

CHAPTER 14

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 97-1103

BY REPRESENTATIVES Morrison, Adkins, Kreutz, Tool, Bacon, Clarke, Gotlieb, Hagedorn, Keller, Nichol, Owen, Reeser, Snyder, Veiga, and S. Williams;
also SENATORS Perlmutter and Hernandez.

AN ACT

CONCERNING THE APPOINTMENT OF INDIVIDUALS BY THE COURT TO ASSIST THE COURT IN THE RESOLUTION OF ISSUES RELATED TO CHILDREN IN DOMESTIC RELATIONS PROCEEDINGS.

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

SECTION 1. 14-10-116, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

14-10-116. Appointments in domestic relations cases - representation of child - special advocates. (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 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. IN NO INSTANCE MAY THE SAME PERSON SERVE AS BOTH THE CHILD'S REPRESENTATIVE PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) OF THIS SECTION AND AS THE SPECIAL ADVOCATE PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION.

(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 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, SUPPORT FOR THE

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

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. THE INDIVIDUAL APPOINTED SHALL ACTIVELY PARTICIPATE IN ALL ASPECTS OF THE CASE INVOLVING THE CHILD, WITHIN THE BOUNDS OF THE LAW. SUCH ATTORNEY SHALL NOT BE CALLED AS A WITNESS IN THE CASE.

(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 REPRESENTATIVE APPOINTED PURSUANT TO PARAGRAPH (a) OF SUBSECTION (2) 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 2. Article 10 of title 14, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

14-10-128.5. Appointment of arbitrator - de novo review of award. (1) WITH THE CONSENT OF ALL PARTIES, THE COURT MAY APPOINT AN ARBITRATOR TO RESOLVE DISPUTES BETWEEN THE PARTIES CONCERNING THE PARTIES' MINOR OR DEPENDENT CHILDREN, INCLUDING BUT NOT LIMITED TO PARENTING TIME, NONRECURRING ADJUSTMENTS TO CHILD SUPPORT, AND DISPUTED PARENTAL DECISIONS. NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, ALL AWARDS ENTERED BY AN ARBITRATOR APPOINTED PURSUANT TO THIS SECTION SHALL BE IN WRITING. THE ARBITRATOR'S AWARD SHALL BE EFFECTIVE IMMEDIATELY UPON ENTRY AND SHALL CONTINUE IN EFFECT UNTIL VACATED BY THE ARBITRATOR PURSUANT TO SECTION 13-22-214, C.R.S., MODIFIED OR CORRECTED BY THE ARBITRATOR PURSUANT TO SECTION 13-22-215, C.R.S., OR MODIFIED BY THE COURT PURSUANT TO A DE NOVO REVIEW UNDER SUBSECTION (2) OF THIS SECTION.

(2) ANY PARTY MAY APPLY TO HAVE THE ARBITRATOR'S AWARD VACATED, MODIFIED, OR CORRECTED PURSUANT TO THE "UNIFORM ARBITRATION ACT OF 1975", PART 2 OF ARTICLE 22 OF TITLE 13, C.R.S., OR MAY MOVE THE COURT TO MODIFY THE ARBITRATOR'S AWARD PURSUANT TO A DE NOVO REVIEW OF SUCH AWARD. IN CIRCUMSTANCES IN WHICH A PARTY MOVES FOR A DE NOVO REVIEW BY THE COURT,

THE COURT SHALL ORDER THE NONPREVAILING PARTY TO PAY THE FEES AND COSTS OF THE PREVAILING PARTY AND THE FEES OF THE ARBITRATOR INCURRED IN RESPONDING TO THE APPLICATION OR MOTION UNLESS THE COURT FINDS THAT IT WOULD BE MANIFESTLY UNJUST.

SECTION 3. Effective date. This act shall take effect July 1, 1997.

SECTION 4. 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: March 20, 1997