The Children’s Rights Committee named Washington County Juvenile Master Jeffrey A. Watson Child Advocate of the Year. Watson accepted the award at the spring CLE program on April 5, in Mechanicsburg.

Watson is in private practice with Smider & Watson, P.C., and serves as solicitor to various municipalities. For several years, he was court-appointed counsel and guardian ad litem for children. Nomination materials note that his negotiation skills and practical ability to understand the intricacies of each family situation were evident from the beginning.

Eight years ago, his expertise was acknowledged with his appointment to juvenile master for Washington County. He has since been appointed by three consecutive administrative judges to hear both dependency and delinquency matters. Watson was awarded the Citizen of the Year Award in 1998.

Judge Debbie O’Dell Seneca, past administrative judge, stated in her letter supporting his nomination, “Mr. Watson has a keen grasp of the Juvenile Act and exhibits great acumen in juvenile cases. He understands the needs of children who are at risk and/or abused and does everything in his power to protect them. Further, he is firm with delinquent children and attempts to facilitate their rehabilitation if necessary.”

The Child Advocate Award was established in 1998 to recognize attorneys who have made significant contributions to advancing the legal status of children. Previous award winners were Frank Cervone, Support Center for Child Advocates (Philadelphia); Heidi Ulrich Dennison (Brookville); Judge Max Baer (Allegheny County); and Bob Schwartz, Juvenile Law Center (Philadelphia). This is the first time a juvenile master has been tapped for the award.
Editor’s Comment

By Joan M. Smith

Since its inception, the Children’s Rights Committee has focused on several varied and significant issues. As with most bar association successes, we are only limited by the interests and involvement of our volunteer committee members.

Fortunately, many have been involved with the review and critique of legislative activity, and our role in bringing matters to the governing body of the bar association is visible and respected. We also have dramatically changed the face of education for child advocates through our CLE programs. Topics on general standards and specific practice issues are diverse and pertinent to changes in both law and policy. The legislative action and CLE subcommittees are well established.

Several other subcommittees have taken on specific issues, achieved designated goals, and have given way to other issues. For some time, we brought to the forefront issues related to schoolyard bullies and children being held by the Immigration and Naturalization Service. We sponsored a Web site contest and now have an interactive learning tool through which children can learn about their legal rights.

The newsletter has attempted to keep child advocates informed and involved, but publication has been limited to biannually despite intermittent efforts to make it quarterly. With this issue, Joyce A. Hatfield-Wise, committee vice chair and solicitor

Committee members have been busy with various Children’s Rights Committee activities in the past several months. Several members spent many hours reviewing legislation, that, if enacted, would change our child custody laws. The Children’s Rights Committee worked closely with the Family Law Section on this legislation. Special thanks to Rob Hawn of Cozen O’Connor for leading these efforts!

As you will see from the enclosed photos, our committee held another very successful CLE this past April -- for which we won an award! The CLE won the award for outstanding achievement in the Best Public Interest Project Category from the Association for Continuing Legal Education. Over 100 attorneys attended the CLE. Our committee also presented the Child Advocate of the Year Award to Jeffrey Watson during the lunch period. Special thanks to Jim Flower for chairing the planning committee and to all members of the planning committee and the faculty.

If you are interested in working on any committee activities, such as planning future CLEs, writing articles for this newsletter, or reviewing pending legislation related to children’s issues, please contact Louann Bell at the PBA at phone (800) 932-0311, ext. 2276, or Louann.Bell@pabar.org.

Notes from the Chair

Lucy Johnston-Walsh

PBA Children’s Rights Committee

Lucy Johnston-Walsh and Scott Hollander, Co-Chairs

Joyce A. Hatfield-Wise, Vice Chair

Bobbi Liebenberg, PBA Board of Governors Liaison

Joan M. Smith and Joyce A. Hatfield-Wise, Newsletter Co-Editors

Louann Bell, PBA Staff Liaison

Patricia M. Graybill, PBA Newsletter Liaison

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To Submit Articles

The Children’s Rights Committee newsletter invites members to submit articles or letters to the editor for publication in the newsletter.

Please contact Joan Smith at fax (215) 635-5003 or Joyce A. Hatfield-Wise at phone (724) 228-6705, fax (724) 223-4713, or e-mail hatfielj@wc.co.washington.pa.us.

We invite your comments and suggestions.
The Judiciary Looks at Child Testimony

By Joyce A. Hatfield-Wise (who represented the appellee agency on appeal)

On Dec. 4, 2001, the Superior Court of Pennsylvania decided the case of In Re: In the Interest of B.L.L., 787 A.2d 1007 (2001), 2001 PA Super 341, wherein the court amplified and discussed the issue of child testimony in proceedings involving children and custody changes, namely custody, adoption and involuntary termination of parental rights. The summation was intended by the court to aid the bar and the court in future cases and may indeed assist child advocates when confronted with this issue.

The court affirmed the termination of the mother’s parental rights. In B.L.L., the issue was raised by the appellant-mother as to whether the trial court erred when it refused the post-trial request for an additional hearing to allow or compel the child’s testimony. The court found the lower court did not err in refusing this request and went on to discuss and delineate the critical differences between the three types of hearings regarding children and custody.

The following chart summarizes the court’s opinion. Of most importance in the instant case, the court held that a birth parent cannot compel the testimony of the subject child in an involuntary termination proceeding, nor is the trial court required to hear from the subject child. As provided for under the Adoption Act, a child in a contested termination matter must be represented by an attorney guardian ad litem and evidence of the preference of the child is not permitted “as the child cannot cede his right to minimal proper nurturing.”

<table>
<thead>
<tr>
<th>Standard of Proof</th>
<th>Central Inquiry</th>
<th>Legal Representation of Children</th>
<th>Children’s Testimony</th>
<th>Children’s Attendance at Hearing</th>
<th>Legal Representation of Parents*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custody</td>
<td>Preponderance of the evidence</td>
<td>Best interests of the child</td>
<td>Not mandatory, permissible by court</td>
<td>Required in proper cases for court to ascertain preference of child</td>
<td>Not required</td>
</tr>
<tr>
<td>Involuntary Termination of Parental Rights</td>
<td>Clear and convincing evidence (the highest level of proof required in any civil proceeding)</td>
<td>Bifurcated: Parental conduct and capacity/ if above proven, inquiry shifts to needs and welfare of the child</td>
<td>Mandatory</td>
<td>Not required, preference of child not permitted as child cannot cede right to minimal proper nurturing</td>
<td>Not required</td>
</tr>
<tr>
<td>Adoption</td>
<td>Competent evidence</td>
<td>Best interests of the child</td>
<td>Mandatory</td>
<td>May be required by the court</td>
<td>Required</td>
</tr>
</tbody>
</table>

*adoptive parents, rights of natural parents have ceased at termination stage
Update on the Law

Adoption of J.D.T., 2002 WL 462286 (Pa. Super.)
Trial court improperly required grandparents to meet third-party standards for standing to adopt their grandsons following termination of parental rights although evidence showed that grandparents had limited prior contact with the children and that social services did not consent to the adoption.

Beers-Capitol v. Whetzel, 256 F. 3d 120 (3rd Cir. 2001)
Executive director of a state juvenile detention facility could not be held liable for alleged sexual assaults by past residents absent evidence that the director was aware of a pattern of abuse. A staff member who admitted suspicion of abuse was not awarded summary judgment because she did not adequately respond to the potential risk.

Parents exhibited the element of intent required to support child endangerment when they refused to seek medical treatment for their minor son who suffered from a life-threatening cancerous tumor. Parents cited religious beliefs for allowing their son to become critically ill. The court found parents knowingly violated their duty of care of which they were aware.

Parents of child who died at day care facility entitled to view that part of child death review that derived from statewide child abuse registry or child abuse reports related to the case. Report contents discussing topics other than suspected or confirmed abuse of other children in facility were privileged and subject to confidentiality restrictions.

In re J.F.D., 782 A.2d 564 (Pa. Super 2001)
Child welfare agency did not violate ASFA and deny child equal protection rights by imposition of arbitrary cutoff of permanency planning for children 17 years and older. There was inadequate evidence that the agency denied older children access to court for termination of parental rights and adoption either passively or actively.

In re N.E., 787 A.2d 1040 (Pa. 2001)
Child welfare agency was required to pay dental bills for child still dependent and subject to its supervision although the child was no longer in the custody of the agency. Both CPSL and Public Welfare Code require the agency to provide care and services to dependent children.

In re R.H., 791 A.2d 331 (Pa. 2002)
Statements made by a juvenile to school police officers during interrogation should have been suppressed at delinquency hearing because he was not advised of his Miranda rights. School police officers were considered law enforcement officers subject to Miranda since they were judicially appointed and had same powers as municipal police.

In re R.M., 790 A.2d 300 (Pa. 2002)
Trial court’s removal of foster child from foster parents to child welfare agency was harmful error and violated due process rights of foster parents. Proof at hearing was that child was sexually abused by brother, was not receiving mental health counseling and was overmedicated. The disparity between the original pleading and proof at hearing materially altered foster parent’s ability to mount an appropriate defense.

Upcoming Conferences

- SEPTEMBER 26 - 29, 2002
  National Children’s Law Conference in Orlando, Fl. Sponsored by the National Association of Counsel for Children. For information, call (303) 864-5320

- OCTOBER 1 - 6, 2002
  “Training the Lawyer to Represent the Whole Child” at the University of Pennsylvania. Sponsored by the National Institute for Trial Advocacy and ABA Section of Litigation. See additional information on Page 9; call (800) 225-6482 or e-mail nita.1@nd.edu.
Committee Activities on Behalf of Children

Law for Kids Subcommittee

Happily, the subcommittee completed its work this spring by naming a grand prize winner and four honorable mention prize winners in its Web site contest. Inspired by a suggestion from PBA Past President Lou Teti, high school students across the state were invited to design an interactive Web site that would teach students about their legal rights. Participants were provided with a brochure from the American Civil Liberties Union for substantive content.

Ian Garvey, New Hope Solebury High School, was the grand prize winner of $1,000. Ian produced a site that won high praise for its accuracy, navigability, content, design and interactivity. His entry originally also included a chat room that was later removed because of our inability to monitor the activity that might take place there.

Honorable mention prizes of $250 each were awarded to Justin Kauffman of Waynesboro Area High School, Erin Balon of Windber Area High School and Chris Sciullo of Greater Latrobe Senior High School at the PBA Awards Breakfast on May 2. A fourth honorable mention prize was awarded to the class of Carol Heid of Iroquois High School.

The contest drew additional entries from Hazleton, Dunmore, Central Dauphin and Shenango High Schools. The committee thanks all for their participation and encourages visits to the Web site, which will be live soon.

Legislative Action

A collaboration with the Family Law Section on Senate Bill 1260 (Proposed Revision of the Custody Act) produced a Joint Resolution that went to the PBA Board of Governors on May 3. Signed by Lucy Johnston-Walsh and Family Law Section Chair Mark Dischell, the resolution recommended that the bar association support the bill, subject to several revisions. The resolution was adopted by the board, and approved by the House of Delegates at their meeting the following day.

The resolution advised that “Child Custody” should appear in the title of Chapter 53 and in the chapter’s text as warranted to align it more directly with its companion Chapter 54, which also pertains exclusively to child custody. When considering criminal convictions (Section 5328) or criminal charges (Section 5329) it was advised that the clause “physical, emotional or psychological” harm be inserted to define the potential threat to the child. Confusion over the use of “consider” in the title to Section 5330 could be avoided by revising the caption to “Factors upon which a custody award shall not be based.” Further, it was suggested that “national origin” be added to the specified list of factors in this section. Mandatory parenting plans should include a statement of the parent’s provision for maintaining the child’s established sibling and social relationships (those involving peer activities). Finally, the Family Law Section and the Children’s Rights Committee agreed on a provision related to standing of certain persons in custody matters concerning dependent children.

Representatives of both the Family Law Section and the Children’s Rights Committee testified jointly before the Senate Judiciary Committee hearing on May 6. The PBA will track future action on the bill.

SAVE THESE DATES:

PBA Committee/Section Day
Nov. 21, 2002
Holiday Inn East, Harrisburg

PBA Midyear Meeting
Casa de Campo,
Dominican Republic
Take an e-tour of the resort at

Visit www.pabar.org or
call the PBA at 1-800-932-0311
for more information.

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Pennsylvania’s Proposed Adoption Act: Substance and Status

By Joyce A. Hatfield-Wise

Adoption did not exist at common law. It is a creature of legislation. First enacted in 1970, Pennsylvania’s modern-day Adoption Act has undergone certain, limited changes over the years. However, in 2001, a major overhaul of the current act was proposed. Reflective of its broad attempt, the proposed legislation consists of over 213 pages, including sample forms and flow charts. The proposed changes serve as a complete rewrite of the act. The proposed act attempts to provide each member of the adoption triad with the necessary protection and respect. It also serves to provide a conjunction between the state’s Juvenile Act and the federal Adoption and Safe Families Act.

The advisory committee reviewed the federal Adoption and Safe Families Act of 1997, the Model State Adoption Act, the Uniform Adoption Act, case law, regulations, adoption literature and the statutes of other states.

The advisory report is the product of numerous subcommittee meetings and 12 full committee meetings. The report represents the consensus of the committee, not necessarily the unanimity of the committee.

While recommending numerous technical and substantive changes, the Pennsylvania Bar Association argued that in many instances, the act is just right.

(Continued on Page 7)
Pennsylvania’s Proposed Adoption Act: Substance and Status

(Continued from Page 6)

By correspondence dated Nov. 28, 2001, some 44 days after the public hearing, Pennsylvania’s Juvenile Court Judge’s Commission (JCJC) had offered its opinion and recommendation on the proposed act. Like those of the PBA, the JCJC’s recommendations are section-specific and largely compatible with the concerns expressed by the bar association.

Some Proposed Key Changes

Due to the breadth of the proposed act, this author has not attempted to summarize here the totality of the changes noted in the proposed legislation. Instead, what follows are but a sampling of some of the key proposed changes, as selected by this author.

• Increases legal representation for child and birth parents (§2109),

Under the proposed act, the child is expressly made a party in every contested involuntary termination proceeding or appeal of a final decree of termination and the court is required to appoint an attorney guardian ad litem for the child. In all other proceedings under the act, the appointment of a guardian ad litem or attorney for the child is permissible if the court determines that the appointment serves the needs, welfare, and best interest of the child. Further, failure to comply with a continuing contact agreement is not grounds for setting aside the adoption.

• Permits birth parent’s designation of an individual to adopt (§2213),

Under this proposed section, a birth parent may execute a voluntary relinquishment form and designate an individual to adopt their child. The section also provides that in the event that the designated individual cannot adopt the child, the court shall vacate the voluntary relinquishment and termination order. The negation of the birth parent’s relinquishment is mandatory without consideration of the needs, welfare, or best interests of the child. Both the JCJC and the PBA have recommended changes to this section.

• Expands class of persons who may file for involuntary termination and adoption (§2231),

Under the proposed act, if a child is not adjudicated dependent, a person who has legal custody of child or who stands in loco parentis and had physical custody of the child for at least six consecutive months of the last eight months prior to filing may file for involuntary termination.

If a child has been adjudicated dependent and has been in foster care placement for 15 out of the last 22 months, a child’s foster parent or other foster care provider who has physical custody or had physical custody of the child for at least six consecutive months of the last eight months prior to filing may file for involuntary termination. The attorney or guardian ad litem for a dependent child may also petition for the involuntary termination of the birth parents’ rights.

The extension of “standing” to foster parents is an issue of much contention. Such standing has not been previously provided for legislatively and the courts have been unwilling to extend it. Both the PBA and the JCJC have expressed their views about this provision. Central to the arguments is the contention that such an expansion will enable foster parents to do an “end-run” around the juvenile court determination with regard to permanency.

• Expands class of persons who may file for adoption (§2501),

In cases where one parent’s rights have already been terminated, the proposed act grants standing to domestic partners to file for adoption without requiring the other parent to relinquish his or her parental rights. The courts have been unwillingly to permit this same-sex parent expansion without legislative action. As in §2231, persons with court-ordered custody or legal guardianship are also permitted to file for adoption.

(Continued on Page 8)
Pennsylvania’s Proposed Adoption Act: Substance and Status

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<table>
<thead>
<tr>
<th>New Grounds</th>
<th>Current Grounds (§2511)</th>
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<tbody>
<tr>
<td>(1) (a)(1)</td>
<td></td>
</tr>
<tr>
<td>(2) (a)(2), modified</td>
<td></td>
</tr>
<tr>
<td>(3) new (parent has engaged in repeated and continued abuse or neglect of child’s sibling or another child in child’s household)</td>
<td></td>
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<tr>
<td>(4) new (aggravated circumstances)</td>
<td></td>
</tr>
<tr>
<td>(5) new (aggravated circumstances)</td>
<td></td>
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<tr>
<td>(6) (a)(3)</td>
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<tr>
<td>(7) (a)(4)</td>
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<tr>
<td>(8) (a)(5)</td>
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<tr>
<td>(9) (a)(6) (reduces measuring stick from 4 months to 2 months of substantial and continuing contact and financial support of child six months of age or younger by non-custodial parent)</td>
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<tr>
<td>(10) (a)(7)</td>
<td></td>
</tr>
<tr>
<td>(11) (a)(8)</td>
<td></td>
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<tr>
<td>(12) new (placement of child for at least 15 of the last 22 months)</td>
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• Expands grounds for involuntary termination (§2233),

Under the proposed act, the grounds for involuntary termination expand from eight to 12 grounds. A cross-reference chart is provided above. As noted, the grounds now encompass aggravated circumstances as defined under the Juvenile Act. Under proposed Ground 12, length of placement alone provides a basis for termination.

• Provides for increased disclosure and access to adoption information and records

The proposed act sets forth conditions when a party may obtain either non-identifying (§§2631-2638) or identifying information (§§2641-2643).

Essentially, the new act provides for the authorized disclosure of information to birth relatives and adoptees and a judicial bypass provision for cause shown.

Under the new act, adoptees age 18 or older may request non-identifying information, but the adoptee may only be the subject of such a request if age 21 or older.

After the effective date of the act, identifying information regarding covered individuals, other than the birth parent shall only be released if the individual has signed an authorization of disclosure. However, identifying information regarding the birth parent shall be released unless the birth parent has filed a disclosure veto.

Sections 2662-2663 provide conditions upon when adoptees or adoptive parents may secure access to a child’s original birth certificate. Essentially, the ability to secure a child’s original birth certificate is effected by whether the adoption decree was entered prior to the effective date of the new act, disclosure of the child’s original birth certificate is prohibited without the written authorization of the birth parents. In cases where the adoption decree is entered after the effective date of the new act, adult adoptees or adoptive parents of a minor adoptee are permitted to obtain a copy of the child’s original birth certificate.

• Expands and creates additional adoption assistance and post-adoption grants (§§2811-2815)

While neither space nor expertise allows this author to offer a cogent discussion of the various changes, suffice it to say that the proposed act requires the Department of Public Welfare to open up its purse to fund a number of financial incentives to adoption.

Current Status of the Proposed Legislation

Following the public hearing and the receipt of other written recommendations and comments, SB 859 has been referred back to the Advisory Subcommittee chairs to review the testimony and comments and to offer any amendments to the proposed act. Based upon any further work of the Advisory Subcommittee, the Senate Judiciary Committee will be in position to report the bill out of committee and to bring it to a vote before the full Senate. Following Senate action, the bill will then be referred to the House for a similar process.

As of this writing, the proposed act remains in the Senate Judiciary Committee. The Catholic Conference has renewed its objections to the legislation and more recently, the Pennsylvania Department of Public Welfare has...
Pennsylvania’s Proposed Adoption Act: Substance and Status

(Continued from Page 8)

While DPW’s concerns are largely fiscal, the Judiciary Committee has agreed to wait for the comments of DPW, which are expected by summer’s end. With the summer recess of the legislature in process and the limited amount of time prior to the end of the legislative calendar on Nov. 30, it is unlikely that SB 859 will reach passage prior to its expiration. In that event, the bill will have to be reintroduced in the next legislative session and follow a similar review, hearing and debate process.

expressed an interest in weighing in on the new act. While DPW’s concerns are largely fiscal, the Judiciary Committee has agreed to wait for the comments of DPW, which are expected by summer’s end. With the summer recess of the legislature in process and the limited amount of time prior to the end of the legislative calendar on Nov. 30, it is unlikely that SB 859 will reach passage prior to its expiration. In that event, the bill will have to be reintroduced in the next legislative session and follow a similar review, hearing and debate process.

Child Advocacy/ Attorney Position Available

Attorney: KidsVoice (formerly Legal Aid for Children) seeks dedicated, organized attorney with initiative and commitment to children to join staff of nonprofit organization providing representation to abused, neglected and at-risk children.

Please send resume and cover letter to Eleanor Bush, Legal Director, KidsVoice, 700 Frick Building, 437 Grant Street, Pittsburgh, PA 15219. EOE

Training the Lawyer to Represent the Whole Child

The National Institute for Trial Advocacy and the American Bar Association Section of Litigation presents “Training the Lawyer to Represent the Whole Child” at the University of Pennsylvania Law School in Philadelphia, Oct. 1-6, 2002.

“Training the Lawyer to Represent the Whole Child” is designed for lawyers who practice in juvenile court, including guardians ad litem; volunteer attorneys; prosecutors; defenders; agency lawyers; and attorneys representing parents or children in status offense, neglect, abuse, child custody, delinquency and adoption cases. Juvenile court practitioners will have the opportunity to learn both general and specialized courtroom skills and knowledge of interdisciplinary issues necessary to provide effective representation in cases that involve children.

This program is in collaboration with the ABA Section of Litigation Children’s Law Committee, Juvenile Law Center, Loyola University Chicago School of Law, National Association of Counsel for Children, Northwestern University School of Law, Rocky Mountain Children’s Law Center, and the Support Center for Child Advocates.

Facilities for this program have been donated by the University of Pennsylvania Law School.

NITA estimates this program will provide 26 CLE credits, of which 2 will apply to legal ethics. A limited number of scholarships are available.

For more information, visit the NITA Web site at www.nita.org/programorder.asp?Action=Show&Part=ABACA or contact the NITA Admissions Department at (800) 225-6482.
Marsha Levick, legal director of the Juvenile Law Center in Philadelphia, presented “Hot Topics in Juvenile Dependency.”

Laval Miller-Wilson, staff attorney with the Juvenile Law Center in Philadelphia, spoke on “Hot Topics in Juvenile Delinquency.”

(Left to Right) As part of the mock hearing, Rhoda Flannisch, a case worker with Lehigh County Children and Youth, played the part of a mother. Judge Emanuel Cassimatis (York) presided.

David P. Rovner of Narberth represented the mother in the mock hearing.
Photo Highlights from Children’s Rights Committee Spring CLE

Lindsay D. Baird, solicitor for Cumberland County Children and Youth, served as the child advocate for the mock hearing. Anita Brewster, program coordinator for the Cumberland County CASA program, is to her left, in the background.

Cherylle Corpuz of the Asia America Law Group in Philadelphia spoke on immigration and naturalization issues involving children.

Networking and time to connect with other child advocates are important components of CLE events, as these two colleagues can attest.

(Left to Right) Judges Emanuel Cassimatis (York) and Barry Feudale (Northumberland) participated in the judges’ roundtable.
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To subscribe to the listserv, complete the form on the front page of the PBA Web site (www.pabar.org). Once subscribed to the listserv you will get the following confirmation message: “File sent due to actions of administrator traci.klinger@pabar.org”

To unsubscribe, send a message to childrenrts-request@list.pabar.org with “unsubscribe” in the subject.

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To send a message to members of the Committee listserv, address your e-mail to childrenrts@list.pabar.org.

IMPORTANT: When you reply to the message, make sure that the listserv name is included either in the “to” or “cc” fields. If you see the listserv name with “bounce” included in the name, remove that address. The “bounce” address is a black hole. You may have to manually add the listserv address to one of the address fields in order for your reply to make it to the members of that list.

To reply only to the sender, hit “Reply,” and type your personal reply to the sender. This response will only go to the sender, not to the entire list-

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