

COURTS, LAWYERS AND THE ADMINISTRATION OF JUSTICE SECTION



Sixth Floor
1100 Constitution Avenue, N.W.
Washington, D.C.
20005-5937
(202) 626-3463
FAX (202) 626-3453

The District of Columbia Bar

August 4, 1998

Sections EventLine
(202) 626-3455

Web Site Address:
www.dcbbar.org/
pro_resources/sections

Re: Proposed Child Welfare Legislation
Expanded Mandatory Reporting Requirements

Steering Committee:
Robin E. Jacobsohn, Co-Chair
John Moustakas, Co-Chair
Joy A. Chapper
Anthony C. Epstein
Melissa G. Reinberg
Richard A. Seligman
Arthur B. Spitzer

Dear Child Welfare Legislation Working Group:

Pamela S. Satterfield
Board of Governors Liaison

We are writing on behalf of the Courts, Lawyers and Administration of Justice Section of the District of Columbia Bar.¹ It has come to our attention that the proposed child welfare legislation contains a provision that requires all individuals, without exception, to report suspected child abuse and neglect without regard to existing laws protecting privileged communications. While the proposed statute imposes sanctions for failure to report only on health professionals, law enforcement officers, educators and human service providers, the law requires all individuals to report. This means that an attorney who obtains confidential information about possible child abuse through a privileged communication with her client would be required to report the information notwithstanding the attorney-client privilege.

Committee:
Court Rules and Legislation

We support the basic purpose of the proposed legislation to reduce child abuse and neglect and to protect potential victims. Consistent with these purposes, Rule 1.6 (c) of the D.C. Rules of Professional Conduct already authorizes a lawyer to disclose information otherwise protected by the attorney-client privilege in order "to prevent a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily harm." This provision, the result of extensive study and review, is intended to strike an appropriate balance between the interests and rights of potential victims and the interests and rights of clients to effective legal representation. This Rule is sufficient to further the goals of the statute without undermining clients' ability to get effective representation.

Andrew H. Marks
D.C. Bar President

J. Strand
D.C. Bar President-Elect

Neil R. Ellis
Chair, Council on Sections

This attempt to override the well-established doctrine preserving the confidentiality of attorney-client communications would seriously undermine the attorney-client relationship. It poses particular problems for attorneys in the domestic violence arena as it requires them to expose their own clients to potential prosecution or child removal when those clients seek protection from abuse inflicted by batterers. This dynamic will likely discourage victims from obtaining protection for themselves and their children. The provision is also highly problematic for child neglect attorneys who would be mandated to report information highly destructive to their clients' cases. Any provision requiring attorneys representing individuals accused of criminal acts to disclose information from their clients would, at a minimum, raise serious

Robin E. Jacobsohn
Vice Chair, Council on Sections

Katherine A. Mazzaferri
D.C. Bar Executive Director

Cynthia D. Hill
D.C. Bar Assistant Executive
Director, Programs

Carol Ann Cunningham
Sections Manager

¹ The views expressed herein are those of the Courts, Lawyers and Administration of Law Section and not those of the District of Columbia Bar or its Board of Governors.


constitutional questions in light of the constitutional right of such individuals to have effective assistance of counsel.

We strongly urge you to reconsider this highly controversial provision which is not necessary to achieve the goals of the overall legislation and which would have serious, unintended consequences undermining the ability of individuals to obtain effective legal representation.

Sincerely



Robin Jacobsohn



John Moustakas

Co-Chairs, Courts Lawyers and Administration
of Justice Section