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September 13, 2019

Clerk of the Wisconsin Supreme Court
Attn: Deputy Clerk-Rules Petitions
PO Box 1688
Madison, WI 53701

RE: Rule Petition 19-13, relating to qualifications as guardian *ad litem* and domestic violence training

Dear Honorable Justices of the Supreme Court,

I support the proposed CLE change to require guardians *ad Litem* to attend, as part of the attorney's initial and on-going continued legal education, a course on domestic violence and the impact of domestic violence on the family.

"[T]he guardian *ad litem* does not represent a child *per se*," *Wiederholt v. Fischer*, 169 Wis. 2d 524, 485 N.W. 2d 442 (Wis. Ct. App. 1992). Rather the guardian *ad litem's* statutory duty is to represent the *concept* of the child's best interest. In advocating for this concept, the guardian *ad litem* acts in the "same manner as an attorney for a party to the action." [767.407(4), Wis. Stats.] To suggest, however, that a guardian *ad litem* is simply an "attorney" for the best interests of the child is incorrect. The guardian *ad litem* has a unique role in the family court system. Sec. 767.407 (1) (a) Wis. Stats. recognizes this unique role: the appointment of a guardian *ad litem* is necessary where the welfare of the child is a concern, or when custody or placement is contested. In fulfilling this role, the guardian *ad litem* must consider the factors as to placement in 767.41 Wis. Stats., and, in particular, the potential existence of domestic violence in the relationship and the impact of the violence on the family dynamic as it relates to the welfare of the child (i.e., *best interests*).

The two stated purposes of an appointment of a guardian *ad litem* in the statute suggests a working understanding of non-legal issues common in a disputed family action such as child development, cultural diversity, alcohol and drugs, mental illness, and domestic violence. As noted in the statute, the Court will only appoint a guardian *ad litem* (with a few exceptions not necessary for this discussion) if the child's welfare is of concern or placement/custody is contested. These issues do not arise in most run-of-the-mill family matters. It is only when allegations such as drug addiction, mental illness, and domestic violence, in particular, are raised by a party does the Court require the appointment of a

guardian *ad litem*. It is incumbent on the guardian *ad litem* to be able to recognize these issues and be conversant as to these topics when making his/her recommendations to the court.

As to domestic violence, the statute specifically requires the court, as well as the custody evaluator and the guardian *ad litem*, to consider evidence of interspousal battery or domestic abuse when addressing custody or placement. As such, it naturally assumes that the guardian *ad litem*, the attorney appointed to represent the best interests of the child, who statutorily must investigate the existence and extent of domestic violence, should understand the social science related to domestic violence, in particular the impact domestic violence has on the child and the family.

The current proposal is not unique as to the requirements of continued legal education for guardians *ad Litem*. The current CLE rules as they pertain to a guardian *ad litem* in a matter involving a child allows for training programs on child development, mental health, socioeconomic and cultural issues, and domestic violence. The current rules contemplate that a properly educated guardian *ad litem* will have training beyond that considered to be typical legal training for an attorney. The current CLE rules understand the unique nature of a guardian *ad litem* and the need for the guardian *ad litem*, in order to properly serve the child and the court, especially in regards to issues pertaining to the welfare of the child, must be able to: recognize the different issues that involve an infant, toddler, pre-teen, or teen; recognize mental health issues and understand the impact that certain mental health problems have on children and families; understand the cycle of domestic violence, control and power, and the pervasive nature of domestic violence to children and the family dynamic; and to offer recommendations to courts that include a full understanding of cultural, religious, and ethnic diversity. True, the guardian *ad litem* is an attorney and is to be treated as such. Yet, as the foregoing notes, the role of a guardian *ad litem* extends well beyond the legal and into areas that require particularized social science knowledge. Neither the current rule, nor the proposed rule suggests that it is the goal of the legal system to create “mini-social worker” guardians *ad litem*. Rather, the objective is that those attorneys who have agreed to accept appointments from a court as a guardian *ad litem* to address particular issues pertaining to the welfare of a child in a family action must be conversant in areas of social science that touch significantly upon divorce, family and paternity matters.

How does the proposed CLE rule aim to meet this objective? Our system is not a perfect system. There is no way to guarantee that a particular guardian *ad litem* will be able to fully recognize domestic violence issues (control, violence, and power). However, no different than any other CLE program, the presentation of the topic will provide the guardian *ad litem* with the tools they need to be in a better position to properly analyze the issues and offer sound and reasonable recommendations to the Court. In that domestic violence, control and power issues are prevalent in family matters (often they may be the triggering event that has led to the separation of the parents), a requirement that a guardian *ad litem* receive training on an on-going basis, possibly as a refresher if nothing else, to better function in its role to the Court in offering recommendations on placement and custody is a good start. In fact, it is a minimal requirement.

I have been an attorney for 29 years, a family court commissioner for 10 years, and when in private practice had been an appointed guardian *ad litem* on hundreds of cases involving a myriad of issues. The most prevalent issue during my time as a guardian *ad litem*, and in my experience as a court commissioner, in family cases, is the allegations of domestic violence. In many of these cases, no criminal or injunctive cases exist; the investigation of the domestic violence allegations requires an ability to ask the right question in the right manner of both the party and the child, recognize other red flags that suggest the existence of domestic violence, and to understand the impact of the violence on the family. Training programs for guardians *ad litem* as to this role were few and far between. Fortunately, there are more training opportunities on the understanding of domestic violence and the impact on families currently available. Yet, in order to benefit from these programs, guardians *ad litem* must be required to attend them. This proposed rule recognizes the need to understand domestic violence, accepts that such training is available, and simply requires that a guardian *ad litem* in order to remain in good standing for appointments takes advantage of the opportunities for such training. Such a rule will

improve the family court system, improve our guardians *ad litem* and the role they place in family matters, and, in turn, help ensure that children and families are safe.

I appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, consisting of several stylized, overlapping loops and a long horizontal stroke extending to the right.

Circuit Court Commissioner