STATE OF WISCONSIN
IN THE SUPREME COURT

IN THE MATTER OF AMMENDMENT OF COURT RULES
GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY

22-___

PETITION

For the reasons set forth in the accompanying supporting memorandum, I, Victoria Schiller, any person in accordance with Wis. Stat. § 751.12 and Supreme Court Internal Operating Procedures II.B.5. and III.) respectfully petitions the Supreme Court to amend Wisconsin's Statutes on Guardian ad Litem (GAL) in:

CHAPTER 757 GENERAL COURT PROVISIONS, SECTION s.757.48 GUARDIAN AD LITEM MUST BE AN ATTORNEY;

s. 757.48(1)(b)

CHAPTER 767 ACTIONS AFFECTING THE FAMILY, SECTION 767.407 GUARDIAN AD LITEM FOR MINOR CHILDREN;

s.767.407(1)(am) APPOINTMENT

s.767.407(4) RESPONSIBILITIES

s.767.407(4m) STATUS HEARING

s.767.407(5) TERMINATION AND EXTENSION OF APPOINTMENT

s.767.406(6) COMPENSATION and/or

[RE ORDER EFFECTIVE JAN. 1, 1990] and STATUTORY CERTIORARI DELETIONS

CHAPTER 814 COURT COSTS, FEES, AND SURCHARGES, SUBCHAPTER II COURT FEES,

s.814.615 FEES FOR MEDIATION AND STUDIES

This petition would foremost like to recognize that while there are existing points of law available to remedy guardian ad litem (GAL) abuses, the persons aggrieved by guardian ad litem abuse are vulnerable persons least able to navigate their way out from under the harm of a guardian ad litem abuses. This petition intends to change the real and perceived professional responsibilities of attorney's practicing as guardian ad litem.

The State of Wisconsin currently has existing law, rules, and common practice that suggest a GAL in family court proceedings maintains quasi-judicial immunity. It is important to recognize the recent passage of changes to 42 U.S.C. §1983. This section was amended on July 1, 2020, by the 116TH CONGRESS, SECOND SESSION, S. 4142, 'ENDING QUALIFIED IMMUNITY ACT,'

> *"It shall not be a defense or immunity to any action brought under this section that the defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that his or her conduct was lawful at the time it was committed. Nor shall it be a defense or immunity that the rights, privileges, or immunities secured by the Constitution or laws were not clearly established at the time of their deprivation by the defendant, or that the state of law was otherwise such that the defendant could not reasonably have been expected to know whether his or her conduct was unlawful." (Ending Qualified Immunity Act)*

This petition seeks to shift the perceived responsibilities of a guardian ad litem to reflect the legal impacts of the 'ENDING QUALIFIED IMMUNITY ACT,' by updating the Wisconsin chapters which regulate guardian ad litem appointments. This petition seeks to improve the nature of a system generally regarded by family law litigants as functioning with a high level of systematic abuse of process to generate fees for attorneys and family law experts, which overburdens the court system based in the likelihood of profits for private entities.

State appointment of the guardian ad litem appointments confers a state agency, as such the state has an interest in ensuring the profession functions a high degree of integrity. The state must ensure that no person is deprived of any rights, privileges, or immunities secured by the U.S. Constitution. The state's presentation of the guardian ad litem quasi-judicial immunity in Wisconsin statute certiorari is self-protectionist without real effect. This fails to balance the for-profit self-interest of the guardian ad litem with the state's interest in the appointee's protections of the due process and equal treatment rights of the families effected by their actions. The changes in this petition shift the perception of liability of the private for-profit enterprise of the guardian ad litem by removing the statutory certiorari on quasi-judicial immunity, as noted in the attached appendixes.

The private practice of law is a for-profit industry, a guardian ad litem's private practice of law is no different in that regard. Wisconsin Statute 757.48(b) states:

> *"The guardian ad litem shall be allowed reasonable compensation for his or her services such as is customarily charged by attorneys in this state for comparable services. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m)(b). If the attorney of record is also the guardian ad litem, the attorney shall be entitled only to attorney fees and shall receive no compensation for services as guardian ad litem." (s.757.48(b))*

Simply put, these professionals make money at a rate similar to a non-appointed attorney. They are, similarly, paid to resolve problems, yet through their desire to profit they are unfortunately motivated to cause problems. While ethical dilemma exists for any private practicing attorney, the guardian ad litem endeavors in this unethical practice under the state's presentation of quasi-judicial immunities. There are no warrantees of workmanship that protect a party from legal abuses. The path of resolution is based in tort, in this regard guardian ad litem should be presented as more liable, not less liable, than any private attorney.

This petition also adds to the required training of the guardian ad litem by requiring training on the systems utilized by the guardian ad litem by including topics are fundamental for guardian ad litem practice.

The petition adds to the Wisconsin Statute 767.407(4), RESPONSIBILITY, requirement for the guardian ad litem to submit recommendations as affidavit with exhibits supporting the guardian ad litem's claims of fact or opinion, see Pappathopoulous v. Pappathopoulous 2017AP1929, 2018 WL 3099880 (Wisconsin Court of Appeals June 21, 2018) for its persuasive value. Experts and family studies will inevitably escalate the quality of their work, to meet the needs of the responsibility statutory requirements of the guardian ad litem, and the likelihood of greased wheels of justice will be reduced.

This petition, additionally, seeks to establish a standard of guardian ad litem fees, based on the comparable rates charged by private attorney fees in the state, which shall be made available to the parties. Furthermore, this petition removes the county fee restriction because it inequitably limits the quality of representation available to persons without income. Removing the guardian ad litem county payer limit will have a multi-effect. It will keep the newly required guardian ad litem fee schedule within a reasonable range. It will force the system to break through chauvinist biases that enable hidden income. It requires the of maintenance of current household finacial disclosures. It will force the guardian ad litem to properly use public resources staffed with properly licensed and trained professionals like social services. It will improve the quality of representation available to the persons based on individual need instead of based on socioeconomic status.

Additionally, the petition creates the standardization of ANY court costs by requiring the court's mandated costs and fees to private entities be equal to those costs specified for the county services of family court. That is not to say, private services cannot charge higher rates. Private services should, in theory, be voluntary and market driven. The changes proposed by this petition are intended to keep family court judges from ordering the rates of pay received by private enterprises. Based on my personal experience, judicial orders assigning private services vastly exceeding of the costs of county services, correlates with

judicial orders violating due process rights. These include orders to arbitrate modification to custody and placement, the removal of a child from their home without cause, and orders for supervision without reason.

The for-profit individual business entities of a guardian's ad litem's legal practice, should be compared with other entities that contract with the state. In many ways, the private for-profit legal firms are each like a municipal corporation. According to the U.S. Supreme Court:

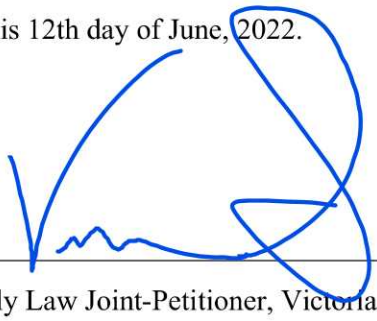
> *"There is nothing in the character of a municipal corporation which entitles it to an immunity from liability for such malfeasances as private corporations or individuals would be liable for in a civil action." T. Shearman A. Redfield, A Treatise on the Law of Negligence § 120, p. 139 (1869) (hereinafter Shearman Redfield). (Owen v. City of Independence, 445 U.S. 622, 640 (1980)).*

These changes would reduce occurrences of municipal liability for future guardian ad litem acts of negligence and unconstitutional practices by amending the policies of the state that enable the practices of an abusive guardian ad litem, See CAIN V. WHITE, 937 F.3d 446 (5th Cir. 2019) (finding that Orleans Parish judges violated the Due Process Clause through an unconstitutional practice for collecting criminal fines and fees). The state should change the laws to create policy and custom that allows petitioners to challenge the acceptance of a guardian ad litem's subjective recommendations and discretionary fees. If a subjective recommendations and discretionary fees may compare to a 'listing,' as in the case of, LOS ANGELES COUNTY v. HUMPHRIES, which says; "*It "is possible," the Ninth Circuit said, that the county, "[b]y failing to" "creat[e] an independent procedure that would allow" the plaintiffs "to challenge their listing[,] . . . adopted a custom and policy that violated" the plaintiffs' "constitutional rights*." (LOS ANGELES COUNTY v. HUMPHRIES, 554 F. 3d, at 1202.). Indeed, the scheme of an abusive guardian ad litem could not work without the regulations and court policies that provide the machinery for the violations of rights.

If the guardian ad litem perceives their professional liabilities to be greater the guardian ad litem will act with greater care. As a result, the state risk for additional municipal liabilities will be reduced.

Respectfully submitted this 12th day of June, 2022.

Victoria Schiller



State of Wisconsin, Family Law Joint-Petitioner, Victoria Schiller.

APPENDIX A, IN THE MATTER OF CREATION OF COURT RULES

GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY

CHAPTER 757

GENERAL PROVISIONS CONCERNING COURTS OF RECORD,

JUDGES, ATTORNEYS AND CLERKS

Wisconsin Statute 757.48 Guardian ad litem must be an attorney.

(1) (a) Except as provided in s.879.23 (4), in all matters in which a guardian ad litem is appointed by the court, the guardian ad litem shall be an attorney admitted to practice in this state. In order to be appointed as a guardian ad litem under s. 767.407, an attorney shall have completed 3 15 hours of approved continuing legal education that relates to the functions and duties of a guardian ad litem under ch. 767 and that includes training on the dynamics of domestic violence and the effects of domestic violence on victims of domestic violence and on children, the Department of Social Services programs policies and practices, criminal records practices, policy, and management, and health records, practices, policy, and management. In order to be appointed as a guardian ad litem under s. 54.40 (1), an attorney shall have complied with SCR chapter 36.

(b) The guardian ad litem shall be allowed reasonable compensation for his or her services such as is customarily charged by attorneys in this state for comparable services as established by county fee schedules. ~~If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m)(b)~~. If the attorney of record is also the guardian ad litem, the attorney shall be entitled only to attorney fees and shall receive no compensation for services as guardian ad litem.

(2) If the statutes do not specify how the fee of the guardian ad litem is paid, the ward shall pay such fee. The court may, however, in cases involving real or personal property in which the ward claims or may have a right or interest, order payment out of such property.

(3) No guardian ad litem may be permitted to receive any assets or income of his or her ward, nor may any bond be required of a guardian ad litem, but all assets or income of the ward may be paid or delivered to the ward's guardian of the estate, subject to the exceptions of s. 54.12.

(4) No person shall be appointed guardian ad litem for a plaintiff without the written consent of the person appointed.

History: Sup. Ct. Order, 50 Wis. 2d vii (1971) 1971 c. 211; 1977 c. 187 s. 96; 1977 c. 299, 447; Stats. 1977 s. 757.48; 1987 a. 355; 1993 a. 16; 1995 a. 27; 2003 a. 130; 2005 a. 387; 2005 a. 443 s. 265; 2007 a. 96. Cross−reference: See s. 879.23 (4) for parent as guardian in probate matters. Cross−reference: See SCR 35.015 for education requirements.

Comment of Judicial Council, 1971: A guardian ad litem shall: (1) Be an attorney and be allowed reasonable compensation as is customarily charged by attorneys for comparable services. If the attorney of record is also the guardian ad litem, only one fee is allowed. (2) Be compensated by the ward or out of the ward's property. (3) Not be permitted to receive any money or property of the ward. (4) Not be appointed for a plaintiff without the appointed person's consent. Subsection (1) is in present law; subs. (3) and (4) are the same as present law. [Re Order effective July 1, 1971]

Sub. (1) (a) is void as an unconstitutional violation of the separation of powers. It interferes with the judiciary's exclusive authority to regulate the practice of law. Fiedler v. Wisconsin Senate, 155 Wis. 2d 94, 454 N.W.2d 770 (1990).

The courts' power to appropriate compensation for court−appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Court, 192 Wis. 2d 1, 531 N.W.2d 32(1995)

APPENDIX B, IN THE MATTER OF CREATION OF COURT RULES

GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY

CHAPTER 767

ACTIONS AFFECTING THE FAMILY

767.407 Guardian ad litem for minor children.

(1) APPOINTMENT. (a) The court shall appoint a guardian ad litem for a minor child in any action affecting the family if any of the following conditions exists: 1. The court has reason for special concern as to the welfare of a minor child. 2. Except as provided in par. (am), the legal custody or physical placement of the child is contested.

(am) The court is not required to appoint a guardian ad litem under par. (a) 2. if all of the following apply: 1. Legal custody or physical placement is contested in an action to modify legal custody or physical placement under s. 767.451 or 767.481. 2. The modification sought would not substantially alter the amount of time that a parent may spend with his or her child. 3. The court determines any of the following: a. That the appointment of a guardian ad litem will not assist the court in the determination regarding legal custody or physical placement because the facts or circumstances of the case make the likely determination clear. or b. That a party seeks the appointment of a guardian ad litem solely for a tactical purpose, or for the sole purpose of delay, and not for a purpose that is in the best interest of the child.

(b) The court may appoint a guardian ad litem for a minor child in any action affecting the family if the child's legal custody or physical placement is stipulated to be with any person or agency other than a parent of the child or, if at the time of the action, the child is in the legal custody of, or physically placed with, any person or agency other than the child's parent by prior order or by stipulation in this or any other action.

(c) The attorney responsible for support enforcement under s. 59.53 (6) (a) may request that the court appoint a guardian ad litem to bring an action or motion on behalf of a minor who is a nonmarital child whose paternity has not been conclusively determined from genetic test results under s. 767.804, acknowledged under s. 767.805 (1) or a substantially similar law of another state, or adjudicated for the purpose of determining the paternity of the child, and the court shall appoint a guardian ad litem, if any of the following applies: 1. Aid is provided under s. 48.57 (3m) or (3n), 48.645, 49.19, or 49.45 on behalf of the child, or benefits are provided to the child's custodial parent under ss. 49.141 to 49.161, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.80 on behalf of the child. 2. An application for legal services has been filed with the child support program under s. 49.22 on behalf of the child, but the state and its delegate under s. 49.22 (7) are barred by a statute of limitations from commencing an action under s. 767.80 on behalf of the child.

(d) A guardian ad litem appointed under par. (c) shall bring an action or motion for the determination of the child's paternity if the guardian ad litem determines that the determination of the child's paternity is in the child's best interest.

(e) Nothing in this subsection prohibits the court from making a temporary order under s. 767.225 that concerns the child before a guardian ad litem is appointed or before the guardian ad litem has made a recommendation to the court, if the court determines that the temporary order is in the best interest of the child.

APPENDIX B, IN THE MATTER OF CREATION OF COURT RULES

GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY, Continued.

(2) TIME FOR APPOINTMENT. The court shall appoint a guardian ad litem under sub. (1) (a) 1. or (b) whenever the court deems it appropriate. The court shall appoint a guardian ad litem under sub. (1) (a) 2. at the time specified in s. 767.405 (12) (b), unless upon motion by a party or its own motion the court determines that earlier appointment is necessary.

(3) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(4) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of a minor child as to paternity, legal custody, physical placement, and support. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the minor child or the positions of others as to the best interests of the minor child. The guardian ad litem shall separately consider all the factors under s. 767.41 (5) (am), subject to s. 767.41 (5) (bm), and custody studies under s. 767.405 (14) all basis, all findings, and any considerations and conclusions of shall be communicated to the court by affidavit. The guardian ad litem must keep records of all their communications during the case, which shall be discoverable by either party, and subject to court demand. The guardian ad litem shall investigate whether there is evidence that either parent has engaged in interspousal battery, as described in s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), and shall report to the court on the results of the investigation, all resulting allegations shall made in affidavit form under penalty of perjury. The guardian ad litem shall review and comment to the court on any mediation agreement and stipulation made under s. 767.405 (12) and on any parenting plan filed under s. 767.41 (1m). Unless the child otherwise requests, the guardian ad litem shall by affidavit communicate to *the court the wishes of the child as to the child's legal custody or physical placement under s. 767.41 (5) (am) 2. The guardian ad litem has none of the rights or duties of a general guardian.*

(4m) STATUS HEARING. (a) Subject to par. (b), at any time ~~after 120 days~~ after a guardian ad litem is appointed under this section, a party may request that the court schedule a status hearing related to the actions taken and work performed by the guardian ad litem in the matter. (b) A party may, not sooner than ~~120~~ days after a status hearing under this subsection is held, request that the court schedule another status hearing on the actions taken and work performed by the guardian ad litem in the matter.

(5) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, or showing of negligence by either party. The guardian ad litem may appeal, may participate in an appeal or may do neither, the guardian ad litem's appeal shall not result in court mandated fees in addition to those of the guardian ad litem, with an objection of a guarded party no two guardian ad litem's may earn fees on an appeal. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the final

APPENDIX B, IN THE MATTER OF CREATION OF COURT RULES

GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY, Continued.

order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

(6) COMPENSATION. (a)The guardian ad litem shall be compensated at a rate that the court determines is reasonable. The court shall order either or both parties to pay all or any part of the compensation of the guardian ad litem relative to the earned income history of the parties, as contained on current finacial disclosures, if the court orders payment from any party updated household finacial disclosures are required from both parties. In addition, upon motion by ~~the guardian ad litem~~ any party, the court shall order either or both parties to pay the fee for an expert witness ~~used by the guardian ad litem~~. If the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter ~~if both parents are indigent~~, the court may direct that the county of venue pay the compensation and fees. ~~If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b). The court may order a separate judgment for the amount of the reimbursement in favor of the county and against the party or parties responsible for the reimbursement.~~ The court may enforce its orders under this subsection by means of its contempt power.

(b) The court shall, in all cases, where the statutes require the court to fix a fee and provide for the payment of expenses of an attorney to be appointed by the court to perform certain designated duties. After the services of the attorney have been performed, shall the court mandate actual payment of the amount for the services. This amount may be in such sum no greater than the court had specified.

(c) If a receipt for private pay cost of any court ordered expense is requested by any party subject to payment a receipt shall be provided, the receipt shall be from the original source of the expense.

***History:** Sup. Ct. Order, 50Wis. 2d vii (1971); 1977 c. 105, 299; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; 1979 c. 352 s. 39; Stats. 1979 s. 767.045; 1987 a. 355; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16, 481; 1995 a. 27, 201, 289, 404; 1997 a. 105, 191; 1999 a. 9; 2001 a. 61; 2003 a. 130; 2005 a. 443 s. 25; Stats. 2005 s. 767.407; 2007 a. 20; 2019 a. 95.*

***Judicial Council Note, 1990:** This section clarifies and expands s. 767.045, as it was amended by 1987 Wisconsin Act 355. It also incorporates the substance of s. 809.85 into it. Sub. (1) (a) specifies the situations in which the court is required to appoint a guardian ad litem. Sub. (1) (a) 1. reflects the desirability of broad discretion for the court to appoint a guardian ad litem. Of special note is sub. (1) (b). While the court has always had the discretion to appoint a guardian ad litem in such situations, the committee concluded that it is desirable to specifically identify these situations as requiring special attention.*

Sub. (2) is the present law which takes into account the need for mediation.

Sub. (4) defines the role of the guardian ad litem. It clarifies that the responsibility is as an advocate for the best interests of the child. It emphasizes the need for the guardian ad litem to function independently, while giving broad consideration to the views of others, including the children, social workers and the like. It also specifies that the guardian ad litem shall function in the same manner as the lawyer for a party. Among other things, this means that the guardian ad litem communicates with the

APPENDIX B, IN THE MATTER OF CREATION OF COURT RULES
GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY, Continued.

court and other lawyers in the same manner as a lawyer for a party, presents information on relevant issues through the presentation of evidence or in other appropriate ways and generally functions as the

lawyer for a party. In this case the "party" is the best interests of the children. Sub. (4) also enumerates specific duties to emphasize their particular importance. The discretion for the guardian ad litem to communicate the wishes of the child in sub. (4) was added in 1987 Wisconsin Act 355, as was much of sub. (6). These are unchanged. Sub. (5) specifies that the appointment terminates at the final order or the conclusion of the appeal unless the court otherwise directs. The court may reappoint or continue the appointment of the guardian ad litem after this but is required to state the scope of the responsibilities for such period.

~~*[Re Order effective Jan. 1, 1990] If both spouses have ability to pay, each should be required to contribute to the payment of the guardian ad litem's fee, with the percentage to be paid by each to be determined in the court's discretion* according to the county's fee schedule and current income disclosure forms.~~

Tesch v. Tesch, 63 Wis. 2d 320, 217 N.W.2d 647 (1974). When the guardian ad litem's report was timely disclosed to both parties, the trial court did not err in failing to introduce the report during a custody hearing.

Allen v. Allen, 78 Wis. 2d 263, 254 N.W.2d 244 (1977). An increase of visitation rights from 24 days to 75 days per year had sufficient impact upon the welfare of the children to require the appointment of a guardian ad litem.

Bahr v. Galonski, 80 Wis. 2d 72, 257 N.W.2d 869 (1977). The appointment of a guardian ad litem pursuant to sub. (1) and s. 891.39 (1) (a) is mandated when paternity is questioned and also when there are special concerns. Special concerns arise when a child's welfare is directly at issue, as is the case when an existing family is disrupted.

Johnson v. Johnson, 157 Wis. 2d 490, 460 N.W.2d 166 (Ct. App. 1990). A guardian ad litem may not be called as a witness in a custody proceeding. The guardian ad litem is to communicate with the court as a lawyer for a party and to present information by presenting evidence.

Hollister v. Hollister, 173 Wis. 2d 413, 496 N.W.2d 642 (Ct. App. 1992). A guardian ad litem could act in a separate action involving the child outside of the court of original appointment even though another guardian ad litem had been appointed by the court when the separate action was brought. Interest of Brandon S.S., 179 Wis. 2d 114, 507 N.W.2d 94 (1993). The court's power to appropriate compensation for court−appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court−ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified, effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel.

Friedrich v. Dane County Circuit Court, 192 Wis. 2d 1, 531 N.W.2d 32 (1995). The denial of a child's request to intervene in a divorce action was correct. The guardian ad litem fulfills the requirement that a child is entitled to representation.

~~*Joshua K. v. Nancy K., 201 Wis. 2d 655, 549 N.W.2d 494 (Ct. App. 1996), 94−3420. Quasi−judicial immunity extends to a guardian ad litem's negligent performance in a divorce proceeding.*~~

Paige K.B. v. Molepske, 219 Wis. 2d 418, 580 N.W.2d 289 (1998), 96−2620. Under sub. (6), if only one of the parties is indigent, the court may not order the county or the indigent party to pay guardian ad litem fees. The court's only option is to order the non−indigent party to pay.

APPENDIX B, IN THE MATTER OF CREATION OF COURT RULES

GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY, Continued.

~~*Olmsted v. Circuit Court for Dane County, 2000 WI App 261, 240 Wis. 2d 197, 622 N.W.2d 29, 00−0620. The quasi−judicial immunity of a guardian ad litem described in Paige K.B. applies only to liability for the negligent performance of his or her duties, not as a shield against court−imposed sanctions for failure to obey a court order.*~~

Reed v. Luebke, 2003 WI App 207, 267 Wis. 2d 596, 671 N.W.2d 304, 02−2211. The guardian ad litem is an advocate for the child's best interest, not a fact−finder or a consultant for the court. A trial court may decide, in individual cases, to weigh the guardian's recommendation more heavily than the other statutory factors, but the court cannot rewrite the statute to create a fixed hierarchy of factors.

Goberville v. Goberville, 2005 WI App 58, 280 Wis. 2d 405, 694 N.W.2d 405, 04−2440. A circuit court may not, when the issue is contested, determine the primary placement of a child without appointing a guardian ad litem for the child. Because the interests affected by the absence of a guardian ad litem are the child's and not the parties', neither parent is empowered to waive a child's right to have its best interests represented and advocated for in a placement proceeding, and the court will decline to address the issue on the basis of either waiver or the doctrine of invited error.

State v. Freymiller, 2007 WI App 6, 298 Wis. 2d 333, 727 N.W.2d 334, 05−2460. The "why" behind appointing guardians ad litem for children in divorce proceedings. Podell. 57 MLR 103.

APPENDIX C, IN THE MATTER OF CREATION OF COURT RULES

GOVERNING PRIVATE PAY GUARDIAN AD LITEM (GAL) FEES AND LIABILITY

814.615 Fees for mediation, ~~and~~ studies, professional supervision.

(1) (a) Except as provided under sub. (2), for family court services provided under s. 767.405 a county shall collect the following fees: 1. For the first mediation session conducted upon referral under s. 767.405 (5), no fee. 2. For all mediation provided after the first session mediation described under sub d. 1., a single fee of $200, regardless of the number of mediation sessions held. 3. For a study under s. 767.405 (14), a fee of $300. Private mediation, arbitration, and study fees shall not be mandated in excess of county fees, private mediation arbitration and study fees may only exceed by the mutual consent of the parties.

(b) The county shall determine when and how to collect the fees under par. (a). Subject to sub. (3), the county shall reduce the fees in accordance with the parties' ability to pay according to the parties earned income history or provide the services without payment of the fees if either party is ~~both parties are~~ unable to pay.

(2) In lieu of the fee under sub. (1) (a) 2. or 3., a county may establish a fee schedule to recover its reasonable costs of providing family court services under s. 767.405. A fee schedule established under this subsection may apply in lieu of the fee under sub. (1) (a) 2. or 3. or both, and shall require no fee for the first mediation session conducted upon referral under s. 767.405 (5); provide for payment for any other services based on the parties' ability to pay relative and according to the parties' current household finacial disclosure forms; and take into account the fees the county collects under s. 814.61 (1) (b) and (7) (b). Fees shall be based on services actually provided. The county may not collect a single fee applicable without regard to the number of sessions or services provided. Subject to sub. (3), the county shall provide family court services to the parties even if both parties are unable to pay. County's existing fee schedules shall be provided to parties subject to court fee payments,

(3) The court or a circuit court commissioner shall direct either or both parties to pay any applicable fee under this section according to a publicly accessible county fee schedule. If either or both parties are unable to pay, the court shall grant a separate judgment for the amount of the fees in favor of the county and against the party or parties responsible for the fees.

(4) The county treasurer shall deposit fees collected under this section in a separate account for the exclusive purpose of providing mediation services, ~~and~~ studies, and professional supervision under s. 767.405.

History: 1987 a. 355; 1991 a. 269; 2001 a. 61; 2005 a. 443 ss. 264, 265.