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## Child advocate receives civil immunity in divorce case

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Lawyers who act as child representatives in divorce cases are absolutely immune from civil damages if they're sued by the child's parents, the 1st District Appellate Court ruled today.

In a 20-page published opinion, Justice Mary K. Rochford ruled that child representatives are "arms of the court" that deserve the same immunity protection as judges.

Milijana Vlastelica sued Jeffrey W. Brend and Levin & Brend P.C. after Brend acted as the child representative for Vlastelica's son during her divorce.

The suit alleged several instances of legal malpractice against Brend, and Cook County Circuit Judge Kathy M. Flanagan granted Brend's motion to dismiss. Flanagan ruled that Brend and his firm were absolutely immune from civil liability as the child representative to advocate the best interest of the son.

Vlastelica appealed, contending that state law doesn't grant immunity to child representatives. She also argued that there is no immunity provided under common law.

In response, Rochford cited the 7th U.S. Circuit Court of Appeals ruling in *Cooney v. Rossiter*, 583 F.3d 967, 970 (7th Cir. 2009).

*Cooney* held that guardians ad litem "deserve protection from harassment by disappointed litigants, just as judges do."

The same principle applies to child representatives, *Cooney* held, because they act as neutrals who are bound by the child's best interests and not necessarily the child's wishes.

"We agree with *Cooney's* characterization of a child representative as a 'hybrid' of a child's attorney and a child's guardian ad litem who acts as an arm of the court in assisting in a neutral determination of the child's best interests. ... We also agree with *Cooney's* holding that to best aid the court in its determination of the child's best interests, the child representative must be accorded absolute immunity so as to allow

him to fulfill his obligations without worry of harassment and intimidation from dissatisfied parents," Rochford wrote.

Brend and his firm were represented by Bruce R. Meckler, Brian J. Williams and Jeffrey B. Greenspan of Meckler, Bulger, Tilson, Marick & Pearson LLP.

Meckler, who was also on the prevailing side in *Cooney*, said today's ruling shows that the court is "recognizing the importance of lawyers acting as child representatives.

"By providing absolute immunity to them, they are encouraging lawyers to serve in that capacity. Custody battles can get pretty acrimonious, and if lawyers didn't have this type of absolute immunity, they would be very hesitant to get involved in these types of cases."

Vlastelica represented herself on appeal and said she will ask the Illinois Supreme Court to take the case. Granting immunity to a child representative doesn't protect the child's best interest because a lawyer's representation could actually harm a child's best interest, she said.

She also called the *Cooney* precedent "dead wrong" because, she said, child representatives shouldn't be compared to judges.

"It is very clear that the judges get absolute immunity only for adjudicating decisions. Child representatives do not do adjudication. They do not do any of the judicial function," Vlastelica said. "Therefore, there is no logic in the court's ruling because the role of advocating the child's best interest is not synonymous with the role of adjudicating the child's best interest, which is what judges do."

Justices Shelvin L. Hall and Bertina E. Lampkin concurred in the appellate opinion, *Milijana Vlastelica v. Jeffrey W. Brend, et al.* 2011 IL App (1st) 102587.

Even with the court's ruling, parents in divorce cases may still allege unprofessional conduct against a child representative to the trial judge or the Illinois Attorney Registration and Disciplinary Commission.

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