STATE OF NEW YORK

5434

2019-2020 Regular Sessions

IN SENATE

May 1, 2019

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the family court act, in relation to expanding the right to assistance of counsel to include petitioner kinship caregivers in custody and guardianship proceedings and respondents in guardianship proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section 262 of the family court act, as added by chapter 682 of the laws of 1975, the opening paragraph as amended by section 3 of part A of chapter 3 of the laws of 2005, paragraphs (i) and (iv) as amended and paragraph (ix) as added by chapter 3 of the laws of 2012, paragraph (ii) as amended by chapter 693 of the laws of 1981, paragraph (iii) as amended by chapter 666 of the laws of 1976, and paragraph (viii) as added by chapter 456 of the laws of 1978, is amended to read as follows:

(a) Each of the persons described below in this subdivision has the right to the assistance of counsel. When such person first appears in court, the judge shall advise such person before proceeding that he or she has the right to be represented by counsel of his or her own choosing, of the right to have an adjournment to confer with counsel, and of the right to have counsel assigned by the court in any case where he or she is financially unable to obtain the same:

(i) the respondent in any proceeding under article ten or ten-A of this act and the petitioner in any proceeding under part eight of article ten of this act;

(ii) the petitioner and the respondent in any proceeding under article eight of this act;

(iii) the respondent in any proceeding under part three **or four** of article six of this act;

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

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(iv) the parent or person legally responsible, foster parent, or other person having physical or legal custody of the child in any proceeding under article ten or ten-A of this act or section three hundred fifty-eight-a, three hundred eighty-four or three hundred eighty-four-b of the social services law, and a non-custodial parent or grandparent served with notice pursuant to paragraph (e) of subdivision two of section three hundred eighty-four-a of the social services law;

(v) the parent of any child seeking custody or contesting the substantial infringement of his or her right to custody of such child, in any proceeding before the court in which the court has jurisdiction to determine such custody;

(vi) **any person acting as a parent of a child, who is seeking custody or guardianship of such child under part three or four of article six of this act, and who is a kinship caregiver of such child. For the purposes of this paragraph the term kinship caregiver shall mean any person described under paragraph (a), (b), or (c) of subdivision three of section four hundred fifty-eight-a of the social services law;**

(vii) any person in any proceeding before the court in which an order or other determination is being sought to hold such person in contempt of the court or in willful violation of a previous order of the court, except for a contempt which may be punished summarily under section seven hundred fifty-five of the judiciary law;

[~~(vii)~~] **(viii)** the parent of a child in any adoption proceeding who opposes the adoption of such child[~~.~~]**;**

[~~(viii)~~] **(ix)** the respondent in any proceeding under article five of this act in relation to the establishment of paternity[~~.~~]**; and**

[~~(ix)~~] **(x)** in a proceeding under article ten-C of this act:

(1) a parent or caretaker as such terms are defined in section one thousand ninety-two of this act;

(2) an interested adult as such term is defined in section one thousand ninety-two of this act provided that:

(A) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act was removed from the care of such interested adult;

(B) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act resides with the interested adult; or

(C) the child alleged to be destitute in the proceeding held pursuant to article ten-C of this act resided with such interested adult immediately prior to the filing of the petition under article ten-C of this act;

(3) any interested adult as such term is defined in section one thousand ninety-two of this act or any person made a party to the article ten-C proceeding pursuant to subdivision (c) of section one thousand ninety-four of this act for whom the court orders counsel appointed pursuant to subdivision (d) of section one thousand ninety-four of this act.

§ 2. Paragraph 1 of subdivision (a) of section 1094 of the family court act, as amended by chapter 3 of the laws of 2012, is amended to read as follows:

(1) appoint an attorney to represent the child in accordance with section two hundred forty-nine of this act, and appoint an attorney to represent a parent, caretaker or interested adult in accordance with paragraph [~~(ix)~~] **(x)** of subdivision (a) of section two hundred sixty-two of this act, if he or she is financially unable to obtain counsel;

§ 3. This act shall take effect on the first of April next succeeding the date on which it shall have become a law.