

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
December 3, 2010
12:30 p.m. – 4:30 p.m.
Oregon Judicial Department
1133 Chemeketa Street NE
Salem, Oregon

Members Present: Hon. Paula Brownhill, Bill Howe, Russell Lipetzky, Jean Fogarty, Linda Scher, Hon Roxanne Osborne, Stephen Adams, Chris Walls, Hon. Keith Raines, Hon. Maureen McKnight, Rebecca Orf

Members Absent: Ernie Mazorol, Robin Selig, Jim Adams, Margaret Olney, Lauren MacNeill

Guests: Kingsley Click, Chief Justice Paul De Muniz, John Maack, Wendy Hull

Staff: None

Minutes: September 10, 2010 minutes were approved.

SUBCOMMITTEE REPORTS:

Court/Child Support Agency Child Support Coordination-*Jean Fogarty*

The subcommittee met on November 18, 2010. They reviewed recommendations from the Task Force on Family Law Forms and Services (Tiffles). They discussed charging for forms (Jean deferred to Judge McKnight for further information on that issue). Jean and the subcommittee are working with ETSD director Bryant Baehr and OJD Forms Coordinator Holly Rudolph on interactive parenting plan forms.

Jean has been able to leverage federal money through an Access and Visitation grant. She feels that its best use is to develop interactive parenting plan forms. Additionally some money could be used for staff assistance (FTE) to help the courts. She is coordinating with Holly Rudolph and the eCourt process. Division of Child Support (DCS) will use the OJD vendor, which will be selected later in December. They also will work with Linda Scher's Parenting Plan subcommittee.

Judge Osborne suggests they consider a video explanation to accompany the forms. Jean hopes a Questions and Answers section will provide clarity, but she will check into video.

Judge McKnight reported that the piece of the DCS grant that subsidizes facilitators is on hold until they know how much money is left after the interactive parenting plan forms are developed.

The Division of Child Support (DCS) website was re-designed. They will develop a process for on-line payments.

Child support guidelines will be reviewed in 2011. They are forming an advisory work group that will include prosecutors, public defenders, legal aid lawyers, private practice attorneys, and hearings officers. Judges will be able to see comments and proposals on-line.

Guest John Maack asked who tests the e-Court interactive forms. DCS will solicit comments from parents, facilitators, and others. Jean explained that DCS seeks input from users. Before forms are finalized, the interactive forms will have test groups that include lay people. She will follow up with Mr. Maack.

Legislative Subcommittee – Russ Lipetzky

Russ explained that there is not a separate subcommittee; all members of SFLAC may be asked to review legislation. He updated the group on potential legislation.

LC 1168 is still in flux. It has not been introduced as a bill. Kingsley Click said that the last meeting of the Joint Interim Committee on State Justice System Revenues is December 8, 2010. When its work is done, it will hand off to the Judiciary Committee where additional work will be done. The courts have over 200 employees tied to a temporary revenue stream that expires in June of 2011. The legislature is looking at standardizing fees to provide more certainty in funding. The courts will be hurt if surcharges go away in June and nothing is done to replace that revenue. The Legislature's desire is to simplify and standardize plus fill gaps in revenue. There are many considerations and many players involved.

Self Representation – Judge Maureen McKnight

They have monthly meetings and have been a sounding board for Tiffles. They have considered four issues recently:

- Charging for interactive forms.
- Facilitation priorities. There are variations in facilitation services from county to county. Some courts have cut all facilitation services, and some have made partial cuts or offered reduced hours. The subcommittee wants to help courts prioritize facilitation services.
- Publication and distribution of pamphlets for judges working with self-represented litigants. This project has been on hold while waiting for judicial ethics rule changes.
- OJD Family Law Website

Parenting Plan Outreach Workgroup (PPOW) - Linda Scher

Linda reported that the subcommittee has been working with policy analyst Shawn Brenizer at DCS on interactive parenting plan forms. There is cross-over between the work of the Domestic Violence Subcommittee, Child Support Subcommittee, and

Parenting Plan Outreach Workgroup. Linda will form a work group by selecting 1-2 people from each subcommittee. Linda will contact Robin Selig for two members of the DV Sub. Holly Rudolph from ETSD will provide legal expertise.

Linda reported that the law requires a parenting time schedule and custody designation. The forms will provide helpful additional information, but they need to make sure users know which choices are optional. Another issue is how the program will work when parties do not need an entire new plan but only want to modify one or two provisions.

Judge McKnight complimented Linda on her hard work. Bill Howe added that Linda has been working very hard for years, and she and her subcommittee produce excellent products.

Parental Involvement Workgroup – Linda Scher

Linda reports the main goals are:

1. To increase effectiveness of early use of parent education.
2. Academic report on custody, shared parenting time, and child development. It will address children's needs as related to parent education and what we should be teaching.

Basically, the report will be an academic focus on what is best for children and families. They hope to have a final draft come out of the January 21, 2011 meeting. SFLAC will review the group's recommendations at the March 4, 2011 meeting.

Russ Lipetzky suggested that we request 15 minutes during the Family Law section annual conference to talk about SFLAC and how our work interfaces with the Family Law section. Judge McKnight agreed and suggested that presentation time would be valuable after interactive forms are developed. The next conference is October 2011. Linda Scher might have a demo by then. Bill Howe will make contact with the conference planners or Family Law section officers and work with Linda on this.

Bill Howe asked if we should ask the OSB Family Law Section for a semi-permanent place on the agenda. Members suggested we wait and see how the first presentation is received. Judge McKnight asked if SFLAC should raise its profile by asking Judge Dan Murphy for a regular column in the Family Law section newsletter. Linda Scher said the Parental Involvement work group could write one or two articles for the newsletter. Judge McKnight will talk to Judge Murphy and report back.

Domestic Relations Guardian Ad Litem Work Group – Keith Raines

Judge Raines reported that the work group issued a written report and it was distributed with the handouts. They will take it to the Oregon State Bar Elder Law section and Probate section after SFLAC approves it. He explained that it may begin as a Supplemental Local Rule (SLR).

Judge McKnight thanked Judge Raines for the work and asked about guardians ad litem for children. Judge Raines said this is designed for party representation in EPPDAPA cases only, not for children. Jean Fogarty pointed out that some parties in family law cases are minors, and Judge McKnight added that minors may apply for FAPA orders in some circumstances.

Judge McKnight asked if the work group will draft model forms. Judge Raines explained that Becky Orf has grant money to work on EPPDAPA forms and will try to incorporate the recommendations, but they may have a supplemental local court rule without forms.

Deadline for comments is January 7, 2011. Bill Howe said it is an excellent product and suggested SFLAC provisionally approve the report. Judge Brownhill asked that comments be sent to Judge Raines and to her by January 7, 2011.

FEES FOR FORMS

Judge McKnight reported that Tiffles' recommendation is that no fee is charged for use of on-line forms above the filing fee. The issues are access to the courts and court efficiency. She explained that this decision evolved over time. If the choice is between no forms versus a fee for forms, then the fee wins out, but the hope is that there is no extra charge. Second choice is a fee only to develop and maintain the forms, but OJD not make a profit from selling forms.

OJD will need to make accommodations for fee waivers and deferrals. It is difficult to get hard figures on the number of fee waivers and deferrals, because we don't have OJIN-inquiry access.

Jean Fogarty pointed out that one challenge is quantifying the benefit to the court of people using legally-sufficient forms, it will reduce staff time; it is important to acknowledge the significant business and economical benefits to the courts.

Kingsley Click said there has been no discussion of profit-making. We would like the forms to be free and accessible as an incentive to use eCourt. Currently some courts charge for hard copy forms, but they only charge actual copy costs. The problem will be updating and maintaining the forms once they are created. Ideally maintenance costs would be covered by filing fees, but that may not be possible.

Bill Howe responded that SFLAC members appreciate the hard decisions that OJD must make, but he pointed out that there are no advocates for family law constituents. They don't have lobbyists to argue for low-cost accessible eCourt forms.

Judge Brownhill pointed out that OJD has no family law staff, and it is difficult to assist courts with family law questions, let alone update model family .law forms.

Jean Fogarty mentioned that the Division of Child Support is involved in the same cases as the courts. Multnomah County accesses \$100,000 of federal money through collaboration with DCS. The Access and Visitation grant will provide money to create interactive parenting plan forms and FTE support for courts.

Linda Scher pointed out that lots of good work is done at the local level through local Family Law Advisory Committees, and we support their work.

CHIEF JUSTICE'S COMMENTS

Chief Justice De Muniz thanked SFLAC for its work and for the list of accomplishments it provided him prior to the meeting. He explained that he foresaw bad times looming and predicted that we would become a weaker branch of government with the elimination of OJD's Court Programs and Services Division. That's where family law resided. It has inhibited our ability to be innovative and creative and has resulted in a transfer of costs. He does not see the budget situation improving any time soon.

LC 1168 is a sensitive initiative right now. Although just a legislative concept, it would sweep court security funds into the pot, and he believes in a dedicated fund for court security projects. The Chief explained that there is a need to proceed carefully, and he will determine the nature and timing of any response.

The Chief said that OJD has been asked for \$13.3 million reductions before the end of the biennium on June 30, 2011. Electronic and business innovations will be necessary; we cannot otherwise do our work with reduced staff. Court staffs are very thin now, and we're able to get day to day work done, but it is difficult and may become more so. He has made it a priority to keep the courts open and accessible, and he has been able to do so even though the cuts are greater than in 2003 when we closed on Fridays. If budget cuts run too deep, they will destroy the unified court system. Local courts will have to operate as they can with the funds they have.

CREW was formed to identify efficiencies and structural changes that would allow courts to operate with fewer revenues while preserving access to justice. CREW recommended:

1. **Use staff resources more efficiently.** In Multnomah County, a shift in the duties of judicial assistants saved eight FTEs. The Supreme Court Justices share judicial assistants, and their JAs also do records work. This saved two and one-half FTEs in records. Other efficiencies include the electronic transfer of files from trial courts when there is an appeal, and centralized financial collections.
2. **Use judicial resources more efficiently.** A special panel of judges has formed to handle complex litigation. There will be improvements in electronic dockets so an available judge in one district can handle hearings in another district. There will be an increase in video appearances.

If we are not successful in re-engineering the courts and/or the cuts are too deep, we will have two systems of justice: one system for those who can afford private litigation and one for the poor, the self-represented, and the criminals.

Self-represented litigants are here to stay. OJD constantly addresses self represented issues as eCourt develops.

How can SFLAC help?

- Organize ways to be effective with the legislature, keeping in mind that OJD must speak with one voice.
- Be available as SMEs.
- Keep doing the work that SFLAC is doing.

Kingsley Click added that SFLAC members who answer questions from court staff and help with forms have been very helpful to OJD.

MEMBERSHIP

Dr. Ed Vien resigned. He will continue on the Parental Involvement work group. He recommended Janice Garceau as his replacement. After much discussion, SFLAC will recommend Janice Garceau as a replacement for Dr. Vien, and members will think about a private psychologist or psychiatrist to add to SFLAC. We will revisit this topic at future meetings.

FAMILY LAW WEBSITE

Judge Brownhill asked the status of the overviews of family law topics that were distributed at the September meeting. She explained that each topic would have a brief overview on the website with links to forms and related sites. Members asked that she email the overviews to them for further revisions.

FAPA NOTIFICATION PROJECT

Rebecca Orf reported that Firearms and Domestic Violence Task Force members Robin Selig, Judge Brownhill, and Rebecca worked with LEDS director Terry O'Connell and the Department of Justice on a new FAPA, EPPDAPA, and stalking notification project. In these protective order cases, petitioners will fill out a special Confidential Information Form that includes telephone number and/or email address. When the proof of service is entered in LEDS, petitioner will be notified by phone or email. The time of service can be a dangerous time for petitioners, and this new process is seen as an innovative safety measure.

Meeting adjourned at 4:30 p.m.

