

FAMILY LAW JOINT EDITORIAL BOARD

MINUTES

**Meeting of April 16, 2005
Hyatt Regency Hotel, Austin, TX**

Present

Harry Tindall, Chair, NCCUSL
Jeff Atkinson, ABA
Linda Elrod, ABA
Mike Kerr, NCCUSL
Kit Peterson, AAML
Evanne Dietz, ABA Young Lawyers Division (observing)

Call to order

The meeting was called to order by Chair, Harry Tindall, at 8:15 a.m.

Minutes

Harry Tindall called for approval of the Minutes of the Family Law Joint Editorial Board (JEB) meeting of November 7, 2004. No one objected. Jeff Atkinson was asked to take minutes of this meeting

Future Meeting with Estates and Trusts JEB

Harry Tindall advised the JEB that it has been suggested that the Trusts and Estates JEB meet with the Family Law JEB to discuss matters of common interest, including uniform acts regarding guardianships, powers of attorney, family limited partnerships, section 529 plans, and irrevocable trusts. The meeting probably will take place in fall 2005.

Uniform Child Abduction Prevention Act

The JEB discussed the Uniform Child Abduction Prevention Act (UCAPA) for 90 minutes. The JEB reviewed a request from the UCAPA Drafting Committee that the Family Law JEB endorse the Drafting Committee's request to expand the scope of the act to include domestic

abductions as well as international abductions. Reasons for expanding the scope of the act include:

- Domestic abductions are a larger problem than international abductions. There currently are approximately 1,100 open Hague (international) cases and more than 262,000 domestic abductions.
- International abductions begin as domestic abductions, and it is not always clear whether an abduction will be domestic or international.
- The legal issues and remedies are similar for both domestic abductions and international abductions.

Jeff Atkinson (ABA) moved that the JEB endorse expansion of UCAPA to cover domestic abductions as well as international abductions. Kit Peterson (AAML) seconded the motion, and the motion passed unanimously.

The JEB also reviewed other aspects of UCAPA, and members of the JEB offered the following comments:

- In § 8, it is important to avoid civil rights violations that could arise if a presumption pertaining to the risk of abduction was based on a person's race or nationality. One possible way of handling the issue is to list nationality as a factor that "may" be considered rather than "shall" be considered.
- It would be desirable to track the language of § 311 of the UCCJEA regarding authorizing law enforcement, in exigent circumstances, to enter private property at any hour take physical custody of a child (A copy of § 311 of the UCCJEA is attached to these minutes.
- More explicit reference to domestic violence might be made in § 8(b) as a "defense" to abduction.
- Use of electronic monitoring devices could be added as a remedy.
- It often is difficult or impossible to obtain "mirror orders" in other countries (reflecting the same terms as a U.S. order regarding custody or parenting time). Thus, this remedy under the act may not be practical.

Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act

The JEB briefly discussed the Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act. Members of the JEB noted that issues facing the act included: (1) would the act be regarded as full-employment-for-attorneys act [response to that concern can include that appointments in custody proceedings are discretionary] and (2) explanation of the need for uniformity and why the act should not be a model act [response to that concern can include that states have a common interest in complying with federal law (CAPTA)].

Review of existing acts and other projects

UCCJEA – The UCCJEA has been approved in 44 jurisdictions under is consideration and likely to pass in Vermont, Massachusetts, and Indiana. Other states that have not adopted the UCCJEA include New Hampshire, and Louisiana. In order to be adopted in Puerto Rico, the act needs to be translated into Spanish. (Puerto Rican Spanish is different from Mexican Spanish.). Harry Tindall asked a translation service about the cost of translation. The translation service told him the cost would be about \$ 10,000. The JEB discussed possible sources of funds for translation, including foundations. Some board members wanted to know the number of UCCJEA-type cases involving Puerto Rico before undertaking an effort to find funding for translation.

Power of Attorney Act – The Family Law JEB requested – and the Power of Attorney Act Drafting Committee agreed – to make powers of attorney terminate when an action is commenced for legal separation or divorce. (See § 111(a)(6) of the draft.)

Interstate Compact on Placement of Children (ICPC) – Private custody cases (that do not involved state welfare services) will not be covered by the ICPC. Interstate foster care services would be covered by the ICPC. The degree to which the ICPC covers adoption was not certain.

Other drafting projects with some relation to family law – Other current drafting projects with some relation to family law include: child witness, guardianships, guardianship jurisdiction and enforcement, as well as power of attorney.

Trends in adoption of acts – It was noted that uniform acts often are promptly approved in western states, and adoption is slower in eastern states.

Study committee regarding relocation of children – Appointment of this study committee will proceed slowly since there are two drafting projects currently underway regarding (primary) family law issues – representation of children and abduction of children – and the conference does not wish to stretch its family law resources too far. The current drafting projects are likely to be ready for a final reading in the summer of 2006.

Study committee regarding collaborative law – This study committee will seek the views of legal entities in addition to entities related to family law. Other entities would include the ABA Sections of Business Law, Litigation, Probate, and Intellectual Property. It was noted that collaborative law is more likely to be utilized by parties that have ongoing relationships with each other (such as business law parties) and its less likely to be used parties that do not have an ongoing relationship with each other (such as parties in personal injury actions).

Hague session on maintenance – A two-week session on maintenance concluded this week. Another session will be necessary. Conflicts persist regarding the European view that jurisdiction should be based on nationality or habitual residence of the child, whereas the U.S. believes that jurisdiction for financial issues requires personal jurisdiction / minimum contacts.

Conference involvement at the Hague. Mike Kerr reported that the Conference could become involved in Hague issues as a non-government organization (NGO), but to do so, the conference probably would need to join with uniform law groups in Mexico and Canada.

Discussion of JEB membership for AFCC

Members of the board discussed offering JEB membership to the Association of Family and Conciliation Courts (AFCC). Harry Tindall, Linda Elrod, and Jeff Atkinson spoke in favor of extending an offer of membership, stating that the AFCC – many members of which are judges and mental health professionals – would have useful perspectives to offer that might not come from the lawyers and professors that primarily make up other organizational members of the JEB. It also was noted that AFCC is a prominent organization in the field of family law. Kit Peterson said her only authority on behalf of the AAML was to oppose offering membership to AFCC.

The JEB also discussed (but did not make a decision regarding) offering membership to the Association of Juvenile and Family Court Judges.

Compensation for an “executive director” or reporter for the JEB

Mike Kerr raised the possibility of paying a stipend to an “executive director” or reporter for the JEB. Duties would include preparing minutes and conducting research. Mr. Kerr said other JEBs paid stipends in a range of \$1,500 to \$8,000 per year. If the Family Law JEB were to pay an executive director or reporter, that arrangement would need to be approved by the entities that make up the JEB.

Adjournment

The meeting of the JEB adjourned at 12:21 p.m.

Jeff Atkinson
Recorder of Minutes

Submitted: April 18, 2005

Appendix:

SECTION 311. WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD.

1. (a) Upon the filing of a petition seeking enforcement of a child-custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this State.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this State, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 308(b).

(c) A warrant to take physical custody of a child must:

- (1) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
- (2) direct law enforcement officers to take physical custody of the child immediately; and
- (3) provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this State. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.