

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 149

(Delegate Dumais)

Judiciary

Judicial Proceedings

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Family Law - Counsel for Minor - Payment of Fees

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This bill authorizes a court to impose counsel fees against one or more parties to an action in which custody, visitation rights, or the support of a minor child is contested.

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Fiscal Summary

**State Effect:** The bill's changes could be handled with existing budgeted resources.

**Local Effect:** The bill's changes could be handled with existing budgeted resources.

**Small Business Effect:** None.

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Analysis

**Current Law:** In an action in which custody, visitation rights, or the support of a minor child is contested, the court may appoint a lawyer to serve as a child advocate attorney or a best interest attorney for the minor child. Lawyers appointed for minor children under these circumstances may not represent any party to the action. The court may impose counsel fees for such an appointment against either or both parents. A lawyer appointed as a child advocate attorney or a best interest attorney must exercise ordinary care and diligence when representing the minor child.

**Background:** This bill is intended to modify the result of the Court of Appeals decision in *Taylor v. Mandel* (No. 3 September Term, 2007). In that case, the maternal grandmother sought custody of or visitation with her grandchildren and requested the appointment of a *guardian ad litem* (a court appointed attorney charged with representing

the best interests of a minor child involved in a court action). The parties in the action reached a settlement, and the circuit court required Ms. Taylor (the maternal grandmother) to pay a portion of the *guardian ad litem* fees. The decision was affirmed by the Court of Special Appeals.

The Court of Appeals reversed those rulings, holding, among other things, that the plain meaning of the term “parent” is a father and mother and does not include grandparents. The Court of Appeals observed that when the General Assembly desires to make a nonparent, but one standing *in loco parentis*, a responsible party, it is aware of how best to convey its intent in statute. The Court of Appeals also stated that while the General Assembly amended § 1-202 of the Family Law Article in 2006, it did not take that opportunity to expand the court’s authority to order payment of *guardian ad litem* fees by third parties although “...third party custody issues had had some notoriety prior to 2006.” As a result, the Court of Appeals ruled that the circuit court did not have authority to require the maternal grandmother to pay *guardian ad litem* fees because the use of the term “parent” only permits the court to assess these fees against a mother or father.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - January 22, 2008  
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