

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
March 2, 2012
12:30 pm – 4:00 pm
Citizen Review Board Office (CRB)
410 NE 18th Avenue
Portland, Oregon

Members Present: Stephen Adams, Jean Fogarty, Janice Garceau, William J. Howe III, Ernest J. Mazorol III, Hon Paula Brownhill, Linda Hukari, Lauren MacNeill, Rebecca Orf, Hon Keith Raines

Members Absent: Hon. Maureen McKnight, Linda Scher, Robin Selig, Chris Walls

Guests: John Maack, Holly Rudolph

Minutes: The minutes from December 2, 2011 were approved.

COMMITTEE REPORTS

Domestic Violence Subcommittee– *Rebecca Orf for Robin Selig*

Becky Orf reported that the FAPA forms have been changed to include an exception for administrative hearings and a teen's right to continue a FAPA Order.

A work group has formed to update the FAPA bench guide. The DV subcommittee will review the changes once the work group finishes the draft.

Court/Child Support Agency Coordination - *Jean Fogarty*

The last meeting was on January 19, 2012.

The Division of Child Support (DCS) has waited for the selection by eCourt of the SSP (Tyler Technologies) to develop the interactive parenting plan forms, but in the end they had to do it themselves rather than coordinate with Tyler or Turbo Court. Linda Scher spoke to Scott Smith at ETSD, and he said if Turbo Court is selected, it may not be compatible with the Division of Child Support's vendor. The committee will regroup and figure out the best approach. It could be 2013-14 before Turbo Court is on board and develops forms, although Holly Rudolph said it could be sooner.

The DCS project was funded with federal grant money, and September 30, 2012 is the end of the grant cycle. They may have to spend the money on a different project even though a great deal of time and effort has been invested in this project.

Statutory revisions from the 2011 session have been made to the Child Support Bench Book. The updated book will go up next week, and there will be a note about it in the April Family Law Newsletter. Jean Fogarty said she will ask Judge McKnight if she would send a link to the updated book to all trial judges.

The Guidelines Advisory Committee met for the last time in February. The final report with the Committee's recommendations has been forwarded to Jean, and Jean will make her policy decisions on what changes should be made to the Guidelines within 30 days and then pursue adoption of the administrative rule changes. The revised guidelines are projected to become effective on January 1, 2013.

Judge Keith Raines will replace Judge McKnight as co-chair of the subcommittee. Ellen Mendoza was the Legal Aid representative on the subcommittee, but she was laid off when the Clackamas Legal Aid office closed. Russ Lipetzky is on the subcommittee, but he may not continue after leaving SFLAC. Bill Howe suggested Kelly Evans from his firm.

Judge Tennyson asked the subcommittee for support for her problem-solving approach to child support enforcement contempt docket. Ernie Mazorol suggested talking to Molly Croisan about getting on a TCA meeting agenda. Judge Tennyson has statistics about the effectiveness of the program used in Multnomah County.

Legislation –

Bill Howe reported that Russ Lipetzky resigned from SFLAC that morning.

Ernie Mazorol gave a brief update on the February legislative session. He said the co-chair budget rebalance plan may not be final. He thinks that eCourt will continue, but it may be cut back some. Legislation passed to create three new court of appeals judgeships effective July 1, 2013 so there is no cost this biennium. The Emergency Board may be able to apply some additional funds to court operations, probably in May. There will be a lot of uncertainty in trial courts if that happens.

Guardianship Work Group – Judge Keith Raines

Judge Raines reported that he will send out a questionnaire to trial courts eventually – to find out if the new forms are in use and whether they need any tweaking.

Futures Committee – Bill Howe

Bill Howe gave an update on the Futures Committee. Chief Justice De Muniz was supportive of the December Futures Committee meeting and had hoped to attend. He continues to be interested in the Futures Committee work, and he deputized SFLAC to look at ways to help children and families in this economic downturn.

There are 22 judges retiring this year, and some are going out early because it is not more fun anymore. Court employees have been laid off and reassigned, and all courts are trying to do the same amount of work with fewer people. Sometimes judges have to reset cases because there aren't enough judges or courtroom clerks to try them.

Let's think fundamentally about the family court system:

- what are critical things that courts must do?
- what can we off load?

- Should we have two tracks – 1 for families with children and 1 for families without children, regardless of marriage?

The Futures Committee recommended Judge Brownhill and Bill Howe meet with the Chief Justice and run some ideas past him. The Chief gave his approval for SFLAC to work with the Institute for the Advancement of the American Legal System (IAALS). IAALS Healthy Families Initiative's (HFI) advisory committee is meeting next week in Colorado, and Bill and the Chief Justice are attending. They are first and last on the agenda after introductions. They will discuss ways to improve the family law system, and they will offer Oregon as the testing ground for innovations. It is possible that IAALS may be able to do research that we cannot do in Oregon due to financial restraints. We should be prepared to tell them what information we want.

Retired Colorado Supreme Court Justice Rebecca Kourlis (author of *Rebuilding Justice*) is executive director of IAALS. IAALS is a national, independent research center at the University of Denver that is dedicated to improvement of the civil justice system. By leveraging a blend of empirical and legal research, innovative solutions, broad-based collaboration, communications and ongoing measurement in high-impact areas, IAALS empowers others with the knowledge, models and will to advance a more accessible, efficient and accountable civil justice system.

What suggestions should Bill and the Chief Justice take to the HFI advisory committee?

- Can we use a separate evidence code for family law cases? Or a more relaxed evidence code?
- Maybe we should unbundle judicial services, and judges should decide only a limited number of issues, such as the value of the business or who should have custody of the child.
- Should we move adjudications out of the courthouse – maybe to public libraries?
- Should we export the administrative child support model to other areas of family law?
- Should we have a small claims model for financial issues?
- Could we have two tracks: an administrative process for cases without children, a court process for cases with children?
- Could we have multi-disciplinary teams to decide family law issues? This model works well in treatment courts.
- What if only high conflict cases could go through the trial track? All others would be transferred to another system.

Stephen Adams explained that worker's compensation litigation was removed from the judicial system in 1916. Labor disputes were moved to the National Labor Relations Board. Many argued that only judges could decide these important issues. Then child support decisions were removed in 1974.

John Maack suggested that we create super circuits and conduct hearings by television or video conference.

Janice Garceau suggested that many people just need legal assistance such as how to navigate the system. Many mediation cases would resolve if the parties had legal advice. When they don't know the law, they think they should go to trial and talk to the judge.

Stephen Adams said the only effective way to change is to blow up the current system and start over. We can't just wipe away the cobwebs. How can we design a new system? The new system should only use a judge when absolutely necessary.

Ernie Mazorol said we need a construct for analysis, such as three boxes:

1. What can we stop doing?
2. What do courts have to do?
3. What do we do with high conflict cases?

What does each box need and can we agree what the structure will look like? He suggested that we give the models to the communities and let people choose what would go in each box, maybe through focus groups. Right now we don't know what people want. Maybe they don't care if they see a judge for some decisions.

Jean Fogarty pointed out that we can easily get suggestions from parents with children through mediators. Maybe facilitators could poll users without children. Still, many court users would not be queried.

Bill Howe explained that the Task Force on Family Law issued a report to Governor Kitzhaber in 1997; it proposed a continuum of family law services. Not everything has to end up in the courts. What can we remove and how would we pay for those things?

Lauren MacNeill suggested that the system offer options along a continuum. Include all services in one place except for the judge piece.

- One component would explain the law, maybe with a consultation fee
- People could attend a settlement conference, maybe with a settlement conference fee

Rebecca Orf would like to know what is happening elsewhere. What are the trends in families? How are populations changing? She cautioned that we should not get so far afield as to lose the humanity of the courts.

Judge Raines pointed out how important our work is. Sometimes court resources are used for other types of cases that should be redirected, such as a jury trial on a minor shoplift offense.

Becky Orf moved that SFLAC endorse this endeavor and authorize Bill Howe to communicate our support to the HFI advisory committee. She emphasized that we are looking forward to implementing new ideas. Stephen Adams seconded the motion.

Motion passed unanimously.

Stephen Adams said:

1. We must become aware of best practices so we can pursue them.
2. We should familiarize ourselves with system changes and what that means for the future of family court.
3. We must consider structural ideas, not just processes.

Let's look at some of the major models that were taken out of the court system. Unsuccessful structures also should be considered.

How did we build new models for:

- Social Security Disability
- Worker's Compensation
- TANF
- Child Support
- Unemployment Compensation

Judge Raines suggested that we expand the Futures Committee to include greater diversity.

OJD Website - Family Law Forms Page

Holly Rudolph re-designed the Family Law forms page to make it easier to use. The new design is only temporary until the Domestic Relations Workgroup for eCourt finishes its work and new packets are put on the website. She asked SFLAC to tentatively okay the design so web designers could do a mock-up. A few suggestions were offered to make the design easier to read and understand. Holly will make those changes.

OJD MODEL FORMS

State Court Administrator Kingsley Click has contracted with Robin Selig to update the model family law forms. No one at the meeting knew the timing of the updates.

Deschutes Circuit Court added seven new videos to help self-represented litigants with family law forms. Kingsley Click will put them on the OJD website once SFLAC approves them. Ernie Mazorol will email a link to SFLAC members with a deadline for comments.

SFLAC MEMBERSHIP

Judge Roxanne Osborne and Russ Lipetzky have resigned from SFLAC. Ernie Mazorol spoke to trial court administrator Amy Bonkosky, and she is interested in becoming a member. She has experience in family law and serves on the ETSD eCourt Steering Committee. **Motion passed** to recommend Amy Bonkosky to the Chief Justice.

The group would like another family law lawyer on SFLAC, and it would be helpful to have someone in the Salem area to serve as chair of the Legislative subcommittee. Lauren Saucy was suggested, and Jean Fogarty volunteered to contact her. Jean also will ask Robin Selig for suggestions. Jean suggested we consider racial and ethnic diversity when we recommend new members.

Stephen Adams said we have had four judges on SFLAC since the committee began in 1998. It has been a workable balance; should it be retained? The consensus is yes, we should continue to have four judges. After considerable discussion, Bill Howe offered to contact Court of Appeals Chief Judge Dave Brewer.

Judge Brownhill and Bill Howe are meeting with Chief Justice De Muniz and incoming Chief Justice Thomas Balmer on March 15, 2012 to brief Justice Balmer on SFLAC.