

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 726
SENATE BILL 429

AN ACT TO PROVIDE PAYMENT FOR ATTORNEYS OR GUARDIANS AD LITEM FOR CERTAIN PERSONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding four new sections to read:

"§ 7A-450.1. Responsibility for payment by certain fiduciaries. – It is the intent of the General Assembly that, whenever possible, if an attorney or guardian ad litem is appointed pursuant to G.S. 7A-451 for a person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian, the parent, guardian, or any trustee in possession of funds or property for the benefit the person, shall reimburse the State for the attorney or guardian ad litem fees, pursuant to the procedures established in G.S. 7A-450.2 and G.S. 7A-450.3. This section shall not apply in any case in which the person for whom an attorney or guardian ad litem is appointed prevails.

"§ 7A-450.2. Determination of fiduciaries at indigency determination; summons; service of process. – At the same time as a person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian is determined to be indigent, and has an attorney or guardian ad litem appointed pursuant to G.S. 7A-451, the court shall determine the identity and address of the parent, guardian or any trustee in possession of funds or property for the benefit of the person. The court shall issue a summons to the parent, guardian or trustee to be present at the dispositional hearing or the sentencing hearing or other appropriate hearing and to be a party to these hearings for the purpose of being determined responsible for reimbursing the State for the person's attorney or guardian ad litem fees, or to show cause why he should not be held responsible.

Both the issuance of the summons and the service of process shall be pursuant to G.S. 1A-1, Rule 4.

"§ 7A-450.3. Determination of responsibility at hearing. – At the dispositional, sentencing or other hearing of the person who is less than 18 years old or who is at least 18 years old but remains dependent on and domiciled with a parent or guardian, the court shall make a determination whether the parent, guardian or trustee should be held responsible for reimbursing the State for the person's attorney or guardian ad litem fees. This determination shall include the financial situation of the parent, guardian or trustee, the relationship of responsibility the parent, guardian or trustee bears to the person and any showings by the parent, guardian or trustee that the person is emancipated or not

dependent. The test of the party's financial ability to pay is the test applied to appointment of an attorney in cases of indigency. Any provision of any deed, trust or other writing, which, if enforced, would defeat the intent or purpose of this section is contrary to the public policy of this State and is void insofar as it may apply to prohibit reimbursement to the State.

If the court determines that the parent, guardian or trustee is responsible for reimbursing the State for the attorney or guardian ad litem fees, the court shall so order. If the party does not comply with the order within 90 days, the court shall file a judgment against him for the amount due the State.

"§ 7A-450.4. Exemptions. – G.S. 7A-450.1, G.S. 7A-450.2 and G.S. 7A-450.3 do not authorize the court to require the Department of Human Resources or any county Department of Social Services to reimburse the State for fees."

Sec. 2. G.S. 7A-588 is amended in the first sentence by inserting between the words "Article" and "shall" the phrase "or pursuant to any other provision of the Juvenile Code".

Sec. 3. G.S. 7A-588 is further amended by deleting the second and third sentences and by substituting the following to read: "The judge may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, G.S. 7A-450.2 and G.S. 7A-450.3. In no event shall the parent or guardian be required to pay the fees for an attorney or guardian ad litem in an abuse or neglect proceeding unless abuse or neglect has been found to have occurred."

Sec. 4. This act shall become effective October 1, 1983, and applies to appointments of attorneys or guardians ad litem on or after this date.

In the General Assembly read three times and ratified, this the 11th day of July, 1983.