

AN INTRODUCTION TO THE LEGAL REPRESENTATIVE

C.R.S. • 14-10-116 (1). *The court may, upon the motion of either party or upon its own motion, appoint an attorney, in good standing and licensed to practice law in the state of Colorado, to serve as the legal representative of the child, representing the best interests of the child in any domestic relations proceeding that involves allocation of parental responsibilities. In no instance may the same person serve as both the child=s legal representative pursuant to this section and as the child and family investigator for the court pursuant to section 14-10-116.5*

What is a Legal Representative?

A Legal Representative is someone who is appointed by the judge or magistrate in a case to serve as the attorney for the child(ren). The Representative shall be an attorney and shall be afforded all the same rights and privileges as any other counsel in the case. The Representative is charged with representing the best interests of the child(ren) with respect to the child(ren)=s parenting time, legal decision making authority of the parents, child support, the child(ren)=s property or any other issue related to the child(ren) that is identified in the court=s order of appointment.

How does the Legal Representative do his/her job?

The typical service of the Representative will begin with an investigation which includes a personal interview with each parent or party requesting relief from the court and at least one personal interview with the child(ren). Most often the meeting with the child(ren) will be conducted in the home where the child(ren) primarily reside. Depending upon the age and capacity of the child(ren) the Representative may request to meet with the child(ren) in each parents= home. The parties may request or the Representative may determine the need to make contact with collateral sources who have relevant information related to the child(ren) or family. For example, teachers, counselors, physicians, extended family and the like. The Representative shall participate in any formal or informal discovery as does any other party to the case and may make his/her own requests for discovery to the parties on behalf of the best interests of the child(ren). The Representative may make recommendations to the parties and the court to assist in the facilitation of settlement of the issue(s) before the court.

What recommendations can the Legal Representative make?

The Legal Representative makes recommendations which he/she believes, based upon the investigation, serve the best interests of the child(ren). Depending upon the issue(s) presented the Representative recommendations may include, but are not limited to; the grant of legal decision making authority between the parties; the division of parenting time between the parties; counseling or other therapeutic intervention for the family; mediation for the family; custody evaluation; or other interventions the Representative feels are in the best interests of the children.

Are recommendations of the Legal Representative Orders of the Court?

No. The recommendations of the Representative are considered by the judge/magistrate as is any other evidence presented by any party. The judge/magistrate will consider the situation of the Representative which is unique in that he/she looks solely from the unbiased position of and/or on behalf of the child(ren). The court is hopeful that the recommendations will assist the parties in reaching a mutual resolution to the issue(s) of the case but the parties are not obliged to accept recommendations they disagree with. The parties still have the right to present relevant evidence to the court which will be weighed along with the evidence of the Representative report.

What is the cost of a Legal Representative?/Who pays?

Typically, the court enters orders for payment of the Legal Representative in its Order which appoints the Representative. The court will order that a retainer fee be paid before the Representative is required to begin work. The Representative will bill his/her time at his/her hourly rate just as any other attorney in the case does.

Generally, it is the parents/parties who are ordered to pay the fees of the Representative. Child(ren) do not have resources to make payment so the fees are apportioned between the parents/parties to the case. If a party is determined by the court to be indigent the Order apportioning fees will indicate that their fees may be paid by the state of Colorado. These instances are rare, however, as the party must qualify as indigent pursuant to strict Colorado guidelines.

What if the parties do not pay the retainer fee within the time required by the Order of Appointment?

The parties will be ordered to make payment directly to the Representative within a short period of time. Typically, within 10 days of the order appointing the Representative. The Representative cannot begin investigation until full payment is made. If either of the parties, or both, do not make payment within the specified time period the Representative will notify the court that he/she is unable to proceed. Any delay by the parties in making payment directly interferes with the Representative's ability to comply with the court's direction. The Representative takes his/her direction only from the court.

How do parties contact the Legal Representative for the first time?

The Representative will be notified by the court of his/her appointment but may not be provided with information to contact the parties. The parties are responsible for initiating contact with the Representative. The court or your attorney, if any, can provide you with the address and phone number to contact the Representative. The Representative will inform you how to make your payment and how to schedule your meetings with him/her.

Are my meetings with the Representative confidential?

There is no attorney/client privilege between the Representative and any party, including the child(ren). Even so, it is critical that all parties and the children are as open and honest as possible with the Representative. It is the court's expectation that all parties will share all necessary and relevant information with the Representative so that he/she can do the most effective job. In making recommendations the Representative will make every attempt to present the information in a neutral, factual and non biased way. Parties who are represented by counsel are encouraged to discuss these issues with their counsel in advance of meeting with the Representative. All parties are encouraged to discuss any questions or concerns directly with the Representative at the first meeting.