



Report on Public Policy Position

Name of Section or Committee:

Children's Law Section

Contact Person:

Rebekah Mason Visconti

Email or Phone:

Viscontir@Michigan.gov

Position (If position is in the form of a report or amicus brief, the document may be attached.):

Please see attached CLS Position letter forwarded to elyon@mail.michbar.org

Date position was adopted:

November 5, 2003

Process by which position was taken, and vote by which position was adopted:

Discussion, motion, and unanimous vote to oppose SB 148. CLS position letter finally approved 12/01/03.

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

This position falls within the following Keller-permissible category (to be completed for legislative issues only):

The regulation and discipline of attorneys

- ✓ Matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency

Increasing the availability of legal services to society

Regulation of attorney trust accounts

The education, ethics, competence, integrity and regulation of the legal profession

Explanation:

The purpose of SB 148 is to establish and regulate the Court Appointed Special Advocate program. MCR 3.917 was adopted on May 1, 2003 to govern CASAs. According to the court rule, the court may "appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division." MCR 3.917(A) SB 148 would give the CASA far more authority than the court rule suggests.

Attach the text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this recommendation. (Text may be provided by hyperlink):

<http://www.michiganlegislature.org/> (Please see above website to review Senate Bill 148)

CHILDREN'S LAW SECTION



STATE BAR OF MICHIGAN

December 2, 2003

CHAIR

REBEKAH MASON VISCONTI
1025 E. FOREST AVE. STE. 438
DETROIT, MI 48207-1024
(313) 833-3777
FAX: (313) 833-3797
viscontir@michigan.gov

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KATHRYN S. FALK FEHRMAN
235 S. GRAND AVE.
LANSING, MI 48909-7537
(517) 335-5213

SECRETARY

JUDITH T. NEW
P.O. BOX 2411
ANN ARBOR, MI 48106-2411
(734) 717-6432

TREASURER

GEULA Z. TRON
65 CADILLAC SQ. RM. 2200
DETROIT, MI 48226-2869
(313) 965-8852

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DETROIT

Senator Alan Cropsey
Chair of Senate Committee on Judiciary
Michigan Senate
P.O. Box 30036
Lansing, MI 48909

Dear Senator Cropsey:

The Children's Law Section is not in support of SB 148 as written. MCR 3.917 was adopted on May 1, 2003 to govern CASAs. The court rule states that the court "may appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division." MCR 3.917(A)

The bill would give the CASA far more authority than the court rule suggests:

- The CASA could be made a party to the proceedings. Section 7(1)
- The CASA could determine if an appropriate case service plan had been developed for the child. Section 9(b).
- The CASA may request to appear as a witness. Section 9(5)
- The CASA should cooperate with the guardian ad litem, where one has been appointed. Section 10(3)

The bill does suggest some standardization of the CASA program volunteers, including: 21 years of age; interest in children; a willingness to commit one year of time; a background check, including a motor vehicle record; a minimum of 10 hours of training; and a recommended supervisor to volunteer ratio of 30 to 1. Given the increased scope of responsibility, these minimal standardization recommendations are dangerously inadequate.

Arguments against the bill:

1. The bill would allow the court to make the CASA a party to the proceedings. This is problematic for several reasons. The CASA is appointed by the court. In essence, the court is making its own representative a party. Also, there is the issue of representation. As a party, would the CASA be entitled to legal representation?

2. The case service plan is developed in conjunction with the court's dispositional order which is based upon the legal basis for jurisdiction. A college educated, specially trained social services caseworker develops this case service plan. The bill would allow an unqualified, inadequately trained CASA the authority to determine if a case service plan is appropriate. Allowing the CASA to make recommendations, without regard to the legal basis for jurisdiction and disposition constitutes a Due Process violation - at a minimum.

3. The bill proposes to allow the CASA the ability to request to testify. The purpose of the CASA is to maintain a relationship with the minor and to gather information to assist the court. After obtaining that information, the CASA is to prepare a report for the court. If further information outside the report is deemed necessary, then the court should have the ability to call the CASA as a witness, but there is no need for the CASA to be allowed to call themselves to the stand. This again seems to provide them with rights normally due to a party to the proceedings.

4. The CASA is to cooperate with the GAL - if one has been appointed. This language defies the current status of the law. Pursuant to MCL 712A.17c(7) and MCR 3.915(a), the court must appoint a lawyer-guardian ad litem for the child. Where the lawyer GAL and the child do not agree as to what is in the child's best interests, the court can also appoint an attorney for the child. MCL 712A.17d (2). MCR 3.915(B)(2)(b). There will never be a case where there is not a CASA and a GAL.

5. Much of the language in the duties of the CASA is the same language that governs guardian ad litem. If the intent of the bill is to ensure that the children's best interests are represented, then perhaps the courts should be looking more at the effectiveness of the child's counsel rather than assigning an unqualified individual those same duties.

On behalf of the Children's Law Section, thank you for the opportunity to explain to the Committee members the reasons why we do not support SB 148. The position expressed is that of the Children's Law Section only. The State Bar of Michigan has no position on SB 148. If you have any further questions, please do not hesitate to contact me at (313) 833-3777.

Sincerely,

Rebekah Mason Visconti
Children's Law Section Chair

cc: Senator Shirley Johnson