

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 14-3—sSB 494
Judiciary Committee

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

SUMMARY: This act establishes new requirements and Superior Court procedures related to the appointment of guardians ad litem (GALs) and counsels for minor children (CMCs) in family relations and other matters. It:

1. allows parties to jointly request the appointment of a specific GAL or CMC or choose one, within two weeks, from a list of 15 provided by the court;
2. requires the court to (a) appoint a GAL or CMC from the list if the parties fail to agree or fail to provide timely notification and (b) include in its subsequent order the appointed GAL's or CMC's duties, the duration of the appointment, a fee schedule, and a proposed schedule for periodic court review;
3. requires GALs and CMCs to file an affidavit on the hours and expenses billed, which becomes a part of the case file;
4. allows certain parties to seek removal of a GAL or CMC and requires the Judicial Branch to develop court procedures for removal hearings;
5. sets the parameters for GALs', CMCs', and health care professionals' participation in court proceedings;
6. provides a list of factors for GALs and CMCs to consider in determining the best interest of the child; and
7. establishes new GAL and CMC compensation requirements, such as (a) the calculation of fees on a sliding scale by a methodology the Judicial Branch must develop and (b) prohibiting courts from ordering the payment of fees from a minor child's college savings funds and certain other exempt property.

The act requires the Judicial Branch to develop a professional code of conduct for GALs and CMCs in family relations matters and a publication on their roles and responsibilities.

The act also (1) requires the court to specify the basis for its decision in orders regarding custody, care, education, visitation, and support of children and (2) changes eligibility criteria the judicial authority may consider in determining whether to appoint counsel for parties unable to afford one. The act also makes technical changes.

EFFECTIVE DATE: October 1, 2014, except for the (1) Judicial Branch's publication, which is effective July 1, 2014, and (2) GAL and CMC professional code of conduct, which is effective upon passage.

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§§ 1-3 — GAL AND CMC NEW APPOINTMENT PROCEDURE

By law, a GAL is someone, not necessarily an attorney, the court appoints during certain proceedings to gather information at its request and report on what he or she believes is in a person's best interest. A CMC is an attorney appointed by the court to advocate in court for a minor child's (person under age 18) best interest.

GAL and CMC Appointment

By law, a court may appoint a GAL or CMC in family relations matters involving minor children (see BACKGROUND). The court may also appoint a CMC in certain cases where a third party wishes to be awarded full or partial custody of a minor child. The act establishes new procedures for GAL and CMC appointment in these matters. (PA 14-207, § 13, amends the definition of "family relations matters" to exclude (1) juvenile matters; (2) matters on appeal from probate court concerning adoption or termination of parental rights, appointment and removal of guardians, and child custody orders; and (3) other children or family relations matters formerly included at the Superior Court's discretion. In doing so, it narrows the scope of the new GAL and CMC appointment procedures and requirements.)

The act authorizes the court to appoint a GAL for a minor child in the same circumstances that it may appoint a CMC. Thus, if the court deems it to be in the best interest of a child, it may appoint a CMC or GAL at any time (1) after the return date of an annulment, divorce, or legal separation or (2) when any such action is controversial. The court may do so on its own motion or at the request of either party, a legal guardian, or a child old enough and capable of making an intelligent request.

Under the act, when a GAL or CMC is being appointed in any of the cases mentioned above, the:

1. court must provide the parties with a list of 15 people it has determined eligible to serve as GALs or CMCs;
2. parties, within two weeks after the court provides the list, must notify the court in writing of the name of the person they have selected to serve; and
3. court must appoint one of the people from the list to serve if the parties cannot agree or do not notify the court in a timely manner.

In most cases, the court must consider any unique circumstances of the parties and any child when determining whether a person is eligible to serve as a GAL or CMC. Under the act, such circumstances include:

1. financial circumstances;
2. language or transportation barriers;
3. physical, mental, or learning disabilities; and
4. the geographic proximity of the person's office to the residence of each of the parties and to the court where the matter is pending.

Under the act, the new appointment procedures do not apply (1) in an emergency or (2) if the parties ask the court to appoint a specific GAL or CMC by submitting a written agreement to the court with the name of the person they have

selected.

Duties, Duration of Appointment, Fee Schedule, and Periodic Review

Under the act, within 21 days after the court has ordered the appointment of a GAL or CMC, it must enter a subsequent order, which must include the:

1. specific nature of the GAL's or CMC's duties;
2. appointment end date, which the court may extend for good cause shown;
3. deadline for the GAL or CMC to report to the court on the work he or she has done;
4. fee schedule, which must include the (a) retainer amount, (b) hourly rate, (c) each party's share of the retainer and hourly fees, and (d) if applicable, information related to the calculation of fees on a sliding scale; and
5. proposed schedule of periodic court review of the GAL's or CMC's work done and fees charged.

Under the act, the court must review the GAL's or CMC's work and fees at least once every three months after his or her appointment. The act allows the parties and the GAL or CMC to waive this review by filing a written agreement with the court.

GAL and CMC Affidavit

The act requires a GAL and CMC in a family relations matter to file with the court, within 30 days after the entry of a final judgment, an affidavit that includes the:

1. case name and docket number,
2. total number of hours and expenses billed, and
3. hourly fee and total amount charged.

A GAL and CMC must not charge the parties for preparing the affidavit, which must be part of the case file.

§ 2 — DIVORCE, ANNULMENT, OR LEGAL SEPARATION CASES

Limitations on GAL or CMC Appointment

Under the act, in divorce, annulment, or legal separation cases (types of family relations matters), and where the parties have not agreed, the court may appoint a GAL or CMC only when, in its discretion, reasonable options and efforts have been made to resolve the parties' dispute regarding the custody, care, education, visitation, or support of a minor child. If there is an agreement, the court must review it.

GALs', CMCs', and Health Care Professionals' Participation in Court Proceedings

By law, a CMC must participate in a minor child's custody, care, education, visitation, or support proceeding if the court deems it is in the child's best interest. The act also requires GALs to participate under those circumstances.

Under the act, to the extent practicable, the court must allow a GAL or CMC

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to participate at (1) the beginning or conclusion of the matter or (2) any other time the court deems appropriate to minimize legal fees incurred by the parties.

The act prohibits a GAL or CMC from speaking or reporting to the court on any medical diagnosis or conclusion of a health care professional treating the minor child, unless the parties have refused to cooperate in paying for or obtaining records containing the health care professional's medical diagnosis or conclusion. (PA 14-207, § 14, instead allows a GAL or CMC to be heard on such a matter if (1) at least one party has refused to cooperate in paying for or obtaining the records and (2) the GAL or CMC possesses the treating healthcare professional's medical record or report that indicates or supports the medical diagnosis or conclusion concerning the child.)

Under the act, if the court deems it to be in the child's best interests, the health care professional must be heard on matters pertaining to the child's interests, including the child's custody, care, support, education, and visitation.

Best Interest of the Child Factors

By law, a GAL or CMC must consider the child's best interests. The act provides a list of factors that they must consider in doing so, but it does not require them to assign any weight to any of the factors considered. The factors include:

1. the child's temperament and developmental needs;
2. the parent's capacity and disposition to understand and meet the child's needs;
3. any relevant and material information obtained from the child, including his or her informed preferences;
4. the wishes of the child's parents as to custody;
5. the child's past and current interaction and relationship with each parent, the child's siblings, and any other person who may significantly affect the child's best interests;
6. each parent's willingness and ability to facilitate and encourage a 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. each parent's ability to be actively involved in the child's life;
9. the child's adjustment to his or her home, school, and community environments;
10. how long the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such an environment, but the GAL or CMC may consider it favorably that a parent voluntarily leaves the child's family home temporarily to relieve household stress;
11. the stability of the child's existing or proposed residence;
12. the involved individuals' mental and physical health, except the disability of a proposed custodial parent or other party must not determine custody unless the proposed custodial arrangement is not in the child's best interests;

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13. the child's cultural background;
14. the effect of an abuser's actions on the child, if any domestic violence has occurred between the parents or between a parent and another individual or the child;
15. whether the child or his or her sibling has been abused or neglected; and
16. whether a party satisfactorily completed the legally required parenting education program.

§ 4 — STANDING TO SEEK REMOVAL OF GAL OR CMC

The act allows parties to a case involving a minor child's care, custody, support, education, or visitation to file a motion to seek removal of a GAL or CMC (i.e., it gives such parties "standing").

It requires the Judicial Branch to establish procedures for a hearing on the motion.

Under the act, the court (1) may, before hearing the motion, refer the parties to the Judicial Branch's family services unit and (2) if there is no resolution, must hold a hearing and decide on the motion for removal.

§ 5 — GAL AND CMC COMPENSATION

Reasonable Fees

By law, if the court appoints an attorney for a minor child in a case involving divorce, annulment, legal separation, child support enforcement, revocation or construction of wills, or in any family relations matter, it may order the attorney's reasonable fees be paid:

1. by the father, mother, or intervening party, individually or in any combination;
2. from the child's estate, in whole or in part; or
3. by the Public Defender Services commissioner, if the child is receiving or has received state aid or care.

The act replaces the term "attorney for a minor child" with "counsel for a minor child" (CMC).

The act allows the court, in cases where a GAL is appointed, to also order these payment options for the GAL's reasonable fees.

College Savings Accounts, Credit Cards, and Exempt Property

The act prohibits the court from ordering the father, mother, or intervening party to pay the GAL's or CMC's reasonable fees from (1) income or assets not subject to debt collection or court order (i.e., "exempt property") or (2) a college savings account established for the minor child, including tuition programs established and maintained by a state or its agency or instrumentality, or by one or more eligible education institutions (i.e., "qualified tuition programs") (see BACKGROUND).

The act also prohibits the court from ordering a party unable to pay the GAL's or CMC's reasonable fees to pay by credit card.

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Sliding-Scale Basis

Under the act, in cases where the court appoints a GAL or CMC, after considering the parties' income and assets, the judge may order the fees to be calculated on a sliding scale. The act requires the Judicial Branch to develop and implement a methodology for calculating GALs' and CMCs' fees on a sliding scale.

§ 6 — JUDICIAL BRANCH'S FAMILY RELATIONS PUBLICATION

The act requires the Judicial Branch to develop a publication on the roles and responsibilities of GALs and CMCs in family relations matters. The publication must (1) be available to the public in hard copy and on the Judicial Branch's website and (2) include detailed information describing the process for an indigent party to apply to the court for GAL and CMC appointment in a family relations matter. (PA 14-207, §§ 13 & 15, narrows the scope of the required publication by changing the definition of "family relations matters," as described above.)

§ 7 — GAL AND CMC CODE OF CONDUCT

Under the act, by October 1, 2014, the Judicial Branch must develop and implement a professional code of conduct for GALs and CMCs appointed in family relations matters. (PA 14-207, §§ 13 & 16, narrows the scope of the required professional code of conduct by changing the definition of "family relations matters," as described above.)

§ 8 — CUSTODY, CARE, EDUCATION, VISITATION, AND SUPPORT ORDERS

The act requires the court to specify the basis for its decision when it makes or modifies orders regarding custody, care, education, visitation, and support of children. By law, the court must consider the best interests of the child and a list of factors in doing so, but is not required to assign a weight to any of the factors that it considers.

§ 9 — ELIGIBILITY FOR APPOINTMENT OF COUNSEL

By law, if a child or youth and his or her parents or guardians are unable to afford counsel in a family relations matter, the judicial authority must determine their eligibility for counsel (e.g., a public defender). To this end, the parents or guardians must complete a sworn written statement showing their liabilities, assets, income, sources of income, and any other information required on the Public Defender Services Commission's forms.

The act requires the judicial authority, when determining eligibility for appointment of counsel, to examine the parent's or guardian's present ability to afford counsel. But, the judicial authority cannot consider a parent's or guardian's prior history of payments to counsel or prior ability to afford counsel as evidence

of present ability to afford counsel.

BACKGROUND

Family Relations Matters

By law, “family relations matters” include divorce; legal separation; annulment; alimony; support; custody; visitation; civil restraining orders; name change; civil support obligations; petitions on behalf of a mentally ill person not charged with a crime; wrongful convictions; juvenile matters; paternity; appeals from probate court decisions concerning adoption, termination of parental rights, appointment and removal of guardians, custody of a minor child, appointment and removal of conservators, child custody orders, and other commitment orders; actions related to prenuptial and separation agreements and to matrimonial and civil union decrees of a foreign jurisdiction; dissolution, legal separation, or annulment of a civil union performed in a foreign jurisdiction; interstate child custody matters; and all other matters within the Superior Court’s jurisdiction concerning children or family relations as the court determines (CGS § 46b-1).

(PA 14-207, § 13, amends the definition of “family relations matters” by excluding (1) juvenile matters; (2) matters on appeal from probate court concerning adoption or termination of parental rights, appointment and removal of guardians, and child custody orders; and (3) other children or family relations matters formerly included at the Superior Court’s discretion and in so doing it narrows the scope of the new GAL and CMC requirements.)

Exempt Property

By law, exempt properties are those not subject to any debt collection process or court order. They include:

1. necessary apparel, bedding, foodstuff, household furniture, appliances, tools, books, and instruments;
2. burial plots;
3. public assistance payments;
4. health and disability insurance payments;
5. workers’ compensation, Social Security, veterans’, and unemployment benefits;
6. court-approved child support payments;
7. one motor vehicle valued up to \$3,500 (i.e., fair market value less liens);
8. wedding and engagement rings;
9. residential utility deposits for one residence, and one residential security deposit;
10. alimony and support, other than child support, if wages are exempt from execution;
11. up to \$1,000 interest in any property;
12. certain interests and accrued dividends in certain unmatured life insurance contracts; and
13. owner-occupied residential property valued up to \$75,000 (CGS §§ 52-352a & 352b).

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Qualified Tuition Program

A “qualified tuition program” is a program established and maintained by a state, its agency or instrumentality, or by one or more eligible educational institutions that allows a person to:

1. purchase tuition credits or certificates on behalf of a designated beneficiary entitling him or her to the waiver or payment of his or her qualified higher education expenses or
2. make contributions to an account established for the beneficiary’s qualified higher education expenses.

A qualified tuition program must meet other specified requirements that pertain to things such as cash contributions, separate accounting, investment direction, and tax treatment (26 USC § 529(b)).

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