



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON MINOR GUARDIANSHIPS

Room 411 South, State Capitol
Madison, WI

August 28, 2018
10:00 a.m. – 3:05 p.m.

Call to Order and Roll Call

Chair Steineke called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Rep. Jim Steineke, Chair; Sen. LaTonya Johnson, Vice Chair; Reps. Paul Tittl and Debra Kolste; and Public Members Susan Conwell, Megan DeVore, Henry Plum, Theresa Roetter, Michael Rosborough, Carrie Schneider, and Gretchen Viney.

COUNCIL STAFF PRESENT: Steve McCarthy and Amber Otis, Staff Attorneys.

APPEARANCES: Therese Durkin, Attorney, and Randall Keys, Chief Legal Counsel, Department of Children and Families (DCF).

Approval of the Minutes of the Meeting on July 24, 2018

Chair Steineke moved that the minutes of the July 24, 2018 meeting be approved. The motion was approved by unanimous consent.

Presentation by Therese Durkin, Attorney, and Randall Keys, Chief Legal Counsel, DCF

Randall Keys read a prepared statement outlining DCF's concerns with the state bar working group's bill draft. Generally, DCF supports improving the laws governing private minor guardianships. However, DCF noted concerns about the challenges of combining private guardianship procedures with the public welfare procedures, and the impacts of moving the private guardianship provisions into ch. 48, Stats.

Mr. Keys and Therese Durkin responded to a number of questions from committee members, including questions about subsidized guardianships, the intersection of public and private interests in the termination of parental rights statutes, potential impacts on county workers, and unintended consequences of the state bar working group's bill draft.

Description of Materials Distributed by Legislative Council Staff

Amber Otis, Staff Attorney, described the materials distributed by Legislative Council staff. The materials included a chart comparing Wisconsin's guardianship procedures for both private guardianships under ch. 54, Stats., and public guardianships under ch. 48, Stats., an update on the Wisconsin State Courts' efforts to collect data on guardianships from the Consolidated Court Automation Program, and an analysis of the application of the *Barstad* case in termination of guardianship proceedings.

Steve McCarthy, Staff Attorney, described research of other states' laws regarding the duties of a guardian ad litem (GAL) in private minor guardianships, survey data on certain aspects of guardianship collected by Kids Matter, Inc., and a memorandum prepared by Legislative Council staff highlighting potential discussion points for the committee's discussion of its assignment.

Discussion of Committee Assignment

Chair Steineke opened the discussion by reminding committee members that the state bar working group's bill draft should only be considered a starting point for the committee, and all members are free to offer opinions and ideas to the committee as it works to create its own legislative product.

Members discussed DCF's concerns with placement of private minor guardianship statutes into ch. 48, Stats. Members agreed both that the committee's bill draft should insert a private minor guardianship statute into ch. 48, and that all of the provisions in the state bar working group's bill draft that do not address private minor guardianships should not be included in the committee's bill draft.

The committee discussed many of the discussion points highlighted by Legislative Council staff, including a robust discussion regarding the scope of and payment for the investigation that a court may order in contested guardianships under the working group's bill draft. For its initial draft, members agreed to make a number of modifications to the state bar working group's bill draft, including revising provisions relating to notice requirements and removing language allowing a court to order an investigation in contested private minor guardianship cases.

The committee discussed a number of items relating to the application of the *Barstad* case to the committee's bill draft. Legislative Council staff discussed in more detail various potential constitutional issues identified in the materials distributed to the committee.

Members agreed not to codify *Barstad's* nonexhaustive list of "compelling reasons" that could drastically affect the welfare of the child and give cause to appointing a guardian in a

contested case, opting instead for the draft to allow courts to determine whether “compelling reasons” exist on a case-by-case basis. Members also agreed that the committee’s draft should incorporate a bifurcated procedure in which the court must first find either parental unfitness or inability, or the existence of “compelling reasons,” before it may consider whether appointing a guardian is in a child’s best interest.

The committee discussed a number of issues relating to cases in which a parent petitions for termination of a guardianship. The committee agreed that the burden of proof in such cases should be placed on the parent, but that the standard of proof should be “by a preponderance of the evidence.” The committee also agreed to require a parent petitioning for termination to allege and prove a substantial change in circumstances, that the parent is fit, and that the best interest of the child requires termination of the guardianship.

The committee also discussed the state bar working group’s bill draft language regarding the role and duties of the GAL. Committee members agreed to retain much of the language, but asked for certain modifications, including clarifying the scope of the GAL’s investigation and report to the court and creating a definition for the term “suitability,” among others.

Other Business

Legislative Council staff reminded members that the committee’s next meeting is scheduled for Tuesday, October 23, 2018.

Adjournment

The committee adjourned at 3:05 p.m.

SM:ksm

[The preceding is a summary of the August 28, 2018 meeting of the Study Committee on Minor Guardianships, which was recorded by WisconsinEye. The video recording is available in the WisconsinEye archives at <http://www.wiseye.org/Video-Archive>.]