TCMP — Texas Catholic Marriage Project

Respondent’s Authority to Retain Independent Counsel for His Children

At the Commencement of the Dissolution Suit

CONFIDENTIAL — INTERNAL WORK PRODUCT

Saturday, October 17, 2026 | 8:27 p.m. Central Daylight Time

Register: Formal legal analysis in plain English

Classification: Confidential legal memorandum

Record: Certified Document No. 21139087

CONFIDENTIAL — TCMP INTERNAL WORK PRODUCT. Intended only for authorized recipients. Do not copy, forward, publish, quote, upload, or distribute without express authorization. This designation does not itself establish attorney–client privilege.

Question presented

What basis would authorize the court to prohibit the respondent from retaining independent private counsel to protect his children’s legal interests at the commencement of the dissolution suit, where no existing order restricts his representational authority and no material conflict with the children has been identified?

Short answer

On those facts, no basis for prohibition has been established. Texas Family Code § 151.001(a)(7) recognizes parental authority to represent a child in legal actions and make decisions of substantial legal significance concerning the child. The respondent holds that authority before the suit begins. The petitioner’s filing does not itself transfer it to her or extinguish his ability to arrange counsel.

Private retention is distinct from requesting a court-appointed attorney ad litem. A restriction must rest on an identified legal ground supported by the facts, rather than the respondent’s opposition to dissolution or the availability of court-appointed representation.

Relevant factual premises

This analysis proceeds on the respondent’s stated facts:

1. Before suit, both parents held parental authority concerning the children's legal interests.

2. No existing order assigned that authority exclusively to the petitioner or another person.

3. The respondent neither waived nor relinquished that authority.

4. No material conflict between the respondent and the children has been identified.

5. The respondent seeks independent counsel to advocate for the children's security, religious formation, and continuing family relationships.

6. His purpose is to protect those interests from the commencement of the dissolution proceeding.

These premises define the analysis; they are not findings made after an evidentiary hearing.

Existing authority to arrange representation

Section 151.001(a)(7) expressly recognizes a parent's right to represent the child in legal action and make other decisions of substantial legal significance. That authority provides the statutory foundation for arranging legal representation for the children. Tex. Fam. Code Ann. § 151.001(a)(7).

The respondent therefore enters the proceeding holding relevant parental authority. He does not acquire it through the petitioner's consent, and her request for dissolution does not itself establish superior authority over the children's representation.

No identified conflict defeats that authority

The respondent seeks to preserve interests he understands the children to hold in their existing family: security, continuing parental relationships, and religious formation. On the stated facts, those objectives do not establish a material conflict with the children.

Disagreement between the spouses is not, by itself, a conflict between the respondent and his children. Nor does opposition to dissolution establish that his effort to obtain independent advocacy is improper.

Any challenge based on conflict must identify the actual divergence of interests and explain its legal significance. It cannot rest solely on his position as the spouse contesting dissolution.

Private retention differs from judicial appointment

The respondent proposes to retain independent private counsel for the children. He is not asking the court to appoint an attorney ad litem.

Section 107.021 governs specified judicial appointments. Its appointment requirements do not, by themselves, establish a prohibition against privately arranged representation. Tex. Fam. Code Ann. § 107.021.

TCMP — Texas Catholic Marriage Project | Confidential Internal Work Product
Unauthorized disclosure, reproduction, or distribution is prohibited.

The lawyer's professional obligations remain applicable. Those obligations regulate the representation; their existence does not establish that this particular retention is disallowed.

A prohibition requires a specific justification

Section 151.001(d)(1) makes parental rights subject to court orders. Consequently, the respondent's authority is not categorically beyond judicial restriction. Tex. Fam. Code Ann. § 151.001(d)(1).

But the power to enter an order does not supply the factual or legal justification for a particular prohibition. A proposed restriction must identify what is defective about this representation and why the applicable law authorizes the restriction.

Here, the stated facts disclose neither an existing restriction on the respondent's authority nor an identified material conflict. The petitioner's filing, the respondent's opposition, and the availability of an attorney ad litem do not fill that gap.

Conclusion

The respondent has a statutory basis to retain independent private counsel to protect the children's legal interests from the commencement of the dissolution suit. On the factual premises stated, no legally sufficient basis for prohibiting that retention has been identified.

A child-centered examination should address how independent advocacy protects the children's implicated interests. It should not presume that the respondent's effort to obtain that protection is improper merely because he contests dissolution.

CONFIDENTIAL