

## BILL TEXT:

## STATE OF NEW YORK

6053

2005-2006 Regular Sessions

## IN ASSEMBLY

March 3, 2005

Introduced by M. of A. IGNIZIO, MIRONES -- Multi-Sponsored by -- M. of A. CALHOUN -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to making technical corrections thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 1201 of the civil practice law and rules, as  
2 amended by chapter 115 of the laws of 1981, is amended to read as  
3 follows:

4 § 1201. Representation of infant, incompetent person, or conservatee.  
5 Unless the court appoints a guardian ad litem, an infant shall appear by  
6 the guardian of his or her property or, if there is no such guardian, by  
7 a parent having legal custody, or, if there is no such parent, by another  
8 person or agency having legal custody, or, if the infant is married,  
9 by an adult spouse residing with the infant, a person judicially  
10 declared to be incompetent shall appear by the committee of his or her  
11 property, and a conservatee shall appear by the conservator of his or  
12 her property. A person shall appear by his or her guardian ad litem if  
13 he or she is an infant and has no guardian of his or her property,  
14 parent, or other person or agency having legal custody, or adult spouse  
15 with whom he or she resides, or if he or she is an infant, person judicially  
16 declared to be incompetent, or a conservatee [~~as defined in~~  
17 ~~section 77.01 of the mental hygiene law~~] and the court so directs  
18 because of a conflict of interest or for other cause, or if he or she is  
19 an adult incapable of adequately prosecuting or defending his or her  
20 rights.

21 § 2. Rule 1202 of the civil practice law and rules, subdivisions (a)  
22 and (b) as amended by chapter 115 of the laws of 1981, is amended to  
23 read as follows:

24 Rule[-] 1202. Appointment of guardian ad litem. (a) By whom motion  
25 made. The court in which an action is triable may appoint a guardian ad

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD08738-01-5

A. 6053

2

1 litem at any stage in the action upon its own initiative or upon the  
2 motion of:

3 1. an infant party if he or she is more than fourteen years of age; or

4 2. a relative, friend or a guardian, committee of the property, or  
5 conservator; or

6 3. any other party to the action if a motion has not been made under  
7 paragraph one or two of this subdivision within ten days after  
8 completion of service.

9 (b) Notice of motion. Notice of a motion for appointment of a guardian  
10 ad litem for a person shall be served upon the guardian of his or her  
11 property, upon his or her committee or upon his or her conservator, or  
12 if he or she has no such guardian, committee, or conservator, upon the  
13 person with whom he or she resides. Notice shall also be served upon the  
14 person who would be represented if he or she is more than fourteen years  
15 of age and has not been judicially declared to be incompetent.

16 (c) Consent. No order appointing a guardian ad litem shall be effec-  
17 tive until a written consent of the proposed guardian has been submitted  
18 to the court together with an affidavit stating facts showing his or her  
19 ability to answer for any damage sustained by his or her negligence or  
20 misconduct.

21 § 3. Section 1203 of the civil practice law and rules is amended to  
22 read as follows:

23 § 1203. Default judgment. No judgment by default may be entered  
24 against an infant or a person judicially declared to be incompetent  
25 unless his or her representative appeared in the action or twenty days  
26 have expired since appointment of a guardian ad litem for him or her. No  
27 default judgment may be entered against an adult incapable of adequately  
28 protecting his or her rights for whom a guardian ad litem has been  
29 appointed unless twenty days have expired since the appointment.

30 § 4. Section 1206 of the civil practice law and rules, as amended by  
31 chapter 115 of the laws of 1981, the opening paragraph as amended by  
32 chapter 635 of the laws of 1988, subdivision (b) as amended by chapter  
33 205 of the laws of 1995 and subdivision (c) as amended by chapter 464 of  
34 the laws of 1995, is amended to read as follows:

35 § 1206. Disposition of proceeds of claim of infant, judicially  
36 declared incompetent or conservatee. [~~Except as provided in EPTL 7-4.9,~~  
37 ~~any~~] Any property to which an infant, a person judicially declared to be  
38 incompetent or a conservatee is entitled, after deducting any expenses  
39 allowed by the court, shall be distributed to the guardian of his or her  
40 property, the committee of his or her property or conservator to be held  
41 for the use and benefit of such infant, incompetent, or conservatee  
42 except that:

43 (a) in the case of an infant who is married to and resides with an  
44 adult spouse, the court may order that the property be distributed to  
45 such adult spouse for the use and benefit of the infant; or

46 (b) if the value of the property does not exceed ten thousand dollars  
47 the court may order the property distributed to a person with whom such  
48 infant, incompetent or conservatee resides or who has some interest in  
49 his or her welfare to be held for the use and benefit of such infant,  
50 incompetent or conservatee; or

51 (c) the court may order that money constituting any part of the prop-  
52 erty be deposited in one or more specified insured banks or trust compa-  
53 nies or savings banks or insured state or federal credit unions or be  
54 invested in one or more specified accounts in insured savings and loan  
55 associations, or it may order that a structured settlement agreement be  
56 executed, which shall include any settlement whose terms contain

A. 6053

3

1 provisions for the payment of funds on an installment basis, provided  
2 that with respect to future installment payments, the court may order  
3 that each party liable for such payments shall fund such payments, in an  
4 amount necessary to assure the future payments, in the form of an annui-  
5 ty contract executed by a qualified insurer and approved by the super-  
6 intendent of insurance pursuant to articles fifty-A and fifty-B of this  
7 chapter. The court may elect that the money be deposited in a high  
8 interest yield account such as an insured "savings certificate" or an  
9 insured "money market" account. The court may further elect to invest  
10 the money in one or more insured or guaranteed United States treasury or  
11 municipal bills, notes or bonds. This money is subject to withdrawal  
12 only upon order of the court, except that no court order shall be  
13 required to pay over to the infant who has attained the age of eighteen  
14 years all moneys so held unless the depository is in receipt of an order  
15 from a court of competent jurisdiction directing it to withhold such  
16 payment beyond the infant's eighteenth birthday. Notwithstanding the  
17 preceding sentence, the ability of an infant who has attained the age of  
18 eighteen years to accelerate the receipt of future installment payments  
19 pursuant to a structured settlement agreement shall be governed by the  
20 terms of such agreement. The reference to the age of twenty-one years in  
21 any order made pursuant to this subdivision or its predecessor, prior to  
22 September first, nineteen hundred seventy-four, directing payment to the  
23 infant without further court order when he or she reaches the age of  
24 twenty-one years, shall be deemed to designate the age of eighteen  
25 years; or

26 (d) the court may order that the property be held for the use and  
27 benefit of such infant, incompetent or conservatee as provided by subdi-  
28 vision (d) of [~~section~~] rule 1210.

29 § 5. Rule 1208 of the civil practice law and rules, as amended by  
30 chapter 844 of the laws of 1968, is amended to read as follows:

31 Rule 1208. Settlement procedure; papers; representation.

32 (a) Affidavit of infant's or incompetent's representative. An affida-  
33 vit of the infant's or incompetent's representative shall be included in  
34 the supporting papers and shall state:

35 1. his or her name, residence and relationship to the infant or incom-  
36 petent;

37 2. the name, age and residence of the infant or incompetent;

38 3. the circumstances giving rise to the action or claim;

39 4. the nature and extent of the damages sustained by the infant or  
40 incompetent, and if the action or claim is for damages for personal  
41 injuries to the infant or incompetent, the name of each physician who  
42 attended or treated the infant or incompetent or who was consulted, the  
43 medical expenses, the period of disability, the amount of wages lost,  
44 and the present physical condition of the infant or incompetent;

45 5. the terms and proposed distribution of the settlement and his or  
46 her approval of both;

47 6. the facts surrounding any other motion or petition for settlement  
48 of the same claim, of an action to recover on the same claim or of the  
49 same action;

50 7. whether reimbursement for medical or other expenses has been  
51 received from any source; and

52 8. whether the infant's or incompetent's representative or any member  
53 of the infant's or incompetent's family has made a claim for damages  
54 alleged to have been suffered as a result of the same occurrence giving  
55 rise to the infant's or incompetent's claim and, if so, the amount paid

A. 6053

4

1 or to be paid in settlement of such claim or if such claim has not been  
2 settled the reasons therefor.

3 (b) Affidavit of attorney. If the infant or incompetent or his or her  
4 representative is represented by an attorney, an affidavit of the attor-  
5 ney shall be included in the supporting papers and shall state:

6 1. his or her reasons for recommending the settlement;

7 2. that directly or indirectly he or she has neither become concerned  
8 in the settlement at the instance of a party or person opposing, or with  
9 interests adverse to, the infant or incompetent nor received nor will  
10 receive any compensation from such party, and whether or not he or she  
11 has represented or now represents any other person asserting a claim  
12 arising from the same occurrence; and

13 3. the services rendered by him or her.

14 (c) Medical or hospital report. If the action or claim is for damages  
15 for personal injuries to the infant or incompetent, one or more medical  
16 or hospital reports, which need not be verified, shall be included in  
17 the supporting papers.

18 (d) Appearance before court. On the hearing, the moving party or peti-  
19 tioner, the infant or incompetent, and his or her attorney shall attend  
20 before the court unless attendance is excused for good cause.

21 (e) Representation. No attorney having or representing any interest  
22 conflicting with that of an infant or incompetent may represent the  
23 infant or incompetent.

24 (f) Preparation of papers by attorney for adverse party. If the infant  
25 or incompetent is not represented by an attorney the papers may be  
26 prepared by the attorney for an adverse party or person and shall state  
27 that fact.

28 § 6. Rule 1210 of the civil practice law and rules, as amended by  
29 judicial conference proposal number 2 for the year 1969, subdivision (d)  
30 as amended by chapter 464 of the laws of 1995, is amended to read as  
31 follows:

32 Rule 1210. Guardian of infant. (a) Petition for appointment; by whom  
33 presented; contents. An infant, if of the age of fourteen years or more,  
34 or a relative or friend of an infant, may present a petition to the  
35 court for appointment of a guardian. The petition shall state the age  
36 and residence of the infant, the name and residence of any living parent  
37 and of the person proposed as guardian, the relationship if any which  
38 such person bears to the infant, and the nature, status and value of the  
39 infant's estate.

40 (b) Hearing. The court shall ascertain the age of the infant, the  
41 amount of his or her personal property, the gross amount or value of the  
42 rents and profits of his or her real estate during his or her minority,  
43 and the sufficiency of the security offered by the proposed guardian. If  
44 the infant is of the age of fourteen years or more, the court shall  
45 examine him or her as to his or her voluntary nomination of or prefer-  
46 ence for a suitable guardian; if he or she is under the age of fourteen,  
47 the court shall select and appoint a suitable guardian.

48 (c) Undertaking. The court shall make an order requiring or dispensing  
49 wholly or partly with an undertaking, in an amount and according to the  
50 conditions set forth in section seventeen hundred eight of the surro-  
51 gate's court procedure act.

52 (d) Direction as to management of estate. The court in its discretion  
53 may direct that the principal of the estate or any part of it be  
54 invested in bonds of the state of New York or of the United States, or  
55 invested in bonds or other obligations of any county, city, town,  
56 village or school district of the state of New York, or deposited with

A. 6053

5

1 any bank, trust company, insured savings and loan association or insured  
2 savings bank or insured state or federal credit union which has been  
3 designated as a depository for such fund; or invested in a bond and  
4 mortgage on unincumbered and improved property within the state, having  
5 a value, to be shown to the satisfaction of the court, of at least  
6 double the amount of principal invested, for the benefit of the infant,  
7 and may direct that only the interest or income be received by the guar-  
8 dian.

9 (e) Filing of certified copy of order of appointment. Upon the  
10 appointment of a guardian of the person or property, or both, of an  
11 infant, the guardian shall file a certified copy of the order of his or  
12 her appointment with the clerk of the surrogate's court of the county in  
13 which he or she has been appointed.

14 § 7. Rule 1211 of the civil practice law and rules, subdivision (a) as  
15 amended by chapter 276 of the laws of 1972, is amended to read as  
16 follows:

17 Rule 1211. Allowance for infant's support. (a) Petition to supreme  
18 court, county court or surrogate's court; contents. A petition to the  
19 supreme court, county court or the surrogate's court for the application  
20 of an infant's property or a portion thereof to the infant's support,  
21 maintenance or education shall set forth in detail:

22 1. the amount and nature of the infant's property, where it is situ-  
23 ated and how invested, his or her income from such property or any other  
24 source and any claim against the infant;

25 2. whether or not the infant's parents are living and, if either of  
26 them is living, all circumstances relative to their ability to support  
27 the infant, and, if neither of them is living, the names of other  
28 persons legally obligated to support the infant and the circumstances  
29 relative to their ability to support the infant; and

30 3. the terms of any previous order made by any court within or without  
31 the state for similar relief and the disposition made of any property  
32 pursuant thereto.

33 (b) Notice. Such notice as the court shall direct shall be given to:

34 1. the guardian of the property of the infant, if the petition is  
35 presented by a person other than such guardian;

36 2. the infant's father if he is living or, if not, then to the  
37 infant's mother or, if neither parent is living, then to the person with  
38 whom the infant resides; and

39 3. the infant if he or she is of the age of fourteen years or more.

40 § 8. This act shall take effect immediately.

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**SPONSORS MEMO:**

**NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(e)**

**BILL NUMBER:** A6053

**SPONSOR:** Ignizio (MS)

**TITLE OF BILL:** An act to amend the civil practice law and rules, in  
relation to making technical corrections thereto

**PURPOSE OR GENERAL IDEA OF BILL:** Makes article 12 of the civil prac-  
tice law and rules gender neutral.

RETRIEVE BILL

SUMMARY OF SPECIFIC PROVISIONS: Inserts the word "her" or "she" where appropriate.

JUSTIFICATION:To article 12 of the civil practice law and rules gender neutral.

PRIOR LEGISLATIVE HISTORY: 2004: A7294

FISCAL IMPLICATIONS: NONE

EFFECTIVE DATE: This act shall take effect immediately

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