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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3135

02/03/2022

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The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act

1.2 relating to judiciary; establishing the State Board of Appellate Counsel for Parents;

1.3 establishing a head appellate counsel and a program administrator; providing for

1.4 attorneys to serve as counsel; permitting counties to utilize the services of the State

1.5 Board of Appellate Counsel for Parents to provide appellate counsel for parents

1.6 of certain juveniles; proposing coding for new law in Minnesota Statutes, chapter

1.7 260C.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. [260C.419] STATE BOARD OF APPELLATE COUNSEL FOR PARENTS.

1.10 Subdivision 1. Structure; membership. (a) The State Board of Appellate Counsel for

1.11 Parents is established in the judicial branch. The board is not subject to the administrative

1.12 control of the judiciary. The board shall consist of seven members, including:

1.13 (1) four public members appointed by the governor; and

1.14 (2) three members appointed by the supreme court, at least one of whom must have

1.15 experience representing parents in juvenile court and who include two attorneys admitted

1.16 to practice law in the state and one public member.

1.17 (b) The appointing authorities may not appoint any of the following to be a member of

1.18 the State Board of Appellate Counsel for Parents:

1.19 (1) a person who is a judge;

1.20 (2) a person who is a registered lobbyist;

1.21 (3) a person serving as a guardian ad litem or counsel for a guardian ad litem;

1.22 (4) a person who serves as counsel for children in juvenile court;

2.1 (5) a person under contract with or employed by the Department of Human Services or  
2.2 a county department of human or social services; or

2.3 (6) a current city or county attorney or assistant city or county attorney.

2.4 (c) All members shall demonstrate an interest in maintaining a high quality, independent  
2.5 appellate defense system for parents in juvenile protection proceedings who are unable to  
2.6 obtain adequate representation. No more than five members of the board may belong to the  
2.7 same political party. At least three members of the board shall be from judicial districts  
2.8 other than the First, Second, Fourth, and Tenth Judicial Districts. To the extent practicable,  
2.9 the membership of the board must include persons with disabilities, reflect the ethnic diversity  
2.10 of the state, take into consideration race and gender, and include persons from throughout  
2.11 the state. The members shall be well acquainted with representing parents in appellate  
2.12 proceedings related to child protection matters as well as the laws that affect a parent  
2.13 appellate attorney's work, including chapter 260C, the Minnesota Rules of Juvenile Protection  
2.14 Procedure, the Minnesota Rules of Civil Appellate Procedure, the Indian Child Welfare  
2.15 Act, and the Minnesota Indian Family Preservation Act. The terms, compensation, and  
2.16 removal of members shall be as provided in section 15.0575. The members shall elect the  
2.17 chair from among the membership for a term of two years.

2.18 Subd. 2. **Head appellate counsel for parents; assistant and contracted attorneys.** (a)  
2.19 Beginning January 1, ....., and for every four years after that date, the State Board of Appellate  
2.20 Counsel for Parents shall appoint a head appellate counsel in charge of appellate services,  
2.21 who shall provide for sufficient appellate counsel for parents and other personnel necessary  
2.22 to discharge the functions of the office. The head appellate counsel shall serve a four-year  
2.23 term and may be removed only for cause upon the order of the State Board of Appellate  
2.24 Counsel for Parents. The head appellate counsel shall be a full-time qualified attorney,  
2.25 licensed to practice law in this state, and serve in the unclassified service of the state.  
2.26 Vacancies of the office shall be filled by the appointing authority for the unexpired term.  
2.27 The head appellate counsel shall devote full time to the performance of duties and shall not  
2.28 engage in the general practice of law. The compensation of the head appellate counsel shall  
2.29 be set by the State Board of Appellate Counsel for Parents and shall be commensurate with  
2.30 county attorneys in the state.

2.31 (b) Consistent with the decisions of the State Board of Appellate Counsel for Parents,  
2.32 the head appellate counsel shall employ assistants or hire independent contractors to serve  
2.33 as appellate counsel for parents. Each assistant appellate counsel and independent contractor  
2.34 serves at the pleasure of the head appellate counsel. The compensation of assistant appellate

3.1 counsel and independent contractors shall be set by the State Board of Appellate Counsel  
3.2 for Parents and shall be commensurate with county attorneys in the state.

3.3 (c) A person serving as appellate counsel shall be a qualified attorney licensed to practice  
3.4 law in this state. A person serving as appellate counsel practicing in Tribal court shall be a  
3.5 licensed attorney qualified to practice law in Tribal courts in the state. Assistant appellate  
3.6 counsel and contracted appellate counsel may engage in the general practice of law where  
3.7 not employed or contracted to provide services on a full-time basis.

3.8 Subd. 3. **Program administrator.** The State Board of Appellate Counsel for Parents  
3.9 shall appoint a program administrator who must be chosen solely on the basis of training,  
3.10 experience, and other qualifications and who serves at the pleasure of the board. The program  
3.11 administrator need not be licensed to practice law. The program administrator shall attend  
3.12 all meetings of the board, but may not vote, and shall:

3.13 (1) enforce all resolutions, standards, rules, regulations, policies, and orders of the board;

3.14 (2) present to the board and the head appellate counsel plans, studies, and reports prepared  
3.15 for the board's and the head appellate counsel's purposes and recommend to the board and  
3.16 the head appellate counsel for adoption measures necessary to enforce or carry out the  
3.17 powers and duties of the board and the head appellate counsel or to efficiently administer  
3.18 the affairs of the board and the head appellate counsel;

3.19 (3) keep the board fully advised as to the boards's financial condition and prepare and  
3.20 submit to the board the annual appellate counsel for parents program and the State Board  
3.21 of Appellate Counsel for Parents budget and other financial information as requested by  
3.22 the board;

3.23 (4) recommend to the board the adoption of rules and regulations necessary for the  
3.24 efficient operation of the board and the state appellate counsel for parents program;

3.25 (5) work cooperatively and collaboratively with sovereign Tribal Nations in the state;  
3.26 and

3.27 (6) perform other duties prescribed by the board.

3.28 Subd. 4. **Duties and responsibilities.** (a) The State Board of Appellate Counsel for  
3.29 Parents shall create and administer a statewide, independent appellate counsel program to  
3.30 represent indigent parents who are eligible for the appointment of counsel under section  
3.31 260C.163, subdivision 3, on appeal in juvenile protection matters.

3.32 (b) The board shall approve and recommend to the legislature a budget for the board  
3.33 and the appellate counsel for parents program.

4.1 (c) The board shall establish procedures for distribution of funding under this section to  
4.2 the appellate program.

4.3 (d) The head appellate counsel with the approval of the board shall establish appellate  
4.4 program standards, administrative policies, procedures, and rules consistent with statute,  
4.5 rules of court, and laws that affect appellate counsel's work. The standards must include,  
4.6 but are not limited to:

4.7 (1) standards needed to maintain and operate an appellate counsel for parents program  
4.8 including requirements regarding the qualifications, training, and size of the legal and  
4.9 supporting staff for an appellate counsel program;

4.10 (2) standards for appellate counsel caseloads;

4.11 (3) standards and procedures for the eligibility of appointment, assessment, and collection  
4.12 of the costs for legal representation provided by appellate counsel;

4.13 (4) standards for contracts between contracted appellate counsel and the state appellate  
4.14 counsel program for the legal representation of indigent persons;

4.15 (5) standards prescribing minimum qualifications of counsel appointed under the board's  
4.16 authority or by the courts; and

4.17 (6) standards ensuring the independent, competent, and efficient representation of clients  
4.18 whose cases present conflicts of interest.

4.19 (e) The board may:

4.20 (1) propose statutory changes to the legislature and rule changes to the supreme court  
4.21 that are in the best interests of the operation of the appellate counsel for parents program;  
4.22 and

4.23 (2) require the reporting of statistical data, budget information, and other cost factors  
4.24 by the appellate counsel for parents program.

4.25 Subd. 5. **Limitation.** In no event shall the board or its members interfere with the  
4.26 discretion, judgment, or zealous advocacy of counsel in their handling of individual cases  
4.27 as a part of the judicial branch of government.

4.28 Subd. 6. **Budget; county opt-in.** The establishment of the office and its employees and  
4.29 support staff and the board shall be funded by the state of Minnesota. Minnesota counties  
4.30 may individually choose to utilize this office to provide appellate representation to indigent  
4.31 parents in their county who are seeking an appeal.

5.1 Subd. 7. **Collection of costs; appropriation.** If any of the costs provided by appellate  
5.2 counsel are assessed and collected or otherwise reimbursed from any source, payments shall  
5.3 be transferred to the commissioner of management and budget for deposit in the special  
5.4 revenue fund and credited to a separate account for the State Board of Appellate Counsel  
5.5 for Parents. The amount credited to this account is appropriated to the State Board of  
5.6 Appellate Counsel for Parents. The balance of this account does not cancel but is available  
5.7 until expended.