

By Senator Joyner

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1 A bill to be entitled
2 An act relating to fees and costs incurred in
3 guardianship proceedings; amending s. 744.108, F.S.;
4 providing that fees and costs incurred by an attorney
5 who has rendered services to a ward in compensation
6 proceedings are payable from guardianship assets;
7 providing that expert testimony is unnecessary in
8 proceedings to determine compensation for an attorney
9 or guardian; amending s. 744.3025, F.S.; providing
10 that a court may appoint a guardian ad litem to a
11 minor if necessary to protect the minor's interests in
12 a settlement; providing that a settlement of a minor's
13 claim is subject to certain confidentiality
14 provisions; amending s. 744.331, F.S.; directing that
15 the examining committee be paid from state funds as
16 court-appointed expert witnesses if a petition for
17 incapacity is dismissed; requiring that a petitioner
18 reimburse the state for expert witness fees if the
19 court finds the petition to have been filed in bad
20 faith; providing an effective date.

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

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24 Section 1. Subsection (8) of section 744.108, Florida
25 Statutes, is amended, and subsection (9) is added to that
26 section, to read:

27 744.108 Guardian's and attorney's fees and expenses.—

28 (8) When court proceedings are instituted to review or
29 determine a guardian's or an attorney's fees under subsection

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30 (2), such proceedings are part of the guardianship
31 administration process and the costs, including costs and
32 attorney fees for the guardian's attorney, an attorney appointed
33 under subsection (2) of s. 744.331, or an attorney who rendered
34 services to the ward, shall be determined by the court and paid
35 from the assets of the guardianship estate unless the court
36 finds the requested compensation under subsection (2) to be
37 substantially unreasonable.

38 (9) The court may determine reasonable compensation for the
39 guardian, the guardian's attorney, a person employed by the
40 guardian, an attorney appointed under subsection (2) of s.
41 744.331, or an attorney who has rendered services to the ward
42 without receiving expert testimony. Any person or party may
43 offer expert testimony after giving notice to interested
44 persons. If expert testimony is offered, a reasonable expert
45 witness fee shall be awarded by the court and paid from the
46 assets of the guardianship estate.

47 Section 2. Section 744.3025, Florida Statutes, is amended
48 to read:

49 744.3025 Claims of minors.—

50 (1) (a) The court may appoint a guardian ad litem to
51 represent the minor's interest before approving a settlement of
52 the minor's portion of the claim in any case in which a minor
53 has a claim for personal injury, property damage, wrongful
54 death, or other cause of action in which the gross settlement of
55 the claim exceeds \$15,000 if the court believes a guardian ad
56 litem is necessary to protect the interests of the minor.

57 (b) Except as provided in paragraph (e), the court shall
58 appoint a guardian ad litem to represent the minor's interest

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59 before approving a settlement of the minor's claim in any case
60 in which the gross settlement involving a minor equals or
61 exceeds \$50,000.

62 (c) The appointment of the guardian ad litem must be
63 without the necessity of bond or notice.

64 (d) The duty of the guardian ad litem is to protect the
65 minor's interests as described in the Florida Probate Rules.

66 (e) A court need not appoint a guardian ad litem for the
67 minor if a guardian of the minor has previously been appointed
68 and that guardian has no potential adverse interest to the
69 minor. ~~A court may appoint a guardian ad litem if the court
70 believes a guardian ad litem is necessary to protect the
71 interests of the minor.~~

72 (2) Unless waived, the court shall award reasonable fees
73 and costs to the guardian ad litem to be paid out of the gross
74 proceeds of the settlement.

75 (3) Any settlement of a claim pursuant to this section is
76 subject to the confidentiality provisions of this chapter.

77 Section 3. Paragraph (c) of subsection (7) of section
78 744.331, Florida Statutes, is amended to read:

79 744.331 Procedures to determine incapacity.—

80 (7) FEES.—

81 (c) If the petition is dismissed:7

82 1. The fees of the examining committee shall be paid upon
83 court order as expert witness fees under s. 29.004(6).

84 2. Costs and attorney ~~attorney's~~ fees of the proceeding may
85 be assessed against the petitioner if the court finds the
86 petition to have been filed in bad faith. If the court finds bad
87 faith under this subparagraph, the petitioner shall reimburse

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88 the state courts system for any amounts paid under subparagraph
89 1.

90 Section 4. This act shall take effect upon becoming law and
91 shall apply to all proceedings pending on that date.