

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 700

(Delegates Dumais and Smigiel)

Judiciary

Judicial Proceedings

Family Law - Court-Appointed Lawyer for Child

This bill provides that, in a contested custody, visitation, or support action, the court is authorized to: (1) 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 (2) 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. A lawyer appointed under the provisions of the bill must exercise ordinary care and diligence in the representation of a minor child.

The bill is effective June 1, 2006.

Fiscal Summary

State Effect: None. The bill would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: Potential minimal. More attorneys may accept court appointments to represent children.

Analysis

Current Law: In an action for custody, visitation rights, or where the amount of support for a minor child is contested, the court may appoint counsel to represent the minor child. The appointed counsel may not represent any party to the action. The court may impose counsel's fees against one or both parents.

Background: In the case of *Fox v. Wills* (No. 43, September Term 2003, filed January 18, 2006), the Court of Appeals stated that Family Law Article, § 1-202, unlike statutes in other states, does not recognize a *guardian ad litem*, also known as a “best interest” attorney, who is appointed to provide independent legal services for the purpose of protecting a child’s best interests, without being bound by the child’s directives or objectives. However, Maryland courts have been construing the statute to authorize the appointment of a *guardian ad litem* for a number of years. This bill is intended to restore the authority of the courts to appoint a best interest attorney who would provide an independent assessment of what is in the child’s best interest, even if that assessment differs from the opinions of the child and the parties.

A proposed rule currently before the Maryland Court of Appeals Standing Committee on Rules of Practice and Procedure would permit the appointment of three types of attorneys in cases involving child custody or visitation: (1) a “best interest” attorney (or *guardian ad litem*), who would be appointed to provide independent legal services for the purpose of protecting a child’s best interest; (2) a “child advocate” attorney, who would provide independent legal counsel for the child, and would owe the child the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client; and (3) a “child’s privilege” attorney, who would be appointed to assert or waive, on behalf of a minor child, any privilege.

Additional Information

Prior Introductions: None.

Cross File: SB 664 (Senator Grosfeld) – Judicial Proceedings.

Information Source(s): Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2006
ncs/jr Revised - House Third Reader - March 30, 2006

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