Notes from the Chair

Let the Light of Our Accomplishments Shine Forth

By Joan M. Smith, Esq.

This year, the Children’s Rights Committee established the Child Advocate of the Year Award to recognize and promote the accomplishments of those who advocate for the welfare of children. On Thursday, April 16, we will celebrate the achievements of Frank P. Cervone, Esq., our first recipient and present him our award at the dinner preceding our second training seminar. I anticipate that this event will afford the opportunity for us to share our triumphs and explore the dilemmas we face as child advocates.

As most of us know, juvenile and family court practice is difficult at best. Being a child advocate has no status within the profession because we do not reach the bench marks that are considered successful — a six digit salary, million dollar settlements, high profile litigation, etc. Additionally, for many, the practice is lonely. Pennsylvania can boast several counties in which there is only one person who is considered to be a child advocate or who is appointed as guardian ad litem for children.

Nevertheless, across the state, there are hundreds of us who give Pennsylvania children a voice in the courtrooms, who recognize impediments to the efficient provision of services and intervene to smooth the way, who identify policy and procedures that thwart the child’s best interests and work to change the system. As topics covered in this issue of the Newsletter attest, we focus on a myriad of issues that critically affect children’s futures. From protecting the individual child in a custody proceeding to shaping a health care system to nurture the ills of a welfare generation, we very often are victorious.

Since November, an ad-hoc subcommittee worked to institute guidelines, solicited nominations and reviewed the credentials of candidates for the 1998 Child Advocate of the Year so that we can let the light of our accomplishments shine forth. Those of us involved in the process of establishing this award were impressed with the qualifications of all of the candidates and the valuable work they are doing. Our award is but a small token of the Pennsylvania Bar Association’s appreciation for the professional accomplishments of those who advocate to advance the rights of children at law.
1998 Child Advocate of the Year Named

Frank P. Cervone, Esq., executive director of the Support Center for Child Advocates in Philadelphia, was selected to receive the 1998 Child Advocate of the Year Award. As staff attorney with Delaware County Legal Assistance Association, legal counsel to St. Gabriel’s System and the Support Center and an adjunct clinical professor at Villanova University School of Law, he has represented the interests of families and children throughout his legal career.

Letters supporting Frank’s nomination highlighted the determination, caring and perseverance of his advocacy. They noted his ability to look beyond the day-to-day crises and engage in strategic planning on a more global level. They emphasized his reputation for being open to the ideas of others and seeking ways to understand differing opinions in a non-adversarial manner to maintain the involvement of those who may disagree. They stressed that while he is an innovator in addressing the emerging needs of children in the welfare system, he simultaneously confronts the ongoing issues of those currently enmeshed in it, all while holding himself to high standards of professional performance and ethics.

Frank has earned a national reputation through his membership on the ABA’s Steering Committee on the Unmet Legal Needs of Children and on the Governance Board of the Center on Children and the Law. He is former co-chair of the ABA Litigation Section’s Task Force on Children and was among seventy experts who met at Fordham University School of Law to define the rights, power and authority of children as clients and the terms of accountability of their lawyers.

Linda Mauro, D.S.W., of Temple University wrote, “At a time when the lives of children mean so little, it is important to have advocates for whom they mean so much. Yet, it is also important that we not lose sight of children and their birth families. [Frank] juggles the complex issues for which there are not clear answers with a sense of commitment, vision, caring and humility. He is a strong voice for children.”

It is with great pleasure that we will present our award to Frank Cervone at dinner on Thursday evening April 16 at the PBI Conference Center in Mechanicsburg in conjunction with our second annual training seminar. Those unable to attend the seminar but interested in attending the Award Dinner may make reservations at $15 per person by contacting PBI at (800) 247-4724.

Current Issues for Child Advocates

Issue raised by Simon Dinenberg, Esq.

Sara was born to teenage parents in a small community in northern Pennsylvania. The marriage was characterized by her father’s abuse which resulted in her mother’s hospitalization on several occasions. Finally, after only one year together, her parents separated and Sara was left to be raised by her paternal grandmother.

Eventually, her mother’s parental rights were terminated. Her father voluntarily relinquished his rights, and Sara was adopted by her grandmother.

The parents never reconciled but they also never divorced. Sara’s mother subsequently moved to New Jersey, cohabited with another man and today has a child from that relationship. Sara’s father was involved intermittently with her through his relationship with his own mother.

This past year, Sara’s father was killed in an automobile accident. He died intestate with an estate valued at nearly $75,000.

We solicit your comments and suggestions on addressing what claim, if any, Sara might assert to her father’s estate. This child had several interests that apparently were not protected at law by her caregivers. Could something have been done differently? Please send your comments for possible future inclusion in this column to Doreen Graziano at 120 Corcoran Street, Old Forge, Pa. 18518.

PBA Children’s Rights Committee

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Pa. Children’s Health Insurance Program Expands Coverage for Children

By Lucy Johnston-Walsh, Esq.

The Balanced Budget Act, which was signed into law by President Clinton on Aug. 5, 1997, provides a historic opportunity to expand children’s access to health insurance coverage. The federal law was developed to provide funding to the states, allowing them to address the issue of the nearly 10 million uninsured, low-income children in the United States. As a result, $47 billion will be provided to the states over the next 10 years. Pennsylvania’s maximum allotment for federal dollars in the federal fiscal year of 1998 is $118 million. The state must spend approximately $57 million in state dollars in order to receive the federal match.

The State Children’s Health Insurance Program (SCHIP), or Title XXI, brings tremendous financial resources to Pennsylvania and offers a unique opportunity to greatly expand health insurance coverage for low-income children. On Oct. 1, 1997, Gov. Tom Ridge took the first step by committing to draw down all the federal dollars available. The federal law requires the states to submit a plan for children’s health insurance expansion to the Health Care Financing Administration (HCFA) for approval in order to receive the federal funding. States have an option of expanding their Medicaid program, providing insurance through a state health insurance program or a combination of both. Pennsylvania already has an existing state children’s health insurance program, CHIP, which currently is funded by a three cent per pack cigarette tax. Gov. Ridge submitted a plan to HCFA on Oct. 31, 1997, which called for lifting the funding cap on Pennsylvania’s CHIP and removed the waiting list. As of February 1998, the Governor’s office is in negotiation with HCFA and approval of the plan is pending.

Of Pennsylvania’s three million children under 18 years of age, 283,000 children or one in 11 children are without health insurance. Of the uninsured children, one third are eligible for Medical Assistance, but currently are not enrolled. Another one third, are estimated to be eligible for coverage under CHIP and SCHIP. The remaining children without health insurance are not eligible for coverage under Medical Assistance or CHIP.

Gov. Ridge announced through his budget proposal that Pennsylvania would expand CHIP coverage for children up to age 19 and up to 200 percent of federal poverty guidelines, as allowable under the federal law. Pennsylvania must develop an outreach program to begin to find the children that are eligible for programs but not enrolled. With the pending receipt of new federal funds, Pennsylvania also should consider expanding the CHIP benefit package so children can receive all medically necessary services.

Children’s Rights Must be Respected and Preserved

By Doreen M. Graziano, Esq.

Every 13 seconds, a child is reported abused or neglected in this country, according to reports from the Children’s Defense Fund. In 1992, an estimated 2.9 million children were the subjects of abuse and neglect reports, almost double the number of children reported 10 years ago. Parents have been identified as perpetrators in 80 percent of abuse and neglect cases, with other relatives making up 10 percent of the total.

One thousand of the nearly one million child abuse and neglect victims confirmed each year in the United States die as a result of mistreatment. Those fatalities increased by 20 percent from 1985 to 1996 according to estimates by the National Committee to Prevent Child Abuse.

With the increase in crack cocaine and methamphetamine use as well as teen pregnancy, home has become an increasingly dangerous place for many children. There has been an increase in complaints of child endangerment over the past decade, from 2.2 million in 1987 to 3.1 million in 1996.

Children are society’s most valuable resources, however, these statistics are evidence that they are also society’s most vulnerable citizens. In order to protect our children, their rights must be respected and preserved.

Children’s rights are recognized in American Constitutional law. Additionally, international law affords the protection of the following children’s civil, political, economic and social rights.

Children have the right to be treated with dignity and respect.

Children have the right to express his or her views in all matters affecting the child, such views being given due weight...
Too Busy to be a Parent?

By John F. Bradley, Esq.

Issues of custody of children arise most frequently in the context of a divorce. In some instances, the parties are able to reach an amicable agreement, but when they are not, the court must make an award of custody. In reaching its decision, the court is guided by the traditional legal standard, “Best Interest of the Child.”

Traditionally, courts have evaluated the physical and psychological health and safety of the home environment, the quality of the child’s relationship with each parent and the comparative character traits of the parties. When applicable, courts also have considered the child’s interaction with a parent’s new spouse or significant other and/or with step siblings.

The child’s own preference also has been given a degree of consideration with greater weight being given to the wishes of an older child. Until recently however, courts ordinarily have not been concerned about the details of a parent’s work, volunteer or recreational schedule.

During the O.J. Simpson trial, Marcia Clark’s ex-husband sought modification of the existing custody award to her on the basis that her workload was too heavy during a major trial to be able to spend sufficient time with her children. More recently, a judge modified an order of custody because the mother (who was not employed outside the home) had become addicted to the Internet and spent too much time “on-line” and too little time with her children.

Lawyers should be aware that their clients with custody might become vulnerable to a future challenge if their lifestyle becomes too busy. Conversely, when retained by non-custodial parents seeking a modification of a custody order, lawyers should consider this issue carefully. As a lawyer, what can you do to protect your client’s interest? Consider the following.

Seeking Custody

Utilize discovery with the same degree of diligence when investigating the other party’s schedule as you would when investigating that party’s income and assets if you were seeking child support. Do not simply ask about time committed to paid employment — volunteer activities and hobbies can be just as time and energy consuming as work.

Make certain that you are fully aware of your own client’s schedule. Since it is highly likely that both parents will be busy people, your goal is to demonstrate that your client is relatively better able to be a nurturing parent.

Do not assume that your client automatically “wins” on this issue, just because she/he works only part-time or is not employed outside the home while the other spouse works full time.

If other adults or even older children live in your client’s household or readily live in your client’s household or readily become addicted to the Internet and spent too much time “on-line” and too little time with her children.

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are available as “personal support resources” to assist with parental responsibilities, make sure that you can document this favorable evidence to the court’s satisfaction.

Defending Custody

Be prepared to challenge any unusual or excessively detailed discovery request for information about your client’s schedule on the grounds of relevancy and/or invasion of privacy. These types of requests will be somewhat unfamiliar to the court so judges may be inclined to reject them.

Be prepared to counter challenge if the moving party also has a very busy schedule. Conversely, if the reason the other party has ample time to spend with the child is due to unemployment, it is reasonable to explore the possibility that the other parent is seeking to improve his/her own standard of living by supplementing his/her income with a child support award. This is particularly likely when the current custodial parent is affluent.

If your client has personal support resources to share the duties of parenthood, bring this fact to the attention of the court.

Finally, do not be reluctant to portray a challenge as an opportunity. Judges who frequently are overworked themselves are well aware that children are growing up in a fast-paced world and must be prepared to meet its challenges. You may be able to argue successfully that a very busy parent will be able to teach a child the vital skills of time management and self discipline.

Negotiating Custody

If your client is experiencing a temporary time crunch, it may be possible to agree to a temporary modification of the outstanding custody order, without conceding a permanent change.

Child Advocate Training Seminar Video for Loan Program

Tapes of our annual training seminars are available for non-CLE loan. If you were unable to attend or just want to review information on pertinent subjects, contact PBA Staff Liaison Louann Bell at (800) 932-0311, ext. 276, to obtain a copy.

The 1997 Seminar tape includes Ethics for Advocates by David Hofstein and ABA Standards of Practice by Frank Cervone. Look for the 1998 Seminar tape to be available by the summer.

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Legislative Update

Senate Bill 1117 would allow courts to order the payment of delinquent child support from money won in a civil suit. This bill passed the Senate and will be sent to the House for approval.

Senate Bill 1051 creates the Standby Guardianship Act whereby a parent who is terminally ill or periodically incapacitated by chronic illness may make a written, revocable designation of a guardian for any minor children. The non-custodial parent may consent to the designation or have a full hearing on the matter. The Act does not extinguish a parent’s rights, but closes the gap in the legal authority to act on his/her behalf and allows for a caring, trusted friend to become the legal guardian of the child without stressful and cumbersome legal proceedings. A similar bill (House Bill 1708) has been referred to the House Judiciary Committee.

House Bill 1672 adds the Uniform Adoption Act and repeals the present Adoption Act. An identical bill was introduced earlier as Senate Bill 544.

House Resolution 127 — Rep. Katie True chairs the Select Subcommittee on Aging and Youth, which was formed to investigate the events relating to child abuse and adequacy of child protective services in Pennsylvania. Following a series of four hearings, the Subcommittee is in the process of compiling a final report with its recommendation for possible enactment of legislation which will be issued to the full House of Representatives.

Act 119 (Jen and Dave’s Law) established a statewide registry to enable a parent to learn if a person involved in a custody proceeding has been charged with certain offenses. To implement the law, the Administrative Office of Pennsylvania Courts has established the nation’s first centralized, automated system for providing criminal charge information to individuals involved in custody matters.

Editor’s Note

(Continued from page 3)

Committee Activities

Legislative Action

Joan Smith and PBA Pres. Vince Grogan provided supporting testimony for the Standby Guardianship Act before Sen. Piccola’s Aging and Youth Committee in late January. Senate Bill 1051 was reported out on March 18 to the full Senate.

Welfare Reform

Three initiatives are underway in the Commonwealth to address concerns raised by the National Study on Day Care and by recent comments from Pres. Clinton on the crisis facing young children with working parents.

Allegheny and Philadelphia Counties have received state funds, and York County is working with United Way funding to develop pilot programs for children impacted by welfare reform.

Support Center for Child Advocates Spring Training

The Child Advocates Volunteer Training Workshop will be offered on Thursday, June 4 at the Bar Education Center in Philadelphia from 8:30 a.m. to 4:30 p.m.

The program features presentations and skills sessions on representing child clients in a variety of legal and administrative forums. A manual is provided and attendees are offered five substantive and one ethics CLE credits. Cost is $35 for volunteers who audit, $125 for child advocate volunteers, $135 for Philadelphia Bar Association members and $150 for non-members. For registration information please call (215) 238-6314.

Special Publication Available

Make a Difference in a Child’s Life - Twenty-five Projects for Lawyers, may be ordered from the ABA Steering Committee on the Unmet Legal Needs of Children by writing to 74016th Street, NW, Washington, D.C. 20005. Or call (202) 662-1675 or fax (202) 662-1032.
Pediatrician Develops Child Death Review Team

Following the lead of the state of Pennsylvania, which convened a statewide Child Death Review Team in November 1994, Andrea Taroli, M.D., a pediatrician in Luzerne County, is coordinating the development of a joint Child Death Review Team for both Lackawanna and Luzerne Counties. Child Death Review Teams routinely and systematically review all deaths of children under the age of 20 years.

The purpose of the Child Death Review Team is to promote the safety and well-being of children and to reduce preventable child fatalities. This is accomplished through timely, systematic, multi-disciplinary and multi-agency review of child deaths. Information derived from this review is used to develop interdisciplinary training, community-based prevention education and data-driven recommendations for legislation and public policy.

If you have any material for future issues of The Child’s Advocate, Of Local Interest column, please contact Editor Doreen M. Graziano at (717) 451-1860 or fax (717) 451-1870.

Upcoming Conferences

- April 16-17. **Second Annual Child Advocate Training Seminar: Current Issues for Child Advocates**, at the PA Bar Institute Conference Center, 5080 Ritter Road, Mechanicsburg, Pa. For registration information, call (800) 932-4637 or fax (717) 796-2348. Rooms reserved at Homewood Suites Hotel, 5001 Ritter Road, Mechanicsburg, Pa. 17055, (717) 697-4900 and Hampton Inn, 4950 Ritter Road, Mechanicsburg, Pa. 17055, (717) 691-1300.

- April 29-May 2. **ABA Family Law Section Spring CLE Conference**, at the Hyatt Regency in Cambridge, Ma. For registration information, call (312) 988-5000 or fax (312) 988-6800. For hotel reservations, phone (617) 492-1234 or fax (617) 492-1234.

- May 13-15. **PBA Annual Meeting**, at the Hershey Lodge and Convention Center, Hershey, Pa. Call (800) 932-0311 or fax (717) 238-1204 for registration information. For hotel accommodations, please call the Hershey Lodge at (717) 533-3311. Children’s Rights Committee Meeting, 1:30 - 3:30 p.m. on May 13.

- May 14-16. **ABA Steering Committee on Unmet Legal Needs of Children** at the Sheraton Society Hill Hotel, Philadelphia, Pa. Contact Renee Williams at (312) 988-5000 or fax (312) 988-5368.


- June 3-8. **3rd Annual Rocky Mountain Child Advocacy Training Institute**. Presented by the Univ. of Denver College of Law, The National Assn. of Counsel for Children and The Rocky Mountain Children’s Law Center in cooperation with the National Institute for Trial Advocacy. Please call Jean Long, conference registrar, at (303) 871-6326 or fax (303) 871-6100 for additional information.