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Children's Task Force Reports



D. Larkin Chenault

A Message from D. Larkin Chenault:

As a means of seeking a more inclusive profession, encouraging the free exchange of ideas and empowering more members and staff to develop solutions to the challenges we face, I will be featuring various leaders of the profession in this column in the months between my articles. This month's guest "Director's Dialogue" is written by Children's Task Force Co-Chairs Hon. Cynthia Diane Stephens and Donald Duquette.

By Cynthia Diane Stephens
and Donald Duquette

If we measure success not just by how well most children do, but by how poorly some fare, America falls far short. The evidence of failure is everywhere one cares to look.

—National Commission
on Children, *America's Children:
Beyond Rhetoric*, 1991

When the public thinks of children and the law, high-visibility cases like Baby Jessica and Baby Richard come to mind. The human drama of a small child caught up in a titanic custody struggle attracts unrelenting media attention and triggers cries for law reform. Yet for every Baby Jessica and Baby Richard, thousands of children pass through our courts with little public attention but with consequences to them just as momentous and life altering as those cases featured on the national news shows. In 1991 State Bar of Michigan leadership began to ask whether our profession and Michigan's courts are as sensitive and responsive to the needs of children as we could be. Through the leadership of 1992-93 President George Googasian, the first of four State Bar presidents to firmly support this effort, the State Bar established a Children's Task Force Planning Committee in the spring of 1992.

The Planning Committee wrestled with identifying the breadth of issues a Children's Task Force might address. There are good reasons for broad advocacy on behalf of our children, including addressing deficits in education, child care, housing, medical care and social welfare. Lawyers have traditionally provided leadership on these issues, which have serious implications for our children and our society. Discussions regarding the state of America's children were occurring in many quarters throughout the nation during this same period. The American Bar Association produced a report by its Unmet Legal Needs of Children Committee in July 1993 titled "America's

Children at Risk" that set out a broad advocacy agenda including both legal and political strategies to save America's children. Ultimately, however, our Planning Committee determined that the State Bar of Michigan should focus on children's issues that were the particular province of lawyers and judges, where our expertise and special responsibilities lie and which are more likely to fall within the limitations imposed by the Keller decision and Michigan Supreme Court Administrative Order 1993-5. The issues, even within this narrower range, are complex and elusive enough! The Mission Statement of the Children's Task Force says, in relevant part:

The mission of the State Bar of Michigan Children's Task Force is to improve the delivery of justice to Michigan's children. The Task Force will examine existing rules, statutes, standards and procedures, and make recommendations to improve the judicial system as it affects matters where the child is a party or a participant.

The Children's Task Force was formally created in September 1993 with a mandate to complete its work in two years. We (Stephens and Duquette) were appointed co-chairs of the effort. President Michael Hayes Dettmer appointed an interdisciplinary task force that, after some turnover after the first year, included a total of 30 persons. Michael Foley and Children's Charter of the Courts together with the State Bar administration provided staff support for the effort. While the task force called upon the expertise of judges and lawyers, the perspective and contributions of the non-lawyer members were invaluable. The work product of the task force was a combined effort of its members, other volunteers and staff. No one component was more important than another. The work was daunting, the issues controversial and our time was limited. However, ours was a hard-working group which accomplished much in its two years of life.

On September 21, 1995, State Bar President Jon R. Muth received the final report



Children's Task Force Co-chairs Donald N. Duquette (left) and Hon. Cynthia R. Stephens (center) discuss the early work of the task force in 1993 with then-President Michael Hayes Dettmer (right).

of the Children's Task Force at his final Board of Commissioners meeting. That report included 23 recommendations with implementation steps identified for each. The recommendations fall into four categories: adjudication of children's cases; advocacy; children's services and the courts; and training and practice resources. These recommendations ranged from the broad, such as detailed guidelines for advocates for children, to the very specific, such as recommendations regarding evidentiary rules on spousal privilege and the tender years hearsay rules. The recommendations all focus on the need to build a justice system that adjudicates cases involving children so as to promote sensitive and efficient resolution of the issues presented.

The Board of Commissioners, consistent with their responsibility under Administrative Order 1993-5, referred the task force's report to the Legislative Committee for review and further action. In the course of the review the committee divided the 23 recommendations into 36 action items. The committee reviewed the items for compliance with Administrative Order 1993-5 and for policy considerations. On Friday, November 17, 1995, the Board voted to do four things in furtherance of the mission of the Children's Task Force. They are:

1. To refer 25 action items to State Bar committees and sections for review and comment. After the comment period, the Legislative Committee will make recommendations to the Board as to whether

to adopt each action item as written, to modify it, reject it or decline to act as a Board leaving action to the sections and committees.

2. To establish a Special Committee on Children's Justice co-chaired by Commissioner Wendy Potts and Judge Cynthia

Diane Stephens. This committee will coordinate efforts to implement those recommendations adopted by the Board of Commissioners.

3. To refer the seven action items already adopted by the Board on November 21 to the Special Committee for immediate action.

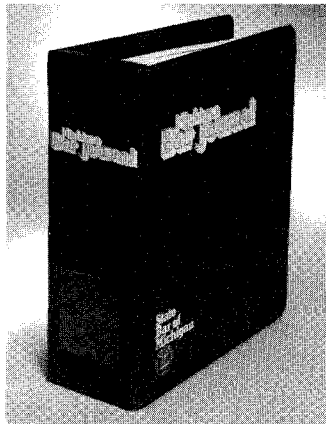
4. To defer action on four action items due to perceived conflicts with Administrative Order 1993-5.

The entire Children's Task Force report is available from the State Bar and an implementation chart follows this article.

The Children's Task Force looks forward to the lively and sincere debate that these recommendations will spur. We are grateful to the Kellogg Foundation for its support of our video project. We look forward to the focused efforts of the lawyers of this state on behalf of our children. We are firm in our belief that the ABA Report was correct when it reported,

If each responds then this great nation should be able to reduce the number of children who fall into rivers of despair, poverty and failure, and to rescue many who have fallen in.

FOR OUR CHILDREN



CHILDREN'S TASK FORCE REPORT RECOMMENDATIONS

Numbers in left-hand column of chart refer to Summary of Recommendations on next page.

NUMBER	TOPIC	ADVOCACY	COMMENTS
1	Spousal privilege	Refer and Publish	
2	Compel spouse testimony	Refer and Publish	
3	Child Competency, repeal	Refer and Publish	
4	Tender Years Rule, amend	Refer and Publish	
5	Tender Years statute, amend	Refer and Publish	
6	Child witnesses	Refer and Publish	
7	Speedy trial in children's cases	Refer and Publish	If consistent with SBM court reorganization proposals.
8	DSS required to file when mistreatment allegations	Not within 93-5 categories	
9	Presumptive mediation	Refer and Publish	
10	Pending/Recent petitions	Permissible	nonideological
11	Report abuse allegations	Refer and Publish	
12	Speedy dispositions when abuse allegation	Refer and Publish	If consistent with SBM court reorganization proposals.
13	Local plans re: abuse allegations	Refer and Publish	If consistent with SBM court reorganization proposals.
14	Transfer to single judicial officer	Refer and Publish	
15	MJI courses for Friend of Court	Refer and Publish	Education of legal and court personnel.
16	Parent's appearance as waiver of notice	Refer and Publish	"matters relating to the improvement of the functioning of the courts, judicial efficacy and efficiency"
17	Third-party standing	Not within 93-5 categories	
18	Definition of "Relatives"	Not within 93-5 categories	
19	Appoint independent advocates for children	Refer and Publish	"increasing the availability of legal services to society"
20	Right of children to intervene	Refer and Publish	
21	Minors' interests in other civil matters	Refer and Publish	"increasing the availability of legal services to society"
22	Entry of judgment	Refer and Publish	"increasing the availability of legal services to society"
23	Settlement of claims	Refer and Publish	"increasing the availability of legal services to society"
24	Guidelines for Advocates	Refer and Publish	"the education, ethics, competence, integrity and regulation of the legal profession"
25	Coordinating Committees	Refer and Publish	"increasing the availability of legal services to society"
26	Central registry	Permissible	nonideological/refer to Special Committee on Children's Justice
27	Access to registry	Permissible	nonideological/refer to Special Committee on Children's Justice
28	Flexible funding	Refer and Publish	
29	Funding driven by "best interests"	Not within 93-5 categories	
30	Transfer venue	Refer and Publish	If consistent with SBM court reorganization proposals
31	Survey of impediments	Permissible	Nonideological/refer to Special Committee on Children's Justice
32	Recruit/train providers	Permissible	Nonideological/refer to Special Committee on Children's Justice
33	Use Circuit Court Counseling Act Funds	Refer and Publish	
34-38	Interdisciplinary workgroup	Refer and Publish	
39	Non-lawyer education	Permissible	Nonideological/refer to Special Committee on Children's Justice
40	Legal Education, etc.	Permissible	"the education, ethics, competence, integrity and regulation of the legal profession"/refer to Special Committee on Children's Justice

Summary of Recommendations

ESTABLISHING SPOUSAL PRIVILEGE AS A RIGHT OF THE WITNESS

The Task Force recommends that Michigan statutes and court rules should be changed to do the following:

Michigan Compiled Law (MCL) 600.2162; MSA 27A.2162 should be amended to:

- (1) I. Make the spousal privilege the right of the spouse whose testimony is sought.
- (2) II. Compel the spouse to give testimony where the testimony pertains to a crime against a person under the age of 18.

REPEAL OF THE CHILD COMPETENCY STATUTE

- (3) This recommendation requires that MCL 600.2163; MSA 27A.2163 be repealed.

"TENDER YEARS" HEARSAY EXCEPTION

- (4) I. The Task Force recommends the Michigan Supreme Court adopt the following rule to replace existing rules, to be enacted as a Michigan Court Rule and a Michigan Rule of Evidence.
- (5) II. The Task Force further recommends that the Michigan Legislature amend MCL 600.2163a; MSA 27A.2163(1) to reflect these changes.
Any statement made by a declarant who is a child under the age of 16, or a declarant who is a developmentally disabled person, as defined in the Mental Health Code, MCL 330.1600(e) and (f), describing any act of criminal sexual conduct, physical abuse or neglect performed with or upon such declarant by another, or the denial thereof, may be admissible within the Rules of Evidence by the testimony of the person or persons to whom the statement is made, whether the declarant is available to testify or not, and is substantive evidence of the act or acts, commissive and/or omissive, if the court finds, at a hearing prior to trial, that the circumstances leading to the making of the statement provide insufficient indicia of trustworthiness, based on the testimony of the proposed witness(es), and that the statement is not otherwise inadmissible. Proposed MCL 600.2163a; MSA 27A.2163(1).

SPECIAL ARRANGEMENTS FOR CHILDREN AS WITNESSES

- (6) The Task Force recommends that the Michigan Legislature amend MCL 600.2163 and MCL 712A.17b to eliminate the requirement to consider psychological maturity and to alter the age to cover any person under 16 in special arrangements for child witnesses.

SPEEDY AND COORDINATED DISPOSITION OF CHILDREN'S ISSUES

- (7) The State Bar of Michigan Children's Task Force recommends that state and local governments and the court systems adopt and implement the following principles:
 - I. As options are explored for court reorganization in Michigan, decisions should be guided by placing a high value on assuring a coordinated and speedy disposition of all court cases affecting children.
 - II. A reorganization of Michigan courts should result in a division of a court or specialty court for children and families based on the following proposals:
 - A. The court should use only judges who are specially trained and experienced in child and family issues.
 - B. There should be one judge for one family.
 - C. Coordination and integration of all social services relied upon by the court is required.
 - D. An aggressive case processing and management system is essential.
 - E. The court should maximize the use of non-adversarial methods of family dispute resolution.

EXPEDITIOUS ADJUDICATION WHEN CHILDREN ARE VICTIMS OF SERIOUS MISTREATMENT

- (8) The Task Force recommends that under certain circumstances, the DSS be required to file a petition with the probate court, when there are substantial allegations which include but are not limited to criminal sexual conduct involving penetration of the child; life threatening injury to the child; loss or serious impairment of a body organ or limb of the child; murder or attempted murder of a child or sibling of the child; or chronic battering of the child. The petition shall request termination of parental rights except where the DSS establishes reasons for not doing so on the record and good cause is determined by the court. The DSS need not provide services aimed at reunification once a petition to terminate parental rights is filed. To that end we recommend amending the Juvenile Code, MCL 712A *et seq.*; MSA 27.3178(598) *et seq.*, including but not limited to sections 1, 13a, 12c, 18f, 19.

PRESUMPTIVE MEDIATION IN CHILD CUSTODY CASES

The Task Force recommends MCL 552.511; MSA 25.176(11), MCL 722.26(B); MSA 25.312(6b), MCL 552.507; MSA 25.176(7), MCL 552.513; MSA 25.176(13), MCL 552.641; MSA 25.164(41), and MCR 3.210(C)(5) to (6) be amended under the following guidelines:

- (9) The Circuit or Probate Judge to whom a disputed custody case is assigned is required to refer the case to a mediator who meets the qualifications of MCL 552.513; MSA 25.176(13) unless any of the following are true:
 - I. There is a pending criminal case or a conviction against either custodial opponent regarding the minor, a violent crime involving any person including domestic assault, criminal sexual conduct or pending criminal case or conviction involving drug possession or sale, less than 10 years old against a custodial parent.
 - II. Either custodial opponent under oath alleges conduct by the other custodial opponent or a resident of the opponent's household which could support a petition for abuse or neglect.
 - III. The court receives a report from any person required under MCL 722.623 alleging suspected child abuse and neglect requiring referral to the Department of Social Services.
 - IV. The court finds probable cause that domestic violence has occurred.
 - V. The court finds good cause to decline to refer.

These mediations shall not delay the investigation of custodial and/or visitation issues or form the sole basis to delay a hearing within 56 days in accordance with MCR 3.210(C). These mediations shall be governed by the same privileges as voluntary mediation.

PROTOCOL FOR RESOLVING CUSTODY DISPUTES WHERE THERE ARE ALLEGATIONS OF CHILD ABUSE AND NEGLECT

- (10) The Task Force recommends that state and local courts adopt and implement the following policies and procedures:
 - I. Parties who initiate any action or file a petition in the circuit court regarding the care or custody of a minor must file a verified statement as to the existence of pending or resolved petitions under MCL 712A.2(b); MSA 27.3178(598.2b)) in any court of this state or any state within 10 years of the case initiation or petition filing.
- (11) II. Allegations of physical or mental abuse should be made under oath either orally or in writing and subject to the penalty of perjury and immediately referred to Children's Protective Services.
- (12) III. Every circuit court should adopt an expedited docketing system to investigate and adjudicate custody disputes where there are allegations of abuse and neglect. Additionally MCR 2.501 should be amended to require that these cases be given precedence to other action involving a contest over the custody of minor children.

- (13) IV. Every circuit should be allowed to devise a plan which would meet the needs of the locality. Every plan should include:
- A. Time standards for hearings on the allegations including an initial hearing within 14 days of receipt of the verified complaint and disposition of the allegation within 56 days.
 - B. A provision that adjournments beyond 90 days should only be granted for compelling reasons.
 - C. A mechanism for rapid retrieval of the records from other agencies and courts which have bearing on the claims.
 - D. A mechanism to receive the school and medical records of the affected child.
 - E. A process to ensure the confidentiality of such records and files.
 - F. A list of agencies available to assist in the investigation, evaluation and resolution of custody disputes.
 - G. A process for referring the allegations to the Department of Social Services within 24 hours of the receipt of the allegation under oath.
- (14) V. Whenever there is an allegation of abuse and neglect in a domestic relations matter and a probate case is filed, the transfer of the case for the purposes of resolving the issues of abuse and neglect to a single judicial officer shall be presumptive. (See Children's Task Force Recommendations on Speedy and Coordinated Disposition of Children's Cases.)
- (15) VI. The Michigan Judicial Institute should develop courses for Friend of the Court staff to assist them in identifying, investigating, supervising and resolving custody disputes where there are allegations of abuse and neglect. Any training for Friend of the Court staff, judges and referees should include information from both lawyers and mental health professionals on this issue.

NOTICE PROVISIONS GOVERNING
CHILD PROTECTION PROCEEDINGS

- (16) The Task Force recommends that the Michigan Legislature amend the Juvenile Code so that a parent's general appearance and participation in any hearing involving a petition is a waiver of any notice defects as to that petition or subsequent review hearings on that petition. This does not affect existing notice provisions governing termination of parental right petitions.

THIRD-PARTY STANDING

- (17) I. The Task Force recommends that the Michigan Legislature amend all relevant Michigan statutes to provide for subject matter jurisdiction over guardianships of minors in both circuit and probate court.
- A. These amendments would allow either court to create, modify and terminate guardianships upon filing of the appropriate papers.
 - B. These amendments should include provisions to provide as follows:
 - 1. An action for guardianship shall be assigned to the probate court unless the Circuit Court has prior jurisdiction over the minor.
 - 2. In addition to existing statutory grounds for guardianship in MCL 700.424, the Michigan Legislature should create an additional basis for guardianship as follows:
 - a) *Standing Test:* A person is entitled to a hearing under this new section if: 1) the child has resided continuously with a third person for a minimum period of time as established by the Legislature so long as such residence has not been established in violation of a valid court order. The minimum period of time set by the Legislature should be 3 months if the child has not reached his/her 2nd birthday, 6 months if the child has reached his/her 2nd birthday and not yet reached his/her 6th birthday, and 1 year if the child is 6 years of age or older; 2) the child has resided with the third person within 5 months of filing the action; and 3) the parent or parents of the child have failed to provide the child with parental care, love, guidance and attention appropriate to the child's age and individual needs resulting in a substantial disruption of the parent-child relationship. This resolution does not expand the standing of foster parents to seek guardianships.

- b) *Best Interests Tests:* If the court finds the above test met, it may grant guardianship under this new section if it finds it is in the best interests of the child to do so according to the best interests factors in the Child Custody Act plus an additional factor—the court shall consider the reasons for the placement of the child with the third person.
 - c) *Presumption in Favor of Parents:* If the dispute is between a third party and a parent, the court shall presume that the best interests of the child are served by denying the guardianship in favor of such parent unless the need for the guardianship in the best interests of the child is established by clear and convincing evidence.
 - d) *Standard on Termination:* If termination of a guardianship is requested by a parent, the court shall not terminate the guardianship unless it is established by clear and convincing evidence that it is in the best interests of the child to do so. A case plan would be required only when the court orders reunification of the child and parent.
- 3. A guardianship under this proposal may continue indefinitely as required by the best interests of the child.
 - 4. Under this proposal the court may order child support by the legal parents and provide visitation to the parents, enforceable by the Friend of the Court pursuant to statute.
 - 5. The court shall appoint an attorney or guardian ad litem for the child.
 - 6. The court shall appoint an attorney for an indigent party. The court may order the payment of attorney fees of one party by another.
 - 7. Appeal from guardianship orders shall be to the Court of Appeals.
 - 8. Nothing in this resolution is intended to limit the Probate Court's authority to grant guardianships under existing law.
 - 9. The investigations and reports needed by the courts to decide guardianships and set support may be completed by the Friend of the Court. MCL 722.26b (MSA 25.312(6b)) will be removed from the Child Custody Act, for it is no longer needed to give guardians the standing to seek custody under the Child Custody Act and provide for cross court assignment.

DEFINITION OF "RELATIVES" FOR PURPOSES
OF CHILD PLACEMENT

- (18) The Task Force recommends that the Michigan Legislature expand MCL 712A.18(1); MSA 27.3178(598.18(1)) to allow for placement of children in conformity to Act 116 of the Child Care Licensing and Regulation Act, MCL 722.115a; MSA 25.358(15).

It is further recommended that the Michigan Legislature clarify the definition of suitable relative placements in child protective proceedings to allow the court the discretion to define "relatives" within the context of the family relationship and community norms. Act 116 of the Child Care Licensing & Regulation Act should be amended to allow for this expanded definition.

APPOINTMENT OF INDEPENDENT
ADVOCATES FOR CHILDREN

- (19) The Task Force recommends that the Michigan Legislature amend the Child Custody Act, MCL 722.27(e); MSA 25.312(7e) and the Guardianship and Protective Proceedings Act, MCL 700.427(4); MSA 27.5427(4) and MCL 700.43(3); MSA 27.5437(3), dealing with appointment of attorney, guardian ad litem or counsel for the child to provide as follows:
- A. In an action involving a question of the custody, support or visitation of a child, the court may, upon motion of a party to the action or upon its own motion, or upon request by the child, appoint a legal counsel, guardian ad litem, CASA or special advisor to act on behalf of the child. ("Legal counsel," "guardian ad litem," "CASA" and "special advisor" are defined in "Guidelines for Attorneys, CASAs and Special Advisors in Child Protection, Guardianship and Child Custody Proceedings.")

B. In an action involving a question of the custody, support, or visitation of a child, the court shall appoint a legal counsel, CASA, special advisor or guardian ad litem for the child (as those terms are defined in "Guidelines for Attorneys, CASAs and Special Advisors in Child Protection, Guardianship and Child Custody Proceedings") if the court has reason for special concern as to the welfare of a minor child.

The court may assess the cost and reasonable fees of the legal counsel, guardian ad litem, or special advisor against one or more parties involved, totally or partially. All fees paid to such legal counsel, guardian ad litem, or special advisor shall be reviewed and approved by the court.

CHILDREN INTERVENING AS PARTIES
TO CUSTODY ACTIONS

(20) The Task Force recommends that (Child Custody Act) MCL 722.21 *et seq.*; MSA 25.312(1) *et seq.* (Child Custody Act) and (Guardianship and Protective Proceedings Act) MCL 700.401 *et seq.*; MSA 27.5401 *et seq.* be amended as follows:

- I. To provide that a child may move to intervene as a party in any action in which the child's custody, visitation or support is determined.
- II. To provide that if a court grants the motion, the court shall appoint legal counsel or guardian ad litem on the child's behalf. The court may choose to appoint some other attorney as legal counsel or guardian ad litem for the child other than the attorney who brought the action.

PROTECTING MINORS' INTERESTS IN CIVIL MATTERS
(EXCLUDING DOMESTIC RELATIONS)

(21) I. It is recommended that the Michigan Supreme Court amend the Michigan Court Rules as follows:

- A. Amend MCR 2.201(E)(2)(d) to provide: The court shall appoint a guardian ad litem, who is an attorney, to represent the interests of a minor party, unless the court finds that a guardian ad litem is not necessary and states the reasons on the record.
- B. Where a guardian ad litem is appointed:
 - 1. Amend MCR 2.201(E)(2)(b) to add: No person with a financial interest in the outcome of an action involving the interests of a minor shall be appointed guardian ad litem or next friend for the minor in that or any related action.
 - 2. Amend MCR 2.504(A)(1) to provide: (c) No action on behalf of a minor or legally incompetent person shall be dismissed without a finding, made after receipt of a report from the guardian ad litem or next friend, that the dismissal is in the best interests of the minor.
 - 3. Amend MCR 2.602(B) to provide: (5) No judgment on behalf of or against a minor shall be entered without a finding by the court made after receipt of a report from the guardian ad litem or next friend, that the judgment is in the minor's best interests.
 - 4. Retitle MCR 2.420: **Entry of Judgment or Dismissal of Actions on Behalf of or Against Minors** and amend as follows:

- (22) a) This rule covers entry of judgments or dismissals pursuant to settlement in any action in which plaintiff or defendant is a minor, except for dismissals under MCR 2.506(F) (dismissal for failure of party to appear), MCR 2.512 (jury verdict), MCR 2.605 (declaratory judgment), MCR 2.610 (judgment notwithstanding the verdict), MCR 2.612 (relief from judgment), and MCR 2.504(B) (involuntary dismissal). Before an action is commenced the settlement of a claim on behalf of a minor is governed by the Revised Probate Code.
- b) In actions covered by this rule, a proposed consent judgment or dismissal pursuant to settlement must be brought before the judge to whom the action is assigned, for the judge to determine whether the proposal is fair and in the best interests of the minor. The court shall receive a report from the guardian ad litem or next friend of the minor which shall set forth:

- (1) the nature of the minor's interest in the action;
- (2) the nature of the injuries or damages to the minor or allegedly inflicted by the minor;
- (3) the nature of any medical or psychological treatment received by the minor;
- (4) the prognosis for the minor;
- (5) any mediation awards rendered in the case or out-of-pocket expenses attendant to the damage claim of the minor;
- (6) the extent of any insurance coverages in the case;
- (7) the proposal for preserving the minor's assets, if any;
- (8) an evaluation of the proposed judgment or dismissal in light of the minor's best interests;
- (9) an evaluation of the effect of the proposed judgment or dismissal upon any rights of the minor upon reaching majority;
- (10) any other information which the guardian ad litem believes will assist the court in determining the best interests of the minor.

- c) The guardian ad litem or next friend shall observe or interview the minor depending on the age of the minor, shall interview the parents or custodians of the minor, shall review pertinent medical reports and records and otherwise protect the interests of the minor.
- d) The judge reviewing the settlement, judgment or dismissal shall inquire whether there is information not contained in the report which concerns the health or other interests of the minor and which are affected by the proposed settlement.
- e) The court shall make direct inquiry of the parent or custodians as to the mental, physical and psychological health of the minor. Where the claim involves personal injury to the minor, the court may, in its discretion, require the minor to appear in court personally to allow the judge an opportunity to observe the nature of the injury.
- f) The dismissal or judgment shall be entered only upon a finding that it is fair to the minor and in his or her best interests.

(23) II. It is recommended that the Michigan Supreme Court adopt MCR 5.770; **Settlement of Claims of Minors; Appointment of Guardian ad Litem** as follows:

- A. The court shall appoint a guardian ad litem, who is an attorney, to represent the interests of a minor party, unless the court finds that a guardian ad litem is not necessary and states the reasons on record.
- B. This rule governs the procedure to be followed for approval of the settlement of the claim of a minor prior to commencement of an action, whether or not a conservator has been appointed.
 - 1. An estate shall be filed on behalf of the minor, and the proposed settlement shall be brought before the court.
 - 2. The court shall appoint a guardian ad litem for the minor, who shall have no financial interest in the outcome of the minor's claim. The guardian ad litem shall file a report with the court as provided in MCR 2.420.
 - 3. The guardian ad litem shall observe or interview the minor depending on the age of the minor, shall interview the parents or custodians of the minor, shall review pertinent medical reports and records and otherwise protect the interests of the minor.
 - 4. The judge reviewing the proposed settlement shall inquire whether there is information not contained in the report which concerns the health or other interests of the minor and which are affected by the proposed settlement.
 - 5. The court shall make direct inquiry of the parent or custodian as to the mental, physical and psychological health of the minor. Where the claim involves personal injury to the minor, the court

may, in its discretion, require the minor to appear in court personally to allow the judge an opportunity to observe the nature of the injury.

- 6. The proposed settlement shall be approved only upon a finding that it is fair to the minor and in his or her best interests.
- 7. Unless otherwise ordered by the court, the fee of the guardian ad litem shall be paid by the source funding the settlement.

GUIDELINES FOR ADVOCATES FOR CHILDREN
IN MICHIGAN COURTS

- (24) I. The Task Force recommends that the State Bar of Michigan adopt the following Guidelines for Advocates for Children and distribute them to bench, bar and other interested persons throughout Michigan.
- II. The Task Force further recommends that the Guidelines for Advocates for Children be implemented by the organized bar, courts, and individual attorneys representing children in Michigan courts for the improvement of such representation.
- III. Law schools, Michigan Judicial Institute, Institute for Continuing Legal Education, other lawyer training units and the Michigan CASA Association should use these Guidelines for Advocates for Children as a basis for training attorneys and others to advocate for children.

COORDINATING COMMITTEES TO IMPROVE
LEGAL AND HUMAN SERVICES TO CHILDREN

- (25) In the interest of aiding children's access to the justice system the Task Force recommends that county prosecutors, and chief judges of probate and circuit courts develop local/regional coordinating committees to address ongoing children's justice issues in each community.
 - I. The coordinating committee should be formed with the following purposes:
 - A. to develop ongoing communication between court officers and court users;
 - B. to address local issues on children's access to the legal system; and
 - C. to develop quality treatment for children that is accessible to families and children and is considered credible to the court.
 - II. The following considerations should guide development of the coordinating committee. Local child abuse and neglect councils or other nonprofit organizations should facilitate the meeting process. Regular meetings should educate, inform, and resolve problems presented by the participants. Efforts should be made to avoid duplication of existing services and organizations.
 - III. The coordinating committee should include representatives from consumers, agencies, and courts, such as:

Police agencies	Prosecutor's office
Department of Social Services	Health department
Child Abuse and Neglect Council	Schools
Community Mental Health	District Court
Circuit Court	Juvenile Court
Friend of the Court	Hospitals
Local Bar association representatives	Foster parent representatives
Private child placing agencies	
 - IV. Representation should include both management and employees who have direct client contact.

The Task Force believes that there are numerous existing committees throughout the state that may be able to adapt their meeting agenda and attendees to address these issues. The Child Abuse and Neglect Councils created by the Children's Trust Fund legislation require similar membership and several counties around the state use the Child Abuse and Neglect Council to function as the coordinating committee. Other states also ascribe to this concept through legislation. Their experience and history in these matters may provide valuable resources for development of similar programs in our state.

PROBATE COURTS AND SERVICES FOR CHILDREN

The Task Force recommends that the state implement statutes and regulations which:

- (26) I. Create a central accessible registry of all court proceedings involving respondents involved with the probate court with appropriate con-

stitutional safeguards. When implemented, the registry should be accessible to the other courts.

- (27) II. Create a system of easy access to this information by authorized users throughout Michigan using appropriate technology.
- (28) III. Implement a flexible funding mechanism that allows the court services to follow the family.
- (29) IV. Overhaul existing funding statutes so that they are driven by the best interests of the child and not fiscal implications, so that issues such as the following are addressed:
 - A. Amend existing law so that the reasonable efforts' determination required by federal mandate does not carry a financial penalty to the county when the court finds that reasonable efforts have not been made.
 - B. Amend existing law so that treatment plans and placement decisions are independent of considerations regarding funding sources and the parent's economic circumstances.
- (30) V. Develop court rules that provide for the transfer of venue in the juvenile division of the probate court.

IMPEDIMENTS TO COURT ORDERS RELATIVE TO
ACCESS TO SERVICES FOR CHILDREN

The Task Force recommends that state and local governments, courts and service providers adopt and implement the following policies:

- (31) I. Conduct a survey of courts in Michigan to determine the extent to which judges experience impediments to the implementation of their orders regarding services for children. Include in this survey a review of the types of orders issued and their relative frequency, the impediments judges experience to the implementation of those orders and their recommendations as to the priorities for services that they identify for children within their care and jurisdiction.
- (32) II. Assess on a regional basis the availability of needed services for children and encourage the recruitment and training of individuals who will be able to fill the need for those services.

USE OF CIRCUIT COURT COUNSELING ACT FUNDS

- (33) I. The Task Force recommends that Circuit Court Counseling Act monies be used to develop programs that help parents ease their children through the divorce process, or for other counseling services directly aimed at services needed by the children.
- II. The Task Force recommends that counties assure that these monies, if used for psychological evaluations, be offset by insurance payments or court ordered repayment from parents who can afford to do so.
- III. The Task Force recommends that a plan and accounting for the monies be filed with the County Clerk's office.

RELEASE FROM RESIDENTIAL PLACEMENTS
AND DISCHARGE FROM COMMITMENT

- (34) The Task Force recommends that the State Bar convene an interdisciplinary workgroup of the probate court, the prosecutors, the DSS, and residential service providers to develop strategies to address the following concerns related to treatment and release of juveniles in residential placements.

The interdisciplinary workgroup should address the relevant issues including the following:
- (35) I. the method for developing treatment plans to assure that the following components are included.
 - A. identification of the problems (behavioral, social, psychological, etc.) that lead to the placement
 - B. an articulation of treatment plan
 - C. a description of expected outcomes that will result from intervention
 - D. an anticipated length of treatment that balances the severity of the problems against the likely success of the proposed treatment plan
- (36) II. the extent to which the current array of treatment options are appropriate to the varying needs of children being placed
- (37) III. the content of the six-month reports on juveniles in placement to include specific information relative to the progress being made in addressing the outcomes articulated in the treatment plan

- (38) IV. concerns related to release hearings
- A. review of hearing requirements including notice and timeframes, and, as appropriate, develop recommendations that will assure adequate notice and proper information is provided to all parties and promote an efficient release and discharge process
 - B. develop procedures to assure that a DSS or the treatment facility representative, with direct knowledge of the child and the treatment plan, is available for release hearings to address questions regarding the child's response to treatment, and plans for follow-up services upon release.

AN EDUCATION PROGRAM FOR NON-LAWYER PROFESSIONALS
REGARDING CHILDREN AND THE MICHIGAN COURT SYSTEM

- (39) It is the recommendation of the Task Force that the State Bar of Michigan adopt and implement the following proposals:
- I. Develop a curricular outline that encompasses the basic issues which need to be included in any educational program, albeit at different levels of detail, for each of the three target audiences: the undergraduate students, the graduate students, and working professionals.
 - II. Identify, accumulate, evaluate and make available those resources that already exist and that can be utilized in the presentation of the issues that have been identified in the curricular outline.
 - III. Develop and distribute a video tape to supplement the existing educational materials for the education of non-lawyer professionals about the court system and cases involving children.

AN EDUCATION PROGRAM FOR LAWYERS AND JUDGES ON THE USE
OF NON-LEGAL PROFESSIONAL RESOURCES

The Task Force recommends the following:

- (40) I. Law Schools should include interdisciplinary courses in such subjects as family and juvenile law where non-lawyer professionals can educate students about child development issues and the effective use of

non-lawyer professionals in representing a child's interests. In light of the state of the practice consideration should be given to making family law a required course for graduation with a juris doctorate.

- II. The State Bar, on its own or in coordination with other service providers, should develop a model curriculum for a Basic Family Law Course which will include not only substantive and procedural law, but also training in child development, alternate dispute resolution and the effective use of non-lawyer professionals.
- III. The Michigan State Bar Board of Law Examiners should add Family Law as a mandatory subject for the essay portion of the State Bar Examination.
- IV. Continuing Legal Education providers should include non-lawyer professionals as team teachers in courses concerning the representation of children and their interests.
- V. The State Bar of Michigan should facilitate the development of a model curriculum for new lawyer and new judge training which should include substantive and procedural law, child development, alternate dispute resolution, and the effective use of non-lawyer professionals.
- VI. The State Bar of Michigan should establish a statewide clearinghouse for training materials and resources related to the delivery of justice to the children of Michigan.
- VII. Courts should encourage adequate training of attorneys appointed in child and family cases by requiring training as a condition of court appointment, developing adequate training programs for the local bench and bar, funding ongoing training programs and development of new programs by retaining a small percentage of attorney fees (e.g. 1%) to support training costs.
- VIII. The State Bar of Michigan should develop a manual for Michigan judges and lawyers to use when they have a case involving a child. The manual will act as a source book to help in locating services, service providers and funding sources for these services.