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

4060--A

2013-2014 Regular Sessions

I N A S S E M B L Y

January 30, 2013

Introduced by M. of A. WRIGHT, TITUS, ROBINSON -- Multi-Sponsored by -- M. of A. AUBRY, PERRY, RIVERA, SWEENEY, TITONE -- read once and referred to the Committee on Children and Families -- recommitted to the Committee on Children and Families in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- 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 1 of chapter 3 of the laws of 2012, is amended to read as follows:

(a) In a proceeding under article three, seven, ten, ten-A or ten-C 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 or in any proceeding where a minor is detained under or governed by the interstate compact for juveniles established pursuant to section five hundred one-e of the executive law, the family court shall appoint an attorney 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

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

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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 mental health or the commissioner of people with 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 assigned counsel. In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney 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. Subdivision (a) of section 249 of the family court act, as separately amended by chapter 41 of the laws of 2010 and chapter 3 of the laws of 2012, is amended to read as follows:

(a) In a proceeding under article three, seven, ten, ten-A or ten-C 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 an attorney 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 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 assigned counsel. In any proceeding under article ten-B of this act, the family court shall appoint an attorney to represent a youth, under the age of twenty-one, who is the subject of the proceeding, if independent legal representation is not available to such youth. In any other proceeding in which the court has jurisdiction, the court may appoint an attorney 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 3. 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 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 AN ATTORNEY FOR THE CHILD SHALL CONTINUE WITHOUT FURTHER ORDER OR APPOINTMENT, UNLESS ANOTHER APPOINTMENT OF AN ATTORNEY FOR THE CHILD HAS BEEN MADE BY THE COURT. THE ATTORNEY FOR THE CHILD SHALL BE NOTIFIED WITHIN TEN DAYS OF THE FILING OF AN ADOPTION PETITION AND WHETHER THE ATTORNEY'S REPRESENTATION OF THE CHILD WILL CONTINUE AT THE ADOPTION. THE 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 ATTORNEY FOR THE CHILD.

S 4. This act shall take effect April 1, 2015; provided that the amendments to subdivision (a) of section 249 of the family court act made by section one of this act shall be subject to the expiration and reversion of such subdivision pursuant to section 8 of chapter 29 of the laws of 2011, as amended, when upon such date the provisions of section two of this act shall take effect.