



Legal Representation of Children in Court Proceedings Addressed in New Uniform Act

The **Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act** was approved in July by the National Conference of Commissioners on Uniform State Laws (NCCUSL) at its 115th Annual Meeting in Hilton Head, South Carolina.¹ This new Act seeks to improve the representation of children in proceedings directly affecting their custody by clearly defining the roles and responsibilities of children's representatives and by providing guidelines to courts in appointing representatives. It is anticipated that the Act will be presented by NCCUSL leadership to the ABA House of Delegates at the ABA Mid-Year Meeting in February for approval, after which it will be submitted for approval in each state.

NCCUSL initiated a drafting committee on the topic because the role of lawyers representing children in court proceedings affecting their interests has been the subject of intense debate for the last decade. Both commentators and various professional organizations have put forth various proposals. State laws vary dramatically on the appointment of representatives for children and often give little guidance. The ultimate Act integrates the ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Standards adopted in 1996 and the ABA Standards of Practice for Lawyers Representing Children in Custody Cases and further addresses the role of the non-lawyer representative, thus dealing in a comprehensive manner with the area.

The Act provides for two categories of lawyers: the child's attorney and the "best interests" attorney. The child's attorney is in a traditional attorney-client relationship with the child and is therefore under traditional ethical limitations governing that relationship. The "best interests" attorney has the responsibility of assisting the court in determining the child's best interests. Unlike the child's attorney, the best interests attorney is not bound by the child's expressed objectives.

The Act also addresses the role of the non-lawyer representative, or "court-appointed advisor." The court-appointed advisor's role is to assist the court in determining the child's best interest. The court-appointed advisor's responsibilities include investigation of the case and, where appropriate, making a recommendation to the court.

An important premise underlying the Act is that an attorney should be appointed for every child who is the subject of an abuse or neglect proceeding. Legal representation for children in these proceedings can ensure that court orders are based on accurate, informed and sensitive assessment of the child's circumstances. In custody proceedings, the Act leaves to judicial discretion the question of appointing a child's representative but provides basic guidelines and a list of factors for the court to consider in deciding whether to make an appointment and which type of appointment to make.

The Act sets out basic guidelines for the appointment and role of attorneys and court-appointed advisors, and provides the option to individual states to provide more detailed guidelines through separate standards of practice. This Act will serve as a great improvement in the representation of children across the country.

¹ The Approved draft may be viewed at http://www.law.upenn.edu/bll/ulc/RARCCDA/2006annualmeeting_approvedtext.htm

The drafting committee on the Act was chaired by Rhoda B. Billings of Lewisville, North Carolina. Other committee members included: David A. Gibson, Brattleboro, Vermont; Paul M. Kurtz, Athens, Georgia; Debra H. Lehrmann, Fort Worth, Texas; Robert L. McCurley, Jr., Tuscaloosa, Alabama; Cisco McSorley, Albuquerque, New Mexico; M. Gay Taylor, Salt Lake City, Utah; Harry L. Tindall, Houston, Texas; and Cam Ward, Alabaster, Alabama. Barbara Ann Atwood of Tucson, Arizona, served as the committee's reporter. Ann M Haralambie of Tucson Arizona and Howard Davidson of Washington, D.C. served as the ABA Advisors to the Committee.