



SPONSOR: Sen. McDowell & Sen. Blevins
Reps. Maier, Valihura & Keeley

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 351

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE CHILD ADVOCATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 29, Section 9007A(c) of the Delaware Code by striking the phrase "The attorney
2 guardian ad litem shall" and inserting the following in lieu thereof:

3 "The attorney guardian ad litem's duty is to the child. The scope of the representation of the child is the
4 child's best interests. The attorney guardian ad litem shall have the duty of confidentiality to the child
5 unless disclosure is necessary to protect the child's best interests. As such, the attorney guardian ad
6 litem shall"

7 Section 2. Amend Title 29, Section 9007A(c)(1) of the Delaware Code by inserting after the word "proceedings"
8 the phrase ", and explain to the child, taking into account the child's ability to understand the proceedings, the duties of the
9 attorney guardian ad litem".

10 Section 3. Amend Title 29, Section 9007A(c)(3) by striking that paragraph in its entirety and inserting the
11 following new paragraph (3) in lieu thereof:

12 "(3) Conduct an independent investigation of the circumstances of a case of appointment, which shall
13 include but not be limited to interviews and/or observations of the child and relevant individuals, as well
14 as a review of all relevant records and reports;"

15 Section 4. Amend Title 29, Section 9007(c)(4) of the Delaware Code by striking that paragraph in its entirety
16 and inserting the following new paragraph (4) in lieu thereof:

17 "(4) Present evidence to the Court in support of his or her position;"

18 Section 5. Amend Title 29, Section 9008A of the Delaware Code by inserting ", or volunteering for," after the
19 words "contracted by" in the first sentence.

20 Section 6. Amend Title 29, Section 9007A(a)(2), of the Delaware Code, by inserting the phrase "and/or the
21 Family Court" after the word "Department" in the first sentence.

SYNOPSIS

Sections 1 through 4 of this Bill address the concerns regarding an attorney guardian ad litem's role in representing a child as indicated in an opinion by the DSBA Professional Ethics Committee. The changes make it clear that the child is the client and the scope of representation is the child's best interests. It also makes sure that an attorney does not take the stand as a witness, but instead presents his or her position in the form of evidence. Section 5 clarifies the intent of the original statute that attorneys who volunteer to represent a child through OCA will be indemnified from liability in that role. Section 6 allows OCA to also review Family Court records in making a determination as to whether a child needs legal representation.

Author: Senator McDowell