



THE MISSOURI BAR

THE MISSOURI BAR CENTER
326 MONROE ST.
POST OFFICE BOX 119
JEFFERSON CITY, MISSOURI 65102
573/635-4128
FAX: 573/635-2811
E-MAIL: MOBAR@MOBAR.ORG
WEB SITE: [HTTP://WWW.MOBAR.ORG](http://www.mobar.org)

DATE: February 24, 2009
TO: Senator Luann Ridgeway
FROM: The Missouri Bar
RE: Senate Bill 218

Recently, The Missouri Bar Executive Committee met to review legislation. The Executive Committee consists of the officers of the bar and three additional members annually elected by the Board of Governors. The members of this year's committee are Thomas M. Burke, President; H.A. "Skip" Walther, President-Elect; John S. Johnston, Vice-President; Charlie J. Harris, Jr., Immediate Past-President; Carol Chazen Friedman; Patrick B. Starke; and Deanna K. Scott. The committee has authority to act on behalf of the Board of Governors during the legislative session. In reviewing legislation, the Executive Committee considers comments received from various Missouri Bar legislative review subcommittees. All positions taken by the Executive Committee are communicated to the full Board as soon as possible after they are taken.

Recently, the Executive Committee reviewed Senate Bill 218, which would allow jury trials in termination of parental rights actions. The Committee found this bill to be within the legislative scope of The Missouri Bar. The legislation generated numerous comments from legislative review subcommittee members. The following concerns were raised:

"Subsection 6 is somewhat confusing because it provides the jury is merely making a recommendation whereas the other sections indicate the jury is making findings. This is also in Section 211.477. This bill should be written so that the jury makes findings on certain issues, and then the court enters judgment in light of those findings. The Supreme Court is not an administrative agency and probably cannot be directed to adopt anything by a certain date." *(name undisclosed)*

"While a trial by jury in cases involving such fundamental rights could promote the administration of justice and impart a perception of fairness to parties, such a requirement would impose a substantial burden upon the courts, many of which are not equipped to hold jury trials for such matters. Accordingly, more funding for the courts would likely be necessary for establishing facilities and payment of jurors. Additionally, family court judges certainly are well-equipped to determine the best interests of a child, especially in contrast to jurors who may not have any experience with children" *Jeremiah Kidwell*

“Would be entirely inappropriate subject matter. Not to mention that those who would choose this track would be those who would be entitled to free representation, overtaxing legal aid services, and imposing on those who provide pro bono services. Even states that allow jury trials in divorce cases leave child custody issues to a judge.” *(Name undisclosed.)*

“Better solution is to legislatively overrule the supreme court decision denying a request for [a] change of judge without cause upon the filing of a termination of parental rights petition. Parents who have been served a TPR petition should have 60 days after services to request a change of judge without cause that must be granted... This is the same period of time allowed in regular civil cases. In addition, the statute should be amended to allow parents to submit their own social study and investigation rather than being stuck with the one prepared by the Juvenile Officer or the Children’s Division under 211.455.3... The statute should require the judge to consider such a report submitted by the parents’ expert.” *Shawn McCarver*

“I polled the Missouri Bar Juvenile Law Committee. Of those responding, only one indicated support for the proposal. Comments against the proposed change included: (a) confidentiality concerns for the child and family; (b) delays in achieving permanency for the child; (c) lack of resources to try an increased number of jury trials.” *Bill Prince*

Because of the above concerns raised by Bar members, the Executive Committee voted to oppose Senate Bill 218.