3789

2015-2016 Regular Sessions

IN ASSEMBLY

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision (a) of section 249 of the family court act, as 1 amended by chapter 3 of the laws of 2012, is amended to read as follows: 2 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 б 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 proceeding under section three hundred fifty-eight-a, three hundred 9 10 eighty-three-c, three hundred eighty-four or three hundred eighty-four-b the social services law or when a minor is sought to be placed in 11 of 12 protective custody under section one hundred fifty-eight of this act or any proceeding where a minor is detained under or governed by the 13 in interstate compact for juveniles established pursuant to section five 14 15 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 16 is sought to be placed in protective custody, if independent legal 17 who representation is not available to such minor. In any proceeding to 18 extend or continue the placement of a juvenile delinquent or person in 19 need of supervision pursuant to section seven hundred fifty-six or 353.3 20 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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act, the court shall not permit the respondent to waive the right to be 1 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 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 5 6 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 attorney to represent the child, when, in the opinion of the family 9 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 court on its own motion may make such appointment. 12

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:

(a) In a proceeding under article three, seven, ten, ten-A or ten-C of 16 this act OR UNDER ARTICLE SEVEN OF THE DOMESTIC RELATIONS LAW WHERE 17 THE IS FROM AN AUTHORIZED AGENCY UNDER CIRCUMSTANCES SPECIFIED IN 18 ADOPTION 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 proceeding under section three hundred fifty-eight-a, 22 three hundred eighty-three-c, three hundred eighty-four or three hundred eighty-four-b 23 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 the subject of the proceeding or who is sought to be placed in protec-27 if independent legal representation is not available to 28 tive custody, 29 such minor. In any proceeding to extend or continue the placement of a juvenile delinquent or person in need of supervision pursuant to section 30 31 seven hundred fifty-six or 353.3 of this act or any proceeding to extend continue a commitment to the custody of the commissioner of mental 32 or 33 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 34 35 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 representation is not available to such youth. In any other proceeding in which 41 42 the court has jurisdiction, the court may appoint an attorney to repre-43 sent child, when, in the opinion of the family court judge, such the 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 PURSUANT TO SECTION THREE HUNDRED FIFTY-EIGHT-A OR THREE HUNDRED OR EIGHTY-FOUR-B OF THE SOCIAL SERVICES LAW, THE APPOINTMENT OF AN ATTORNEY 53 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 ATTORNEY FOR THE CHILD SHALL BE NOTIFIED WITHIN TEN DAYS THE COURT.

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THE FILING OF AN ADOPTION PETITION AND WHETHER THE ATTORNEY'S REPRE-OF 1 SENTATION OF THE CHILD WILL CONTINUE AT THE ADOPTION. 2 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 б 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.