

Bill as
Introduced

HB 634-FN - AS INTRODUCED

2011 SESSION

11-0824
09/05

HOUSE BILL

634-FN

AN ACT relative to payment of guardian ad litem and mediator fees in marital cases where the parties are indigent.

SPONSORS: Rep. G. Richardson, Merr 4; Sen. Houde, Dist 5

COMMITTEE: Children and Family Law

ANALYSIS

This bill abolishes a special fund for compensation of mediators and guardians ad litem in marital cases where the parties are indigent. The bill also repeals an obsolete provision regarding the regulation of guardians ad litem by the supreme court.

This bill was requested by the supreme court.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struckthrough~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 634-FN - AS INTRODUCED

11-0824
09/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to payment of guardian ad litem and mediator fees in marital cases where
the parties are indigent.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Repayment of Mediator Fees by Indigent Parties. Amend RSA 461-A:7, X to read as follows:

2 X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her
3 services. The amount of the fee shall be set annually by supreme court rule. The court may order
4 each party to pay a proportional amount of said fee. The fee shall be paid [~~from the special fund~~
5 ~~established pursuant to RSA 461-A:17]~~ **by the judicial council** and repaid by the parties in
6 accordance with RSA 461-A:18, **including fees for pre-suit marital mediation authorized**
7 **pursuant to RSA 490-E:2, V.**

8 2 Repayment of Guardian Ad Litem Fees by Indigent Parties. Amend RSA 461-A:16, IV to read
9 as follows:

10 IV. The fees for services for the guardian ad litem and others utilized by the guardian and
11 approved by the court shall be a charge against the parties in a proportional amount as the court
12 may determine. Where the parties are indigent, compensation for guardians ad litem and others
13 utilized by the guardian and approved by the court shall be based upon the applicable fee schedule
14 established by the supreme court for indigent defense counsel **and shall be paid by the judicial**
15 **council and repaid by the parties in accordance with RSA 461-A:18.**

16 3 Repayment of Mediator and Guardian Ad Litem Fees. Amend RSA 461-A:18, I to read as
17 follows:

18 I. In any case where a mediator has been appointed pursuant to RSA 461-A:7 or a guardian
19 ad litem has been appointed pursuant to RSA 461-A:16 and the responsible party's proportional
20 share of the expense is ordered to be paid by the judicial council [~~from the special fund established~~
21 ~~pursuant to RSA 461-A:17]~~, the party shall be ordered by the court to repay the state through the
22 unit of cost containment, office of administrative services, the fees and expenses paid on the party's
23 behalf as the court may order consistent with the party's ability to pay, such ability to be determined
24 by the unit of cost containment.

25 4 Repeal. The following are repealed:

26 I. RSA 6:12, I(b)(81), relative to moneys deposited in the mediator and guardian ad litem fund.

27 II. RSA 461-A:16, VI, relative to regulation of guardians ad litem by the supreme court.

28 III. RSA 461-A:17, relative to a special fund for compensation of mediators and guardians ad
29 litem.

30 5 Effective Date. This act shall take effect July 1, 2011.

HB 634-FN - AS INTRODUCED
- Page 2 -

LBAO
11-0824
01/20/11

HB 634-FN - FISCAL NOTE

AN ACT relative to payment of guardian ad litem and mediator fees in marital cases where
the parties are indigent.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

Amendments

Amendment to HB 634-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Repayment of Mediator Fees by Indigent Parties. Amend RSA 461-A:7, X to read as follows:

4 X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her
5 services. The amount of the fee shall be set annually by supreme court rule. The court may order
6 each party to pay a proportional amount of said fee. The fee shall be paid from the ~~[special fund~~
7 ~~established pursuant to RSA 461-A:17]~~ **mediation and arbitration fund established in RSA**
8 **490-E:4** and repaid by the parties in accordance with RSA 461-A:18, **including fees for pre-suit**
9 **marital mediation authorized pursuant to RSA 490-E:2, V. The supreme court shall**
10 **determine by rule a percentage amount of the entry fee paid to each clerk of court for each**
11 **petition in domestic relations cases to be deposited into the mediation and arbitration**
12 **fund to be used to pay for mediation where both parties are indigent. At no time shall the**
13 **percentage amount exceed 25 percent of the entry fee for each petition.**

14 2 Repayment of Guardian Ad Litem Fees by Indigent Parties. Amend RSA 461-A:16, IV to read
15 as follows:

16 IV. The fees for services for the guardian ad litem and others utilized by the guardian and
17 approved by the court shall be a charge against the parties in a proportional amount as the court
18 may determine. ~~[Where the parties are indigent, compensation for guardians ad litem and others~~
19 ~~utilized by the guardian and approved by the court shall be based upon the applicable fee schedule~~
20 ~~established by the supreme court for indigent defense counsel.]~~

21 3 Repayment of Mediator and Guardian Ad Litem Fees. Amend RSA 461-A:18, I to read as
22 follows:

23 I. In any case where a mediator has been appointed pursuant to RSA 461-A:7 or a guardian
24 ad litem has been appointed pursuant to RSA 461-A:16 and the responsible party's proportional
25 share of the expense ~~[is]~~ **was** ordered to be paid by the judicial council from the **prior** special fund
26 established pursuant to RSA 461-A:17 **or is ordered to be paid by the judicial branch from the**
27 **mediation and arbitration fund pursuant to RSA 490-E:4**, the party shall be ordered by the
28 court to repay the state through the unit of cost containment, office of administrative services, the
29 fees and expenses paid on the party's behalf as the court may order consistent with the party's
30 ability to pay, such ability to be determined by the unit of cost containment.

31 4 Mediation and Arbitration Fund. Amend RSA 490-E:4, I(a) to read as follows:

32 (a) All moneys collected pursuant to **RSA 461-A:7, X**, RSA 490:27, II, RSA 490-D:12, III,

Amendment to HB 634-FN

- Page 2 -

1 RSA 503:4, II, and RSA 502-A:28, III.

2 5 Liability for Expenses. RSA 461-A:17 is repealed and reenacted to read as follows:

3 461-A:17 Guardians Ad Litem and Mediators; Liability for Expenses. The judicial council shall
4 have no responsibility for the payment of the costs of a mediator or guardian ad litem for any party
5 under this chapter.

6 6 Repeal. The following are repealed:

7 I. RSA 6:12, I(b)(81), relative to moneys deposited in the mediator and guardian ad litem
8 fund.

9 II. RSA 461-A:16, VI, relative to regulation of guardians ad litem by the supreme court.

10 7 Effective Date. This act shall take effect July 1, 2011.

2011-1753s

AMENDED ANALYSIS

This bill abolishes a special fund for compensation of mediators and guardians ad litem in marital cases where the parties are indigent and requires that such compensation be paid from the mediation and arbitration fund. The bill requires the supreme court to determine by rule a percentage amount of the entry fee for each petition in domestic relations cases to be deposited into the mediation and arbitration fund. The bill also repeals an obsolete provision regarding the regulation of guardians ad litem by the supreme court.

This bill was requested by the supreme court.

Amendment to HB 634-FN

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to payment of guardian ad litem and mediator fees in marital cases where
4 the parties are indigent and relative to standards of practice for non-certified
5 guardians ad litem.
6

7 Amend the bill by replacing all after the enacting clause with the following:

8

9 1 Repayment of Mediator Fees by Indigent Parties. Amend RSA 461-A:7, X to read as follows:

10 X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her
11 services. The amount of the fee shall be set annually by supreme court rule. The court may order
12 each party to pay a proportional amount of said fee. The fee shall be paid from the ~~[special fund~~
13 ~~established pursuant to RSA 461-A:17]~~ **mediation and arbitration fund established in RSA**
14 **490-E:4** and repaid by the parties in accordance with RSA 461-A:18, **including fees for pre-suit**
15 **marital mediation authorized pursuant to RSA 490-E:2, V. The supreme court shall**
16 **determine by rule a percentage amount of the entry fee paid to each clerk of court for each**
17 **petition in domestic relations cases to be deposited into the mediation and arbitration**
18 **fund to be used to pay for mediation where both parties are indigent. At no time shall the**
19 **percentage amount exceed 25 percent of the entry fee for each petition.**

20 2 Repayment of Guardian Ad Litem Fees by Indigent Parties. Amend RSA 461-A:16, IV to read
21 as follows:

22 IV. The fees for services for the guardian ad litem and others utilized by the guardian and
23 approved by the court shall be a charge against the parties in a proportional amount as the court
24 may determine. ~~[Where the parties are indigent, compensation for guardians ad litem and others~~
25 ~~utilized by the guardian and approved by the court shall be based upon the applicable fee schedule~~
26 ~~established by the supreme court for indigent defense counsel.]~~

27 3 Repayment of Mediator and Guardian Ad Litem Fees. Amend RSA 461-A:18, I to read as
28 follows:

29 I. In any case where a mediator has been appointed pursuant to RSA 461-A:7 or a guardian
30 ad litem has been appointed pursuant to RSA 461-A:16 and the responsible party's proportional
31 share of the expense [is] *was* ordered to be paid by the judicial council from the *prior* special fund
32 established pursuant to RSA 461-A:17 *or is ordered to be paid by the judicial branch from the*
33 *mediation and arbitration fund pursuant to RSA 490-E:4*, the party shall be ordered by the

Amendment to HB 634-FN
- Page 2 -

1 court to repay the state through the unit of cost containment, office of administrative services, the
2 fees and expenses paid on the party's behalf as the court may order consistent with the party's
3 ability to pay, such ability to be determined by the unit of cost containment.

4 4 Mediation and Arbitration Fund. Amend RSA 490-E:4, I(a) to read as follows:

5 (a) All moneys collected pursuant to *RSA 461-A:7, X*, RSA 490:27, II, RSA 490-D:12, III,
6 RSA 503:4, II, and RSA 502-A:28, III.

7 5 Liability for Expenses. RSA 461-A:17 is repealed and reenacted to read as follows:

8 461-A:17 Guardians Ad Litem and Mediators; Liability for Expenses. The judicial council shall
9 have no responsibility for the payment of the costs of a mediator or guardian ad litem for any party
10 under this chapter.

11 6 Repeal. RSA 6:12, I(b)(81), relative to moneys deposited in the mediator and guardian ad
12 litem fund, is repealed.

13 7 Parental Rights and Responsibilities; Non-Certified Guardians Ad Litem. Amend the
14 introductory paragraph of RSA 461-A:16, VI to read as follows:

15 VI. The supreme court shall provide the following relative to *non-certified* guardians ad
16 litem appointed pursuant to this section:

17 8 Effective Date. This act shall take effect July 1, 2011.

Amendment to HB 634-FN
- Page 3 -

2011-1784s

AMENDED ANALYSIS

This bill:

I. Abolishes a special fund for compensation of mediators and guardians ad litem in marital cases where the parties are indigent and requires that such compensation be paid from the mediation and arbitration fund.

II. Requires the supreme court to determine by rule a percentage amount of the entry fee for each petition in domestic relations cases to be deposited into the mediation and arbitration fund.

III. Requires the supreme court to adopt practice standards for non-certified guardians ad litem appointed in parental rights and responsibilities cases.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

Senator Matthew Houde Chairman
 Senator Sharon Carson V Chairman
 Senator Fenton Groen
 Senator Jim Luther

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: April 12, 2011

HEARINGS

Thursday

4/28/2011

JUDICIARY

LOB 101

1:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

1:00 PM	HB614	requiring a performance audit of the guardian ad litem board and guardian ad litem services.
1:15 PM	HB634-FN	relative to payment of guardian ad litem and mediator fees in marital cases where the parties are indigent.
1:30 PM	HB490-FN	adopting the interstate compact for juveniles.
1:45 PM	HB597	revising the child support guidelines based on an income shares model of calculating child support.
2:00 PM	HB225-FN	relative to the return of personal property confiscated by law enforcement agencies from a person charged with a crime.

Sponsors:

HB614

Rep. Mary Gile

Rep. Edward Moran

Rep. Franklin Gould

Rep. Julie Brown

HB634-FN

Rep. Gary Richardson

Sen. Matthew Houde

HB490-FN

Rep. Patricia Dowling

HB597

Rep. Edward Moran

Rep. Mary Gile

Sen. Sharon Carson

HB225-FN

Rep. J. Brandon Giuda

Rep. Alfred Baldasaro

Rep. Jennifer Coffey

Sen. John Barnes, Jr.

Rep. Jon Richardson

Rep. John McDonnell

Rep. Kevin Avar

Rep. Jeanine Notter

Rep. William Panek

Rep. Kenneth Kreis

Rep. Joseph Krasucki

Sen. Jeb Bradley

Susan Duncan 271-8631

Sen. Matthew Houde

Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, Senior Legislative Aide

RE: Hearing report on HB 634-FN – **relative to payment of guardian ad litem and mediator fees in marital cases where the parties are indigent.**

HEARING DATE: April 28, 2011

MEMBERS OF THE COMMITTEE PRESENT: Senators Houde, Carson, Groen and Luther

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Representative G. Richardson; Senator Houde

What the bill does: This bill abolishes a special fund for compensation of mediators and guardians ad litem in marital cases where the parties are indigent. The bill also repeals an obsolete provision regarding the regulation of Guardians ad Litem by the Supreme Court. This bill was requested by the Supreme Court.

Who supports the bill: Attorney Howard Zibel, Legal Counsel to the Judicial Branch and Supreme Court;

Who opposes the bill: Michael Puia

Others testifying: Representative G. Richardson; Nina Gardner on behalf of the Judicial Council

Summary of testimony received:

- **Representative Richardson** introduced the bill and explained that when Attorney Zibel asked him to bring it forward, it was a very simple bill – doing away with an obsolete fund. Since then, the world has turned upside down and has sought to unfund GALs. He said that Attorney Zibel has an amendment to propose.
- **Attorney Zibel** distributed copies of the language he asks that the Committee to consider adopting. He explained that originally the GAL Fund was to fund Guardians ad Litem in indigent cases and has generated around \$240,000 a year (with the exception of last year

when it raised \$289,000). However, the amount that has been paid out has reached \$1.2 million, causing Ms. Gardner to go and get a Warrant for the additional funds. He explained that a percentage of the filing fees in marital cases went into this fund. He said that they decided just to eliminate the fund and get rid of the requirement to do the bookkeeping and accounting in order to keep it simple.

- **Ms. Gardner** clarified that because it is a dedicated fund, she was also required to prepare a Dedicated Fund Report annually – and that this was a chance to get rid of it.
- **Attorney Zibel** noted that the Governor in his budget address proposed defunding Guardians ad Litem and Marital Mediators in indigent cases. He said that the Judicial Branch took no position regarding the loss of funding for GALs, but that they did come out in opposition to not funding Marital Mediators. He said that in a time when the courts are stressed, mediation helps them to provide an “off ramp” for some of these cases. He said that the cost of providing the mediators was \$54,000 last year – and that it will be higher this year, but still under \$100,000. He said that they approached House Finance Committee and asked them to take some amount of money from the GAL Fund and divert it to allow Marital Mediators. This means that \$289,000 will go to the OMA fund (Office of Mediation). He said that the House went along with this proposal and that it is section 68 in House Bill 2. He noted that thus far, the Senate has kept this in House Bill 2. This, he said, is section 1 of the bill.
- He said that if HB 634 can be a vehicle, then these sections can be removed from House Bill 2.
- He noted that IV is a technical section that makes I work (Section 70 of HB 2).
- Section 3 is revised from Section 69 of HB 2. He said that it deals with the collection of amounts that can be paid back and that there are three changes from House Bill 2:
 1. Allows Cost Containment to collect the GAL “tail” expenses that will come in over the next few months;
 2. Allows Cost Containment to collect moneys paid for Marital Mediators; and
 3. Corrects an error that had the Judicial Council paying and it should have been the Judicial Branch paying.
- He said that the Court hope to be more aggressive with mediation and want to expand these services to the “brought forward” cases.
- He said that Section 6 deals with three repeals in the original bill.
- He said that back in 2005, the GAL Board was given certification over GALS and that the court has control over GALs in the indigent cases so this section is no longer needed.
- **Ms. Gardner** noted that section 2, is Section 65 in HB 2, and removes GALs when parties are indigent in order to effectuate the needed budget cuts.

- She explained that they discussed the impact of necessary budget reductions and because she gets funds outside of the General Fund budget for these cases, eliminating these fund cases effectuates those needed savings.
- She said that the second piece, section 5, the liability of expenses, the Judicial Council has no responsibility. She said that there have been concerns that there will be some bills that may be caught – and noted that Judge Kelly has asked that the GALs get done with these cases. She said that she asked the Finance Committee to give her access to up to \$240,000 of the fund balance to pay these remaining bills. She said that any balance would lapse to the General Fund.
- **Ms. Gardner** explained that Cost Containment works with the parties over years to collect these moneys.
- **Senator Groen** reiterated the intent of the bill – to close the obsolete fund. **Attorney Zibel** agreed that this was the original bill but that now it has the intention that these expenses will no longer be paid at all (GALs in indigent cases). He said that their proposal was to take what was going into the fund and divert it to the Office of Mediation and Arbitration and this gives them the legislative authority to do so. This would allow them \$289,000 to keep alive Mediation for indigent cases.
- **Senator Houde**, in remarking about the previous hearing, asked if the other GALs would be going away. **Ms. Gardner** responded that CASA is being funded at 95% which will provide them with \$494,000 each year in the new budget. She said that the Judicial Council will not be paying for GALs in indigent cases at all – and noted that she has been paying these for about 15 years now.
- **Senator Houde**, in noting the difficult decisions being made, asked what happens if this doesn't pass, since it's already in House Bills 2. He asked why the decision to support Mediators as opposed to GALs. **Attorney Zibel** said that they thought that the policy committee should weigh in on these – and that they think this is a better vehicle than being in House Bill 2 – so they will ask that their sections be removed from that bill. He noted that Mediation helps to remove cases from the court system – and GALs do not do this. He said that in terms of doing more with fewer resources, Mediators accomplish more and GALs don't. **Ms. Gardner** concurred saying that an early report recommended using more mediation services and that this bill would accomplish that. **Attorney Zibel** noted that they may be slow learners as they came on board with mediators back in 2007. He said that this office was funded with \$134,500 for the first year and that they are self-funded.
- **Senator Groen** asked how they can be self-funded if they are diverting the \$289,000. **Attorney Zibel** responded that the funds come from a percentage of the filing fees.

- **Ms. Gardner** clarified that parties who are filing for divorce pay a portion to the fund. She noted that if you are not indigent, then you must pay for the mediation.
- **Senator Groen** noted that they are not just looking at a one-time funding, but an on-going basis.
- **Michael Puiia** testified that he echoes this that one gets a lot more bang with mediation. He noted that the Odyssey computer system does not tell you who was the GAL or mediator in cases – and that GALs cost a lot more than mediators. He said that generally one pays \$3,400 for mediation but a case with a GAL can be \$10,000 or even as high as \$60,000. He said that the mediation process is encouraging – that the mediator is not a third party whereas having a GAL in a case focuses on the negative.
- He remarked that right now, Judge Kelly has issued administrative order 2011 – 03 requiring all services of GALs in indigent cases shall cease. He said that if you're indigent, two years later, the fees can be shifted to you and it can snowball into a lot of costs for our courts and our state and used the example of someone who is incarcerated. He noted that Administrative Order 17 of the Superior Court gives the court the ability to reapportion costs.
- **Senator Houde** closed the hearing at 2:20 p.m.

Funding: See Fiscal Note.

Future Action: The Committee took the bill under advisement.

sfd

[file: HB 0634-FN report]

Date: April 29, 2011

Speakers

Testimony

Duncan, Susan

From: Raymond Foss [raymondafoss@gmail.com]
Sent: Thursday, April 21, 2011 2:12 PM
To: Merrill, Amanda; Sanborn, Andy; Odell, Bob; Morse, Chuck; Boutin, David; Groen, Fenton; Lambert, Gary; Barnes, Jack; Forsythe, James; Rausch, James; Forrester, Jeanie; Luther, Jim; Gallus, John; Houde, Matthew; Kelly, Molly; Stiles, Nancy; Bragdon, Peter; White, Raymond; Prescott, Russell; Carson, Sharon; Larsen, Sylvia; De Blois, Tom; Bradley, Jeb; D'Allesandro, Lou
Subject: Please fund GAL's and Mediators in indigent cases.
Attachments: Letter to NH Senate 04212011.doc

To the members of the NH Senate - Please see my attached letter, as a family law attorney. We need GAL's and Mediators in indigent cases. Please restore this funding in the budget you pass.

Thank you.

Sincerely,

Ray
Raymond A. Foss, Esq.
Poetry Where You Live
& Law Offices of Raymond A. Foss, PLLC
160 Main Street
Suncook, NH 03275-1206
(603) 973-2447
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<http://www.raymondafoss.blogspot.com>

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Raymond A. Foss, Esq.

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April 21, 2011

New Hampshire Senate
107 N. Main Street
Room 302 - State House
Concord, NH 03301

RE: NH State Budget, HB1 and HB2, etc.

To the Honorable Members of the New Hampshire Senate:

I am sending this follow up letter to the letter below which I sent three weeks ago. As a Christian and a family law attorney, who is very mindful that this is Holy Week, I feel I must speak out.

The likely budget cuts which you are being asked to consider are already having a significant effect on the least of our citizens. I have read with sadness the new order issued in two days ago in the Family Division, shutting down the essential Guardian ad Litem system for indigent parents, as of June 1, 2011. The official version is at: <http://www.courts.state.nh.us/fdpp/gal.htm>; but I have embedded the text below as well.

The need for Guardians ad Litem is in many cases most urgently needed in indigent cases, to do the kind of thorough investigation of the facts of the cases. Special education identification, involvement of agencies, mental health professionals, DCYF, DCSS, and many school officials seems to cluster in these families. The State will reap a whirlwind if this order becomes permanent under the Budget being reviewed.

Court cases will be more litigious as the parties argue more of what the GAL's sifted through in open court. Court cases will be longer as more witnesses have to be called to testify. Children will be hurt by temporary orders being in place longer.

STATE OF NEW HAMPSHIRE

Judicial Branch Family Division

ADMINISTRATIVE ORDER NUMBER 2011-03

Pending further order and effective immediately, in light of legislation that will, if signed into law, eliminate funding for Guardian ad Litem services in marital cases for indigent parents, it is ordered as follows:

Cases in which both parents are indigent (fund cases):

No Guardian ad Litem may be appointed in any new or reopened marital matter where both parents are indigent.

Guardians ad Litem in any such pending matter are directed to conclude their work and provide a report and final bill to the court no later than June 1, 2011.

Partial private pay/indigent fund:

No Guardian ad Litem may be appointed in any new or reopened marital matter in which one parent is indigent and the other is able to pay for the services of a Guardian ad Litem.

Guardians ad Litem in any such pending matter are directed to conclude their work and provide a final report and final bill to the court no later than June 1, 2011.

In the event the parties agree that the private pay parent will assume full liability for payment of the Guardian ad Litem services, the parties or the Guardian ad Litem may file a motion with the court requesting relief from this Administrative Order.

Private pay:

This order shall not apply to any case where the parties are personally liable for the full amount of the Guardian ad Litem services.

Dated: April 19, 2011 /s/ Edwin W. Kelly__

Edwin W. Kelly

Administrative Judge

Judicial Branch Family Division

There will be huge long-term negative consequences on our courts and the social fabric and our families if the funding is not found to maintain the Mediation and Guardian ad Litems for indigent cases in the Family Division.

I beg you to reconsider what the House passed.

Thank you.

Sincerely,

Raymond A. Foss, Esq.

HB 634

JUDICIAL BRANCH PROPOSED AMENDMENT

Senate Judiciary Committee
April 28, 2011

Amend the bill by replacing all after the enacting clause with the following:

1 Mediation of Cases Involving Children; Payment of Mediator Fees by Indigent Parties. Amend RSA 461-A:7, X to read as follows:

X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her services. The amount of the fee shall be set annually by supreme court rule. The court may order each party to pay a proportional amount of said fee. The fee shall be paid from the ~~[special fund established pursuant to RSA 461-A:17]~~ **mediation and arbitration fund established in RSA 490-E:4** and repaid by the parties in accordance with RSA 461-A:18, **including fees for pre suit marital mediation authorized pursuant to RSA 490-E:2, V. The supreme court shall determine by rule a percentage amount of the entry fee paid to each clerk of court for each petition in domestic relations cases to be deposited into the mediation and arbitration fund to be used to pay for mediation where both parties are indigent. At no time shall the percentage amount exceed 25 percent of the entry fee for each petition.**

2 Guardian ad Litem Fees. Amend RSA 461-A:16, IV to read as follows:

IV. The fees for services for the guardian ad litem and others utilized by the guardian and approved by the court shall be a charge against the parties in a proportional amount as the court may determine. ~~[Where the parties are indigent, compensation for guardians ad litem and others utilized by the guardian and approved by the court shall be based upon the applicable fee schedule established by the supreme court for indigent defense counsel.]~~

3 Repayment of Mediator and Guardian Ad Litem Fees. Amend RSA 461-A:18, I to read as follows:

I. In any case where a mediator has been appointed pursuant to RSA 461-A:7 or a guardian ad litem has been appointed pursuant to RSA 461-A:16 and the responsible party's proportional share of the expense **was [is]** ordered to be paid by the judicial council from the **prior** special fund established pursuant to RSA

461-A:17 or is ordered to be paid by the judicial branch from the special fund established pursuant to RSA 490-E:4, the party shall be ordered by the court to repay the state through the unit of cost containment, office of administrative services, the fees and expenses paid on the party's behalf as the court may order consistent with the party's ability to pay, such ability to be determined by the unit of cost containment.

4 Mediation and Arbitration Fund. Amend RSA 490-E:4, I(a) to read as follows:

(a) All moneys collected pursuant to **RSA 461-A:7, X**, RSA 490:27, II, RSA 490-D:12, III, RSA 503:4, II, and RSA 502-A:28, III.

5 Liability for Expenses. RSA 461-A:17 is repealed and reenacted to read as follows:

461-A:17 Guardians ad Litem and Mediators; Liability for Expenses. The judicial council shall have no responsibility for the payment of the costs of a mediator or guardian ad litem for any party under this chapter.

6 Repeal. The following are repealed:

I. RSA 6:12, I(b)(81), relative to moneys deposited in the mediator and guardian ad litem fund.

II. RSA 461-A:16, VI, relative to regulation of guardians ad litem by the supreme court.

7 Effective Date. This act shall take effect July 1, 2011.

CONCORD MONITOR

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Attorneys for needy parents cut

Accused must defend themselves

By [Maddie Hanna](#) / [Monitor staff](#)

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Parents who cannot afford an attorney to defend themselves against accusations of abusing or neglecting their children are no longer entitled to have one appointed.

The change in state law, which went into effect July 1, was prompted by budget cuts. It has child advocates as well as attorneys who represent parents in abuse and neglect cases worried that more children will be permanently removed from their homes.

"When the government starts treading on your rights, that's when you have the right to a lawyer," said Tracy Bernson, a Dover family lawyer. "That's what's so wrong about this."

The change was proposed by the Judicial Council, which pays the state's public defenders, contract attorneys and guardians ad litem, and also funds New Hampshire Legal Assistance and the Indigent Defense Fund.

Like other state agencies, the council was asked by Gov. John Lynch to cut its \$26 million budget by 5 percent this year, said Nina Gardner, its executive director.

That cut was actually deeper, Gardner said, because the council had gone over its budget by \$2.5 million the year before. Faced with that situation, Gardner said the council was forced to preserve its constitutional responsibilities - criminal representation - and instead propose cuts to those it considered statutory, including the representation of parents in abuse and neglect cases.

"They weren't cold-blooded decisions," Gardner said, noting that the council also proposed ending the practice of appointing guardians ad litem in marital

cases. Providing representation to accused parents in abuse and neglect cases costs about \$1.2 million a year, Gardner said. About 400 new cases are filed each year, with 1,000 cases open at any given time.

A complex process

Abuse and neglect cases begin with a report to the state Division for Children, Youth and Families. After investigating the claims, the department may bring a case against the parents in family court. Virtually all of the parents involved in abuse and neglect cases qualify for court-appointed attorneys, family lawyers said.

Parents go to court for a preliminary hearing, to be followed within 30 days by the family court equivalent of a trial. The state calls witnesses, whom the parents and their attorneys can cross-examine. They can also call their own witnesses to defend themselves against the allegations.

The judge will then decide what happens to the child - and what parents need to do to address the problems in their home. Review hearings are held regularly, giving attorneys a chance to show the judge that parents are complying with the court's conditions.

The process is complex and the stakes tremendous: After a series of review hearings, if the parents haven't complied, the state could move for a permanent termination of parental rights. And that begins another court case.

While the cases aren't criminal - sexual and serious physical abuse allegations are referred to the police - "if you asked any of these parents . . . they'd take incarceration as long as they could keep their children," said Nancy Popp, a family law attorney who practices in Strafford County. "That's how important it is to them."

Popp, who has been handling abuse and neglect cases for 22 years, said 80 percent of the parents she represents have trouble reading. Many have mental health and substance abuse issues, and "they're probably the most disadvantaged group in terms of self representation that one could get or find," she said.

Without a lawyer, parents accused of abuse likely won't know they can subpoena witnesses, or understand how to interpret the state statutes, Popp said. They may not think to call experts as witnesses - a doctor, for example, who could counter a state's witness in a case accusing a parent of breaking a child's bones.

"They'll be going in alone, with whatever their disabilities might be," Popp said of accused parents. "I just think it's outrageous."

Constitutional debate

Gardner said the council reviewed case law and decided that representation in abuse and neglect cases wasn't a constitutional right. She noted that parents will still be entitled to attorneys in termination of parental rights cases that follow abuse and neglect proceedings.

While New Hampshire had been providing a right to counsel in abuse and neglect cases, "that doesn't mean it's absolutely necessary, under federal or state precedent," Gardner said.

But that position is disputed by family law attorneys, including Vivek Sankaran, a law professor at the University of Michigan Law School who specializes in issues involving parents.

Sankaran said he believes New Hampshire parents do have a constitutional right to be represented in abuse and neglect cases based on the state Supreme Court decision affirming an accused stepparent's right to counsel.

New Hampshire is now one of about half a dozen states that do not guarantee lawyers for indigent parents in abuse and neglect cases, although unlike New Hampshire, the other states give a judge discretion to appoint attorneys, Sankaran said.

No state, however, has limited the right to counsel recently, Sankaran said, noting that the American Bar Association has a project to strengthen parent representation.

In New Hampshire, lawyers said they hope to bring the issue before the state Supreme Court. Family law attorney Kysa Crusco, who represents parents in abuse and neglect cases, said she's filing motions asking judges for permission to keep representing her clients and be paid for her work.

If they deny her motions, Crusco said she will appeal to the Supreme Court.

"Most of these families, they're not going to be perfect," Crusco said. "The kids aren't going to have the very best life they could."

"But they're their parents," she said. "And they have a fundamental, constitutional right under their state constitution to parent their children."

(Maddie Hanna can be reached at 369-3321 or mhanna@cmonitor.com.)

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Lightfoot Kysa Crusco Nina Gardner Tracy Bernson Maddie
Hanna Monitor staff

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Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: May 5, 2011

THE COMMITTEE ON Judiciary

to which was referred House Bill 634-FN

AN ACT relative to payment of guardian ad litem and mediator
fees in marital cases where the parties are indigent.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4 - 0

AMENDMENT # 1784s

Senator Matthew Houde
For the Committee

Danielle Barker 271-3091

New Hampshire General Court - Bill Status System

Docket of HB634

Docket Abbreviations

Bill Title: relative to payment of guardian ad litem and mediator fees in marital cases where the parties are indigent.

Official Docket of HB634:

Date	Body	Description
1/25/2011	H	Introduced 1/6/2011 and Referred to Children and Family Law; HJ 11 , PG. 194
2/9/2011	H	Public Hearing: 2/17/2011 11:00 AM LOB 206 ==Executive Session to Follow==
2/18/2011	H	Committee Report: Ought to Pass for Mar 2 (Vote 13-0; CC); HC 18 , PG.385
3/2/2011	H	Ought to Pass: MA VV; HJ 25 , PG.671-672
3/16/2011	S	Introduced and Referred to Judiciary
4/13/2011	S	Hearing: 4/28/11, Room 101, LOB, 1:15 p.m.; SC20
5/5/2011	S	Committee Report: Ought to Pass with Amendment #2011-1784s , NT, 5/11/11; SC23
5/11/2011	S	Committee Amendment 1784s, Not Voted On; SJ 16
5/11/2011	S	Sen. Houde Moved Laid on Table, MA, VV; SJ 16

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE

HEARING REPORT

PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S) (1)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1753s - AMENDMENT # _____
 - AMENDMENT # 1784s - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

DATE DELIVERED TO SENATE CLERK

7/21/11

BY:

Susan J. Deacon
COMMITTEE AIDE