

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

:

Plaintiff

:

v.

:

Case No.

Defendant

:

ORDER APPOINTING BEST INTEREST ATTORNEY

This matter having come before the Court, it is this day _____ of, 20____, by the Circuit Court for Montgomery County, Maryland

ORDERED, that _____, telephone number _____, is hereby appointed as a **Best Interest Attorney (BIA)** at the rate of _____ per hour with the rights and responsibilities set forth in the Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access (hereafter “The Guidelines”) to represent _____ [children’s names and dates of birth]. A Best Interest Attorney is a court-appointed attorney who provides independent legal services for the purpose of protecting a child’s best interests, without being bound by the child’s directives or objectives. The BIA shall have all the rights and responsibilities of a Child Privilege Attorney (CPA), including but not limited to deciding whether to assert or waive the child(ren)’s statutory privilege, in accordance with *Nagle v. Hooks*, 296 Md. 123 (1983), and it is further

ORDERED, that the parties, counsel for the parties, all persons who are custodians of records pertinent to this Order, and all persons who otherwise have privileged or confidential information pertaining to the child(ren) shall fully cooperate with the BIA in the performance of the duties instructed by this Court; and it is further

ORDERED, that the BIA shall have reasonable access to the child(ren) and to all otherwise privileged or confidential information, including but not limited to any protected health information, about the child(ren), without the necessity of any further court order or without the necessity of a subpoena, but upon written request by the BIA together with a copy of this Order. The BIA’s access to privileged and confidential information shall be without the necessity of a signed release, including medical, dental, psychiatric/psychological, social services, drug and alcohol treatment, law enforcement, and educational records and information; and it is further

ORDERED, that the Best Interest Attorney shall be compensated as indicated:

- The BIA shall provide representation on a pro-bono basis.

Having met the criteria as a Court Funded Appointment, the Best Interest Attorney shall be compensated by the Court at the rate of ***\$1,500 for fees and/or expenses*** and that at the conclusion of the case, the BIA shall submit a fee petition.

Plaintiff's payment into Best Interest Attorney's trust account. Plaintiff is hereby directed to pay the BIA, for deposit into the BIA's trust account, the sum of \$_____ within 10 days of the date of this Order as an initial contribution towards the BIA's fees in performance of the services identified herein and file a line indicating same.

Defendant's payment into Best Interest Attorney's trust account. Defendant is hereby directed to pay the BIA, for deposit into the court-appointed attorney's trust account, the sum of \$_____ within 10 days of the date of this Order as an initial contribution towards the BIA's fees in performance of the services identified herein and file a line indicating same.

The BIA shall not be required to begin work representing the child(ren) until payment is made by the parties into the court-appointed attorney's trust account, as indicated above.

Final allocation of fees shall be determined by the Court at a hearing on the merits of this case or upon the BIA's Petition. The Court may hold the parties jointly and severally liable for all fees due to the BIA, subject to the parties' rights to seek indemnification from each other to the extent that either party pays more than their allocated share; and it is further

ORDERED, that, the BIA shall send monthly itemized statements of work completed, time spent, expenses incurred, and total fees incurred to counsel of record for each party, or if none, to each party. This provision does not apply to a pro bono or Court-funded attorney; and it is further

ORDERED, that if a party objects to an entry on a monthly itemized statement, the party shall indicate that in writing to the court-appointed attorney not later than 30 days from the date of the statement. Once the 30-day period has passed without objection, the amount billed shall be deemed fair and reasonable and BIA is authorized to draw the amount billed from their trust account; and it is further

ORDERED, that the BIA may submit a motion for interim fees for services rendered and expenses advanced, and for anticipated services or expenses that need to be incurred, which the Court shall order to be paid by a date certain, provided that the Court is satisfied as to the necessity of services rendered and expenses incurred by the BIA, and the need for additional services and expenses to be incurred. If an opposition to the request is filed, a hearing may be scheduled at the discretion of the Court in accordance with The Montgomery County Circuit Court Child Counsel Appointment Policies & Procedures; and it is further

ORDERED, that the BIA shall be permitted to reasonably delegate tasks to appropriate personnel, including but not limited to associate attorneys, paralegals, and clerical staff, provided however that the BIA shall supervise delegated tasks and must appear at substantive child-related court proceedings; and it is further

ORDERED, that absent further Order of this Court, the BIA shall not be required to participate in any appeal in this matter; and it is further

ORDERED, that either party's failure to make payment in accordance with this Order, in addition to any other consequences, including a finding of contempt of Court, shall be cause for the BIA to request withdrawal of their representation, upon written motion to the Court; and it is further

ORDERED, that although the minor child(ren) are not parties to this action, the court-appointed attorney shall be entitled to engage in discovery, including but not limited to all methods thereof authorized by the Maryland Rules, Title 2, Chapter 400, as part of the performance of the duties assigned herein, and to file motions or seek orders as appropriate in the fulfillment of the duties appointed herein; and it is further

ORDERED, that although the minor child(ren) are not parties to this action, the service and notice provisions in Title 1 of the Maryland Rule apply as though the child(ren) were parties; and it is further

ORDERED, that within ten (10) days of the date of this Order, the Plaintiff (or counsel)/ the Defendant (or counsel) shall provide to the BIA copies of all pleadings and papers filed in the above action and any correspondence between the parties or counsel for the parties. Also, each party, or their counsel, shall provide to the BIA, within ten (10) days of the date of this Order, copies of any of the following reports pertaining to the minor child(ren) which are in the possession, custody, or control of the party: medical records, school records, reports and/or evaluations pertaining to the physical, mental, or emotional condition of any child, learning assessments of any kind, police reports, and reports from Departments of Social Services pertaining to any alleged abuse or neglect (including abuse or neglect in which the child(ren) were not involved); and it is further

ORDERED, that within ten (10) days of the date of this Order, each party shall provide to the BIA the names and known addresses and telephone numbers of any and all mental health providers who have evaluated or treated the child(ren) and anyone else with whom the child(ren) may have a privilege pursuant to the Statute; and it is further

ORDERED, that the BIA shall not have any ex parte communications with the Court. In addition, the attorney/client privilege shall be respected at all times. As such, the BIA may not speak to the parties without the prior permission of their respective attorneys, and the attorneys for the parties may not speak with the child(ren) without the prior permission of the BIA; and it is further

ORDERED, that the BIA shall neither testify at trial nor file a written report with the Court, except when asserting or waiving privilege they may file a document addressing privilege with the Court prior to the hearing or trial; and it is further

ORDERED, that pursuant to The Guidelines, the BIA shall ensure that the child(ren)'s position is made part of the record whether or not different from the position the court-appointed attorney advocates; and it is further

ORDERED, that unless otherwise specifically ordered, the BIA's appearance shall terminate 30 days after the entry of the Order resolving the issues for which the attorney was appointed.

, MAGISTRATE
Circuit Court for Montgomery
County, Maryland

, JUDGE
Circuit Court for Montgomery
County, Maryland

Settlement/Status Date:

Trial Date:

APPOINTMENT OF BEST INTEREST ATTORNEY
(*See Family Law Fund policy below.)

The Court may appoint counsel to represent a child in the following capacities in a Family Law case as a **Best Interest Attorney*** (FL 1-202). Fee limits to be set by order.

***FAMILY LAW FUND:** When the Court appoints counsel to represent children, the Court may order the parties to pay reasonable compensation for such representation and may apportion those costs equitably. Where the Court determines that the parties are unable to bear the expense of such representation, the Court may request that the Family Law Fund pay some or all of the costs. *As the Family Law Fund is limited, such compensation will be limited to a maximum of \$1,500.*

Circuit Court for Montgomery County, Maryland

Child Counsel Appointment Policies & Procedures

The following policies and procedures have been adopted by the Circuit Court for Montgomery County in order to be in full compliance with Md. Rule 9-205.1, Appointment of Child Counsel and the Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access (“Guidelines”), as well as to ensure that the child counsel appointments are made appropriately and on an equitable basis.

I. Roster of Court-Approved Child Counsel

The Court will keep a Roster of Court-Approved Child Counsel for appointment in domestic cases through a shared file maintained by the Family Division Coordinator.

A. Attorney Qualifications. In compliance with the Guidelines 4 and 5, the Court requires that attorneys on the Court-Approved Roster meet the following criteria:

1. Successfully complete **six-hours of training** as detailed in Guideline 4;
2. Have at least three (3) years of family law experience or other relevant experience¹;
3. Maintain professional liability insurance, at the Attorney’s sole expense²; and
4. Be willing to take at least one (1) *pro bono* appointment as child counsel per year.

B. Child Counsel Application Review

1. The Family Division Coordinator will review requests from attorneys to ensure that those added to the Roster of Court Approved Child Counsel meet the criteria listed above. The Judge In Charge of the Family Division will ultimately determine which attorneys will be added to the roster.

2. Attorneys wishing to be on the Roster of Court-Approved Child Counsel shall submit a request, including a copy of their resume and proof that they have completed the training required (Paragraph A, above), to the Family Division Coordinator. If necessary, the designated Family Division Coordinator will contact the attorney to obtain supplemental information regarding qualifications. The Family Division Coordinator will send the request and resume to Judge in Charge of the Family Division, who will review the applications to

¹ In evaluating “relevant experience,” the court may consider the attorney’s experience in social work, education, child development, mental health, healthcare, or related fields. (See Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access, § 5 (b)).

² This includes malpractice insurance provided by the Attorney’s employer, partnership or corporation.

determine whether the attorney has the necessary qualifications and decide whether the attorney should be placed on the Roster.

C. Periodic Announcement to the Bar. The Court will place an announcement in the Montgomery County Bar Newsletter and send an e-mail via the Bar Association's Family Law ListServ to inform attorneys of the qualifications criteria for the Roster of Court-Approved Child Counsel ("Court-Approved Roster"), the application process, and how requests for appointment of Child Counsel will be processed (see below for the Motion Review and Approval Process).

D. Request, Review and Approval Process. The following process will be used to review and approve requests for Appointment of Child Counsel in domestic cases:

1. All requests for the appointment of a child counsel pursuant to the Guidelines shall be referred by the Clerk's Office to the Family Division Magistrate's Office.
2. A Family Division Magistrate shall only recommend the Appointment of Child Counsel from the Court-Approved Roster.
3. A copy of the signed Order will be sent to the designated Family Division Coordinator, who will maintain a record of the appointments from the Court's Roster.
4. The Court will attempt to provide attorneys on the Roster with an equitable share of appointments, while also ensuring that the needs of the case are the primary factor in appointing counsel, especially in the more difficult and complex cases.
5. If the motion is granted, the appointment shall be made from the court-approved Roster of Child Counsel Attorneys for each case, unless the parties and their attorneys agree to appointment of a qualified attorney who is not on the Court's Roster.
6. The standard Order Appointing Counsel for Child shall be used in all cases.
7. The hourly rate for Court-appointed child counsel shall be \$250, subject to change by Court Order for good cause, or agreement of the parties AND the Court-appointed child counsel.

E. Review of Fee Petition

1. Uncontested: The Special Magistrate will review all uncontested motions for BIA fees.
2. Contested: The Administrative Judge will preside over hearings on any such motion which is contested as to fees. This hearing may not exceed 3 hours.

F. Court-Appointed Attorney Authority

The court - appointed attorney shall be permitted to reasonably delegate tasks to appropriate personnel, including but not limited to associate attorneys, paralegals, and clerical staff, provided however that the court-appointed attorney shall supervise delegated tasks and must appear at substantive child-related court proceedings.

II. Court Funded Child Counsel

- A. Appointment of Child Counsel for Indigent Parents.** Where the Court determines that the parties are unable to bear the expense of child counsel, the Court may direct the Family Law Fund to pay some or all of the costs. Under those circumstances, the Court will pay \$1,500, for the fees and/or expenses of a BIA or CAA appointed pursuant to these Policies and Procedures. A CPA appointed pursuant to these Policies and Procedures may be paid \$375. *As the Family Law Fund is limited, such compensation may not be available at all times, nor in every case.*
- B. Affidavit of Indigency.** In order for the Court to determine whether parties are unable to bear the expense of child counsel, an Affidavit of Indigency must be attached to a Motion for Appointment of Counsel for a Child. This Affidavit shall state: the amount of money in each parent's checking and savings accounts; each parent's employment status, occupation, and annual income; other sources of income for each parent, including rentals, disability income, spousal support, and any other source of funds; and the identity, ownership and value of real or personal property (for example, a home, motor home, vehicle, or boat). The Court shall develop a form Affidavit.