THE ROLES & RESPONSIBILITIES OF COURT APPOINTED ATTORNEYS IN TEXAS FAMILY LAW CASES

The court appointed attorney for a child in a Texas family court case can have a significant impact on what the court finds to be in the child's best interest.

When you are involved in a family law case, understanding and respecting the roles and responsibilities of court-appointed attorneys can help you better interact with them and increase the chance of positively affecting the outcome of your case.

WHEN WILL A COURT APPOINT AN ATTORNEY?

The court will usually appoint an attorney on behalf of a child in a family law case when it finds that the child's interests are not being represented by any other party to the case. This sometimes happens when the child's interest might not align with his or her guardian's interest.[1]

In some situations, the court is *required* to appoint an attorney for a child. These situations include cases involving termination of parental rights and conservatorship (or child custody) cases filed by a governmental entity, such as the Texas Department of Family and Protective Services.[2]

TYPES OF COURT APPOINTED ATTORNEYS

Amicus Attorney

ROLE

- Provides the court with the legal services necessary to help protect a child's best interests [3]
- Does not provide legal services *to the child* [3]
- Does not have an attorney-client relationship with the child, and the Amicus attorney may share confidential information from the child with the court in limited circumstances[4]
- Is not limited by the child's wishes or directions in what the Amicus attorney can recommend to the court as being in the child's best interests [4]

Attorney ad litem

ROLE

- Provides the child with legal services [5]
- Has a more traditional attorney-client relationship with the child [5]
- If the child can appropriately formulate a desire about what he or she wants to have happen in the case and express it, then the Attorney ad litem is required to do what the child wants [5]
- If the child cannot decide or express their objectives, or if it appears that the child has been improperly influenced or coached in what to say, then the Attorney ad litem determines what they believe is in the child's best interest and advocates that position on the child's behalf [7]

RESPONSIBILITIES OF A COURT APPOINTED ATTORNEY

The court appointed attorney assists the court in answering the question:

WHAT IS IN THE BEST INTEREST OF THE CHILD? [8]

In determining the "best interest" of the child, courts want to ensure that the child will live in a safe environment. Some of the factors that the court considers are: [9]

the ability of the parent/guardian to provide a safe environment

- the willingness of the parents to provide the child with a safe and stable environment
- the child's age and physical and mental well-being
- the degree of harm to the child
- the availability of an adequate social support system consisting of an extended family and friends to the child
- whether there is a history of abusive conduct or substance abuse by the child's family or other persons who access to the child's home
- whether the child is fearful of living in the child's home
- whether the child's family demonstrates adequate parenting skills

As soon as an attorney is appointed as Amicus or Ad Litem for a child, the attorney will:

- Be allowed to meet and spend time with the child [10]
- Talk privately with the child—without the parents present—about who they are, why they are there, and what the attorney's job is in order to determine what the child wants—all in an age appropriate manner [11]

- Have access to any of the child's medical, school, or other records that they may need to review in order to carry out their duties [12]
- Take part in the case like any other party and be present at any hearing or other event in the case

- Interview the other people involved in the child's life [13] (this may include parents, teachers, grandparents, babysitters, doctors, or anyone who the attorney determines has relevant information about the child's circumstances)
- Go into the child's home and school and meet with people who know the child's circumstances
- Bring this information back to the court

REMEMBER!

When you talk with the court appointed attorney, they cannot tell you confidential information that they learned from the child, so don't ask.[14]

The court appointed attorney cannot give you legal advice, which likely includes explaining the next steps in the process to you.[15]

As difficult as it might be, let the court appointed attorney do their job without interfering. As always, the best practice is to obtain your own attorney, and of course, follow their advice, as each case is unique.

SOURCES

[1] Tex. Fam. Code § 160.612.

[2] Tex. Fam. Code § 107.012.

[3] Tex. Fam. Code § 107.001(1); *O'Connor v. O'Connor*, 245 S.W.3d 511, 515 (Tex. App. —Houston [1st Dist.] 2007, no pet.) (trial court "is, in effect, the amicus attorney's client for a limited purpose").

[4] *In re Collins*, 242 S.W.3d 837, 847 (Tex. App.—Houston [14th Dist.] 2007, orig. proceeding).

[5] Tex. Fam. Code § 107.0131.

[6] Tex. Fam. Code § 107.003(a)(1)(B), 107.004(a)(2).

[7] Tex. Fam. Code § 107.008(b).

[8] Tex. Fam. Code § 153.002 ("The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child."); *see In re M.S.*, 115 S.W.3d 534, 547 (Tex. 2003); *see also Bukowski v. Bukowski*, 399 S.W.2d 528, 529 (Tex.1966).

[9] *In re Vogel*, 261 S.W.3d 917, 923-24 (Tex. App. —Houston [14th Dist.] 2008, no pet.) (citing *In re C.A.M.M.*, 243 S.W.3d 211, 221 (Tex. App.—Houston [14th Dist.] 2007, pet. denied)); *see also* Tex. Fam. Code § 263.307, (for infographic: https://statutes.capitol.texas.gov/Docs/FA/htm/FA.263.htm)

[10] Tex. Fam. Code § 107.006(a); § 107.006(a).

[11] Tex. Fam. Code § 107.003(a)(1)(B).

[12] Tex. Fam. Code § 107.003(a)(1)(D).

[13] Tex. Fam. Code § 107.003.

[14] Tex. Disciplinary Rules Prof'l Conduct R. 1.05(b), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtitl. G, app. A (Tex. State Bar R. art. X § 9).

[15] Tex. Disciplinary Rules Prof'l Conduct R. 4.03.

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