



Substitute Senate Bill No. 494

Public Act No. 14-3

***AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS
FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS.***

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

Section 1. (NEW) (*Effective October 1, 2014*) (a) Except as provided in subsection (b) of this section, prior to appointing counsel or a guardian ad litem for any minor child in a family relations matter, as defined in section 46b-1 of the general statutes, the court shall provide the parties to the matter with written notification of fifteen persons who the court has determined eligible to serve as counsel or a guardian ad litem for any minor child in such matter. When making a determination as to whether a person is eligible to serve as counsel or a guardian ad litem for a minor child in a particular matter, the court shall give due consideration to any unique circumstances of the parties and any child to such matter. Circumstances considered shall include, but not be limited to: (1) Financial circumstances, (2) language barriers, (3) transportation barriers, (4) physical, mental or learning disabilities, and (5) the geographic proximity of such person's office to the residence of each of the parties and to the court where the matter is pending. Not later than two weeks after the date on which the court provides such written notification, the parties shall provide written notification to the court of the name of the person who the parties have selected to serve as counsel or a guardian ad litem. In the event that

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the parties (A) fail to timely provide the court with the name of the person to serve as counsel or guardian ad litem, or (B) cannot agree on the name of the person to serve as counsel or guardian ad litem, the court shall appoint counsel or a guardian ad litem for the minor child by selecting one person from the fifteen names provided to the parties.

(b) The provisions of subsection (a) of this section shall not apply when: (1) The parties have requested that counsel or a guardian ad litem be appointed and present to the court a written agreement that contains the name of the person who the parties have selected to serve as counsel or a guardian ad litem for the minor child for their matter; or (2) an emergency situation requires the immediate appointment of counsel or a guardian ad litem for the minor child.

(c) Not later than twenty-one days following the date on which the court enters an initial order appointing counsel or a guardian ad litem for any minor child pursuant to this section, the court shall enter a subsequent order that includes the following information: (1) The specific nature of the work that is to be undertaken by such counsel or guardian ad litem; (2) the date on which the appointment of such counsel or guardian ad litem is to end, provided such end date may be extended for good cause shown pursuant to an order of the court; (3) the deadline for such counsel or guardian ad litem to report back to the court concerning the work undertaken; (4) the fee schedule of such counsel or guardian ad litem that shall minimally set forth (A) the amount of the retainer, (B) the hourly rate to be charged, (C) the apportionment of the retainer and hourly fees between the parties, and (D) if applicable, all provisions related to the calculation of fees on a sliding-scale basis; and (5) a proposed schedule of periodic court review of the work undertaken by such counsel or guardian ad litem and the fees charged by such counsel or guardian ad litem. Periodic court review shall be undertaken not less than every three months following the date of the appointment of such counsel or guardian ad

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litem, unless such periodic court review is waived by the parties and any such counsel or guardian ad litem pursuant to a written agreement filed with the court. Not later than thirty days after the entry of a final judgment in a family relations matter involving counsel or a guardian ad litem for a minor child, such counsel or guardian ad litem shall file with the court an affidavit that sets forth (A) the case name, (B) the case docket number, and (C) the hourly fee charged, total number of hours billed, expenses billed and the total amount charged by such counsel or guardian ad litem. Counsel or a guardian ad litem for a minor child shall not charge the parties for the preparation of such affidavit. Upon the filing of the affidavit with the court, such affidavit shall be made part of the case file.

Sec. 2. Section 46b-54 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) The court may appoint counsel or a guardian ad litem for any minor child or children of either or both parties at any time after the return day of a complaint under section 46b-45, if the court deems it to be in the best interests of the child or children. The court may appoint counsel or a guardian ad litem on its own motion, or at the request of either of the parties or of the legal guardian of any child or at the request of any child who is of sufficient age and capable of making an intelligent request.

(b) Counsel or a guardian ad litem for the minor child or children may also be appointed on the motion of the court or on the request of any person enumerated in subsection (a) of this section in any case before the court when the court finds that the custody, care, education, visitation or support of a minor child is in actual controversy, provided the court may make any order regarding a matter in controversy prior to the appointment of counsel or a guardian ad litem where it finds immediate action necessary in the best interests of any child.

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(c) In the absence of an agreement of the parties to the appointment of counsel or a guardian ad litem for a minor child in the parties' matter and a canvassing by the court concerning the terms of such agreement, the court shall only appoint such counsel or guardian ad litem under this section when, in the court's discretion, reasonable options and efforts to resolve a dispute of the parties concerning the custody, care, education, visitation or support of a minor child have been made.

(d) If the court deems the appointment of counsel or a guardian ad litem for any minor child or children to be in the best interests of the child or children, such appointment shall be made in accordance with the provisions of section 1 of this act.

[(c)] (e) Counsel or a guardian ad litem for the minor child or children shall be heard on all matters pertaining to the interests of any child, including the custody, care, support, education and visitation of the child, so long as the court deems such representation to be in the best interests of the child. To the extent practicable, when hearing from such counsel or guardian ad litem, the court shall permit such counsel or guardian ad litem to participate at the beginning of the matter, at the conclusion of the matter or at such other time the court deems appropriate so as to minimize legal fees incurred by the parties due to the participation of such counsel or guardian ad litem in the matter. Notwithstanding the provisions of this subsection, counsel or a guardian ad litem for any minor child shall not speak or report to the court on any medical diagnosis or conclusion made by a health care professional who is treating such minor child unless the parties have refused to cooperate in paying for or obtaining records containing the medical diagnosis or conclusion of the health care professional. If the court deems it to be in the best interests of the minor child, such health care professional shall be heard on matters pertaining to the interests of any such child, including the custody, care, support, education and

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visitation of such child.

(f) When recommending the entry of any order as provided in subsections (a) and (b) of section 46b-56, counsel or a guardian ad litem for the minor child shall consider the best interests of the child, and in doing so shall consider, but not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided counsel or a guardian ad litem for the minor child may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence

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has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether a party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. Counsel or a guardian ad litem for the minor child shall not be required to assign any weight to any of the factors considered.

Sec. 3. Section 46b-57 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

In any controversy before the Superior Court as to the custody of minor children, and on any complaint under this chapter or section 46b-1 or 51-348a, if there is any minor child of either or both parties, the court, if it has jurisdiction under the provisions of chapter 815p, may allow any interested third party or parties to intervene upon motion. The court may award full or partial custody, care, education and visitation rights of such child to any such third party upon such conditions and limitations as it deems equitable. Before allowing any such intervention, the court may appoint counsel for the child or children pursuant to the provisions of section 46b-54, as amended by this act, and section 1 of this act. In making any order under this section, the court shall be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference.

Sec. 4. (NEW) (*Effective October 1, 2014*) Any party to an action involving the custody, care, support, education or visitation of a minor child shall have standing to file a motion that seeks removal of counsel for the minor child or a guardian ad litem for the minor child. The Judicial Branch shall establish a procedure to effectuate the hearing of such motion. Prior to hearing such motion, the court may refer the parties to the family services unit of the Judicial Branch. If the allegations set forth in the motion cannot be resolved, a hearing shall

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be held on the motion and a decision on the motion shall be made by the court.

Sec. 5. Section 46b-62 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) In any proceeding seeking relief under the provisions of this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362, the court may order either spouse or, if such proceeding concerns the custody, care, education, visitation or support of a minor child, either parent to pay the reasonable attorney's fees of the other in accordance with their respective financial abilities and the criteria set forth in section 46b-82. If, in any proceeding under this chapter and said sections, the court appoints [an attorney] counsel or a guardian ad litem for a minor child, the court may order the father, mother or an intervening party, individually or in any combination, to pay the reasonable fees of [the attorney] such counsel or guardian ad litem or may order the payment of [the attorney's] such counsel's or guardian ad litem's fees in whole or in part from the estate of the child. If the child is receiving or has received state aid or care, the compensation of [the attorney] such counsel or guardian ad litem shall be established and paid by the Public Defender Services Commission.

(b) If, in any proceeding under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362, the court appoints counsel or a guardian ad litem for a minor child, the court may not order the father, mother or an intervening party, individually or in any combination, to pay the reasonable fees of such counsel or guardian ad litem from a college savings account, including any account established pursuant to any qualified tuition program, as defined in Section 529(b) of the Internal Revenue Code, that has been established for the benefit of the minor child. If the court determines that the father, mother or an intervening

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party does not have the ability to pay such reasonable fees, the court shall not order that such reasonable fees be paid by such persons through the use of a credit card. In addition, any order for the payment of such reasonable fees shall be limited to income or assets that are not exempt property under sections 52-352a and 52-352b.

(c) In any proceeding under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362, in which the court appoints counsel or a guardian ad litem for a minor child, the court may order that the fees to be paid to such counsel or guardian ad litem be calculated on a sliding-scale basis after giving due consideration to the income and assets of the parties to the proceeding.

(d) The Judicial Branch shall develop and implement a methodology for calculating, on a sliding-scale basis, the fees owing to counsel or a guardian ad litem for a minor child appointed in any proceeding under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362.

Sec. 6. (NEW) (*Effective July 1, 2014*) The Judicial Branch shall develop a publication that informs parties to a family relations matter, as defined in section 46b-1 of the general statutes, about the roles and responsibilities of counsel for a minor child and the guardian ad litem for a minor child when such persons are appointed by the court to serve in a family relations matter. Such publication shall contain detailed information describing the process by which a party who is indigent may apply to the court for the appointment of counsel or guardian ad litem for a minor child in a family relations matter. Such publication shall be available to the public in hard copy and be accessible electronically on the Internet web site of the Judicial Branch.

Sec. 7. (NEW) (*Effective from passage*) Not later than October 1, 2014, the Judicial Branch shall develop and implement a professional code of

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conduct applicable to any counsel or guardian ad litem for a minor child appointed in a family relations matter, as defined in section 46b-1 of the general statutes.

Sec. 8. Subsection (c) of section 46b-56 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a

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proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers, but shall articulate the basis for its decision.

Sec. 9. Section 51-296a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

(a) The judicial authority before whom a family relations matter described in subparagraph (A) of subdivision (1) of subsection (c) of section 51-296 is pending shall determine eligibility for counsel for a child or youth and the parents or guardian of a child or youth if they are unable to afford counsel. Upon a finding that a party is unable to afford counsel, the judicial authority shall appoint an attorney to provide representation from a list of qualified attorneys provided by the office of Chief Public Defender.

(b) The judicial authority before whom a juvenile matter described in subparagraph (B) of subdivision (1) of subsection (c) of section 51-296 is pending shall notify the office of Chief Public Defender who shall assign an attorney to represent the child or youth. The judicial authority shall determine eligibility for counsel for the parents or guardian of the child or youth if such parents or guardian is unable to afford counsel. Upon a finding that such parents or guardian is unable to afford counsel, the judicial authority shall notify the office of Chief Public Defender of such finding, and the office of Chief Public

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Defender shall assign an attorney to provide representation.

(c) For the purposes of determining eligibility for appointment of counsel pursuant to subsection (a) or (b) of this section, the judicial authority shall cause the parents or guardian of a child or youth to complete a written statement under oath or affirmation setting forth the parents' or guardian's liabilities and assets, income and sources thereof, and such other information as the Public Defender Services Commission designates and requires on forms adopted by the commission. When determining eligibility for appointment of counsel pursuant to subsection (a) or (b) of this section, the judicial authority shall examine the parent or guardian's present ability to afford counsel. A parent or guardian's prior history of payments to counsel or prior ability to afford counsel shall not be considered as evidence of such parent or guardian's present ability to afford counsel.

(d) The payment of any attorney who was appointed prior to July 1, 2011, to represent a child or indigent parent in any case described in subparagraph (A) of subdivision (1) of subsection (c) of section 51-296 who continues to represent such child or parent on or after July 1, 2011, shall be processed through the office of Chief Public Defender and paid at the rate that was in effect at the time of such appointment.

Approved May 8, 2014