S T A T E O F N E W Y O R K

1390--A

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT, TITUS, CHRISTENSEN -- Multi-Sponsored by -- M. of A. ALFANO, AUBRY, BARRA, PHEFFER, REILLY, J. RIVERA, SWEENEY, TITONE, TOWNS -- read once and referred to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the family court act and the domestic relations law, in relation to the appointment of law guardians for certain children who are freed for adoption

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 249 of the family court act, as amended by section 2 of part A of chapter 3 of the laws of 2005, is amended to read as follows:

(a) In a proceeding under article three, seven, ten or ten-A of this act OR UNDER ARTICLE SEVEN OF THE DOMESTIC RELATIONS LAW WHERE THE ADOPTION IS FROM AN AUTHORIZED AGENCY UNDER CIRCUMSTANCES SPECIFIED IN SUBDIVISION NINE OF SECTION ONE HUNDRED TWELVE OF THE DOMESTIC RELATIONS LAW, or where a revocation of an adoption consent is opposed under section one hundred fifteen-b of the domestic relations law or in any proceeding under section three hundred fifty-eight-a, three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b of the social services law or when a minor is sought to be placed in protective custody under section one hundred fifty-eight of this act, the family court shall appoint a law guardian to represent a minor who is the subject of the proceeding or who is sought to be placed in protective custody, if independent legal representation is not available to such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section seven hundred fifty-six or 353.3 of this act or any proceeding to extend or continue a commitment to the custody of the commissioner of

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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mental health or the commissioner of mental retardation and developmental disabilities pursuant to section 322.2 of this act, the court shall not permit the respondent to waive the right to be represented by counsel chosen by the respondent, respondent's parent, or other person legally responsible for the respondent's care, or by a law guardian. In any other proceeding in which the court has jurisdiction, the court may appoint a law guardian to represent the child, when, in the opinion of the family court judge, such representation will serve the purposes of this act, if independent legal counsel is not available to the child. The family court on its own motion may make such appointment.

S 2. Section 112 of the domestic relations law is amended by adding a new subdivision 9 to read as follows:

9. UPON THE FILING OF PETITION TO ADOPT FROM AN AUTHORIZED AGENCY WITH RESPECT TO A CHILD FOR WHOM A LAW GUARDIAN HAD BEEN APPOINTED BY THE FAMILY COURT IN A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT, OR PURSUANT TO SECTION THREE HUNDRED FIFTY-EIGHT-A OR THREE HUNDRED EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, THE APPOINTMENT OF A LAW GUARDIAN SHALL CONTINUE WITHOUT FURTHER ORDER OR APPOINTMENT, UNLESS ANOTHER APPOINTMENT OF A LAW GUARDIAN HAS BEEN MADE BY THE COURT OR UNLESS THE JUDGE WHO WILL BE FINALIZING THE ADOPTION HAS PERSONALLY PRESIDED OVER THE LAST PROCEEDING INVOLVING THE CHILD; IN SUCH CIRCUMSTANCE THE CONTINUATION OF REPRESENTATION BY THE LAW GUARDIAN IS DISCRETIONARY. THE LAW GUARDIAN SHALL BE NOTIFIED WITHIN TEN DAYS OF THE FILING OF AN ADOPTION PETITION AND WHETHER THE LAW GUARDIAN'S REPRESENTATION OF THE CHILD WILL CONTINUE AT THE ADOPTION. THE LAW GUARDIAN MAY BE RELIEVED OF HIS OR HER REPRESENTATION UPON APPLICATION TO THE COURT FOR TERMINATION OF APPOINTMENT. UPON APPROVAL OF SUCH APPLICATION, THE COURT SHALL IMMEDIATELY APPOINT ANOTHER LAW GUARDIAN.

S 3. Subdivision 9 of section 112 of the domestic relations law, as added by section two of this act, is amended to read as follows:

9. Upon the filing of petition to adopt from an authorized agency with respect to a child for whom [a law guardian] AN ATTORNEY had been appointed by the family court in a proceeding pursuant to article ten of the family court act, or pursuant to section three hundred fifty-eight-a or three hundred eighty-four-b of the social services law, the appointment of [a law guardian] AN ATTORNEY FOR THE CHILD shall continue without further order or appointment, unless another appointment of a law guardian has been made by the court or unless the judge who will be finalizing the adoption has personally presided over the last proceeding involving the child; in such circumstance the continuation of representation by the [law guardian] ATTORNEY FOR THE CHILD is discretionary. The [law guardian] ATTORNEY FOR THE CHILD shall be notified within ten days of the filing of an adoption petition and whether the [law guardian's] ATTORNEY'S representation of the child will continue at the adoption. The [law guardian] ATTORNEY FOR THE CHILD may be relieved of his or her representation upon application to the court for termination of appointment. Upon approval of such application, the court shall immediately appoint another [law guardian] ATTORNEY FOR THE CHILD.

S 4. This act shall take effect April 1, 2010; provided, however, that section three of this act shall only take effect if the legislature enacts a chapter of the laws of 2009 amending the civil practice law and rules and other laws relating to the representation of children, as proposed in legislative bills numbers S.5461 and A.7805.