



Report on Public Policy Position

Name of Section or Committee:

Children's Law Section

Contact Person:

Evelyn C. Tombers

Email:

tomberse@cooley.edu

Bill Number:

SB 141 (Van Woerkom) Children; services; court-appointed special advocates; provide for. Creates new act.

Date position was adopted:

February 7, 2007

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting

Number of members in the decision-making body:

16

Number who voted in favor and opposed to the position:

16 Voted for position

0 Voted against position

0 Abstained from vote

0 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Children's Law Section opposes SB 141 for the same reasons it opposed SB 148 on December 2, 2003, and SB 379 on May 11, 2005. Copies of those positions and the reasons for opposing the bills are available on the State Bar of Michigan website, <http://www.michbar.org/childrens/legislation.cfm>.

Please note that the position on SB 148 in the 03-04 legislative session is attached.

The following is the position statement on SB 379 from the 05-06 legislative session:

The CLS voted 16 to 0 (with 1 abstention) to OPPOSE this bill for the following reasons:

- It would put CASA volunteers on the same level as L-GAL's, by requiring the two to "cooperate," making the CASA a party and allowing the CASA volunteer access to all the same information.
- There are "work product" concerns with mandating that L-GAL's grant CASA volunteers access to their files.

- CASA volunteers would have “the authority to ... interview parties involved with the case, including parents, other parties in interest, and other persons having significant information relating to the child.” This will certainly include those who are represented by counsel.
- CASA volunteers do not have sufficient training to conduct “independent investigations.”
- Allowing a CASA volunteer to be a party to an action to which he/she has no vested interest is dangerous.
- There are no educational requirements for CASA volunteers, as opposed to other parties making recommendations in the proceedings, such as L-GAL’s and DHS caseworkers.

There is a conflict because CASA volunteers are appointed by the court and would appear to be part of the judicial branch. Therefore the court is making its own representative a party to the proceedings.

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

<http://legislature.mi.gov/doc.aspx?2007-SB-0141>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

List any arguments against the position:

None provided.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

The regulation and discipline of attorneys

- ✓ The improvement of the functioning of the courts

The availability of legal services to society

The regulation of attorney trust accounts

The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller- permissible explanation:

The Bill relates to improving the functioning of the courts, but see the reasons for opposing the bill.

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

CHAIR-ELECT

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

