



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB4232

Introduced 2/27/2009, by Rep. Timothy L. Schmitz

SYNOPSIS AS INTRODUCED:

750 ILCS 5/506

from Ch. 40, par. 506

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that a court-appointed attorney serving as the attorney for the minor child, guardian ad litem, or child representative shall review the case and submit a litigation budget for court approval. (Eliminates provisions that state that (i) the court shall order the payment to an appointed attorney, guardian ad litem, or child's representative of an amount for costs, fees, and disbursements, according to invoices filed every 90 days during the representation; and (ii) the court shall review the invoices submitted and approve the fees, if they are reasonable and necessary.) Provides that the court shall not authorize payment of bills to an appointed attorney that are not properly itemized. Provides that case budgets, bills for services and expenses, and any case budget modifications shall be reviewed and approved by the trial judge and the chief judge of the circuit court or the chief judge's designee. Provides that the compensation for an appointed attorney shall not exceed \$150 per hour, as adjusted annually by the State Treasurer based upon the consumer price index. Effective immediately.

LRB096 08326 AJO 18434 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

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

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

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

7 Sec. 506. Representation of child.

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

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

18 (2) Guardian ad litem. The guardian ad litem shall
19 testify or submit a written report to the court regarding
20 his or her recommendations in accordance with the best
21 interest of the child. The report shall be made available
22 to all parties. The guardian ad litem may be called as a
23 witness for purposes of cross-examination regarding the

1 guardian ad litem's report or recommendations. The
2 guardian ad litem shall investigate the facts of the case
3 and interview the child and the parties.

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

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

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

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

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

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

3 (b) Fees and costs; court-appointed attorney for the minor
4 child, guardian ad litem, or child representative.

5 (1) This Section applies only to compensation and
6 expenses of an attorney appointed by the court as set forth
7 in this Section for the period after appointment.

8 (2) Litigation budget.

9 (A) The court shall require an attorney for the
10 minor child, guardian ad litem, or child
11 representative, including those appointed in Cook
12 County, after the attorney has had adequate time to
13 review the case and prior to engaging trial assistance,
14 to submit a proposed estimated litigation budget for
15 court approval, that will be subject to modification in
16 light of facts and developments that emerge as the case
17 proceeds. Case budgets shall be reviewed and approved
18 by the judge assigned to try the case and the chief
19 judge of the circuit court or the chief judge's
20 designee. As provided under paragraph (5) of this
21 subsection (b), petitions for compensation shall be
22 reviewed and approved by both the trial judge and the
23 chief judge of the circuit court or the chief judge's
24 designee.

25 (B) The litigation budget shall serve purposes
26 comparable to those of private retainer agreements by

1 confirming both the court's and the attorney's
2 expectations regarding fees and expenses.
3 Consideration should be given to employing a pretrial
4 conference in order to facilitate reaching agreement
5 on a litigation budget at the earliest opportunity.

6 (C) The budget shall be incorporated into an
7 initial pretrial order that reflects the
8 understandings of the court and the attorney regarding
9 all matters affecting the attorney compensation and
10 reimbursement and payments for investigative, expert,
11 and other services, including, but not limited to, the
12 following matters:

13 (i) The hourly rate at which the attorney will
14 be compensated.

15 (ii) The best preliminary estimate that can be
16 made of the cost of all services, including, but
17 not limited to, attorney, expert, and
18 investigative services, that are likely to be
19 needed through the phases of the proceedings. The
20 court shall have discretion to require that
21 budgets be prepared for shorter intervals of time.

22 (D) An approved budget shall guide the attorney's
23 use of time and resources by indicating the services
24 for which compensation is authorized. The case budget
25 shall be re-evaluated when justified by changed or
26 unexpected circumstances and shall be modified by the

1 trial judge and the chief judge of the circuit court or
2 the chief judge's designee when reasonable and
3 necessary.

4 (3) An attorney for the minor child, guardian ad litem,
5 or child representative shall be compensated after the
6 review and approval by the trial judge and the chief judge
7 of the circuit court or the chief judge's designee of a
8 claim for services detailing the date, activity, and time
9 duration for which compensation is sought. Compensation
10 for an attorney for the minor child, guardian ad litem, or
11 child representative may be paid at a reasonable rate not
12 to exceed \$150 per hour. The court shall not authorize
13 payment of bills that are not properly itemized.

14 (4) Beginning in 2010, every January 20, the statutory
15 rate prescribed in paragraph (3) shall be automatically
16 increased or decreased, as applicable, by a percentage
17 equal to the percentage change in the consumer price
18 index-u during the preceding 12-month calendar year.
19 "Consumer price index-u" means the index published by the
20 Bureau of Labor Statistics of the United States Department
21 of Labor that measures the average change in prices of
22 goods and services purchased by all urban consumers, United
23 States city average, all items, 1982-84=100. The new rate
24 resulting from each annual adjustment shall be determined
25 by the State Treasurer and made available to the chief
26 judge of each judicial circuit.

1 (5) An attorney for the minor child, guardian ad litem,
2 or child representative may also petition the court for
3 certification of expenses for reasonable and necessary
4 expenses including, but not limited to, investigatory and
5 other assistance, experts, and other witnesses. If the
6 requests are submitted after services have been rendered,
7 the requests shall be supported by an invoice describing
8 the services rendered, the dates the services were
9 performed, and the amount of time spent. These petitions
10 shall be reviewed and approved by both the trial judge and
11 the chief judge of the circuit court or the chief judge's
12 designee.

13 (6) An attorney for the minor child, guardian ad litem,
14 or child representative shall petition the court for
15 certification of compensation and expenses under this
16 Section periodically during the course of that person's
17 representation. The petitions shall be supported by
18 itemized bills showing the date, the amount of time spent,
19 the work done, and the total being charged for each entry.
20 The court shall not authorize payment of bills that are not
21 properly itemized. The petitions shall be reviewed and
22 approved by both the trial judge and the chief judge of the
23 circuit court or the chief judge's designee.

24 ~~The court shall enter an order as appropriate for costs,~~
25 ~~fees, and disbursements, including a retainer, when the~~
26 ~~attorney, guardian ad litem, or child's representative is~~

1 ~~appointed. Any person appointed under this Section shall file~~
2 ~~with the court within 90 days of his or her appointment, and~~
3 ~~every subsequent 90-day period thereafter during the course of~~
4 ~~his or her representation, a detailed invoice for services~~
5 ~~rendered with a copy being sent to each party. The court shall~~
6 ~~review the invoice submitted and approve the fees, if they are~~
7 ~~reasonable and necessary.~~

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

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

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.