

CHAPTER 244

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 05-1172

BY REPRESENTATIVE(S) Jahn, Berens, Boyd, Clapp, Crane, Green, Hefley, Paccione, Stafford, Todd, Carroll T., Coleman, Kerr, and Solano;
also SENATOR(S) Grossman, Groff, Shaffer, Taylor, and Williams.

AN ACT**CONCERNING COURT APPOINTMENTS IN DOMESTIC RELATIONS CASES INVOLVING CHILDREN.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly hereby finds and declares that, due to the need to continue to encourage court appointments of persons to serve the best interests of children in domestic relations proceedings involving the allocation of parental responsibilities, it is the intent of the general assembly that quasi-judicial immunity continue to be granted for a court-appointed legal representative of the child acting within the course and scope of an order of appointment pursuant to existing Colorado case law.

SECTION 2. 14-10-116, Colorado Revised Statutes, is amended to read:

14-10-116. Appointment in domestic relations cases - representation of child's best interest - legal representative of the child. (1) The court may, upon the motion of either party or upon its own motion, appoint ~~an individual for the parties' minor or dependent children or to assist the court~~ AN ATTORNEY, IN GOOD STANDING AND LICENSED TO PRACTICE LAW IN THE STATE OF COLORADO, TO SERVE AS THE LEGAL REPRESENTATIVE OF THE CHILD, REPRESENTING THE BEST INTERESTS OF THE CHILD in any domestic relations proceeding pursuant to subsection (2) of this section. ~~The court shall set forth the duties of such individual in a written order of appointment, which order shall include a requirement that any attorney appointed pursuant to this section to serve as either a representative of the child or as a special advocate shall comply with the applicable provisions set forth in the chief justice directive 97-02, concerning the court appointment of guardians ad litem and other representatives and of counsel for children and indigent persons in titles 14, 15, 19 (dependency and neglect only), 22, and 27, C.R.S., and any subsequent chief justice~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~directive or other practice standards established by rule or directive of the chief justice pursuant to section 13-91-105 (1) (a), C.R.S., concerning the duties or responsibilities of guardians ad litem and special advocates in legal matters affecting children~~ THAT INVOLVES ALLOCATION OF PARENTAL RESPONSIBILITIES. In no instance may the same person serve as both the child's LEGAL representative pursuant to ~~paragraph (a) of subsection (2) of this section~~ and as the special advocate CHILD AND FAMILY INVESTIGATOR FOR THE COURT pursuant to ~~paragraph (b) of subsection (2) of this section~~ SECTION 14-10-116.5.

(2) ~~The court may appoint either or both of the following:~~

~~(a) An individual to serve as a representative of the child. The individual shall be an attorney. The individual~~ THE LEGAL REPRESENTATIVE OF THE CHILD, APPOINTED PURSUANT TO SUBSECTION (1) OF THIS SECTION, shall represent the best interests of the minor or dependent child, as ~~that term is~~ described in section 14-10-124, with respect to the child's custody, the allocation of parental responsibilities, support for the child, the child's property, parenting time, or any other issue related to the child that is identified ~~in the court's order of appointment~~ BY THE LEGAL REPRESENTATIVE OF THE CHILD OR THE APPOINTING COURT. ~~The individual appointed~~ LEGAL REPRESENTATIVE OF THE CHILD shall actively participate in all aspects of the case involving the child, within the bounds of the law. ~~Such attorney~~ THE LEGAL REPRESENTATIVE OF THE CHILD SHALL COMPLY WITH THE PROVISIONS SET FORTH IN THE COLORADO RULES OF PROFESSIONAL CONDUCT AND ANY APPLICABLE PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES OR OTHER PRACTICE STANDARDS ESTABLISHED BY RULE OR DIRECTIVE OF THE CHIEF JUSTICE PURSUANT TO SECTION 13-91-105 (1) (c), C.R.S., CONCERNING THE DUTIES OR RESPONSIBILITIES OF BEST INTEREST REPRESENTATION IN LEGAL MATTERS AFFECTING CHILDREN. THE LEGAL REPRESENTATIVE OF THE CHILD shall not be called as a witness in the case. WHILE THE LEGAL REPRESENTATIVE OF THE CHILD SHALL ASCERTAIN AND CONSIDER THE WISHES OF THE CHILD, THE LEGAL REPRESENTATIVE OF THE CHILD IS NOT REQUIRED TO ADOPT THE CHILD'S WISHES IN HIS OR HER RECOMMENDATION OR ADVOCACY FOR THE CHILD UNLESS SUCH WISHES SERVE THE CHILD'S BEST INTEREST AS DESCRIBED IN SECTION 14-10-124.

~~(b) An individual to serve as a special advocate. The special advocate may be, but need not be, an attorney. The special advocate shall investigate, report, and make recommendations on any issues that affect or may affect the best interests of the minor or dependent child as that term is described in section 14-10-124. The subject matter and scope of the special advocate's duties shall be clearly set forth in the court's order of appointment. Such duties shall include the requirement that the special advocate file a written report with the court. The special advocate shall make independent and informed recommendations to the court. While the special advocate shall consider the wishes of the child, the special advocate need not adopt such wishes in making his or her recommendations to the court unless they serve the child's best interests as described in section 14-10-124. The child's wishes, if expressed, shall be disclosed in the special advocate's report. The special advocate may be called to testify as a witness regarding his or her recommendations.~~

(3) The court shall enter an order for costs, fees, and disbursements in favor of the child's LEGAL representative appointed pursuant to ~~paragraph (a) of subsection (2)~~ (1) of this section. ~~or in favor of the special advocate appointed pursuant to paragraph (b)~~

~~of subsection (2) of this section or both.~~ The order shall be made against any or all of the parties; except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the state.

SECTION 3. Legislative declaration. The general assembly hereby finds and declares that, due to the need to continue to encourage court appointments of persons to serve the best interests of children in domestic relations proceedings involving the allocation of parental responsibilities, it is the intent of the general assembly that quasi-judicial immunity continue to be granted for a child and family investigator acting within the course and scope of an order of appointment pursuant to existing Colorado case law.

SECTION 4. Article 10 of title 14, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

14-10-116.5. Appointment in domestic relations cases - child and family investigator. (1) THE COURT MAY, UPON THE MOTION OF EITHER PARTY OR UPON ITS OWN MOTION, APPOINT AN INDIVIDUAL TO SERVE THE COURT AS A CHILD AND FAMILY INVESTIGATOR PURSUANT TO SUBSECTION (2) OF THIS SECTION IN A DOMESTIC RELATIONS PROCEEDING THAT INVOLVES ALLOCATION OF PARENTAL RESPONSIBILITIES. THE COURT SHALL SET FORTH THE SPECIFIC DUTIES OF THE CHILD AND FAMILY INVESTIGATOR IN A WRITTEN ORDER OF APPOINTMENT. THE SAME PERSON MAY NOT SERVE AS BOTH THE LEGAL REPRESENTATIVE OF THE CHILD PURSUANT TO SECTION 14-10-116 AND AS THE CHILD AND FAMILY INVESTIGATOR FOR THE COURT PURSUANT TO THIS SECTION.

(2) A CHILD AND FAMILY INVESTIGATOR APPOINTED BY THE COURT MAY BE AN ATTORNEY, A MENTAL HEALTH PROFESSIONAL, OR ANY OTHER INDIVIDUAL WITH APPROPRIATE TRAINING, QUALIFICATIONS, AND AN INDEPENDENT PERSPECTIVE ACCEPTABLE TO THE COURT. THE CHILD AND FAMILY INVESTIGATOR FOR THE COURT SHALL INVESTIGATE, REPORT, AND MAKE RECOMMENDATIONS AS SPECIFICALLY DIRECTED BY THE COURT IN THE APPOINTMENT ORDER, TAKING INTO CONSIDERATION THE RELEVANT FACTORS FOR DETERMINING THE BEST INTERESTS OF THE CHILD AS SPECIFIED IN SECTION 14-10-124. THE CHILD AND FAMILY INVESTIGATOR SHALL MAKE INDEPENDENT AND INFORMED RECOMMENDATIONS TO THE COURT, IN THE FORM OF A WRITTEN REPORT FILED WITH THE COURT, UNLESS OTHERWISE ORDERED BY THE COURT. WHILE THE CHILD AND FAMILY INVESTIGATOR SHALL CONSIDER THE WISHES OF THE CHILD, THE CHILD AND FAMILY INVESTIGATOR NEED NOT ADOPT SUCH WISHES IN MAKING HIS OR HER RECOMMENDATIONS TO THE COURT UNLESS THEY SERVE THE CHILD'S BEST INTERESTS AS DESCRIBED IN SECTION 14-10-124. THE CHILD'S WISHES, IF EXPRESSED, SHALL BE DISCLOSED IN THE CHILD AND FAMILY INVESTIGATOR'S WRITTEN REPORT. THE CHILD AND FAMILY INVESTIGATOR MAY BE CALLED TO TESTIFY AS A WITNESS REGARDING HIS OR HER RECOMMENDATIONS. THE CHILD AND FAMILY INVESTIGATOR SHALL COMPLY WITH APPLICABLE PROVISIONS SET FORTH IN CHIEF JUSTICE DIRECTIVES, AND ANY OTHER PRACTICE OR ETHICAL STANDARDS ESTABLISHED BY RULE, STATUTE, OR LICENSING BOARD THAT REGULATES THE CHILD AND FAMILY INVESTIGATOR.

(3) THE COURT SHALL ENTER AN ORDER FOR COSTS, FEES, AND DISBURSEMENTS IN FAVOR OF THE CHILD AND FAMILY INVESTIGATOR APPOINTED PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE ORDER SHALL BE MADE AGAINST ANY OR ALL

OF THE PARTIES; EXCEPT THAT, IF THE RESPONSIBLE PARTY IS INDIGENT, THE COSTS, FEES, AND DISBURSEMENTS SHALL BE BORNE BY THE STATE.

SECTION 5. 13-91-105 (1) (c), Colorado Revised Statutes, is amended to read:

13-91-105. Duties of the office of the child's representative - guardian ad litem programs - CASA programs. (1) In addition to any responsibilities assigned to it by the chief justice, the office of the child's representative shall:

(c) Enhance the provision of services in Colorado by attorneys appointed to serve as LEGAL representatives of children pursuant to section 14-10-116, ~~(2)~~, C.R.S., AND ATTORNEYS APPOINTED TO SERVE AS CHILD AND FAMILY INVESTIGATORS PURSUANT TO SECTION 14-10-116.5, C.R.S., WHEN THE COSTS OF SUCH APPOINTMENTS ARE BORNE BY THE STATE, by:

(I) Ensuring the provision and availability of high-quality, accessible training throughout the state for attorneys seeking to serve as LEGAL representatives of children, AND ATTORNEYS SEEKING TO SERVE AS CHILD AND FAMILY INVESTIGATORS, as well as to judges and magistrates who regularly hear domestic matters under article 10 of title 14, C.R.S.;

(II) Making recommendations to the chief justice concerning the establishment, by rule or chief justice directive, of the minimum training requirements that an attorney seeking to serve as a LEGAL representative of a child AND AN ATTORNEY SEEKING TO SERVE AS A CHILD AND FAMILY INVESTIGATOR shall meet;

(III) Making recommendations to the chief justice concerning the establishment, by rule or chief justice directive, of standards to which attorneys serving as LEGAL representatives of children AND ATTORNEYS SERVING AS CHILD AND FAMILY INVESTIGATORS shall be held;

(IV) Overseeing the practice of LEGAL representatives of children appointed pursuant to section 14-10-116, C.R.S., AND OVERSEEING THE PRACTICE OF ATTORNEYS SERVING AS CHILD AND FAMILY INVESTIGATORS APPOINTED PURSUANT TO SECTION 14-10-116.5, C.R.S., to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures;

(V) Seeking to enhance existing funding sources for and studying the availability of or developing new funding sources for the provision of services by ATTORNEYS SERVING AS court-appointed LEGAL representatives of children AND ATTORNEYS SERVING AS COURT-APPOINTED CHILD AND FAMILY INVESTIGATORS;

(VI) Effective July 1, 2001, allocating moneys appropriated to the office of the child's representative in the state judicial department for the provision of services by ATTORNEYS SERVING AS court-appointed LEGAL representatives of children AND ATTORNEYS SERVING AS COURT-APPOINTED CHILD AND FAMILY INVESTIGATORS;

SECTION 6. 14-10-124 (1.5) (b) (IV) and (1.5) (b) (V), Colorado Revised Statutes, are amended to read:

14-10-124. Best interests of child. (1.5) Allocation of parental

responsibilities. The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the physical, mental, and emotional conditions and needs of the child as follows:

(b) **Allocation of decision-making responsibility.** The court, upon the motion of either party or its own motion, shall allocate the decision-making responsibilities between the parties based upon the best interests of the child. In determining decision-making responsibility, the court may allocate the decision-making responsibility with respect to each issue affecting the child mutually between both parties or individually to one or the other party or any combination thereof. In determining the best interests of the child for purposes of allocating decision-making responsibilities, the court shall consider, in addition to the factors set forth in paragraph (a) of this subsection (1.5), all relevant factors including:

(IV) Whether one of the parties has been a perpetrator of child abuse or neglect under section 18-6-401, C.R.S., or under the law of any state, which factor shall be supported by credible evidence. If the court makes a finding of fact that one of the parties has been a perpetrator of child abuse or neglect, then it shall not be in the best interests of the child to allocate mutual decision-making with respect to any issue over the objection of the other party or the LEGAL representative of the child.

(V) Whether one of the parties has been a perpetrator of spouse abuse as defined in subsection (4) of this section, which factor shall be supported by credible evidence. If the court makes a finding of fact that one of the parties has been a perpetrator of spouse abuse, then it shall not be in the best interests of the child to allocate mutual decision-making responsibility over the objection of the other party or the LEGAL representative of the child, unless the court finds that the parties are able to make shared decisions about their children without physical confrontation and in a place and manner that is not a danger to the abused party or the child.

SECTION 7. 14-13-111 (1), Colorado Revised Statutes, is amended to read:

14-13-111. Taking testimony in another state. (1) In addition to other procedures available to a party, a party to a child-custody proceeding ~~or a guardian ad litem~~ or other LEGAL representative of the child may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

SECTION 8. 13-91-104 (2) (a), Colorado Revised Statutes, is amended to read:

13-91-104. Office of the child's representative - board - qualifications of director. (2) (a) The Colorado supreme court shall appoint a nine-member child's representative board, referred to in this article as the "board". No more than five members of the board shall be from the same political party. The members of the board shall be representative of each of the congressional districts in the state. Three members of the board shall be attorneys admitted to practice law in this state who have experience in representing children as guardians ad litem or as legal

representatives of children. Three members of the board shall be citizens of Colorado not admitted to practice law in this state, who shall have experience at advocating for children in the court system. Three members of the board shall be citizens of the state who are not attorneys and who have not served as CASA volunteers or ~~special advocates~~ CHILD AND FAMILY INVESTIGATORS.

SECTION 9. 19-3-304 (2) (ee), Colorado Revised Statutes, as enacted by Senate Bill 05-004, enacted at the First Regular Session of the Sixty-fifth General Assembly, is amended to read:

19-3-304. Persons required to report child abuse or neglect. (2) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

(ee) ~~Special advocates~~ CHILD AND FAMILY INVESTIGATORS, as described in section ~~14-10-116 (2) (b)~~ 14-10-116.5, C.R.S.

SECTION 10. 14-10-127 (1) (a) (I.5) (F), Colorado Revised Statutes, as enacted by House Bill 05-1157, enacted at the First Regular Session of the Sixty-fifth General Assembly, is amended to read:

14-10-127. Evaluation and reports. (1) (a) (I.5) A party may request a supplemental evaluation to the evaluation ordered pursuant to subparagraph (I) of this paragraph (a). The court shall appoint another mental health professional to perform the supplemental evaluation at the initial expense of the moving party. The court shall not order a supplemental evaluation if it determines that any of the following applies, based on motion and supporting affidavits:

(F) In addition to the evaluation ordered pursuant to subparagraph (I) of this paragraph (a), there has been an investigation and report prepared by a ~~special advocate~~ CHILD AND FAMILY INVESTIGATOR pursuant to section ~~14-10-116~~ 14-10-116.5, and the court finds that a supplemental evaluation concerning parental responsibilities will not serve the best interests of the child.

SECTION 11. 14-10-128.1 (4) (b), Colorado Revised Statutes, as enacted by House Bill 05-1171, enacted at the First Regular Session of the Sixty-fifth General Assembly, is amended to read:

14-10-128.1. Appointment of parenting coordinator. (4) (b) The court may appoint a person who has served or is serving in a case as a ~~special advocate~~ CHILD AND FAMILY INVESTIGATOR pursuant to section ~~14-10-116~~ 14-10-116.5 to serve in the same case as the parenting coordinator, upon the agreement of the parties. After appointing a person pursuant to this section to serve as a parenting coordinator in a case, the court may not subsequently appoint the person to serve as a ~~special advocate~~ CHILD AND FAMILY INVESTIGATOR in the same case pursuant to section ~~14-10-116~~ 14-10-116.5.

SECTION 12. Effective date. (1) This act shall take effect July 1, 2005, except that:

(a) Section 10 of this act, amending section 14-10-127 (1) (a) (I.5) (F), Colorado Revised Statutes, shall take effect only if House Bill 05-1157 is enacted at the First Regular Session of the Sixty-fifth General Assembly and becomes law; and

(b) Section 11 of this act, amending section 14-10-128.1 (4) (b), Colorado Revised Statutes, shall take effect only if House Bill 05-1171 is enacted at the First Regular Session of the Sixty-fifth General Assembly and becomes law.

SECTION 13. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 2005