



General Assembly

February Session, 2014

Amendment

LCO No. 4382

SB0049404382SD0

Offered by:

SEN. COLEMAN, 2nd Dist.
REP. FOX, 146th Dist.
SEN. KISSEL, 7th Dist.
REP. REBIMBAS, 70th Dist.
SEN. MCKINNEY, 28th Dist.
SEN. FASANO, 34th Dist.
SEN. HOLDER-WINFIELD, 10th Dist.
REP. GONZALEZ, 3rd Dist.
REP. CANDELARIA, 95th Dist.
REP. VARGAS, 6th Dist.
REP. ARCE, 4th Dist.

REP. MORRIS, 140th Dist.
REP. MCCRORY, 7th Dist.
REP. CLEMONS, 124th Dist.
REP. MCGEE, 5th Dist.
REP. CARTER, 2nd Dist.
REP. AYALA, 128th Dist.
REP. SANTIAGO, 130th Dist.
REP. DIMINICO, 13th Dist.
REP. HEWETT, 39th Dist.
REP. SANCHEZ, 25th Dist.
REP. KOKORUDA, 101st Dist.

To: Senate Bill No. 494

File No. 619

Cal. No. 412

"AN ACT CONCERNING GUARDIANS AD LITEM AND ATTORNEYS FOR MINOR CHILDREN IN FAMILY RELATIONS MATTERS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective October 1, 2014*) (a) Except as provided in
4 subsection (b) of this section, prior to appointing counsel or a guardian
5 ad litem for any minor child in a family relations matter, as defined in
6 section 46b-1 of the general statutes, the court shall provide the parties

7 to the matter with written notification of fifteen persons who the court
8 has determined eligible to serve as counsel or a guardian ad litem for
9 any minor child in such matter. When making a determination as to
10 whether a person is eligible to serve as counsel or a guardian ad litem
11 for a minor child in a particular matter, the court shall give due
12 consideration to any unique circumstances of the parties and any child
13 to such matter. Circumstances considered shall include, but not be
14 limited to: (1) Financial circumstances, (2) language barriers, (3)
15 transportation barriers, (4) physical, mental or learning disabilities,
16 and (5) the geographic proximity of such person's office to the
17 residence of each of the parties and to the court where the matter is
18 pending. Not later than two weeks after the date on which the court
19 provides such written notification, the parties shall provide written
20 notification to the court of the name of the person who the parties have
21 selected to serve as counsel or a guardian ad litem. In the event that
22 the parties (A) fail to timely provide the court with the name of the
23 person to serve as counsel or guardian ad litem, or (B) cannot agree on
24 the name of the person to serve as counsel or guardian ad litem, the
25 court shall appoint counsel or a guardian ad litem for the minor child
26 by selecting one person from the fifteen names provided to the parties.

27 (b) The provisions of subsection (a) of this section shall not apply
28 when: (1) The parties have requested that counsel or a guardian ad
29 litem be appointed and present to the court a written agreement that
30 contains the name of the person who the parties have selected to serve
31 as counsel or a guardian ad litem for the minor child for their matter;
32 or (2) an emergency situation requires the immediate appointment of
33 counsel or a guardian ad litem for the minor child.

34 (c) Not later than twenty-one days following the date on which the
35 court enters an initial order appointing counsel or a guardian ad litem
36 for any minor child pursuant to this section, the court shall enter a
37 subsequent order that includes the following information: (1) The
38 specific nature of the work that is to be undertaken by such counsel or
39 guardian ad litem; (2) the date on which the appointment of such
40 counsel or guardian ad litem is to end, provided such end date may be

41 extended for good cause shown pursuant to an order of the court; (3)
42 the deadline for such counsel or guardian ad litem to report back to the
43 court concerning the work undertaken; (4) the fee schedule of such
44 counsel or guardian ad litem that shall minimally set forth (A) the
45 amount of the retainer, (B) the hourly rate to be charged, (C) the
46 apportionment of the retainer and hourly fees between the parties, and
47 (D) if applicable, all provisions related to the calculation of fees on a
48 sliding-scale basis; and (5) a proposed schedule of periodic court
49 review of the work undertaken by such counsel or guardian ad litem
50 and the fees charged by such counsel or guardian ad litem. Periodic
51 court review shall be undertaken not less than every three months
52 following the date of the appointment of such counsel or guardian ad
53 litem, unless such periodic court review is waived by the parties and
54 any such counsel or guardian ad litem pursuant to a written agreement
55 filed with the court. Not later than thirty days after the entry of a final
56 judgment in a family relations matter involving counsel or a guardian
57 ad litem for a minor child, such counsel or guardian ad litem shall file
58 with the court an affidavit that sets forth (A) the case name, (B) the
59 case docket number, and (C) the hourly fee charged, total number of
60 hours billed, expenses billed and the total amount charged by such
61 counsel or guardian ad litem. Counsel or a guardian ad litem for a
62 minor child shall not charge the parties for the preparation of such
63 affidavit. Upon the filing of the affidavit with the court, such affidavit
64 shall be made part of the case file.

65 Sec. 2. Section 46b-54 of the general statutes is repealed and the
66 following is substituted in lieu thereof (*Effective October 1, 2014*):

67 (a) The court may appoint counsel or a guardian ad litem for any
68 minor child or children of either or both parties at any time after the
69 return day of a complaint under section 46b-45, if the court deems it to
70 be in the best interests of the child or children. The court may appoint
71 counsel or a guardian ad litem on its own motion, or at the request of
72 either of the parties or of the legal guardian of any child or at the
73 request of any child who is of sufficient age and capable of making an
74 intelligent request.

75 (b) Counsel or a guardian ad litem for the minor child or children
76 may also be appointed on the motion of the court or on the request of
77 any person enumerated in subsection (a) of this section in any case
78 before the court when the court finds that the custody, care, education,
79 visitation or support of a minor child is in actual controversy, provided
80 the court may make any order regarding a matter in controversy prior
81 to the appointment of counsel or a guardian ad litem where it finds
82 immediate action necessary in the best interests of any child.

83 (c) In the absence of an agreement of the parties to the appointment
84 of counsel or a guardian ad litem for a minor child in the parties'
85 matter and a canvassing by the court concerning the terms of such
86 agreement, the court shall only appoint such counsel or guardian ad
87 litem under this section when, in the court's discretion, reasonable
88 options and efforts to resolve a dispute of the parties concerning the
89 custody, care, education, visitation or support of a minor child have
90 been made.

91 (d) If the court deems the appointment of counsel or a guardian ad
92 litem for any minor child or children to be in the best interests of the
93 child or children, such appointment shall be made in accordance with
94 the provisions of section 1 of this act.

95 [(c)] (e) Counsel or a guardian ad litem for the minor child or
96 children shall be heard on all matters pertaining to the interests of any
97 child, including the custody, care, support, education and visitation of
98 the child, so long as the court deems such representation to be in the
99 best interests of the child. To the extent practicable, when hearing from
100 such counsel or guardian ad litem, the court shall permit such counsel
101 or guardian ad litem to participate at the beginning of the matter, at
102 the conclusion of the matter or at such other time the court deems
103 appropriate so as to minimize legal fees incurred by the parties due to
104 the participation of such counsel or guardian ad litem in the matter.
105 Notwithstanding the provisions of this subsection, counsel or a
106 guardian ad litem for any minor child shall not speak or report to the
107 court on any medical diagnosis or conclusion made by a health care

108 professional who is treating such minor child unless the parties have
109 refused to cooperate in paying for or obtaining records containing the
110 medical diagnosis or conclusion of the health care professional. If the
111 court deems it to be in the best interests of the minor child, such health
112 care professional shall be heard on matters pertaining to the interests
113 of any such child, including the custody, care, support, education and
114 visitation of such child.

115 (f) When recommending the entry of any order as provided in
116 subsections (a) and (b) of section 46b-56, as amended by this act,
117 counsel or a guardian ad litem for the minor child shall consider the
118 best interests of the child, and in doing so shall consider, but not be
119 limited to, one or more of the following factors: (1) The temperament
120 and developmental needs of the child; (2) the capacity and the
121 disposition of the parents to understand and meet the needs of the
122 child; (3) any relevant and material information obtained from the
123 child, including the informed preferences of the child; (4) the wishes of
124 the child's parents as to custody; (5) the past and current interaction
125 and relationship of the child with each parent, the child's siblings and
126 any other person who may significantly affect the best interests of the
127 child; (6) the willingness and ability of each parent to facilitate and
128 encourage such continuing parent-child relationship between the child
129 and the other parent as is appropriate, including compliance with any
130 court orders; (7) any manipulation by or coercive behavior of the
131 parents in an effort to involve the child in the parents' dispute; (8) the
132 ability of each parent to be actively involved in the life of the child; (9)
133 the child's adjustment to his or her home, school and community
134 environments; (10) the length of time that the child has lived in a stable
135 and satisfactory environment and the desirability of maintaining
136 continuity in such environment, provided counsel or a guardian ad
137 litem for the minor child may consider favorably a parent who
138 voluntarily leaves the child's family home pendente lite in order to
139 alleviate stress in the household; (11) the stability of the child's existing
140 or proposed residences, or both; (12) the mental and physical health of
141 all individuals involved, except that a disability of a proposed

142 custodial parent or other party, in and of itself, shall not be
143 determinative of custody unless the proposed custodial arrangement is
144 not in the best interests of the child; (13) the child's cultural
145 background; (14) the effect on the child of the actions of an abuser, if
146 any domestic violence has occurred between the parents or between a
147 parent and another individual or the child; (15) whether the child or a
148 sibling of the child has been abused or neglected, as defined
149 respectively in section 46b-120; and (16) whether a party satisfactorily
150 completed participation in a parenting education program established
151 pursuant to section 46b-69b. Counsel or a guardian ad litem for the
152 minor child shall not be required to assign any weight to any of the
153 factors considered.

154 Sec. 3. Section 46b-57 of the general statutes is repealed and the
155 following is substituted in lieu thereof (*Effective October 1, 2014*):

156 In any controversy before the Superior Court as to the custody of
157 minor children, and on any complaint under this chapter or section
158 46b-1 or 51-348a, if there is any minor child of either or both parties,
159 the court, if it has jurisdiction under the provisions of chapter 815p,
160 may allow any interested third party or parties to intervene upon
161 motion. The court may award full or partial custody, care, education
162 and visitation rights of such child to any such third party upon such
163 conditions and limitations as it deems equitable. Before allowing any
164 such intervention, the court may appoint counsel for the child or
165 children pursuant to the provisions of section 46b-54, as amended by
166 this act, and section 1 of this act. In making any order under this
167 section, the court shall be guided by the best interests of the child,
168 giving consideration to the wishes of the child if the child is of
169 sufficient age and capable of forming an intelligent preference.

170 Sec. 4. (NEW) (*Effective October 1, 2014*) Any party to an action
171 involving the custody, care, support, education or visitation of a minor
172 child shall have standing to file a motion that seeks removal of counsel
173 for the minor child or a guardian ad litem for the minor child. The
174 Judicial Branch shall establish a procedure to effectuate the hearing of

175 such motion. Prior to hearing such motion, the court may refer the
176 parties to the family services unit of the Judicial Branch. If the
177 allegations set forth in the motion cannot be resolved, a hearing shall
178 be held on the motion and a decision on the motion shall be made by
179 the court.

180 Sec. 5. Section 46b-62 of the general statutes is repealed and the
181 following is substituted in lieu thereof (*Effective October 1, 2014*):

182 (a) In any proceeding seeking relief under the provisions of this
183 chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to
184 46b-213w, inclusive, 47-14g, 51-348a and 52-362, the court may order
185 either spouse or, if such proceeding concerns the custody, care,
186 education, visitation or support of a minor child, either parent to pay
187 the reasonable attorney's fees of the other in accordance with their
188 respective financial abilities and the criteria set forth in section 46b-82.
189 If, in any proceeding under this chapter and said sections, the court
190 appoints [an attorney] counsel or a guardian ad litem for a minor child,
191 the court may order the father, mother or an intervening party,
192 individually or in any combination, to pay the reasonable fees of [the
193 attorney] such counsel or guardian ad litem or may order the payment
194 of [the attorney's] such counsel's or guardian ad litem's fees in whole
195 or in part from the estate of the child. If the child is receiving or has
196 received state aid or care, the compensation of [the attorney] such
197 counsel or guardian ad litem shall be established and paid by the
198 Public Defender Services Commission.

199 (b) If, in any proceeding under this chapter and sections 17b-743,
200 17b-744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g,
201 51-348a and 52-362, the court appoints counsel or a guardian ad litem
202 for a minor child, the court may not order the father, mother or an
203 intervening party, individually or in any combination, to pay the
204 reasonable fees of such counsel or guardian ad litem from a college
205 savings account, including any account established pursuant to any
206 qualified tuition program, as defined in Section 529(b) of the Internal
207 Revenue Code, that has been established for the benefit of the minor

208 child. If the court determines that the father, mother or an intervening
209 party does not have the ability to pay such reasonable fees, the court
210 shall not order that such reasonable fees be paid by such persons
211 through the use of a credit card. In addition, any order for the payment
212 of such reasonable fees shall be limited to income or assets that are not
213 exempt property under sections 52-352a and 52-352b.

214 (c) In any proceeding under this chapter and sections 17b-743, 17b-
215 744, 45a-257, 46b-1, 46b-6, 46b-212 to 46b-213w, inclusive, 47-14g, 51-
216 348a and 52-362, in which the court appoints counsel or a guardian ad
217 litem for a minor child, the court may order that the fees to be paid to
218 such counsel or guardian ad litem be calculated on a sliding-scale basis
219 after giving due consideration to the income and assets of the parties to
220 the proceeding.

221 (d) The Judicial Branch shall develop and implement a methodology
222 for calculating, on a sliding-scale basis, the fees owing to counsel or a
223 guardian ad litem for a minor child appointed in any proceeding
224 under this chapter and sections 17b-743, 17b-744, 45a-257, 46b-1, 46b-6,
225 46b-212 to 46b-213w, inclusive, 47-14g, 51-348a and 52-362.

226 Sec. 6. (NEW) (*Effective July 1, 2014*) The Judicial Branch shall
227 develop a publication that informs parties to a family relations matter,
228 as defined in section 46b-1 of the general statutes, about the roles and
229 responsibilities of counsel for a minor child and the guardian ad litem
230 for a minor child when such persons are appointed by the court to
231 serve in a family relations matter. Such publication shall contain
232 detailed information describing the process by which a party who is
233 indigent may apply to the court for the appointment of counsel or
234 guardian ad litem for a minor child in a family relations matter. Such
235 publication shall be available to the public in hard copy and be
236 accessible electronically on the Internet web site of the Judicial Branch.

237 Sec. 7. (NEW) (*Effective from passage*) Not later than October 1, 2014,
238 the Judicial Branch shall develop and implement a professional code of
239 conduct applicable to any counsel or guardian ad litem for a minor

240 child appointed in a family relations matter, as defined in section 46b-1
241 of the general statutes.

242 Sec. 8. Subsection (c) of section 46b-56 of the general statutes is
243 repealed and the following is substituted in lieu thereof (*Effective*
244 *October 1, 2014*):

245 (c) In making or modifying any order as provided in subsections (a)
246 and (b) of this section, the court shall consider the best interests of the
247 child, and in doing so may consider, but shall not be limited to, one or
248 more of the following factors: (1) The temperament and developmental
249 needs of the child; (2) the capacity and the disposition of the parents to
250 understand and meet the needs of the child; (3) any relevant and
251 material information obtained from the child, including the informed
252 preferences of the child; (4) the wishes of the child's parents as to
253 custody; (5) the past and current interaction and relationship of the
254 child with each parent, the child's siblings and any other person who
255 may significantly affect the best interests of the child; (6) the
256 willingness and ability of each parent to facilitate and encourage such
257 continuing parent-child relationship between the child and the other
258 parent as is appropriate, including compliance with any court orders;
259 (7) any manipulation by or coercive behavior of the parents in an effort
260 to involve the child in the parents' dispute; (8) the ability of each
261 parent to be actively involved in the life of the child; (9) the child's
262 adjustment to his or her home, school and community environments;
263 (10) the length of time that the child has lived in a stable and
264 satisfactory environment and the desirability of maintaining continuity
265 in such environment, provided the court may consider favorably a
266 parent who voluntarily leaves the child's family home pendente lite in
267 order to alleviate stress in the household; (11) the stability of the child's
268 existing or proposed residences, or both; (12) the mental and physical
269 health of all individuals involved, except that a disability of a
270 proposed custodial parent or other party, in and of itself, shall not be
271 determinative of custody unless the proposed custodial arrangement is
272 not in the best interests of the child; (13) the child's cultural
273 background; (14) the effect on the child of the actions of an abuser, if

274 any domestic violence has occurred between the parents or between a
275 parent and another individual or the child; (15) whether the child or a
276 sibling of the child has been abused or neglected, as defined
277 respectively in section 46b-120; and (16) whether the party
278 satisfactorily completed participation in a parenting education
279 program established pursuant to section 46b-69b. The court is not
280 required to assign any weight to any of the factors that it considers, but
281 shall articulate the basis for its decision.

282 Sec. 9. Section 51-296a of the general statutes is repealed and the
283 following is substituted in lieu thereof (*Effective October 1, 2014*):

284 (a) The judicial authority before whom a family relations matter
285 described in subparagraph (A) of subdivision (1) of subsection (c) of
286 section 51-296 is pending shall determine eligibility for counsel for a
287 child or youth and the parents or guardian of a child or youth if they
288 are unable to afford counsel. Upon a finding that a party is unable to
289 afford counsel, the judicial authority shall appoint an attorney to
290 provide representation from a list of qualified attorneys provided by
291 the office of Chief Public Defender.

292 (b) The judicial authority before whom a juvenile matter described
293 in subparagraph (B) of subdivision (1) of subsection (c) of section 51-
294 296 is pending shall notify the office of Chief Public Defender who
295 shall assign an attorney to represent the child or youth. The judicial
296 authority shall determine eligibility for counsel for the parents or
297 guardian of the child or youth if such parents or guardian is unable to
298 afford counsel. Upon a finding that such parents or guardian is unable
299 to afford counsel, the judicial authority shall notify the office of Chief
300 Public Defender of such finding, and the office of Chief Public
301 Defender shall assign an attorney to provide representation.

302 (c) For the purposes of determining eligibility for appointment of
303 counsel pursuant to subsection (a) or (b) of this section, the judicial
304 authority shall cause the parents or guardian of a child or youth to
305 complete a written statement under oath or affirmation setting forth

306 the parents' or guardian's liabilities and assets, income and sources
 307 thereof, and such other information as the Public Defender Services
 308 Commission designates and requires on forms adopted by the
 309 commission. When determining eligibility for appointment of counsel
 310 pursuant to subsection (a) or (b) of this section, the judicial authority
 311 shall examine the parent or guardian's present ability to afford
 312 counsel. A parent or guardian's prior history of payments to counsel or
 313 prior ability to afford counsel shall not be considered as evidence of
 314 such parent or guardian's present ability to afford counsel.

315 (d) The payment of any attorney who was appointed prior to July 1,
 316 2011, to represent a child or indigent parent in any case described in
 317 subparagraph (A) of subdivision (1) of subsection (c) of section 51-296
 318 who continues to represent such child or parent on or after July 1,
 319 2011, shall be processed through the office of Chief Public Defender
 320 and paid at the rate that was in effect at the time of such appointment."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	New section
Sec. 2	<i>October 1, 2014</i>	46b-54
Sec. 3	<i>October 1, 2014</i>	46b-57
Sec. 4	<i>October 1, 2014</i>	New section
Sec. 5	<i>October 1, 2014</i>	46b-62
Sec. 6	<i>July 1, 2014</i>	New section
Sec. 7	<i>from passage</i>	New section
Sec. 8	<i>October 1, 2014</i>	46b-56(c)
Sec. 9	<i>October 1, 2014</i>	51-296a