

## **Defined Capacities, Roles, and Acts of Representation of Child (ren) Pursuant to 750 ILCS 5/506: Representation of Child**

### Differences with the Roles/Actions of Court-Appointed Guardian Ad Litem, Child's Representative, and Attorney for the Child:

- What roles/acts are required under the law/statute (750 ILCS 5/506)?
- What roles/acts are discretionary under the law/statute?
- Additional information and takeaways of roles/acts not set forth under the law/statute.

<b>Roles/Action Taken</b>	<b>Guardian Ad Litem</b>	<b>Child's Representative</b>	<b>Attorney (for the Child)</b>
Appointed by Court with Court Order	Yes	Yes	Yes
Conflict Checks	Yes	Yes	Yes
File Appearance <sup>1</sup>	Yes	Yes	Yes
File Pleadings	No (in general, excluding specific case law)	Yes	Yes
Interview Parents (parties of the case) <sup>2</sup>	Yes (required per law/statute)	Yes (required per law/statute)	Yes (required per law/statute)
Interview Child (ren) - Observe child (ren) if too young for interview	Yes (required per law/statute)	Yes (required per law/statute)	Yes (required per law/statute)
Interview Others	Yes (discretionary)	Yes (discretionary)	Yes (discretionary)
Home Visits	Yes (discretionary)	Yes (discretionary)	Yes (discretionary)
Advocate Best Interests of Child (ren)	Yes	Yes	Not Necessarily
Advocate Preferences of Child (ren)	Not Necessarily (advocate best interests of the child)	Not Necessarily (advocate best interests of the child)	Yes (required per law/statute)
Provide Recommendation <sup>3</sup> (opinion) to the Court Regarding Investigation <sup>4</sup>	Yes	No	No

<sup>1</sup> These roles are generally discharged upon entry of Allocation Judgment or entry of Agreed Order by Order of Court, if not sooner upon investigation completed per the Court, and generally reappointed for future issues in a case.

<sup>2</sup> Refer to Order of Appointment for authorization to communicate with each party without his/her attorney being present.

<sup>3</sup> Avoid being "too involved" in every issue. Order of Appointment ought to define role and scope of appointment. For example, generally a Guardian Ad Litem and a Child Representative do not become involved in financial matters unless directly affects child (ren).

<sup>4</sup> Do not encourage litigation as generally the dispute(s) was/were submitted first to mediation, which did not fully settle all pending issues before the Court.

Submit Report of Investigation to the Court <sup>5</sup>	Yes	No	No
Prepare Pretrial Conference Memorandum	Yes (considered a witness subject to direct questioning and cross examination)	No	No
Testify in open Court <sup>6</sup>	Yes	Yes	Not Necessarily
Argue and submit Evidence at in open Court	No	Yes	Yes
Efile Billing Every 90 Days with Court's Approval <sup>7</sup>	Yes (required per law/statute)	Yes (required per law/statute)	Yes (required per law/statute)
Immunity	Yes	Yes	Yes

---

<sup>5</sup> Some Recommendations are provided to the Court orally to save, in part, on fees; yet these recommendations are usually found in, what is called a "Report", regardless if oral or written.

<sup>6</sup> Usually trial retainers are requested and provided in Order of Court.

<sup>7</sup> Payment is usually in the form of a retainer and non-payment, in part or full, will likely result in the filing of a Petition for Rule against the non-paying party. Most Courts ask for "non-payment" as a part of the "Report."

Section 506 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/506):

“Sec. 506. Representation of child (**with emphasis**).

(a) **Duties.** In any proceedings involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare of a minor or dependent child, 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 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. 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 shall apply to fees and costs for attorneys appointed under this Section.

(Source: P.A. 99-90, eff. 1-1-16.)”