

*Metzger*

Trial court appoints Minor's Counsel for 9 year old child with suspected autism in a bitter custody proceeding, and orders father to advance \$100,000 as a retainer. This scenario forms the backdrop for a needed reminder and review of the often misunderstood role of Minor's Counsel. *Family Code* sections 3150-3153, and *California Rules of Court* 5.240, 5.241 and 5.242 are the provisions governing the scope, duties and compensation of Minor's Counsel. But the bare statutes and implementing rules don't flesh out what for years has been seen as a hybrid, nuanced, and often misconstrued role of Minor's Counsel: attorney, guardian ad litem, advocate, best interests counselor, Parenting Plan Coordinator, witness, interpreter of child's preferences [See "*Appointment for Counsel for Child*" CEB, *Child Custody Litigation and Practice*, Chapter 10 (2013)]. There remain unsettled issues in this context: local counties have the power to establish their own panels and procedures, an old and questionable State Bar ethics opinion (Formal Opinion 1976-37) prohibits an attorney for a party from requesting appointment of counsel for a minor child, the ABA Standards of Practice for Lawyers Representing Children in Custody Cases [#4C(1)-(2)], creates a slightly different ethical standard, and the California legislature has created a hybrid role by mandating that Minor's Counsel both represent the child's best interests and, at the same time, present the child's preferences [*Civil Code* section 3151(a)]; but what if the two views are in conflict?

The *Metzger* opinion, in affirming the trial court appointment and order, reviewed and clarified the criteria for appointment of Minor's Counsel by its finding that *Family Code* section 3151(a) sets forth the duties of Minor's Counsel, holding that appointment of counsel for the minor child did not interfere with father's constitutional right to determine his child's best interests, determining that father's right to decide with whom his daughter associates did not take precedence over the court's authority to determine the child's best interests, and that father's right to protect his child's medical privacy was not supported by credible evidence so as to render Rule 5.242 unconstitutional.

The Minor's Counsel appointed by the trial court had specialized training, was available, and could assist the court; thus, the appointment was not an abuse of discretion, nor was the award of \$100,000, to be advanced by father, but credited 50/50 in the ultimate division of community property.

Appellant-father conjured up as many arguments as he could think of to reverse the trial court order, never a well-designed strategy. Here, father, an attorney, represented himself *in pro per*, never a wise choice, especially when one's own family and child are involved. As enflamed custody disputes continue their path to the courthouse, the *Metzger* opinion should be kept in mind as the latest judicial interpretation of this sensitive and, as noted, often misunderstood aspect of custody litigation.

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