

3789

2015-2016 Regular Sessions

I N A S S E M B L Y

January 27, 2015

Introduced by M. of A. WRIGHT, TITUS, ROBINSON -- Multi-Sponsored by --
M. of A. AUBRY, PERRY, RIVERA, TITONE -- read once and referred to the
Committee on Children and Families

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision (a) of section 249 of the family court act, as
2 amended by chapter 3 of the laws of 2012, is amended to read as follows:
3 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
4 this act OR UNDER ARTICLE SEVEN OF THE DOMESTIC RELATIONS LAW WHERE THE
5 ADOPTION IS FROM AN AUTHORIZED AGENCY UNDER CIRCUMSTANCES SPECIFIED IN
6 SUBDIVISION NINE OF SECTION ONE HUNDRED TWELVE OF THE DOMESTIC RELATIONS
7 LAW, or where a revocation of an adoption consent is opposed under
8 section one hundred fifteen-b of the domestic relations law or in any
9 proceeding under section three hundred fifty-eight-a, three hundred
10 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
11 of the social services law or when a minor is sought to be placed in
12 protective custody under section one hundred fifty-eight of this act or
13 in any proceeding where a minor is detained under or governed by the
14 interstate compact for juveniles established pursuant to section five
15 hundred one-e of the executive law, the family court shall appoint an
16 attorney to represent a minor who is the subject of the proceeding or
17 who is sought to be placed in protective custody, if independent legal
18 representation is not available to such minor. In any proceeding to
19 extend or continue the placement of a juvenile delinquent or person in
20 need of supervision pursuant to section seven hundred fifty-six or 353.3
21 of this act or any proceeding to extend or continue a commitment to the
22 custody of the commissioner of mental health or the commissioner of
23 people with developmental disabilities pursuant to section 322.2 of this

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

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1 act, the court shall not permit the respondent to waive the right to be
2 represented by counsel chosen by the respondent, respondent's parent, or
3 other person legally responsible for the respondent's care, or by
4 assigned counsel. In any proceeding under article ten-B of this act, the
5 family court shall appoint an attorney to represent a youth, under the
6 age of twenty-one, who is the subject of the proceeding, if independent
7 legal representation is not available to such youth. In any other
8 proceeding in which the court has jurisdiction, the court may appoint an
9 attorney to represent the child, when, in the opinion of the family
10 court judge, such representation will serve the purposes of this act, if
11 independent legal counsel is not available to the child. The family
12 court on its own motion may make such appointment.

13 S 2. Subdivision (a) of section 249 of the family court act, as sepa-
14 rately amended by chapter 41 of the laws of 2010 and chapter 3 of the
15 laws of 2012, is amended to read as follows:

16 (a) In a proceeding under article three, seven, ten, ten-A or ten-C of
17 this act OR UNDER ARTICLE SEVEN OF THE DOMESTIC RELATIONS LAW WHERE THE
18 ADOPTION IS FROM AN AUTHORIZED AGENCY UNDER CIRCUMSTANCES SPECIFIED IN
19 SUBDIVISION NINE OF SECTION ONE HUNDRED TWELVE OF THE DOMESTIC RELATIONS
20 LAW, or where a revocation of an adoption consent is opposed under
21 section one hundred fifteen-b of the domestic relations law or in any
22 proceeding under section three hundred fifty-eight-a, three hundred
23 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b
24 of the social services law or when a minor is sought to be placed in
25 protective custody under section one hundred fifty-eight of this act,
26 the family court shall appoint an attorney to represent a minor who is
27 the subject of the proceeding or who is sought to be placed in protec-
28 tive custody, if independent legal representation is not available to
29 such minor. In any proceeding to extend or continue the placement of a
30 juvenile delinquent or person in need of supervision pursuant to section
31 seven hundred fifty-six or 353.3 of this act or any proceeding to extend
32 or continue a commitment to the custody of the commissioner of mental
33 health or the commissioner of mental retardation and developmental disa-
34 bilities pursuant to section 322.2 of this act, the court shall not
35 permit the respondent to waive the right to be represented by counsel
36 chosen by the respondent, respondent's parent, or other person legally
37 responsible for the respondent's care, or by assigned counsel. In any
38 proceeding under article ten-B of this act, the family court shall
39 appoint an attorney to represent a youth, under the age of twenty-one,
40 who is the subject of the proceeding, if independent legal represen-
41 tation is not available to such youth. In any other proceeding in which
42 the court has jurisdiction, the court may appoint an attorney to repre-
43 sent the child, when, in the opinion of the family court judge, such
44 representation will serve the purposes of this act, if independent legal
45 counsel is not available to the child. The family court on its own
46 motion may make such appointment.

47 S 3. Section 112 of the domestic relations law is amended by adding a
48 new subdivision 9 to read as follows:

49 9. UPON THE FILING OF PETITION TO ADOPT FROM AN AUTHORIZED AGENCY WITH
50 RESPECT TO A CHILD FOR WHOM AN ATTORNEY HAD BEEN APPOINTED BY THE FAMILY
51 COURT IN A PROCEEDING PURSUANT TO ARTICLE TEN OF THE FAMILY COURT ACT,
52 OR PURSUANT TO SECTION THREE HUNDRED FIFTY-EIGHT-A OR THREE HUNDRED
53 EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, THE APPOINTMENT OF AN ATTORNEY
54 FOR THE CHILD SHALL CONTINUE WITHOUT FURTHER ORDER OR APPOINTMENT,
55 UNLESS ANOTHER APPOINTMENT OF AN ATTORNEY FOR THE CHILD HAS BEEN MADE BY
56 THE COURT. THE ATTORNEY FOR THE CHILD SHALL BE NOTIFIED WITHIN TEN DAYS

1 OF THE FILING OF AN ADOPTION PETITION AND WHETHER THE ATTORNEY'S REPRE-
2 SENTATION OF THE CHILD WILL CONTINUE AT THE ADOPTION. THE ATTORNEY FOR
3 THE CHILD MAY BE RELIEVED OF HIS OR HER REPRESENTATION UPON APPLICATION
4 TO THE COURT FOR TERMINATION OF APPOINTMENT. UPON APPROVAL OF SUCH
5 APPLICATION, THE COURT SHALL IMMEDIATELY APPOINT ANOTHER ATTORNEY FOR
6 THE CHILD.

7 S 4. This act shall take effect April 1, 2017; provided that the
8 amendments to subdivision (a) of section 249 of the family court act
9 made by section one of this act shall be subject to the expiration and
10 reversion of such subdivision pursuant to section 8 of chapter 29 of the
11 laws of 2011, as amended, when upon such date the provisions of section
12 two of this act shall take effect.