Notes from the Chair

By Joan M. Smith, Esq.

In early July, I received a letter from PBA President Vince Grogan that focuses on the tremendous changes facing the legal profession. In setting forth his agenda for the year, he has challenged PBA committees to develop at least one project or program this year to provide substantive information and services that are relevant to our specific practices.

The Children’s Rights Committee has produced this Newsletter and our Conference and while they are both in their fledgling stages, I believe that they well serve President Grogan’s bidding. Within these pages, you will be informed about specific activities that our Committee is pursuing and about upcoming programs and conferences. Our own Conference, typically held in April, offers a formal educational agenda focusing on the obstacles we face in advocating for children. Both efforts encourage a dialogue among practitioners about day-to-day issues and challenge us to push the current state of the law forward for Pennsylvania’s children.

A new column, “Current Issues in Child Advocacy,” premiers in this issue. In it, we hope to focus on issues that practitioners are increasingly likely to encounter. Whatever your view, we encourage your responses and will publish them in subsequent issues. I hope that through this exchange individual practitioners can attempt new strategies and fine-tune challenges to those procedures and practices which do not serve children well.

Beyond President Grogan’s concerns, the Children’s Rights Committee aspires to make a difference. We expect this task will not be an easy one. Answers are not simple. And perhaps we will often find ourselves standing alone. In opposing the 1995 referendum on child video testimony, the PBA stated that they were not opposed to children testifying electronically, but to avoid an unconstitutional, fundamental change in the confrontation clause of the Pennsylvania Constitution, “the passion of the issue should not rule the day.” The real mandate for our Committee is to find a way to focus the passion of the issue to improve the legal and social environment for children.

New Changes Enacted Under Welfare Reform

By Joan M. Smith, Esq. and Lisa A. Waldman, Esq.

On March 3, 1997, Pennsylvania implemented the federal Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), which many of us know as “Welfare Reform.” This act ended the federal entitlement of the Aid to Families with Dependent Children (AFDC) program and replaced it with block grants to the states. With its block grant, Pennsylvania created Temporary Assistance to Needy Families (TANF). Some of the goals of this new program are to promote personal responsibility; to move cash recipients into jobs; to provide work incentives and supports; to break the cycle of dependency; and to strengthen families and support children. Under this program, recipients of cash assistance must take a greater role in being self-sufficient. To encourage this, the new program sets

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Committee Working Toward Unified Family Court

Lisa A. Waldman, Esq.

On May 15, 1997, the Pennsylvania Bar Association’s Commission on Women in the Profession sponsored a program entitled, “Fractured Families, Fragmented Courts” at the PBA Annual Meeting in Hershey, Pa. The program began with a video featuring judges, attorneys and clients commenting about their experiences with the family courts and the deficiencies they observe with the current system. A roundtable discussion followed and was comprised of family law experts including some experts from other states that have a unified family court. This lively discussion identified problems and proposed solutions for the current family court system in Pennsylvania.

Some of the issues discussed include the need for flexibility with any system that is adopted; better education of the judiciary and court staff; early intervention to preserve the status quo of the family; a decrease in the number of steps in the process and the time that it takes to complete the cases; the need for one judge one family so that there is consistency; and the need for mediation and social services to be a part of the overall plan. With these ideas in mind, John Bradley and I drafted a questionnaire to be distributed to family law clients throughout Pennsylvania to help us gain a better understanding of their concerns. We would like to also conduct statewide hearings so that people will have an opportunity to comment on the current system and the proposed changes and on new legislation being proposed to move Pennsylvania forward in the family law area. The questionnaire will be submitted at the next meeting of the Children’s Rights Committee for members’ approval.

Based upon the complexity of the issues needing to be addressed, a unified family court in Pennsylvania is still years away, but with programs like the “Fractured Families, Fragmented Courts,” and the follow-up work that is being done across the Commonwealth, Pennsylvania is on the right track.

In Memoriam

Peter N. Kutulakis
1934 - 1997

By Joan M. Smith, Esq.

As many of you may know, Peter was stricken recently on a flight returning from the ABA Annual Meeting. My association with him came out of our mutual concern for the rights of children and our interest in keeping the activities of a fledgling Children’s Rights Committee going. As co-chair last year, he provided valuable counsel and thoughtful assistance. His commitment to problem solving, as evidenced in his activities on behalf of the PBA’s Commercial Arbitration and Mediation and Alternative Dispute Resolution Committees, served our Committee well as he planned and coordinated our first conference.

With his sudden death on August 5th we have lost a dedicated advocate, scholar, teacher and friend. If we were wise enough to learn from his example, Peter prepared us well to continue his work to achieve a more peaceful, generous and thoughtful place in which to live. Nevertheless, we will miss him greatly.

PBA Children’s Rights Committee

Joan M. Smith, Chair
Julia Lynn Malloy-Good, Vice Chair
Hon. Cynthia A. Baldwin
PBA Board of Governors Liaison
John F. Bradley, Newsletter Editor
Louann Bell, PBA Staff Liaison
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Current Issues in Child Advocacy - Bullies on the Playground

By Kathleen B. Vetrano

Adam is a middle-school student in a middle-class suburb. He was assaulted on his way to school by three boys who are his classmates. He also has been subject to physical and verbal violence by various children on school grounds. The record of one of his attackers has revealed a history of five prior assaults involving other students.

The school policy defines a physical attack as an attack by a person or a group upon another person who does not wish to conflict and who has not provoked the attack. When an attack occurs, all parents of the students involved are notified and police actions are taken in addition to school actions.

In this matter, the school did not follow their policy in that on one occasion the parent of one attacker was not notified. The principal took his time in notifying teachers, although he had promised immediate notification. The assistant principal told Adam and his parents that “it is not cool to be smart in middle school” and maybe he should consider a private school where good grades are rewarded.

Adam was so upset and scared to attend school that his parents took him to the police to assuage some of his worries by reporting the incident. His parents are concerned that he will have problems developing trust in other students.

Adam’s parents, frightened and concerned about these incidents, proceeded to write numerous letters to Adam’s principal, vice-principal and teachers and forwarded copies to the superintendent and assistant superintendent as well. They also wrote to the school board, PTA and township representatives.

Adam’s parents arranged meetings to discuss the situation and offered to assist the school in addressing the problem of bullies on the playground. They suggested an indoor game room, which could be staffed by parent volunteers during recess and that additional adults and staff could supervise recess and hallways during class changes. However, the school administration rebuffed the offers of assistance claiming that there was no room available for indoor recess and that additional monitoring by teachers was not provided for in their contracts.

We solicit your comments and suggestions on addressing this issue with school authorities, in the courts and in the legislature to redress some of the grievances Adam and his parents experienced.

Doreen Graziano will be taking over as the newsletter editor of the next issue of the Child’s Advocate newsletter. Please send your comments regarding the bullies on the playground issue to her at 120 Corcoran Street, Scranton, PA 18518.

Support Center for Child Advocates Offers Workshops

On Nov. 6, the Philadelphia Bar Education Center will present the Support Center for Child Advocates Volunteers Training Workshop at the Bar Education Center, the Wanamaker Building, East Penn Square, Suite 1010, in Philadelphia.

The Support Center for Child Advocates provides legal assistance and social service advocacy to abused and neglected children in Philadelphia County.

The program begins at 8:30 a.m. and concludes at 4:30 p.m. This program offers 5 substantive and 1 ethics CLE credits.

This course offers presentations and skill sessions on many child advocacy issues and provides volunteers with a training manual. This course also provides attorneys, who have a primary office in Philadelphia, with the certification for eligibility to receive court-appointed dependency cases. Cost for child advocate volunteers is $125; for Philadelphia Bar Association members is $135; for non-members is $150; and for non-lawyers and volunteer lawyers who audit is $25.

For registration information please call (215) 238-6314.

Public Service Announcements Promote Fatherhood

By Lisa A. Waldman, Esq.

The Domestic Relations Association of Pennsylvania, in conjunction with the Pennsylvania Bureau of Child Support Enforcement, produced a public service announcement campaign earlier this year to promote fatherhood. The campaign features Ken Ryan of the Philadelphia Phillies, together with his daughters Julia and Amanda, and Tony Womack of the Pittsburgh Pirates, together with his wife Janet and daughter Jessica. Four 30-second video PSAs were sent to television stations across Pennsylvania in June, and radio PSAs are being prepared.

The campaign entitled “Don’t Drop the Ball” includes positive messages for fathers whether they are married, divorced or single that they need to be there for their children. More information about this campaign is available on the Domestic Relations Association of Pennsylvania’s web site at www.Libertynet.org-drap. This web site also includes still photos from the video PSA.
Protecting School Children

By Lynn Owens, Esq.

It is ironic that at the time that gender-based violence and sexual harassment in our public schools is on the rise, federal courts are creating laws that virtually insulate schools and school districts from civil rights lawsuits. Under the Education Amendments of 1972, & 901, 20 U.S.C.A. & 1681 (“Title IX”) and 42 U.S.C.A. & 1983 (“Section 1983”), the statutes upon which this type of litigation is based, require intentional discrimination by an official of the school before the school district will be held liable for violating a plaintiff student’s civil rights, Oona R-S v. Santa Rosa City Schools, 890 F.Supp. 1452 (N.D. Calif. 1995). In other words, a student plaintiff seeking to make out a civil rights claim based on violation of Title IX must prove that the defendant school district in fact discriminated against her because of sex, not that defendant school district merely failed to guarantee that plaintiff would not be exposed to any such discrimination by third parties. Id. This requirement may not be difficult to meet where the harasser/aggressor is a school official, see e.g., Franklin v. Gwinnett County Public Schools, 112 S.Ct. 1028 (1992); Oona R-S, supra. However, where the harasser/aggressor is another student or students, the “intentional” requirement may be insurmountable to a student plaintiff’s courtroom success.

For example, in Rowinsky v. Bryan Independent School District, 80 F.3d 1006 (1996) the United States Court of Appeals, Fifth Circuit, held that Title IX does not impose liability on a school district for peer hostile environment sexual harrassment, absent allegations that the school district directly discriminated based on sex. In Rowinsky, an eighth-grade female student suffered a pattern of harassment on her school bus, including repeated lewd comments and profanity based on gender, as well as actual fondling of the girl’s genitals and breasts by male students. The assistant vice principal met with the girl’s parents and agreed with them regarding the extent and nature of the harassment their daughter was suffering. Although the school was well aware of the situation, the school took little action to prevent the harrassment, merely asking the boys and girls to sit in separate seats on the bus. Moreover, when this request was ignored, the school took no further action. Finally, the female student and her mother sued the school district under Title IX for hostile environment sexual harassment. The District Court granted the school district’s motion for summary judgment and the United States Court of Appeals, Fifth Circuit affirmed, holding that: (1) the mother did not have standing to sue under Title IX and (2) the school district itself did not directly discriminate against the female student based on her sex.

The Rowinsky ruling is surprising particularly in light of the media attention the student-to-student harassment is receiving of late. A recent article in the ABA journal “Classroom Distinctions: New Sexual Harassment Guidelines for Schools Released,” (May 1997, p. 18-20) indicated that sexual harassment suits from students in grades K-12 are up from 11 in 1991 to 72 in 1996. Moreover, according to the article the figure for sexual harassment suits in grade and high schools (72) is almost equal to that of college students (78). Equally startling is a recent column in Reader’s Digest (August 1997, p. 62), which describes how a 13-year-old female student in Philadelphia’s Norris Barratt Middle School was raped by two male students behind a portable blackboard in her classroom, although the substitute teacher never left the room.

Notably, members of the Pennsylvania Bar Association’s Children’s Rights Committee have clients who have suffered sexual harassment and / or violence in Pennsylvania schools and are finding it very difficult to resolve either by working with school officials or bringing a civil rights suit. Several possible courses of action come to mind: (1) explore the possibility of other causes of action under which to bring student-to-student violence / harassment suits; (2) proceed with a suit under the current state of law and argue for change; (3) push for legislation in the Pennsylvania Legislature that affords school children greater protections; and / or (4) educate students and teachers with respect to students’ rights. At future meetings of the Children’s Rights Committee, we can explore the plausibility of such proposals and discuss other possible solutions to this pressing problem.

Committee Activities on Behalf of Children

Adoption and Foster Care

Merilee Weiss and Frank Cervone of the Support Center for Child Advocates are scheduled to testify at hearings on the Unified Adoption Act in late September.

Child Advocate Project

Lynn Owens will provide a skeleton brief for child advocates doing appellate work. Please contact Lynn at (215) 735-0195 for help with your research needs.

Legislative Action

The newly established subcommittee discusses all proposed legislation relating to children. We have also reviewed proposals for legislation and have established communication with the House Committee on Children and Youth to draft standards of practice for child advocates.
Welfare Reform

(Continued from page 1)

limits for eligibility.

Most cash assistance recipients must perform an eight-week job search to be eligible for cash assistance. In order to continue receiving cash assistance after two years, most adults must have a job working at least 20 hours per week, or be performing community service. Additionally, there is a lifetime limit of five years on cash assistance. Based upon these measures, which are intended to promote personal responsibility, recipients will be more likely to cooperate to get child support established against a non-custodial parent so that they can get off cash assistance and reserve some of their five-year lifetime limit for another time when they might need it more.

Despite the laudable objectives of the TANF program, there is growing concern in the legal community that these new regulatory requirements pertaining to the recipient’s eligibility may produce dramatic adverse ramifications, for example:

- States must assure that adult recipients are participating in work activities:
  - By 2002, nearly all adults in families receiving welfare must be working;
  - A large pool of subsidized or free labor threatens the livelihood of many persons employed at the lower end of the pay scale;
  - Wages at the bottom third of the pay scale are expected to decline 12 percent;
  - Thousands of welfare recipients will be added to a job market already burgeoning with people who cannot find work.
  - Every family not qualifying for the state’s 20 percent “hardship exemption” is limited to 60 months of assistance for a lifetime:
    - Once a family member receives five years of help, the entire family will lose their grant;
    - Homelessness threatens 25 percent of families with incomes below the poverty level.
  - Teenage parents under 18 must stay in school to receive welfare:
  - School districts with limited funds and space will be compromised severely by enrollment increases and by attendance reporting requirements.
  - Current recipients of Supplemental Security Income (SSI) benefits must prove their continued eligibility under new regulations;
  - Up to 80 percent of cases of medically needy children who require treatment, medicine and prosthetic devices may be reviewed; their SSI benefits will be suspended, or could even be denied entirely, if they fail to file a timely appeal.

A pamphlet was sent to all welfare recipients in February 1997, detailing changes in the law so they would know what to expect. Some changes detailed in the pamphlet to remain eligible for cash assistance are the above-noted requirement that children under 18 stay in school; single parents under age 18 are required to live with their parents or an approved adult; and those convicted of welfare fraud in the past or convicted of felonies will not be eligible. These measures are meant to encourage education and strengthen families and to preserve as much of the funding as possible for those families that truly need it.

The cash assistance offices are working with the clients to help them break the cycle of dependency by advising them regarding getting their GED’s if needed, providing resources to help with job training or finding a job, and providing daycare funding to allow the custodial parents to work. This increased self sufficiency is expected to promote higher self esteem for both the custodial parents and their children. The Children’s Rights Committee of the Pennsylvania Bar Association plans to monitor the program carefully to ensure that the children of Pennsylvania are getting the full benefit from this new program.

In response to preserving the SSI benefits of medically needy children, the PBA has created the Lawyers Involved in the Needs of Kids (LINK) project. The LINK project is recruiting volunteer lawyers to help preserve benefits for those children whose disabilities still meet the guidelines; to review case files and work toward qualifying children for benefits under the new guidelines; and to represent families whose benefits are being terminated to ensure that benefits are not being denied improperly. The PBA has developed training materials and has offered training seminars for lawyers willing to assist those families in need. For more information regarding the LINK project, please contact Jaymee Mehrmann-Pavlovic at (800) 932-0311 or fill out the form provided below.

The Philadelphia Bar Association has established A Lawyer for Every Child (ALEC) task force to recruit volunteer

(See Welfare Reform, page 6)

PBA Lawyers Involved in the Needs of Kids Project Volunteer

Sign-up Form

Yes, I want to help disabled kids!
Name _______________________
Address ______________________
Telephone ______________________
Fax ______________________

☐ I am interested in learning more about this project.
☐ I am interested in this project and have experience in dealing with medical evidence and could offer assistance to others working on the cases.
☐ I am interested in participating in this project; however, I am not serving clients in this area of law and will require some assistance from colleagues familiar with this subject matter.

Return this form to: Jaymee Mehrmann-Pavlovic
PBA, P.O. Box 186, Harrisburg, Pa. 17108-0186
or Fax: (717) 238-1204.
Welfare Reform

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lawyers, paralegals and law students in helping children whose SSI benefits are jeopardized and to publicize the impact that stopping benefits will have. Lawyers will assist families in requests for reconsideration and in representation at face-to-face hearings about their eligibility. Community Legal Services (CLS) and the Volunteers for the Indigent Program (VIP) will conduct client interviews, screen cases for merits, coordinate volunteer training and provide mentors for volunteers. Funding is also being sought to hire paralegals to obtain medical records and to hire expert witnesses. Philadelphia area professionals who wish to help in this endeavor can contact CLS at (215) 981-3756 or VIP at (215) 981-3787.

Upcoming Programs


- December 10, 1997. Committee/Section Day at the Holiday Inn - Harrisburg East. For more information please call (800) 932-0311, ext. 276.

The PBA Hotline for Childrens’ SSI Redetermination, at (800) 598-1989, provides a recorded message offering general information to parents, but a disclaimer is made about the hotline offering legal advice. The hotline suggests that a parent begin immediately gathering medical information to verify eligibility. If a notice is received that the child’s benefits are denied, an appeal must be filed within 10 days or benefits will be suspended temporarily during the pendency of the appeal. If the family misses the 10-day window, an appeal can still be filed within 60 days, but benefits will not be paid during the appeal period. This “10-day Rule” became fully effective on July 1, 1997. The hotline recommends that callers should contact their local legal services office or county bar association with any questions, but no phone numbers are provided.