When will the Court appoint a lawyer (an ICL) to represent the interests of your children?

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In complex parenting matters the before the Court the divorce lawyer may ask the Court to appoint an ICL. The Court itself may decide to appoint an ICL- that is a lawyer for your child or children.

A family Law case decided by the Court in 1994 is often relied upon by both the Court and the divorce lawyer to assist in determining when an ICL should be appointed.

This 1994 case known as Re K was a decision of the Full Court of the Family Court.

Re K suggested that where one or more of the following factors apply to the case, the Court should consider the appointment of an ICL:

1. Where there are allegations of child abuse, whether physical, sexual or psychological.
2. Cases where there is an apparently intractable conflict between the parents.
3. Where the child is apparently alienated from one or both parents.
4. Where there are real issues of cultural or religious difference affecting the child.
5. Where the sexual preferences of either or both of the parents or some other person having significant contact with the child are likely to impinge upon the child's welfare.
6. Where the conduct of either or both of the parents or some other person having significant contact with the child is alleged to be anti-social to the extent that it seriously impinges on the child's welfare.
7. Where there are issues of significant medical, psychiatric or psychological illness or personality disorder in relation to either party or a child or other persons having significant contact with the children.
8. Where on the material filed by the parents, neither seems a suitable custodian.
9. Where a child of mature years is expressing strong views, the giving of effect to which would involve changing a long standing custodial arrangement or a complete denial of access to one parent.
10. Where one of the parties proposes that the child will either be permanently removed from the jurisdiction or permanently removed to such a place within the jurisdiction as to greatly restrict or for all practicable purposes exclude the other party from the possibility of access to the child.
11. Where it is proposed to separate siblings.
12. Where none of the parties are legally represented.
13. Applications in the Court's welfare jurisdiction relating in particular to the medical treatment of children where the child's interests are not adequately represented by one of the parties.

The divorce lawyer can advise as to further information about the appointment of an ICL including as follows:-

1. Who will be the ICL - The Legal Aid Commission will select who is to be the ICL.
2. Who pays for the ICL -Each party usually pays 50% of the costs of the ICL however an application can be made to waiver the fee in cases of hardship.

A Divorce Lawyer can advise how the appointment of an ICL may impact your case.

If you would like to arrange an appointment with a child custody lawyer, contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.