

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
September 13, 2013
12:30 pm – 3:30 pm
Oregon Judicial Department – Vick Building
525 Trade Street
Salem, Oregon

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

Members Absent: Janice Garceau, Lauren MacNeill

Guests: Kingsley Click, Holly Rudolph, Jeff Hall, Susan Grabe, Natalie Knowlton, John Maack

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

Minutes: The minutes from June 7, 2013 were approved as amended.

eCourt: There was general discussion about eCourt. Clatsop, Columbia and Tillamook went live on August 12, 2013. That brings the total number of judicial districts using Odyssey to eight. Benton and Polk will go live in January 2014. Judge McKnight asked if the courts using Odyssey could share information with courts that are preparing to go live. Amy Bonkosky said there are and will continue to be opportunities to exchange information. State Court Administrator Kingsley Click said that the 2013 legislature provided additional money for eCourt, including some money for staff at ETSD and OETO.

Social Media: Judge Raines reported that judges cannot access social media (such as Facebook) for work purposes in the courtroom. Sometimes a party will ask the judge to look at Facebook during trial, but judges do not have access to Facebook and cannot delay proceedings to submit a request for access. Judge McKnight added that parties sometimes ask the judge to read text messages from cell phones or listen to voice mail messages on phones. Although the evidence may be relevant and helpful, it is not practical to receive cell phones in evidence. Bill Howe pointed out that these barriers often exist in self-represented cases.

Conversation with Kingsley Click: Kingsley reported that Chief Justice Balmer had a scheduling conflict and will not be able to attend the SFLAC meeting. When asked how SFLAC can help the State Court Administrator's Office, Kingsley said she would like more information on family court services. How have mediation programs changed with less money? Have we lost services? Can we leverage

services/resources statewide? Kingsley said facilitation programs are another concern. It would help self-represented parties to have facilitation services available in all courthouses, but some courts have had to cut these programs. Unbundling legal services is another area where SFLAC may be able to advise the State Court Administrator.

Judge McKnight expressed concern that we are not keeping statewide family law forms up-to-date, and we still do not have interactive family law forms.

Justice Brewer said trained facilitators in courthouses would make a big difference to self-represented litigants. Bill Howe added that morale is low in courthouses with too few facilitation services. It creates stress for court staff and litigants.

Informal Domestic Relations Trials – Jeff Hall, trial court administrator in Deschutes County, reported that Deschutes has conducted six informal domestic relations trials. Parties feel like they've been heard, and they receive immediate decisions. Judge Wells Ashby thought it would be similar to what all courts are doing now, but that has not been true. It is a fundamental change. There is no cross-examination. The judge may consider written reports. The judge is able to gather necessary information. There is less tension, and this process creates less hostility than many traditional dissolution trials. Mr. Hall recommends:

- Consider expanding to other courts

Bill Howe explained that we hope to roll out to all courts eventually, but judges need to be assured they are not violating the Code of Judicial Conduct.

- Encourage unbundling of legal services

Natalie Knowlton said that judicial leadership is essential for the success of the IDRT model. The brochure alone was not enough. She said Judge Bagley's explanation of the process at the pretrial conference persuaded litigants to try the informal trial.

Justice Brewer asked if the process will work in a court that does not hold pretrial conferences. Jeff Hall said the choice should be made whenever the trial is set; a pretrial conference is not necessary.

Linda Hukari asked if domestic violence has been a concern. Jeff Hall explained that Judge Ashby and Judge Bagley are alert to DV issues. They feel this process is better for victims than a traditional trial with cross-examination.

Mr. Hall said receiving an immediate decision is helpful to litigants. Judge Bagley's judicial assistant fills out the judgment as the judge rules. The litigants walk out of the courtroom with judgment in hand.

COMMITTEE REPORTS

Domestic Violence – Robin Selig

Chair Robin Selig serves on the eCourt Law and Policy Committee and the eCourt Domestic Relations workgroup. She asked about the status of interactive family law forms and TurboCourt. Kingsley Click replied that new forms are on the way.

The Subcommittee has been working to keep the statewide FAPA forms up to date, and they've spent a great deal of time on the new Sexual Abuse Protective Order forms. Robin and Becky Orf have spent many hours reviewing and revising the forms. The Subcommittee also is developing name change forms to address the confidentiality law change.

Futures – Bill Howe, Stephen Adams

The Futures Committee met just prior to the SFLAC meeting. In 2012, the Committee developed a list of possible reforms. For the last year, they focused on the Informal Domestic Relations Trial. Now that the pilot is underway in Deschutes, what would be the next helpful reform? The Committee recommends that SFLAC look at unbundled legal services.

Stephen Adams explained that lawyers do not participate in serious unbundling. The concept has not caught on in any jurisdiction. He said there are pros and cons to SFLAC taking it on. Oregon is innovative in the family law area, and that's a plus. On the other hand, if no one else has made it work, should we try? It may be difficult, and we may not succeed. He suggested several areas where SFLAC could be involved:

- Public outreach
- Business models
- Model contracts
- Development of court rule or proposed legislation
- Enlist lawyers who offer unbundled services

Justice Brewer agreed that it is daunting, but parallel projects are underway. He suggested that SFLAC partner with existing efforts. The Oregon State Bar has a group working on it. There is an Innovations in the Law: Science and Technology conference at OMSI on September 20, 2013, and Dan Katz from Michigan State University Law School will present. His mission is unbundled legal services.

Judge McKnight said the Self-Representation Subcommittee deals with these issues. She will run it by the members. Susan Grabe reported that the Bar has an Unbundled Legal Services Task Force. Initially they thought the Task Force could do its work quickly and propose new legislation. The members are discussing many issues and so the project is taking longer than

anticipated. She explained that the legal profession is changing, and the Bar wants to be involved in the changing landscape. Kingsley Click said OJD is supportive of these efforts.

Stephen Adams suggested that SFLAC ally with others who are working on unbundling. He said there is a judicial administration side to this effort. Judges in general are coming around to support the concept, and SFLAC can help. Unbundling is the next phase in a customer-based system. Bill will talk to Susan Grabe and others, and he will update SFLAC by email in the next three months. SFLAC members agreed to continue the discussion at the December meeting.

Court/Child Support Agency Coordination - Kate Richardson & Hon. Keith Raines

This subcommittee has several new members.

The agency is one year into its grant for development and implementation of interactive parenting plans. OJD now is saying it will be 2014 before it can move on interactive forms. Judge Raines commented that the project may not come together, and the agency may have to choose a different path.

Kate Richardson reported that the revised child support guidelines rolled out after a long vetting process. The guidelines took effect on July 1, 2013.

Self Representation – Judge Maureen McKnight

Judge McKnight reported that the Subcommittee has focused on four areas. First, the Subcommittee re-prioritized the list of OJD family law forms. She added that frustration is growing over the delay in development of interactive forms. She suggested that OJD could coordinate with the City of Portland, which has interactive FAPA forms. Courts throughout Oregon can use the interactive FAPA forms by changing the court name at the top. OJD also should be working with DOJ since DOJ has the grant to develop interactive parenting plans.

The Subcommittee is working on collaboration with law libraries and public libraries. It is helping develop a list of icons for public terminals in libraries and identifying materials for each work path.

The Subcommittee is working on service instructions with the goal of writing instructions at a fifth grade level. They also are vetting discussions of limited license legal technicians.

Judge Brownhill mentioned that the self-representation page on the OJD family law website needs attention and asked if the Subcommittee or any another entity could work on it. Justice Brewer said grants for technology generally won't pay for operations, but money may be available for design. This may be a good time to pursue a grant for design of the self-representation page.

PPOW/Parental Involvement Workgroup - Linda Scher

Linda Scher voiced her frustration with the delay in development of interactive parenting plans. Two years ago, she presented at the Oregon State Bar Family Law Conference at Salishan, and

she told the audience that interactive forms were coming soon. She feels the delay is embarrassing. Parenting plans on the OJD family law website are not easy to use.

The workgroup was reactivated recently, and members are continuing the joint custody conversation.

Spousal Support Guidelines Workgroup - Hon. Keith Raines

The workgroup identified practical considerations because this issue will come up again in future legislative sessions:

- Many people leaving marriage have disparate earning capacities. The marriage partner with less earning capacity often functions in a role of family care rather than career development.
- A marriage partner who has the primary charge to care for children, including taking time off from work to deal with illness and appointments, will likely suffer some loss in career.
- A party who enjoys greater career opportunities during the marriage is likely to continue to enjoy a higher trajectory of earnings, lifestyle, and retirement in the future. Conversely, a party who has had reduced career opportunities during the marriage is not likely to achieve a similar level of earnings, lifestyle and retirement as the other party

It also identified some areas to consider:

- In a spousal support modification, is it appropriate to require the obligor to account for or spend down assets which were awarded to the obligor as part of the dissolution judgment?
- Should modification be based on a change of circumstances or is the sheer passage of time a reasonable reason for a review? In that review, is it appropriate that the focus be the obligee's attempts or success at becoming more self-sufficient?
- Should the length of time that the parties have been physically and financially separated be an enhanced factor in determining support?

SFLAC authorized the workgroup to request comments and recommendations from the legal community. Judge Raines will report at the December SFLAC meeting.

2013 Salishan Presentation – Bill Howe

Mr. Howe will present with Judge Bagley at the 2013 OSB Family Law Conference at Salishan. They have half an hour to discuss the Informal Domestic Relations Trial. Mr. Howe asked Kingsley Click her position on rollout to other courts. Ms. Click replied that nothing prohibits other courts from using the process, but judges might want to see how it goes in Deschutes. Robin Selig suggested that SFLAC take the opportunity to evaluate the IDRT process before introducing to other courts.

Next Meeting -- The next SFLAC meeting will be on December 6, 2013, in Portland.