MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
June 3, 2011
12:30 p.m. – 4:30 p.m.
Citizen Review Board Office (CRB)
410 NE 18th Avenue
Portland, Oregon

Members Present: Hon. Paula Brownhill, Bill Howe, Russell Lipetzky, Jean Fogarty, Hon Roxanne Osborne, Hon. Keith Raines, Linda Scher, Robin Selig, Janice Garceau, Rebecca Orf, Hon. Maureen McKnight, Chris Walls, Stephen Adams.

Members Absent: Jim Adams, Ernie Mazorol, Lauren MacNeill.

Guests: John Maack, Holly Rudolph.

Staff: None

Minutes: March 4, 2011 minutes were approved as amended.

Salishan Conference:
Bill Howe, Linda Scher, and Judge McKnight will present on SFLAC at the Oregon State Bar Family Law Section annual conference at Salishan in October.

Bill will introduce the SFLAC vision. He will talk in general terms about the financial condition of the courts and the meaning of this for lawyers.

Judge McKnight will discuss interactive forms and Law and Policy decisions regarding confidentiality and family law in eCourt.

Linda Scher will discuss the two Parental Involvement Workgroup reports.

Russ Lipetzky suggested they explain what SFLAC is, and why lawyers should pay attention to what it does. SFLAC is the highest level of cross-pollenization in Oregon. Lawyers should know that. Linda Scher suggested a one-page summary of what SFLAC is and does.

Robin Selig will think about domestic violence issues and get back to Linda about potential information to provide.

COMMITTEE REPORTS

Self-Representation Subcommittee – *Judge McKnight*

Judge McKnight reported that the Self-representation Subcommittee has focused on two eCourt issues:

1. Fees
2. Prioritization of Forms

Fees

The Subcommittee wrote a five-page document with a proposed fee structure for the development and use of interactive forms. The document went to Lisa Norris-Lampe for the Law and Policy Committee. She will refer the issue to eCourt governance when it is ready for a decision. Multnomah Trial Court Administrator Doug Bray presented it to the Trial Court Administrators.

The Subcommittee noted that offering interactive forms without charging a fee has been the strong preference of SFLAC, and SFLAC endorsed the reasoning of the Task Force on Family Law Forms & Services (TFFLFS) on this issue. However, like TFFLFS, if faced with a choice between charging for forms versus *no* forms or no forms for several years, SFLAC recommends charging a fee.

The vision is electronic filing, but in Phase One, the vendor would give the option of electronic filing or printing and filing forms in person at the courthouse. Should fee waivers and deferrals be interactive OR should people come to the courthouse to request waiver or deferral? This question has not been answered.

Holly Rudolph said we may end up with parallel tracks: on-line waivers and deferrals *plus* in-person waivers and deferrals.

Prioritization

The Subcommittee proposed the following prioritization of forms, which SFLAC approved:

1. Dissolution
2. Modification
3. Status Quo/Protective Order of Restraint Motions/Orders
4. Unmarried Parents Petition (ORS 109.103)
5. Immediate Danger Orders
6. FAPA
7. Parenting Plans
8. Parenting Time Enforcement
9. Fee Waiver and Deferral
10. Stalking Protective Order
11. Motion/Order of Assistance
12. EPPWDAPA (Elderly Persons & Persons with Disabilities Abuse Prevention Act)
13. Contempt

14. Registration of Foreign Order
15. Separation
16. Motions to Change Venue
17. Governing Child Support Orders
18. Motions to Correct Judgments based on clerical error
19. Name Changes

The prioritization list went to the Law and Policy Committee, which endorsed the recommendations. Dissolution packet is the biggest project. There are many forms needed, and we cannot just duplicate existing packets. Jean Fogarty pointed out that shared content will give some economy of savings. Judge McKnight's goal is to complete the dissolution forms first. Parenting plans should be completed by then. That will cover many of the other forms because of duplication in packets.

Judge McKnight said that no action is needed from SFLAC at this time. After considerable discussion, SFLAC members made clear that access to the courts is of primary importance. We do not want to impair access by making it difficult for litigants to obtain fee waivers or deferrals or to make interactive form usage fees so high that some people cannot afford to use them.

Judge McKnight explained that payments for the use of interactive forms will go to the vendor. If a waiver is granted, then OJD still must pay the vendor. The recommendation is to charge those who pay in full enough to cover the cost of fee waivers and deferrals. An additional $20 differential paid by full-payers is not likely to deter their use of interactive forms. The overall cost of full-pay is reasonable considering the estimated demand and known market fees.

Domestic Violence – *Robin Selig*
Robin Selig introduced and reviewed the DV web page drafts. Once the web pages are finished, the Subcommittee will begin work on a Domestic Violence Bench Book for judges, an updated FAPA guide, and an Oregon-specific Firearms Guide. The Subcommittee will work on incorporating pictures in the web page drafts and will send them to SFLAC members by email for final approval before posting on the website.

Judge McKnight attended the National Council of Juvenile and Family Court Judges roundtable on custody evaluations and how judges make custody decisions in domestic violence cases. She said "Court Watch" ranks high in what judges feel is helpful. Russ Lipetzky suggested that it would be interesting to learn whether Court Watch operates in counties other than Multnomah. Judge Osborne mentioned that Klamath County used to have Court Watch.

Court/Child Support Agency Child Support Coordination -- *Jean Fogarty*
Jean Fogarty reported that the web pages SFLAC members received were not final drafts. She will fix some minor errors before they are posted on the website.

The Subcommittee met on March 17, 2011. A workgroup addressed where administrative orders should be filed when there is a court proceeding pending. Some court staff put administrative orders in a separate court file. The workgroup recommends that the Division of Child Support send orders to the Court without a case number, and alert the Court that there are related orders/cases.

DCS is working with Linda Scher and Holly Rudolph on interactive parenting plan forms. There have been delays due to OJD negotiations with Turbo Court, but DCS can't wait any longer. September 30, 2011 is the deadline for spending grant funds. They are hoping to have the project completed this summer.

The Subcommittee helped create the new Child Support Bench Book. It will be inserted in the June 2011 edition of the Family Law Bench Book, and it will go to judges at the New Judge Seminar. It is on the DCS website and went out on the listserv. Jean Fogarty will send a link to SFLAC members.

Jean asked about updates to OJD family law forms. One form needs to be revised, and some forms may need revision due to legislative changes. How do the OJD forms get changed? Russ Lipetzky explained that since Court Programs and Services Division was eliminated, there is no one at OSCA to work on family law forms. OJD contracted with Russ to make some changes, but unless there is funding, further changes may not occur.

Judge McKnight said she receives inquiries every week about changes to model family law forms. Many people in the trial courts incorrectly assume that someone is doing this work. Not everyone understands the impact of closing CPSD. Rebecca Orf said she queried trial court administrators and court facilitators regarding taking forms off the website or adding a disclaimer to say the forms may not be up-to-date, and the vote was to leave outdated forms on the website with disclaimers. Stephen Adams suggested adding a disclaimer to every page of every form.

Bill Howe asked about the possibility of providing private funding to OJD to update forms. The statute specifically allows for that. What would be the cost to update family law forms?

Judge McKnight brought up two issues:

1. How do we get family law staff in the State Court Administrator's Office?
2. If we are not successful, what is our position regarding forms? Should we take them off the website or add disclaimers?

Russ Lipetzky asked if we should argue for updates now so the interactive forms will be accurate. Holly Rudolph responded that ETSD Director Bryant Baehr knows her parameters. She is currently working on eCourt forms but she is not close to completion yet. If OSCA could pay overtime for Holly, and SFLAC could do red-line versions, then Holly could make necessary changes.

Judge Brownhill cautioned against SFLAC revising model forms. We do not have time or staff, and we should not take on this important work. As an example, we have spent a year on the four overview topics and still do not have final versions.

Bill Howe suggested we contact trial court administrators Jim Adams, Ernie Mazorol, and Doug Bray to ask their opinion regarding updating family law forms. What is the best way to assure that the forms will be useful to trial courts? Judge McKnight volunteered to talk to Doug Bray, Judge Brownhill will talk to Ernie Mazorol, and Rebecca Orf will talk to Jim Adams.

Rebecca Orf said the forms are up-to-date now. When Russ Lipetzky revised forms, he put disclaimers in the introductions. January 1, 2012 is the effective date of most domestic relations law changes. We should have about six months before most legislative changes take effect.

Linda Scher suggested that we discuss the issue further at the September meeting after we receive feedback from the three TCAs.

Legislative – *Russ Lipetzky*

Russ Lipetzky distributed a handout of family law changes:

1. A "notice of termination of attorney-client relationship" may be filed at the conclusion of a case in lieu of a motion and order allowing withdrawal. **HB 2685**

2. The ORS 107.065 ninety day waiting period is repealed. **HB 2686**

3. An ORS 107.135 modification must be filed if emergency custody is sought under ORS 107.139. **HB 2686**

4. ORS 109.103 is expanded to cover additional provisions of chapter 107 (107.431, 434, 437, 445, 449, 755-95). **HB 2686**

5. Temporary support is to be paid to the other party rather than to the clerk of the court as currently specified in ORS 107.095. **HB 2687**

6. A general judgment may include temporary support retroactive to the date the obligor was served with a request for support in a motion or petition even if no limited judgment was entered. **HB 2687**

7. A marital asset acquired by gift or inheritance by one party and continuously held separately by that party will not be subject to the presumption of equal contribution. **HB 386**

8. For those who have been trying to follow the bouncing ball, **HB 2710**, which would significantly revamp the filing fee and family law court programs funding structure, is still very much up in the air and faces an uncertain future. HB 2287 may extend the surcharges for some period of time since they otherwise would end on June 30, 2011. No final decisions have been made.

Rebecca Orf reported that there are some FAPA changes. One is a bill to increase the court's authority to protect pets/service animals/companion animals. It excludes commercial animals.

Regarding repeal of the 90 day waiting period, the Oregon State Bar Family Law section will engage in ongoing discussions regarding how it is working. Judge McKnight questioned whether 30 days will be enough time to avoid defaults for self-represented litigants. She will hold the section to this commitment.

Parenting Plan Outreach (PPOW) - *Linda Scher*
Linda reports that Shawn Brenizer, Judge McKnight, Holly Rudolph, Jean Fogarty, and Linda have been working on interactive parenting plan forms. It is a large project that is moving forward.

Judge Diana Stewart presented the Custody and Parenting Time Report and Parent Education Report at a Family Law CLE.

Linda reported that a segment of *This American Life – Tough Love*, focused on a Florida drug court. It illustrated an abuse of power but also mentioned what a good drug court can do. She will send the link to SFLAC members.

Guardian Ad Litem Workgroup – *Judge Raines*
The workgroup has focused on qualifications for Guardians Ad Litem in domestic relations cases (their work on GAL in EPPDAPA cases is done). The Council on Court Procedures says it is unnecessary, but the workgroup went ahead despite the Council's position.

The workgroup did not intend to limit application to FAPAs. Judge Raines will email to SFLAC members the final qualifications for Guardians Ad LItem in EPPDAPA cases and proposed qualifications in domestic relations cases. Should we send the approved documents to the Chief Justice and Kingsley Click? To the trial courts? The lists are intended to be aids to judges in appointing guardians ad litem – they are suggestions, not requirements.

Judge Raines asked if SFLAC would like to move forward on the domestic relations GAL list. After much discussion, Judge Raines decided to address guidelines for appointment of GAL for disabled persons in domestic relations cases, not for minors. The workgroup will look at putting the guidelines into a questionnaire format, like a bench guide.

OJD Family Law Website
SFLAC members favorably reviewed the new child support pages and DV pages. Robin Selig will put graphics in the domestic violence pages to break up the text and make it more readable. SFLAC will review and finalize the DV pages by email once graphics are added. The child support pages are approved for posting, although Jean Fogarty will make minor corrections.

Judge Brownhill asked about the four overviews: Dissolution, Mediation, Paternity, and Custody. Are they ready to post? Judge McKnight asked if we should add overviews now or wait for interactive forms. Linda Scher suggested that we post now as there is not much introductory information on the website now. Janice Garceau concurred. We should add a reference to same sex couples in the dissolution overview.

John Maack stated that the custody and parenting time are blurred together. He suggested that they be separated into two topics.

Membership
There is a vacancy on SFLAC due to Margaret Olney's resignation.

Stephen Adams said that finding new members is not a question of representing a specific constituency in a formal sense. We should look for someone who will:

- Make every effort to attend meetings
- Be straightforward and present strong views
- Have geographic diversity

We should be enthusiastic toward people who attend SFLAC meetings or participate on subcommittees.

Bill Howe previously volunteered to handle the membership issues. He will lead this discussion at the September meeting.

Meeting is adjourned at 4:40 p.m.