

“Court-Appointed Lawyers Representing Children”

In January 2007, the Court of Appeals of Maryland, on recommendation by the Standing Committee on Rules of Practice and Procedure, made changes to the existing laws concerning the appointment of “Guardians *ad litem*” for children in divorce cases by creating Rule 9-205.1.

Like *guardians ad litem*, court-appointed lawyers represent the interests of the minor children in high-conflict custody cases, many of which involve abuse, neglect, juvenile delinquency, and/or dependency. Also like *guardians ad litem*, these lawyers have no duty to the parents involved in these cases due to potential conflicts of interest.

However, under the new rules in Maryland, there are now three types of lawyers for children instead of one *guardian ad litem*, performing the necessary tasks in representing children in these cases:

- The Child’s Best Interest Attorney (“BIA”) represents the child’s best interest, but is not bound by the child’s directives or objectives. They are permitted to disclose confidential information if it is in the child’s best interest. While they do not testify in court, the BIA visits and gets to know the child; makes an independent assessment of the situation; compiles their findings; makes a recommendation to the court via pleadings and motions; participates in settlement negotiations and trial; and familiarizes the child with the places, people, procedures, and questioning they might be exposed to during the process.
- The Child’s Advocate Attorney (“CAA”) serves as the voice of the child in court and informs the court of the child’s wishes and requests. The CAA makes sure that the child has the capacity to consider and understand the court process and the outcome of their case. The CAA also visits and gets to know the child; makes the child’s preferences known to the court via pleadings and motions; participates in settlement negotiations and trial; and familiarizes the child with the places, people, procedures, and questioning they might be exposed to during the process.
- The Child’s Privilege Attorney (“CPA”) is appointed to waive or assert certain privileges on behalf of the child since the child’s parent is involved in the litigation and therefore precluded from waiving those privileges. The CPA meets and interviews the child; advises the child of the limited scope of his representation; interviews witnesses to determine when to assert or waive the privilege; and reviews the child’s mental, educational, medical and other records.

Rule 9-205.1 requires that a court order appointing a child’s lawyer specify which of the three roles they are taking. The changes in the law also allow the lawyer to participate in discovery and other civil procedures on behalf of the child.

Lawyers who take on representation of a child must be a member of the Maryland bar (or

otherwise approved by a judge), in good standing, have completed all required training, have at least three years of family law experience, and be willing to take at least one *pro bono* appointment as a child advocate per year. Unless waived by the Court, all they must also complete at least 6 hours of training in the representation guidelines, child development, communication skills, recognizing child abuse, domestic violence and neglect, family studies, substance abuse, and other related issues. The Courts' Administrative Offices will be sponsoring child counsel trainings across the state to educate and prepare Maryland attorneys for the new changes in the law.

In determining whether to appoint a lawyer for a child, courts consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment, as well as the following list of factors:

- 1) request of one or both parties;
- 2) high level of conflict;
- 3) inappropriate adult influence or manipulation;
- 4) past or current child abuse or neglect;
- 6) special physical, educational, or mental health needs of the child that require investigation or advocacy;
- 7) actual or threatened family violence;
- 8) alcohol or other substance abuse;
- 9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
- 10) relocation that substantially reduces the child's time with a parent, sibling, or both; and,
- 11) any other factor that the court considers relevant.

Lastly, and perhaps most controversially, the new law takes away a child's lawyer's ability to seek immunity in a malpractice suit against them. A lawyer's failure to follow a representation guideline does not itself give rise to a cause of action against a lawyer, nor does it create a presumption that the lawyer has breached a duty owed to the child. However, it does leave open the possibility that the lawyer could be sued in situations involving malpractice.

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