



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON MINOR GUARDIANSHIPS

Room 411 South, State Capitol
Madison, WI

July 24, 2018
10:30 a.m. – 3:10 p.m.

Call to Order and Roll Call

Chair Steineke called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Jim Steineke, Chair; Sen. LaTonya Johnson, Vice Chair; Rep. Paul Tittl; and Public Members Susan Conwell, Megan DeVore, Henry Plum, Theresa Roetter, Michael Rosborough, Carrie Schneider, and Gretchen Viney.

COMMITTEE MEMBER EXCUSED: Rep. Debra Kolste.

COUNCIL STAFF PRESENT: Terry C. Anderson, Director; Jessica Karls-Ruplinger, Deputy Director; Rachel Letzing, Principal Attorney; Steve McCarthy and Amber Otis, Staff Attorneys; and Kelly Mautz, Support Staff.

APPEARANCES: Terry C. Anderson, Director, Legislative Council Staff; Jessica Jablonske, Constituent, Fifth Assembly District; Henry Plum and Theresa Roetter, Attorneys; and Gretchen Viney, Professor, University of Wisconsin (UW) Law School.

Introductory Remarks by Representative Jim Steineke, Chair

Chair Steineke welcomed committee members. He explained that his interest in the committee was prompted by a constituent's concerns regarding current law. His goal for the committee's work is to make the laws governing minor guardianships more clear and workable for guardians, practitioners, courts, and others involved in the legal system.

Opening Remarks by the Joint Legislative Council

Terry Anderson, Director of the Legislative Council Staff, welcomed committee members and thanked them for their service.

Introduction and Background of Committee Members

At the invitation of the chair, committee members introduced themselves and provided brief explanations of their backgrounds and interest in the committee's topic.

Presentation by the Legislative Council Committee Staff

Amber Otis, Staff Attorney, summarized background information relating to minor guardianships under Wisconsin law. She noted that ch. 54, Stats., which applies to guardianships of minors and certain adults, generally constitutes Wisconsin's guardianship law, but that minor guardianships are also authorized in certain, specialized circumstances under ch. 48, Stats. She noted that the committee is instructed to focus on minor guardianships under ch. 54, Stats., and, therefore, provided a summary of ch. 54, Stats., and related case law.

Steve McCarthy, Staff Attorney, outlined recent legislative proposals introduced in the 2009 and 2011 legislative sessions, as well as a more recent bill draft (LRB-0921/P5), all of which are products of members of the State Bar of Wisconsin's Children & the Law Section. He outlined major components of the legislative efforts, including: placing the private minor guardianship statutes into ch. 48, Stats.; creating four distinct types of guardians for minors; updating and clarifying procedural requirements; and codifying certain aspects of case law.

He further identified a nonexhaustive list of issues for the committee to consider. Such issues include: the scope of the committee's assignment; the extent to which the committee relies upon the previous legislative efforts as a basis for the committee's work product; the manner in which existing case law should be addressed in statute; and what, if any, new rights should be afforded a minor subject to a guardianship order.

Remarks by Jessica Jablonske, Constituent, Fifth Assembly District

Ms. Jablonske shared her experience as guardian appointed under ch. 54, Stats. Specifically, she outlined the events giving rise to the guardianship and her experience with the legal system. She identified certain issues with current law, including inconsistency in the application of constitutional standards imposed by case law, confusion as to the definition of "best interest of the child," and her concern for guardians' lack of rights in the process.

Presentation by Attorneys Henry Plum and Theresa Roetter

As members of the State Bar's working group, Attorneys Plum and Roetter presented to the committee regarding ch. 54, Stats., including its history and current problems, and described how LRB-0921/P5 seeks to address those problems. Specifically, Attorney Roetter outlined the following problems: the statutes contain multiple definitions of legal custody and guardianship; case law has developed standards that are not codified in statute; and procedures under ch. 54, Stats., are not compatible with minors.

Attorney Plum explained that, to address these issues, LRB-0921/P5 includes the following changes: clarifies the guardian's authority; provides four types of guardianship, including the creation of an emergency guardianship; codifies the legal standard under case law for appointing a guardian, in that the petitioner must establish "that the parent is unfit, unwilling or unable to provide for the care, custody, and control of the child or other compelling facts and circumstances demonstrating that a full guardianship is necessary;" and revises several procedural aspects of guardianship proceedings.

Presentation by Professor Gretchen Viney, UW Law School

Professor Viney provided the perspective of a guardian ad litem (GAL) in minor guardianship proceedings under ch. 54, Stats. She clarified that a GAL is a court-appointed lawyer who serves as a trial advocate for the best interest of the child. She explained that while the GAL represents the best interest of the child, that is not the legal standard for guardianship, which creates confusion for those involved in the process. She also explained that, as an attorney to the proceeding, the GAL presents evidence and cannot be a witness and is not subject to discovery.

Professor Viney identified issues for the committee to consider when analyzing LRB-0921/P5. Such issues included, generally, the need to clarify the applicable standards for certain guardianship issues (such as reasonable visitation or the suitability of the guardian) by employing defined terms or multi-factor tests, and the option to have other professionals investigate the suitability of the guardian and the needs of the child, in light of the ethical issues posed by the GAL's role as an attorney for the child's best interest.

Discussion of Committee Assignment

Committee members requested additional types of information and engaged in a preliminary discussion of LRB-0921/P5. Topics included the costs of the investigation created by the bill draft, the constraints imposed by constitutional case law, duties of the GAL, and the definition of "legal custody" and the extent to which a parent retains certain rights when a guardian is appointed.

Legislative Council staff indicated that, in consultation with the chair, they would compile additional information for the next meeting, including data on Wisconsin guardianships, legal research regarding the constitutional limits imposed by case law, and other states' approaches to the duties of GALs.

Plans for Future Meetings

The next meeting of the Study Committee will be held on Tuesday, August 28, at 10:00 a.m., in Room 411 South, State Capitol. A future meeting is scheduled for Tuesday, October 23.

Other Business

There was no other business brought before the committee.

Adjournment

The committee adjourned at 3:10 p.m.

AO:ksm

[The preceding is a summary of the July 24, 2018 meeting of the Study Committee on Minor Guardianships, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]