

HOUSE BILL REPORT

HB 1139

As Reported by House Committee On: Judiciary

Title: An act relating to attorneys serving as pro tempore judges, commissioners, and guardians ad litem.

Brief Description: Preventing conflicts of interest for attorneys serving as pro tempore judges, commissioners, and guardians ad litem.

Sponsors: Representative Upthegrove.

Brief History:

Committee Activity:

Judiciary: 1/25/05 [DP].

Brief Summary of Bill

- Allows an attorney to act as a judge pro tempore or commissioner pro tempore while the attorney is currently serving as a guardian ad litem (GAL), but not in cases in which the attorney previously represented or was a GAL for any of the parties or a child of the parties.
- Prohibits an attorney from serving as a GAL in a case if the attorney has ever served as a judge pro tempore or a court commissioner pro tempore on a case involving any of the parties.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Campbell, Assistant Ranking Minority Member; Kirby, Serben and Wood.

Staff: Trudes Tango Hutcheson (786-7384).

Background:

A guardian ad litem (GAL) is a person who is appointed by the court to represent, or assist the court in determining, the best interests of a child, adjudicated incapacitated person, or an alleged incapacitated person.

Courts may appoint GALs in cases involving: (a) family law issues, such as custody and visitation; (b) child dependencies and termination of parental rights; and (c) allegedly incapacitated persons.

GALs may be compensated or may be volunteers. Courts maintain a GAL registry, which is a list of people authorized by the court to serve as GALs in family law and child dependency and termination cases.

Generally, GALs are required to receive certain training and disclose information to the court or the parties regarding their background, expertise, and potential conflicts of interest. A GAL must avoid any actual or apparent conflict of interest. Courts have policies and procedures for filing, investigating, and adjudicating grievances made by or against GALs. GALs are subject to discipline under local court rules.

A judge or commissioner pro tempore is a person acting as a temporary judge or commissioner. The state constitution and statutes authorize the appointment of judges pro tempore in superior courts, and superior court judges have the inherent power to appoint commissioners pro tempore.

In western Washington judicial districts with populations over 100,000, an attorney may not be appointed as judge pro tempore or commissioner pro tempore in superior court if he or she currently serves as a compensated GAL in that district.

Summary of Bill:

The prohibition against attorneys serving as commissioners pro tempore and judges pro tempore if the attorney is currently appointed as a paid GAL is removed.

However, the attorney may not act as a judge pro tempore or commissioner pro tempore in a case if the attorney has ever acted as an attorney or GAL for any of the parties or child of any of the parties. An attorney may not act as a GAL in a case if the attorney has ever been a judge pro tempore or commissioner pro tempore on a case that involved any of the parties.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Except in eastern Washington districts and small counties, an attorney can't be both a guardian ad litem and a pro tem judge at the same time. The attorneys are required to choose. The result of the current law is that the pool of guardians ad litem has gotten smaller. This is a hardship on the counties. The bill maintains the prohibition against actual conflicts but it expands the list of people who will be available to act as guardians ad litem.

The statute doesn't apply to smaller counties because most attorneys in small counties have had contact or relationships with the people in the county.

Testimony Against: None.

Persons Testifying: Rick Bartholomew, Family Law Section of the Washington State Bar Association; and Michael Loudon, Attorney.

Persons Signed In To Testify But Not Testifying: None.