

1:45 – 2:45 p.m. Ethical Conundrums Facing the Family Law Practitioner*

This in-depth analysis of the ethical issues facing the family law practitioner covers client selection, engagement, court room decorum/demeanor, recognizing conflicts, case closure, and civility issues. Special considerations when representing children are also examined.

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Mr. Schlesinger opened his firm in Libertyville, Lake County, Illinois in 1986, devoting the practice exclusively to family law matters including divorce, alimony, custody, support, paternity, and adoption cases. He has handled cases in Cook and Lake counties in the trial courts and the appellate court. Mr. Schlesinger is a 25+year member of the American Academy of Matrimonial Lawyers. He has served on its Admissions Committee, its Board of Directors, and as Vice President.

Gary Schlesinger has been appointed by the President of the Illinois State Bar Association as a liaison with the attorney registration and disciplinary commission of the Illinois Supreme Court.

Mr. Schlesinger has also been appointed to the governing body of the Illinois State Bar Association Family Law Section, called the Family Law Section council. The council will review and recommend all family law legislation pending in the Illinois legislature, publish a newsletter, and put on seminars.

Gary has been named a Super Lawyer. Please see his Super Lawyer profile: <http://www.superlawyers.com/illinois/lawyer/Gary-L-Schlesinger/aa6b6013-c218-49de-9584-905ea63dcbbeb.html>

Current Employment Position:

Sole Practitioner, since 1986

Year Joined Organization:

1986

Areas of Practice:

Family Law

Adoption

Divorce

Separation

Premarital Agreements

Paternity

Custody & Support

Juvenile Cases

Litigation Percentage:

100% of Practice Devoted to Litigation

Bar Admissions:

Illinois, 1971

U.S. District Court Northern District of Illinois, 1971

Education:

Northwestern University School of Law, Chicago, Illinois, 1970
J.D., Doctor of Jurisprudence

Loyola University of Chicago, Chicago, Illinois, 1967
B.S., Bachelor of Science
Major: Sociology

Published Works:

Does it Matter if the Parents are Married?, A Publication of the Lake County Bar Association, Vol. V, No. 6, June, 1998

What is Necessary for the Power to Make A Decision?, A Publication of the Lake County Bar Association, Vol. VI, No. 6, June, 1999

Cohabitation, Published by Illinois State Bar Association for members of the Family Law Section., Vol. 42, No. 1, July, 1998

Cohabitation Revisited, Published by Illinois State Bar Association Family Law Newsletter, December, 2007

Classes/Seminars Taught:

Family Law Seminar, Illinois State Bar Association, 2008 - Present

Family Law Seminars, Illinois State Bar Association, 1987 - 1992

Family Law Seminars, Lake County Bar Association, 1974 - Present

Adult Education Program, Mundelein High School, 1992 - 2008

Presenter at seminar entitled "The Financial Side of Divorce -- Litigation Issues 2001", presented by Clifton Gunderson, LLC and the Illinois Chapter of the

American Academy of Matrimonial Lawyers

Honors and Awards:

Illinois SuperLawyer - Family and Divorce Law 2006, 2007, 2008, 2009, 2010, 2011.

A Fellow in the American Academy of Matrimonial Lawyers

Sources:

Illinois Rules of Professional Conduct

<https://www.iardc.org/newruleslist.html>

Client Trust Account Handbook

https://www.iardc.org/clienttrusthandbook_toc.html

Illinois ARDC Ethics Inquiry Program

<https://www.iardc.org/ethics.html>

Simple Rule:

If you feel that what you are doing, did, or are about to do is something that you cannot tell to your mom, spouse, or grandmother, do not do it.

Set up a conflicts system so that if a potential client contacts you, you know if you can speak with that person. RPC 1.6 and 1.7. Rule 1.16. Duty to prospective client.

Establishing the attorney client relationship:

RPC 1.5 fees.

Reasonable.

In re LUIS KUTNER, Attorney, Respondent

No. 51608

Supreme Court of Illinois

**78 Ill. 2d 157; 399 N.E.2d 963; 1979 Ill. LEXIS 427; 35 Ill. Dec. 674; 11
A.L.R.4th 123**

October 19, 1979, Filed

Written fee agreement.

In re Marriage of Magnuson, 156 Ill. App. 3d 691 (2d. dist. 1987)

Cannot change it later. Fiduciary relationship.

No. 2—09—1234

Opinion filed March 31, 2011

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

TIMOTHY WHELAN LAW) Appeal from the Circuit Court
ASSOCIATES, LTD.,) of Du Page County.

)
Plaintiff and Counterdefendant-)
Appellee and Cross-Appellant,))

v.) No. 09—AR—182

))

FRANK KRUPPE, JR.,))

Honorable

Defendant and Counterplaintiff-) Bruce R. Kelsey,

Appellant and Cross-Appellee.) Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court, with opinion.

Justices Hutchinson and Zenoff concurred in the judgment and opinion.

OPINION

I. WHETHER THE PARTIES' FEE AGREEMENT WAS AGAINST PUBLIC POLICY

Defendant first contends that a provision in the fee agreement between him and plaintiff violated public policy. Specifically, defendant complains of the following provision: "In the even [*sic*]

it becomes necessary to bring a collection proceeding against you for nonpayment of fees and costs,

I may include reasonable attorney fees and cost [*sic*] in those proceedings." In this case, the jury first

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awarded plaintiff \$30,339.14, and the trial court then awarded plaintiff an additional \$19,660.86

based upon this provision.

Whether a provision of a contract violates public policy is a question of law subject to *de novo* review. *In re Marriage of Rife*, 376 Ill. App. 3d 1050, 1054 (2007). When the resolution of an issue

turns upon public policy, it is not the role of a court to make policy; rather, the court must ascertain

the public policy of this state with reference to the Illinois Constitution, statutes, and long-standing

case law. *In re Estate of Feinberg*, 235 Ill. App. 3d 256, 265 (2009). Defendant believes he has found such a manifestation of public policy in *Lustig v. Horn*, 315 Ill. App. 3d 319 (2000).

In *Lustig*, as in this case, an attorney sued his former client to recover attorney fees from an earlier representation as well as the fees and costs of the collection proceeding. The retainer agreement between the parties included the following provision: "[I]n the event of default in payment

Client will pay reasonable attorney's fees and costs incurred in collecting said amount which may be

due." (Emphasis and internal quotation marks omitted.) *Lustig*, 315 Ill. App. 3d at 321.

Defendant

relies primarily on the following passage from *Lustig*, 315 Ill. App. 3d at 327:

"An attorney should not place himself in the position where he may be required to choose between conflicting duties or where he must reconcile conflicting interests rather than protect fully the rights of his client. [Citations.] In the instant case, paragraph 3 of the

retainer agreement anticipates suit against and recovery of additional fees from a client should that client fail to pay the bill within the time required. As evidenced from Lustig's conduct, paragraph 3 gives rise to substantial fees for vigorous prosecution of the attorney's own client. As Horn aptly points out, this provision very well could be used to silence a client's complaint about fees, resulting from the client's fear of his attorney's retaliation for

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nonpayment of even unreasonable fees. Such a provision is not necessary to protect the attorney's interests; on the contrary, it merely serves to silence a client should that client protest the amount billed."

As defendant further points out, the *Lustig* court also commented that "such a provision clearly is

unfair and potentially violative of the Rules of Professional Conduct barring an attorney from representing a client if such representation may be limited by the attorney's own interest."

Lustig,

315 Ill. App. 3d at 327. While this passage, read in isolation, would seem to stand for the proposition

that an attorney may never collect fees or costs when prosecuting an action for earlier fees and costs

arising out of the representation of a client, a full reading of *Lustig* reveals several significant and

relevant differences between it and the present case.

Notably, by the time the client in *Lustig* signed the retainer agreement, an attorney-client relationship already existed between the parties. *Lustig*, 315 Ill. App. 3d at 322. Under such circumstances, the potential for overreaching on the part of an attorney is much greater than before

the relationship commences, when the client is free to simply walk away. See *Lustig*, 315 Ill. App.

3d at 326. Because an attorney-client relationship is fiduciary (*Lustig*, 315 Ill. App. 3d at 325-26),

the *Lustig* court emphasized that "[p]articular attention will be given to contracts made or changed

after the relationship of attorney and client has been established" (*Lustig*, 315 Ill. App. 3d at 326).

Indeed, "[a] presumption of undue influence arises when an attorney enters into a transaction with

his client during the existence of the fiduciary relationship." *Lustig*, 315 Ill. App. 3d at 326. The burden is on the attorney to rebut this presumption by clear and convincing evidence. *Lustig*, 315

Ill. App. 3d at 326 (citing *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 464-65 (1983)). To rebut this presumption, the *Lustig* court continued, the attorney would have to show that

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“(1) he made a full and fair disclosure to [his client] of all the material facts affecting the transaction

and (2) the transaction was fair.” *Lustig*, 315 Ill. App. 3d at 327. Initially, the court noted that there

was little evidence indicating that the attorney explained the implications of the provision at issue in

that case to his client. *Lustig*, 315 Ill. App. 3d at 327. Subsequently, the court held that the transaction could not be deemed fair, and, in support, it set forth the paragraph upon which defendant

here relies (which we set forth above).

Thus, it is abundantly clear that the matter upon which defendant relies was part of the *Lustig* court’s determination that the attorney failed to rebut the presumption of undue influence that arose

because he represented the client when the agreement was consummated. That is not the case here.

Defendant asserts that the *Lustig* court never expressly limited its holding to the facts of that case.

While true, as we read *Lustig*, it is not possible to divorce the paragraph upon which defendant relies

from the discussion of undue influence. Thus, we reject defendant’s characterization of and reliance

upon *Lustig* as establishing a *per se* rule against a fee agreement containing a provision like the one

at issue in the present case. We conclude that there is no such general proscription.

Accordingly,

at least to the extent that plaintiff is represented by outside counsel (see *In re Marriage of Tantiwongse*, 371 Ill. App. 3d 1161, 1164-65 (2007) (holding that attorneys do not incur fees when

they represent themselves)), we perceive no *per se* public policy that would void the provision in the

fee agreement regarding the recovery of fees.

Client bill of rights or not?

Attorney retaining lien.

422 F.3d 540 (2005)

Paula JOHNSON, Plaintiff, v. Leland CHERRY and James

**Mister, Defendants-Appellees. Appeal of: Barbara J. Clinite,
Appellant.**

No. 04-3562.

United States Court of Appeals, Seventh Circuit.

Argued May 4, 2005.

Decided September 6, 2005.

So now you have a client and you have been paid, what do you do with the money? If you put it in your trust account, it must be an IOLTA account.

**BRIAN DOWLING, Appellee, v. CHICAGO OPTIONS
ASSOCIATES, INC., et al. (DLA Piper Rudnick Gray Cary (US),
LLP, Appellant).**

Docket No. 102578.

SUPREME COURT OF ILLINOIS

226 Ill. 2d 277; 875 N.E.2d 1012; 2007 Ill. LEXIS 856; 314 Ill. Dec. 725

May 3, 2007, Opinion Filed

Dowling is codified in rule 1.15.

This is also the rule on establishing an IOLTA account.

It is best to have a fee letter, in writing, that explains everything including what you are doing with the initial deposit—retainer.

Read the comments to rule 1.5. There are no non-refundable retainers.

Contingent fees are prohibited for divorce but not for collection of past due support or property.

So, now you have a client, a fee agreement, the initial payment, now what? Just read the Rules of Professional Conduct and they are your roadmap.

1.2 deals with allocation of work between attorney and client. Who does what? Clarify this in writing.

1.3 says you will work diligently. Promptly.

1.4 is communication with client. More clients complain about lack of communication than anything else. Write lots of letters. Return phone calls emails. Send the client a copy of each paper you generate or receive.

1.6 deals with confidentiality. Your client's parent pays the initial deposit and then wants to be informed of everything and make decisions for the client. You need written consent from client to do this.

At initial interview, client brings a friend or relative for moral support. What to do?

1.7 conflict of interest between current clients. Can you represent the boy friend and girl friend against each their respective spouses? At divorce? Post judgment? Both parties come to you for an agreed divorce. Who is your client? What do you owe the other spouse?

1.8 more conflict rules. Can you offer to buy the house? Comic book collection? Guitar? Can you take those as fee or security for fee? Need court permission—750 ilcs 5/508(f)(5).

No sexual relations with a client unless the sexual relationship predates the

attorney client relationship 1.8(j)

*175 Ill. 2d 504, *; 677 N.E.2d 909, **;
1997 Ill. LEXIS 22, ***; 222 Ill. Dec. 375*

In re RICHARD ANTHONY **RINELLA**, Attorney, Respondent.

Docket No. 81878

SUPREME COURT OF ILLINOIS

175 Ill. 2d 504; 677 N.E.2d 909; 1997 Ill. LEXIS 22; 222 Ill. Dec. 375

February 20, 1997, Filed

SUBSEQUENT HISTORY: [***1] Certiorari Denied November 3, 1997, Reported at: [1997 U.S. LEXIS 6515](#).

1.9 more conflict rules dealing with duty to former client.

1.14 client with diminished capacity. This comes up frequently in a divorce practice. At what point do you go to relatives or the probate court for a guardian? Not an easy decision.

1.15. safekeeping property. Never, never never put client money in your general account. Never.

1.16. If you decline to represent someone, write them and say so. That way there is no question later. If you wish to withdraw, follow this and Ill. Sup. Ct. rule 13. There may be local court rules on this also.

2.4 If you are a mediator, you must explain to the unrepresented party that you do not represent either party and explain the role of mediator vs. the role of an attorney.

3.1 only pursue meritorious claims and defenses.

3.2 do not drag out litigation.

3.3 do not lie to the court.

3.4 be fair to opposing party and counsel.

3.7 lawyer as witness. Cannot be both. Choose one. Especially important if you write the pre marital agreement. You will probably be a witness and then cannot represent your client in the divorce.

4.2 communication with represented party. In re Angela Peters.

Filed September 22, 2006

In re Angela E. Peters Respondent-Appellant

Commission No. 04 CH 127

**Synopsis Of Review Board Report And
Recommendation (September 2006)**

The Administrator filed a one-count complaint against respondent, Angela E. Peters, alleging that during her representation of a client in a dissolution matter she improperly communicated with and caused her client to improperly communicate with a party represented by counsel without that counsel's prior consent; engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; and engaged in conduct that is prejudicial to the administration of justice and that tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute. Peters denied most of the factual allegations in the complaint and denied all allegations of misconduct.

The Hearing Board found that the Administrator proved the charges against Peters with the exception of the charge of engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. It recommended that Peters receive a censure.

The matter came before the Review Board on Peters' exceptions. She argued that (1) the Hearing Board's findings that she improperly communicated with and caused her client to improperly communicate with a party represented by counsel are erroneous; (2) the Hearing Board's finding that her conduct prejudiced the administration of justice is erroneous; (3) the Hearing Board abused its discretion by striking certain testimony from two character witnesses; and (4) a reprimand is a more appropriate sanction than a censure.

The Administrator contended on review that she presented clear and convincing evidence that Peters engaged in dishonest conduct, and the Hearing Board's finding to the contrary was against the manifest weight of the evidence.

The Review Board determined that the facts as found by the Hearing Board do not support the determination that Peters herself improperly communicated with a person represented by counsel. Therefore, the Review Board reversed the Hearing Board's finding of misconduct as to that charge. The Review Board affirmed the finding that Peters caused her client to improperly communicate with a person represented by counsel, and that this conduct prejudiced the administration of justice and tended to defeat the administration of justice or to bring the courts or the legal profession into disrepute. The Review Board also affirmed the Hearing Board's finding that the Administrator did not [prove by clear and convincing evidence that Peters engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.](#) The Review Board determined that a reprimand is an

appropriate sanction for Peters' misconduct.

We do, however, agree with the Hearing Board that Respondent violated Rule 4.2 when she prepared the revised settlement agreement and gave it to David with the knowledge that he was going to deliver it to Mary.

We recognize that the legislature encourages the settlement of dissolution matters. See 750 ILCS 5/502(a) (West 1998). Attorneys must do so, however, within the boundaries of the Rules of Professional Conduct. Respondent was required to deliver the revised settlement agreement to Mary's attorney. In bypassing Mary's attorneys and using David to deliver the revised agreement to Mary directly, Respondent violated Rule 4.2.

So, when you give your client drafts of documents to review, be certain to tell the client not to show it to the spouse and that you have to send it to the attorney for the spouse.

4.3 be careful in your dealings with and statements to unrepresented parties.

7.1 and 7.2 and 7.3 deal with communications about your providing services and advertising. Read carefully. If you deal with a web site company, make certain it knows the rules. You will be disciplined, not it.

The ABA has a formal opinion on lawyer websites. 10-057.
www.americanbar.org/content/dam/aba/migrated/cpr/pdfs/10_457.pdf

http://www.americanbar.org/groups/professional_responsibility/resources/professionalism.html

Rule 7.4 says you cannot say you specialize in divorce. You can say that your practice is limited to divorce.

Rule 7.5 deals with firm names and what may be on your letterhead. Can you say Joe Smith and Associates if you have none?

8.3 is the rule that you have to report misconduct by others.

*125 Ill. 2d 531, *; 533 N.E.2d 790, **;
1988 Ill. LEXIS 121, ***; 127 Ill. Dec. 708*

In re JAMES H. **HIMMEL**, Attorney, Respondent

No. 65946

Supreme Court of Illinois

125 Ill. 2d 531; 533 N.E.2d 790; 1988 Ill. LEXIS 121; 127 Ill. Dec. 708

September 22, 1988, Filed

Rule 8.4 defines some specific types of misconduct.

REPRESENTING CHILDREN

You may be appointed in one of three capacities. 750 ilcs 5/506.

May 2010 Child Representative Seminar

**Circuit Court of the 19th
Judicial Circuit
Lake County, Illinois**

Lake County Bar Association

Gary L. Schlesinger
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CASE LAW

As we have been told, the statute pursuant to which the court has the power to appoint is 750 ILCS 5/506. As of May 10, 2010, the LexisNexis annotations show 41 cases. Attached is the statute and the annotations. Rather than discuss all of them, I will only mention a few. No citations will be provided in this portion of the materials, they are all in the annotations.

ROLE AND DUTIES

Please read De Bates. In this case, the court appointed a child representative who submitted a sealed report to the court at the close of all the evidence. The court admitted the report into evidence and denied the mother's request that she be able to cross-examine the child representative.

"Bush's report described his interviews with S.B., Edward, and Norma, and various school and medical records provided by the parties, as well as his observations of visitations between S.B. and Edward. S.B. related to Bush that she enjoyed the Florida trip and denied that any abuse occurred. S.B. said she did not want to visit Edward because he gets drunk and she feared he would hurt her. She described recollections of Edward coming home drunk and "poking her in the eyes and stepping on her toes" when she was smaller. She admitted she has never seen him drink alcohol and could not articulate any reason for *****21** her fears. Additionally, Bush attached the first written report of Dr. Blechman and the written report of Dr. Mark Goldstein, a psychologist who had completed a court-ordered child custody evaluation prior to the judgment of dissolution. The report concluded with Bush's recommendation that physical custody of S.B. be transferred to Edward."

"In his written report, child representative Bush described his observations of visitation between Edward ***510** and S.B., recounted S.B.'s version of the events in Florida as well as her recollections of Edward *****27** coming home drunk and "poking her in the eyes and stepping on her toes" when she was smaller. The report was admitted in evidence, but Norma was unable to cross-examine Bush on his observations and the basis for his recommendations because of the clear statutory prohibition against calling him as a witness. Thus, Norma argues that she was deprived of a meaningful opportunity to be heard on

a matter implicating a fundamental liberty interest, thereby violating her right to procedural due process of law as guaranteed by the [fourteenth amendment to the United States Constitution](#) (U.S. Const., amend. XIV) and [section 2 of article I of the 1970 Illinois Constitution](#) (Ill. Const. 1970, art. I, § 2).

The appellate court construed the statute to allow calling the child's representative as a witness if the representative directly witnesses relevant facts and circumstances used to support a recommendation, because the representative has then "stepped out of his attorney role." [342 Ill. App. 3d at 214](#). In that instance, the court reasoned, the representative has become a witness who may be called and questioned at trial, as any other witness, under the terms or specifications as **[**28]** determined by the court. The appellate court held that [section 506\(a\)](#) does not deny a party procedural due process and is not unconstitutional because it can be interpreted to allow a party to request disclosure by the child representative of underlying factual matters or to cross-examine the child representative when the representative acts as a witness. [342 Ill. App. 3d at 214](#). **[**726]** The court further held that this interpretation may be reconciled with [Rule 3.7 of the Illinois Rules of Professional Conduct](#) (134 Ill. 2d R. 3.7), prohibiting an attorney from being both a witness and an advocate for his client, because in such circumstances the court is **[*511]** authorized, under [section 506\(a\)\(3\)](#), to appoint another attorney to represent the child. [342 Ill. App. 3d at 214](#).

The appellate court held that the trial court erred in denying Norma's request to examine Bush, to the extent that the representative's recommendation was based on his observations as a witness. The court reasoned, however, that the error was harmless because it did not play a significant role in the trial court's ruling. The trial court recited that it would **[**29]** consider the report "for what it's worth" along with many other factors and, therefore, any error in considering the report was not prejudicial. [342 Ill. App. 3d at 214-15](#).

Norma argues before us that the appellate court's statutory construction is unreasonable because it disregards the express, unambiguous language prohibiting calling the child's representative as a witness "regarding the issues set forth" in [section 506\(a\)\(3\)](#). Edward argues that the statute limits those issues to the expressed wishes of the child, confidential communications made by the child, and the training and experience of the child representative. According to Edward, there is no express prohibition on questioning the representative on the factual basis for his recommendations or on his observations in coming to a

particular recommendation.

The challenged statute provides that the child representative's duty shall be "to advocate what the representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case," and further provides that the representative "shall possess all the powers of investigation and recommendation as does a guardian ad litem. [***30] " [750 ILCS 5/506\(a\)\(3\)](#) (West 2002).

We agree with Norma that the statutory language is clear and unambiguous.

^{HN5}The "issues set forth" in [section 506\(a\)\(3\)](#) clearly include the duty to advocate what the representative finds to be in the child's best interests [*512] and the power to investigate and recommend in the manner of a guardian *ad litem*. Where the language of a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction. [Raintree Homes, Inc. v. Village of Long Grove, 209 Ill. 2d 248, 255, 807 N.E.2d 439, 282 Ill. Dec. 815 \(2004\)](#). The representative's observations and conversations with the parties, witnesses, and S.B. were clearly within the statutory ambit barring him as a witness. Thus, the appellate court's statutory construction was error, and we must address the issue of whether procedural due process requires allowing the representative to be called as a witness."

So, do not do what Mr. Bush did. If you are a guardian ad litem, then you investigate, you testify and you get cross examined. If you are a child representative, you do not testify nor submit a written report as evidence. You disclose your position in a pre trial memorandum and you argue from evidence in the record.

COLLEGE PETITION

You could be appointed to represent a child in a college petition pursuant to 750 ILCS 5/513. [Miller v. Miller](#).

FEES

Concerning your fees, you comply with the statute, 5/506(b). If either party requests an evidentiary hearing on the fees, the court must conduct one. IRMO Thompson.

Thanks to my friend, Joel Levin, your fees are not dischargeable in bankruptcy. Levin v. Greco.

PARENTAGE CASES

Before the statute was amended to include parentage in the opening paragraph, trial courts had inherent power to appoint a guardian ad litem in a parentage case. Denofrio v. Kuc.

IMMUNITY

You cannot be successfully sued because you are acting in an official capacity as a court officer. Cooney v. Rossiter

ETHICS

Rule 907. Minimum Duties and Responsibilities of Attorneys for Minor Children

(a) Every child representative, attorney for a child and guardian *ad litem* shall adhere to all ethical rules governing attorneys in professional practice, be mindful of any conflicts in the representation of children and take appropriate action to address such conflicts.

2010 Illinois Rules of Professional Conduct

<https://www.iardc.org/newrules2010.htm>

RULE 6.2: ACCEPTING APPOINTMENTS

A lawyer shall not seek to avoid appointment by a tribunal to represent

a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Adopted July 1, 2009, effective January 1, 2010.

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action

pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime in circumstances other than those specified in paragraph (c);

(2) to prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a

controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

(c) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

ADVOCATE (Rules 3.1 to 3.9)

[Rule 3.1: Meritorious Claims And Contentions](#)

[Rule 3.2: Expediting Litigation](#)

[Rule 3.3: Candor Toward The Tribunal](#)

[Rule 3.4: Fairness To Opposing Party And Counsel](#)

[Rule 3.5: Impartiality And Decorum Of The Tribunal](#)

[Rule 3.6: Trial Publicity](#)

[Rule 3.7: Lawyer As Witness](#)

RULE 8.2: JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

RULE 8.3: REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of Rule 8.4(b) or Rule 8.4(c) shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by the attorney-client privilege or by law or information gained by a lawyer or judge while participating in an approved lawyers' assistance program or an intermediary program approved by a circuit court in which nondisciplinary complaints against judges or lawyers can be referred.

(d) A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary Commission shall report that fact to the Commission.

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(d) engage in conduct that is prejudicial to the administration of justice.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.



LEXSTAT 750 ILCS 5/506

ILLINOIS COMPILED STATUTES ANNOTATED
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*** STATUTES CURRENT THROUGH PUBLIC ACT 96-890 OF THE 2010 LEGISLATIVE
SESSION ***

*** ANNOTATIONS CURRENT TO STATE CASES THROUGH MARCH 31, 2010 ***

CHAPTER 750. FAMILIES
ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT
PART V. PROPERTY, SUPPORT AND ATTORNEY FEES

GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY

750 ILCS 5/506 (2010)

§ 750 ILCS 5/506. Representation of child

Sec. 506. Representation of child. (a) Duties. In any proceedings involving the support, custody, visitation, education, parentage, property interest, or general welfare of a minor or dependent child,

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the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities to address the issues the court delineates:

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

(2) Guardian ad litem. The guardian ad litem shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The guardian ad litem may be called as a witness for purposes of cross-examination regarding the guardian ad litem's report or recommendations. The guardian ad litem shall investigate the facts of the case and interview the child and the parties.

(3) Child representative. The child representative shall advocate what the child representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child representative shall meet with the child and the parties, investigate the facts of the case, and encourage settlement and the use of alternative forms of dispute resolution. The child representative shall have the same authority and obligation to participate in the litigation as does an attorney for a party and shall possess all the powers of investigation as does a guardian ad litem. The child representative shall consider, but not be bound by, the expressed wishes of the child. A child representative shall have received training in child advocacy or shall possess such experience as determined to be equivalent to such training by the chief judge of the circuit where the child representative has been appointed. The child representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child representative shall not render an opinion, recommendation, or report to the court and shall not be called as a witness, but shall offer evidence-based legal arguments. The child representative shall disclose the position as to what the child representative intends to advocate in a pre-trial memorandum that shall be served upon all counsel of record prior to the trial. The position disclosed in the pre-trial memorandum shall not be considered evidence. The court and the parties may consider the position of the child representative for purposes of a settlement conference.

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

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

In no event is this Section intended to or designed to abrogate the decision making power of the trier of fact. Any appointment made under this Section is not intended to nor should it serve to place any appointed individual in the role of a surrogate judge.

(b) Fees and costs. The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian ad litem, or child's representative is appointed. Any person appointed under this Section shall file with the court within 90 days of his or

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her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party. The court shall review the invoice submitted and approve the fees, if they are reasonable and necessary. Any order approving the fees shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate. The court may not order payment by the Department of Healthcare and Family Services in cases in which the Department is providing child support enforcement services under Article X of the Illinois Public Aid Code [305 ILCS 5/10-1 et seq.]. Unless otherwise ordered by the court at the time fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy under 11 U.S.C.A. 523. The provisions of Sections 501 and 508 of this Act [750 ILCS 5/501 and 750 ILCS 5/508] shall apply to fees and costs for attorneys appointed under this Section.

HISTORY: Source: P.A. 85-357; 89-364, § 70; 90-309, § 5; 91-410, § 5; 92-590, § 10; 94-640, § 5; 95-331, § 1125.

NOTES:

NOTE.

This section was Ill.Rev.Stat., Ch. 40, para. 506.

EFFECT OF AMENDMENTS.

The 1995 amendment by P.A. 89-364, effective August 18, 1995, in the fourth sentence inserted "or any adult party".

The 1997 amendment by P.A. 90-309, effective January 1, 1998, in the first sentence, inserted "best", substituted a comma for "and" preceding "visitation" and added "and property" at the end.

The 1999 amendment by P.A. 91-410, effective January 1, 2000, inserted the subsection (a) and (b) designations and rewrote the section to the extent that a detailed comparison would be impracticable.

The 2002 amendment by P.A. 92-590, effective July 1, 2002, substituted "child support enforcement services" for "child and spouse support services" in the third sentence of subsection (b).

The 2005 amendment by P.A. 94-640, effective January 1, 2006, rewrote the section.

The 2007 revisory amendment by P.A. 95-331, effective August 21, 2007, substituted "Department of Healthcare and Family Services" for "Illinois Department of Public Aid" in (b).

CASE NOTES

ANALYSIS

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CONSTITUTIONALITY

Section 506(a)(3) of the Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/506(a)(3) was unconstitutional as applied in this case because the child's representative's report was adverse to the mother and she was deprived of her due process under U.S. Const. Amend IV, and Ill. Const. 1970, Art. I, § 2 to cross-examine the representative. One of the fundamental rights protected under the fourteenth amendment is the right of parents to make decisions concerning the care, custody, and control of their children without unwarranted state intrusion. *In re Marriage of De Bates*, 212 Ill. 2d 489, 289 Ill. Dec. 218, 819 N.E.2d 714, 2004 Ill. LEXIS 1619 (2004).

ATTORNEY FEES

Although the law firm that was appointed to represent the interests of the children of a husband and wife involved in a dissolution of marriage action was entitled to reasonable compensation, as the petition and amended petition for fees the firm filed were for final fees and costs, the trial court erred when it failed to conduct an evidentiary hearing on the petition when the husband requested one. *In re Marriage of Thompson*, 384 Ill. App. 3d 1, 322 Ill. Dec. 650, 891 N.E.2d 941, 2008 Ill.

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App. LEXIS 612 (1 Dist. 2008), appeal denied, 229 Ill. 2d 696, 900 N.E.2d 1126, 2008 Ill. LEXIS 1792 (2008).

--ABUSE OF DISCRETION

Where the trial court awarded fees of \$2,500 to the attorney appointed by the court to represent the interests of the children, the award was an abuse of the trial court's discretion. *In re Olsher*, 78 Ill. App. 3d 627, 34 Ill. Dec. 32, 397 N.E.2d 488 (1 Dist. 1979).

--APPEAL

Where order for attorney fees from which appeal was taken arose from a contempt proceeding, it was final and appealable. *Spizzo v. Langman*, 168 Ill. App. 3d 487, 119 Ill. Dec. 146, 522 N.E.2d 808 (2 Dist. 1988).

Although this section does allow for an award of attorney fees in favor of the child's attorney, it does not specifically authorize the award of such fees during the pendency of an appeal. *In re Macaluso*, 110 Ill. App. 3d 838, 66 Ill. Dec. 478, 443 N.E.2d 1 (2 Dist. 1982).

--AWARD AGAINST STATE

This section does not allow an award of attorney fees against the state. *Williams ex rel. Williams v. Davenport*, 306 Ill. App. 3d 465, 239 Ill. Dec. 374, 713 N.E.2d 1224 (1 Dist. 1999).

--CHILD'S ATTORNEY

Court properly assessed an appointed child guardian's fees to the parents under the Marriage Act, because the guardian's representation of the child was related to issues concerning the father's parentage and sibling visitation, all of which were related to issues of custody, visitation, and parentage as required under this section. *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146, 290 Ill. Dec. 654, 821 N.E.2d 1228, 2004 Ill. App. LEXIS 1551 (1 Dist. 2004), appeal denied sub nom. *Nienhouse v. Nienhouse*, 214 Ill. 2d 536, 294 Ill. Dec. 4, 830 N.E.2d 4 (2005).

While 750 ILCS 5/508 provides that a court may order either spouse to pay attorney's fees, and this section permits the court to award fees to an attorney who has been appointed by the court to represent the interest of a minor or dependent child, neither provides for the award of attorney fees to an adult child of the marriage. *In re Garrison*, 99 Ill. App. 3d 717, 54 Ill. Dec. 653, 425 N.E.2d 518 (2 Dist. 1981).

--IMPROPER

Where the trial court assessed attorney fees against wife and her attorney in custody action without considering the financial resources of the parents and the relevant circumstantial factors, the court-ordered fees were improper. *Spizzo v. Langman*, 168 Ill. App. 3d 487, 119 Ill. Dec. 146, 522 N.E.2d 808 (2 Dist. 1988).

--NECESSARY SERVICES

The amount of attorney fees awarded should be only in such an amount as will compensate for services rendered, and those services must have been reasonably required and necessary to the case. *In re Zannis*, 114 Ill. App. 3d 1034, 70 Ill. Dec. 545, 449 N.E.2d 892 (1 Dist. 1983).

--PROPER

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Language of this section does not limit its application to proceedings brought under the Marriage Act; indeed, 750 ILCS 5/508 specifically authorizes the payment of attorney fees in litigation reasonably connected with a proceeding under the Act. *In re Marriage of Nienhouse*, 355 Ill. App. 3d 146, 290 Ill. Dec. 654, 821 N.E.2d 1228, 2004 Ill. App. LEXIS 1551 (1 Dist. 2004), appeal denied sub nom. *Nienhouse v. Nienhouse*, 214 Ill. 2d 536, 294 Ill. Dec. 4, 830 N.E.2d 4 (2005).

Trial court apportioning attorney fees between former spouses for guardian ad litem appointed for child, whom mother claimed was sexually abused by father, was not abuse of discretion where mother brought charges of sexual abuse and satanic cult practices against father without presenting evidence to substantiate the charges and, as a result of mother's actions and pleadings, father had to incur significant attorneys' fees and costs to defend himself and the child's attorney likewise expended a great amount of time in defending the child's welfare. *McClelland v. McClelland*, 231 Ill. App. 3d 214, 172 Ill. Dec. 461, 595 N.E.2d 1131 (1 Dist. 1992).

CHILD REPRESENTATIVE

Mother filing a petition to remove the mother's minor child from Illinois to North Carolina was not entitled to have stricken the closing statement of a child representative regarding the best interests of the child. Except for the child representative's last statement asking the trial court to deny the removal petition, the child representative's statements were proper law-based arguments allowed by 750 ILCS 5/506(a)(3), and the trial court struck the last statement. *Meeta Bhati v. Singh*, Ill. App. 3d , 336 Ill. Dec. 557, 920 N.E.2d 1147, 2009 Ill. App. LEXIS 1248 (1 Dist. 2009).

In contrast to a legal guardian, a "child representative" under 750 ILCS 5/506 had neither custody nor general responsibility of children; rather, the position of child representative, like that of guardian ad litem, was simply an appointment that an Illinois court could make to advance the interests of children within a particular legal proceeding, limited to decisions made in that proceeding. Therefore, because the child representative did not have custody or general responsibility for the care of the debtor's children, the debtor's obligation to pay the child representative was not an obligation payable to a legal guardian under 11 U.S.C. § 101(14A). *Levin v. Greco (In re Greco)*, 397 B.R. 102, 2008 Bankr. LEXIS 3472 (Bankr. N.D. Ill. 2008).

CONSTRUCTION

Although the child representative asserted that the bankruptcy court could have been guided and informed by 750 ILCS 5/506(b), which provided that all fees and costs payable to an attorney, guardian ad litem, or child representative were by implication deemed to be in the nature of support of the child and were within the exceptions to discharge in bankruptcy under 11 U.S.C. § 523, the Supremacy Clause, U.S. Const. art. 6, precluded any argument that state statutes could override acts of Congress, and that was particularly true for bankruptcy, as to which Congress was given authority to enact uniform laws. Accordingly, the state was without power to make or enforce any law governing bankruptcies that conflicted with the national bankruptcy laws. *Levin v. Greco (In re Greco)*, 397 B.R. 102, 2008 Bankr. LEXIS 3472 (Bankr. N.D. Ill. 2008).

DISCRETION OF COURT

--IN GENERAL

An appointment under this section is subject to the sound discretion of the trial court and where a child's interests are vigorously asserted, appointment of separate counsel is not required. *In re Stuckert*, 138 Ill. App. 3d 788, 93 Ill. Dec. 294, 486 N.E.2d 395 (2 Dist. 1985).

--ABUSE OF DISCRETION

The trial court did not abuse its discretion in failing to appoint a guardian ad litem, sua sponte, or in ordering an investigation and report by the Department of Children and Family Services in an action modifying the custody provisions of a divorce decree. *De Franco v. De Franco*, 67 Ill. App. 3d 760, 24 Ill. Dec. 130, 384 N.E.2d 997 (1 Dist. 1978).

--GUARDIAN AD LITEM NOT APPOINTED

The trial court did not err in not appointing a guardian ad litem to the children in determining custody, as both children's best interests were adequately considered by the trial court and numerous witnesses, including psychologists and therapists, testified concerning the children's best interests. *In re Doty*, 255 Ill. App. 3d 1087, 196 Ill. Dec. 134, 629 N.E.2d 679 (5 Dist. 1994).

ENFORCEMENT OF DIVORCE DECREE**--COLLEGE EXPENSES**

A custodial parent could not waive child's claim to college expenses in a property settlement agreement with noncustodial parent; parents cannot bargain away the child's right under the agreement without benefit to the child, without judicial approval, and without means available to the child to judicially contest the parents' agreement in violation of the Illinois law. *Miller v. Miller*, 163 Ill. App. 3d 602, 114 Ill. Dec. 682, 516 N.E.2d 837 (1 Dist. 1987).

--STANDING

Evidence held sufficient that child of divorced parents had standing in the trial court divorce proceedings to enforce the terms of the divorce decree which obligated the non-custodial parent to pay his college expenses. *Miller v. Miller*, 163 Ill. App. 3d 602, 114 Ill. Dec. 682, 516 N.E.2d 837 (1 Dist. 1987).

EVIDENCE HELD SUFFICIENT

Where, despite the court's expressed uncertainties, the court ultimately decided in favor of the maternal grandparents over uncle in custody dispute, there was sufficient evidence to support the court's decision. *In re Russell*, 169 Ill. App. 3d 97, 119 Ill. Dec. 725, 523 N.E.2d 193 (2 Dist. 1988).

FACTORS CONSIDERED

The trial court correctly considered the relevant factors in deciding whether the amount of attorney fees was reasonable where at the hearing on fees for petitioner's attorneys, the expertise of the attorneys was testified to; each attorney testified as to the hourly rate he charged and that each had in fact rendered the services specified; the motion judge stated that he was acquainted with the case and that the parties were "litigious people" requiring their attorney's frequent presence in court; respondent's gross income for two years was established; and petitioner was found not to be employed but was dependent upon the moneys which respondent was ordered to pay as temporary maintenance. *In re Zannis*, 114 Ill. App. 3d 1034, 70 Ill. Dec. 545, 449 N.E.2d 892 (1 Dist. 1983).

--IMPROPER

The granting of an award is improper where no evidence is presented concerning the services performed, the basis of the award, or the reasonableness of the fees charged for the services

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performed. *Soraparu v. Soraparu*, 147 Ill. App. 3d 857, 101 Ill. Dec. 241, 498 N.E.2d 565 (1 Dist. 1986).

--SUFFICIENT SHOWING

It is sufficient to support an award of fees if the party seeking the fees would be stripped of financial resources if required to pay. *In re Zannis*, 114 Ill. App. 3d 1034, 70 Ill. Dec. 545, 449 N.E.2d 892 (1 Dist. 1983).

GUARDIAN AD LITEM

Although an attorney had been discharged as a child representative in a post-dissolution proceeding, she was entitled to reasonable attorney's fees under 750 ILCS 5/506 for, inter alia, appearing as a witness at an administrative hearing related to the mother's custody as the lower court implied that those activities fell within her course of representation. *Cooney v. Bischoff*, 386 Ill. App. 3d 348, 325 Ill. Dec. 843, 898 N.E.2d 1122, 2008 Ill. App. LEXIS 1086 (2 Dist. 2008).

In visitation proceedings, a father could not claim error under 750 ILCS 5/506 with regard to the presentation of evidence from a guardian ad litem because the father did not object to the guardian's oral report at a pretrial conference; thus, the issue was waived on appeal. Further, there was no plain error as the father did not explain what he would have done differently if he had received the guardian's recommendation earlier and in writing. *In re Marriage of Saheb*, 377 Ill. App. 3d 615, 316 Ill. Dec. 801, 880 N.E.2d 537, 2007 Ill. App. LEXIS 1195 (1 Dist. 2007).

--IN GENERAL

Child representative appointment did not violate a custodial parent's due process rights, since the parent had opportunity to question the basis for the representative's recommendations; if the representative were ultimately required to testify in court, another attorney would be appointed to represent the child, so that no ethical violation would occur. *De Bates v. Bates*, 342 Ill. App. 3d 207, 276 Ill. Dec. 618, 794 N.E.2d 868, 2003 Ill. App. LEXIS 879 (2 Dist. 2003), *aff'd sub nom. In re Marriage of De Bates*, 212 Ill. 2d 489, 289 Ill. Dec. 218, 819 N.E.2d 714 (2004).

This section governs the appointment of an attorney or guardian ad litem for the minor children. *Gibson v. Barton*, 118 Ill. App. 3d 576, 74 Ill. Dec. 252, 455 N.E.2d 282 (4 Dist. 1983).

--CHILD'S INTERESTS

Where child's custodial parent asked the court to appoint an attorney to act in the child's best interests, where he filed an appearance, attended some hearings, but never joined or intervened in the mother's petition to declare paternity, the child's interests were adequately protected so as not to necessitate the additional appointment of a guardian ad litem. *Koenig ex rel. Koenig v. Koenig*, 211 Ill. App. 3d 1045, 156 Ill. Dec. 385, 570 N.E.2d 861 (1 Dist. 1991).

--COLLEGE EXPENSES

Although this section does not provide for the appointment of an attorney to represent the interest of a child with respect to payment of the child's college expenses, this section does recognize that circumstances may exist in which a child's interest may need protection by an attorney "with respect to his support, custody and visitation" from the conflicting interest of the child's parents. *Miller v. Miller*, 163 Ill. App. 3d 602, 114 Ill. Dec. 682, 516 N.E.2d 837 (1 Dist. 1987).

--EVIDENCE CONSIDERED

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Trial court did not err in allowing guardians ad litem to listen to tapes that were inadmissible at trial where review of the tapes materially advanced their ability to determine and defend the child's interests. *In re Karonis*, 296 Ill. App. 3d 86, 230 Ill. Dec. 531, 693 N.E.2d 1282 (2 Dist. 1998).

--FEES

This section does not allow an award of fees against the state. *Williams ex rel. Williams v. Davenport*, 306 Ill. App. 3d 465, 239 Ill. Dec. 374, 713 N.E.2d 1224 (1 Dist. 1999).

The decision regarding the allowance and amount of fees to be awarded a guardian ad litem rests within the sound discretion of the trial court, and will not be disrupted on review unless the discretion is clearly abused; the amount to be awarded depends upon the factors and circumstances of each case, and the court in determining the amount must consider the total circumstances involved, including the circumstances of the mother and father; the importance, novelty, and difficulty of the questions raised, especially from a family law standpoint; the degree of responsibility involved from a management perspective; the time and labor required; the usual and customary charge in the community; and the benefits of the client. *Soraparu v. Soraparu*, 147 Ill. App. 3d 857, 101 Ill. Dec. 241, 498 N.E.2d 565 (1 Dist. 1986).

Award of a \$500 fee to guardian ad litem was an abuse of discretion where the guardian testified that he spent "25 hours or more" on the case, and no showing was made concerning what particular services were included in these "25 hours or more," nor was there any indication of their necessity. *Soraparu v. Soraparu*, 147 Ill. App. 3d 857, 101 Ill. Dec. 241, 498 N.E.2d 565 (1 Dist. 1986).

--NOT MANDATORY

Under certain circumstances, the circuit court has an obligation to appoint a guardian ad litem, particularly when a minor is without proper representation; however, a guardian ad litem need not be appointed in every case and is not mandatory. *Koenig ex rel. Koenig v. Koenig*, 211 Ill. App. 3d 1045, 156 Ill. Dec. 385, 570 N.E.2d 861 (1 Dist. 1991).

--PATERNITY PROCEEDINGS

A trial court has the inherent power and statutory authority to appoint a guardian ad litem for a child subject to paternity proceedings. *Denofrio v. Kuc*, 201 Ill. App. 3d 810, 146 Ill. Dec. 1021, 558 N.E.2d 1355 (1 Dist. 1990).

IMMUNITY FROM SUIT

Mother's 42 U.S.C.S. § 1983 suit against a family court judge, a child psychiatrist, and a children's representative appointed under 750 ILCS 5/506(a)(1), alleging that they conspired to deprive her of the custody of her children, failed because they acted in their official capacities as court officers in finding that the mother suffered from Munchausen syndrome by proxy and, thus, were absolutely immune from suit. *Cooney v. Rossiter*, 583 F.3d 967, 2009 U.S. App. LEXIS 21468 (7th Cir. 2009).

IMPROPER ACTIONS

An attorney who serves in the dual capacity of guardian ad litem and legal representative for the children pursuant to this section cannot base his custody recommendation on independent interviews with persons who did not testify at the trial. *In re Pool*, 118 Ill. App. 3d 1035, 74 Ill. Dec. 458, 455 N.E.2d 887 (3 Dist. 1983), overruled on other grounds, *In re Wycoff*, 266 Ill. App. 3d 408 203 Ill. Dec. 338, 639 N.E.2d 897 (4 Dist. 1994).

INDEPENDENT ACTION

Because petitioner's filing of a request for temporary attorney fees in a divorce proceeding did not constitute a new action, respondent did not have an absolute right to a substitution of judges, and absent specific allegations of prejudice, the trial court correctly denied the motion. *In re Zannis*, 114 Ill. App. 3d 1034, 70 Ill. Dec. 545, 449 N.E.2d 892 (1 Dist. 1983).

PARENTAGE PETITION BARRED

A parentage petition is barred by a prior, uncontested judgment of dissolution, where a court appointed guardian ad litem represented the minor during the dissolution proceedings. *In re Griesmeyer*, 302 Ill. App. 3d 905, 236 Ill. Dec. 227, 707 N.E.2d 72 (1 Dist. 1998).

PETITION FOR DISSOLUTION**--NOT FINAL JUDGMENT**

A petition for dissolution of marriage advances only a single claim and the numerous other issues involved, such as custody, property distribution, and support are merely questions which are ancillary to the cause of action; therefore a petition for dissolution is not a final judgment until the remaining issues are resolved. *In re Darning*, 117 Ill. App. 3d 620, 72 Ill. Dec. 785, 453 N.E.2d 90 (2 Dist. 1983).

QUALITY OF REPRESENTATION

A minor child could not challenge the quality of the guardian ad litem's representation for the first time after the child custody judgment was rendered. *In re Apperson*, 215 Ill. App. 3d 378, 158 Ill. Dec. 864, 574 N.E.2d 1257 (4 Dist. 1991).

LEGAL PERIODICALS

For Note, "A Lawyer's Guide to Eavesdropping in Illinois," see 87 Ill. B.J. 362 (1999).

For note, "Guardians Ad Litem: The Guardian Angels of Our Children in Domestic Violence Courts", see 30 Loy. U. Chi. L.J. 281 (1999).

For article, "Family Law: 1987-88 Illinois Law Survey," see Loy. U. Chi. L. J. 461 (1988-89).

For article, "The Ambiguous Role of the Lawyer Representing the Minor In Domestic Relations Litigation," see 70 Ill. B. J. 510 (1982).

PRACTICE GUIDES AND TREATISES

Civil Practice (Illinois) Volume I: Opening the Case § 12.30 Types of Proceedings in Which Appointment Is Necessary (IICLE)

Advising Elderly Clients and Their Families § 12.18 Guardians ad Litem and Custody Evaluators (IICLE)

Gitlin on Divorce § 11-12 Representation of Child by Guardian Ad Litem or Attorney, Including Child's Representative

Gitlin on Divorce § 4-2 Parties Other Than Husband and Wife

Illinois Jurisprudence, Family Law § 9:05 Representation of child

Illinois Jurisprudence, Family Law § 8:05 Representation of child

