

**MINUTES
SFLAC MEETING
MULTNOMAH COUNTY JUVENILE JUSTICE CENTER
PORTLAND, OREGON
June 3, 2004
(1:30 – 4:30 p.m.)**

Judge Brownhill called the meeting to order at 1:40 p.m.

Members Present: Hon. Paula Brownhill, Chair; Hon. Maureen McKnight; Hon. Robert R. Selander; Jim Adams, Stephen Adams, Dave Hakanson, Bill Howe, Ernie Mazorol, Linda Scher, Ed Vien, Robin Selig

Guests: Hon. Dale Koch, Alice Phalan, Dan Dennehy, Erin Ruff, Chris Walls

Staff Support: BeaLisa Sydlik and Joy Brewer

CONSENT CALENDAR

Minutes for the December 3, 2004 meeting were adopted unanimously on the motion of S. Adams. Ms. Sydlik stated that drafting the agenda would be completed with group input, through email, about three or four weeks prior to the meeting.

SFLAC RETREAT

- Review written notes from April 15-16, 2005 Retreat: Ms. Sydlik clarified that formal action was not required on the notes. It was noted that Lauren MacNeill's name needed to be added to the notes as a participant.
- Review and approve draft "charter" language: Ms. Sydlik stated the charter language, as SFLAC's basic mission, would be presented to Nancy Miller and Kingsley Click, who would refer it to Justice Carson. S. Adams motioned for adoption; and Mr. Howe seconded.

Discussion followed regarding the Charter and definition of "principles," the difference between a "mission statement" and a "charter," as well as whether or not the signatures of the Chief Justice and State Court Administrator (SCA) should be added.

S. Adams withdrew his original motion, and motioned to add post-signature lines for the Chief Justice and SCA. It was also agreed that the language in the sentence immediately following the ORS would be reworded to state, "(t)he Statewide Family Law Advisory Committee's charge shall include [deleting "*hereafter abide by and accomplish the following*"]." In paragraph numbered three, the word "considered" shall be stricken. Mr. Howe seconded the motion. The motion passed unanimously.

The SFLAC agreed that once signed by the Chief Justice and SCA, the Charter be placed on the SFLAC's website. Judge McKnight recommended it also be referred to the OSB's Family Law Section's listserv, and she agreed to make this request once the Charter was finalized and signed.

- Review and discuss “family law innovations” list: The group’s consensus was to include discussion about innovative ideas as a regular agenda topic.

POLICY CONCERNS AND DEVELOPMENTS

- **Court Connected Mediator Qualifications:** Erin Ruff attended the meeting to respond to questions about the mediator qualifications draft. She reviewed the process’s history and the group’s composition that developed the document. Ms. Ruff stated the group believes this is an improvement and the best way to balance the diverse issues that had to be addressed.

J. Adams stated that Section 12 on page 6, appointing authority (presiding judge), requires some type of finding and questioned why not serve “at will”, i.e., at the pleasure of the presiding judge. Ms. Ruff stated the intention was not to limit the presiding judges’ authority; rather it was meant to provide authority for removal. She said the issue was to include authority for removal and perhaps “at will” should be included.

J. Adams noted that Section 2.1 (1) seems unnecessarily complicated. Ms. Ruff explained the basic mediation requirements. She identified the group’s interest as leaving the basic at 30 hours but increasing the continuing education training for civil mediators. This was a compromise between an unfair burden and those who felt it left a gap in basics. J. Adams stated the language reads more like a compromise than a policy and strongly encouraged inserting a structured, well-thought-out training program. Ms. Scher clarified that the training likely would be provided by mediation centers and not individually sought out. Ms. Seelig inquired about domestic violence training. Ms. Ruff discussed the DV curriculum and referenced the rule regarding DV compliance with SCA guidelines. She confirmed the training would be adopted separately as a guideline in a separate document.

Mr. Hakanson noted this was a daunting process. He inquired about the requirement that domestic relations mediators should have a bachelor’s and not a master’s or law degree. Ms. Ruff replied that the requirements makes it possible for rural communities that have difficulty attracting mediators who meet the education requirement, but otherwise are excellent candidates, to have mediators. Discussion was had regarding whether judicial discretion could be used in such cases. Ms. Ruff responded that the qualifications are not subject to a local waiver. She clarified that a presiding judge can do a substitution by developing written plans to meet the published requirements in a certain amount of time for individual mediators. It is the SCA who grants a “waiver.” Ms. Ruff explained that courts do not like to do a substitution or waiver for something they recognize as a regular problem, and the SCA does not want a waiver process as the rule as opposed to the exception. Mr. Hakanson suggested this was an opportunity to promote mediation and encourage colleges to expand their curriculum. Ms. Ruff noted that Oregon has many such programs and specifically identified several. She stated the issue also included access, money, time, and people who were very good mediators but did not have the financial assets to obtain an advanced degree.

S. Adams suggested other approaches, such as “grandparenting,” be considered for those who have the experience and are accepted; but at this point forward, candidates must meet the new requirements. He asked if transition rules and an accompanying timeline were considered by the

group. Ms. Ruff stated transitioning was not considered, and grandparenting could not be accommodated by the current rules as a viable option.

Judge Brownhill inquired how this matter got out of UTCR. Ms. Ruff reported that the design group did not want it to reside there. When presented to the UTCR Committee, they approached the Chief Justice and inquired about the level of review. The UTCR Committee did not feel it was an appropriate fit. Justice Carson inquired of staff and the UTCR Committee and then opted to put it in his guidelines.

Ms. Ruff stressed using the website to seek opinions and generate public discussion. Ms. Scher expressed her respect for the variety of people involved, length of time, and public notice sought. She stated that detailed training was one of most important parts of document, and she wholeheartedly endorsed it. A number of members stated this was a good document, and suggested the committee sign off on it.

J. Adams stated that he regarded a master's degree as usual and customary and not extreme, and reaffirmed his disapproval of establishing a bachelor's level requirement. He stated that he was not comfortable putting his comments on the internet as an individual, rather than through committee. He noted that a social worker with no law background would really struggle on financials under the proposed standards.

The SFLAC noted that mediator issues directly relate to the SFLAC's charter.

Ms. Scher stated that she was confused by dueling concerns regarding education and amnesty. The debate about bachelor/master's degrees has been longstanding and never had a uniform belief. This tends to cause a division among mediator and evaluator positions. She noted these requirements solely address mediators. The issue is access to meeting requirements due to financial reasons or the mediator's location. She discussed presiding judges' discretion to hire/decline appointment of mediators under the proposed rule. Ms. Scher stressed these are state-connected qualifications; Oregon has no standards for private mediators, and it is not possible to saddle the state with aspirational qualifications. She noted the concern is a need to have access and not limit courts that cannot find an adequate number of qualified mediators.

The members agreed to focus on the domestic relations, not the civil mediation, rules. Other discussion evolved around:

- Education "aspirational" standards
- Grandparenting clause regardless of former standards, essentially an amnesty program
- Allow greater local discretion
- Appropriate bachelor's degree as an entry level plus equivalent of two additional years experience or education in direct mediation
- Identification of the practical requirement for requiring a master's
- Judicial discretion to dismiss mediators at will

Ms. Ruff stated that mediators receive \$65 to \$70 hourly in rural communities. Staffing is unlikely to change greatly in these areas because the job does not pay enough due to its part-time nature.

S. Adams suggested amending the draft to retain the requirement of a master's or law degree and

add an automatic grandparenting for mediators who have served in this capacity in the previous two years. Ms. Scher pointed out that the original standard has had a master's/law degree requirement since 1989 and inquired how the environment would change. S. Adams responded that a majority of the mediators' standards would rise because they would work on the aspirational side as a career and encourage colleges to expand programs. In other situations, the waiver would continue to meet rural needs.

Judge Selander inquired if the waiver process met the needs of communities. Ms. Ruff responded that she initially thought it did, however, feedback through this process indicated it did not.

S. Adams moved that FLAC recognize this is an important opportunity to adopt important degree requirements as they currently exist in the UTCR and add grandparenting of persons who have served as court-appointed mediators for the past two years in Oregon as domestic or financial mediators and endorse the current waiver rules. The motion also stated that SLFAC noted the extremely hard work Ms. Ruff's group had undertaken. Mr. Hakanson seconded the motion.

Dr. Vien inquired about the waiver process. Ms. Ruff explained the substitution waiver would work for now but must have a plan to meet the requirements. She clarified that a waiver requires the approval of the SCA, who feels this should be granted only for exceptional situations.

Ms. Scher discussed the qualities possessed by good mediators—degree, training, and experience—and noted that neither law nor social work degrees give all of the education required. She stated the experience piece is significant and the most difficult to obtain. She expressed concern with focusing solely on the degree recommendation to the exclusion of the other requirements, which could make SFLAC's comments appeared skewed to one element, rather than the entire package.

Ms. Scher moved to amend the motion to say "proposed waiver requirements," rather than say "current waiver requirements."

Motion passed, with one nay.

J. Adams moved that mediators who are appointed by the Presiding Judge serve at the judge's discretion for removal purposes. Mr. Howe seconded the motion, which carried unanimously.

Judge McKnight requested that SFLAC recommend substituting the term, "self-represented," for "pro se."

By consensus the members selected the following statement to introduce the committee's comments: "We endorse the Dispute Resolution portion with the following recommendations."

SUBCOMMITTEE REPORTS

Annual Family Law Conference: The Circuit Court Judges' Conference will be in April 2006. By consensus the members agreed to work with this group to coordinate a combined conference.

At this point in the meeting, Mr. Mazorol and J. Adams left the building.

Futures Subcommittee: Mr. Howe reviewed past and future meeting dates and times. He stated the goal was to bring core values to the next SFLAC meeting. He stated the subcommittee had refined its broad charge to come up with practices needed to best manifest the Futures Report. Mr. Howe stated they would start with a list of what has worked and develop a list of additional items to implement (2005-09 list of items). The subcommittee proposed preparing a draft for SFLAC and then doing outreach. Alice Phalan pointed out that the Juvenile Court Improvement Project (JCIP) and the Chief Justice's Drug Court Advisory Committee were completing four- to five-year planning documents, although it was not clear how these efforts and plans would be aligned.

Legislative Planning: No report.

Domestic Violence: Ms. Selig discussed elder abuse law and requested direction from SFLAC on the committee's expectations. She was concerned about broadening the subcommittee's responsibility beyond physical/financial elder abuse. Ms. Sydlik stated the SCA would appreciate this Subcommittee's assistance with the revisions to the forms and instructions the SCA's office will be required to create as a result of Senate Bill 106.

Ms. Sydlik also discussed legislation regarding protected persons and the need for self-represented forms and instructions with Chapter 125 proceedings (guardianships and conservatorships). Members did not believe this fell within the "family law" penumbra and would not be the right undertaking for the DV Subcommittee.

It was agreed SFLAC would appreciate the DV Committee accepting elder abuse, including financial abuse, as part of their charge. Judge McKnight stated the priority would be implementation of the legislation, i.e. interpretation issues that might be cleared up and education to the public about its use, such as evictions. The committee will set priorities at its next few meetings.

Linda Scher distributed a summary of recommendations from the subcommittee for changes to the "Guidelines for Developing DV Protocols." She reviewed the history of this process and discussed the eight recommendations developed by the committee. Ms. Scher moved these be adopted as changes to existing guidelines on developing DV protocols. The motion was seconded by Judge McKnight and carried unanimously. After a Table of Contents is added, the revised guidelines will be forwarded to Nancy Miller and the State Court Administrator for approval and placed on the OJD Family Law website.

Regarding Project Passport, a decision was made that the SFLAC would not recommend that Oregon participate in this project due to potential fiscal impact of changing the forms, the fact that there do not seem to be the kinds of issues that exist in other states regarding law enforcement's understanding of restraining order forms, and a conclusion that introducing a coversheet would not fix interstate problems. Judge Brownhill will contact Project Passport officials and advise them of the decision.

It was recommended that the Chair of the OSB's Elder Law Section and the legislative representative for Elder Advocates be consulted by the Future's Subcommittee in developing a plan that includes Chapter 125 proceedings.

Parenting Plan Outreach Workgroup: Ms. Scher stated the workgroup has finalized a Parenting Plan Power Point presentation for education and outreach. The State Court Administrator's Office has also printed 1,000 brochures to support the presentation. Ms. Alison Taylor's (Executive Director of the Oregon Family Institute) was acknowledged for her efforts in creating the presentation. Ms. Scher plans to refine the presentation and distribute information as well as secure potential venues, such as the Juvenile Judges Conference or Judicial Conference. She will distribute the information to SFLAC members.

Court/Child Support Agency Child Support Coordination: Judge McKnight stated the committee meets frequently by phone and in person. The dominant topic remains the parent locate issue; i.e., how to implement it in Oregon. The Federal Parent Locate Service makes information available to parents, law enforcement and courts regarding missing and absent parents and children. A related topic is parental abduction of children. The issue is what information a court is allowed to release without violating federal regulations. A small ad hoc group continues to work on behalf of subcommittee. If a solution is found to this major impediment, the subcommittee would develop protocols for dealing with the issue.

The subcommittee currently is discussing a national strategic plan, developed by child court administrations, and is focusing on modification issues.

Regarding the Parental Access and Visitation grant process, the committee's interest was encouraging statewide planning for the use of the money that was consistent with court and child support program's perspectives and using the locate system statewide.

The committee has been kept updated on the progress of the OJD child support contract that would make some work done on child support cases reimbursable by the federal government. If the project is approved, it will be piloted in Multnomah County.

Judge McKnight reported that in the OSB's Family Law Section's listserv, one of the members noted that it costs more to appeal the de novo hearing than it does to file initially in the court to do one's modification. Ms. Sydlik stated this matter will be explained in the next issue of Family Law Newsletter and briefly discussed the enabling statute.

Judge McKnight reported there was legislation underway regarding child support, paternity and disestablishment of paternity issues, which would have significant implications for family law. She recommended that SFLAC discuss legislative issues, and S. Adams requested this topic be placed on the next meeting agenda.

Self-Represented Legal Services Subcommittee: Judge McKnight reported that the subcommittee is addressing pro bono and unrepresented litigants and the judicial support piece. She reviewed the history of discussions, and the possibility of seeking clarity through revision or opinion seeking. Judge McKnight noted that judicial ethics in dealing with unrepresented litigants—tension between impartial judge and meaningful judge—would be an appropriate topic for the judges’ conference. Ms. Sydlik reported that the Judicial Education Committee met and is considering this topic for the Circuit Judges’ conferences.

The subcommittee is also creating Guidelines for Developing Attorney Assistance Programs and a brochure to assist self-represented litigants in preparing for their own trials. In addition, the group is contemplating development of judicial protocols for dealing with self-represented cases.

Judge Koch noted that Oregon may revisit adopting ABA Canons carte blanche, which it had not done. Although the timing of this process is good, it will likely take three or more years.

NEW BUSINESS

Senate Interim Task Force on Parental and Family Abductions: Ms. Sydlik recommended moving this topic to the agenda item of “Policy Concerns and Developments” for the next meeting because of its complexity. The topic involves reunification of estranged children, specifically developing sensitivity training and awareness around parental abduction. For preparation, Ms. Sydlik provided hand-outs for advance reading.

Membership: Due to health reasons, Sharon James has offered her resignation and recommended that Lauren MacNeill be considered for appointment by the SFLAC. The members requested acknowledgment of Ms. James’ contribution to the committee and family law in Oregon. By consensus the group requested that Judge Brownhill recommend appointment of Ms. MacNeill to SFLAC.

The meeting was adjourned at 4:15 p.m.

Prepared by:

Joy Brewer
Judicial Assistant

Reviewed by:

BeaLisa Sydlik, Family Law Senior Policy Analyst
SFLAC Administrative Support

FUTURE MEETINGS:

Friday, September 9, 2005	10:00 a.m. - 3:30 p.m.	Radisson - Portland Airport
Friday, December 2, 2005	Noon - 4:30 p.m.	Multno Co Juvenile Justice Center