



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5544

Introduced 2/15/2012, by Rep. Jil Tracy

SYNOPSIS AS INTRODUCED:

750 ILCS 5/506

from Ch. 40, par. 506

Amends provisions of the Illinois Marriage and Dissolution of Marriage Act concerning fees and costs for representation of a child. Provides that: an appointed attorney, guardian ad litem, or child representative's failure to submit a detailed invoice for each 90-day period precludes the collection of costs, fees, and disbursements for services rendered in that period; an appointed attorney, guardian ad litem, or child representative may not bill the parties any fees for the preparation and presentation of an invoice; the court may not award lump sum fees to an appointed attorney, guardian ad litem, or child representative; the court may not authorize payment of bills that are not properly itemized; compensation for an appointed attorney, guardian ad litem, or child representative may be paid at a reasonable rate not to exceed \$150 per hour; and that this rate shall be adjusted each year in accordance with the consumer price index. Deletes language providing that: the court may not order payment by the Department of Healthcare and Family Services if the Department is providing child support enforcement services under the Illinois Public Aid Code; and fees and costs payable to an appointed attorney, guardian ad litem, or child representative are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy unless the court orders otherwise. Makes other changes.

LRB097 18385 AJO 63611 b

1 AN ACT concerning civil law.

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

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

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

7 Sec. 506. Representation of child.

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

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

12 (c) Beginning in 2014, every January 20, the statutory rate
13 described in subsection (b) shall be automatically increased or
14 decreased, as applicable, by a percentage equal to the
15 percentage change in the consumer price index-u during the
16 preceding 12-month calendar year. "Consumer price index-u"
17 means the index published by the Bureau of Labor Statistics of
18 the United States Department of Labor that measures that
19 average change in prices of goods and services purchased by all
20 urban consumers, United States city average, all items,
21 1982-84=100. The new rate resulting from each annual adjustment
22 shall be made available to the Chief Judge of each judicial
23 circuit.

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