

**Minutes from telephonic Legislation Subcommittee Meeting re Chapter 741 proposal
January 6, 2010**

Subcommittee Members in Attendance: Sarah Sullivan
Linda Clark
Amy Hamlin
Robyn Scher unable to attend
Frank Zilaitis

Task: In an email sent to the members of this Subcommittee, dated December 1, 2009, Patty Alexander stated that our task is to review a proposed bill change in Chapter 741. The proposal was made by the UFC Committee of the Supreme Court Steering Committee on Families and Children in the courts. As of December 1, the full committee had not yet voted on the proposed change.

Comments: The Subcommittee wants to know why the proposed change was made by the UFC Committee. The proposed language of “civil and criminal records” raised several concerns which include:

1. The interpretation. Does the change mean “civil records and criminal records” from a court file? Does it mean any civil records such as medical records from a doctor’s office, mental health records, guardianship records, etc?
2. Some of the civil records that may be included could be confidential; for example, dependency and guardianship files.
3. If a judge considered evidence from civil and criminal records, a Respondent may have subsequent problems with any pending immigration or juvenile proceedings.
4. When looking at criminal records, an arrest is not indicative of a crime. A judge could be unreasonably swayed by this type of information.
5. Some of the civil and criminal records reviewed by a judge is not admissible into evidence.
6. The current procedure includes a verified pleading and if any court documents are provided at the hearing, the documents are subject to the rules of evidence and the right to cross-examine. The subcommittee questions the necessity of additional records for an ex parte procedure because the pleading is verified.
7. If the Clerk ensures the Notice of Related Cases is accurate, there should be some communication to the court of other civil and/or criminal cases that might be relevant. A bankruptcy, guardianship, or a baker act proceeding may not necessarily be relevant in an ex parte DV case. Those issues can be addressed during a hearing. The practice of having this kind of information for an ex parte hearing may lend itself to abuse and overreaching if a person were

able to dig up a bunch of “dirty laundry” in the form of court records and attach them to a petition.

Conclusion: Overall, the Subcommittee does not support the suggested change to Chapter 741.30(5)(b), adding “civil and criminal court records” to the evidence a judge can use when considering an ex parte temporary injunction.