



General Assembly

Substitute Bill No. 138

February Session, 2010

* SB00138HS 022510 *

AN ACT CONCERNING MOTIONS FOR SUMMARY JUDGMENT IN JUVENILE COURT MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2010*) (a) For purposes of this
2 section "juvenile matters" means all proceedings concerning uncared-
3 for, neglected or dependent children and youths within this state,
4 termination of parental rights of children committed to a state agency,
5 matters concerning families with service needs, contested matters
6 involving termination of parental rights or removal of guardian
7 transferred from the Probate Court and the emancipation of minors,
8 but does not include matters of guardianship and adoption or matters
9 affecting property rights of any child or youth over which the Probate
10 Court has jurisdiction, except that appeals from probate concerning
11 adoption, termination of parental rights and removal of a parent as
12 guardian shall be included.

13 (b) In the superior court for juvenile matters, the respondent party
14 may file a motion for summary judgment at any time, except the
15 respondent party filing the motion must obtain the court's permission
16 to file a motion after the case has been assigned for a trial on the
17 merits. On the same day that the respondent party files a motion for
18 summary judgment, the respondent party shall serve a copy of such
19 motion on all parties or, if represented by an attorney, on the party's

20 attorney.

21 (c) The motion may be supported by any appropriate documents,
22 including, but not limited to, affidavits, certified transcripts of
23 testimony under oath, disclosures and written admissions.

24 (d) A party opposing a motion for summary judgment may file an
25 opposing memorandum and supporting documents not later than
26 fifteen days after receiving a copy of the motion pursuant to subsection
27 (b) of this section, unless the court grants the opposing party an
28 extension of time for filing the opposing memorandum in opposition
29 to the motion for summary judgment.

30 (e) The court shall hold a hearing on the motion for summary
31 judgment and opposing memorandum, if any, at which time any party
32 shall be permitted to testify and present evidence.

33 (f) The court shall grant the motion for summary judgment and
34 render judgment in favor of the moving party if the pleadings,
35 affidavits and any other proof submitted show that there is no genuine
36 issue as to any material fact and that the moving party is entitled to
37 judgment as a matter of law. In deciding a motion for summary
38 judgment, the court shall view the evidence in the light most favorable
39 to the nonmoving party.

40 (g) (1) Affidavits offered in support or opposition to a motion for
41 summary judgment shall be made on personal knowledge, set forth
42 facts that are admissible in evidence and show that the affiant is
43 competent to testify to the matters stated in the affidavit.

44 (2) If the court finds that a party opposing a motion for summary
45 judgment cannot, for reasons stated, present facts essential to justify
46 opposition, the court may deny the motion for judgment or order a
47 continuance of the matter to permit the respondent party opposing a
48 motion for summary judgment to obtain affidavits or other
49 information.

50 (3) If the court finds that any affidavit in support or opposition to a
51 motion for summary judgment is made in bad faith or solely for the
52 purpose of delay, the court shall order the offending party to pay to
53 the other party the reasonable expenses which the filing of the affidavit
54 caused that party to incur, including attorney's fees. Any offending
55 party or attorney may be adjudged guilty of contempt and any
56 offending attorney may also be disciplined by the judicial authority.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2010</i>	New section
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HS *Joint Favorable Subst.*