

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
(SFLAC)
March 6, 2015
12:30 pm – 4:30 pm
Department of Justice
1515 SW Fifth Avenue, Suite 410
Portland, Oregon

Members Present: Chair, Hon. Paula Brownhill; Vice-Chair, William J. Howe III; Stephen Adams via phone; Colleen Carter-Cox via phone; Ryan Carty; Dr. Adam Furchner; Janice Garceau; Laurie Hart; Linda Hukari; Lauren MacNeill; Hon. Maureen McKnight; Rebecca Orf via Polycom; Hon. Keith Raines; Kate Cooper Richardson; Robin Selig

Members Absent: Hon. David Brewer; Amy Bonkosky; Laurie Hart; Lauren Mac Neill

Guests: Samantha Benton, Holly Rudolph, Karrie McIntyre, Terry Svay, Linda Scher, Jeff Hall via phone

Chair, Hon. Paula Brownhill called the meeting to order at 12:33 pm.

INTRODUCTIONS

Minutes: Minutes from December 5, 2014 were approved. No corrections or discussion.

Deschutes Informal Domestic Relations Trials - Jeff Hall, Deschutes County
Deschutes County has conducted about 20 trials so far, spread out over custody and dissolution, one custody case. The trials are just part of business now. Unfortunately the survey did not work out the way they wanted, so they will try to get more information in September - right now they are focusing on eCourt. A second part of the evaluation is to interview the judges and attorneys who attend hearings. No complaints, no concerns.

Judge Brownhill asked Jeff when would be a good time to have him come back and report again. December was suggested, and Jeff agreed.

- **Action:** Add Deschutes Informal Domestic Relations Trials to the December SFLAC Agenda.

SUBCOMMITTEE REPORTS

Self-Representation Subcommittee – Judge Maureen McKnight

The subcommittee met yesterday. The primary topics were to solicit input on how the statewide rollout of turbo court FAPA forms had gone. They discussed the repurposing of Law Libraries to legal resource centers. They also talked about service instructions – Judge McKnight still working on it. They discussed the Change of Name and Gender forms. The subcommittee discussed the OJD Family Law website in terms of what Colleen is working on, and what we can do to assist.

Moving back to the Law Library issue, the County Commissioners put in a small amount of money for PSU Center for Public Service to do a feasibility study, specific to Multnomah County, on what switching libraries to legal resource centers would look like. A meeting will be set to discuss the study with stakeholders. Judge McKnight brought up the idea to the subcommittee because she is sensitive to the fact that how Multnomah County will restructure their Law Library might not be the same in every county. She is trying to voice interest in how to support other law libraries with forms, kiosks, using technology in a way to get info out to those who are less staffed. Related to the Law Libraries, Terry Wright has been hired by OSB on consultant basis to work on access issues, particularly related to new and unemployed lawyers. Judge McKnight says the revision for the Law Library piece should encompass that. How can we all work together?

On the change of gender forms, SFLAC approval months ago, add to the website, change of gender or change of sex forms. Samantha will send the forms out for comment.

Bill asks what Terry Wright is doing as to the scope of the project with young lawyers. Judge McKnight reports that she speaks for herself, not the bar, that there have been so many initiatives looking at why there were underrepresented litigants, and underemployed attorneys. There is a great demand for services, and a great number of under employed attorneys, Terry should further agenda of bringing these two groups together.

Linda mentions that they copied the Gender and Name Change forms from Multnomah County, and that they worked well.

Kate brings up a tangentially-related issue, the Gender Neutral Language bill. If there is a work group, Kate wants to be involved. Ryan mentions that he doesn't think there is a work group.

Judge McKnight also brought up Lincoln and Lane going live with Odyssey, she was wondering if it would be beneficial for courts and lawyers to have a one-pager summarizing things to know in family court when you go live in Odyssey. Multnomah County has learned some tips and tricks – workarounds. Samantha mentions working with OETO on the product. Holly mentions that Daniel Parr is the E-filing guru. Judge McKnight suggestion was well received.

- **Action:** Samantha will send the Gender and Name Change forms out to SFLAC by email asking for comments to Samantha and Judge McKnight. (Two to three week turnaround.)
- **Action:** Samantha will work on a one- or two-page family law Odyssey tips and tricks sheet.

Domestic Violence Subcommittee – Robin Selig

The subcommittee met once in February, with the focus of the meeting being to catch up on DV issues around the state. They went over legislative proposals and Becky's webinars. The Governor's Oregon Domestic Violence Prevention and Response Task Force met a couple of times: Erin Greenawald (DOJ) has reported on the Task Force. Robin is trying to find a project for the subcommittee to focus on. No next meeting scheduled yet, but the focus at that meeting will be on future work of the DV Subcommittee.

Janice suggested creating a Birth-Through-Three-type plan related to DV. This could be a joint project for DV Subcommittee and Parental Involvement Subcommittee to create a tool for parents to implement safety plans. Robin suggests that Janice bring the idea to the DV group when she is done with her other priorities.

Judge Raines has an idea for the DV Subcommittee. Since SFLAC has already created standards for custody, mediation, arbitration, etc., it might be the right time to look at custody evaluators and DV. Custody evaluators do not always understand domestic violence. There is a need for a set of standards before they make a recommendation related to DV. Robin looked at current standards and they mention domestic violence training without any specificity of what training hours, content should be. Robin looked at AMLL and AFCC guidelines, but similarly, they just mention a background in DV.

Janice mentioned that AFCC just completed a yearlong project on domestic violence, and a set of guidelines will be coming soon. Judge McKnight can speak to the Family Court Enhancement project in Multnomah County. What are standards and tools and what should be used? What kinds of training should evaluators have?

Robin would like to monitor Multnomah County. And take a look at AFCC guidelines once they are posted, see how they can be used in Oregon. Robin will bring up the ideas at next SFLAC DV Subcommittee meeting.

Bill asked Janice if she was going to the AFCC National Convention; there is a session in May, where they are rolling out guidelines.

Judge Raines stated that after he went to the convocation about batterer intervention programs, still troubled that there is so little funding and support for those programs. Need to systemically deal with batterers effectively.

Robin said that last meeting, there was discussion on batterer intervention program issues. Becky says that the group is trying to sort through batterer intervention effectiveness and research. Becky serves on the DOJ Batterer Intervention advisory committee. Part of the difficulty is the research for battering is twenty years behind. To date, no evidence-based batterer intervention, however, one of the most important factors is a coordinated community response. Becky went to NCJFCJ three-day conference last June. Becky's conclusion is that we are doing the best we can with the information and research available, but there is a lot to learn, and to keep looking at.

Judge Brownhill asked Becky about the document she was going to send to all the judges? Becky stated that it's on hold because they haven't had a chance to have some feedback before we proceed.

Robin says that, going back to respond to Judge Raines, DV Subcommittee may not be the best place for work with batterer intervention, but the Gov. Task force might be a good body to bring the issue to. Can mention to Sybil

Becky says that Yamhill County has approached the BIPP advisory committee about sorting out situational violence cases from battering. The terms and definitions are confusing. A lot of discussion is going on in different groups about batterer intervention. The BIPP minutes are on the DOJ website, if anyone wants to look at them.

- **Action:** All - if you would like to be on the BIPP advisory committee let Becky know.

Court/Child Support Agency Coordination Subcommittee - Kate Richardson

The Subcommittee did not have quarterly meeting because Kate was out of state. Kate will follow up by email. Few things happening between the members: working on the Oregon Law Commission placeholder bill on juvenile records (SB 405), there was a back and forth with Judge Abernathy and Judge McKnight. Didn't get as much into the bill as they were hoping, but Kate thinks that from talking to the DOJ representative from the workgroup that it was a battle, and there is a lack of understanding on how the program works and why. The resulting bill will be okay and CSP will make it work. Report on the UIFSA bill - SB 604, needs amendments, needs to be passed verbatim. Kate found a definition of a term that doesn't appear at all. Just about finished will request hearing. Kate and Lane Shetterly (OLC) will testify on the bill. Division of Child Support bills have now been introduced through the House Judiciary Committee. Minor bills dealing with obsolete statutes.

Linda asks about displaying a percentage of time versus overnights on the child support worksheet? Will that be happening? Kate says that it will not show up right now, but if it can through the legislative implementation, may be able to make it work. Making changes to the calculation is complicated, and it is a resource issue.

Judge Raines asks why it doesn't work to put in a percentage. Janice answers that overnight subject is so linked to the child support. You can receive child support credit for daytime care for a child. Mediators know about the possibility, but it is problematic, and comes up over and over again. There are parents who provide significant support during the day but don't get credit. Hope that the calculator can look like what is actually happening. Kate responds that it is on the list, possibly within this year. Most new laws effective January 1st.

Parental Involvement and Outreach - Janice Garceau

Adam reports that the Subcommittee met twice since the last SFLAC meeting, and work continues on the birth-through-three Bench Card. They want to have something within three months. Another piece they are working on is a PowerPoint presentation training that would ideally travel from county to county. It is training on birth through three parenting plans and the most current research and considerations. Adam requests to bring the presentation to next SFLAC meeting to look at the product. The training is for one hour/one hour 15 min. The training is designed for judges, attorney, mediators, and evaluators.

Judge Brownhill asks if the training would work as a Salishan presentation (Oregon State Bar's Family Law Conference). Bill says that it sounds like a great thing to introduce during the OSB Family Law Conference. Bill will welcome someone else handling the presentation. Bill thinks SFLAC should hold the spot at the Conference, and keep things interesting and exciting. Bill offers to follow up with getting information for time restraints, but Ryan says he can follow up with Stephanie Wilson, one of the Conference planners. The Conference is October 8-10.

(Came back to discuss AFCC Conference after Mediation Funding Work Group) Bill looked at AFCC agenda and Session 35 is Intimate Partner Violence: Guidelines for Child Custody Evaluation. Nancy Ver Steegh is the presenter; Bill will ask her to send us a copy of guidelines.

- **Action:** The Parental Involvement Subcommittee will have time to present their training at the next SFLAC meeting – put on the agenda.
- **Action:** Ryan will contact Stephanie Wilson about getting an hour of time at the Conference, and will give Stephanie Janice's contact information.
- **Action:** Bill will email Nancy Ver Steegh about AFCC guidelines, will forward to Janice and Ryan.

Mediation Funding Workgroup - Janice Garceau & Lauren MacNeill

The group is Janice, Lauren, and Nathalene Frener (the mediation program manager in Lane County). Yesterday there was a public hearing on the OJD Budget. It includes funding for mediation at the same amount as previous years. The perspective of mediation programs is that funding is inadequate. The programs are funded by a pass through, so OJD tries to determine what the funding should be. A study/report from OSCA asked trial court administrators how the mediation funds were being used. OSCA report was requested after the funding decision had already been made. Lauren testified yesterday, some conversations about some additional funding. Good news: OJD provided that there be funding, bad news: the

funding will be the same. Becky asks about the OAFCS meeting in May. Should Janice invite Kingsley to talk to the group? Kingsley can help to clarify. Linda says Lincoln County has no funding. Some courts have nothing because money got sent to the law libraries. Janice says in Multnomah County, they took some money from law libraries, have gotten grant money, have begged borrowed and stole. Still work to be done.

- **Action:** Janice - Invite Kingsley to the May Oregon Association of Family Court Services meeting.

Legislative Subcommittee – Ryan Carty

SB 370 is taking up the majority of Ryan's time. It modifies OPSRP survivor benefits. PERS is interpreting the OPSRP language to say that if you die and you're not married, then there is no survivor benefit. If you die while remarried, then no problem, the new spouse gets the survivor benefit. This would be illegal under ERISA, but since it is a state plan, OPSRP can do this. Ryan only knows of two plans where this is the case, City of Portland and OPSRP. Ryan worked with Clark Williams on this bill, he is a pension attorney in Salem, and he doesn't know of any other plans in the country that PERS1 and PERS2 Pension plan unique. It is a divestment of benefits.

Senate Judiciary Committee was on board with the legislation, and they were asking why are we not setting a precedent that is consistent with every other plan? But PERS is not on board with the bill. PERS has a bill to implement new computer systems in relation to new benefits. There is a concern that a new beneficiary is more work to implement the system, and it is a cost issue.

Ryan just testified on HB2337, and that bill would provide authority for litigants - where spousal support has been awarded - to request documents from each other once every two years. Rather than initiate a court case, the obligor can request limited financial information. In order to request information, you must first give your financial information. There is also protection of personal information for those in DV situations. But HB 2337 is moving. Ryan thinks that there are a lot of bills relating to family law legislation, FAPAs, etc. this year. Janice asks if there is a joint custody bill. Ryan says that yes there is a joint custody bill, and a mandatory spousal support bill.

Robin reports on the OJD Budget. There are two policy option packages (POPs), Increasing the Number of Facilitators and Restoring Family Law Staff. The Chief Justice asked Robin to testify at the same hearing Lauren was at Ways & Means Subcommittee on Public Safety. Robin submitted written testimony on the two POPs. Kingsley hopeful for movement for the two POPs. Doug Harclerod (Executive Director of Oregon District Attorney Association) testified for SB 5514, judges' salaries, did a nice job.

Limited Scope/Unbundling Workgroup – Bill Howe

Bill notes that it is a tough time for OJD to focus on new things, but Kingsley with Samantha's and Leola's help created a chart addressing the Unbundling Work Group suggestions. Samantha

says that there are two upcoming projects: (1) Enact an unbundling work group of about 10 to discuss UTCRs and possibly suggest amendments to make unbundled legal services easier to provide and; (2) Judge and staff training on unbundling during a lunchtime webinar. The webinar will be presented by Helen Hierschbiel, who gave an unbundling presentation at the last OSB Family Law Conference. Samantha will send Helen's PowerPoint to all SFLAC members. There is also a possibility of working with IAALS to recreate the self-represented litigant study in other counties. Bill notes that the workgroup will probably not have too many rule changes, but will look at ways to eliminate obstacles to unbundling.

Bill reported on Multnomah County Self Represented Litigant Study. The interviews with the folks and the court are complete, they just hit 20% of the interview goal in Multnomah Co. and Larimer County. They are close to having data sets they need. Talked to Judge McKnight, and they have been moving forward with an incentive-based support. They talked about circulating another study, \$25 gift card. Bill suggested giving out currency. Bill notes that it is just difficult to get enough people to come in and take the survey.

Another idea is to learn about self-represented litigants in Deschutes, Grant, Baker, other counties. Bill asked IAALS to do this, but they said they are not staffed to do it. The Goal of IAALS is to pilot things then hand them off to someone else. Former Chief Justice offered to turn this into practicum opportunity for law students. The goal would be to have a mix of rural/urban counties. Janice asks about how they are recruiting self-represented litigants? Bill says that they solicit people to respond by sending out post cards. Bill suggests Janice to send suggestion to McKnight. Data list to contact through that. Parent education classes would be a place to hand out the cards. Bill suggests Janice to send the parent education class suggestion to Judge McKnight. Court clerks are handing out cards in Massachusetts and Tennessee. Interestingly, MA is the rural county in the study. (Judge McKnight arrives, answers questions about solicitation of participants.)

- **Action:** Samantha will send Helen's Unbundling Power Point to the SFLAC members.
- **Action:** Judge McKnight will give cards to Janice to hand out at Parent Education classes.

OJD Family Law Website – Colleen Carter-Cox

Colleen provided an update on the progress of the OJD Family Law Website. (Terry hands out PDFs of the website.) Colleen says that generally there is a content upgrade and improvement. Thanks to people reviewing content, especially Janice and Linda, and Judge McKnight on readability tools. The goal is to improve the look and the ability to navigate the site. The photos on the family law website will be all Oregon photos. In addition, Terry has designed a Family Law Program logo.

There will be left hand side navigation, and incorporation of more subjects to the left hand navigation in the new site. The new navigation will always appear wherever you are in the site. There will be drop down boxes on the left hand tabs, adding to a more modern look and feel. On the third page of the PDF handout, forms are listed for ease of navigation.

The self-help page will be revamped, and there will be icons for the various areas of help – DV, Family, etc. Currently the self-help page says “Content coming soon,” and we were joking that now we could amend it to “Content coming really soon.”

There will be page-within-a-page location for the information, so that it is not overwhelming. We are adding a new feature of expanding information. (The handout shows a page within a page.) Changing the format to make it easier to look at and navigate. Judge Raines says to check with your local courts for the available LOCAL Family Law Forms. Colleen says that it will be apparent on the Forms page. Adam asks if there will be a search bar, and yes, there will be a search bar on the final site.

- **Action:** Colleen, Terry, Samantha to present website to SFLAC at June meeting.

SB 373 – Ryan Carty

SB 373 is the product of a work group that developed from SB 812. The work group met between sessions. The issue is that in small counties with three or fewer judicial positions, if a party gets two disqualifications, it can create a real problem for the county to shuffle dockets and to bring in a Plan B judge. One option is to limit in counties with three judicial seats or fewer to limit the disqualifications to one (not two). The interim work group says that stakeholders cannot come to agreement. Judges favored limiting disqualifications. The practitioners OTLA, OCDA, were opposed to that plan. The work group as a whole could not come to agreement, and the Senate Judiciary brought the bill forward limiting the disqualifications to one in the smaller counties (three or less judges). Ryan asks for feedback on this plan.

Ryan brought up in the work group that it is difficult for practitioners when different counties do things differently. Marion County has to submit by 5pm the motion to disqualify to Presiding Judge in person. Judge Raines notes that some practitioners file illegitimate affidavits. Statute says that there is one day to file affidavit, and to call somebody. But Washington County doesn't have anyone to call. Petitioners in Washington County know the judge immediately. But for Respondents, when does the “day” start? Becky asks if this is an OJD bill? Ryan says that it is. Becky doesn't think that we should oppose a bill proposed by OJD. Ryan says that he just wants to discuss the bill to get feedback. Becky suggests talking to Bruce Miller at OJD. Steven states that SFLAC is not in a position to oppose it, but not in a position to endorse it.

Brownhill says that she knows two judges who are very much in favor of this bill, and she is in favor of it. What people don't realize is that every party gets two bumps - many cases where no judge can sit, causing hardships. McKnight says that not just lawyers, but self-represented litigants request to disqualify a judge, and it creates a lot of paperwork. Also, Judge McKnight says she can see the issue in small counties. Becky notes that Dave Factor is the primary analyst of the bill for OJD, maybe talk to Dave. Bill says that he is conflicted - Judges are important members of the community in small counties, so they have a lot of personal knowledge of the people in the county. Maybe we can toughen up the rules for affidaviting judges? Bill is

sympathetic to the problem with small counties. Judge Raines mentions that if you know that you should recuse yourself, you do. McKnight notes that when Ryan mentions lawyers are upset about all the local rules, although she is sympathetic, she says that judges are like doctors - if you are going to prescribe, you need to know the side effects. There will continue to be variations that will need to be mastered. Consistency won't carry the day.

BREAK – be back at 2:15 pm

Interpreter Costs Follow-Up – All

Judge Raines has no update. Becky says she needs to re-read minutes from December. Linda mentions that Court Interpreter Services sent an email about possible interpreter education classes for the judges in Benton and Linn. Judge Raines doesn't want to step on any toes.

- **Action:** Becky to talk to Kingsley about interpreter cost and potential abuses of the system – is it OK with her for us to come up with language regarding interpreter costs and abuses?
- **Action:** Judge Raines to draft language if it is OK with Kingsley.

OSB Salishan Conference – Bill Howe

This was discussed earlier in the meeting.

LFLAC Liaisons – Judge Brownhill/ Steven Adams

Steven is out of Oregon, in Princeton, NJ. He is studying at a music school in Princeton, NJ. He was the liaison to Union/Wallowa, but since he is gone, Judge Brownhill will take over as liaison to the Union County Local FLAC. Union county meets once a month, very active.

Kerri McIntyre is here from the Lane County Local FLAC. Lane Co. FLAC has Colleen Carter-Cox and Nathalene Frenier on board. The FLAC has been very active since the reinstatement in 2012. Kerri is the Chair. There are five lawyers, reps from child support division, mediation, parent education, and Presiding Judge Rasmussen on the committee. One of the first project was rewriting local rules. The FLAC has spent a lot of time educating local attorneys, putting on three different CLEs, including one three-hour CLE, "Learn the Basics of Lane County." Judges and local practitioners gave insight into Lane-specific practice. Lots of good information came out of that CLE, including information on bankruptcy overlap. FLAC has also established supervised parenting time as part of mediation. Expanded a scope of options for self-represented litigants. Largest project was helping with self-represented litigants. The FLAC created a roadmap for petitioner, and roadmap for respondent. Lane Co. is willing to share the roadmap. Right now there are lots of interested parties who want to help – there is a volunteer who teaches classes to help self-represented litigants fill out paperwork. Colleen helps update the FLAC on the SFLAC.

Ryan notes that Marion County is rewriting 8.75, the Parenting Plan. Russ Lopetski and Paul Saucy are the primary drafters. The plan is primarily used by pro se litigants.

Janice asks if there was review of the Birth Through Three information. Ryan says he thinks they did look at the information. Janice asks if there can be a link on the SFLAC Website for the Birth Through Three Guide. Samantha says that she knows there will be one.

Judge Raines says Washington County has not had a FLAC in a long time, but they have a Bench and Bar Committee that works on issues, and puts on CLEs. Janice notes that FLAC's need to be interesting. Becky says Jackson County no longer has a FLAC, there was a big turnover - there are new judges doing family law. Judge McKnight says that there also may be an issue with Odyssey implementation – it takes up a lot of time.

- **Action:** Samantha to send the dissolution road map to SFLAC members.
- **Action:** Samantha to circulate the Marion County Parenting Plan.

Rewrite of ORS Chapter 107 – Ryan Carty

Judge Letourneau suggested rewrite 107.138, 107.139. Judge Letourneau wrote to Ryan in January. What types of relief can and can't be granted, etc. His concern was that there are different answers in different areas of the state. Oregon State Bar, will tackle the issue in the next legislative session. David Dorsey of Coos Bay is very interested in working on this project. The issue is creating more consistency on a statewide level with custody/modifications/status quo. Judge Letourneau wanted to bring the issue up to SFLAC so that we are aware of what he is requesting/acting on.

Judge McKnight says that there are some SLRs in counties to address these issues. One of the problems is that the word emergency is not defined, which was an intentional choice. Multnomah County used to have "Riggs Rule," allows a custody basis, but even if you have a definition you will have inconsistent application on what is an emergency. This is a particularly hard to litigate area of law. Multnomah County won't give a pre-judgment status quo order once there has been service. Ryan says that he doesn't think that Judge Letourneau wants to mess with the rules of evidence. Judge Raines says if you get that order, other party is allowed an immediate hearing – week or two weeks. As a judge, you are looking at a lot of hearsay (drug abuse, etc.)

Holly says that she would like to follow along with this. Forms for Status Quo/Modifications are going to be looked at soon.

Other Business

Judge McKnight reminds the SFLAC that the new case management system will better document our workload and what we do. OJIN never counted modifications. Odyssey will lead to better documentation.

Judge Brownhill mentions that traditionally the SFLAC meets with the Chief Justice and Kingsley at the September SFLAC meeting, but Cycle Oregon is Sept. 12-19th. Judge Brownhill suggests

that we switch June or December meeting to Salem. The location of the September meeting will be determined upon the Chief Justice's availability.

- **Action:** Judge Brownhill will check with Chief Justice on availability to attend SFLAC meeting in September.

Next Meeting

The next SFLAC meeting will be June 5, 2015 in Portland.

Meeting adjourned at 3:30 p.m.