

House Judiciary Committee

January 10, 2023

HB 1113

Good morning Chairman Klemin and members of the House Judiciary Committee, my name is Jaclyn Hall and I am the Executive Director of the North Dakota Association for Justice. Today, I am here in opposition of HB 1113 as it is written.

Guardian ad litem is defined as a guardian that a court appoints to watch after someone during a case. Unlike typical guardians or conservators, guardians ad litem only protect their wards' interests in a single case. Courts most frequently appoint a guardian ad litem in parents' disputes over child custody of their children. For example, the Child Abuse Prevention and Treatment Act requires states to appoint a guardian ad litem for children in abuse or neglect proceedings.

In some instances, courts also appoint a guardian ad litem in cases involving an allegedly incapacitated person. For example, if children sue, asking the court to declare their parent incapacitated and appoint a guardian or conservator, the court may appoint guardian ad litem to advocate the parent's best interests.

As part of the investigation, the court can appoint a parenting investigator or attorney ad litem to provide impartial information to the court. **To do their job, parenting investigators and attorney guardian ad litem are given a lot of responsibilities.** They must become familiar with the family and its history, which means reviewing the custody case as well as any relevant medical, criminal, child abuse and neglect, and educational reports.

HB 1113 provides civil immunity for parenting investigators for **ordinary** negligence in section 1, subsection 6 and provides civil immunity for attorney guardian ad litem in section 2, subsection 4.

Ordinary negligence is defined as a failure to meet the definition of ordinary care. Many circumstances impose a duty to exercise reasonable care on one or both parties. A driver, for example, has a duty to obey traffic laws and do his or her best to prevent car accidents. If a driver breaches this duty, such as by texting while driving, he or she has committed an act of negligence.

These investigators have a duty to provide the best evaluation for these individuals. By removing any consequence for not doing so, is doing a disservice to the individual. Immunity removes this requirement.

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Guardian ad litem, regardless if they are parenting investigators or attorney guardian ad litem, is under a duty to help safeguard and protect the interests and welfare of their ward. By removing any consequence for not doing so is wrong.

There should be no question that the position of a guardian ad litem is extremely important. Regardless of the type of proceeding in which guardians are appointed, the lives of their wards, whether minors or people with disabilities, can be severely affected if the person serving as a guardian is incompetent or negligent. Both the ward and the court depend on the ability of the guardian ad litem to do their job properly. For this reason, it is expected that guardians will fulfill their duties fully, carefully, and non-negligently. Unfortunately, that is not always the case. **By providing immunity, you remove the requirement for a guardian ad litem to protect the interest of their wards.**

I urge you to remove this immunity provision for parenting investigators and attorney guardian ad litem. This will protect the individual they are appointed to support.

Thank you for your time and I will stand for questions.

A handwritten signature in blue ink, appearing to read "Jaclyn Hall", is written over a circular stamp or watermark.

Jaclyn Hall

North Dakota Association for Justice