



1956

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### Recommended Citation

Howard, Delmer D. (1956) ""Friend of the Court"," *Kentucky Law Journal*: Vol. 45 : Iss. 1 , Article 4.

Available at: <https://uknowledge.uky.edu/klj/vol45/iss1/4>

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# “Friend of the Court”

By DELMER D. HOWARD\*

PRIOR TO THE 1946 session of the General Assembly, there was no agency in Kentucky to assist the divorced mother in the collection of maintenance awarded by the circuit courts for the support of the infant children. The delinquent father found that he could escape contempt of court citations because of the inability of the mother to secure these citations. Attorneys were reluctant to follow through on contempt citations after they had completed their services in securing divorces. Usually the payments of maintenance and support for the children were small and the mother could not afford to employ an attorney to represent her in taking punitive action against the father. In addition to the maintenance paying problem which confronted the mother, the courts became aware of the need of an investigative officer to represent the children in contested divorce cases where it was apparent that the parties were prone to exaggerate the favorable conditions of each home.

One of the first proponents of the Friend of the Court Act was Judge Chester D. Adams of the Fayette Circuit Court. Judge Adams became alarmed at the growing number of divorce cases in his court, particularly in the effect upon infant children. Mr. Anthony Thomson, an attorney of the Lexington Bar, became interested in studying the need for a Friend of the Court to represent children of divorced parents in Kentucky. Through the joint efforts of Judge Adams and Mr. Thomson and other members of the Bar in Kentucky, the 1946 session of the General Assembly enacted a “Friend of the Court” act for counties containing cities of the first and second classes. This act of the General Assembly, as amended in 1948, provides as follows:

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(1) In any county containing a city of the first or second class, the fiscal court may, by resolution, authorize the appointment of a "friend of the court." If the circuit court of the county has but one judge, the appointment shall be made by the judge. If the court has two or more judges, the appointment shall be made by joint action of the judges, at the general term. The appointment shall be for a term of two years, subject to removal at the pleasure of the appointing authority. Vacancies shall be filled by appointment of the appointing authority for the unexpired term. The person appointed shall be a licensed practicing attorney. He shall take the Constitutional oath of office and shall give bond in such sum as may be fixed by the appointing judge or judges.<sup>1</sup>

The act further provides that the Friend of the Court shall supervise and enforce the payment of maintenance adjudged by the circuit court in divorce actions. If the court so orders, all payments for the maintenance of children must be made through the Friend of the Court and he will see that the payments are properly applied in accordance with the order or judgment. The act further provides, however, that if the court so directs, the payments can be made to the Juvenile Court and the Friend of the Court will render such assistance as may be required in keeping records concerning the payments and the enforcement of delinquent payments. The act further provides that the Friend of the Court shall investigate all cases where payments have become delinquent and can bring the delinquent party before the court for nonpayment of maintenance. The Friend of the Court is further directed to report to the court all cases in which children are not receiving proper care and maintenance, and he is ordered to make such other reports to the court as may be required.

The Friend of the Court, when requested by the trial judge, is directed to make investigations of facts and circumstances that would affect the rights and interests of children.<sup>2</sup> He is directed to report to the trial judge his findings and to make recommendations as to the care, custody and maintenance of the children. The Friend of the Court is further authorized to secure the issuance of court orders, rules and citations against delinquent paying par-

<sup>1</sup> Ky. Rev. Stat. sec. 403.090 (1955).

<sup>2</sup> Ibid. sec. 403.090 (2).

ents.<sup>3</sup> He is directed to attend the taking of depositions and has authority to cross examine witnesses in divorce cases where children are involved. The Friend of the Court is prohibited from representing any party in a divorce action.<sup>4</sup>

The 1956 General Assembly, recognizing the necessity of extending the Friend of the Court Act, enacted House Bill 227 which amended KRS 403.090 and enlarged the Friend of the Court Act to enable any county in Kentucky to appoint a Friend of the Court when authorized by the fiscal court of the county.<sup>5</sup>

The need of a Friend of the Court in Kentucky is illustrated by some statistics furnished the Fayette Circuit Court and the Fiscal Court in Fayette County by the Friend of the Court in that county. For a ten month period in 1948 the Friend of the Court reported that he had processed 1,010 complaints involving 1,740 children. During that same period of time he had written 189 letters and had traveled 680 miles. He had attended the taking of depositions in 134 cases involving 217 children. During that same period of time he had caused to be issued 104 rules against delinquent fathers. This report was made after the Friend of the Court Act had been in effect only a short time.

In 1955 the Friend of the Court reported that he had held 891 conferences involving 1,684 children. He further reported that he had mailed over 800 letters and had traveled 1,317 miles on investigations concerning the homes of children under consideration by the Fayette Circuit Court. During that same period of time he had attended 124 trials involving 209 children and had issued 116 rules against delinquent fathers. During that same period of time, the Friend of the Court reported, he attended 40 hearings on the custody of children and processed 60 actions filed under the Uniform Support of Dependents Act of the State of Kentucky and other states. He further reported that the Domestic Relations Office of Fayette County which receives payments for the support of children would collect somewhere in the neighborhood of \$250,000.00 for the current calendar year. Approximately one-third of that amount was paid by orders of the Fayette County Juvenile Court and about two-thirds was paid by orders of the

<sup>3</sup> Ibid. sec. 403.090 (3).

<sup>4</sup> Ibid. sec. 403.090 (5).

<sup>5</sup> Ky. Acts 1956, chap. 214, 416.

Circuit Court. These payments were made in weekly and monthly installments usually in denominations of \$5.00, \$10.00 and \$15.00.

The enactment of the Uniform Support of Dependents Act<sup>6</sup> by the 1950 General Assembly greatly increased the work of the Friend of the Court. Kentucky joined 45 other states in enacting legislation designed to enforce maintenance payments against runaway fathers. This act of the legislature permitted a mother to institute an action in the courts of Kentucky against a father of neglected or dependent children who had deserted his family and moved to another state having reciprocal legislation. The law designated the "Petitioner's Representative" as the county attorney, a corporation counsel, state's attorney, commonwealth attorney and any other public officer by whatever title his public office may be known.<sup>7</sup> The Fayette Circuit Court has interpreted this to include the Friend of the Court and directed the Friend of the Court to institute all necessary actions under the Uniform Support of Dependents Act when complaints were made by the mothers of neglected children. The Friend of the Court continues to represent the plaintiff and to process suits filed under the Uniform Support of Dependents Act when forwarded to Fayette County from other states, although the 1954 Act imposes these duties on the county attorney.<sup>8</sup>

Another function of the Friend of the Court is to work in conjunction with the juvenile court of the county where he is appointed. As the circuit court does not have punitive powers over minor children, it is frequently necessary for the Friend of the Court to refer cases to the juvenile court when children of divorced parents present a behavior problem. Frequently children of divorced parents are brought into the juvenile court for infractions of the law and the juvenile court makes recommendations to the circuit court on changes of custody. The Friend of the Court acts as an investigative officer to bridge the gap between the juvenile court and the circuit court in matters pertaining to the custody of children of divorced parents.

Although the original Friend of the Court Act has been on the

<sup>6</sup> Ky. Rev. Stat. sec. 407.010 et seq. (1953).

<sup>7</sup> Ky. Rev. Stat. sec. 407.020 (1953); repealed 1954, Ky. Rev. Stat. sec. 407.020 (1955).

<sup>8</sup> Ky. Rev. Stat. sec. 407.190 and 407.250 (1955).

statute books only ten years, its importance has been recognized by the counties containing cities of the first and second class where its operation has been effective during those years. It is believed that more counties will take advantage of the Friend of the Court Act as amended by the 1956 Legislature. Courts will be given valuable assistance through the use of practicing attorneys as their investigative and enforcement officers, whose efforts will be put forth to bring about a better life for children of so many broken homes.