

THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN

The Honorable Sandy E. Karlan*

Sara was 13 when she was raped by her stepfather, became pregnant and gave birth to a son. Her first appearance in Dade's circuit court was in the dependency division, where she came as an abused child seeking the court's protection and a guardian ad litem. Her second appearance was as a witness in her stepfather's criminal trial. She later appeared in the court's juvenile division, when she was appointed a lawyer for the termination of her parental rights so the child could be adopted. The court appointed another guardian ad litem for the infant.

In another Dade case, two children saw their father murder their mother. They appeared first in dependency court with a guardian ad litem, then in criminal court as witnesses, and finally in family court, when relatives sought to adopt them. They also were represented in probate court to settle their mother's estate.¹

Although these cases appear unusual, they illustrate many of the issues facing children in courtrooms today. The entire area of children's rights is an emerging area of law that began only thirty-five years ago with the United States Supreme Court decision *In re Gault*.² Since that time, much attention has focused on juvenile-court proceedings, but until recently, very little attention has focused on the needs of children in proceedings throughout the court system and the inter-relatedness of those proceedings. For example, it is possible that a child whose parents are divorcing is the subject of a custody dispute. This

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1. Edith G. Osman, *Florida Bar Online, News Media Center, Florida Bar Journal, Protecting Our Most Precious Resource* <<http://www.flabar.org/newflabar/publicmediainfo/TFBJournal/dec99-pres.html>> (accessed Oct. 15, 2001).

2. 387 U.S. 1 (1967). The Supreme Court held that a juvenile is entitled to procedural due-process rights in delinquency proceedings. *Id.* at 30-31.

child also might be a witness in a domestic-violence case with a criminal component, while at the same time the child could be involved in delinquency proceedings. It is with this broader focus in mind that The Florida Bar commenced to address these concerns and ensure that children's legal needs were being met. The purpose of this Article is to discuss the creation, purpose, and status of the Commission on the Legal Needs of Children.³

I. CREATION AND PURPOSE OF THE COMMISSION

Created for a two-year term by then-Florida Bar President Edith Osman in June 1999, the Commission on the Legal Needs of Children (Commission) was designed to identify the unmet legal needs of children in Florida and to propose solutions for those unmet needs.⁴ Because this undertaking was on an unprecedented scale, the Commission was to consider all aspects of children's legal needs in all divisions of the court system, whether they appeared as parties, witnesses, or criminal defendants.⁵ Until the Commission was created, many groups had focused primarily on the juvenile-court system but had not considered children's rights in other areas, such as ownership of assets in civil and probate cases or the privacy rights of children in state custody, including foster care.

The Commission defined four stages to its work:

1. identifying the legal needs of children in Florida;
2. identifying which needs are being met — for example, what programs and services currently exist;
3. identifying the unmet legal needs of children in Florida; and
4. proposing and implementing programs and procedures to ensure that the legal needs of children are being met.⁶

It was anticipated that the Commission could accomplish the

3. A full discussion of the Commission's findings can be found in its Interim Report dated March 2001. Fla. B. Commn. on the Leg. Needs of Children, *Florida Bar Online, Organization, Special Committees/Commissions, Commission on the Legal Needs of Children, Interim Report March 2001* <<http://www.flabar.org/newflabar/organization/Committees/scchild.html>> (Mar. 2001) [hereinafter *Interim Report*].

4. *Id.* at 2–3.

5. Osman, *supra* n. 1. No state had pursued such a comprehensive review at that time. *Id.*

6. The Author learned this information from serving as chair of the Commission.

first three steps within the first year.

The Commission sought information from a vast array of sources and was composed of a diverse membership⁷ of Florida Supreme Court justices, attorneys, psychologists, trial judges, and children's advocates.

The challenge for the members was to suspend their professional interests as advocates for children in limited areas and to consider system-wide changes. Initially, they defined the legal needs of children according to court jurisdiction. The original categories were delinquency/criminal, civil/probate, dissolution of marriage/family, and dependency/abuse, which included Children and Families in Need of Services.⁸

After reviewing the extensive lists of legal needs, it became apparent that generic legal needs existed in all court divisions. As a result, the lists were reconfigured and prioritized to reflect the needs of all children.⁹ Subcommittees were then formed to handle priority issues.

II. PRIORITY ISSUES

A. Representation: Adequately Protecting Children's Personal Rights and Liberties, and Preserving Children's Assets

One of the Commission's priority issues focuses on the question of what type of representation children should receive —

7. The members of the Commission are: Hon. Sandy E. Karlan, Florida's Eleventh Judicial Circuit, Chair; Gerald I. Kornreich, Esq., Vice Chair; Sharon Lynne Langer, Esq., Vice Chair; Hon. R. Fred Lewis, Supreme Court of Florida; Hon. Barbara J. Pariente, Supreme Court of Florida; Robin A. Abraham, Esq.; Hon. Ronald V. Alvarez, Florida's Fifteenth Judicial Circuit; Hon. Brian Jordan Davis, Florida's Fourth Judicial Circuit; Hon. Daniel Paul Dawson, Florida's Ninth Judicial Circuit; Hon. Norman Stuart Gerstein, Florida's Eleventh Judicial Circuit; Joni Goodman (Guardian Ad Litem Program); Hon. T. Michael Jones, Florida's First Judicial Circuit; Hon. Kathleen Ann Kearney, Secretary of Florida Department of Children and Families; Carlos J. Martinez, Esq.; Richard C. Milstein, Esq.; Hon. Sandra Murman, Florida House of Representatives; Patricia G. O'Connell; Hon. Frank Orlando, Ret.; Bernard P. Perlmutter, Esq.; Allen Jay Plotkin, Esq.; Azim Ramelize, Esq.; Hon. Burt Saunders, Florida Senate; Edward S. Sczechowicz, Jr., Ph.D.; Robert N. Sechen, Esq.; Hon. Lynn Tepper, Florida's Sixth Judicial Circuit; Alex Victorero, Youth Representative; Hon. Martha C. Warner, Chief Judge, Florida's Fourth District Court of Appeal; Hon. Lois Wexler, Broward County School Board Member; Gary A. Woodfield, Esq.; Rhoda Kibler, Esq., Staff Director. *Interim Report*, supra n. 3; E-mail from Sandy E. Karlan, Chair of Fla. B. Commn. on the Leg. Needs of Children, to William Backer, Articles & Symposia Editor, *Stetson Law Review*, *Members of the Commission* (Oct. 23, 2001) (copy on file with *Stetson Law Review*).

8. The Author learned this information from serving as chair of the Commission.

9. The list of priority issue areas can be found in the *Interim Report*, supra n. 3.

a traditional attorney/client format, a guardian ad litem, or some specially created, state-wide children's advocate?¹⁰ Also, this issue concerns whether the form of representation should be the same for a child who is a victim in a dependency proceeding, the subject of a highly contested custody matter, a party to a personal-injury case, or a witness or victim of a crime. This issue further concerns the type of training a child's advocate should have and the competency requirements for a child to assist the appointed counsel.

The Commission heard testimony from many types of children's advocates. Clinical programs, which represent children in various proceedings, advocated a holistic approach that would search for and help with the root causes of a child's unmet needs.¹¹ Members of the guardian-ad-litem programs and the executive director of the National Court Appointed Special Advocates Association spoke about the lay-guardian model of representation and the combined attorney-and-lay-guardian model, particularly in abuse-and-neglect cases.¹² Willson McTavish, the Children's Lawyer from Ontario, Canada, spoke of the state-wide office of children's counsel created in 1896 that represents children in probate, tort, abuse, and custody proceedings.¹³

Another representation problem was brought to the attention of the Commission. The Commission heard reports that, despite *Gault*, many delinquent children waive counsel without fully understanding their rights.¹⁴

B. The Courts: Study of Operations, Facilities, and Personnel

In another priority issue, the Commission considered technology in the courts and the uniformity, linkage, and sharing of information. As part of these considerations, the Commission reviewed the proposal for a Model Family Court recommended by

10. As this Article was being published, the Commission reached a compromise involving the creation of a state-wide Office of the Children's Advocate. Jan Pudlow, *Children Deserve Independent Representation*, 29 Fla. Bar. News, 1, 4 (Feb. 1, 2002).

11. *Interim Report*, *supra* n. 3, at 20. The Commission heard from both Gator TeamChild from the University of Florida Frederic G. Levin College of Law and the Children's Advocacy Center of Florida State University College of Law TeamChild. *Id.*

12. *Id.* at 16, 19.

13. *Id.* at 22.

14. *See Gault*, 387 U.S. at 34-32 (recognizing a child's right to counsel in juvenile proceedings).

the Florida Supreme Court Family Court Steering Committee.¹⁵ The Model Family Court provides a framework within which families can resolve conflicts in an orderly fashion with the least amount of harm to the family.¹⁶ The focus of the Model Family Court is on children and the idea that “[t]he best way to help children is to help families solve their problems, not tear them apart in adversarial settings.”¹⁷

A problem that children and families face in the courts is that parallel or related cases affecting one family can occur simultaneously in three or more divisions of the court, and the different judges and corresponding lawyers may be unaware of the other proceedings. This situation could lead to inconsistent and dangerous results. For example, there may be a dependency case in which a mother is awarded custody of a twelve-year-old child due to the father’s abuse. There might also be a domestic-violence injunction against the father. Meanwhile, the child might be arrested for what amounts to a delinquency charge and the court may release the child to his or her father. The Model Family Court would eliminate this problem by creating a case-management system that would notify all involved of pending cases and either coordinate the process and outcome or consolidate them before one court.¹⁸

The most significant method of accomplishing this goal is to design technology that would allow different courts and their divisions to communicate with one another. To that end, the Commission was awarded a \$25,000 administration-of-justice grant by The Florida Bar Foundation to provide a blueprint of Florida’s current court technology.¹⁹ This project includes the efforts of the courts, the governor’s office, executive departments, and the legislature to upgrade and integrate the systems.²⁰ When the state of the existing technology is categorized, it should be easier to design a new system. The Gartner Group, an information-technology consulting organization, has undertaken this study with a report expected in Spring 2002.

15. The Florida Supreme Court adopted the recommendations with modifications. The full opinion is reported as *In re Report of the Family Court Steering Committee*, 785 S.2d 438 (Fla. 2001).

16. *Interim Report*, *supra* n. 3, at 27.

17. *Id.*

18. *Id.* at 41–42.

19. *Id.* at 42.

20. *Id.*

C. Children's Legal Rights to Treatment and Services

In the area of children's legal rights, the Commission identified several services to which children are legally entitled, but that are lacking or not provided. These include mental-health services and special-education services.²¹

Joseph Tulman, a professor at the University of the District of Columbia, David A. Clarke School of Law, reported that eighty-to-ninety percent of children in delinquency facilities are qualified as educationally disabled.²² Additionally, twenty percent of children in Florida's facilities suffer from a serious mental illness, and seventy-five percent have a problem with substance abuse.²³

The Commission learned that, in the United States, 105,000 children a day are imprisoned, but only 5,000 of them "are treated in home-based multisystematic functional family therapy" as recommended by the United States Surgeon General.²⁴

The Commission also learned that, nation-wide, juvenile courts have seen a 124% increase in females involved in violent cases.²⁵ However, there has been very little increase in services provided for young women.

The Commission is also grappling with the philosophical and policy issues surrounding legislation that requires some juveniles to be direct filed and tried as adults.²⁶ Specifically, the Commission is considering whether this decision should be made exclusively by the state attorney or by a judge.

D. Confidentiality and Legislation

The confidentiality area tries to address a child's right to privacy and the issue of information-sharing between judges on related cases. The concern is that information might be shared improperly. For example, information that is properly withheld from a jury, but received by a judge, might be communicated to another judge sitting as a fact-finder in a related case.

The Commission also is considering whether a guardian-ad-litem report that is admissible in the dispositional phase of an

21. *Id.* at 5. Special-education services are provided for under the federal Individuals with Disabilities Education Act. 20 U.S.C. § 1412 (2000).

22. *Interim Report, supra* n. 3, at 10.

23. *Id.* at 6.

24. *Id.* at 7.

25. *Id.* at 11.

26. *Id.* at 6-8, 12.

abuse case should be admissible, with its inherent hearsay, in a custody case. Another question being considered is whether children in state custody or foster care are entitled to view and have copies of all records concerning them. A third question is whether the public should have access to records of a child in foster care as a way to prevent systemic abuses. In addition, the Commission is examining whether the current confidentiality rules prevent the public from discovering abuse that may occur to children in foster care.

As part of its work, the Subcommittee assigned to the confidentiality area must review the laws of Florida to determine whether there are inconsistencies or gaps in them.²⁷ To do so, this Subcommittee, as well as the others, can utilize the recently-developed *Children's Law Workbook*.²⁸ The *Children's Law Workbook* is the result of a partnership between the Commission and Gator TeamChild. This partnership was formed to research Florida and federal laws relating to children's legal rights. At the time of this writing, Gator TeamChild had completed research in the following areas: domestic violence, Florida's Probate Code and guardianship, laws related to confidentiality, health-care laws and mental-health laws, Florida-education laws, Florida's Evidence Code, the rules of procedure in all courts, the Florida Administrative Code, federal laws applicable to children specifically in Florida, and the Florida School Board Association Rules.

This information will eventually be available on The Florida Bar's Web site. The significance of this work cannot be overemphasized. It is anticipated that this material will provide a research source for scholars throughout the State.

It is further anticipated that the Commission will be able to

27. *Id.* at 36. Inconsistencies have been discovered even on the definition of a child. Jan Pudlow, *Florida Bar Online, NewsMedia Center, Florida Bar News Index, Florida Bar News, Children's Panel Studies Representation Issues* <<http://www.flabar.org/newflabar/publicmediainfo/tflbnews/01jan15-3.html>> (Jan. 15, 2001).

28. Gator TeamChild, U. of Fla., Frederic G. Levin College of L., *Children's Law Workbook* (Fla. B., Commn. on the Leg. Needs of Children draft Sept. 2001) (copy on file with *Stetson Law Review*).

The *Children's Law Workbook* is organized as follows:

1. What Is a Child?
2. When Is a Child a Party?/Right to Counsel
3. When Is a Guardian ad Litem Appointed?
4. What Is Confidential?/Right to Privacy
5. Miscellaneous Provisions Relating to Rules of Court.

create a bench book for judges and lawyers regarding children's rights, and that this bench book can be used as a foundation to create a separate children's code in the Florida Statutes.

E. The Role of the Bar

As the leader in the area of inquiry regarding the role of The Bar, The Florida Bar leadership, beginning with Edith Osman with the continued support of former-President Herman Russomanno, and the current support and encouragement of President Terrence Russell and President-elect Tod Aronovitz, has provided the resources for this Commission's work.

The Bar already has created a Web page for the Commission's information on its main Web site²⁹ and will be posting the *Children's Law Workbook* materials on that site.

The Subcommittee that focused on education, which also examined the role of The Bar, stressed the importance of consistent, standardized, and professional training for all lawyers who represent children, and for all judges in all divisions.³⁰ Currently, any attorney can offer to represent a child as a way of completing pro bono service without receiving specific training. The *Interim Report* contains specific recommendations regarding the kind of training and courses that are needed.³¹

Diane Geraghty, Director of the Child Law Center at Loyola University Chicago School of Law, urges law schools to teach and train future lawyers to specialize in "pediatric law."³² This approach would encourage future lawyers to focus on a child's legal needs rather than focusing on the administration of the courts. The Commission also asked The Florida Bar to create a standing committee on children's law.³³

29. Fla. B., *Florida Bar Online, Organization, Special Committees/Commissions, Commission on the Legal Needs of Children* <<http://www.flabar.org/newflabar/organization/Committees/scchild.html>>.

30. *Interim Report*, *supra* n. 3, at 32.

31. *Id.* at 31-32.

32. Diane Geraghty, *The Role of Legal Education in the Emerging Legal Specialty of Pediatric Law*, 26 *Loy. U. Chi. L.J.* 131, 131 (1995).

33. Fla. B., *Florida Bar Online, NewsMedia Center, Florida Bar News Index, Florida Bar News, Children's Commission Panels Report Their Progress* <<http://www.flabar.org/newflabar/publicmediainfo/tfbnews/01jan15-4.html>> (Jan. 15, 2001).

III. CURRENT STATUS AND THE FUTURE

The Commission requested an additional year to complete its work. That request to The Florida Bar Board of Governors included the following as the reasons for an extension:

1. to hold public hearings on specific recommendations and topics; to receive input from all stakeholders around the state, not just the “experts”;
2. to manage the Administration-of-Justice technology grant funded by The Florida Bar Foundation;
3. to consider and review the results of pilot projects on children’s representation that are currently funded throughout the State;
4. to obtain information on areas of practice that have not been fully addressed, including domestic relations, domestic violence, probate and confidentiality;
5. to complete the compilation of the laws related to children and the development of a bench book on children’s law and a proposal for a children’s code; and
6. to make site visits to juvenile facilities and speak with the children.³⁴

The Florida Bar Board of Governors, under President Russell’s leadership, agreed to extend the Commission until June 2002.³⁵ At the time of this writing, public hearings have been held in Miami and in Broward County in conjunction with Nova Southeastern University, Shepard Broad Center for the Study of Law. Additionally, site visits to juvenile detention centers and a high-school town-hall meeting have occurred.

The Commission will use the extended term to continue to meet its goals, including those detailed above in the extension request. Yet, even when the Commission’s term ends, there will be work unfinished and questions unanswered. The lasting impact of the Commission should be that issues previously not considered were raised and addressed on behalf of children. In the future, the Commission hopes to witness some changes to the legal system inspired not by court procedure, but rather by the needs of those requiring assistance — the children.

34. The Author learned this information from serving as chair of the Commission.

35. *Interim Report, supra* n. 3, at 3.

