

By Senator Campbell

33-298-98

See HB

1 A bill to be entitled
2 An act relating to guardians ad litem; amending
3 ss. 61.401 and 61.403, F.S.; providing that the
4 guardian ad litem and the child's attorney need
5 not be the same person; providing that
6 guardians ad litem who are attorneys in good
7 standing with The Florida Bar may act as their
8 own attorneys; providing an effective date.

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10 Be It Enacted by the Legislature of the State of Florida:

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12 Section 1. Section 61.401, Florida Statutes, is
13 amended to read:

14 61.401 Appointment of guardian ad litem.--In an action
15 for dissolution of marriage, modification, parental
16 responsibility, custody, or visitation, if the court finds it
17 is in the best interest of the child, the court may appoint a
18 guardian ad litem to act as next friend of the child,
19 investigator, or evaluator, ~~not as attorney or advocate~~. The
20 court in its discretion may also appoint an independent legal
21 counsel for a child to act as its attorney ~~or advocate~~;
22 ~~however, the guardian and the legal counsel shall not be the~~
23 ~~same person~~. In such actions which involve an allegation of
24 child abuse or neglect as defined in s. 415.503(3), which
25 allegation is verified and determined by the court to be
26 well-founded, the court shall appoint a guardian ad litem for
27 the child. The guardian ad litem shall be a party to the any
28 judicial proceeding in which he or she was appointed by the
29 court from the date of the appointment until the date of
30 discharge.

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1 Section 2. Section 61.403, Florida Statutes, is
2 amended to read:

3 61.403 Guardians ad litem; powers and authority.--A
4 nonattorney guardian ad litem, when appointed, shall act as
5 next friend of the child, investigator, or evaluator, not as
6 the child's attorney ~~or advocate~~ but shall act in the child's
7 best interest. A guardian ad litem shall have the powers,
8 privileges, and responsibilities to the extent necessary to
9 advance the best interest of the child, including, but not
10 limited to, the following:

11 (1) The guardian ad litem may investigate the
12 allegations of the pleadings affecting the child, and, after
13 proper notice to interested parties to the litigation and
14 subject to conditions set by the court, may interview the
15 child, witnesses, or any other person having information
16 concerning the welfare of the child.

17 (2) The nonattorney guardian ad litem, through
18 counsel, may petition the court for an order directed to a
19 specified person, agency, or organization, including, but not
20 limited to, hospitals, medical doctors, dentists,
21 psychologists, and psychiatrists, which order directs that the
22 guardian ad litem be allowed to inspect and copy any records
23 and documents which relate to the minor child or to the
24 child's parents or other custodial persons or household
25 members with whom the child resides. Such order shall be
26 obtained only after notice to all parties and hearing thereon.

27 (3) The nonattorney guardian ad litem, through
28 counsel, may request the court to order expert examinations of
29 the child, the child's parents, or other interested parties in
30 the action, by medical doctors, dentists, and other providers
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1 of health care including psychiatrists, psychologists, or
2 other mental health professionals.

3 (4) The guardian ad litem may assist the court in
4 obtaining impartial expert examinations.

5 (5) The guardian ad litem may address the court and
6 make written or oral recommendations to the court. The
7 guardian ad litem shall file a written report which may
8 include recommendations and a statement of the wishes of the
9 child. The report must be filed and served on all parties at
10 least 20 days prior to the hearing at which it will be
11 presented unless the court waives such time limit. The
12 guardian ad litem must be provided with copies of all
13 pleadings, notices, and other documents filed in the action
14 and is entitled to reasonable notice before any action
15 affecting the child is taken by either of the parties, their
16 counsel, or the court.

17 (6) A nonattorney guardian ad litem, acting through
18 counsel, may file such pleadings, motions, notices, or
19 petitions for relief as the guardian ad litem deems
20 appropriate or necessary in furtherance of the guardian's
21 function. The nonattorney guardian ad litem, through counsel,
22 is entitled to be present and to participate in all
23 depositions, hearings, and other proceedings in the action,
24 and, through counsel, may compel the attendance of witnesses.

25 ~~(7)~~ The duties and rights of nonattorney guardians do
26 not include the right to practice law.

27 (7) A guardian who is a member in good standing of The
28 Florida Bar may act as his or her own counsel, and may file
29 such pleadings, notices, motions, or petitions for relief as
30 the guardian ad litem deems appropriate or necessary in
31 furtherance of the guardian's function.

1 (8) The guardian ad litem shall submit his or her
2 recommendations to the court regarding any stipulation or
3 agreement, whether incidental, temporary, or permanent, which
4 affects the interest or welfare of the minor child, within 10
5 days after the date such stipulation or agreement is served
6 upon the guardian ad litem.

7 Section 3. This act shall take effect upon becoming a
8 law.

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HOUSE SUMMARY

Revises provisions of law relating to guardians ad litem to provide that the guardian ad litem and the child's attorney need not be the same person and to provide that guardians ad litem who are attorneys in good standing with The Florida Bar may act as their own attorney.