

## **CHAPTER 13 MINOR'S COUNSEL**

### **Rule 5.13.1**

#### **Appointment of Counsel for Children**

**A.** When appropriate, the court may appoint qualified, private counsel to represent the best interests of the minor child(ren) in a custody or visitation dispute in accordance with Family Code section 3150 and California Rules of Court, rules 5.240-5.242. The child(ren)'s attorney shall be referred to as "minor's counsel." Before beginning work on the case and no later than 10 days after being appointed, minor's counsel shall file Judicial Council Form FL-322 (Declaration of Counsel for a Child Regarding Qualifications). Failure to timely file the declaration may result in a forfeiture of fees and costs incurred prior to the filing date.

#### **B. Duties of the Parties Upon Appointment of Minor's Counsel.**

**1.** After the appointment of minor's counsel, the court will determine minor's counsel's rate of compensation.

**2.** The court will typically set an "ability to pay" hearing within 30 days of the appointment to determine the parties' financial ability to pay all or a portion of the minor's counsel's fees and expenses in accordance with Family Code section 353 and the California Rules of Court, rules 5.240-5.242. If the court determines that the parties have the ability to pay all or a portion of the fees and expenses, the court will order the parties to pay in any manner it determines is reasonable and compatible with the parties' financial ability pursuant to Family Code section 353 and California Rules of Court, rule 5.241.

**3.** Upon the appointment of minor's counsel, the parties must provide minor's counsel with copies of all substantive pleadings, declarations and exhibits filed or lodged in the case, the name, address and telephone number of each professional who has provided services to the children, and a list of the parties' contentions bearing on custody and visitation. The court will order the parties to provide the information and sign releases to permit all professionals who are or have been involved with the parties and/or the child(ren) to provide information as requested by minor's counsel.

**C. Rights and Responsibilities of Appointed Minor's Counsel.** Upon appointment, minor's counsel will be vested with all rights and duties set forth in Family Code sections 3151, 3151.5 and 3152, and California Rules of Court, rule 5.242 and the list set forth on page 3 of local form SDSC D-041.

**1.** Once minor's counsel has been appointed, he or she must be given notice of all future proceedings and the child must be treated as a party to the action. Accordingly, all written communications and documents regarding child custody/visitation and related issues must be copied to the other attorney or SRL and the minor's counsel. Minor's counsel must participate in any proceeding in which custody, visitation or related matters are at issue. Minor's counsel may participate in other proceedings if counsel believes the child's best interests would be served by such participation.

**2.** Requests by minor's counsel for the appointment of experts and/or investigators must be made in writing to the Supervising Family Judge before any experts and/or investigators are retained or paid. Requests will be determined on a case-by-case basis, including a determination of reasonable fees to be incurred. Requests for fees for experts and/or investigators retained without prior court approval will be denied.

**3. SDSC Form D-137 ("Declaration and Order for Payment of Attorney Fees and Costs of Minor's Counsel").** Minor's counsel shall submit a declaration and order for payment of fees at every "ability to pay" and/or "review" hearing or no less than every 90 days if there is no pending review hearing.

**D. Review Hearings.** The court will generally hold a review hearing every 90 days to consider both the continued appointment of minor's counsel and the parties' ability to pay.

**E. Complaint Procedure.** Any complaints regarding minor's counsel shall be addressed, in writing, to the Family Court Supervising Judge. The written complaint shall include the case name, number, the name of the judicial officer assigned to the case, and the name of the minor's counsel. The complaint shall be as specific as possible regarding the alleged inadequacies or behaviors which give rise to the complaint. The Supervising Judge shall have the discretion to respond to the complaint directly or to refer it to the Chairperson of the Minor's Counsel Subcommittee of the San Diego County Bar Association. If referred to the Chairperson, the Chairperson will attempt to resolve the complaint informally. If the Chairperson is able to resolve the complaint informally, he or she will notify the Supervising Judge. If the Chairperson is

not able to resolve the complaint informally, he or she will convene a Review Panel to investigate the complaint. The Review Panel shall be comprised of two volunteer attorneys who have no connection to the underlying case and at least one of whom is qualified to be appointed as minor's counsel and the Supervising Judge or his or her designee. The Review Panel shall investigate the complaint and make a written report with recommendations to the Supervising Judge within 60 days of the date the Review Panel is convened. The Supervising Judge will then take whatever steps he or she deems appropriate with respect to the complaint.

(Adopted 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2007; Rev. 1/1/2008; Rev. 1/1/2009; Rev. 1/1/2010)