Bar to coordinate mentoring.

Thank you for your consideration of these requests.

Sincerely,

---

Representative Mark Gundrum, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

---

Senator Kim Plache, Cochair  
Special Committee on Guardians Ad Litem  
in Actions Affecting the Family

Attachment

cc: Marjorie Schuett, Chair, Family Law Section, State Bar of Wisconsin

## APPENDIX 1

### Committee and Joint Legislative Council Votes

At its January 12, 2001 meeting, the Special Committee voted to recommend WLC: 0019/3 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. At that meeting, the Special Committee also voted to recommend that the Joint Legislative Council petition the Wisconsin Supreme Court to amend current Supreme Court Rules relating to eligibility for GAL appointments. The votes on the draft and the draft petition were as follows:

- WLC: 0019/3, relating to guardians ad litem, parent education and parenting plans in actions affecting the family: Ayes, 13 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek and Screnock); Noes, 0; and Absent, 6 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney, Gemignani and Serlin).
- Petition to the Wisconsin Supreme Court to amend rules relating to eligibility for appointment as a GAL for a minor: Ayes, 14 (Sens. Plache and Huelsman; Reps. Gundrum, and Owens; and Public Members Barrett, Cranley, Fahrenkrug, Hansen, Kirk, Onheiber, Pfeiffer, Ptacek, Screnock and Serlin); Noes, 0; and Absent, 5 (Sens. Shibilski and Welch; Rep. Staskunas; and Public Members Delaney and Gemignani).

At its March 14, 2001 meeting, the Joint Legislative Council voted to introduce WLC: 0019/3 on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sens. Chvala and Panzer; and Reps. Black and Krug).

The Joint Legislative Council also voted to approve and send the petition to the Wisconsin Supreme Court on a roll call vote as follows: Ayes, 18 (Sens. Risser, Baumgart, Burke, Darling, George, Grobschmidt, Robson, Rosenzweig and Zien; and Reps. Rhoades, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Stone); Noes, 0; and Absent, 4 (Sen. Chvala and Panzer; and Reps. Black and Krug).

WLC: 0019/3 was subsequently introduced as 2001 Senate Bill 126 on April 4, 2001 and was referred to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

The petition was filed with the Clerk of the Wisconsin Supreme Court on April 5, 2001.

**APPENDIX 2**

**JOINT LEGISLATIVE COUNCIL**  
s. 13.81, Stats.

Cochair  
FRED A. RISSER  
*Senate President*  
5008 Risser Road  
Madison, WI 53705-1365

JAMES BAUMGART  
1419 North 16th Street  
Sheboygan, WI 53081-3257

BRIAN BURKE  
*Cochair, Joint Comt. on Finance*  
2029 North 51<sup>st</sup> Street  
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*Senate Majority Leader*  
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*Ranking Minority Member, Joint  
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*Assembly Majority Leader*  
1117 Dickens Drive  
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STEPHEN J. FREESE  
*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533-1200

SENATORS  
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*President Pro Tempore*  
1100 West Wells St., #1711  
Milwaukee, WI 53233-2326

RICHARD GROBSCHMIDT  
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South Milwaukee, WI 53172-1736

MARY PANZER  
*Senate Minority Leader*  
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West Bend, WI 53095-3653

REPRESENTATIVES  
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Peshtigo, WI 54157-0119

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Comt. on Finance*  
406 South 9th Avenue  
Wausau, WI 54401-4541

SCOTT R. JENSEN  
*Assembly Speaker*  
850 South Springdale Road  
Waukesha, WI 53186-1402

Cochair  
KITTY RHOADES  
*Representative*  
708 4<sup>th</sup> Street  
Hudson, WI 54016-1643

JUDITH ROBSON  
2411 East Ridge Road  
Beloit, WI 53511-3922

PEGGY ROSENZWEIG  
6236 Upper Parkway North  
Wauwatosa, WI 53213-2430

DAVID ZIEN  
1716 63rd Street  
Eau Claire, WI 54703-6857

SHIRLEY KRUG  
*Assembly Minority Leader*  
6105 West Hope Avenue  
Milwaukee, WI 53216-1226

MICHAEL LEHMAN  
1317 Honeysuckle Road  
Hartford, WI 53027-2614

JEFF STONE  
7424 West Forest Home Ave.  
Greenfield, WI 53220-3358

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

**GUARDIANS AD LITEM IN ACTIONS AFFECTING THE FAMILY,  
SPECIAL COMMITTEE ON**

Cochair  
KIM PLACHE  
Senator  
2614 17th Street  
Racine, WI 53405-3522

JOANNE HUELSMAN  
235 West Broadway, Ste. 210  
Waukesha, WI 53186-4832

CAROL OWENS  
144 County Road C  
Oshkosh, WI 54904-9065

JOHN BARRETT  
Clerk of Circuit Court  
Milwaukee County  
901 N. 9<sup>th</sup> St., Room 104P  
Milwaukee, WI 53233-1425

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WI Council on Children &  
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16 N. Carroll St., Suite 600  
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Court Counseling  
Winnebago Co. Courthouse  
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Oshkosh, WI 54903-2808

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Cochair  
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ERICA SERLIN  
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Center of Madison, Inc.  
700 Rayovac Drive  
Madison, WI 53711-2479

STUDY ASSIGNMENT: The Committee is directed to study the guardian ad litem system as it applies to actions affecting the family, including an examination of the appointment, role, supervision, training and compensation of guardians ad litem. The review of the appointment of guardians ad litem shall include the necessity of appointment in contested custody or placement cases and whether professionals with specialized expertise in the emotional and developmental phases and needs of children should be appointed to act as guardians ad litem. The Committee shall prepare a report of any recommended legislation and shall petition the Wisconsin Supreme Court to consider rules for the reform of the guardian ad litem system in actions affecting the family based on the Committee's recommendations that are more appropriate for supreme court rules. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

19 MEMBERS: 4 Senators; 3 Representatives and 12 Public Members.

LEGISLATIVE COUNCIL STAFF: Anne Sappenfield, Senior Staff Attorney; Pam Shannon, Senior Staff Attorney; and Julie Learned, Support Staff.

<sup>(1)</sup> Appointed as a Public Member of the Special Committee by an October 12, 2000 mail ballot.

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# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson  
Chief Justice

16 East State Capitol  
Telephone 608-266-6828  
Fax 608-267-0980

J. Denis Moran  
Director of State Courts

December 7, 2001

Senator Gary George  
Co-chair, Joint Legislative Audit Committee  
Room 118 South, State Capitol  
Madison, WI 53701

Representative Joseph Leibham  
Co-chair, Joint Legislative Audit Committee  
Room 123 West, State Capitol  
Madison, WI 53701

Dear Sen. George and Rep. Leibham,

I write in response to your letter of November 1 directed to Chief Justice Abrahamson. In that letter you request that we address a number of issues associated with Guardian ad Litem and Family Court Counseling services, including those incorporated by reference to the February 14, 2001 letter sent to you by Rep. Gundrum and Sen. Plache.

The Court discussed your request at its open administrative conference on November 13 and directed me to both respond and convey its appreciation for the spirit of comity in which it was made.

Some of the questions you ask are easily answered. We reimburse counties for GAL expenditures annually. To qualify for that reimbursement a county is required to report its GAL expenses to us, also annually.

During calendar year 2000, counties reported \$9.4 million in GAL expenditures and \$2.2 million in recoupment. Specifically, they reported \$3,216,138 in expenditures and \$1,686,203 in recoupment under Chapter 767. Total state reimbursement for GAL expenditures was \$4.7 million, which number has remained constant since 1994 when the program began. I should note that



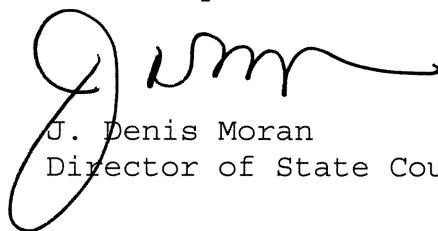
this is based on unaudited figures reported by the counties, which we are forced by limited resources (a two person fiscal staff) to accept as submitted.

With respect to compensation of GALs, we know, as was brought out in testimony before the committee, that practice varies from county to county and, sometimes, from year to year. In some places appointments are made on an individual basis and compensated at the Supreme Court Rule rate of \$70/hour. Some counties contract with firms or individual lawyers for some or all of their GAL work. Some employ a combination of approaches. We don't have at present, but can develop, a description of the current practices in each county.

With respect to family court counseling, we know that we collected \$621,798.54 during calendar year 2000. What is more difficult for us to track is how those funds are actually expended on the services for which they are collected and the extent to which they are sufficient to cover the costs of those services. Both the funds and the programs are administered at the county level. We are in the process of assessing our ability to develop reliable information in this area but may have to rely on reports from the counties in the final analysis since we lack the resources to conduct an audit in every jurisdiction.

We continue to collect information that will enable us to answer some of the other questions contained in your letter and to identify those which we may not be able to answer without some outside assistance. We will share this with you as it develops.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Moran", with a large, stylized flourish at the end.

J. Denis Moran  
Director of State Courts

cc: Chief Justice Shirley Abrahamson  
Senator Plache  
Representative Gundrum  
Jan Mueller, Legislative Audit Bureau

## Rossmiller, Dan

---

**From:** Sappenfield, Anne  
**Sent:** Monday, February 11, 2002 9:33 AM  
**To:** Rossmiller, Dan  
**Subject:** GAL bill

Hi Dan!

You had mentioned a possible amendment to SB 126 that would require mediators to use the factors under s. 767.24 instead of the best interests of the child standard. We had a draft to that effect, but the committee decided not to go forward with it. My notes indicate that the members felt that it would be contrary to the goals of mediation to bring up factors of litigation and that the point of mediation is for the parents to define the issues so that they may come up with an agreement. Judge Kirk suggested that, at most, he would consider adding the phrase "consistent with s. 767.24", but leave the best interests of the child as the standard.

I have no idea what the co-chairs' position would be on an amendment to this effect. I just wanted to let you know the arguments we heard.

*Anne Sappenfield*  
Senior Staff Attorney  
WI Legislative Council Staff



**Richard H. Hart, Jr.**  
Attorney at Law

1100 West Wells Street  
Suite 601  
Milwaukee, Wisconsin 53233

TELEPHONE (414) 271-1225

FAX (414) 271-0457

E-Mail rhart@execpc.com

**FACSIMILE COVER SHEET**

PLEASE DELIVER THE FOLLOWING PAGES TO:

DATE: FEBRUARY 14 2002

NAME: SENATOR GARY R. GEORGE

FIRM/COMPANY: \_\_\_\_\_

CITY/STATE: MADISON WISCONSIN

FAX NUMBER: (608) 266-7381

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: FIVE (5)

REGARDING: SB 126

DESCRIPTION OF DOCUMENTS FAXED HEREWITH and/or MESSAGE:

LETTER DATED 2/14/02

If you do not receive all of the pages, PLEASE CALL US BACK AS SOON AS POSSIBLE at (414) 271-1225.

The documents accompanying this telecopy transmission contain information from HART LAW OFFICES which is confidential and/or privileged. This information is intended to be for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited and may constitute an invasion of the privacy of the intended recipient. If you have received this telecopy in error, please notify us by telephone immediately so that we can arrange for the retrieval of the original document at no cost to you.



**Richard H. Hart, Jr.**  
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TELEPHONE (414) 271-1225

FAX (414) 271-0457

E-MAIL rhart@rhart.com

VIA FACSIMILE

February 14, 2002

Senator Gary R. George  
Post Office Box 7882  
Madison, WI 53707-7882

Re: SB 126

Dear Senator George:

I am writing to you in support of SB 126. For the most part, I practice family law and criminal law. I am often appointed by the court to act as a *Guardian ad Litem* in Family Court and Children's Court. I enjoy handling *Guardian ad Litem* work. Hopefully I am of some assistance to families and, particularly, to the children.

In most of my *Guardian ad Litem* cases, the court orders the parties to make deposits toward my fees. Often the services provided exceed the deposits. More often than not, the parties cannot even afford to pay the originally ordered deposit. I do not withhold my services as a *Guardian ad Litem* because a party has not paid my fee. This would not be fair to the children. However, at the conclusion of the case, I would like to be paid for my work.

It is a constant struggle to obtain payment. I advise people right up front that they may or may not like my recommendation in the end. However, regardless of my recommendations, they will still be responsible to pay for my services. They agree to this. After all is said and done, they often neglect to pay. My options to collect are limited.

I understand the SB 126 will give the court more options in this regard. I feel it is needed. I have attached a copy of an order that was just issued in one of my cases. You will see that, even though I tried to be very reasonable in working out payments, the party still did not live up to her promises. What the Commissioner is doing in this case cannot be done in most cases.

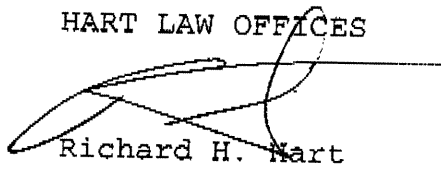
Senator Gary R. George  
February 14, 2002  
Page Two

The options available under SB 126 would reduce the need to litigate over fees. This would allow everyone to do their job in the best fashion possible.

I would appreciate your support of this Bill.

Yours truly,

HART LAW OFFICES

A handwritten signature in black ink, appearing to read "Richard H. Hart", is written over a horizontal line. The signature is stylized and somewhat cursive.

Richard H. Hart

RHH/gm

In re the marriage / paternity of: \_\_\_\_\_  
 Petitioner: Bethany \_\_\_\_\_  
 \_\_\_\_\_ and \_\_\_\_\_  
 Respondent: John \_\_\_\_\_

Case # FA / PA \_\_\_\_\_  
**FINDINGS AND ORDER**

Family A B C D E  
 IV-D / KIDS Case # \_\_\_\_\_

Type or print all information down to the findings.

- \_\_\_ Order Amending Temporary Orders
- \_\_\_ Order Amending Judgment
- \_\_\_ Income Withholding Only
- \_\_\_ Other:
- \_\_\_ By Stipulation of the parties

Form prepared by Richard Hort 271-1225  
 Name Daytime phone #

DATE OF HEARING: 2-12-02

Mother Name Bethany SSN \_\_\_\_\_ DOB \_\_\_\_\_  
 Appeared? YES / NO  
 Counsel? YES / NO Address \_\_\_\_\_  
 Name \_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP+4 \_\_\_\_\_

Father Name \_\_\_\_\_ SSN \_\_\_\_\_ DOB \_\_\_\_\_  
 Appeared? YES / NO  
 Counsel? YES / NO Address \_\_\_\_\_  
 Name \_\_\_\_\_ Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP+4 \_\_\_\_\_

Other Appearances: State/WI by \_\_\_\_\_ Other Richard Hort

Child(ren) - Provide Name, Date of Birth, and Social Security Number, if available OK

John 12/15/92  
Leo 1/18/95

**THE COURT FINDS:**

Court ordered payee (CP): Mother / Father / Other \_\_\_\_\_ NCP: Mother / Father \_\_\_\_\_  
(circle one) (circle one)

NCP'S Employer Name \_\_\_\_\_  
 Fax # \_\_\_\_\_  
 Phone # \_\_\_\_\_ Address \_\_\_\_\_  
Street City State ZIP+4

NCP's Gross Monthly Income \$ \_\_\_\_\_ NCP is paid \_\_\_\_\_ Weekly \_\_\_\_\_ Biweekly \_\_\_\_\_ Semimonthly \_\_\_\_\_ Monthly

Other findings: GAL had duly served a contempt motion to collect her fees, set by Judge Guolce 3/26/01 at a hearing where mom appeared & promised to pay. She hasn't paid the Check if findings continue on next page

**THE COURT ORDERS:** moderate 25 pm she agreed to - and now she's not  
 Monthly Payments through WISCONSIN SUPPORT COLLECTIONS TRUST FUND here.  
(Payable by NCP to CP unless indicated otherwise)

Current Child Support \_\_\_\_\_ Eff. Date \_\_\_\_\_ Per cont. order  
 Current Family Support \_\_\_\_\_ Eff. Date \_\_\_\_\_ Per cont. order  
 Current Maintenance \_\_\_\_\_ Eff. Date \_\_\_\_\_ Per cont. order  
 Repay Arrears \_\_\_\_\_ Eff. Date \_\_\_\_\_ Per cont. order

Other orders: Stay warrant to March 26, 2002 @ 9:15 AM. Put support on HOLD pending further order.

[This order is reviewable by either party before the judge pursuant to Sec.767.13(6)Wis.Stats. and Local Court Rule.] Check if orders continue on next page

PRESIDING OFFICIAL'S NAME / TITLE \_\_\_\_\_ PRESIDING OFFICIAL'S SIGNATURE Lucy Cooper DATE SIGNED 2/12/02

IN RE

Case No. 98 [REDACTED]

FINDINGS / ORDER - Continued

Family A B C D

IV-D / KIDS Case No. [REDACTED]

Petitioner  
and  
Respondent

DATE OF HEARING: 2/12/02

FINDINGS: Ct knows mother is employed and list her wages are low - approx. 1000 plm. BUT she receives 850 child support regularly and her credit is paying NOTHING and failing to appear is contemptuous. Mr Hart does serious work as a COURT APPOINTED GAL; ironically, in this case, his recommendation was supportive of the mother.

What court would like to do here is to take GAL fee from mother's child support @ 50 plm until paid.

That, however, is not permitted, according to CSE Administrator Nancy Hornstake, because of a directive

ORDERS: by Chief Judge Michael Skierawski, prohibiting setting up subaccounts in kids to pay private attorneys (as opposed to re-paying Milw County for fees, advanced in indigency cases - and this is not an indigency case.)

Court will, therefore, put MOM's support on hold until she presents herself to court, and makes definite verifiable arrangements to pay Mr Hart his 768.00 plus 250 atty fees (and having to file this motion & come to court twice. Authority for putting suppt on hold to get a Contemnor/custodial parents ATTENTION in Krause ~~to~~ 2/12/02

PRESIDING OFFICIAL'S NAME, TITLE

PRESIDING OFFICIAL'S SIGNATURE

DATE