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**MEMORANDUM**

To: Chief District Court Judges  
District Court Judges  
Clerks of Superior Court

From: Jo Bernard McCants *JBM*  
Associate Legal Counsel

Re: Underage Marriages

The North Carolina General Assembly enacted House Bill 142 (Amend Marriage Laws) (S. L. 2001-62) during the 2001 legislative session. The provisions of the bill become effective October 1, 2001. Some of the provisions relate exclusively to the duties and responsibilities of the register of deeds and will have no impact on the courts. However, the bill contains several provisions relating to the ability of certain children over the age of 14 but less than 16 to obtain court authorization to marry. These provisions will impact the district court and are addressed below.

**Who may marry under the new law?**

Under G.S. 51-2A, an unmarried female who is more than 14 years of age, but less than 16 years of age and is pregnant or has given birth may apply to the district court for authorization to be married. Similarly, an unmarried male who is more than 14 years of age, but less than 16 years of age and is the putative father of a child, either born or unborn, may apply to the district court for authorization to marry. If both parents are more than 14 years of age, but less than 16 years of age, each of the parents must agree to the marriage before petitioning the court for authorization to marry.

**What is the procedure for seeking the court's authorization to marry?**

The underage party (plaintiff) must file a civil action in the district court requesting judicial authorization to marry. The clerk is required to appoint an  
(over)

attorney as guardian ad litem for the plaintiff in accordance with G.S. 1A-1, Rule 17, upon the filing of the complaint. The costs of filing a civil action must be paid at the time the action is filed unless the plaintiff is allowed to file as an indigent. The plaintiff must serve a copy of the summons and complaint in accordance to G.S. 1A-1, Rule 4, on the father of the plaintiff, the mother of the plaintiff, and any other person, agency, or institution having legal custody or serving as a guardian of the plaintiff. The plaintiff must also serve a copy of the complaint in accordance with G.S. 1A-1, Rule 4, or G.S. 1A-1, Rule 5, on the guardian ad litem appointed by the clerk to assist the plaintiff in the action. (Note: Parties to the action are not entitled to court appointed counsel. Each underage party must bring a separate action to obtain authorization to marry.)

### **What are the duties and responsibilities of the guardian ad litem?**

The guardian ad litem must represent the best interest of the plaintiff. The guardian ad litem must determine the facts of the case, the needs of the plaintiff, the available resources within the family and community to meet those needs, the impact of the marriage on the plaintiff, and the ability of the plaintiff to assume the responsibilities of marriage. In addition, the guardian ad litem must offer evidence and examine witnesses during the hearing. The guardian ad litem is authorized to obtain any information or reports, whether or not confidential, that the guardian deems relevant to the case. (Note: The guardian ad litem will receive compensation for services in accordance with rules adopted by the Office of Indigent Defense Services.)

### **What are the duties and responsibilities of the presiding judge?**

A district court judge may issue an order authorizing a marriage under the new law only upon finding as fact and concluding as a matter of law that the plaintiff is capable of assuming the responsibilities of marriage and the marriage will serve the best interest of the plaintiff. In making this determination, the court must consider the following:

- (1) The opinion of the parents of the underage party as to whether the marriage serves the best interest of the underage party.
- (2) The opinion of any person, agency, or institution having legal custody or serving as a guardian of the underage party as to whether the marriage serves the best interest of the underage party.
- (3) The opinion of the guardian ad litem appointed to represent the best interest of the underage party pursuant to G.S. 51-2A(b) as to whether the marriage serves the best interest of the underage party.
- (4) The relationship between the underage party and the parents of the underage party, as well as the relationship between the underage

party and any person having legal custody or serving as a guardian of the underage party.

(5) Any evidence that it would find useful in making its determination.

There is a rebuttable presumption that the marriage will not serve the best interest of the plaintiff when all living parents of the plaintiff oppose the marriage. In addition, the fact that the female is pregnant, or has given birth, alone does not establish that it would be in the best interest of the plaintiff to authorize the marriage. If the court denies the plaintiff's motion to marry, the plaintiff must wait one year from the date of the entry of judgment before seeking authorization from another court. There is no right of appeal.

I hope that you find this information helpful. If you have any questions, please feel free to contact me at (919) 733-7107 or [Jo.McCants@aoc.state.nc.us](mailto:Jo.McCants@aoc.state.nc.us).

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