

West's Annotated Code of Maryland

Family Law (Refs & Annos)

Title 1. Definitions; General Provisions (Refs & Annos)

Subtitle 2. General Provisions (Refs & Annos)

MD Code, Family Law, § 1-202

§ 1-202. Appointment of counsel for minor

Effective: October 1, 2008

Currentness

**In general**

(a) In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court may:

(1)(i) appoint a lawyer who shall serve as a child advocate attorney to represent the minor child and who may not represent any party to the action; or

(ii) appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action; and

(2) impose counsel fees against one or more parties to the action.

**Duty of lawyer**

(b) A lawyer appointed under this section shall exercise ordinary care and diligence in the representation of a minor child.

**Credits**

Added by Acts 1984, c. 296, § 2, eff. Oct. 1, 1984. Amended by [Acts 2006, c. 467, § 1, eff. June 1, 2006](#); [Acts 2008, c. 488, § 1, eff. Oct. 1, 2008](#).

**Notes of Decisions (37)**

MD Code, Family Law, § 1-202, MD FAMILY § 1-202

Current through all legislation from the 2016 Regular Session of the General Assembly

Notes Of Decisions (37)

**Actions in which counsel may be appointed**

Appointment of counsel for minors is authorized under Maryland law in actions action in which custody, visitation rights, or amount of child support is contested. Md. Code, Family Law, § 1-202 . [In re Blaemire, 1999, 229 B.R. 665 . Infants 1259](#)

Trial court was without authority to appoint counsel to represent, during parents' divorce proceedings, the interests of child with respect to issues such as replevin, conversion, or return of child's property. Code, Family Law, § 1-202 . [Van Schaik v. Van Schaik, 1992, 603 A.2d 908, 90 Md.App. 725 . Infants 1259](#)

Circuit court had authority to appoint counsel for child in proceedings wherein the Department of Social Services (DSS) sought increase in father's child support obligation and wherein father, with mother's apparent acquiescence, sought termination of his obligation for support. Code, Family Law, §§ 1-202 , [12-103 . Carroll County Dept. of Social Services v. Edelmann, 1990, 577 A.2d 14, 320 Md. 150 . Infants 1259](#)

**Representation of child**

**Representation of child - In general**

Statute governing appointment of counsel for a minor in an action in which custody, visitation rights, or the amount of support of minor is contested authorizes the trial court to appoint counsel for a child to provide the court with an independent analysis of the child's position; indeed, the purpose of the statute is to afford the court an opportunity to hear from someone who will speak on behalf of the child. [Garg v. Garg, 2005, 881 A.2d 1180, 163 Md.App. 546 , certiorari granted 888 A.2d 341, 390 Md. 284 , reversed 900 A.2d 739, 393 Md. 225 . Infants 1259](#)

Even if minor children who were represented by guardian ad litem in their parents' divorce and child custody action were entitled to additional representation by attorney advocate, attorney they chose would not be permitted to represent them, as he was not neutral representative; attorney was not initially contacted by children, but rather, by either their mother or her friend, and mother's parents were funding representation. Code, Family Law, § 1-202 . [Auclair v. Auclair, 1999, 730 A.2d 1260, 127 Md.App. 1 . Attorney And Client 21.5\(1\)](#)

**Best interests of child, representation of child**

Clear purpose of state court in appointing attorney for children under Maryland law is to act in the best interests of the attorney's wards. Md. Code, Family Law, § 1-202 . [In re Blaemire, 1999, 229 B.R. 665 . Infants 1246\(1\)](#)

When the trial court appoints an attorney to be a guardian ad litem for a child in a custody dispute, the attorney's duty is to make a determination and recommendation after pinpointing what is in the best interests of the child. Code, Family Law, § 1-202 . [Auclair v. Auclair, 1999, 730 A.2d 1260, 127 Md.App. 1 . Infants 1245](#)

When a divorce action involves a child custody dispute and the child requires representation, the "best interest of the child" may require appointment of a neutral attorney to act as the child's guardian. Code, Family Law, § 1-202 . [Auclair v. Auclair, 1999, 730 A.2d 1260, 127 Md.App. 1 . Infants 1238\(9\)](#)

Appointment of attorney for five-year-old son of the parties was necessary, in order to look out for child's interests, not those of his parents. [Levitt v. Levitt, 1989, 556 A.2d 1162, 79 Md.App. 394 , certiorari denied 560 A.2d 1118, 316 Md. 549 . Infants 1238\(9\)](#)

**Representation of child - Best interests of child**

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### **Authority of appointed counsel**

Under Maryland law, there are three functions that attorney appointed by court for minors can perform: he or she may exercise certain waivers of child's privileges, act as guardian ad litem, and serve as court's investigator. Md. Code, Family Law, § 1-202 . [In re Blaemire, 1999, 229 B.R. 665 . Infants 1245](#)

Court-appointed attorney representing child in action in which custody, visitation, or support is contested may exercise certain waivers of child's privileges, act as guardian at litem, and serve as court's investigator; extent of attorney's role is dictated by the court. Code, Family Law, § 1-202 . [Miller v. Bosley, 1997, 688 A.2d 45, 113 Md.App. 381 . Infants 1245 Infants 1246\(1\)](#)

Attorney appointed for child in parents' divorce action did not have authority to bring action to compel father to deliver child's bicycle to specified location and to remit \$12 to attorney as trustee for Child. Code, Family Law, § 1-202 . [Van Schaik v. Van Schaik, 1992, 603 A.2d 908, 90 Md.App. 725 . Infants 1245](#)

### **Length of appointment**

Appointment of counsel for child in parents' divorce action continues past date of divorce if conflicts as to custody, visitation, and support remain. Code, Family Law, § 1-202 . [Van Schaik v. Van Schaik, 1992, 603 A.2d 908, 90 Md.App. 725 . Infants 1243](#)

### **Discretion of court**

Trial court acted within its discretion in allocating to husband the costs of the children's best interest attorney in coordinating the children's reunification therapy with mother in divorce proceedings, where the trial court engaged in a thorough consideration of the parties' financial needs and financial status, it recognized that husband was in the best position to pay the fees, and husband bore much of the responsibility for bringing about the conditions necessitating attorney's services. [Meyr v. Meyr, 2010, 7 A.3d 125, 195 Md.App. 524 . Child Custody 943](#)

Trial court did not abuse its discretion in deferring request by wife to appoint attorney for child pending resolution of jurisdictional issue raised by husband in divorce proceeding involving custody dispute; statute authorized trial court to appoint counsel in cases in which custody was contested, but it did not mandate such an appointment, there was no emergency, given that child resided with wife and had been with her for over a year, and husband was under an injunction prohibiting him from removing child from jurisdiction, which he showed no sign of disobeying, and jurisdictional issue raised under Uniform Child Custody Jurisdiction Act (UCCJA) did not in any way relate to, much less determine, who should have custody of child. [Garg v. Garg, 2006, 900 A.2d 739, 393 Md. 225 . Infants 1259](#)

Denial of wife's request to appoint independent counsel for children in connection with divorce proceedings before Beth Din, which was Jewish court proceeding before panel of three rabbinic judges, was not reversible error, despite contention that children had not consented to have their rights determined by Beth Din; final determination of children's best interest was made by circuit court, which had jurisdiction over children's beneficial interest without their consent. Code, Family Law, § 1-201 . [Kovacs v. Kovacs, 1993, 633 A.2d 425, 98 Md.App. 289 , certiorari denied 638 A.2d 753, 334 Md. 211 . Child Custody 923\(1\) Child Support 558\(1\)](#)

### **Guardian ad litem**

Minor children who are represented by guardian ad litem in their parents' divorce and child custody action are not entitled to additional representation by attorney advocate, even if children's views are in opposition to guardian's best interest recommendation; children's advocate could make only minimal contribution to custody proceedings but would result in tremendous increase in time and cost, and costs of employing advocate for children's wishes would in every case conscript family resources better directed to children's needs outside

litigation process. Code, Family Law, § 1-202 . [Auclair v. Auclair, 1999, 730 A.2d 1260, 127 Md.App. 1 . Child Custody](#) 416

Minor children's guardian ad litem was adequate representative of children's interests in their parents' divorce and child custody action, thus precluding children from intervening of right, despite claim that guardian was not zealously advocating children's wishes; guardian's representation was consistent with guidelines enunciated in prior caselaw, guardian had arranged to meet with children on several occasions to learn their concerns about and preferences for custody and visitation, and despite children's assertions that they were unable to communicate well with guardian, guardian articulated children's preferences as expressed in their letters to trial judge. Code, Family Law, § 1-202 ; [Md.Rule 2-214\(a\)](#) . [Auclair v. Auclair, 1999, 730 A.2d 1260, 127 Md.App. 1 . Child Custody](#) 409

### **Waiver of objections**

Trial court properly appointed attorney for minor child in parents' divorce action even though parties had agreed on all custody, visitation, and support issues and agreement had been filed in proceedings prior to appointment, where father consented to appointment. Code, Family Law, § 1-202 . [Van Schaik v. Van Schaik, 1992, 603 A.2d 908, 90 Md.App. 725 . Infants](#) 1238(9)

By consenting to appointment of counsel for child and to psychiatric and orthodontic evaluations of child, father waived right to object to appointment and to counsel's continued representation of child after divorce decree was entered; evaluations of child were not completed and were not contemplated to have been completed by date of divorce decree. Code, Family Law, § 1-202 . [Van Schaik v. Van Schaik, 1992, 603 A.2d 908, 90 Md.App. 725 . Infants](#) 1259

### **Immunity**

Attorney appointed by trial court to represent minor child in parents' divorce proceeding under statute governing appointment of attorney for minors in actions in which custody, visitation rights, or amount of support for child was contested, had no immunity from tort liability with respect to legal malpractice suit filed against him by mother, who had filed suit on behalf of minor child; statute provided no basis for immunity, as neither language nor history of statute suggested that attorney appointed under statute owed his principal duty of allegiance to court, clause of statute prohibiting attorneys appointed under it from representing any party underscored that attorney's allegiance was owed entirely to minor child, and attorney had no immunity under common law, to which inhabitants of state were entitled under Declaration of Rights; abrogating, , 97 Md.App. 26, 627 A.2d 30 , , 127 Md.App. 1, 730 A.2d 1260 . [Fox v. Wills, 2006, 890 A.2d 726, 390 Md. 620 . Attorney And Client](#) 109

### **Counsel fees**

#### **Counsel fees - In general**

Trial court acted within its discretion in imposing joint and several liability on parents for outstanding fees of minor children's best interest attorney in child custody dispute, where statute governing contested custody cases expressly provided that the court could, in its discretion, impose attorney's fees against either or both parties as was just and proper under the circumstances. [Van Schaik v. Van Schaik, 2011, 24 A.3d 241, 200 Md.App. 126 . Child Custody](#) 943

Maternal grandmother was not parent, within meaning of statute authorizing imposition of guardian ad litem fees against either or both parents in custody actions. [Taylor v. Mandel, 2007, 935 A.2d 671, 402 Md. 109 . Infants](#) 1244

Guardian ad litem was entitled to attorney fees for services rendered after entry of child support judgment and prior to official reappointment as guardian ad litem; reappointment was unnecessary because the trial court's previous order incorporated a hearing transcript that constituted a continuing appointment of the guardian ad litem, and guardian continued at all times to promote the best interest of the child in the dissolution action.

[Miller v. Miller, 2002, 788 A.2d 717, 142 Md.App. 239 , certiorari granted 796 A.2d 695, 368 Md. 526 , affirmed 810 A.2d 947, 371 Md. 591 . Child Support](#) 603

Father was properly ordered to pay fees for counsel appointed for his minor child after divorce had been granted, where father consented to orthodontic and psychological evaluations which were pertinent to counsel's appointment and father agreed that costs of evaluations and attorney fees should be determined

by court after proper hearing, even though there were no contested issues of custody, visitation, or support throughout proceedings. Code, Family Law, § 1-202 . [Van Schaik v. Van Schaik, 1992, 603 A.2d 908, 90 Md.App. 725 . Infants 1319](#)

Circuit court could not assess counsel fees for services rendered in representing minor in proceedings wherein the Department of Social Services (DSS) sought increase in father's child support obligation and wherein mother and father sought to terminate father's parental rights and child support obligations, without considering the financial status of the parties, the needs of the parties, and whether there was substantial justification for bringing or defending the proceeding. Code, Family Law, §§ 1-202 , 12-103, 12-103(b) . [Carroll County Dept. of Social Services v. Edelmann, 1990, 577 A.2d 14, 320 Md. 150 . Child Support 603 Infants 2112](#)

Order requiring father to pay adult son's counsel fees incurred in divorce proceeding whereby mother sought support for such adult child, who was destitute by reason of his cystic fibrosis, was proper, notwithstanding father's contention that such counsel was representing wife's interests against him and, therefore, she should share responsibility for such fees. Code, Courts and Judicial Proceedings, § 3-604 ; Code 1957, Art. 27, § 97 . [Stern v. Stern, 1984, 473 A.2d 56, 58 Md.App. 280 . Divorce 1168\(1\)](#)

#### **Counsel fees - Hearings**

Circuit court was not necessarily required to entertain a hearing in child custody modification case when determining the apportionment of attorney fees and costs, but court was required to state the basis for its determination that ex-husband was required to pay the fees of the children's best interest attorney and the court appointed evaluator. [Gillespie v. Gillespie, 2012, 47 A.3d 1018, 206 Md.App. 146 . Child Custody 954 Child Custody 955](#)

A hearing is not always required before a court determines the apportionment of attorney fees in child custody modification case. [Gillespie v. Gillespie, 2012, 47 A.3d 1018, 206 Md.App. 146 . Child Custody 954](#)

#### **Hearings, counsel fees**

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#### **Counsel fees - Federal law**

Trial court lacked authority to treat guardian ad litem fees imposed in divorce proceeding as "child support," so that fees could be collected through garnishment of federal retirement annuity; while order awarding fees qualified as a legal process and order made it clear that award for guardian ad litem fees was to be included as child support, as was required by regulation, treatment of guardian ad litem fees as child support was inconsistent with state law. [Goldberg v. Miller, 2002, 810 A.2d 947, 371 Md. 591 . Child Support 442](#)

Trial court's designation of guardian ad litem's attorney fees as child support was improper; state child support law that failed to expressly provide for inclusion of attorney's fees in a child support award was not preempted by federal law that allowed for such a designation, and by state statute's failure to include guardian ad litem fees as one of the enumerated expenses for child support, the omission of such fees constituted a statement that the legislature did not intend for legal fees to be treated as child support. [Miller v. Miller, 2002, 788 A.2d 717, 142 Md.App. 239 , certiorari granted 796 A.2d 695, 368 Md. 526 , affirmed 810 A.2d 947, 371 Md. 591 . Child Support 603](#)

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### Counsel fees - Standing

Under statute governing appointment of counsel for minors, children of parties involved in legal proceedings with respect to the children had "standing" in appeal by father questioning whether attorney fee awarded to children's appointed counsel was excessive, and had a right to representation in the appeal itself. [Code, Courts and Judicial Proceedings, § 3-604](#). [Lapides v. Lapides, 1981, 437 A.2d 251, 50 Md.App. 248](#). Infants 1253 Infants 1353

### Standing, counsel fees

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### Counsel fees - Review

Because trial court did not state the basis for its determination that ex-husband was required to pay the fees of the children's best interest attorney and the court appointed evaluator in child custody modification case, appellate court was unable to properly review the decision, and thus, case would be remanded for the limited purpose of determining the fees for the best interest attorney and court appointed evaluator. [Gillespie v. Gillespie, 2012, 47 A.3d 1018, 206 Md.App. 146](#). Child Custody 924

Normally, when court appoints counsel for child, in action in which custody, visitation rights or amount of support is contested, and assesses the cost against party to the action, that assessment will not be disturbed on appeal unless appellate court finds that it constituted abuse of discretion. [Code, Family Law, §§ 1-202, 12-103](#). [Carroll County Dept. of Social Services v. Edelmann, 1990, 577 A.2d 14, 320 Md. 150](#). Child Custody 921(1)

Although attorney appointed to represent children of parties involved in legal proceedings with respect to the children was entitled to compensation for services rendered on appeal by father questioning whether attorney fee awarded to counsel was excessive, remand was appropriate to chancellor with directions for him to determine an adequate fee to compensate attorney for his efforts on appeal. [Lapides v. Lapides, 1981, 437 A.2d 251, 50 Md.App. 248](#). Divorce 1324

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to determine an adequate fee to compensate attorney for his efforts on appeal. [Lapides v. Lapides, 1981, 437 A.2d 251, 50 Md.App. 248 . Divorce 1324](#)

#### **Remand**

Remand was required for trial court to appoint counsel to represent child, in divorce action involving acrimonious custody dispute, pursuant to statute allowing for such appointment; custody issue was complex, because trial court had to determine whether issue was to be decided by Maryland court or by Indian court, custody determination was of paramount importance, because resolution of dispute would determine whether child would reside in Maryland or India, and, given that child would be profoundly affected by outcome of case, fundamental fairness suggested that he should have had counsel to articulate his interest and to assist on critical and complex issues that would be determinative of his future. [Garg v. Garg, 2005, 881 A.2d 1180, 163 Md.App. 546 , certiorari granted 888 A.2d 341, 390 Md. 284 , reversed 900 A.2d 739, 393 Md. 225 . Child Custody 924 Infants 1259](#)

#### **Review**

Trial court did not err in denying former husband's motion to strike children's best interest attorney, in proceedings on former husband's petition to modify custody; former husband failed to identify any ethical violation by children's best interest attorney or any violation of the best-interest-attorney guidelines, former husband instead based his case for disqualification on his vociferous disagreement with how best interest attorney conducted her representation of the children, and former husband did not have a right to disqualify children's best interest attorney merely because he disagreed with her tactics and strategy. [McAllister v. McAllister, 2014, 97 A.3d 227, 218 Md.App. 386 . Infants 1259](#)