

NEW YORK COUNTY LAWYERS' ASSOCIATION
FAMILY COURT AND CHILD WELFARE COMMITTEE

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Catherine Krebs
Director
ABA Section on Litigation

Dear Ms. Krebs:

The Family Court and Child Welfare Committee of the New York County Lawyers Association supports the ABA's 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). Our Committee is made up of current and former Judges and judicial officers, and lawyers representing children, parents, and the child protective agency in New York City. The proposed 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.

Children subject to child welfare proceedings are entitled to be represented by counsel. In New York, this has been an essential requirement of our Family Court Act for over three decades. That 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 proposed Uniform 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 in the field and to others interested in this area of legal practice.

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 direct 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 positions of our Committee and with the New York County Lawyers Association that client-directed advocacy best protects a child 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, following the counseled wishes of their clients in accordance with time tested ethical guidelines.

Sincerely,

Maxine Ketcher, Esq.

Co-chair

Nancy Thomson, Esq.

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