

IRWIN

Integrity Determination



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Compassion Trust



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Minor's Counsel

- Family Code section 3150:
 - (a) If the court determines that it would be in the best interest of the minor child, the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding, provided that the court and counsel comply with the requirements set forth in Rules 5.240, 5.241, and 5.242 of the California Rules of Court.
 - (b) Upon entering an appearance on behalf of a child pursuant to this chapter, counsel shall continue to represent that child unless relieved by the court upon the substitution of other counsel by the court or for cause.

Minor's Counsel

- Appointed by the Court
- Attorney Acts independent from either parent
- Factors the Court Considers are:
 - Issues of child custody and visitation are highly contested or protracted
 - The child has been subjected to stress as a result of the dispute which may be alleviated by the intervention of counsel representing the child
 - Counsel for the child will likely be able to provide to the Court relevant information not otherwise readily available

Minor's Counsel

- The dispute involved allegations of physical, emotional, or sexual abuse or neglect of the child
- It appears that one or both parents are incapable of providing a stable, safe, and secure environment
- Counsel is appointed who is knowledgeable about the issues being raised regarding the child in the proceeding
- The best interest of the child appears to require independent representation, and
- If there are two or more children, any child would require separate counsel to avoid a conflict of interest.
(Cal. Rules of Court 5.240 (a))

Minor's Counsel

- Who May Request Appointment of Counsel for a Child:
 - A party
 - The attorney for a party
 - The child, or any relative of the child
 - A mediator under Family Code section 3184
 - A professional person making a custody recommendation Family Code 3111 and 3118, Evidence Code section 730, or Civil Procedure section 2032.010 et seq.

Minor's Counsel

- A county counsel, district attorney, city attorney, or city prosecutor authorized to prosecute child abuse and neglect or child abduction cases under state law
- A court-appointed-guardian ad-litem or special advocate
- Any other person who the court deems appropriate.
- Cal. Rules of Court 5.240 (b)

Minor's Counsel

- What does a Minor's Counsel do when they are appointed?

They will interview the parents

They will interview the child / children

They may interview other family members, friends

They may interview doctors, therapist, coaches, teachers, or social workers

They will review records, including school records, medical records, and therapy records

They will review the Court records and documents

Minor's Counsel

They will appear at hearings and provide the Court information about the children as necessary, including the child's wishes

They will continue to review information regarding the child/children and stay in contact with them throughout the litigation process to **represent their best interest**

They may prepare a written statement of issues and contentions setting forth the facts that bear on the best interest of the child. (FC 3151)

Minor's Counsel

Minor's Counsel has a unique relationship with the minor child and has the following rights:

- 1) Reasonable access to the child.
- 2) Standing to seek affirmative relief on behalf of the child.
- 3) Notice of any proceeding, and all phases of that proceeding, including a request for examination affecting the child.
- 4) The right to take any action that is available to a party to the proceeding, including, but not limited to, the following: filing pleadings, making evidentiary objections, and presenting evidence and being heard in the proceeding, which may include, but shall not be limited to, presenting motions and orders to show cause, and participating in settlement conferences, trials, seeking writs, appeals, and arbitrations.
- 5) Access to the child's medical, dental, mental health, and other health care records, school and educational records, and the right to interview school personnel, caretakers, health care providers, mental health professionals, and others who have assessed the child or provided care to the child. The release of this information to counsel shall not constitute a waiver of the confidentiality of the reports, files, and any disclosed communications. Counsel may interview mediators; however, the provisions of Sections 3177 and 3182 shall apply.
- 6) The right to reasonable advance notice of and the right to refuse any physical or psychological examination or evaluation, for purposes of the proceeding, which has not been ordered by the court.
- 7) The right to assert or waive any privilege on behalf of the child.
- 8) The right to seek independent psychological or physical examination or evaluation of the child for purposes of the pending proceeding, upon approval by the court. (FC 3151 (c))

Minor's Counsel



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