

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
March 4, 2011
12:30 p.m. – 4:30 p.m.
Department of Justice
1515 SW 5th Avenue, Suite 410
Portland, Oregon

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

Members Absent: Ernie Mazorol, Lauren MacNeill

Guests: Bryant Baehr, Holly Rudolph, John Maack, Mike Fearl, Dr. Ed Vien, Paul Edison-Lahm, Donna Austin, Jane Parisi Mosher

Staff: None

Minutes: December 3, 2010 minutes were approved as amended.

E-COURT AND FAMILY LAW

Guest Bryant Baehr reviewed eCourt progress. OJD has selected Tyler Technologies as the single service provider. Tyler has a suite of products, but the products are not specific to Oregon. OJD is working on the contract with Tyler Technologies. Total costs are in the ballpark of \$120,000,000.

Tyler Technologies will sub-contract with Turbo Court for intelligent interactive eCourt forms. Turbo Court specializes in guiding through a process step-by-step. The focus is on domestic relations at this time. Turbo Court's cost is about \$1.7 million for servers, configurations to coordinate with Tyler Technologies, and to develop interactive forms.

Once a base contract is finalized with Tyler Technologies, we can work on the Turbo Court component of the contract, maybe in June, 2011. Bryant wants to do front end work now so there is no delay when the contract is signed. Bryant asked, "Where do we start? What packets should be first? What forms in each packet should be first?" He suggests that we make those decisions soon. Judge McKnight reported that the Self-Representation Subcommittee began preliminary work on a priority list and is looking at costs as well.

In eCourt, there will be a new way to think about forms. Holly will be involved in developing the top priority forms, but once the forms are in production, Holly is done. The next question is: How will we update forms after they are produced in interactive format?

Turbo Court wants to be paid to develop the forms, set up the forms, and every time someone clicks on a form. In addition to Turbo Court, Tyler Technologies wants to be paid. This will be a transaction-based business model for Turbo Court and Tyler Technologies.

Bryant said the data will belong to the Oregon Judicial Department (OJD) and will be on OJD's server, but Tyler will have access to all information filed electronically. OJD is ensuring that confidentiality agreements are in place to prevent unauthorized use and /or the selling of data. OJD will be the only entity authorizing internal / external access. Turbo Court servers will have access prior to the final click but access will be restricted to only those who need it.

Russ Lipetzky asked how Tyler Technologies and Turbo Court will be paid for the services and products. Will it be by the user? Or will it be by the Oregon Judicial Department? Is there a fee owed to Tyler Technologies and Turbo Court each time an interactive document is filed? Bryant responded that it has not been determined yet. The Oregon Judicial Department is not in a position to lose money on forms. They want to resolve all of these questions in the next six months.

Stephen Adams asked about fee waivers and deferrals. Will we move from "loss of revenue to the Oregon Judicial Department" for each waiver to "Oregon Judicial Department pays cash for each waiver"? We don't want to build barriers to use eCourt. The Oregon Judicial Department benefits from the public using interactive forms.

Janice Garceau stated that in Multnomah County, those who pay the filing fee cover the waivers by paying a few dollars more. Judge McKnight said that Arizona charges a flat fee of \$50 per document because it is too complicated to figure out the formulas. What do we charge payers to cover fee waivers and deferrals? Should we have three tiers? Or two tiers with payers paying more, and waivers and deferrals paying nothing? Tiffles recommended two tiers. Judge McKnight believes we are looking at 60 – 70% waivers and deferrals for the self-represented population.

Bryant asked when deferrals actually pay: in 30 days or 60 days? We do not want to create barriers to the court; we want eCourt to be quick and easy to use. The Oregon Judicial Department would need \$10,000,000 to handle costs to be PCI-compliant plus several million dollars in operating expenses per year.

After we have interactive forms, what will we do about revising/updating forms? Turbo Court wants to be paid for revisions, and we are not used to paying to update a form. Costs will depend on whether there is a logic tree behind the change. If a revision affects the logic tree, the fee could be \$20,000 – \$50,000 hypothetically.

Russ Lipetzky asked if we can pay up front to incorporate changes later. Bryant responded that our ballpark numbers didn't include those costs, but it may be possible for the Oregon Judicial Department to put money in the pot for that.

Jean Fogarty asked what the costs will be if people print and hand carry forms to the courthouse. Bryant responded that there will be no charge for the interactive parenting plan forms developed with Child Support Program grant money. When the forms become part of the eCourt package, there may be fees for “use and go forms.”

Bryant asked if SFLAC has a recommendation for how the Oregon Judicial Department should handle fees for forms. Can SFLAC make a recommendation by the end of April? Judge McKnight stated that the Self-Representation Subcommittee has done work on this issue. She suggested that SFLAC decide by email after hearing from the Subcommittee.

Bryant explained that OJD has 363 model forms. They won't all be converted to interactive forms. Judge McKnight said we could have fillable PDF forms to complement the Turbo Court interactive forms. With fillable PDF forms, the user can tab to fields as needed, but they are not the same as interactive forms. She said we can create fillable forms in-house.

James Adams said there may be a fairly simple solution for fees for family law forms. If we could add \$20 to every filing fee in a family law case, that would cover the costs for Tyler Technologies and Turbo Court. We would also have a surplus to pay for form development and upkeep and management. We could charge eFilers less than paper filers, which would reward performance and provide disincentives for non-performance. This suggestion was well-received by all members, although Judge McKnight raised the concern that it may be too late -- the legislature's work on fees this session may prevent us from adopting the filing fee add-on at this time.

Jim volunteered to chair a work group to look further at this recommendation. The charge of the group is to advise SFLAC on a civil filing fee assessment to pay for public access to Oregon eCourt electronic and interactive forms. This group will supplement the work of the Self-Representation Subcommittee, which already has worked on recommendations regarding priorities and payment for interactive forms. Members of the work group will be Jim as chair, Judge McKnight, Judge Brownhill, Ernie Mazorol, and Bryant Baehr (ex officio).

Bill Howe moved that SFLAC recommend to the State Court Administrator that OJD implement an add-on to civil filing fees to pay for the development and maintenance of interactive family law forms. Stephen Adams seconded the motion. **Motion passed.**

SUBCOMMITTEE REPORTS

Self Representation – *Judge Maureen McKnight*

Judge McKnight reviewed the report of the OSB/OJD Task Force on Family Law Forms and Services.

The recommendations:

1. If OJD moves promptly, OJD should take the lead on interactive family law forms.
2. OJD should ensure the use of model forms in all trial courts.
3. OJD should provide adequate legal staff and clerical support for coordinating the development, maintenance, and revision of the forms
4. Model family law forms should be provided in an interactive electronic format. Forms that are not suitable for interactive formats should be in fillable PDF format.
5. If fees are necessary to develop and maintain forms, Tiffles recommends a tiered approach to accommodate parties with fee waivers and deferrals.
6. SFLAC should recommend prioritization of documents to be developed into interactive forms.
7. Among other things, these issues should be considered in development of forms: integration with e-filing, interface using a standard web browser, ability to extract data, adaptability, diagnostics to determine the appropriateness of forms for users, prompts, data validation, ability for users to save their work, clarity regarding data security and retention, ability of OJD to make minor revisions, capacity to offer forms in other languages.
8. Website hosting the forms should use a secure portal, state what entity is hosting the service, provide access to instructions throughout the process, and include links to other resources.
9. Keep facilitation programs at maximum level of service. SFLAC should make recommendations to the State Court Administrator regarding facilitation delivery models.
10. Expand information regarding unbundled legal services and pro bono assistance.
11. The OSB Family Law section should convene a work group to identify and recommend elimination or revision of statutory and regulatory forms and procedures that complicate things unnecessarily.

Russ Lipetzky asked what Tiffles would like from SFLAC. Judge McKnight referred to recommendations six and nine.

Stephen Adams moved to endorse the Tiffles report and recommend to the Chief Justice that it be accepted; SFLAC concurs with the recommendations and will do the work listed. Bill Howe seconded the motion. **Motion passed.**

Judge McKnight raised concerns with Jim Adams' suggested filing-fee add-on proposal because of the legislative work that has been done on fees. Russ Lipetzky was highly skeptical that we could introduce a filing fee add-on in the current legislative session. If the add-on plan should not work at all or not immediately, OJD should have a fall-back position. Judge McKnight said the Self Representation Subcommittee is working on that back-up plan.

Parental Involvement Workgroup – Linda Scher

The Parental Involvement Workgroup, consisting of Linda Scher, Janice Garceau, Jane Parisi-Mosher, Paul Edison Lahm, Robin Selig, Donna Austin, and Ed Vien, introduced two draft reports: *Parent Education: What Works Best* and *Custody and Parenting Time: What Works Best for Children*. SFLAC members shared their appreciation of the excellent work of the Workgroup.

After considerable discussion, Judge Keith Raines moved that SFLAC accept the Custody and Parenting Time report as a good summary of current research and ask the Chief Justice and State Court Administrator for permission to post the report on the OJD Family Law website. Jean Fogarty seconded the motion. **Motion passed.**

Bill Howe moved that SFLAC accept the Parent Education report and ask the Chief Justice and State Court Administrator for permission to post the report on the OJD Family Law website. Judge Raines seconded the motion. **Motion passed.**

Domestic Violence Subcommittee – Robin Selig

The group has not met for several months. Members are working on several projects, including the DV web pages. Rebecca Orf chairs that work group.

The Legal Aid Family Law pamphlet was updated in the Fall of 2010 and was updated on the OJD website also. Several additional documents have been updated but not yet posted.

The US Attorney's Office hosted a conference on Firearms and Domestic Violence on February 4, 2011. It was very successful. The materials are posted on the US Attorney's website. Robin Selig helped plan the conference and recruited speakers.

Robin Selig, Rebecca Orf, Judge McKnight, and Judge Brownhill are working on a memo to trial courts about firearms and domestic violence and Brady Certificates. They are nearing completion and hope to distribute the memo and forms within the next month. Stephen Adams asked if any Heller challenges are expected. Judge McKnight said there have been unsuccessful attempts at the trial level.

Robin serves on the eCourt Law and Policy Committee, and she reported that most of the substantive work is done. The Committee will consider some additional issues.

Rebecca Orf reported she developed a FAPA-specific Confidential Information Form for use with the FAPA Notification project. This project has enabled victims in protective order cases to provide a telephone number or email address for immediate notification when the protective orders are served on respondents. The project is underway and preliminary figures show that it is in use around the state (with some exceptions).

Legislative Subcommittee – Russ Lipetzky

A number of family law bills have been introduced this session. HB 2816 revives fault in spousal support determinations. HB 2710 is a fee bill that would standardize filing fees with no more local add-ons. The bill provides that OSCA will consult SFLAC regarding administration of mediation and court-connected program funds.

SB 334 is a joint custody bill.

Russ helped draft legislation that would reverse the presumption of equal contribution in gift cases. The estate planning section and family law counsel collaborated on this bill.

HBs 2685, 2686 and 2687-A:

1. Allow filing of a notice of termination of attorney – client relationship.
2. Repeal the ORS 107.065 90-day waiting period.
3. Require filing a 107.135 modification upon filing of a 107.139 emergency custody motion.
4. Expand 109.103 to cover all applicable provisions of chapter 107.
5. Repeal the “pay temporary support to the clerk of the court” provisions of 107.095.
6. Allow a 107.105 general judgment to incorporate 107.095 temporary support that has not already been reduced to a limited judgment.

Rebecca Orf said several FAPA bills have been introduced.

Bill Howe and Albert Menashe wrote SB 489, a bill that would require the court to reset family law trials on stipulation of the parties.

Russ will send out a summary of the family law bills he is tracking.

Court/Child Support Agency Child Support Coordination-Jean Fogarty

This Subcommittee met on January 20, 2011. Jean reported that the Guidelines Advisory Committee has been re-formed with 20 members. Judge Susan Tripp is on the committee and 11-12 judges are part of the interest group. March 31, 2011 is the first meeting.

They are moving forward on interactive parenting plan forms. Jean organized a work group to decide how and where administrative child support orders are filed. Should they be filed in the same case or a different case? What happens when the domestic relations case is dismissed?

The Subcommittee discovered some language is missing in the OJD model dissolution judgment. There is no corresponding language in the judgment to modify an existing child support order.. Russ Lipetzky and Judge McKnight will fix the problem and send

the fix to Judge Brownhill. Judge Brownhill will copy Holly with the fix and will post the revised judgment on the OJD website.

EPPDAPA Work Group – *Judge Keith Raines*

The Council on Court Procedures members feel current guardianship law is adequate to cover appointment of guardians ad litem in an EPPDAPA cases. Judge Raines will circulate draft documents including a GAL application and appointment order before the next SFLAC meeting.

SALISHAN PRESENTATION

SFLAC will present at the OSB Family Law Section annual conference at Salishan. We were given 1 hour and 15 minutes. Bill Howe, Linda Scher, and Judge McKnight will represent SFLAC. Linda Scher will discuss parenting plans. Judge McKnight will discuss eCourt and interactive forms. Bill Howe will make a checklist of everything else. Let Bill know if you have handouts or topics.

FAMILY LAW WEBSITE

The child support pages are nearly done and ready to post. Members will review the four overviews (dissolution, mediation, paternity, and custody) before the next meeting. The DV Subcommittee is working on the DV pages. We are making progress.

MEMBERSHIP

Without staff, Judge Brownhill is unable to keep up with SFLAC membership issues, including appointment orders. Bill Howe volunteered to take over membership duties, including monitoring member terms and submitting requests for appointments to the Chief Justice. Holly Rudolph suggested Beth Allen may be a good addition to SFLAC when a member vacancy arises.

Meeting adjourned at 4:38 p.m.