

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
March 1, 2013
DEPARTMENT OF JUSTICE
1515 SW 5th AVENUE
PORTLAND, OREGON

Members Present: Stephen Adams, Hon. Paula Brownhill, Janice Garceau, William Howe, Linda Hukari, Rebecca Orf, Hon. Keith Raines, Linda Scher, Robin Selig, Amy Bonkosky, Lauren MacNeill, Hon. Maureen McKnight, Kate Richardson, Laurie Hart, Colleen Carter-Cox

Members Absent: Hon. David Brewer, Richard Funk

Others Present: Jeff Hall, John Maack

Meeting Minutes

December 7, 2012 meeting minutes approved as amended.

SFLAC's recommendation to Chief Justice Balmer of new member Colleen Carter-Cox is ratified.

Informal Domestic Relations Trials -- Bill Howe, Linda Hukari, Jeff Hall

Bill Howe explained that Linda Hukari and Jeff Hall's work group, formed after the December 2013 SFLAC meeting, has developed the Informal Domestic Relations Trial model. It is drafted as a Deschutes Circuit Court supplemental local rule. Bill has been liaison to the Honoring Families Initiative advisory committee. Linda has kept the work group organized and on task. Jeff has been working with the Deschutes circuit judges and the Deschutes County Bar Association.

They wanted a rule that we could implement without legislative action. The proposed SLR will have to be approved by the Chief since it is out of cycle, but it will not be a Chief Justice Order.

The model is "opt in" and the right to appeal remains intact. The work group proposed that all dissolution cases would be filed the same way. The court will schedule a pre-trial conference, and the filing party will receive a document from the court that offers two choices: a quick easy dissolution or a more complex time-consuming dissolution. The filing party also will receive a brochure that describes the Informal Judicial Resolution process.

If both parties elect the IJR process, the IJR trial will be scheduled. The parties must persuade a judge that they understand the IJR process and they consent to submit to it. The judge will determine if the consents are free, knowing, and voluntary.

At the IJR trial, the moving party is sworn and gives a statement. Lawyers will not ask questions, but the judge may ask questions to develop the evidence. After the moving party is done, the responding party is sworn and gives a statement. Parties may call expert witnesses and may offer expert witness reports for review by the judge. No other witnesses will testify.

The court may take any case out of the IJR process. A party who opt in may later opt out. The court may put waiver language in the declaration.

Jeff Hall has been working with the Deschutes Bar Association and the Central Oregon Matrimonial Attorneys. Deschutes judges are committed to the new process, and lawyers are interested. Jeff would like to tell the Chief Justice that SFLAC is in favor, but Deschutes probably will move forward with the SLR even if SFLAC does not endorse it.

Jeff Hall and Linda Hukari are working with two law students from Hofstra University to develop the brochure. The brochure will explain the process and may offer suggestions for documents to bring and issues to address. Jeff also is developing an evaluation piece with the help of the Institute for the Advancement of the American Legal System.

Several SFLAC members, including Janice Garceau, Robin Selig, Judge McKnight, and Rebecca Orf, expressed concerns about cases involving domestic violence. They pointed out that DV issues are not addressed in the supplemental local rule. Bill Howe responded that DV cases already are in the court system, and courts do not screen family law cases for DV now. The presence of DV by itself does not mean this is an undesirable forum. It may be advantageous for some DV victims.

Judge McKnight said information up front is critical for DV victims so the content of the brochure is important. The evaluation piece must be able to address the DV component. How will we identify DV victims in the evaluation? She is willing to participate in discussions, and she said Loretta Frederick from the Battered Women's Justice Project might be helpful. She did not suggest that courts screen for domestic violence. She said the court should give litigants sufficient information up front so litigants can make informed choices.

Robin Selig would like to review the draft brochure. Rebecca Orf suggested that the DV Subcommittee review it.

Judge McKnight expressed appreciation for use of the term “self-represented” rather than the Latin “pro se.” She asked if Deschutes is committed to sixth grade readability. Jeff Hall said they are, and he will do a readability screen. She stressed that the rule should be courteous to self-represented litigants and should treat them the same as represented litigants. Stephen Adams praised the work of the work group; he appreciates the commitment to program evaluation.

Linda Scher suggested that the brochure and/or rule make clear what an expert witness is. Stephen Adams said the brochure must be complete and tell the parties who can and cannot testify. Bill Howe explained that Idaho judges found they could learn all they need to know from the parties, without testimony of friends, neighbors and relatives. Lawyers can speak a little at the beginning and end; testimony will come mostly from the parties. If litigants want to call lay witnesses, they can choose the traditional trial model.

Bill explained that Jeff Hall and Linda Hukari participated in the last IAALS Honoring Families Initiative advisory committee meeting. They received advice from Becky Kourlis, Marsha Kline Pruitt, Andy Schepard, and other family law experts. The goal is to provide another forum, not the only forum. He said we are resolving cases now with self-represented litigants who do not know the rules of evidence or how to get evidence before the judge. They have little help. With this process, they would receive a brochure and it would be much easier for them to present their information. The evaluation piece is necessary so we do no harm.

Motion: Bill Howe moved to have SFLAC generally support the Deschutes Informal Domestic Relations Trial rule. Motion seconded. After clarification that the motion means support in general, not support for the specific wording of the proposed rule, **motion passed.**

Jeff Hall gave the Deschutes bar until March 8, 2013 to comment on the proposed rule. The work group will meet again after March 8 to review SFLAC comments and the bar’s comments. Jeff will send a final draft of the rule to SFLAC members. SFLAC will vote by email to endorse or not endorse the rule, and SFLAC will ratify its action at the June 2013 SFLAC meeting. Jeff said they are moving fairly quickly so SFLAC will need to act promptly.

Subcommittee Reports:

Domestic Violence- *Robin Selig*

The DV Subcommittee has met once since December. Two work groups have met more often. Robin reported on three activities: 1) the subcommittee has finished the revised Family Abuse Prevention Act (FAPA) Benchbook, and it is posted on the OJD family law website. Rebecca Orf sent a memo to all judges, trial court administrators, and court facilitators with a link to the Benchbook. Rebecca hopes to update the FAPA Benchbook more frequently in the future. 2) the subcommittee is helping Rebecca Orf plan Oregon Judicial Department domestic violence training. They plan to develop a webinar to reach more judges and staff. Vanessa Timmons, executive director of the Oregon Coalition Against Domestic and Sexual Violence, will help. The training may cover trauma, including vicarious trauma suffered by court staff. 3) The FAPA Benchbook is one chapter in the Domestic Violence Benchbook. The subcommittee will take a rest and may not begin work on another chapter until April or May. The subcommittee plans to tackle a chapter on custody and parenting time next.

Judge Maureen McKnight is planning and presenting at an OJD regional training for judges on May 10, 2013 in Portland. She will include a segment on working with self-represented litigants and cover tips and technology, temperament, and family law sticky wickets. She also will include a domestic violence component. Rebecca Orf and Judge Brownhill will help with the sticky wickets presentation.

Judge McKnight recently attended the National Council of Juvenile and Family Court Judges Family Law Summit in San Antonio, Texas. She presented with Loretta Fredrick, legal and policy advisor for the Battered Women's Justice Project, on domestic violence issues.

Robin Selig reported that the Oregon Task Force on Firearms and Domestic Violence no longer has funding, but the task force has continued to meet quarterly by telephone. They are monitoring the development of firearm surrender protocols around Oregon.

Multnomah County is working on a process. Judge McKnight and Commission Dan Saltzman are leading that effort. Deschutes, Klamath, and Clackamas Counties also have shown interest. Task force chair Erin Greenawald from the Oregon Attorney General's Office will present on firearm surrender protocols at the Oregon District Attorneys' Association summer conference.

Court/Child Support Agency Child Support Coordination – *Kate Richardson*

Kate Richardson reported that the subcommittee has experienced several membership changes in the last several months. In addition to other changes, new SFLAC member

Laurie Hart has joined the subcommittee. The subcommittee meets quarterly.

The subcommittee met in February and discussed latest developments in the federal grant for the Child Support Program to develop interactive parenting plan forms and provide mediation support for families creating parenting plans. The grant is called “Parenting Time Opportunities for Children in the Child Support Program.” Kate and her team stay in touch with Oregon Judicial Department eCourt director Bryant Baehr so they can coordinate for development of the forms for the OJD website, hopefully through TurboCourt.

Kate will speak at the OJD regional training on May 10, 2013, on the newly revised child support guidelines. Kate hopes to roll out the new guidelines by July 1, 2013. There is a great deal of internal work involved that takes time to develop.

The Child Support Program has three bills in the legislature this session. SB 589 would remove the requirement of judicial approval of administrative child support orders. SB 590 would make a few minor changes to improve operations, including removing requirements for unnecessary personal information and a particular restriction on withholding orders. SB 591 would make clear that dismissal of a judicial proceeding does not dismiss an administrative child support order involving the same parties. OJD remains neutral on all three.

The major legislative request of the Child Support Program and the Department of Justice this session is a request for capital financing through bonding to modernize its technology. The Program and the project steering committee have worked very hard with the federal oversight office to develop this major technology project, and Kate is cautiously optimistic.

The Office of Administrative Hearings is creating a child support hearings video. Her office and other members of the subcommittee were invited to work in partnership with OAH. On a light note, Kate is on a quest to diminish the use of acronyms by the Child Support Program. She hopes this will make it easier for Child Support Program customers.

Parental Involvement/Parenting Plan Subcommittee - *Linda Scher*

Linda Scher thanked Kate Richardson and Shawn Brenizer for their continued work on the interactive parenting plan forms.

Linda drafted a letter to four state senators regarding Dr. Linda Nielsen’s correspondence, and Judge Brownhill sent the letter in February 2013. Dr. Nielsen provided additional

materials on shared custody.

Linda will reactivate the Parental Plan Outreach Subcommittee to review family law legislation. She will coordinate with Legislative Subcommittee chair Richard Funk. SFLAC members were in agreement.

Linda previously sent SFLAC members the results of her Facilitator and Family Court Services survey. Some counties did not respond to the survey. Amy Bonkosky and Rebecca Orf will try to contact the counties who did not respond and encourage them to complete the survey.

Self-Representation Subcommittee – Judge Maureen McKnight

The Subcommittee has been working on a plan to convert law libraries to comprehensive legal resource centers for use by self-represented litigants. That work is on hold while they wait to see what happens in the 2013 legislative session.

One of the Subcommittee's priorities is development of a website for self-represented litigants. They are looking at other states' websites. They also are looking at the OJD family law website; they want to get materials for self-represented litigants front and center so they are easy to find.

When Multnomah County transitions to eCourt, the court will slow to about 50% of its current workload to allow for staff training. This will occur between mid-March and June of 2014. The court must cover all legally required functions (such as compliance with federal child support laws). They may recruit lawyers to help with settlement conferences and other court work.

Judge McKnight and Judge Keith Raines are developing monthly webinar trainings for new judges on Family Law 101 topics. They have scheduled trainings for March, April, May, and June of 2013.

Legislative Subcommittee – Chair Richard Funk was ill so there was no Subcommittee report.

Judge Keith Raines mentioned that HB 3134 would allow a judge to order joint custody if it is in the best interests of the child, even if one party objects. He said this would have a fiscal impact on the courts.

Kate Richardson reported that SB 341 is pending that would change ORS 107.108, the child attending school statute. It would terminate a child support obligation when a child

turns 18 or when the child turns 19 if still in high school at age 18. Senator Betsy Johnson introduced the bill.

Guardian Ad Litem Work Group - Judge Keith Raines

Judge Raines sent guardian ad litem forms to trial judges for use in Elderly Persons and Persons with Disabilities Abuse Prevention Act cases. The Council on Court Procedures decided the forms should be statutory, not a rule, so it declined to act. He asked what SFLAC would like to do. Rebecca Orf volunteered to post the forms on the OJD family law website. Judge Brownhill will add the forms to the 2013 Family Law Benchbook. Judge McKnight will mention the forms at the May 10, 2013 regional training for judges.

Spousal Support Guidelines Work Group: -- Judge Keith Raines

Judge Raines and Linda Scher created a survey to help the work group determine if Oregon should develop spousal support guidelines. Judge Raines developed the questions, and Linda created a survey monkey. Judge Raines sent the survey to Massachusetts judges because Massachusetts implemented spousal support guidelines.

Before the guidelines, spousal support in Massachusetts was all or nothing: indefinite spousal support or no spousal support. The new system includes factors to consider, and there has been an increase in litigation as the parameters are tested. 50% of the judges responded to the survey, and they indicated general satisfaction with the guidelines. Judge Raines will send the next survey to Massachusetts lawyers. If the lawyers are enthused, we may want to pursue guidelines in Oregon.

Judge Raines will send SFLAC members a link to the survey results.

SFLAC Membership and Staff Support – Judge Paula Brownhill

Colleen Carter-Cox is the newest SFLAC member. SFLAC will not seek additional members at this time.

Paul De Muniz has offered staff support for SFLAC through his office at Willamette University. Judge Brownhill will follow up with him.

The Family Law Section of the Oregon State Bar contributed money to the Oregon State Bar to help SFLAC with administrative duties. The Bar sent the agendas and public meeting notices for this meeting. Judge Brownhill will update SFLAC's list of interested persons.

LFLAC Liaisons

Amy Bonkosky agreed to be liaison for Umatilla/Morrow LFLAC. Linda Hukari will take Douglas County. Colleen Carter-Cox serves on the Lane LFLAC, so she will replace Justice Brewer as the Lane liaison.

Family Law Benchbook

The Family Law Benchbook is distributed to new judges at the New Judge Seminar in June. Only those new judges receive updated copies of the book. Judge McKnight asked if we could put the Family Law Benchbook on-line with the help of Paul De Muniz's staff at Willamette University. Judge Brownhill will follow up.

Judge Brownhill has begun the annual update of the Family Law Benchbook. She asked if the Circuit Judges Association Family Law Committee could help. Judge Raines explained that he, Judge McKnight, and one other judge are the only members of the Family Law Committee. Judge McKnight asked that Judge Brownhill send the update schedule to the SFLAC subcommittee chairs. Judge Brownhill will send the list to all SFLAC members.

Other Business

Judge Raines inquired about a change to the OJD form of child support judgment summary that appears to give a litigant the choice of terminating child support at age 18 or continuing it for a child attending school. Robin Selig explained that Russ Lipetzky changed the form in 2009 because ORS 107.108 provides that support for a child attending school is discretionary. Robin changed the judgment summary to be consistent with the language Russ added to the judgment. Judge Raines said there is case law that says "may" means "shall" in ORS 107.108. Judge Raines or Kate Richardson will research and send SFLAC members the citation. [*Sandlin and Sandlin*, 113 Or App 48 (1992)]

Meeting adjourned at 3:28