

July 12, 2009

TO: Potential Amicus Curiae Parties

FROM: The Mockingbird Society
Eric S. Merrifield

RE: **In re. Dependency of AR and DR – Right to Counsel in Dependency Proceedings**

The Mockingbird Society (“MBS”) has decided to participate as an amicus curiae in what may become a landmark lawsuit at the state Court of Appeals. The lawsuit presents the issue of *whether children and adolescents in foster care have a constitutional right to be represented by an attorney in dependency proceedings*. The following is intended to provide you with information you can use to decide whether your organization would like to join our efforts.

What is this lawsuit about?

Under current Washington law, children who are age 12 or older who are involved in dependency proceedings may request to be represented by an attorney, and, if they do, the court may appoint an attorney to represent the children's interests and wishes. We believe this law is inadequate and unconstitutional because (1) it only allows children 12 and older to make the request and does not even apply to younger children, (2) it requires the children to make the request, even though they are seldom equipped to do so, and (3) even when children make the requests, the courts have the discretion to deny them. This is why Washington has been rated among the five worst states regarding representation of children. Based upon the experience MBS has working with foster youth and alumni, we will argue that children have a fundamental constitutional right to representation.

Why is this question at the Court of Appeals?

This question is before the Court of Appeals because, during a 2008 termination trial, a mother requested that the court appoint a lawyer to represent AR, her 12-year-old daughter. The judge denied the request based almost entirely on the CASA's opinion that participation in the trial would be traumatic for AR. Because AR had no lawyer in the dependency proceedings, she had no ability to contest the cutoff of visits with her mother or her younger brother, she could not contest the termination of her relationship with her mother, and she was unable to participate in any way in the proceedings or even understand what was happening. The state has agreed that the termination of parental rights was erroneous and has asked the Court of Appeals to remand the case for another trial. However, AR has asked the Court of Appeals to decide whether she has a constitutional right to counsel. If the Court agrees to hear that question, we will participate as an amicus curiae on the limited issue of right to counsel in dependency proceedings.

What is an amicus curiae?

"Amicus curiae" is literally translated as "friend of the court." Amicus Curiae parties commonly assist the Court in deciding a case by providing the informed perspective of groups who will be impacted by the Court's decision. An amicus is not a party to the lawsuit, but merely helps the Court to understand what's at stake in the larger community.

What's next?

If you would like to participate, we will need information from you regarding your group, its mission, and your relevant experiences and observations that might help to inform the Court. A schedule is proposed below.

Projected Schedule for Amicus Brief
(Based on expected filing in about mid-September)

Interested Amici Party Signs Cooperation Agreement	July 24
<p>Interested Amici Party provides the following types of information to MBS:</p> <ul style="list-style-type: none"> • Organization mission • Programs and Services • Accomplishments • Agenda <p><i>The goal of such information is to demonstrate the value of your contribution to the conversation over the legal issue.</i></p> <ul style="list-style-type: none"> • Organizational <u>observations</u> and <u>specific stories</u> about what the availability of attorney representation means for youth in foster care. <p><i>The goal here is to make legal arguments specific and concrete.</i></p> <ul style="list-style-type: none"> • <u>Studies, reports, surveys, or other information</u> that would provide further evidence to persuade the Court of Appeals. <p><i>The goal is to show that your observations are fully supported by the academic literature and corroborated by empirical evidence.</i></p>	August 3
Interested Amici Party Reviews/Comments on draft Amicus Brief	August 31
MBS Files Amicus Curiae Brief w/ Court of Appeals	September

Thank you for your interest in helping The Mockingbird Society build a world class foster care system by advocating for a right to counsel for children in dependency proceedings.

Should you have any further questions regarding your organizational participation as an amicus curiae party, feel free to contact Jim Theofelis at 206-323-5437 or jim@mockingbirdsociety.org