

**PHILADELPHIA BAR ASSOCIATION
FAMILY LAW SECTION MEETINGS**

Meeting of June 6, 2011

Next Section Meeting: Monday, July 11, 2011, 12:00 p.m., Philadelphia Bar Association, 1101 Market Street, 11th Floor.

Next Executive Committee Meeting: Thursday, July 21, 2011, 12:00 p.m., Philadelphia Bar Association, 1101 Market Street, 11th Floor Committee Room South.

The meeting was called to order at approximately 12:10 by Julia Swain, Esquire, and concluded at approximately 1:10 p.m.

I. WELCOME AND INTRODUCTION

Julia welcomed everyone to the meeting, including Judge Pechkurow and Karen Zeitz, Esquire.

II. APPROVAL OF MINUTES

There were no changes to the May minutes and they were approved as written.

III. TREASURER'S REPORT

As of May 31, 2011, the Section's treasury had a balance of net assets in the amount of \$27,184. A copy of the report is attached hereto.

IV. ANNOUNCEMENTS

The Winter Holiday Party will be held at the Rittenhouse Hotel on December 8.

Megan Watson presented the Section's Resolution opposing HB 525 (regarding the prohibition against the appointment of parenting coordinators) to the Board of Governors, which approved the Resolution.

The Bench Bar Program will take place on October 14 and 15. The Section will be presenting a program called *Facing Facebook, Facing Ourselves: Social Media in Child Custody Litigation*. Two members of our Section, along with Judge Thompson and Master Glen Andreola will be on the panel. The program will take place on Friday, October 14 at 3:00 p.m. The Section is also co-sponsoring a program with the Criminal Justice Section regarding the impact of criminal convictions in civil litigation. Julia encouraged the Section members to attend.

The Scholarship Committee has determined that the Section will award five \$100 scholarships to juvenile/dependency lawyers in order to encourage their participation

in the Section. Lawyers will have to participate in the appointment wheel in order to be eligible for the scholarship. Julia will announce the scholarship at the next Juvenile/Dependency Committee meeting.

V. PRESENTATION

Frank Cervone of the Support Center for Child Advocates gave a presentation on the American Bar Association's Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings. The Model Act would invite state legislatures to enact legislation that would create the right to counsel for every child in abuse/neglect proceedings, and it would set a floor for the standard of practice for child advocates. The Section unanimously voted to recommend the Resolution to the Board of Governors. Materials are attached.

VI. COMMITTEE REPORTS

The Adoption Committee noted that the Adoption Amendments recently passed, and the Committee is planning a program for an upcoming meeting.

The Consumer Education Committee announced that many of the brochures/packets/forms have been updated, although they are not all yet available on the Court's website. The Committee is hoping to have the brochures translated in other languages.

The Custody Committee announced that they will be presenting a program in the fall.

The Divorce and Equitable Distribution Committee announced that they will be presenting a program regarding awards of counsel fees.

The Domestic Violence Committee announced that they are investigating service issues in an attempt to make it easier for petitioners to serve PFA petitions on defendants.

The Inter-County Liaison Committee provided information regarding the Delaware County Domestic Relations Office's requirements in order to submit a stipulation for entry as an order. Materials are attached.

The Legal Rights of Unmarried Cohabitants Committee is planning a program regarding the issues surrounding the dissolution of same-sex marriages, civil unions and domestic partnerships.

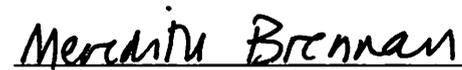
The Support and Alimony Committee will be presenting a program regarding the intersection of SSD and support.

The Court Language Access Task Force will be discussing the ABA's resolution that would mandate the use of interpreters for certain court proceedings.

VII. GOOD AND WELFARE

Dina Ronsayro and her family welcomed a daughter, Sydney Ronsayro, on May 11, 2011.

Respectfully submitted,



Meredith Brennan, Esquire
Secretary

ATTACHMENTS:

Treasurer's report

Slip opinions

Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

Delaware County DRO Requirements for Stipulations

**Family Law Section
Statement of Activities
For the Five Months Ending May 31, 2011**

	May	YTD 05/31/11
Sources of Funds		
Dues	\$90	\$6,182
Annual Dinner	0	0
Cocktail Party & Special Events	3,125	3,125
Section Lunch Meetings	112	737
Miscellaneous	0	0
	\$3,327	\$10,044
Total Income		
Application of Funds		
Annual Dinner	\$0	\$345
Cocktail Party & Special Events	21	21
Committees/CLE Programs	0	0
Postage	0	10
Section Lunch meetings	162	916
Reproduction	0	406
Newsletter	0	0
Telephone	0	0
List Serv/Website	0	0
Miscellaneous	0	0
	183	1,698
Total Application of funds		
Excess/(deficit) of all activities	3,144	8,346
Balance at beginning of period	18,838	18,838
Net Assets	\$21,982	\$27,184

Committees		
Custody	\$0	\$0
Custody and Divorce Mediation	0	0
Dependency	0	0
Divorce/Equitable Distribution	0	0
Domestic Violence	0	0
Support and Alimony	0	0
Support and Alimony	0	0
	0	0

Total Committee

\$0 \$0

RECENT PA. APPELLATE COURT FAMILY LAW SLIP OPINIONS

June 2011

Summarized by David I. Grunfeld, Esquire

1. **Durning v. Balent/Kurdilla**, Carb., 3121 EDA 2010
(Pa. Super. 5/2/11)

Mother appealed shared (alternate weeks) physical custody order. Vacated - mother in Pennsylvania with her mother only to litigate custody; she had primary custody in Alaska for five years until illness; father unilaterally kept child; mother's move with her soldier husband to North Carolina reasonable under Gruber. Opinion by Strassburger joined by Ford Elliott and Allen.

2. **R.M. v. J.S.**, Alleg., 1380 WDA 2010
(Pa. Super. 5/6/11)

Florida father appealed denial of his preliminary objections to custody complaints of Pennsylvania mother and maternal grandmother. Vacated and remanded for hearings on (1) whether mother's absence from Florida was intended to be permanent, (2) which state has "maximum significant contacts," (3) possible "unjustified conduct" by mother and grandmother, (4) standing of grandmother. Opinion by Donahue joined by Bowes and Shogan.

3. **Hill v. Randolph**, Lanc., 707 MDA 2002
(Pa. Super. 6/1/11)

PFA defendant appealed conviction of indirect criminal contempt for violation of order. Affirmed - statute does not bar prosecution for multiple violations, double jeopardy, or non-jury trial. Opinion by Stevens joined by Shogan. Concurring opinion by Colville, relying on two distinct instances of violation.

Copies of Pa. Supreme and Superior slip opinions may be downloaded from the Internet on the homepage of the Administrative Office of the Pa. Courts, address www.aopc.org.

Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

"The matter of independent representation by counsel, so that a child may have his own attorney when his welfare is at stake, is the most significant and practical reform that can be made in the area of children and the law." In the Matter of T.M.H., 613 P.2d 468, 470 (Okla. 1980) (holding that all children have a constitutional right to counsel in termination of parental rights cases).

What the *Model Act* Does:

- 1) Requires appointment of a lawyer for every child and youth in abuse/neglect proceedings.
- 2) Builds upon existing ABA Standards and Policy to offer a model state statute format that can be adopted by various state legislatures.
- 3) Improves the quality of legal representation for children and youth in abuse and neglect cases by setting clear qualifications and performance guidelines consistent with ABA Standards of Practice for Lawyers Representing a Child in Abuse and Neglect Cases and ABA Model Rules of Professional Conduct.

What the *Model Act* DOES NOT DO:

- 1) Does **not** supplant the important role of child welfare courts: judges, not lawyers, will ultimately decide what is in the best interest of the child.
- 2) Does **not** restrict the authority of a judge to appoint an advocate to present information about a child's best interest, at any point in the case, such as a court-appointed special advocate (CASA), lawyer or other best interest advocate.
- 3) Does **not** apply in any way to domestic relations child custody cases such as disputes between parents.

Why the *Model Act*?

- 1) **Children involved in court proceedings involving state intervention should have a statutory right to legal representation.** Many states have no statutory right to counsel, resulting in thousands of children and youths being denied a lawyer to represent them.
- 2) **Courts have routinely found that foster care placements and other forms of state custody confine and can threaten foster children's physical liberty.** *Kenny A.*, 356 F. Supp. 2d at 1360-61 ("children in state custody are subject to placement in a wide array of different types of foster care placements, including institutional facilities where their physical liberty is greatly restricted."). See *Braam v. State*, 150 Wn.2d 689, 698, 81 P.3d 851 (2003) (emphasis added) (quoting *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) (comparing foster children to individuals involuntarily committed to hospitals)).
- 3) **Lawyers for children allow them to be participants in the proceedings that affect their lives and safety.** Children who are represented by a lawyer often feel the process is fairer because they had a chance to participate and be heard. Youngsters are more likely to accept the court's decision because of their involvement in the process.
- 4) **The *Model Act* was written with experts** from the ABA Center on Children and the Law and 30+ children's law centers around the country that represent children daily. Drafters also met with representatives from the ABA Family Law Section to integrate their comments.

Why is the representation of children in abuse, neglect and dependency proceedings so important?

Designed to protect children from abuse and neglect, dependency court proceedings can be intrusive and disruptive to the child and family. The most basic rights and needs of children will be decided by these proceedings:

- » Who will be their mother, father, or siblings? Will they visit?
- » Where will they live? Where will they go to school?
- » Will they be hospitalized and what medications will they take?
- » What will the future hold for them?

An abuse/neglect case that results in the child's removal from the home may immediately or ultimately result in the child being thrust into an array of confusing and frightening situations, including movement from home to home with total strangers, group home or institutional commitment, even locked detention for running away or otherwise violating a court order. Sometimes these moves have more to do with the State's fiscal or administrative interests than the child's welfare.

Our notion of basic civil rights demands that children have a trained legal advocate to speak on their behalf and to protect their legal rights, just as they would if they were facing a month in juvenile detention. The Model Act seeks to embed in state law a set of standards, duties and mechanisms to ensure the provision of high-quality, effective lawyering for children.

Access to a lawyer:

- » Will provide children and youths with someone who knows how to use the legal process to ensure that their rights are being protected and that they are safe in a foster home or safe to return to their biological family's home.
- » Can help prevent children and youths from running away and can help them or their parents to gain access to needed services.
- » Provides a confidential and privileged relationship to ensure the court's awareness of the entire family story. An adolescent may be comfortable revealing information about why they want to go home ONLY to their lawyer because of that confidential and privileged relationship.

In the absence of counsel for children, trial courts lack the information necessary to make what is arguably the most important decision in a child's life—who will be that child's family forever.

What if a child tells his attorney to ask for something unsafe or outrageous?

- 1) Lawyering for children relies largely on client counseling: explaining pros & cons of certain choices, and explaining how or why a court may make a decision about a specific request.
- 2) Most children's lawyers report that they rarely go into court and argue for things that are absurd because they've counseled their client through the options. Given the safe, confidential relationship of the lawyer-client relationship, they work together to formulate the child's position.
- 3) The Model Act provides guidance for lawyers who feel that they need to take protective action when their clients are at risk of harm.

DELAWARE COUNTY

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The Pennsylvania Department of Public Welfare, Bureau of Child Support Enforcement, by Memorandum dated October 7, 2010, issued recommended procedural changes for the establishment of child support orders based upon stipulations between the parties. Historically, support obligations have sometimes been agreed to without using the Pennsylvania Child Support Enforcement System. The Bureau's Memorandum seeks to clarify the minimum requirements for that procedure to render it compliant with Pennsylvania and federal law. At the heart of the recommendation is the requirement that the stipulation contain the Guideline calculation mandated by Pa. R. C. P. 1910.16-1 through 1910.16-7.

Accordingly, any agreement/stipulation submitted to the DRS must have:

- A. A Guideline calculation for each child or spouse who is the subject of the stipulation, and an explanation for deviation, if any, from the amount of the Guideline calculation.
- B. Effective date when the agreement will start;
- C. The amount of support to be paid by the defendant must be a monthly frequency;
- D. The monthly net incomes of the parties (or annual gross);
- E. The dependants' names and amount to be paid for each;
- F. An amount designated to be paid on arrears (at minimum 10% of monthly support amount);
- G. The amount of credit to be granted (if applicable);
- H. A statement that it must be paid through County Domestic Relations; ← 
- I. A statement identifying which party will provide health insurance, as well as the name and address of the insurance company and its identification numbers;
- J. A statement of how any unpaid medical expenses over \$250.00 will be split (percentage between the parties);
- K. A statement of the division of any other expenses which are included within the order (child care, tuition, etc.); and
- L. The signature of each party as an acknowledgement of his and her agreement with the stipulation, understanding of the amount calculated under the Guideline, and the date on which the agreement is executed.