



NEW YORK  
CITY BAR

COUNCIL ON CHILDREN

SUSAN LISA JACOBS

CHAIR

116 JOHN STREET, SUITE 1605

NEW YORK, NY 10038

Phone: (212) 691-0950

Fax: (212) 691-0951

[sjacobs@cfny.org](mailto:sjacobs@cfny.org)

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Catherine Krebs

Director

ABA Section on Litigation

[CatherineKrebs@prodigy.net](mailto:CatherineKrebs@prodigy.net)

Dear Ms. Krebs:

I am the Chair of the Association of the Bar of the City of New York's Council on Children, and on behalf of the Council am writing in support of the ABA Section of Litigation's opposition to the Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act ("the Act") proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The City Bar's Council on Children consists of chairs of all City Bar committees concerned with children, families and the law. Council membership also includes law professors, judges, and attorneys for children, parents and child caring agencies. We have reviewed "the Act" and unanimously oppose its adoption as running counter to important core principles in the representation of children everywhere. In addition, we believe it is in direct conflict with Chief Judge Judith S. Kaye's rules for the representation of children in New York State.

This Act (1) eliminates the mandate of client-centered confidentiality and (2) takes from the child-client the right to define the representation and gives that decision to the court. In our view the Act flies in the face of years of years of thoughtful and informative work that has been done to define the appropriate role of the attorney for a child and undermines the ABA's own Standards on Representing Children in Abuse and Neglect Proceedings.

Children subject to child welfare proceedings are entitled to be represented by counsel. In New York, this has been an essential requirement of the Family Court Act for over three decades. This counsel should be able to act independently and zealously on behalf of his or her client, as defined by the professional rules of ethics adopted by each state. Both the ABA Model Code and the Model Rules provide guidance to any lawyer assuming the role of representing a young person. Moreover, as even the commentary to the Act indicates, there has been a tremendous effort in the last ten years among advocates for children in practice and in the academy to define the appropriate role of the child's lawyer. Excellent standards, such as the

ABA Standards on Representing Children in Abuse and Neglect Proceedings, provide guidance to the field.

Recently, the Chief Judge of the State of New York issued a new set of rules governing the representation of children which requires lawyers to represent their clients' counseled wishes consistent with their clients' ability to understand and participate in the decision making about representation even if the attorney does not believe what the child wants is in his or her best interests. This step is consistent with the position of our organization that client-directed advocacy best protects a child client's interests.

We urge the ABA's House of Delegates to reject the NCCUSL Act and to continue its long-standing support of independent counsel for children.

Sincerely,

Susan L. Jacobs, Esq.