

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
March 6, 2009
12:30 p.m. to 4:30 p.m.

CPSD Large Conference Room
Portland, Oregon

Members Present: Hon. Paula Brownhill, Butch Castor, Hon. Keith Raines, Linda Scher, David Hakanson, Hon. Maureen McKnight, Dr. Edward Vien, Rebecca Orf, Hon. Robert Selander, Russell Lipetzky, Chris Walls

Members Absent: William Howe III, Jim Adams, Robin Selig, Stephen Adams, Ernie Mazorol, Lauren MacNeill

Guests: Brian De Marco, Margaret Olney, Special Counsel to John Kroger

Staff: Maria Hinton, Beckie Pettis-Parker

David Hakanson has resigned from the committee and this is his last meeting. Judge Brownhill presented Dave with a Certificate of Appreciation for his years of service to the SFLAC. Dave was thanked for all of his hard work and dedication to the SFLAC. Dave stated that he will still be available to work on subcommittees.

Minutes of the December 5, 2008 and January 23, 2009, minutes were approved.

Committee reports:

Qualifications and Guidelines Workgroup – *Edward Vien*

The workgroup has completed the Parent Coordination standards as well as the Evaluation standards and is currently working on Supervised Parenting Time standards. The group is planning to complete its work and present a draft to this committee by the June SFLAC meeting.

Model Community Family Courts – *Maria Hinton*

In Lauren's absence, Maria Hinton reported that the subcommittee has not met since the December SFLAC meeting but the subcommittee members are still in the information gathering stage. Lauren is planning to involve Barbara Babb from the University of Baltimore School of Law and Director of Center for Families, Children and the Courts in a teleconference meeting in the near future.

Parenting Plan Outreach Workgroup (PPOW) – *Linda Scher*

Linda reported that the website is working very well. Linda is continuing to do outreach and has Clackamas and Multnomah presentations on her schedule. Linda continues to get questions regarding the translation of the Parenting Plan forms and the OJD is currently not able to meet this need. She is looking for alternate funding for this project.

Domestic Violence Subcommittee – *Linda Scher for Robin Selig*

Linda reported that the Stalking forms project has gone through many reviews and she is asking this committee to make final comments, then approve the forms to be forwarded to the Chief for posting on the OJD website. Chris recommended that a sentence be added to the form that asks if an interpreter will be needed and if so, in what language. There was also discussion that the form needs to include a request for attorney fees if the action is contested. Linda clarified that it was a policy decision to omit this wording and the instructions indicate that these forms should not be used if a party requests attorney fees. Russ Lipetzky moved to approve the stalking forms with some additional fine tuning. Judge Raines seconded. The motion passed unanimously.

Court/Child Support Agency Child Support Coordination – *Butch Castor*

Butch reported the concern that adoptions are being finalized without notice to the Child Support Program (CSP). DHS legal counsel is looking at their rules and processes to see if notification could be sent to CSP. There is another group working on “confidentiality in the court” issues and Judge Raines has joined that group. The CSP was sending documents to the court that contained confidential information. The CSP has now changed its internal processes and is currently sending only required documents to the court and retaining supporting documents in program files. The committee also reviewed the status of pending legislative child support bills.

Legislative Subcommittee – *Brian De Marco*

Brian disseminated a status report on family law bills. Brian will contact SFLAC if he has concerns about a specific bill, and he asks that the committee contact him with comments and recommendations. Russ asked that Brian notify the committee if any red flags come up and Brian stated that he would welcome any calls or emails from committee members if they have a concern about any particular bill.

Judge Raines suggested that HB 2272 should reflect that it mandates every “new” child support order is to include medical support. Butch stated that per federal requirements CSP has to show that medical support is ordered and being enforced. When they come across a judgment without medical support, they have a state-initiated process that will modify it to add the medical support, even if that is the only basis for the modification.

Margaret Olney reported that Matt Minehan has dropped the joint presumptive custody bill. Margaret will have additional information on several other bills sent to Brian DeMarco. Russ asked Brian to add the information to the summary sheet.

Judge Selander had questions regarding HB 2272 provision that a last-issued child support judgment does not supersede an earlier support order unless it specifically states that it does. Margaret will look into the bill and respond to his question. On HB 2273, Judge Selander stated that we over-suspend drivers’ licenses currently, but if we collect fines for people driving while suspended, those fines should go directly for

support payments. Brian will check the hearing notes on HB 2273 and forward them to Judge Selander.

Forms Review Subcommittee – Beckie Pettis-Parker

Beckie announced that she is leaving the OJD and her last day is 3-12-09. Brian stated that resources are shrinking rapidly in CPSD. Forms development is halted due to lack of resources. Brian will be relying on SFLAC to revise or update existing forms when needed. As the budget situation develops, we will know more about opportunities for forms development through eCourt initiatives. The positions previously staffed by BeLisa Sydlik and Beckie Pettis-Parkers will not be filled in this biennium.

Judge Brownhill received an inquiry from Cheryl Fowler from Office of Education and Training Outreach (OETO) asking if anyone is working on an update to the Elderly and Disabled Persons Abuse Prevention Act Bench Guide. No one in CPSD is working on it and Judge McKnight stated that she thought someone from the Elder Section of the Bar was asked to assist in this update. Judge Brownhill will follow up to determine the status of the update. Cheryl also asked if anyone is working on probate forms for the Family Law Bench book. It is possible that Washington County Circuit Court Judge Rita Cobb worked on probate forms, but no one in CPSD has done so.

Self Representation Subcommittee – Hon. Maureen McKnight

Judge McKnight reported that the committee meets monthly via teleconference call. They are working on three primary issues currently:

- 1) Revision of the core values statement for self-represented litigants. The Chief would like to see language included that addresses judicial satisfaction. Draft language has not yet been developed.
- 2) Attorney Assistance Manual addressing pro bono and self-representation access projects. The subcommittee is working with Judge Ellen Rosenblum's Ethics Committee. The current revision of the ethics rules will help this project move forward. They hope to have clarifying language by October 2009.
- 3) Forms are a focal point in providing access for self-represented litigants. As our budgets are cut and services are reduced, the subcommittee sees the issue of electronic forms development as a priority. There is a parallel effort going on relating to eCourt. The Law and Policy Committee has a subcommittee who is looking at the standardization of statewide forms. One of the first steps is to identify statutorily mandated forms and/or form content. This subcommittee would like guidance from SFLAC as to whether and when to begin the dialog about mandated or model forms with OJD stakeholders. (For example, the California and Washington approach identifies some family law forms as mandated in some circumstances and other forms are judicially approved but not required.)

Brian reported that the forms issue has been discussed by the Law and Policy

Committee but there has been no resolution. Some of the eCourt work has been delayed due to budget circumstances. However, this discussion should be happening now so that the SFLAC is ready to make recommendations in the domestic relations area when the time comes to implement eCourt. Judge McKnight clarified that the Self Representation Subcommittee will not create the forms but will identify forms that need to be developed and will prioritize the order of forms development.

Should the subcommittee begin talks with the family law section of the Bar, judges, and other stakeholders about the possibility of developing a template for classification of certain forms (mandated and model)? Should we discuss the possibility of mandating certain family law forms for everyone (lawyer and self-represented litigants) to use in a specific format? Should the discussion include model forms that can be used as guides? Any other forms not identified in these two groups will continue to be developed by lawyers.

Judge McKnight believes we should start the discussions now. She suggested that we may want to look at a continuum with some forms required, some forms approved and some without guidelines. Becky Orf suggested that we need to look at the bigger picture now and start this dialog. Once eCourt starts to move forward for trial courts, we could be on a very short timeline and it would be good to have these discussions underway beforehand. Russ stated that it appears that going to a “forms” based system is inevitable with the development of eCourt. The family law bar opposes the concept. It is appropriate to begin the discussions now.

Judge McKnight is asking the SFLAC for a specific charge to pursue this issue. The resource expenditure will come from developing a thoughtful plan and outreach process to start this discussion.

The SFLAC would like to the subcommittee to:

- Identify and prioritize forms that we need but do not currently have
- Develop a plan for the larger discussion about mandated and model forms

Firearms and DV Task Force update – Hon. Paula Brownhill

The task force continues to meet monthly. Project Coordinator Jamie Badeau was hired with a STOP grant and is traveling to different counties collecting information and protocols. She will be traveling to King County Washington soon to observe their successful Firearms Forfeiture Program. The task force is working on a grant for 2009-2010, and is looking at the possibility of developing a video for criminal arraignments and perhaps training law enforcement on federal firearms laws and gun surrender protocols.

Discussion of confidentiality and privacy issues in family law cases and Oregon eCourt:

The discussion centered on the issue of open courts vs. segregation of personal information. Judge McKnight reported there has already been outreach to the press (The Oregonian) about family law cases and possible limiting of documents available

through eCourt. She believes that some documents should be restricted from internet access. Judge Brownhill stated that she believes that is Robin Selig's position as well.

Brian stated that the Law and Policy Confidential Information Work Group (LPC CIWG) is the right place to receive the SFLAC recommendations. Becky stated that the work group already has decided that some items will not be accessible to the general public on-line.

It was clarified that the public could still go into the courthouse and view any public document; however, electronic access through eCourt may be limited in certain case types. Judge McKnight stated that the Child Support Program would still have electronic access to some confidential information to meet their needs for program purposes.

Becky faxed over the draft matrix that Nori Cross developed for the LPC CIWG with the understanding that this is a draft and will be revised in the near future. Currently the matrix indicates that all OSB attorneys will have access to family law cases (except for confidential/redacted information) because they will be registered users. Out of state attorneys will have restricted access. Margaret asked if a law firm would be considered the "attorney of record" and other attorneys, paralegals, etc. within the firm would have access to the documents. The possibility of developing a professional conduct rule that states you are not accessing this information for other than professional purposes might alleviate concerns. The point was made that it is easier to expand access in the future than to restrict access.

SFLAC made the following recommendations that Robin Selig will take back to the LPC Confidentiality Work Group:

- All judgments in family law cases (including limited judgments), subject to redaction guidelines, should be made available to the general public online.
- For documents whose access is restricted to parties and attorneys, it is not necessary for all OSB attorneys to have on-line access. Since parties can grant access of their electronic files to consulting attorneys, there is no need for all OSB attorneys to have access to those files. SFLAC recommends that OSB members not have access to all case files in the restricted view. Those records should be limited to parties and attorneys of record.

Russ favors unrestricted access for OSB members. Judge Selander favors restricting on-line access to judgments. He pointed out that redaction is a slippery slope.

Margaret reported that she is a liaison between Department of Justice, the courts, Child Support Program and Department of Human Services Child Welfare. They are looking at developing a different model for modifications. The current model is very time intensive and they are considering implementing a "phone in" process. They are also looking at emergency rules that would temporarily adjust child support guidelines due to the current economic situation. They would look at actual income as opposed to presumptive and potential income.

The SFLAC agreed to discuss by email redaction of confidential/private information using Robin's memo dated 2-13-09 as a guide. Deadlines for responses should be identified in the subject line of these emails. If the committee feels it needs to meet to further discuss this topic, Judge Brownhill will ask Kingsley for approval to meet via video-conference.

Mediation in Probate Cases

The discussion of mediation in probate cases was tabled.

UTCR 2.1

Russ Lipetzky and Becky Orf made the presentation to the UTCR Committee on UTCR 2.1__ Confidential Information Forms (CIF). The Committee passed the rule and approved the use of the CIF forms (with minor changes). Judge McKnight stated that there is now a template for these issues as we move forward in many arenas. Becky Orf will try to get a copy of the final form out to the SFLAC as soon as possible.

FAPA 5-Day Hearings

Judge Brownhill read an email from Judge Mitchell regarding FAPA statute ORS 107.716 relating to 5-day hearings. He is concerned that courts are unable to notify parties with such short timelines. Judge Raines and Judge McKnight suggested sharing information with Judge Mitchell on how other courts handle this situation (e.g., telephone and email notification). Judge Brownhill will contact Judge Mitchell to let him know how other courts address this issue.

Budget Discussion

Judge Brownhill promised Kingsley Click, State Court Administrator, that SFLAC would suggest ways to create efficiencies and increase court revenues in family law cases. SFLAC came up with the following points:

- The fee waiver/deferral process should be amended to allow for collection of fees at the time of final judgment when financial circumstances have changed. Judges should be allowed to re-visit the decision to waive or defer at the time of final judgment, and amend that decision accordingly. This would not affect access to court since the decision is made at the end of the case.
- Consider implementing fees for facilitation services. Some litigants who use facilitation services are able to pay for the services. Other states such as Washington and California charge for these services, and we could look at those models. We must be careful, however, to continue to allow access to parties who are unable to pay for the services.
- Develop a uniform fee schedule for family law forms. Local courts charge varying amounts for forms; a standard schedule would be helpful and could bring in additional revenues.
- Consider charging hearing fees for judicial settlement conferences (not those mandated by the court).

- SFLAC supports unbundled legal services. OJD should encourage attorneys to provide unbundled legal services to the extent that ethical considerations allow.
- Use volunteer lawyers to handle settlement conferences (both attorney represented and self-represented litigant cases to avoid developing a two tiered system.) Volunteers also could help staff facilitation centers and work as pro tem judges.
- Develop instructional videos to post on the OJD website that could help litigants walk through the forms processes.
- Develop a “frequently asked questions” section on all court websites to explain many processes for litigants. The more information we can make available on local websites, the more we can reduce demands on facilitators and court staff.
- Develop an orientation class prior to seeing facilitators (Klamath has a class, Deschutes is creating a video).
- Develop technical assistance guides to be posted on the OJD website and be available in local courts.
- Increase fees for modifications.
- Initiate a reduced filing fee for people who do their own paperwork and file a stipulated judgment without need for court-connected mediation or other court services. This would encourage cooperation and settlement and may result in an increase in modification filings. Parenting time modifications do not require motions; recommend that be expanded to other types of modifications.
- Charge for faxes in all courts.
- Reimburse courts from federal IV-D funds for child support functions that the court performs.

Judge Brownhill will compile these ideas into a draft document for final review by the SFLAC, then will forward on the Kingsley.

Strategic Plan: Judge Brownhill stated that the SFLAC 2005-2009 Strategic Plan is in its last year. With the uncertainty of the current economic environment, it was suggested that the committee allow the current SFLAC Strategic Plan to lapse and develop a more concise working document that highlights key action items as they align with the OJD Strategic Plan. Subcommittee chairs should draft a paragraph and submit to Judge Brownhill, with the understanding that staff resources for subcommittee work is greatly reduced through June 30, 2009. It is uncertain at this time what staffing will be available after July 1, 2009.

Judge Brownhill will contact Kingsley sometime after the OJD legislative hearings to see if SFLAC has approval to meet in June. The conference room at the CPSD office in Portland will remain reserved for June 5th unless we are instructed to cancel the meeting. Judge Brownhill will inform the committee as soon as she knows the status of the meeting.

Meeting adjourned at 4:15 p.m.

Scheduled Meetings:

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| Friday, June 5, 2009 | 12:30 p.m. - 4:30 p.m. | CPSD Portland Office |
| Friday, September 11, 2009 | 12:30 p.m. - 4:30 p.m. | TBA |
| Friday, December 4, 2009 | 12:30 p.m. - 4:30 p.m. | CPSD Portland Office |