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To Rep. Robert Brooks, Chair
Rachel Letzing, Principal Attorney
Margit Kelley, Senior Staff Attorney

From Tiffany L. Highstrom

Date March 4, 2019

Re 2018 Legislative Council Study Committee on Child Placement and Support

This Memo is being written to supplement my mail ballot to the 2018 Legislative Council Study Committee on Child Placement and Support.

LRB-0410/1: "Reduction of Child Support Payments during Incarceration."

This legislation proposes that incarceration cannot be considered voluntary unemployment for the purpose of determining a person's earning capacity for purposes of child support. While I understand the studies and research that initiated this legislation, I have concern that this legislation, if enacted, would simply shift financial responsibility from the incarcerated parent to the non-incarcerated parent, who is already assuming the physical and emotional responsibility of the child/ren.

LRB-0668/1: "Exclusion of Military Allowances in Determining Gross Income for Purposes of Child."

I have no objection to this proposed legislation. My mail ballot was not submitted correctly and should be amended.

LRB-0976/1: "Eliminating Rule on Recovery of Birth Costs."

The testimony offered during these hearings was that the proposed July 1, 2018 DCF revisions to birth costs recovery was not sustainable for the county departments. The recent administrative rule changes do not appear to be having the anticipated impact for the local counties.

LRB-0409/1 "Uniform Deployed Parents Custody and Visitation Act."

This legislation would adopt the Uniform Deployed Parents Custody and Visitation Act to address a process for addressing physical placement during military deployment or service.

I have no objections to the Subchapter II, Agreements for Custodial Responsibility During Deployment.

My objection relates to Subchapter III, which addresses the Judicial Procedure for Granting Custodial Responsibility During Deployment. I think the reasoning set forth in *Lubinski v. Lubinski*, 2008 WI App 151 is appropriate in these situations. If a parent is fit, able and available, they should have the right to have physical placement of their child in the other parent's absence. I am also concerned about legislation that delegates physical placement specifically, not just visitation rights, to third parties, and the possibility the legislation will create future constitutional challenges. Even if not enacted, stepparents still have the ability to petition a court for visitation under Wis. Stat. § 767.43 in these circumstances.

Petition to Amend Supreme Court Rule 35.015.

This proposed petition would modify the eligibility of lawyers to accept a Guardian *ad Litem* appointment in family law. Currently, a Guardian *ad Litem* taking appointments in Chapter 767 proceedings, which governs family law, is required to obtain 6 hours of Guardian *ad Litem* credits in the reporting period in which the lawyer takes the appointment. The new legislation would specify the subject matters in which that education was obtained.

My primary concern regarding this petition concerns 1(a), which requires that for a lawyer's first appointment, at least one-half (3) of the total 6 Guardian *ad Litem* required credits shall be related to the dynamic and impact of family violence education.

While I understand the need for further education in this area, my concern with this section is that it doesn't adequately prepare family lawyers for all the issues they may encounter in their Guardian *ad Litem* practice. Guardian *ad Litem* appointments tend to attract newer lawyers, in part, because of the pay rate, but also to gain courtroom experience. By demanding that one-half of their initial Guardian *ad Litem* education be focused on domestic abuse issues, other important areas, such as basic negotiation skills, court

procedure, ethical issues, mental health problems, special needs issues, substance abuse, and other health issues would likely not be addressed without the Guardian *ad Litem* having to obtain additional credits. This may be cost prohibitive for a new lawyer or law firm and could potentially discourage new Guardians *ad Litem* from taking Guardian *ad Litem* appointments.

Additionally, regarding (b), for subsequent Guardian *ad Litem* appointments, the Guardians *ad Litem* should be able to dictate their educational credits based upon their respective practices and cases. Guardians *ad Litem* do face new and challenging issues, such as the effects of the opiate crisis. The educational credits for the Guardians *ad Litem* need to be flexible enough to allow professionals to educate themselves in response to these demands and their respective practice areas. Likewise, after their initial Guardian *ad Litem* training, these lawyers may not simply practice as a Guardian *ad Litem* in Chapter 767. Several counties in the state of Wisconsin operate under a contract system which require Guardians *ad Litem* to take cases under Chapter 48 and 938. These types of cases are also procedurally complex and involve a breadth of issues beyond family violence. Of their 6 Guardian *ad Litem* credits, Guardians *at Litem* may want to utilize 3 on education in these areas. This leaves only 3 Guardian *ad Litem* credits for family law, one of which is already pre-determined in the area of dynamic and impact of family violence education under this legislation. Given the wide range of issues Guardians *ad Litem* face, they should have discretion in choosing their educational credits.