

2009-2010 LEGISLATIVE COMMITTEE

ROSTER

August 27, 2009 Telephonic Conference

NAME	Present	Excused
Peter Gladstone, Chair of Section	/	
Patricia Alexander, Co-Chair	/	
Elisha Roy, Co-Chair	/	
Thomas Duggar, Vice-Chair	/	
Maria Gonzalez, Vice-Chair	/	
Heather Apicella, Secretary	/	
Ron Bornstein, Secretary	/	
Abigail Beebe	/	
Barbara Beilly	/	
Angel Bello-Billini		
Steve Berzner		
Pauline Black		
Rob Boyd	/	
Toni Butler	/	
Matt Capstraw	/	
Debra Carter		
Wanda Clapp		
Linda Clark	/	
Lawrence Datz		
Terry Fogel	/	
Christian Givens		
Doug Greenbaum	/	
Amy Hickman		
David Hirschberg	/	
Ben Hodas		
Rana Holz	/	
Luis Insignares		
Robert Jones		
Paul Kararek	/	
Charlotte Karlan		
Norberto Katz	/	
Ingrid Keller	/	

Diane Kirigin		
Lisa Kleinberg		
Belinda Lazzara		
Juliette Lippman	/	
David Manz	/	
Ray McNeal	/	
Robert Merlin	/	
Jack Moring	/	
Ashley Myers		
Monica Pigna	/	
Carin Porras	/	
David Riggs	/	
Kim Rommel-Enright	/	
Rosemarie Roth	/	
Scott Rubin	/	
Tom Sasser	/	
Robin Scher		
Lee Ann Schreiber	/	
Dian Shehata		
Laura Davis Smith		
Sarah Sullivan		/
Jeff Weissman		
Julia Wyda	/	
Adam Zborowski		
Frank Zilaitis	/	

Minutes
August 27, 2009
TELEPHONIC CONFERENCE

Legislative Committee
(Family Law Section - Florida Bar)

MEMBERS IN ATTENDANCE: See attached roster.

I. Call to Order and Welcome by Co-Chairs:

Co-Chair, Elisha Roy, called the meeting to order at 12:05pm, and thanked all members for attending the conference call. Elisha explained why this conference call was necessary, and that the only business which will be address is the Motions stemming from the Review of Office of Child Advocate Bill Subcommittee.

Elisha further explained that Amy Hickman is the chair of the Subcommittee. Elisha explained how the voting works, in order to assure that all members were apprised of the rules as they relate to the voting methods on a particular motion (subcommittee motions do not require a “second”, etc.).

II. Subcommittee Report: Review of Office of Child Advocate Bill Subcommittee:

Co-Chair, Elisha Roy, asked the Committee whether or not everyone had the opportunity to read the Subcommittee’s August 20, 2009 Minutes; and the proposed Bill (drafted by the Fla. Bar Standing Committee on the Legal Needs of Children), both of which were previously emailed to the entire Committee?

Elisha explained that the Florida Bar’s Standing Committee on the Legal Needs of Children were tasked with giving a report ensuring that the children’s needs were met from a legal standpoint. A while ago, a bill was proposed which essentially stated how a child was to be represented. Subsequently, a new bill came about this last legal session, and many organizations have great concerns regarding this bill (i.e. the Palm Beach County Legal Aide, etc.). Senator Nan Rich was approached by the Florida Bar Standing Committee on the Legal Needs of Children to sponsor this bill.

Elisha further explained that there are several areas of concern regarding this bill. For example, separation of powers issues, funding issues, bureaucracy issues, etc. The primary concern relating to the bill is that it creates an executive branch of the Statewide Office of Child Advocate; and the GAL and AAL office is under this branch. Elisha stated that she understands that this Committee could discuss the issues as they

relate to the “executive office” all day; however, there are so many concerns with the structure of the bill as a whole that we can not get hung up on solely this discussion.

III. Subcommittee Motion #1:

Elisha stated that the first subcommittee motion is: that the Legislative Committee recommend to the Executive Committee that the Family Law Section oppose the bill as written because of the separation of powers issue of the bill creating an Executive Branch “law firm” that has inherent conflicts built in that cannot be overcome by drafting.

Elisha asked Past Chair of the Family Law Section, Scott Rubin, to explain this Motion to the Committee in further detail.

Scott Rubin explained that the legislature is creating a “law firm,” which is the office of children’s advocate. This law firm is going to be answering to the Executive branch, and the lawyers within this branch are told how to deal with the client’s, when the client’s are able to make the decisions, etc. Scott expanded further on the issues as they relate to the Florida Bar and the rules regulating attorneys, conflict issues, etc.

Co-Chair, Elisha Roy, also stated that during the subcommittee meeting, there was a discussion regarding other “executive branches,” like the DOR, Office of Regional Counsel, and why these offices are different from the Office of Child Advocate. In addition, to the differences, there are several other funding issues.

Scott Rubin further explained that aside from the issues explained previously, this office can be appointed to represent the victim and alleged perpetrator, in certain instances.

Chair of the Family Law Section, Peter Gladstone, wanted to ensure that time is set aside at the end to determine how to couch this respective problem.

Linda Clark stated that she appreciates the issues as they relate to conflicts, but questioned whether or not there is any proposal regarding funding? Co-Chair, Elisha Roy explained that the Legal Needs of Children Conference was held in Orlando yesterday (8/27/09), and one of the first Motions from the GAL Office was to have all funding for the GAL Office would remain with GAL Office, prior to permitting any other funding for any other office. Elisha also stated that the AAL program (Attorney Ad Litem Program) is in need of a lot of money.

Chair of the Subcommittee, Amy Hickman, stated that there are other ways to deal with the “voice of the child issue.” Amy Hickman explained that the voice of the child was originally the concern. Matt Capstraw stated that if the goal is to ensure that the child has a voice, then this bill as written must be opposed because of the conflict of the separation of powers.

Co-Chair Elisha Roy called for the vote. Motion re-stated.

Vote was taken. Motion passed unanimously.

IV. Subcommittee Motion #2:

Co-Chair, Elisha Roy stated that the second Subcommittee Motion is: The Legislative Committee recommend to the Executive Committee that the Family Law Section oppose the bill as written because it, via the legislature, delegates responsibilities that belong to the judicial branch, under the auspices of the Supreme Court, to the Executive Branch.

Elisha explained that this issue deals with the portion of the bill which talks about the lawyer's relationship with the minor child and how lawyers are supposed to represent the child. Brief discussion ensued.

Elisha called for the vote. Motion passed unanimously.

V. Subcommittee Motion #3:

Co-Chair, Elisha Roy stated that the third subcommittee Motion is: that the Legislative Committee recommend to the Executive Committee that the Family Law Section oppose the bill as written because it is violative of the Family Law Sections standing position that supports adequate funding of the state court system, state attorney's offices, public defenders' offices, and court-appointed counsel.

Amy Hickman stated that yesterday (8/27/09) at the Legal Needs of Children conference, they voted on this bill, stating that the bill must be fully funded. There is now a conflict that this may drain funds, despite the fact that the funds may not even be available.

Elisha Roy asked Kim Rommel-Enright to explain that how the funding comes from private agencies to the various legal aid organizations; and how the private sources may not help out. Kim Rommel Enright, explained that the Legal Needs of Children Motion could create a large problem with funding because of the private sources who may no longer give the funds to the various agencies. Elisha stated that there were representatives available from Orange County legal aid who had the same concerns.

Elisha called for the vote. Motion passed unanimously.

VI. Subcommittee Motion #4:

Co-Chair, Elisha Roy stated that the fourth Subcommittee Motion is: to communicate to the Standing Committee and the Board of Governors that this bill will likely negatively impact existing fully functional programs around the state, removing the ability for children to get representation.

Elisha explained that this is a technical point of view as to what we need to do next.

Elisha called for the vote. Motion passed unanimously.

VII. Other Matters Relating to this Bill:

Terry Fogel stated that she knew that Howard Talenfeld has been very interested in gaining the input from the Family Law Section as to how we feel about these issues. Terry asked Elisha and Amy, what was the outcome of yesterday's meeting? Elisha stated that she emailed Howard regarding the concerns of the Subcommittee; and what she believed would, in turn, be the same concerns of the Legislative Committee. Amy Hickman stated that this issue has been vetted with the creation of bureaucracy, it seems that every one is concerned that the child have a voice; which Amy agreed with (stating that she believed there should be an increased representation of the children). However, Amy explained, the Legal Needs of Children need to find the funding without draining the funding from other programs. We can help this issue (ensuring that the children have a voice), by creating some language into Chapter 39 as to allowing the child to communicate with the court. Amy explained that during the conference/meeting there was a territory fight (i.e. The GAL wanted an appointment in every case, the AAL wants to make sure they are involved, etc.). Elisha also explained that there was a Motion if there is a Motion to appoint a lawyer for the child, and that Motion is denied then there will be judicial review of this denial. Elisha stated that it became more about what each organization needed. Typically, when we come up with a standing position (i.e. if it affects another area of practice, i.e. real estate, we go to the REPTILES section, and tell them about our standing position). One of the Big Bar section positions, is that the court must be adequately funded; this is in conflict with that position. Elisha stated that the short end, is that none of our concerns were addressed yesterday.

Past Section Chair, Scott Rubin, provided some history which may be helpful. Scott explained that in June, 2008 Robin Rosenberg from Florida Children's First sent an email to Scott, Jeff Weissman, and Paul Hill, stating that she was working with the Legal Needs of Children on the bill that the children must be represented by an attorney. In August, 2008 an email went out to Maria Gonzalez and Kim Enright this. Subsequently, Maria Gonzalez sent an email regarding the ABA Model Act (initial draft) for our children's issues committee to be reviewed. Nothing ever came to the legislation committee, or EC regarding this. Terry Fogel and Norberto confirmed that at no time was there any discussion regarding this bill.

Co-Chair, Elisha Roy explained that both she and Amy Hickman, were contacted a couple years ago regarding a very different bill. Terry Fogel pointed out that she believed that this issue is a "very hot political issue." Chair of the Section, Peter Gladstone stated that he had a long discussion with Judge Frusciante (who is the Chairperson of the Delinquency and Dependency Court in the 17th Judicial Circuit, Broward County). Peter Explained that Judge Frusciante is very concerned about the funding issue, and he is opposed to the idea of an AAL (Attorney Ad Litem) on every case; it appeared that the Judge is less aware of the conflict regarding the separation of powers issue. Peter further stated that he believes this may not be as difficult of a political issue as we may believe.

Peter Gladstone explained that a lot of people put a lot of work and time into this bill, and we have to understand that the problem is that people may believe that the section is completely submarineing all their work.

Norberto Katz stated that if we are now opposing this bill, is this now not deeply divisive in the bar, and therefore the same cannot be lobbied? Scott Rubin stated that this is a deep philosophical decision; the bar has allowed various sections of the bar to lobby different sides of the bill.

VIII. Meeting Adjourned: at 12:50 p.m.

Submitted by,

Heather Apicella, Co-Secretary