

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
June 6, 2014
12:30 pm – 4:00 pm
Department of Justice
1515 SW Fifth, Suite 410
Portland, Oregon

Members Present: Stephen Adams, Amy Bonkosky, Hon. Paula Brownhill, Colleen Carter-Cox, Ryan Carty, Adam Furchner, Janice Garceau, William J. Howe III, Linda Hukari, Hon. Maureen McKnight, Rebecca Orf, Hon. Keith Raines, Kate Cooper Richardson, Robin Selig

Members Absent: Hon. David Brewer, Laurie Hart, Lauren MacNeill,

Guests: Angela Laidlaw, Megan Hassen, Janice Davidson from IAALS, John Maack, Katsu

Chair Hon. Paula Brownhill called the meeting to order at 12:35 pm.

Minutes: Minutes from March 7, 2014 were approved.

COMMITTEE REPORTS

Domestic Violence – Becky Orf

Robin Selig and Rebecca Orf prepared a revised stalking outline for the 2014 Family Law Benchbook. They also updated the stalking protective order case notes for the benchbook.

The subcommittee reviewed and updated the domestic violence webpages on the OJD family law website. They sent the revisions to Megan Hurley at OJD. All links should work.

Bill Howe announced that the Association of Family and Conciliation Courts is doing a study on domestic violence. Becky Orf asked Bill to ask AFCC to keep Becky and Robin in the loop.

ACTION ITEM: Bill will contact Executive Director Peter Salem.

Court/Child Support Agency Coordination - Kate Richardson

Kate Richardson reported that the Subcommittee met in May and discussed the Child Attending School statute, ORS 107.108. The Subcommittee solicited input regarding potential legislation, and, after considering the comments, decided not to seek a legislative change in the 2015 session.

The Subcommittee has reviewed the Child Support pages of the OJD website and fixed the broken links.

The Office of Administrative Hearings is moving from the Employment Department to Department of Administrative Services. A new Chief Hearings Officer will be appointed.

Division of Child Support will go ahead with the mediation component of the Parenting Time Opportunities for Children grant (DCS no longer will partner with OJD on interactive parenting plan forms). DCS has contracted or will contract with mediators to serve parents in all 36 counties. Mediation will be free to parents. There were 200 referrals last month, and mediators are excited about the program. Janice Garceau pointed out that this connects the court-connected mediators throughout Oregon.

Kate Richardson reported that the National Child Support Enforcement Association is holding its national conference in Portland on August 11-13, 2014. Oregon will present a session on the Informal Domestic Relations Trial. Judge Katherine Tennyson is on a panel to address child support and victims of family violence. SFLAC member Janice Garceau will speak on parenting time and its correlation to child support. There also will be an Oregon presentation on self-represented litigants.

Parental Involvement - Janice Garceau

Janice Garceau said the workgroup has met since the last SFLAC meeting. Judge Diana Stuart wrote a very brief response to the issues raised regarding shared parenting time. Some members of the workgroup are editing the Birth to Three workbook.

The workgroup's longer term goal is to distill all of the work on shared care/parenting time into tools and products for practitioners, judges, and families.

Janice reported that the April 2014 issue of the Family Court Review is devoted to articles on Shared Parenting. Janice suggested SFLAC members purchase the April issue. Bill Howe volunteered to solicit permission to email the articles to SFLAC. Bill said the positions go from 50/50 shared parenting time to 100/0 with one parent having no parenting time. Janet Johnson, Joan Kelly, and Marcia Kline Pruett came down closer to the zero end of the continuum, and they provided an analytical framework for decision-making in individual cases. Janice added that the authors did not agree on shared time, but they agreed on shared decision-making.

ACTION ITEM: Bill Howe will seek permission to distribute April 2014 Family Court Review articles to SFLAC.

Stephen Adams said there should be no SFLAC product unless we address ORS 107.169(3). Janice explained that the workgroup's charge is much more restricted; they decided to work on tools to help professionals make decisions.

Bill Howe suggested that the workgroup should consider Oregon's joint custody law. He said the workgroup must talk about it. Parents get confused about what joint custody means, and a

lot of pressure is relieved if both parents can weigh in on decisions. Janice said the workgroup may be willing to look at joint decision-making in the future, but they will focus on the current project.

Futures – Bill Howe, Stephen Adams
No Report.

Legislative Subcommittee – Ryan Carty

Ryan Carty emailed a report on SB 799. A legislative task force addressed the issue of possible changes to rules relating to attorney withdrawals. The task force came out of SB 799 in the 2013 session. The most significant concerns were judicial workload, providing adequate notice to the court and litigants when attorneys appear/withdraw, and when it is appropriate for the court to be directly involved (i.e., an **order** for withdrawal being required versus the filing of a notice of withdrawal).

The result of the task force’s work is a recommendation for 2015 legislation that will repeal/replace ORS 9.380 and 9.390 and deal with attorney withdrawals in the Uniform Trial Court Rules. This legislation would partially address #10 on Woody Mosten’s list of recommendations for Unbundled Legal Services.

Ryan Carty also reported on potential legislation coming from the Oregon State Bar. There may be a bill regarding PERS and interpretation of the statute on survivor benefits and another bill that provides for the exchange of limited financial information post-judgment in an extrajudicial setting when spousal support has been ordered.

Spousal Support Guidelines Workgroup - Hon. Keith Raines

The work product is done. The workgroup will retire for now.

Self Representation – Judge Maureen McKnight

The Subcommittee has focused on three areas:

- Interactive forms.
- Survey of self-represented litigants
- Service instructions

Interactive forms: Judge McKnight and subcommittee members are very frustrated over the delay on interactive family law forms. Judge McKnight reported that interactive family law forms are no closer to a finished product than they were in March. She has advocated for these forms for years, and she feels there is a huge need. She explained that interactive forms would guide the litigant through a series of questions whose answers produce a form the litigant can file in court. Multnomah Circuit Court has been using interactive Family Abuse Prevention Act forms since October 2012. At least 95% of them are prepared electronically through the

TurboCourt web-based product, which has greatly reduced the staff time needed to help applicants with the paperwork.

Unlike hand-written forms, interactive web-based forms produce legible and complete pleadings. Their user-friendliness helps judges, parties, and agencies to interpret and enforce the terms. Their electronic format aids transmission of the documents to the sheriff's office for service.

Amy Bonkosky said she is on the eCourt Steering Committee, and she asks about smart forms every month. The answer has been that resources are focused on Multnomah's go-live. Multnomah is live now, and Amy will ask again at the Steering Committee meeting on Thursday. There are only two years left to complete eCourt implementation, and some remaining projects (such as sentencing support) are not as important as development of interactive forms.

Janice Garceau said people come back to the courthouse repeatedly because they cannot figure out how to complete the paperwork. It takes a lot of court time to help these folks.

Bill Howe offered to help in any way he can. Judge McKnight will follow up with him and with Amy. Judge Raines had a self-represented litigant recently who did everything right because he had watched Washington County's videos on-line. Judge McKnight agreed that we need a combined approach to help the self-represented.

Survey: The Subcommittee is developing a survey to ascertain the number of self-represented litigants using court resources and to find out what was helpful to them and what was most difficult. Janice Garceau and Colleen Carter-Cox are working on the survey.

Bill Howe reported that IAALS has decided to build on Julia McFarlane's Canadian study to learn more about self-represented litigants. IAALS will conduct an in-depth study of self-representation in the US. IAALS will choose five jurisdictions, including Multnomah County, in which to gather data. Judge McKnight would like to participate, but she has some concerns. She and Bill Howe will participate in a conference call next week to discuss the IAALS survey.

Service Instructions: The Subcommittee has finished a draft of instructions for service on opposing parties in a family law cases. When finalized, the instructions will be posted on-line for use by self-represented litigants. There is no such resource available now. The current draft is at ninth grade reading level. They are trying to bring it down to eight grade level. The Subcommittee will distribute the draft to facilitators and others for comments.

Unbundled Legal Services Workgroup – Bill Howe

Bill Howe introduced Janice Davidson, retired Chief Judge of the Colorado Court of Appeals. She is an advisor at IAALS and is helping the Unbundled Legal Services workgroup.

The workgroup has met twice since March. Bill went through the list of Woody Mosten's recommendations and reported on each.

1. Courts should offer information to self-represented litigants (see #11). **Workgroup endorsed.**
2. Courts should study the needs and composition of self-represented litigants in Oregon. **Workgroup endorsed.**
3. Courts should train judges and court staff to assist self-represented litigants. **Workgroup endorsed.**
4. Courts should allocate increased resources to assist self-represented litigants. **Workgroup endorsed.**
5. Courts should establish guidelines that provide that self-represented litigants are entitled to the same level of respect as those represented by a lawyer. **Modified by workgroup.**
6. Court should provide information to self-represented ligiants similar to the contained in Judge Steinberg's letter used in LA County Superior Court. **Workgroup initially said to delete this one but now wants SFLAC to review it.**
7. Unbundling preference for judicial appointments. **Workgroup recommends delete.**
8. Court personnel (including judges and clerks) should be trained to help court users identify and take advantage of unbundling resources in the community. **Workgroup recommends seek further information.**
9. Unbundling-friendly court rules should be enacted. **Workgroup's number one priority.**
Linda Hukari emailed a good template for this one.
10. Courts should develop user-friendly court forms to facilitate lawyers making and withdrawing from limited scope appearances. **Workgroup voted this number two priority.**
Workgroup will discuss further and report at the next SFLAC meeting.
11. Courts should create and make available a user-friendly brochure. **Modified to say, Court should publish and make prominently available consumer friendly brochures, video loops, and other material describing the benefits and risks of unbundling, including on the OJD website and the maintenance of lists of lawyers willing to offer limited scope services such as currently offered by Lane County.**
12. Docketing preferences. **Workgroup recommends delete.** This may happen in the ordinary course anyway because hearings will be shorter.

13. Courts should fund and promote mandatory education regarding unbundling. **Workgroup recommends delete.** It is important but possibly implement later as part of comprehensive education program. The Oregon State Bar Family Law Section annual conference at Salishan will have a session on unbundling this year.
14. Courts should provide information on unbundling to mediators within their jurisdiction. **Workgroup recommends that SFLAC contact Oregon Mediation Association.**
15. Courts should support and encourage local bar associations to offer unbundling education to lawyers within their jurisdictions. **Workgroup modified this recommendation.**
16. Judges should favor parties who have opted for limited scope representation in considering fee and cost requests and should disfavor parties who do not demonstrate that their lawyers offered limited scope representation. **Workgroup recommends deleting the second half of the sentence beginning with “and should disfavor...”**

ACTION ITEM: Stephen Adams will examine whether ORS 20.075 already provides the court with sufficient authority or whether additional statutory or rule changes are advisable.

17. Courts should establish panels for attorneys willing to offer limited scope representation based on qualify standards. Every attorney on the list should be required to offer pro bono limited scope services to the poor and underserved populations at a level determined by each court. **Workgroup recommends to delete mandatory pro bono. Workgroup recommends that each court be able to decide whether to have lists of lawyers who will provide unbundled services.**
18. Courts should adopt an evaluation process to assess the effectiveness of unbundling initiatives. This may need to be a joint effort with the Oregon State Bar. **Workgroup endorsed.** Janice Davidson will ask IAALS if it will help develop an evaluation tool for use in Oregon courts.

Stephen Adams explained that the financial incentive in #16 is a good idea for those cases in which one party is willing to settle or proceed in a simplified fashion and the other side is not willing to do so. Judges should have the power to reward a party who has truly tried to protect the family finances.

Bill Howe stated the workgroup will consider all comments and will wait for the Self-Representation Subcommittee to weigh in.

Salishan Conference – Bill Howe

Bill Howe requested and received 30 minutes for SFLAC on the agenda at the 2014 OSB Family Law Conference at Salishan. He invited Judge McKnight to present with him, and he will recruit someone if she is unable.

IAALS Projects – Bill Howe

Janice Davidson explained that work on uncontested divorce is on the back burner. They may fold it into the Differentiated Case Management screening triage. Judge Raines asked why parties couldn't do a confession of judgment to dissolve a marriage when both sides agree

LFLAC Liaisons – Hon. Paula Brownhill

The list of LFLAC liaisons needs to be updated. Judge McKnight volunteered for Multnomah County (to replace Linda Scher), and Linda Hukari took Baker.

SFLAC would like to hear from at least one LFLAC a year. Linda Hukari will contact Judge David Leith, chair of the Marion County LFLAC, about making a presentation at the September SFLAC meeting.

Life Insurance – Hon. Keith Raines

Judge Raines suggested that Oregon needs a fix for a life insurance problem that occasionally causes an unjust result. If a judge orders a party (obligor) to maintain life insurance for the benefit of a child or former spouse, the obligor designates a new friend as beneficiary, the new friend does not know about the court order, and obligor dies, the new friend will receive the insurance proceeds instead of the child or former spouse. Ryan Carty said the OSB Family Law Section might look at it.

ACTION ITEM: Judge Raines will write proposed language and email it to SFLAC members.

Family Law Forms for Change of Sex – Hon. Maureen McKnight

Judge McKnight said that Multnomah and a few other courts have model forms for Change of Sex, but the forms are not on the OJD family law website. SFLAC members agreed that the forms should be added to the state's model forms. Judge McKnight will follow up with her Subcommittee.

Next Meeting

The next SFLAC meeting will be on September 12, 2014 in Salem.

Judge Brownhill will invite Kingsley Click and Chief Justice Balmer to join the meeting.

ACTION ITEM: Linda Hukari will check on a meeting room.

ACTION ITEM: Bill Howe will check on the Supreme Court conference room.

Meeting adjourned at 4:05 p.m.