

By Senator Joyner

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1 A bill to be entitled
2 An act relating to fees and costs incurred in
3 guardianship proceedings; amending s. 744.108, F.S.;
4 updating terminology; providing that fees and costs
5 incurred by an attorney who has rendered services to a
6 ward in compensation proceedings are payable from
7 guardianship assets; providing that expert testimony
8 is not required in proceedings to determine
9 compensation for an attorney or guardian; amending s.
10 744.3025, F.S.; providing that a court may appoint a
11 guardian ad litem to represent a minor if necessary to
12 protect the minor's interest in a settlement;
13 providing that a settlement of a minor's claim is
14 subject to certain confidentiality provisions;
15 amending s. 744.331, F.S.; requiring that the
16 examining committee be paid from state funds as court-
17 appointed expert witnesses if a petition for
18 incapacity is dismissed; requiring that a petitioner
19 reimburse the state for expert witness fees if the
20 court finds the petition to have been filed in bad
21 faith; providing applicability; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Subsections (5) and (8) of section 744.108,
27 Florida Statutes, are amended, and subsection (9) is added to
28 that section, to read:

29 744.108 Guardian ~~Guardian's~~ and attorney ~~attorney's~~ fees

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30 and expenses.—

31 (5) All petitions for guardian ~~guardian's~~ and attorney
32 ~~attorney's~~ fees and expenses must be accompanied by an itemized
33 description of the services performed for the fees and expenses
34 sought to be recovered.

35 (8) When court proceedings are instituted to review or
36 determine a guardian's or an attorney's fees under subsection
37 (2), such proceedings are part of the guardianship
38 administration process and the costs, including costs and
39 attorney fees for the guardian's attorney, an attorney appointed
40 under s. 744.331(2), or an attorney who has rendered services to
41 the ward, shall be determined by the court and paid from the
42 assets of the guardianship estate unless the court finds the
43 requested compensation under subsection (2) to be substantially
44 unreasonable.

45 (9) The court may determine reasonable compensation for the
46 guardian, the guardian's attorney, a person employed by the
47 guardian, an attorney appointed under s. 744.331(2), or an
48 attorney who has rendered services to the ward without receiving
49 expert testimony. Any person or party may offer expert testimony
50 after giving notice to interested persons. If expert testimony
51 is offered, a reasonable expert witness fee shall be awarded by
52 the court and paid from the assets of the guardianship estate.

53 Section 2. Section 744.3025, Florida Statutes, is amended
54 to read:

55 744.3025 Claims of minors.—

56 (1) (a) The court may appoint a guardian ad litem to
57 represent the minor's interest before approving a settlement of
58 the minor's portion of the claim in any case in which a minor

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59 has a claim for personal injury, property damage, wrongful
60 death, or other cause of action in which the gross settlement of
61 the claim exceeds \$15,000 if the court believes a guardian ad
62 litem is necessary to protect the minor's interest.

63 (b) Except as provided in paragraph (e), the court shall
64 appoint a guardian ad litem to represent the minor's interest
65 before approving a settlement of the minor's claim in any case
66 in which the gross settlement involving a minor equals or
67 exceeds \$50,000.

68 (c) The appointment of the guardian ad litem must be
69 without the necessity of bond or notice.

70 (d) The duty of the guardian ad litem is to protect the
71 minor's interests as described in the Florida Probate Rules.

72 (e) A court need not appoint a guardian ad litem for the
73 minor if a guardian of the minor has previously been appointed
74 and that guardian has no potential adverse interest to the
75 minor. ~~A court may appoint a guardian ad litem if the court~~
76 ~~believes a guardian ad litem is necessary to protect the~~
77 ~~interests of the minor.~~

78 (2) Unless waived, the court shall award reasonable fees
79 and costs to the guardian ad litem to be paid out of the gross
80 proceeds of the settlement.

81 (3) Any settlement of a claim pursuant to this section is
82 subject to the confidentiality provisions of this chapter.

83 Section 3. Paragraph (c) of subsection (7) of section
84 744.331, Florida Statutes, is amended to read:

85 744.331 Procedures to determine incapacity.-

86 (7) FEES.-

87 (c) If the petition is dismissed:7

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88 1. The fees of the examining committee shall be paid upon
89 court order as expert witness fees under s. 29.004(6).

90 2. Costs and attorney ~~attorney's~~ fees of the proceeding may
91 be assessed against the petitioner if the court finds the
92 petition to have been filed in bad faith. If the court finds bad
93 faith under this subparagraph, the petitioner shall reimburse
94 the state courts system for any amounts paid under subparagraph
95 1.

96 Section 4. The amendments made by this act to ss. 744.108,
97 744.3025, and 744.331, Florida Statutes, apply to all
98 proceedings pending on the effective date of this act.

99 Section 5. This act shall take effect upon becoming a law.