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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 440

02/11/2013 Authored by Hilstrom
The bill was read for the first time and referred to the Committee on Judiciary Finance and Policy
02/25/2013 Adoption of Report: Pass and Read Second Time

1.1 A bill for an act
1.2 relating to judiciary; modifying certain provisions relating to the State Guardian
1.3 Ad Litem Board; amending Minnesota Statutes 2012, sections 260B.163,
1.4 subdivision 6; 260B.331, subdivision 6; 260C.163, subdivision 5; 260C.331,
1.5 subdivision 6; 480.35, subdivision 1; 518.165, subdivisions 1, 3.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2012, section 260B.163, subdivision 6, is amended to
1.8 read:

1.9 Subd. 6. **Guardian ad litem.** (a) The court shall appoint a guardian ad litem to
1.10 protect the interests of the minor when it appears, at any stage of the proceedings, that the
1.11 minor is without a parent or guardian, or that the minor's parent is a minor or incompetent,
1.12 or that the parent or guardian is indifferent or hostile to the minor's interests. In any
1.13 other case the court may appoint a guardian ad litem to protect the interests of the minor
1.14 when the court feels that such an appointment is desirable. The court shall appoint the
1.15 guardian ad litem on its own motion or in the manner provided for the appointment of
1.16 a guardian ad litem in the district court. The court may appoint separate counsel for the
1.17 guardian ad litem if necessary.

1.18 (b) A guardian ad litem shall carry out the following responsibilities:

1.19 (1) conduct an independent investigation to determine the facts relevant to the
1.20 situation of the child and the family, which must include, unless specifically excluded by
1.21 the court, reviewing relevant documents; meeting with and observing the child in the
1.22 home setting and considering the child's wishes, as appropriate; and interviewing parents,
1.23 caregivers, and others with knowledge relevant to the case;

1.24 (2) advocate for the child's best interests by participating in appropriate aspects of
1.25 the case and advocating for appropriate community services when necessary;

2.1 (3) maintain the confidentiality of information related to a case, with the exception
 2.2 of sharing information as permitted by law to promote cooperative solutions that are
 2.3 in the best interests of the child;

2.4 (4) monitor the child's best interests throughout the judicial proceeding; and

2.5 (5) present written reports on the child's best interests that include conclusions and
 2.6 recommendations and the facts upon which they are based.

2.7 (c) The court may waive the appointment of a guardian ad litem pursuant to
 2.8 paragraph (a), whenever counsel has been appointed pursuant to subdivision 2 or is
 2.9 retained otherwise, and the court is satisfied that the interests of the minor are protected.

2.10 (d) In appointing a guardian ad litem pursuant to paragraph (a), the court shall not
 2.11 appoint the party, ~~or any agent or employee thereof~~, filing a petition pursuant to section
 2.12 260B.141 and 260C.141.

2.13 (e) The following factors shall be considered when appointing a guardian ad litem in
 2.14 a case involving an Indian or minority child:

2.15 (1) whether a person is available who is the same racial or ethnic heritage as the
 2.16 child or, if that is not possible;

2.17 (2) whether a person is available who knows and appreciates the child's racial or
 2.18 ethnic heritage.

2.19 (f) The court shall require a background study for each guardian ad litem as provided
 2.20 under section 518.165. The court shall have access to data collected pursuant to section
 2.21 245C.32 for purposes of the background study.

2.22 Sec. 2. Minnesota Statutes 2012, section 260B.331, subdivision 6, is amended to read:

2.23 Subd. 6. **Guardian ad litem fees.** (a) In proceedings in which the court appoints a
 2.24 guardian ad litem pursuant to section 260B.163, subdivision 6, paragraph (a), the court
 2.25 may inquire into the ability of the parents to pay for the guardian ad litem's services and,
 2.26 after giving the parents a reasonable opportunity to be heard, may order the parents to
 2.27 pay guardian ad litem fees.

2.28 (b) In each fiscal year, the commissioner of management and budget shall deposit
 2.29 guardian ad litem reimbursements in the special revenue fund and credit them to a
 2.30 separate account with the State Guardian Ad Litem Board. The balance of this account is
 2.31 appropriated to the State Guardian Ad Litem Board and does not cancel but is available
 2.32 until expended. Revenue from this account must be spent in the judicial district in which
 2.33 the reimbursement is collected.

2.34 Sec. 3. Minnesota Statutes 2012, section 260C.163, subdivision 5, is amended to read:

3.1 Subd. 5. **Guardian ad litem.** (a) The court shall appoint a guardian ad litem to
3.2 protect the interests of the minor when it appears, at any stage of the proceedings, that the
3.3 minor is without a parent or guardian, or that the minor's parent is a minor or incompetent,
3.4 or that the parent or guardian is indifferent or hostile to the minor's interests, and in every
3.5 proceeding alleging a child's need for protection or services under section 260C.007,
3.6 subdivision 6, except proceedings where the sole allegation is that the child is a runaway
3.7 or habitual truant. In any other case the court may appoint a guardian ad litem to protect
3.8 the interests of the minor when the court feels that such an appointment is desirable. The
3.9 court shall appoint the guardian ad litem on its own motion or in the manner provided
3.10 for the appointment of a guardian ad litem in the district court. The court may appoint
3.11 separate counsel for the guardian ad litem if necessary.

3.12 (b) A guardian ad litem shall carry out the following responsibilities:

3.13 (1) conduct an independent investigation to determine the facts relevant to the
3.14 situation of the child and the family, which must include, unless specifically excluded by
3.15 the court, reviewing relevant documents; meeting with and observing the child in the
3.16 home setting and considering the child's wishes, as appropriate; and interviewing parents,
3.17 caregivers, and others with knowledge relevant to the case;

3.18 (2) advocate for the child's best interests by participating in appropriate aspects of
3.19 the case and advocating for appropriate community services when necessary;

3.20 (3) maintain the confidentiality of information related to a case, with the exception
3.21 of sharing information as permitted by law to promote cooperative solutions that are
3.22 in the best interests of the child;

3.23 (4) monitor the child's best interests throughout the judicial proceeding; and

3.24 (5) present written reports on the child's best interests that include conclusions and
3.25 recommendations and the facts upon which they are based.

3.26 (c) Except in cases where the child is alleged to have been abused or neglected,
3.27 the court may waive the appointment of a guardian ad litem pursuant to paragraph (a),
3.28 whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise,
3.29 and the court is satisfied that the interests of the minor are protected.

3.30 (d) In appointing a guardian ad litem pursuant to paragraph (a), the court shall not
3.31 appoint the party, ~~or any agent or employee thereof~~, filing a petition pursuant to section
3.32 260C.141.

3.33 (e) The following factors shall be considered when appointing a guardian ad litem in
3.34 a case involving an Indian or minority child:

3.35 (1) whether a person is available who is the same racial or ethnic heritage as the
3.36 child or, if that is not possible;

4.1 (2) whether a person is available who knows and appreciates the child's racial or
4.2 ethnic heritage.

4.3 (f) The court shall require a background study for each guardian ad litem as provided
4.4 under section 518.165. The court shall have access to data collected pursuant to section
4.5 245C.32 for purposes of the background study.

4.6 Sec. 4. Minnesota Statutes 2012, section 260C.331, subdivision 6, is amended to read:

4.7 Subd. 6. **Guardian ad litem fees.** (a) In proceedings in which the court appoints a
4.8 guardian ad litem pursuant to section 260C.163, subdivision 5, clause (a), the court may
4.9 inquire into the ability of the parents to pay for the guardian ad litem's services and,
4.10 after giving the parents a reasonable opportunity to be heard, may order the parents to
4.11 pay guardian ad litem fees.

4.12 (b) In each fiscal year, the commissioner of management and budget shall deposit
4.13 guardian ad litem reimbursements in the special revenue fund and credit them to a
4.14 separate account with the State Guardian Ad Litem Board. The balance of this account is
4.15 appropriated to the State Guardian Ad Litem Board and does not cancel but is available
4.16 until expended. Revenue from this account must be spent in the judicial district in which
4.17 the reimbursement is collected.

4.18 Sec. 5. Minnesota Statutes 2012, section 480.35, subdivision 1, is amended to read:

4.19 Subdivision 1. **Structure; membership.** (a) The State Guardian Ad Litem Board is
4.20 established in the judicial branch. The board is not subject to the administrative control
4.21 of the judiciary. The State Guardian Ad Litem Board shall consist of seven members
4.22 including:

4.23 (1) three members appointed by the Supreme Court, at least one of whom must have
4.24 former guardian ad litem experience, and who include two attorneys admitted to practice
4.25 law in the state and one public member; and

4.26 (2) four members appointed by the governor.

4.27 The appointing authorities may not appoint an active judge to be a member of
4.28 the State Guardian Ad Litem Board, but may appoint a retired judge. The appointing
4.29 authorities may not appoint a registered lobbyist to be a member of the State Guardian Ad
4.30 Litem Board.

4.31 (b) All candidates shall demonstrate an interest in maintaining a high quality,
4.32 independent guardian ad litem program for the advocacy of the best interests of children
4.33 as required in juvenile and family court. The candidates shall be well acquainted with the
4.34 guardian ad litem program, as well as laws that affect a guardian ad litem's work, including

5.1 the Minnesota Indian Family Preservation Act under sections 260.751 to 260.835; the
 5.2 federal Multiethnic Placement Act of 1994 under United States Code, title 42, section 662
 5.3 and amendments; and the federal Indian Child Welfare Act under United States Code, title
 5.4 25, section 1901 et seq. At least three members of the board shall be from judicial districts
 5.5 other than the First, Second, Fourth, and Tenth Judicial Districts. The terms, compensation,
 5.6 and removal of members shall be as provided in section 15.0575. ~~The Supreme Court shall~~
 5.7 appoint members shall elect the chair from among the membership for a term of two years.

5.8 Sec. 6. Minnesota Statutes 2012, section 518.165, subdivision 1, is amended to read:

5.9 Subdivision 1. **Permissive appointment of guardian ad litem.** In all proceedings
 5.10 for child custody or for dissolution or legal separation where custody or parenting time
 5.11 with a minor child is in issue, the court may appoint a guardian ad litem ~~from a panel~~
 5.12 ~~established by the court~~ to represent the interests of the child. The guardian ad litem shall
 5.13 advise the court with respect to custody and parenting time.

5.14 Sec. 7. Minnesota Statutes 2012, section 518.165, subdivision 3, is amended to read:

5.15 Subd. 3. **Fees.** (a) ~~A guardian ad litem appointed under either subdivision 1 or 2~~
 5.16 ~~may be appointed either as a volunteer or on a fee basis.~~ If a guardian ad litem is appointed
 5.17 on a fee basis, the court shall enter an order for costs, fees, and disbursements in favor
 5.18 of the child's guardian ad litem. The order may be made against either or both parties,
 5.19 except that any part of the costs, fees, or disbursements which the court finds the parties
 5.20 are incapable of paying shall be borne by the State Guardian Ad Litem Board. ~~The costs~~
 5.21 ~~of court-appointed counsel to the guardian ad litem shall be paid by the State Guardian Ad~~
 5.22 ~~Litem Board if a party is incapable of paying for them.~~ In no event may the court order
 5.23 that costs, fees, or disbursements be paid by a party receiving public assistance or legal
 5.24 assistance or by a party whose annual income falls below the poverty line as established
 5.25 under United States Code, title 42, section 9902(2).

5.26 (b) In each fiscal year, the commissioner of management and budget shall deposit
 5.27 guardian ad litem reimbursements in the special revenue fund and credit them to a
 5.28 separate account with the State Guardian Ad Litem Board. The balance of this account is
 5.29 appropriated to the State Guardian Ad Litem Board and does not cancel but is available
 5.30 until expended. Revenue from this account must be spent in the judicial district in which
 5.31 the reimbursement is collected.