

Rule 39: Attorney for Child

(A) When Appointed

The court may, in its discretion, appoint an attorney for a minor child when necessary to protect the legal interests of a child in contested proceedings involving the allocation of parental rights and responsibilities. The appointment may be made on the court's own motion or upon the motion of:

- (1) A party;
- (2) The attorney for a party;
- (3) The court-appointed guardian ad litem.

(B) Nature of Representation

The attorney for a child shall provide independent legal representation as counsel of record for the child who shall be joined as a party defendant. The attorney for the child shall owe the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client in a traditional attorney-client relationship. The attorney for a child is not an attorney performing the role of a guardian ad litem appointed pursuant to Sup.R. 48.01-48.07.

The attorney for a child is subject to constraints on ex-parte communication; disclosure of client confidences and attorney work product; conflicts of interest; becoming a witness in the litigation and is otherwise bound by the requirements of the *Ohio Rules of Professional Conduct*.

The attorney for a child shall be served with all pleadings, motions, notices and other documents filed in the case and be provided with all documents exchanged in discovery. The attorney for a child shall be given notice of all hearings and other proceedings, in the same manner as service is made or notice is given to the parties to the action, consistent with rules and laws applicable to parties.

The attorney for a child shall become familiar with the *American Bar Association Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases (August 2003)*.

(C) Appointment considerations

The court shall not appoint an attorney to represent a child unless the court finds, at any stage in the proceedings, that the legal interests of the child are not adequately protected or represented by one of the parties. The court will not routinely appoint an attorney for a child.

If there is a conflict between the guardian ad litem's position and the child's preference, the court may appoint an attorney for the child.

In determining whether to make an appointment of an attorney for a minor child, the court shall consider the:

- (1) Nature and adequacy of the evidence to be presented by the parties and the availability of other methods of obtaining information, including social service organizations, guardians ad litem, and evaluations by mental health professionals;
- (2) Whether the child's attorney would be likely to provide the court with relevant evidence not otherwise readily available or likely to be presented;
- (3) The age and maturity of the child and whether the child is of sufficient reasoning ability to express wishes and desires;
- (4) Whether the child is competent to direct the terms of the representation;
- (5) Available resources for payment.

The court may consider the following factors:

- (1) Whether the issues of allocation of parental rights and parenting time are highly contested or protracted;
- (2) Whether the child is subjected to stress as a result of the dispute that might be alleviated by the intervention of counsel representing the child;
- (3) Whether the dispute involves allegations of physical, emotional, or sexual abuse or neglect of the child;
- (4) Whether the best interest of the child appears to require independent representation;
- (5) Whether the appointment would be helpful in resolving the issues of the case.

(D) Limited Scope of Appointment

The court may appoint an attorney for a child to address a specific issue or issues.

(E) Reappointment

The court will consider reappointing the same attorney for a specific child in any subsequent proceeding determining the best interest of the child.

(F) Eligibility to Serve

The Court maintains a public list of attorneys approved to represent a child.

To qualify to serve, an attorney must:

- (1) Be licensed, in good standing, by the Supreme Court of Ohio;
- (2) Be on the court's approved list of guardians ad litem; and
- (3) Maintain appropriate malpractice insurance.

(G) Appointments

The court will make appointments so as to ensure an equitable distribution of workload among the attorneys on the approved list. Equitable distribution means a system through which

appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among substantially all persons from the list maintained by the court.

The court may consider the complexity of the issues, parties, counsel, and the children involved, as well as the experience, expertise and demeanor of the available attorneys, including language, culture, and the special needs of a child in the following areas:

- (1) Child abuse;
- (2) Domestic violence;
- (3) Drug abuse of a parent or the child;
- (4) Mental health issues of a parent or the child;
- (5) Particular medical issues of the child;
- (6) Educational issues.

(I) Order of Appointment

The court will issue an Order of Appointment that will state:

- (1) The appointed counsel's name, address, telephone number, and email address;
- (2) The name of the child for whom counsel is appointed;
- (3) The child's date of birth;
- (4) The child's address, if appropriate;
- (5) The appointment is solely as legal counsel for the child;
- (6) The scope of the appointment and the issues to be addressed in the case;
- (7) Authorize the appointed counsel to have reasonable access to the child and to all otherwise privileged or confidential information about the child, without the necessity of any further order of court or the execution of a release, even in the absence of consent by a parent or by the child, except if the information is otherwise protected by law;
- (8) The rate of compensation for the attorney and the determination of the ability of any party to pay the attorney fees and expenses;
- (9) The allocation of fees payable by each party to the attorney subject to further order of court;

(J) Duration and Termination of Appointment

The appointment shall remain in effect until all matters addressed in the appointment are resolved including but not limited to the filing of objections and appeals to the appellate court. The court must grant permission for the continued representation of the child beyond the appellate level.

(K) Duties and Rights

(1) Duties

- (a) In informing and counseling the client, the attorney for the child should:

- (i) Meet with the child upon appointment, before court hearings, when apprised of emergencies or significant events affecting the child, and at other times as needed;
 - (ii) Explain to the child what is expected to happen, before, during, and after each hearing;
 - (iii) Advise and consult the child and provide guidance, communicating in a way that maximizes the child's ability to direct the representation;
 - (iv) Discuss each substantive order, and its consequences, with the child.
- (b) The attorney for the child shall:
- (i) Immediately identify himself or herself as attorney for the child when contacting individuals and inform them about the role of the attorney, the scope of the appointment, and that documents and information obtained by the attorney may become part of court proceedings;
 - (ii) Gather evidence that bears on the legal interests of the child and present that admissible evidence to the court in any manner appropriate for the counsel of a party.
 - (iii) Present the child's wishes to the court;
 - (iv) Serve notices and pleadings on all parties consistent with rules and laws applicable to parties;
 - (v) Interview the child;
 - (vi) Review court files and all accessible relevant records available to both parties
 - (vii) Make any further investigations child's counsel considers necessary to ascertain evidence relevant to the custody or visitation hearing;
 - (viii) Introduce and examine witnesses, present arguments to the court concerning the child's welfare, and participate further in the proceeding to the degree necessary to represent the child adequately.

(2) Rights

(a) The attorney for a child shall have the following rights with respect to the child represented:

- (i) To have reasonable access to the child;
- (ii) To confer with the child in a private setting that allows for confidential communications, which may include by telephone or videoconference, as appropriate;
- (iii) To have standing to seek affirmative relief on behalf of the child;
- (iv) To be heard in the proceeding and take any action available to a party in the proceeding;
- (v) To have access to the child's medical, dental, mental health, and other health-care records;
- (vi) To have access to the child's school and educational records;

- (vii) To interview school personnel, caretakers, health-care providers, mental health professionals, and others who have assessed the child or provided care to the child;
- (viii) To assert or waive any privilege on behalf of the child;
- (ix) To refuse any physical or psychological examination or evaluation that has not been ordered by the court;
- (x) On approval of the court, to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding;
- (xi) To conduct thorough, continuing, and independent discovery and investigations;
- (xii) To request the court to authorize the relevant local child protective services to release relevant reports or files concerning the child.
- (xiii) Not to be compelled to produce the attorney's work product developed during the appointment;
- (xiv) Not to be required to disclose the source of information obtained as a result of the appointment;
- (xv) Not to provide a report or submit a report into evidence;
- (xvi) Not to testify in court.

(b) The attorney for the child should:

- (i) Interview the child in a developmentally appropriate manner;
- (ii) Seek to elicit in a developmentally appropriate manner the child's expressed objectives of representation;
- (iii) Consider the impact on the child in formulating the attorney's presentation of the child's expressed objectives of representation to the court;
- (iv) Take any action consistent with the child's interests that the attorney considers necessary to expedite the proceedings;
- (v) Encourage settlement and or participate in alternative forms of dispute resolution;
- (vi) Review and sign, or decline to sign, a proposed or agreed order affecting the child;
- (vii) Request a hearing or trial on the merits;
- (viii) Consent or refuse to consent to an interview of the child by another attorney;
- (ix) Attend all legal proceedings in the suit.

(L) Complaints and Removal from the Court Approved List

(1) Complaints

In the event of comments or complaints regarding the performance of an attorney for a child, the director of the guardian ad litem program will do all of the following:

- (a) Provide a copy of the comments and complaints to the attorney for the child;

- (b) Forward the comments and complaints to the administrative judge;
- (c) Issue a timely disposition of the comment or complaint;
- (d) Notify the person making the comment or complaint of the disposition;
- (e) Maintain a written record in the file of the attorney regarding the nature and disposition of the comment or complaint.

(2) Removal

An attorney for a child may be removed from the approved list for the following reasons:

- (a) Failing to meet the qualifications and/or responsibilities established in this rule;
- (b) In the interest of justice and for good cause shown.

(M) Compensation

(1) Approved Fee Rate

An attorney for a child shall bill and be paid at the rate of \$150.00 per hour for all reasonable and necessary time expended and expenses incurred.

(2) Deposits

Parties are responsible for payment for the legal services provided by the attorney for the child.

When making the appointment, the court will order one or both of the parties to pay a \$1,500.00 or greater deposit toward the attorney's fees and expenses, to be paid by one or both of the parties. After considering the parties' ability to pay, the court may issue an order waiving or modifying this requirement if the parties are unable to pay a deposit.

The deposit shall be paid to the attorney for a child who shall hold it as security for partial payment of the attorney's fees. The attorney shall file a notice with the court that states when payment was received.

(3) Payment

The attorney for a child shall submit a motion for payment at the conclusion of the case. The motion must itemize the duties performed, time expended, and expenses incurred. The court will issue an order regarding payment of requested fees and expenses that allocates payment to one or more parties, unless a hearing on the motion is requested within 14 days.

In determining the allocation of attorney fees, the court will consider any relevant factor, including:

- (a) The rate or amount of compensation of the child's attorney;
- (b) The sources of compensation of the child's attorney, including the parties;
- (c) The income, assets, liabilities, and financial circumstances of the parties, as demonstrated using an affidavit, testimony to the court, or evidence of qualification for any means-tested public assistance;
- (d) The conduct of any party resulting in the increase of the child's attorney fees and expenses without just cause;
- (e) The terms and amount of any installment payments.

The court may approve or deny any portion of the requested fees.

(4) Record-keeping

The attorney must do all of the following:

- (a) Keep accurate records of the time spent, services rendered, and expenses incurred in each case while performing the responsibilities as the attorney for the child.
- (b) Provide a redacted monthly statement detailing fees and expenses to all parties.

(5) Enforcement

Approved fees payable to an attorney shall be deemed to be in the nature of support of the child and within the exceptions to discharge in bankruptcy under 11 U.S.C. 523.

The court may enforce payment of the child's attorney fees and expenses as follows:

- (a) Issue a lump sum judgment;
- (b) Conduct contempt of court proceedings; or
- (c) Utilize any other manner authorized by law.

The court will not delay or dismiss a proceeding solely because of a party's failure to pay attorney fees and expenses. The inability of a party to pay attorney fees and expenses ordered by a court will not delay any final entry.