

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
March 5, 2010
12:30 p.m. to 4:30 p.m.

Citizen Review Board Office
Portland, Oregon

Members Present: Hon. Paula Brownhill, Jim Adams, Stephen Adams, Jean Fogarty, Russell Lipetzky, Hon. Maureen McKnight, Rebecca Orf, Ernie Mazorol, Lauren MacNeill, Hon. Keith Raines, Linda Scher, Robin Selig, Dr. Ed Vien, Chris Walls

Members Absent: Bill Howe, Margaret Olney

Guests: Alison Taylor

Staff: None

Minutes: December 4, 2009, minutes were approved as amended.

SUBCOMMITTEE REPORTS:

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

The committee updated the parent education list. Linda would like a process for making updates on the OJD family law web pages.

Domestic Violence (DV) Subcommittee—*Robin Selig*

The firearms brochure for victims is almost finished. Any comments or questions should be directed to Robin.

Rebecca Orf is heading a small workgroup that is reviewing the OJD DV web pages.

The committee has a long priority list, including revising the Judges' Handbook on Firearms and creating a new DV bench guide. The group will support any judicial training that may occur in the next year. They also will review the arraignment script.

Rebecca Orf will cover DV and dependency issues at the JCIP conference in August. The OJD Judicial Education Committee approved a regional training for judges in August. The DV subcommittee will help with a powerpoint for Judge McKnight, who will be one of the presenters. The regional training is a full day, with half day focus on evidence and half day focus on DV and other topics.

Court/Child Support Agency Coordination Subcommittee —*Jean Fogarty*

The guidelines calculator was demonstrated at the January 21, 2010, subcommittee meeting. Jean also has been doing demos around the state. On March 17, 2010, Jean and Judge McKnight co-presented the calculator in Multnomah County. Judge McKnight

suggested a noon-hour webinar for judges on the new calculator. The guidelines will be reviewed again in 2011.

The child support chapter of the family law bench book is under review and will be submitted by the May deadline. The parenting time video was posted on the DCS website on March 15, 2010. There will be a link to it from the OJD website.

Jean would like to get the word out on the Healthy Kids agreement with DHS. Families with incomes up to 300% of the federal poverty level can qualify for excellent health insurance. Children may be eligible for free or low-cost coverage for doctor visits, dental care, vision, medicines and more through the program. DHS will fund a position in DCS for a trainer to teach people how to enroll in services. The person will train staff and create flyers and brochures. Chris Walls said court facilitators need the information too.

Jean reported that DCS has a paternity establishment program, and they would like to publicize it as well. They are developing posters and flyers on paternity establishment to reach more people. They offer free genetic testing, and they will file voluntary agreements and pay the \$40 filing fee. They achieved 86% last year, with a target of 90%. 40% of children in the US are born out of wedlock; 36% in Oregon. They are trying to make it as easy as possible for families to establish paternity. Russ Lipetzky suggested that a registry for putative fathers might increase the numbers.

Judge McKnight said these programs highlight the need for OJD family law staff with child support expertise to disseminate information about the DCS program. She answers child support questions by email, but it is not the best method. Judge McKnight will check back with State Court Administrator Kingsley Click on this issue.

Department of Justice will transfer some assistant attorneys general from Child Advocacy to the Civil Recovery section. Many larger counties do not have standing child support dockets, which makes scheduling difficult. Judge McKnight asked if the LFLACs can help with scheduling issues. Rebecca Orf suggested talking to TCAs and presiding judges. Russ suggested that district attorneys be brought into the loop. Ernie Mazorol said it should be done county-by-county, and DCS should determine how much time is needed and how often the hearings should be scheduled.

Forms Review Subcommittee—*Rebecca Orf*

FAPA/EPPDAPA forms went to Interpreter Services this week. Amy Scholerman is posting the forms on the OJD website. Word versions will be posted on the intranet so local courts may make modifications. Updating these forms was a difficult process. Brian DeMarco had only 90 days to revise a large selection of forms, and he did not finish them. OJD does not have staff to complete his work. They will wait on other forms for now. Rebecca also will wait for the UTCR Committee to revise the Confidential Information Form before more updates are done. Heidi Stricklin asked if a group of court facilitators could go through some forms and make recommendations to a small group of judges and others. The group thought “yes,” except for FAPA forms, which have just been updated. Rebecca Orf explained that email revisions do not work well. The

revision process that works best is an in-person group setting with everyone in the group agreeing to each change.

Self-Representation Subcommittee—*Judge Maureen McKnight*

The committee meets monthly by telephone. They are tracking the reactions of self-represented persons to the new child support calculator. The Child Support Subcommittee has been responsive to suggestions. The subcommittee is looking at ways courts have changed facilitator programs in response to budget cuts.

The Bench/Bar Task Force on Family Law Forms and Services hopes to improve services to self-represented litigants. One focus of the Task Force is interactive forms. The Oregon State Bar has the interest and resources to make this happen. The Self-Representation Subcommittee will assist the Task Force.

Judge McKnight said the subcommittee can focus on the website now that the Task Force is underway. She said the civil Gideon concept is a recurring issue. California has a pilot to fund attorneys for some family law cases. Oregon has no money and it would not be effective to use subcommittee resources on that issue now. They will wait to see what happens in California.

Stephen Adams said California's progress on this issue comes out of a complicated background. He agreed that the subcommittee should wait to see what happens in California. Also tied into the subcommittee's hard work is: 1) should we help self-represented people? or 2) should we encourage lawyers to do more pro bono work? Judge McKnight said the subcommittee priorities are the Bench-Bar Task Force and the website.

Linda Scher said there is a need to coordinate initiatives and products for self-represented litigants. It is confusing to have the child support calculator list parent B first when the parenting plan has parent A first. Judge McKnight hopes Task Force recommendations will suggest ways to view products in a coordinated way.

Judge McKnight hopes the Task Force will implement interactive family law forms. Stephen Adams said it will be a long process for the Task Force, including how to make forms interactive and what vendor to select. Judge McKnight added additional questions: How do we get interactive forms? How will they be maintained? How will they be updated? Should there be instructional videos?

Linda Scher said the original proposal envisioned a broader group than 12 Task Force members. Judge McKnight said there will be six bar members, six OJD members, plus interested parties. The concept is for broad representation. The group will need to identify who is not at the table and how to include them.

Jim Adams said e-Court decided to go to a single solution provider, and the new vendor will speed up the eCourt process. OJD will be well into general civil implementation in 2010. He said it is essential that we have standardized forms for an integrated system. Jim will be liaison to Val Paulson's eCourt Forms Committee.

Ernie Mazorol said the e-Court Implementation Committee formed a workgroup to decide what forms should be standard statewide. Ernie said some things in eCourt will need consistency, while other things will not. Judge McKnight does not want the Task Force to duplicate efforts so would like to know what other groups are doing.

Qualifications and Guidelines Work Group—*Ed Vien*

Ed Vien explained that the only new content is the introduction, and Alison Taylor did much of the work on it. The hope is that all roles, including parenting time supervisors, will be filled by professionals. Stephen suggested that the introduction mention what parenting time supervisors do and asked that the phrase “supervised visitation” be used only for third party visits (not for parenting time).

Ed Vien will add language regarding professional roles, clean up “visitation” and take out bold type. He will forward the final version to Judge Brownhill to send to Kingsley Click. His work group will brainstorm how to disseminate the guidelines.

Stephen Adams’ Motion: SFLAC endorse guidelines with introduction. PASSED.

Legislative Subcommittee —*Russ Lipetzky*

Russ Lipetzky provided a hand-out with suggestions for family law legislative changes. One is a bill that would allow for termination of the attorney/client relationship when a case is resolved. Another bill would clean up “payment to clerk of court”. Currently ORS 107.095 provides that prejudgment suit money is to be paid to the clerk of the court. Temporary spousal support is to be paid to Department of Justice, court clerk or court administrator.

Another bill would repeal ORS 107.065, which would do away with 90-day waiting period in dissolution cases. Judge McKnight said the self-represented subcommittee recommended a 60-day period for response with no 90-day waiting period. Chris Walls said this bill would save the courts time and paper.

Some discussion has focused on an Olesberg fix, which dealt with the presumption of equal contribution as to inherited property. There may be a joint bill from the OSB estate and family law sections.

Rebecca Orf said OJD legislative concepts are due April 1, 2010. Ernie Mazorol explained that the deadline is April 2, 2010, and Kingsley Click or the Chief Justice could ask for SFLAC’s opinion on proposed bills. OJD has no family law point person. Nori Cross reviews and prioritizes bills and sends them to various staff for follow up. Staff does an fiscal impact analysis.

OLD BUSINESS:

Membership

Members would like Judge Selander's vacancy to be filled with another judge. Several names were suggested. Judge Brownhill will contact them and report back on the results.

Uniform Support Affidavit

Judge Brownhill recapped the USA discussion. SFLAC proposed to the UTCR Committee that uniform support affidavits be offered as exhibits rather than filed in the court's case file. Just prior to the September 2009 UTCR Committee meeting, Judge Kirsten Thompson raised a concern about courts that make prejudgment decisions based on USAs in the files. The SFLAC proposal would not work for those counties. As a result of Judge Thompson's concern, SFLAC did not make a presentation at the UTCR Committee meeting.

After considerable discussion, Judge Raines offered to talk to Judge Thompson and report back on the conversation. Ernie Mazorol and Jim Adams will post an inquiry on the TCA list serve and let everyone know which counties do prejudgment relief by affidavit. Russ Lipetzky said there is a UTCR meeting on April 9, 2010. The Committee will discuss a proposal to change the USA to a Uniform Support Declaration, and the UTCR Committee will review public comment over the past six months. Russ said we should put the UTCR Committee on notice that SFLAC continues to look at this issue. Russ will write to Bruce Miller with a copy to Carl Stecker.

E-Court and Family Law

Jean Fogarty reported for Margaret Olney on the Oregon State Bar interim committee on parenting plans and enforcement of parenting time. Matt Minehan proposed a presumption of equal parenting time for parents in a custody/parenting time dispute. Russ Lipetzky said a joint custody bill failed in the 2009 legislature, but the interim committee was formed to study the issue.

Judge McKnight said joint custody bills will keep coming; there has been a joint custody suggestion in every session since 1983. Linda said the new work group on parental involvement could continue the conversation. In the meantime, Margaret Olney will keep SFLAC advised of the legislative committee's work.

Alison Taylor said maybe the SFLAC work group should take time to review the research and offer a range of responses. The work group can bring the information to SFLAC, and SFLAC can decide next steps. Russ Lipetzky pointed out that a review of the research has been done many times. Judge McKnight endorses Linda's suggestion that SFLAC be pro-active. Linda Scher said the SFLAC Work Group on Parenting Time & Access will report to SFLAC in June.

EPPDAPA—*Judge Keith Raines*

Judge Raines explained that there are no requirements for who may serve as Guardian Ad Litem (GAL) in the Elderly Persons and Persons with Disability Abuse Prevention Act protection orders. He proposed that SFLAC form a work group to come up with standards for GALs in EPPDAPA cases. A GAL applicant would need to certify that

he/she meets the standards. Judge Raines will create a work group and involve the OSB elder law section and others with experience in elder abuse cases.

Court Fees—*Judge Keith Raines*

Judge Raines explained that state courts interpret the law and OJD directives regarding court fees, including fees for motions, differently. He proposed that all courts do the same thing to be fair to all court users. Russ said court fees are a hot topic. He believes consistency is key, and fees must be fair to allow court users to access the courts. It was agreed to table this discussion pending the outcome of a bar committee's work on court fees.

E-Court and Domestic Relations—*Rebecca Orf*

Rebecca Orf reported that the eCourt Domestic Relations Committee was divided on the issue of Oregon State Bar's electronic access to family law documents. The Committee will draft a memo with final recommendations, and she will send it to SFLAC members. The eCourt committee members do not know if self-represented litigants will have free access to court files and documents. The answer to that question will drive other answers.

Stephen Adams opined that a litigant who pays a filing fee should not be required to pay extra to view the litigant's file online. He feels SFLAC should speak up on this issue. It is an issue of transparency and access for court users, and it will cost the courts more to pull paper files for litigants than to allow litigants to view files on-line.

Stephen Adams' Motion: Recommend to Chief Justice that no access fees be charged for a litigant to view the litigant's own file online. PASSED.

UTCR 2.130 Confidential Information Form Update—*Russ Lipetzky for Robin Selig*

Russ Lipetzky reported that the CIF Revision group has been meeting twice a month since October 2009. SFLAC member Robin Selig is co-chair. Revision group members are taking the newly enhanced rule to constituencies for feedback. They will propose the UTCR "enhanced" CIF rule to the Chief Justice for adoption out of cycle. They will work on implementation issues between the passage and effective date.

Certain information will be placed in the CIF rather than the file. Confidential personal information is redefined—addresses, email addresses, and phone numbers are out. Access to CIF by the opposing party is changed. A notice is filed on the opposing party, and it tells what category of information is provided. They cannot see the information without consent of the other party or court order. Timing on filing a CIF also will be changed. If confidential personal information has been filed in a CIF, a party will not have to file the same information again.

Russ said they took an extraordinary amount of comment, and they carefully reviewed the comments in detail. He feels good about the product. Stephen Adams said this is terrific work, carefully done.

Judge Raines' Motion: Recommend to the Chief Justice that he adopt the final draft of revised UTCR 2.130 from the CIF Revision Group. PASSED.

SFLAC Website—*Judge Brownhill*

Judge Brownhill reported that she is working with ETSD on creation/update of the SFLAC web page. She has written new content, and she hopes to have draft pages online soon for SFLAC members to review.

Some members would like non-English information/services to be a bullet on the left menu of the OJD Family Law home page. Members also would like a short address for the OJD Family Law site so it's easy to remember and tell people. Judge Brownhill explained that work on the SFLAC web page will be finished before we begin work on the family law web pages. By the June meeting, she will attempt to answer how updates to the Family Law pages will be made. It will be a great deal of work to do these updates, but it is very important for court users to be able to access accurate information on the OJD site.

Other Business

Draft minutes will be sent to SFLAC for review prior to meetings. Only approved minutes will be sent with meeting notices to the public.

Meeting adjourned at 4:30 p.m.