

**TO: Senate Judiciary Committee**

**From: Amy Davenport, Chief Administrative Judge**

**Date: April 9, 2014**

**Re: H. 581 Minor Guardianship Bill – Suggested Amendments**

The first nine amendments listed below other are for the purposes of clarifying some ambiguities in the bill as it passed the House. The tenth amendment is entirely new and relates to authorization to appoint probate judges to serve in the other divisions of the Superior Court.

**1. §2622(2)(A)(ii),(iv) and (v): Definition of a Child in Need of Guardianship**

The words "The custodial" should be inserted before the word "parent" in each of these sections so that they read:

(ii) The custodial parent's physical or mental health prevents the parent from providing proper care and supervision for the child...

(iv) The custodial parent of the child is incarcerated.

(v) The custodial parent is on active military duty.

**2. §2622 (3) Definition of custodial parent:**

Add a sentence to the end of the definition as follows:

"If physical parental rights and responsibilities are shared pursuant to court order, both parents are considered "custodial parents" for the purposes of this definition."

**3. §2622(4) and (9): Definitions of Interested Persons and Parties**

Delete these two definitions. Rule 17 of the Rules of Probate Procedure already covers the definition of interested persons and parties for minor guardianship as well as all other probate proceedings. Rule 17 is sufficient to cover the persons who need to be involved in these proceedings. The Franklin-Grand Isle Bar is in agreement with this recommendation.

**4. §2623(b) Venue for Minor Guardianship Proceedings**

Delete subsection (b) which describes venue. Venue is already covered under 4 V.S.A. 311a, a statute which covers venue for all probate proceedings. The Franklin-Grand Isle Bar is in agreement with this recommendation.

**5. §2626(a) Consensual Guardianship**

I agree with the Vermont Parent Representation Center that the words "knowingly waive their parental rights" should be deleted from subsection (a). It is not necessary or entirely accurate.

**6. §§2626(b)(3) and 2628(b)(2): Family Plan**

Many folks have commented that while in some cases, such as a lengthy hospitalization of a parent or a deployment overseas, the expected duration of the guardianship is obvious, in many other cases it will be very difficult for parents/proposed guardian/the court to describe the expected duration of the guardianship. The amendment would add the phrase "if known" to the end of the sentence so that it would read:

"(3) the expected duration of the guardianship, if known; and.."

There has been much discussion about the Agreement and Family Plan and whether this will be too difficult for parents and the guardian to complete absent legal representation or, at least, an adequate system of supports as recommended by the Services Subcommittee of the Minor Guardianship Committee. I have drafted the attached form for an Agreement and Family Plan in custodial cases (pages 5-7), which would be filed along with a consent in the consensual cases. I have tried to keep it as simple as possible. I think the form would provide some clarity as to what the responsibilities of the parties and proposals on parent child contact.

### **7. §2629(b): Financial Guardianships:**

Financial guardianships that are created because the minor has inherited money or property or has been awarded money as a result of a personal injury claim or insurance proceeds. I agree with the Franklin-Grand Isle Bar Association that these guardianships should be described in a separate section or article as the issues involved in these types of proceedings are very different from custodial guardianships of minors. A draft for a separate section on financial guardianships is attached. (See pages 8-9) It was drafted with the assistance of Judges Susan Fowler, Joanne Ertel and George Belcher. If this amendment is adopted, then §2629(b) would be eliminated with subsection (b)(1) being added to the duties of the custodial guardian.

### **8. §2629(c)(4): Responsibilities of the Guardian regarding parent child contact orders of the Probate Court**

The wording of this provision is subject to some ambiguity as to the Guardian's responsibility for compliance with parent child contact provisions ordered by the Probate Court. To clarify that Guardian's are expected to comply with the orders of the Probate Court with respect to parent-child contact, I will suggest rephrasing as follows;

(3) make decisions with respect to the child's contact with ~~other persons including the child's parents, provided that the guardian shall comply with all provisions of the guardianship order regarding parent-child contact~~ others except that the guardian shall comply with the provisions of the guardianship order with respect to parent child contact and contact with siblings.

### **9. §2630(a): Parent Child Contact**

This section is phrased in terms of the guardian's responsibility with respect to parent child contact, responsibilities which are already described in the prior section. Upon reflection, it really should be worded to provide guidance to the probate court in making parent child contact orders. I would suggest the following language which is similar to the language in the Juvenile Procedures Act, 33 V.S.A. §5319, language which has worked quite well.

§ 2630. Parent-child contact

(a) The Court shall order parent-child contact unless the Court finds that it is necessary to deny parent-child contact because the protection of the physical safety or emotional well-being of the child so requires. Except for good cause shown, the order shall be consistent with any existing parent-child contact order.

(b) The Court may determine the reasonable frequency and duration of parent-child contact and may

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set such conditions for parent-child contact as are in the child's best interests.

(c) Parent-child contact may be modified by stipulation or upon motion of a party or upon the Court's own motion.

### **10. Authority to Appoint Probate Judges to Serve in Other Divisions**

Finally, I am requesting one additional amendment to the bill which has no impact on guardianship proceedings. The amendment relates to probate judges and the ability of the Administrative Judge to appoint a probate judge to serve in one of the other divisions of the superior court. Currently, I occasionally authorize the appointment of some probate judges to hear small claims and landlord tenant cases in the Civil Division, but I have to appoint them in the same way that I appoint attorneys as acting judges. This would allow me to appoint them as judges. I have attached a copy of the amendment.

## § 22. Designation and special assignment of judicial officers and retired judicial officers

~~(a)~~ ~~(a)~~ The chief justice may appoint and assign a retired justice or judge with his or her consent or a superior or probate judge to a special assignment on the supreme court. The chief justice may appoint, and the administrative judge shall assign, an active or retired justice or a retired judge, with his or her consent, to any special assignment in the superior court or the judicial bureau.

~~(a)~~(b) The administrative judge ~~shall~~ may appoint and assign a judge to any special assignment in the superior court. For the purposes of this subsection a judge shall include: a superior judge, a probate judge, a family division magistrate or a judicial hearing officer.

~~(b)~~(c) The administrative judge may appoint and assign a member of the Vermont bar residing within the state of Vermont to serve temporarily as:

(1) an acting judge in superior court;

(2) an acting magistrate; ~~or~~

(3) an acting probate judge; or

(3) an acting hearing officer to hear cases in the judicial bureau.

(c) Special assignments may be made as a result of the disqualification, disability or death of a justice or judge, or because of the vacancy of a judicial office, or because the business of the court requires. When so designated and assigned and in the actual performance of those judicial duties, an appointee shall have all the powers and authority of the assigned judicial office, but not otherwise and shall retain them until the duties devolving upon him or her are fully performed. A designated and assigned justice or judge or acting judge shall not be counted in the number of justices or judges provided by law.

(d) [Repealed.]

(e) The supreme court shall develop and provide whatever judicial training it deems necessary to enable persons who are specially assigned under this section to carry out their assigned judicial duties.

(f) In making an appointment under subsection (b) of this section, the administrative judge shall apply the criteria and standards for judicial appointments contained in section 601 of this title.

DRAFT Form PMG\_\_\_\_\_

**STATE OF VERMONT****SUPERIOR COURT****PROBATE DIVISION****Unit****Docket No.**\_\_\_\_\_**In re Guardianship of :**

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**Custodial Guardianship Agreement and Family Plan**

This Family Plan is for the following child(ren) of the parents:

Name of Child	DOB
Name of Child	DOB
Name of Child	DOB

This Family Plan is agreed upon by the following parties:

 Guardian/Proposed Guardian: \_\_\_\_\_

 Parent: \_\_\_\_\_
I am a: (check one)  custodial parent  non-custodial parent
 Parent: \_\_\_\_\_
I am a: (check one)  custodial parent  non-custodial parent

We hereby agree that the Probate Division may issue an Order establishing a custodial minor guardianship for the minor child(ren) with \_\_\_\_\_ as guardian under the following terms and conditions:

1. As the guardian of the child(ren), I, \_\_\_\_\_, agree that I will:
  - Take custody of the child(ren) and establish the child(ren)'s place of residence provided that I shall not establish a residence for the child outside of the State of Vermont unless authorized by the Court following notice to the parties and an opportunity for hearing.
  - Make decisions related to the child's education;
  - Make decisions related to the child's physical and mental health including consent to medical treatment and medication;
  - Make the child(ren) available for parent child contact as ordered by the Court. If the children are unavailable due to illness or other emergency, I agree that I will work with the parent to schedule make-up contact.
  - Make decisions concerning the child(ren)'s contact with persons other than the parents including reasonable contact with any siblings of the child(ren);

- File an annual status report with the Probate Division and provide a copy of the report to each parent.
  - Consult with \_\_\_\_\_ prior to making decisions related to:  
Name of parent or parents
    - Changes in the child(ren)'s school;
    - Changes in the child(ren)'s doctors or other medical providers;
    - Other: \_\_\_\_\_
  - Provide \_\_\_\_\_ with notice and the opportunity to  
Name of Parent or Parents

participate in:

    - Non-emergency medical appointments for the child(ren);
    - Meetings with the child(ren)'s teachers or other school personnel;
    - Other: \_\_\_\_\_
2. As a parent of the child, I, \_\_\_\_\_, agree that I will:
- Make myself available for parent child contact as ordered by the Court. If due to an emergency, I am unable to have contact with the child, I will notify the Guardian as soon as possible.
  - Keep the Guardian informed of any changes in my address or phone number.
  - Other: \_\_\_\_\_  
\_\_\_\_\_
3. As a parent of the child, I, \_\_\_\_\_, agree that I will:
- Make myself available for parent child contact as ordered by the Court. If due to an emergency, I am unable to have contact with the child, I will notify the Guardian as soon as possible.
  - Keep the Guardian informed of any changes in my address or phone number.
  - Other: \_\_\_\_\_  
\_\_\_\_\_
4. Estimated Duration of Guardianship if Known: We agree that the guardianship established by the Court should remain in place until the following event or events take place: *(This section is optional)* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**We understand that the guardianship cannot end without an order from the Probate Court terminating the guardianship.**

5. Parent Child Contact Schedule:  
We agree that the Court may order contact between the parent(s) named above and the minor child(ren) as follows:
- Weekday and/or weekend contact during the school year: \_\_\_\_\_
  - Holiday Contact: \_\_\_\_\_
  - Contact during School Vacations: \_\_\_\_\_

6. Parent Child Contact for Non-Custodial parent *(to be filled out only if there is an order establishing parent child contact for one of the parents).*

The parent child contact schedule for \_\_\_\_\_ in the attached Order shall be:

as set forth in the Order.

modified as follows \_\_\_\_\_.

We, the undersigned, agree that the provisions of this parenting plan may be incorporated into the parental rights and responsibilities order of this court:

\_\_\_\_\_  
Parent's Printed Name

\_\_\_\_\_  
Parent's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Parent's Printed Name

\_\_\_\_\_  
Parent's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Proposed Guardian's Printed Name

\_\_\_\_\_  
Proposed Guardian's Signature

\_\_\_\_\_  
Date

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Article\_\_\_\_. Financial Guardians of Minors

§ 26\_\_\_\_. Appointment of Financial Guardian of Minor

On petition of a minor or a person interested in the welfare of a minor, the Probate Division of the Superior Court may appoint a financial guardian when the minor has a parent living and the minor is the owner of real and personal property. Guardians appointed pursuant to this section (Article?) shall have the care and management of the estate of the minor but not the custody of the minor.

§ 26\_\_\_\_. Petition for Financial Guardian of Minor

(a) A parent or a person interested in the welfare of a minor may file a petition with the Probate Division of the Superior Court for the appointment of a financial guardian for a minor. The petition shall state:

- (1) The names and addresses of the parents, the minor, and the proposed guardian;
- (2) The proposed guardian's relationship to the minor;
- (3) The nature of the minor's real and personal property.

(b) Venue for a petition for a financial guardianship shall be determined pursuant to 4 V.S.A. §311a.

(c) The petition shall be served on all interested persons pursuant to V.R.P.P. 17(a)(4).

§ 26\_\_\_\_. Hearing

The Probate Division shall schedule a hearing upon the filing of the petition and shall provide notice of the hearing to all parties.

§ 26\_\_\_\_. Guardianship Order

If the Court grants the petition for financial guardianship of a minor, the Court shall enter an order establishing a financial guardianship, naming the proposed guardian of the minor and setting forth provisions specifying the powers and duties of the guardian.

§ 26\_\_\_\_. Powers and Duties of Financial Guardian of Minor

The duties of a financial guardian shall include the duty to:

- (1) Pursue, receive, and manage any property right including an inheritance, insurance benefit, litigation, real or personal property, or other financial matter provided that such benefits or property shall not be expended without prior Court approval.



- (2) Deposit any cash resources of the minor in accounts established for the guardianship. The cash resources of the minor shall not be co-mingled with assets of the guardian;
- (3) Responsibly invest and re-invest the cash resources of the minor;
- (4) Obtain court approval for the expenditure of funds to meet the minor's extraordinary needs which cannot be met with other family resources.
- (5) Conserve for the minor's future needs any money the minor has that is not required to meet the minor's current needs;
- (6) Establish one or more special needs trusts with court approval; and
- (7) File an annual financial accounting report to the Probate Division accounting for the funds received, managed and spent on behalf of the minor.

Repeal 14 V.S.A. 2653