

DOES YOUR CHILD NEED THEIR OWN DIVORCE ATTORNEY?

By Paul Nelson, Esq



I have a peer whose parents went through a horrific marital split. He can recall when he was as young as 5, his mom and dad having brutal knockdown fights. They yelled at each other. They threw things at each other. They even fought over a knife, though (thankfully) no one got stabbed.

Grueling divorce proceedings between these dueling spouses lasted for longer than three years. At some point, they decided their two kids *also* required legal counsel.

Is this rare? In a word: No. It is not that uncommon in California.

Most divorces involve only two lawyers, one for each spouse. However, in high-conflict cases, when neither side can be fully trusted to advocate for a child's best interests, the court may appoint its own counsel. This individual is known as the "minor's counsel."

Appointing a minor's counsel may be considered appropriate if:

- There is high conflict or extended legal history between the parents.
- The dispute is causing the child stress.
- There is information available about the child's best interests that is not likely to be presented by either parent.
- There are claims of child abuse or neglect.
- Either or both parents may be incapable of providing a stable, safe, and secure environment for the child.
- There are special issues that a minor's counsel can provide insight into for the court.
- The court believes independent representation is best.

It should be noted that the minor's counsel can speak to the child privately, without either parent present. They will have access to normally confidential information, such as medical records and school records, as well as court-sanctioned access to teachers, doctors, therapists, friends, and other people in the children's lives. The idea is to present the court with a full picture of the children's circumstances, independent of what the parents might say.

As an alternative to a minor's counsel, I usually advocate for the appointment of a child psychologist to conduct a thorough custody evaluation. A trained, experienced child psychologist is better equipped to determine when kids are telling the truth. They are also better at evaluating the quality of individual parent-child relationships than a minor's counsel and can make qualified custody recommendations.

Even so, there are two primary situations when the appointment of a child psychologist is appropriate. They are:

- **Standard custody evaluations.** The court appoints an expert to evaluate the children, the home environment, and parents to give a court a professional recommendation as to the appropriate custody arrangement. (This is called an Evidence Code, Section 730 Custody Evaluation.) The cost of such an evaluation can range from \$7,500 to \$25,000 (or more if highly contested) and be apportioned in any manner based on each party's financial situation.
- **Therapy.** Sometimes courts will order children to undergo therapy by a child psychologist to deal with the emotional difficulties resulting from contentious parents, emotional or physical abuse, trauma, etc. Again, the costs of this can be apportioned in any manner based on each party's financial situations.

As a family law attorney who has also gone through a divorce involving my own young kids, I am deeply concerned about doing what's right for the child in the event of marital dissolution. The court also wants to see children raised in positive, safe, and stable environments.

Ultimately, the most important thing is to consider your children's well-being during this difficult time. Because as hard as things are for you right now, I can assure they are just as tough—or even tougher—on your little ones.

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