

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
June 6, 2008
12:30 p.m. to 4:30 p.m.

Multnomah County Juvenile Justice Center
Portland, Oregon

Members Present: Hon. Paula Brownhill, Hon. Maureen McKnight, Stephen Adams, Lauren MacNeill, Linda Scher, David Hakanson, Hon. Terry Leggert, Dr. Ed Vien

Members Absent: William Castor, Ernie Mazorol, Judge Robert Selander, Jim Adams, Robin Selig, William Howe

Guests: Hon. Carol Bispham, Chair, Linn LFLAC, Janice Ashe, Family Court Services in Multnomah County.

Staff: BeaLisa Sydlik

Judge Brownhill called the meeting to order at 12:35 p.m.

CONSENT CALENDAR

Motion to approve the March 7, 2008 minutes was made by Hon. Terry Leggert and seconded by Linda Scher. Committee approved the minutes as written.

POLICY CONCERNS AND DEVELOPMENTS—New

(BeaLisa stated for the record that some of the discussion occurring may not have been recorded. Written notes from Judge Brownhill and BeaLisa will provide discussion points for the minutes.) The committee introduced themselves to Judge Bispham.

SFLAC vacant positions:

Linda Scher moved to recommend to the Chief Justice appointment of the Honorable Rebecca Orf and the Honorable Keith Raines to the SFLAC. Motion was seconded and passed unanimously.

Committee members expressed interest in more diversity on the SFLAC and discussed possible professionals to approach about joining the SFLAC. There is no maximum number of members that can be appointed, therefore it was suggested that the committee seek interest from the following four positions: attorney, facilitator, legislator, and social worker.

- Dave will check with mental health professionals, social workers and attorneys in Deschutes County.
- Linda will ask attorneys on her subcommittee.
- Judge McKnight will contact three family law attorneys and also will check with facilitators on her subcommittee.
- BeaLisa will contact a family court coordinator/facilitator.
- Judge Brownhill will contact Joyce Cohen to see if she is interested in serving on a subcommittee.
- Ed Vien will contact four psychologists.

Judge Brownhill suggested that the committee continue to gather names and revisit this topic at the next meeting.

Liaisons to Local Family Law Advisory Committees (LFLACs):

The liaison structure was reviewed by the committee. BeaLisa distributed copies of 107.425(3)(d), which reflects legislative changes recommended by Hugh McIsaac. This statute states that the presiding judge of each judicial district shall establish qualifications for the appointment and training of individuals and panels and the designation of programs under ORS 107.425. In establishing qualifications, the presiding judge must take into consideration guidelines recommended by SFLAC.

BeaLisa suggested that SFLAC liaisons contact LFLACs or presiding judges to find out the LFLACs current status and activities and to see if LFLACs need assistance in implementing this provision. BeaLisa recommended making the contacts after the SB 176 subcommittee reconvenes (Dr. Ed Vien, BeaLisa Sydlik, Dave Hakanson, Lauren Mac Neill, Alison Taylor). This subcommittee will review the SFLAC guidelines regarding appointment and training of parent coordinators, custody evaluators, and supervised visitation providers.

Judge Leggert reported that the Marion County LFLAC is very active and determines qualification standards. BeaLisa said the guidelines have become a legislative issue. The Domestic Violence Alliance (DVA) would like more stringent standards for domestic violence training for custody evaluators. BeaLisa attended a DVA meeting and let the group know about the statute and the SFLAC guidelines. Rather than pursuing legislation, it may be prudent to have liaisons follow up with local courts to collect information and compile it for the SFLAC guidelines revision. BeaLisa suggested that someone from the DVA join Dr. Vien's subcommittee.

Stephen Adams supported development of statewide "best practices" rather than legislation. Although it is true that "one size does not fit all" with respect to metro vs. rural counties, there is additional value to defining best practice throughout the state. Stephen suggested a disclaimer at the bottom of the guidelines that gives permission for deviation under certain circumstances.

BeaLisa suggested that SFLAC send a letter to LFLAC chairs and presiding judges asking for information regarding the development of standards and guidelines and offering help from the SFLAC liaison. The goal is to develop a good model that could be adapted locally.

SFLAC members agreed to retain the current liaison structure and it was agreed that SFLAC will send a letter to the LFLACs that advises them to contact their liaison for assistance, if needed.

The liaison list has been revised as follows:

Columbia – Judge Brownhill
Multnomah -- Judge McKnight
Clackamas – Lauren Mac Neill
Yamhill – BeaLisa Sydlik

Further changes will be forthcoming.

Judge Carol Bispham is chair of the newly reformed Linn County LFLAC. BeaLisa volunteered to attend their first meeting. Judge Brownhill informed Judge Bispham that Robin Selig, attorney for the Oregon Law Center, is the SFLAC liaison for Linn county LFLAC.

Legislative Report: BeaLisa recommended that a Legislative Subcommittee be reactivated that would consist of SFLAC members and others with legislative issues touching on family law concerns. The 2009 legislative session will be a very busy time for proposals that affect family law. BeaLisa distributed examples of topics that will be proposed:

- The white document shows items that the OJD has asked the OSB to sponsor. The Board of Bar Governors approved them and they are now part of the OSB law improvement legislative packet (i.e., FAPA modifications be allowed for issues other than parenting time and custody)
- There is a bar proposal from the debtor/creditor section that touches on confidentiality of private information. This proposal suggests that only the last four digits of social security numbers, driver's license numbers, and year of birth be put into judgments. For judgment collection purposes, OJD needs complete information for enforcement. This could have adverse effects on child support enforcement, eCourt initiatives, and the proposal that was made on behalf of the SFLAC regarding a "confidential information form".
- The purple and pink documents regarding parenting time enforcement and joint custody contain proposals that could move forward in the 2009 session. Senator Nelson might appreciate information from the SFLAC Legislative Subcommittee.

- The tan document is a proposal that would revive the Service-members' Civil Relief Act (SCRA) issue. Legislative counsel to the House Veterans Affairs Committee is looking at whether the SCRA applies in FAPA proceedings. The courts need to be actively involved in this issue. Judge McKnight asked to be kept informed on the progress of this proposal.

BeaLisa made recommendations for membership on the Legislative Subcommittee. Stephen Adams moved to form the Legislative Subcommittee as a standing committee to the SFLAC. Motion was seconded and passed. Judge Brownhill appointed BeaLisa Sydlik as chair to the Legislative Subcommittee and authorized her to contact potential members.

Wallace P. Carson, Jr. Outstanding Achievement Award: BeaLisa read the purpose, description, and criteria developed for the award. Judge Brownhill reported that there are several nominations for the award that will be presented at the 2008 Family Law Conference in September. Nominees include:

1. William J. Howe III
2. James Adams and Ernest Mazorol
3. Hugh Mclsaac
4. Hon. Paul Lipscomb
5. Hon. Dale Koch

After discussion, Stephen Adams moved to present the 2008 award to Hugh Mclsaac. The motion was seconded and passed unanimously by the committee.

Judge Brownhill will contact Judge Valentine to see if he would provide a photograph of the Oregon coast, and Judge Leggett will provide Maria with the name of a business who could make the plate for the award. The award will be presented at the Family Law Conference. The committee gave Judge Brownhill discretion regarding notification to Hugh.

Oregon Judicial Code Revision Workgroup Report: BeaLisa distributed material and reported on the charge of the workgroup. At the request of Chief Justice De Muniz, this workgroup is reviewing the revised ABA Model Judicial Code and recommending revisions to the Oregon Judicial Code with regard to self representation and pro bono services. Judge Ellen Rosenblum from the Court of Appeals is leading the workgroup, and BeaLisa is serving as a liaison for the bar and the SFLAC to bring up issues of concern.

Two rules in particular are implicated: Rule 2.2 addresses the topic of judicial interactions with self represented litigants in the courtroom, and Rule 3.7 addresses the pro bono issue.

Regarding rule 2.2, sample proposed revised language was distributed to the SFLAC, giving examples of how a fair and impartial process for self represented litigants might be

achieved. Judge McKnight, chair of the Self-Represented Legal Services subcommittee, explained that the first sentence is worded to express a proactive approach. Stephen Adams suggested that the language should address all litigants, and this statement would allow a judge to take steps in any court process to ensure a fair and impartial process **for all litigants, including self represented litigants**. The committee agreed with this suggestion. Judge Leggert moved to adopt the Self Represented Legal Services subcommittee's recommended changes and to give the subcommittee the authority to make changes to the language without changing the substantive meaning. The motion passed unanimously.

Regarding rule 3.7, the bar's Pro Bono Committee as well a sub-group of Judge Rosenblum's workgroup worked on the language. Bealisa asked the SFLAC to support the proposal in light of the fact that pro bono work is essential for many self-represented litigants. The support of the SFLAC will give extra strength to the proposal. Judge McKnight voiced concern, on the basis of comments made by other judges, that the "establishing procedures or schedules to accommodate pro bono lawyers" language may be objectionable and hinder the passing of the proposal. Bealisa stated that the language comes from the Conference of Chief Justices and the Conference of State Court Administrators' resolution.

Bealisa could propose a "fallback" position that allows deletion of the "schedules" language, or possibly include "in their discretion" or "general or case specific." One suggestion was to state "establishing procedures or schedules to accommodate cases with volunteer lawyers". This takes the emphasis off the lawyer and puts it on the case.

Stephen Adams and Linda Scher suggested deleting Latin language wherever possible, e.g. use "volunteer lawyers" instead of "pro bono".

Judge Leggert moved to authorize Bealisa to report that SFLAC supports the changes to rule 3.7 and suggests some language changes. Motion was seconded and passed unanimously.

SFLAC Meeting Schedule for 2009:

The committee agreed upon the following meeting dates for 2009:

March 6, 2009

June 5, 2009

September 11, 2009

December 4, 2009

All meetings will be from 12:30 p.m. to 4:30 p.m. The committee agreed to keep the meetings at the Multnomah County Juvenile Justice Center. Bealisa, Maria and Judge Brownhill will decide which meeting will be in Salem with the Chief Justice and state court administrator Kingsley Click.

It is essential that we have a speaker phone available for the meetings. Janice Ash will address the cell phone ban with the building management committee.

Circuit Judges Association Conference update: Judge McKnight reported that she was involved in a presentation on self representation with:

- Judge Zeeland from the California Court of Appeals, and
- Karen Adam who is a Family Law Commissioner in Arizona

There was also a panel of six speakers for a question and answer session.

This program was developed from the Harvard curriculum. Judge McKnight distributed a copy of the PowerPoint presentation and went through the outline.

An issue still to be addressed is the “guidance” needed in self representation cases with juries. There is still disagreement regarding the judges’ role in preparing judgments, particularly in family law cases. Future projects for the Self Representation subcommittee may include writing one or more articles for the family law newsletter, summarizing some of the curriculum, and explaining the ten techniques where judges have received training. These articles could also touch upon the work that Judge Rosenblum’s group is doing with regards to the revision of the judicial code.

OLD BUSINESS

Model Community Courts/Alternative Methods of Resolving Family Law Matters:

Lauren Mac Neill reported that the workgroup has made a little progress in that they have clarified and confirmed members of the workgroup. Members include Dave Hakanson, Ernie Mazorol, Judge Selander, Butch Castor and Lauren Mac Neill. Some reading material has been distributed to the workgroup and their first meeting will be scheduled soon. Lauren will update the SFLAC at the September meeting.

Subcommittee Reports:

Self Represented Legal Services Subcommittee: Judge McKnight officially requests that the name of this subcommittee be changed to the Self Representation subcommittee. The committee approved this change. As mentioned above, this subcommittee has been working on draft language for Judge Rosenblum’s workgroup with respect to the revision of the judicial code. The subcommittee will consider disseminating information to Oregon lawyers through articles written for the Family Law Newsletter.

Family Law Conference Planning Subcommittee: BeaLisa distributed a copy of the “draft” brochure, and Judge Brownhill reported that Judge Murphy and Bud Borja will present the keynote on Friday to open the conference. Stephen Adams will moderate the dinner panel presentation, with panel members including Judge Claudia Burton,

Judge John Jelderks from the federal court, Dr. Edward Vien, and one or two others that have not yet confirmed.

The Conference will be taped. BeaLisa will get clarification on the availability of tapes for sale. Workshop presenters not selected for the Conference were offered a "resource table" in the lobby where they could display materials. Only one person requested the table.

SFLAC will meet on September 12, 2008 from 11:00 a.m. to 3:00 p.m. at the Keizer Renaissance Inn. Registration for the Family Law Conference starts at 3:00 p.m.

Parenting Plan Outreach Workgroup: Linda Scher reported that there have been a lot of really good comments received about the draft materials. There were seventeen survey responses received and a lengthy response from the Association of Court Connected Programs. The feedback was very detailed and substantive. Parallel to that, the Multnomah County Subcommittee on Standard Parenting Time Schedule has been moving toward replacing their current schedule and adopting the statewide Parenting Plan Guide materials. The subcommittee will be meeting on June 16th to discuss major policy issues and Linda will be present to answer questions and provide feedback.

The major barrier to the Parenting Plan revision project has been the lack of resources and technical expertise. The A2J model would be ideal for the parenting plan because it is user friendly, but again, there are barriers to resources. Linda voiced concern about the length of time it will take to get all the revised materials onto a user friendly webpage where parents can easily navigate. Linda requested an agenda item for the September meeting that addresses these barriers and how SFLAC can advocate for support.

Court/Child Support Agency Child Support Coordination: Judge McKnight reported that there are two main documents pertinent to child support. The main issue that the subcommittee is grappling with is the fact that the state Child Support Program, due to workload reasons, is no longer doing support calculations for self-represented litigants. There is a subcommittee working to find an adequate long-term solution. Both sides came to the table with an open mind. The first meeting of the subcommittee looked at the California approach (see document). The Child Support Program in California pays facilitators and family law commissioners to do child support calculations.

Currently, court facilitators, district attorneys and DCS offices are struggling because there is nowhere to send families that need help with the calculations. The Child Support Program did agree on a small compromise while the group works on long term solutions. Litigants who are filing for emergency custody, either pre-judgment or in modifications, may have the Child Support Program do the calculation if the litigant appears with a motion for emergency custody. This will address the most emergent cases. The Child Support Program sent a letter to their field offices explaining that they should be doing these calculations in emergency cases. This is a very small percentage of the demand.

National directives on child support focus on the success of efforts to collect support payments from people with reported wages, electronic wage withholding, IRS returns, etc. But many states have large arrears that are not being collected, and Oregon has not yet dealt with this issue. The theme of federal child support for the past 6-7 years has really been child-focused as opposed to collection-focused, and geared more toward a problem solving approach.

Judge McKnight asked Katherine Tennyson, (see handout) to report on Multnomah County's innovative approach to child support enforcement. Multnomah County pays a monitor to help people who cannot easily get money to pay their child support. This monitor is basically a case manager who lays out specific steps with short timelines and meets frequently with the obligors. The liaison helps them through things like "workforce readiness", getting jobs, mental health and drug and alcohol stabilization, etc. This program has doubled the collections. The subcommittee would like to publicize the program and share data collected from Multnomah.

The subcommittee is considering inviting the new state Attorney General to a subcommittee meeting to discuss child support. This may wait until after the November election.

Lauren Mac Neill reported that this group is looking at the Parental Access and Visitation (PAV) grants and the Child Support Program has decided to look at doing this differently next year. The RFP will be written to elicit proposals that will help people who access the child support program also develop an enforceable parenting plan.

Domestic Violence Subcommittee: Judge Bispham volunteered to join the subcommittee.

BeaLisa reported on two issues taken to the DV Subcommittee:

1. FAPA petitions need a space to allege reason why her/his or the children's safety would be served by dispossessing or prohibiting firearms. The "other relief" section in the FAPA statutes says the court may order other relief as necessary for the safety and welfare. Because of the state constitutional language regarding the right to bear arms, judges are sensitive about having a factual basis that justifies the dispossession order. BeaLisa explained that the forms need to work in two different scenarios; when the petitioner goes to court and has a hearing, and also in those counties where FAPAs are processed without a hearing before a judge.
2. The DV Subcommittee had concerns about specificity of addresses on FAPA orders. Prosecutions may have been dropped because orders did not identify specifically where respondents must not go. Some victims will not specify confidential addresses. The subcommittee voted to return to prior language that

allowed for addresses to be listed, but also allowed for “future” addresses. The recommendations will be forwarded to the SB267 committee and ultimately will be decided by the State Court Administrator.

Meeting adjourned.

Scheduled Meetings:

Sept 12, 2008	11:00 a.m. - 3:00 p.m.	Keizer Renaissance Inn, Keizer, Oregon (lunch will be provided)
Dec 5, 2008	12:30 p.m. - 4:30 p.m.	Multnomah Juvenile Justice Center
March 6, 2009	12:30 p.m. - 4:30 p.m.	Multnomah Juvenile Justice Center
June 5, 2009	12:30 p.m. - 4:30 p.m.	Multnomah Juvenile Justice Center
Sept 11, 2009	12:30 p.m. - 4:30 p.m.	Multnomah Juvenile Justice Center
Dec 4, 2009	12:30 p.m. - 4:30 p.m.	Multnomah Juvenile Justice Center