

Hi there. I'm here to talk with you about attorneys who represent children in child custody cases. They are referred to as child counsel. These are lawyers appointed by the court when it has concerns about the health, safety, or well-being of a child. It is the job of child counsel to ensure that a child's interests are represented.

You should understand upfront that these lawyers represent your child, not you or the other party or parties. You should also know that courts look at a number of factors before appointing child counsel.

### **CHAPTER HEADING: COURTS LOOK AT A NUMBER OF FACTORS BEFORE APPOINTING CHILD COUNSEL**

They will look at the nature and level of conflict between you and the other party or parties and your child's physical, emotional, and other needs. The court also wants to know: Are there other ways of getting information about your child? And what value will child counsel bring to the case?

Another factor the court looks at is resources. In general, you and the other party or parties will be expected to pay child counsel fees. Depending on your income, you might be eligible for a fee waiver.

Let's talk about the types of child counsel.

### **CHAPTER HEADING: TYPES OF CHILD COUNSEL**

There are three types of lawyers the court may recommend.

- a Best interest Attorney,
- a Child Advocate Attorney, or
- a Child Privilege Attorney.

Let me break this down for you. First, let's talk about Best Interest Attorneys.

### **CHAPTER HEADING: BEST INTEREST ATTORNEYS**

They are called Best interest Attorneys for a reason. Their job is to represent the best interest of a child in a custody case. For short, people call them a BIA. A BIA will make independent assessments about what parenting time or decision-making arrangement is in your child's best interest. They then advocate for this in your case. They'll meet with your child and try to understand their needs and interests. The Best Interest Attorney will investigate if you and the other party or parties are equipped to meet those needs. They might visit your home, review records, interview you and other people who know your family, and even observe you with

your child. Based on their investigation, they'll decide what they think is best for your child. For example, the BIA may find that it is in your child's best interest for you to make their educational decisions and for the other party to make medical decisions. Or, they can recommend a schedule for when your child spends time with each of you. If your case goes to trial, the BIA can present evidence, call and cross-examine witnesses, and ask for information through a legal process called discovery.

You should know that your child may not want what the BIA thinks is best for them. For example, your child may want to spend summers with their cousins. The BIA's job is to communicate that **preference** to the court, **but** their job is to advocate for what they believe is in your child's best interest. So, they may instead advocate for your child to spend summers with you or the other party rather than their cousins.

You should also know that the court will consider what the BIA says, but is not bound by it. The court will listen to all arguments, review evidence, and make its own decision about what it believes is best for your child.

Let's talk about the second type of child counsel: Child Advocate Attorneys.

#### **CHAPTER HEADING: CHILD ADVOCATE ATTORNEYS**

Again, the name says it all. This type of lawyer is an advocate for what your child wants. They represent your child's voice in the case. The court may appoint a child advocate attorney if it finds that your child is mature enough to vocalize their wishes in a court setting. Like a BIA, a child advocate attorney will meet with your child and investigate your and the other party or parties' ability to meet their needs. They can visit your home, interview you and people who know you, review records, and observe you with your child. Unlike a BIA, their job is to advocate for what your child wants. So, if your child wants to spend summers with their cousins, the lawyer's job is to **advocate** for that.

If your case goes to trial, the child advocate attorney can present evidence, call and cross-examine witnesses, and participate in discovery. The child advocate attorney will advise your child, discuss risks and benefits of their preferences, and keep their discussions confidential.

Let's talk for a minute about your child

#### **CHAPTER HEADING: YOUR CHILD**

You or the other party might want them to meet with the judge or testify at your trial. A BIA or child advocate attorney will talk to your child about what this means and help them understand what to expect. The BIA can object to your child talking to the judge or testifying if it's not in

your child's best interest. If your child doesn't want to go to court, their child advocate attorney will object on their behalf. Ultimately, the judge will decide what is in the best interest of your child.

It's the job of the BIA and child advocate attorneys to minimize harm to your child. Testifying in court can be a scary and traumatic experience for a child. It puts them in the difficult position of having to speak out against one or both of their parents, a heavy burden for anyone, regardless of age.

Okay, let's move on to the third type of child counsel: Child Privilege Attorneys

#### **CHAPTER HEADING: CHILD PRIVILEGE ATTORNEYS**

This type of lawyer is appointed to decide if a child's right to privacy should prevent certain information from being shared in court. This mostly comes up when a child is seeing a therapist. Let's say you or the other party want your child's therapist to share information about your child because it might be helpful in your case. Information shared in therapy is considered privileged. This means that the therapist cannot share what a patient says with anyone except in rare and extreme circumstances. The patient, however, can choose to waive the privilege and allow the therapist to share information. If the patient is a minor, ordinarily a parent can waive privilege on their behalf. In the context of a custody case, however, a parent cannot waive their child's right to privacy. If a party wants privileged information to be presented, the court can appoint a child privilege attorney to decide whether the privilege should be waived. The attorney will meet with your child and may interview other people and review records. Their focus is on the impact that sharing privileged information will have on your child. Their goal is to protect your child.

We have covered a lot of information. Let's review.

#### **CHAPTER HEADING: LET'S REVIEW**

In child custody cases, the court can appoint a lawyer to represent your child. Courts carefully consider the impact of appointing child counsel and will consider a number of factors. There are three types of child counsel. Best interest attorneys represent your child's interests. Child advocate attorneys represent your child's wishes. Child privilege attorneys decide whether confidential information about your child can be shared. All three types of lawyers represent your child, not you. Fees for child counsel are usually split between the parties, but you may be eligible for a fee waiver based on your income.

We hope this video has been helpful. Thanks for watching.