

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 428

An Act to amend and reenact §§ 16.1-266.1 and 16.1-267 of the Code of Virginia, relating to qualifications and performance of attorneys appointed to represent parents or guardians; child dependency cases; compensation; pilot multidisciplinary law offices.

[H 893]

Approved April 4, 2024

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-266.1 and 16.1-267 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-266.1. Standards for attorneys appointed as guardians ad litem; list of qualified attorneys; attorneys appointed for parents or guardians.

A. On or before January 1, 1995, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to § 16.1-266. The standards shall, insofar as practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia, (ii) current training in the roles, responsibilities and duties of guardian ad litem representation, (iii) familiarity with the court system and general background in juvenile law, and (iv) demonstrated proficiency in this area of the law.

B. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem based upon the standards and shall make the names available to the courts. If no attorney who is on the list is reasonably available, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

C. ~~Counsel appointed for a parent or guardian pursuant to subsection D of § 16.1-266 shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. On or before January 1, 2026, the Judicial Council, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for the qualification and performance of attorneys appointed pursuant to § 16.1-266 to represent a parent or guardian of a child when such child is the subject of a child dependency case. The standards shall, to the extent practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia; (ii) current training in the roles, responsibilities, and duties of parent or guardian representation; (iii) familiarity with the court system and a general background in juvenile law; and (iv) demonstrated proficiency in this area of law. For purposes of this section, a "child dependency case" includes cases before the juvenile and domestic relations district courts, and the circuit courts on appeal, involving a child who is (a) alleged to have been abused or neglected pursuant to § 16.1-278.2; (b) alleged to be at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care pursuant to § 16.1-278.2; (c) the subject of a petition for approval of an entrustment agreement pursuant to § 16.1-277.01; (d) the subject of a petition for relief of custody pursuant to § 16.1-277.02; (e) placed in foster care and is the subject of a foster care or permanency plan filed pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2; and (f) the subject of a petition for termination of residual parental rights pursuant to § 16.1-283.~~

D. Beginning July 1, 2026, the Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to be appointed to represent indigent parents and guardians involved in a child dependency case based on the standards required by this section and shall make such names available to the courts.

E. ~~Counsel appointed for a parent or guardian pursuant to subsection D of § 16.1-266 prior to July 1, 2026, shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. On or after July 1, 2026, such counsel shall be selected from the list of attorneys who are qualified to be appointed to represent indigent parents and guardians established in accordance with subsection D. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the parent or case, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.~~

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266

and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian, or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163. *When the court appoints counsel to represent a parent, guardian, or other adult pursuant to § 16.1-266 in a child dependency case as defined in § 16.1-266.1, such counsel shall be compensated for his services in an amount not to exceed \$330, except that in matters arising under § 16.1-283, such counsel shall be compensated for his services in an amount not to exceed \$680. Notwithstanding the foregoing, no court may waive the limitation of fees as set forth therein.*

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266, the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court may adjust the cost sought by the guardian ad litem of such services.

3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

2. That up to two multidisciplinary law offices or programs may be established for the purpose of representing parents in child dependency court proceedings or, prior to the initiation of such proceedings, pursuant to a child protective services assessment or investigation in localities, jurisdictions, or judicial districts that affirm they have met criteria developed by the work group established by Chapter 305 of the Acts of Assembly of 2022. Such multidisciplinary law offices shall utilize the Interdisciplinary Practice Model developed by the American Bar Association and the Family Justice Initiative and develop such protocols, goals, and outcome measures as are consistent with those required for federal financial participation for legal representation under Title IV-E of the Social Security Act, 42 U.S.C. § 673 (Title IV-E). Any private or local public entities establishing any such multidisciplinary law office may enter into an agreement with a local department of social services or the Department of Social Services to receive Title IV-E funding for eligible administrative costs of providing legal representation for a child who is a candidate for Title IV-E foster care or in foster care and his parent to prepare for and participate in all stages of foster care legal proceedings, including court hearings related to the child's removal from the home.

3. That any multidisciplinary law office or program established pursuant to the second enactment of this act shall, in any calendar year that such multidisciplinary law office or program is in effect for at least six months, submit a report that includes information on program outcomes, expenses, recommendations, and any other information pertinent to the measurement of how the program impacts the progression of child dependency cases. Such report shall be submitted annually to the Office of the Children's Ombudsman established by Chapter 4.4 (§ 2.2-438 et seq.) of Title 2.2 of the Code of Virginia and the Chairmen of the House Committees for Courts of Justice and on Health and Human Services and Appropriations and the Senate Committees for Courts of Justice and on Education and Health and Finance and Appropriations by November 1.

4. That the provisions of § 16.1-267 of the Code of Virginia, as amended by this act, shall become effective on January 1, 2025.