

SENATE BILL REPORT

HB 1139

As of March 30, 2005

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: Passed House: 2/04/05, 96-0.

Committee Activity: Judiciary: 3/22/05.

SENATE COMMITTEE ON JUDICIARY

Staff: Aldo Melchiori (786-7439)

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. 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.

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.

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, in Division One or Two of the Court of Appeals, 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. Conversely, 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.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The effect of the current law is to unnecessarily remove people with experience from the GAL registry. There are not enough GALs and this bill would help expand the pool. Current law has a harsher effect in smaller districts where the pool of GALs is more limited.

Other: This provision was useful when it was first passed, but it should be repealed because it has outlived that usefulness. The rules of professional conduct adequately address this issue.

Testimony Against: This provision responded to specific issues in an area where conflicts of interest were rampant. The statute is working well and there has been no showing that it is harming the public, the people it is meant to serve. Litigants representing themselves do not realize that they can question a GAL or pro tempore judge regarding conflicts of interest. This is just special interest legislation. We must retain these protections to prevent abuse of the system.

Who Testified: PRO: Chuck Szurszewski, WSBA Family Law Executive Committee; Jeff Hall, Board of Judicial Administration; Michael Loudon, Attorney.

CON: Lawrence Hunt; Joe Kearney, Citizen Advocate Families First/TABS.