



WISCONSIN LEGISLATIVE COUNCIL

CHILD GUARDIANSHIP AND CUSTODY

Room 412 East (Joint Finance Room), State Capitol
Madison, Wisconsin

September 22, 2004
10:00 a.m. - 1:00 p.m.

[The following is a summary of the September 22, 2004 meeting of the Special Committee on Child Guardianship and Custody. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Lasee called the meeting to order. The roll was called and a quorum was present.

COMMITTEE MEMBERS PRESENT: Sen. Alan Lasee, Chair; Sen. Robert Jauch; Reps. Sheryl Albers, Stephen Nass, Ann Nischke, and Jeffrey Wood; and Public Members Rosemary Albrecht, Thomas Donegan, Mary Kasperek, Betty Klug, and Patti Seger.

COMMITTEE MEMBERS ABSENT: Rep. Robert Ziegelbauer; and Public Member Sandra Cardo Gorsuch.

COUNCIL STAFF PRESENT: Russ Whitesel, Senior Staff Attorney; Philip Cardis, Staff Attorney; and Rachel Veum, Support Staff.

APPEARANCES: Terry C. Anderson, Director, Legislative Council; John McCabe, National Conference of Commissioners on Uniform State Laws, Legislative Director; and Betsy J. Abramson, University of Wisconsin Law School.

Opening Remarks

Senator Alan Lasee, Senate Co-Chair of the Joint Legislative Council and Chair of the Special Committee, opened the meeting with remarks to the committee members on behalf of himself and Representative Steve Wieckert, the Assembly Co-Chair of the Joint Legislative Council. Representative Wieckert was not able to attend the meeting.

Chair Lasee described the makeup and history of the Joint Legislative Council. He discussed the charge of the committee and outlined ground rules for operation of Council study committees, specifically, rules relating to voting. At the conclusion of his remarks, Chair Lasee thanked the individuals on the committee for their willingness to serve.

Terry C. Anderson, Director, Legislative Council staff, welcomed the committee members and introduced the Legislative Council staff that will be working with the committee. Mr. Anderson requested that committee members update their individual contact information, described the procedures for completing travel vouchers, and noted that the committee's meetings are recorded and available on the Internet.

Introduction of Committee Members

Chair Lasee asked each member of the committee to briefly introduce themselves.

Description of Materials Distributed

Russ Whitesel, Senior Staff Attorney, Legislative Council staff, provided a description of the documents that were mailed to committee members.

Mr. Whitesel also noted that members had been provided with copies of ch. 822 of the statutes, the current child custody jurisdiction act in Wisconsin.

Presentations by Invited Speakers

John McCabe, National Conference of Commissioners on Uniform State Laws, Legislative Director, gave an overview of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) as drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Mr. McCabe described the Act in some detail explaining how it revises the law on child custody jurisdiction in light of subsequent federal enactments and almost 30 years of inconsistent case law in various states. He explained that the Act provides clearer standards for states to exercise original jurisdiction over child determinations, enunciates a standard of continuing jurisdiction, and clarifies other aspects of interstate child custody. He also explained that the Act provides for a remedial process to enforce interstate child custody and visitation determinations. Mr. McCabe explained that the new UCCJEA reconciles the Act with the federal Parental Kidnapping Prevention Act which was enacted by Congress in 1980. Mr. McCabe stated that the revisions of the jurisdictional aspects of the Act eliminate the inconsistent state interpretations and provide a "home state" jurisdiction that requires full faith and credit be given to a child custody determination by a state that exercises initial jurisdiction when there is a "home state."

Mr. McCabe indicated that the revised UCCJEA has thus far been adopted in 40 states. He indicated that seven other states are currently considering adoption of the UCCJEA. He indicated that Iowa, Illinois, Michigan, and Minnesota have all adopted the revised UCCJEA. In response to a question, Mr. McCabe said that he would provide information to the committee on which states of the 40 have included the tribal inclusion language that is currently offered as an option in the Act. In response to another question, he stated that there had been no significant problems raised in the 40 other

states that have adopted the Act. Mr. McCabe, in response to a question, explained how the expedited emergency hearing procedures in the Act operate.

Betsy J. Abramson, University of Wisconsin (UW) Law School, Director, Elder Law Project, provided information on a project of the UW Law School and the State Bar Elder Law group that is revising the guardianship provisions in ch. 880, Stats., the general guardianship statute. Ms. Abramson indicated that the primary focus of the group has been on improving the guardianship statute with respect to senior citizens not with regard to children. Ms. Abramson continued by explaining that the draft is now going through its third revision and that the group expects to introduce legislation in the next session. She highlighted some of the major changes in the Act, including specification of the age of a ward for whom a guardian could be appointed, the separation of “guardians of the person” and “guardians of the estate,” court considerations in the appointment of a guardian, and the nomination of a guardian. Ms. Abramson indicated that under the draft the standard of acting in the “best interests” of the child or the ward will still be the controlling consideration.

Several questions were raised with regard to the role of the state in becoming a guardian and whether the draft provided additional authority to the state to undertake such activities. Ms. Abramson responded that the draft still provides a preference to parents and allows the ward’s preferences to be taken into account by the judge prior to the appointment of a guardian. It was pointed out that the family preference would still be relevant in any appointments under the draft.

In response to another question regarding the number of guardians, Ms. Abramson indicated that under the draft two guardians could be appointed for the same ward or the responsibilities could be split between the guardian of the person and the guardian of the estate. Ms. Abramson indicated that the drafting group had reorganized ch. 880 and intended to place it in closer proximity to similar provisions in the statutes. Ms. Abramson also pointed out that the draft generally proposes to clarify the authority of the guardian and those of a ward.

Ms. Abramson also answered a series of questions regarding certain aspects of how the Act would treat certain specific instances. She indicated that the provisions of the draft relating to minors had been reviewed by Theresa Roetter, a member of the children’s law section of the State Bar. She indicated that she could make available a draft to the committee for staff review when the draft was in final form.

A question was also raised about parental alienation syndrome and abuse issues. The staff was asked to review legislation on the issue from the last session and provide information to the committee at its next meeting. Several questions were raised with regard to custody and divorce cases and also guardian ad litem.

Discussion of Committee Assignment

It was explained by staff that the committee was constituted to look at issues involving child guardians, not guardian ad litem for children. Further, it was explained that the custody issues were primarily related to the interstate custody issues contained in the Uniform Act discussed earlier in the meeting, rather than child custody in divorce cases.

Other Business

There was no other business brought before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held on *Wednesday, October 20, 2004, at 10:00 a.m., in Room 412 East, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 1:00 p.m.

RW:rv