

**MINUTES**  
**STATE FAMILY LAW ADVISORY COMMITTEE**  
**December 5, 2008**  
**12:30 p.m. to 4:40 p.m.**

**Oregon State Library, Room 103**  
**Salem, Oregon**

**Members Present:** Hon. Paula Brownhill, Hon. Robert Selander, William Howe III, Stephen Adams, Russell Lipetzky, Butch Castor, Robin Selig, Hon. Rebecca Orf, Hon. Keith Raines, Ernie Mazorol, Linda Scher, Lauren Mac Neill, Dr. Edward Vien, Jim Adams, Hon. Maureen McKnight

**Members Absent:** David Hakanson

**Guests:** Chief Justice Paul De Muniz, Alexander Aikman, Deputy State Court Administrator for Court Programs, Brian DeMarco, Beckie Pettis-Parker, Bealisa Sydlik, Alice Phalan

**Staff:** Maria Hinton

Judge Brownhill called the meeting to order at 12:30 p.m.

Judge Brownhill, on behalf of the SFLAC, recognized Bealisa Sydlik for her 10 years of service to the SFLAC and expressed great appreciation for her dedication and hard work. The SFLAC wished her well in her new position with Legislative Counsel.

**CONSENT CALENDAR**

Minutes from September 12, 2008: Robin Selig stated that her name was omitted from the “members present” section of the minutes, and the minutes should be amended to reflect her presence at the meeting. Stephen Adams moved to approve the September 12, 2008, minutes as amended. Motion was seconded and the committee approved the minutes.

**POLICY CONCERNS AND DEVELOPMENTS—New**

**SFLAC discussion of membership terms, limits and potential new members:**

Bill gave a brief history of the SFLAC, stating that the group first met in 1998. There have been two chairs to the committee since it was created. The first was Judge Koch, the current chair is Judge Brownhill. The committee members are appointed by and serve at the pleasure of the Chief Justice. Recently the topic of established and staggered terms and term limits became a discussion point for the committee. It was suggested that new members would bring a different perspective (both from outside the OJD and nationally) and possibly innovative ideas to the committee. The discussions around this topic also identified the value of “historical memory” and experience. Judge

Brownhill distributed a drafted order that identified terms for the next three years for existing members per the December 2007 SFLAC vote.

After much discussion, and with the understanding that most of the memberships currently have terms that expire 12-31-08, Ernie moved to initiate three year terms for new members and a staggered term for existing committee members based on the draft developed by Judge Brownhill, with no term limits. Bill seconded the motion and the committee unanimously passed the motion.

The committee reviewed the list of interested persons who would like to be considered for membership. The committee discussed the importance of having a representative from court Facilitation Programs on the committee. Stephen stated that Chris Walls has shown an interest in the workings of the committee by consistently attending meetings and has volunteered on various projects and subcommittees. She has demonstrated a commitment to family law that this committee highly values. Linda moved to recommend that Chris Walls be added as a member of the SFLAC. Stephen seconded the motion and the committee unanimously voted to approve. The committee agreed that it has sufficient members; no further recommendations will be made to add members in the foreseeable future.

The SFLAC liaison list was reviewed. Bill volunteered to serve as liaison for Douglas County, Judge Raines will serve as liaison for Lincoln County, and Russ Lipetzky will serve as liaison for Marion and Polk counties. At the March meeting the committee will discuss the possibility of Chris serving as liaison for the 7<sup>th</sup> Judicial District, and designate liaisons for the counties where Dave Hakanson is currently serving as liaison.

### **Subcommittee Reports:**

Written subcommittee reports were distributed to the committee.

#### **Family Law Conference Planning Subcommittee:** *Judge Brownhill*

The Family Law Conference occurred on September 12-13, 2008 in Keizer, Oregon. 98% of the 114 participants gave the conference favorable ratings. Donna Beegle's presentation on poverty was a highlight of the conference. We presented the Wallace P. Carson Jr. Outstanding Achievement Award to Hugh Mclsaac. Total income was \$17,600. Total expenses were \$13,124.64.

#### **Parenting Plan Outreach Workgroup (PPOW):** *Linda Scher*

Linda referred to her letter to Alex Aikman dated 12-16-08 regarding technology needs for the Parenting Plan Guide materials. Linda acknowledged that several of the items she identified as glitches have been resolved, but she would like Alex to talk about translation of the material into Spanish. Alex mentioned that this item will be deferred until OJD has a clearer picture of its budget. Revisions of the basic guide are complete. The subcommittee will continue to solicit feedback for future revisions via emails and Survey Monkey. Recent outreach included

facilitator training in May 2008, presentation at the SFLAC Conference, presentation at the OSB Family Law Conference in October, and presentation at the Employee Assistance Programs in November. Many presentations are planned for the future.

**Domestic Violence Subcommittee:** *Robin Selig*

The subcommittee has been working on a proposed UTCR that will establish procedures for submitting confidential information in family law cases. The rule was presented to the UTCR Committee on October 10, 2008. The proposed rule and public comments will be reconsidered at the March 6, 2009 UTCR meeting.

Robin Selig is a member of the Firearms and Domestic Violence Task Force. BeLisa Sydlik was a member but will be replaced by Beckie Pettis-Parker. Jamie Badeau is the project coordinator; she is located at the LEDS office in Salem. Judge Brownhill chairs the Task Force. Jamie will be traveling throughout the state to gather information related to surrender, storage and return of firearms, including data entry issues around identification of qualifying protective orders and misdemeanor crimes of domestic violence. The Task Force will work on statewide protocols for statewide enforcement. Subcommittee members agreed to be resources for Jamie as appropriate.

The subcommittee is monitoring certain legislative concepts. The first is a proposal to allow modifications of FAPA orders in limited circumstances. The other would authorize and fund the co-location of domestic violence advocates in DHS Child Welfare and Self-Sufficiency offices. Based on current state budget constraints, it is likely this will be included in the Governor's proposed budget.

The subcommittee is working on forms and instructions for the issuance of civil stalking protective orders. These forms may be ready for SFLAC review at the March meeting.

VAWA grant RFPs should be out in January and February for funding to assist courts in improving responses to domestic violence and stalking and in providing training and education on DV and stalking.

BeLisa and Bonnie Braeutigam both resigned from the subcommittee. They will be sorely missed.

**Court/Child Support Agency Child Support Coordination:** *Butch Castor*

The subcommittee recommended that the SFLAC submit comments to the UTCR proposal currently open for comment with a March 2009 deadline. Judge McKnight and Robin Selig will take the lead. The subcommittee is continuing to work on assistance for child support calculations, focusing on web training opportunities. The subcommittee is still working with the AG and DHS on TPR cases and sharing that information with the Child Support Program. There are

privacy and internal process issues in these cases.

**Self Representation Subcommittee:** *Judge McKnight*

One of the subcommittee's top priorities was getting the article out for family law practitioners. They set up a mailbox for comments. The remainder of her report was presented later in the meeting.

**Legislative Subcommittee:** *Brian De Marco*

No additional information right now. Brian would like to develop a conference call system with the subcommittee once the legislature convenes. Judge McKnight asked to be included in the email communications. SFLAC will be informed if issues develop that need committee input.

**Model Community Family Courts:** *Lauren Mac Neill*

The subcommittee met via teleconference on November 21, 2008. Maria will be staffing the subcommittee. They reviewed the Futures Subcommittee report on Oregon's Integrated Family Court of the Future and its follow-up 2001 paper, and they are looking at Australian family court reforms. They will schedule a teleconference in 2009 with Professor Barbara Babb of the Center for Families, Children and the Courts at the University of Baltimore School of Law. She has done extensive work on family court system models, including convening a recent conference and presenting a report reviewing family court models nationwide. They also provide technical assistance to courts.

**SFLAC Qualifications and Guidelines Workgroup:** *Dr. Edward Vien*

This subcommittee has met twice since the September SFLAC meeting and is nearing completion for parent coordination standards. They will finalize on January 12, 2009 and move on to evaluator and supervisor qualifications. The group is very dynamic and invested in the process.

**Forms Review Subcommittee:** *Beckie Pettis-Parker*

Alex reported that the Law and Policy Committee (LPC) will be identifying forms that should be required to be statewide forms. If there are forms that you believe should be standardized across the state, please submit them to Alex. A LPC forms subcommittee may be convened to look at this issue.

BeaLisa and Beckie Pettis prepared draft revisions of the Elder Abuse forms, which will be submitted to the courts for use on a trial basis before publishing to the OJD website. These should be out by the end of December.

The new contempt forms are being reviewed for legal corrections and should be posted to the website by the end of December.

Facilitators asked for forms to request appeals de novo. BeaLisa prepared draft forms and sent them out for review. Comments were received and revisions were

made. The forms are out for final review before they are posted on the website. The Court/Child Support Coordination Subcommittee will be updated on the final status of the forms.

The DV subcommittee is working on new civil stalking forms.

Beckie and Maria are working with the SFLAC Self-Representation Subcommittee on plain English revisions to Packet 3A: Custody, Parenting Time, Child Support for Unmarried Parents.

## **New Business:**

### **OJD Strategic Plan**

Stephen suggested that SFLAC members discuss their reactions to the OJD Strategic Plan that was recently received by the SFLAC. Stephen suggested the committee compile their recommendations in order to have effective input.

Alex stated that SFLAC did not receive the strategic plan in time for comment, and he apologized for the mistake. It was always the Chief's intention and the intention of the Leadership Team to receive feedback from advisory committees, but the distribution of the plan to this committee was missed. Regrettably, the time for comment has passed.

The draft strategic plan has been sanctioned by the Leadership Team and approved by the Chief. The text of the plan will be shared with Presiding Judges and TCAs on December 11, 2008, and will then be attached to the budget report the Chief sends to the legislature on December 15, 2008. Although time for initial input has passed, Alex stated that there is much work still to be done between the Strategic Plan and development of an implementation plan.

Alex explained that the plan started with over one hundred action items. The final plan "consolidated" those concepts into forty action items and broadened the language to accommodate many different possibilities. Alex suggested that SFLAC comments would be embraced in the language of the plan, even if the wording is not specific to family law.

Bill asked where the SFLAC goes from here since the committee wants to be helpful. Alex stated that it would be appropriate to respond to the Chief as a committee or individually with ideas on how to move forward in the family law arena while relating to specific concepts identified in the strategic plan. Once the 2009 legislative session is over, staff will be charged with developing an implementation plan for the "strategically critical" items identified in the plan given the budget and resource limitations we have to work with.

Linda suggested that the SFLAC have a special meeting in January to fully discuss the strategic plan and develop a report for the Chief to consider. Judge McKnight agreed that this document will guide SFLAC activities in the future and the committee should

have an in-depth discussion of the concepts. Maria will circulate dates and arrange a meeting.

### **Discussion with Chief Justice De Muniz –**

The Chief joined the meeting and introductions were made. Judge Brownhill outlined accomplishments of the committee over the last year:

- 2008 Family Law Conference
- Discussions on privacy and confidentiality issues relating to Oregon Court
- The SFLAC has nine subcommittees who are active and working hard on issues relating to family law
- Judicial Conference activities by Judges McKnight and Raines
- Revision of the Parenting Plan Guide and creation of the medium/long distance Parenting Plan worksheet and form
- DV Subcommittee work on the revision of the FAPA forms (taking forms out of statutes)
- The OJD is losing BeaLisa Sydlik, Family Law Staff Counsel, but the committee has gained some new members (Judge Rebecca Orf, Judge Keith Raines, Russell Lipetzky)

Linda reported on the need to convert the parenting plan materials into a user-friendly, interactive format, to supply parents without internet access a CD that they can take home and review and complete the materials on their home computers, and to incorporate Kiosks in our courts for public use. Also important is the need to translate the revised forms into other languages, especially Spanish.

### ***Self-Representation***

Judge McKnight prefaced her comments with the acknowledgment that we are in a reality of limited resources as opposed to expanding. Many processes may be addressed as Oregon eCourt is developed and implemented. One preparatory issue that was agreed upon after the Harvard conference was the development of a “core values statement”. This document would serve as a framework for the OJD when working with self represented litigants and is submitted as a draft to this committee and the Chief for review and comment.

When discussing self represented services, Judge McKnight and the SFLAC Self Representation Subcommittee identified three categories that should be considered:

- Forms (to be developed in a user-friendly format and revised to meets the readability guidelines set forth by the OSCA, which is 8<sup>th</sup> grade level readability)
- Procedural issues: 1) should Oregon be moving in the direction that other states have done in requiring at least some required forms in family law? This could help provide some standardization as eCourt is developed; 2) there is an overarching issue relating to the desire for consistency statewide in services

provided by Facilitation Programs; 3) training for judges relating to self representation has been incorporated but there needs to be training for TCAs and court staff as well; 4) local website development in family law would be a prime opportunity to provide access to information for self represented litigants— possibly the development of a template for local courts to use.

- Attorney assistance: unbundled legal services promotion has been on hold pending the revision of the judicial canons that Judge Rosenblum's workgroup is conducting. The subcommittee article on Self Representation that was published in the OSB Family Law Newsletter is intended to engage attorneys in the discussion of services provided to self represented parties.

One underlying theme in self represented issues is that Oregon is a two forum justice system and we need to work closely with the Child Support Program. Many litigants come to the courthouse through the agency door.

Bill voiced support for the effort of Judge McKnight and the Self Representation Subcommittee. He also stated that he just returned from Norway, where every person in a family law case with children is appointed a lawyer. The same is true for Britain and Australia. Judge Orf agreed with Bill that we need to place an equal amount of effort in making available legal representation for parties. She also stated that she is very grateful, as a judge, to have facilitation staff to send self represented parties to after a hearing.

Judge McKnight stressed that the ultimate goal for parties is indeed legal representation and the subcommittee strongly support this goal, however, statistics show that the customer base has shifted nationally, and there are more and more people going through court proceedings as a self represented person. This shift to public focus is a reality that we need to deal with and there is concern that the court will lose public support if it does not make itself understandable and usable by individuals, some of whom may choose to hire attorneys in a limited or unbundled manner.

Judge McKnight stated that the public is in need of assistance in the area of child support calculations. The Child Support Program no longer offers assistance in most cases with the child support calculation and the facilitation programs are very limited in most counties in the services they can provide. One solution that the Department of Justice is looking at is the simplification of their own computer program. This new program will be tested early in 2009, but again, this will only help people who have computer access, and is depending upon funding allocations.

Judge Selander voiced concern and stated that he believes it is very important to get attorney involvement in cases, either with unbundled services or having facilitators be lawyers, so that many of the steps that are missed by self represented people can be addressed. Russ stated that he is a strong supporter of unbundled legal services. In his practice, he sees many divorce cases where some orders can be modified, but others like property settlements that cannot be changed. Some unintended consequences for

self represented parties are very devastating. Judge Raines voiced concern with people entering the courtroom repeatedly with modifications of orders that were just modified the previous month.

Judge McKnight agrees that there is more up-front work that needs to be completed by the courts, possibly the development of a case management system or screening function, if resources were available. Another major problem is the missed step of getting the final order signed by a judge. These problems existed before the facilitation programs were formed. The courts need to appropriately respond to the fact that people either can't afford or choose not to go to lawyers. Attorney involvement in the process, either by settlement conferences or possibly judgment writing, would certainly be a benefit. The attorney involvement piece is the piece that we haven't done well so far. Hopefully, the OSB article will start a more extensive dialog with attorneys.

Lauren MacNeill reported that the SFLAC Model Community Family Court subcommittee is looking at national and international models that address many of the concerns voiced here today.

Ernie reported that Deschutes County will be implementing a program that will require people to go through a 30 minute orientation before they can see a facilitator. This orientation will explain what can and cannot be done by a facilitation program. It will state problems that have been identified by people proceeding with a court action without the assistance or advice of a lawyer. It will provide a list of resources available, i.e. OSB Lawyer Referral and Modest Means Programs. It is a pro-active approach that hopefully will help people understand the risks involved in choosing to represent themselves in legal actions.

### ***Confidentiality and Privacy in eCourt***

Robin Selig reported on the issues of privacy and confidentiality in family law matters with relation to the development of Oregon eCourt. At the 2008 Family Law Conference, Bud Borja made a presentation on the Oregon eCourt initiative. His presentation was followed by a very lively panel discussion directly relating to privacy issues in family law. Judge Brownhill wrote to the Chief in February 2008 regarding the SFLAC concerns and to offer SFLAC's assistance as appropriate. There were three main issues in her letter:

- Safety issues for domestic violence and other crime victims
- Identity theft (financial account and credit card numbers, tax ID numbers are often part of family law court files)
- General privacy concerns relating to easy internet access to very embarrassing information that are also part of family law files

Robin and BeaLisa Sydlik participated in the Confidentiality Workgroup of the OJD Policy, Law and Standards Committee. The Policy, Law and Standards Committee (PLSC) has been reorganized into the Law and Policy Committee (LPC), which Alex Aikman chairs. Judge Orf proposed that SFLAC have a representative on the new committee. Stephen stressed the importance of having an SFLAC liaison on the LPC to

bring to light very serious concerns specific to family law cases. Alex Aikman, chair of the LPC, said Robin may continue on the Confidentiality Work Group, and he suggested that Beckie Pettis and Brian DeMarco funnel SFLAC comments to the LPC.

Bill stated that in Norway and Australia the family court is closed to the public and in England divorce cases are closed if children are involved. This could potentially be one way to insulate people from having their files open to the public and also protect against the threat of identity theft. Oregon may need to consider these issues, and SFLAC should be part of that discussion.

### ***SFLAC Membership***

Bill Howe reported that many members' SFLAC terms will expire on December 31, 2008, and these dedicated individuals are willing to be reappointed for staggered three year terms. A draft reappointment order will be forwarded to the Chief for review and approval.

### ***Future Efforts***

Ernie Mazorol asked Chief Justice De Muniz where he would like to see this committee focus its energy and work.

The Chief thanked the committee members for their dedication and service. He made the following comments in response to the discussion and concerns of the committee:

- **Budget**—The Chief believes that the Judicial Branch of government has been underfunded for at least two decades. He does not have a defeatist attitude going into this legislative session. He feels that over the last three years, the OJD has worked to develop relationships and cooperative work groups that have fostered a much different relationship with the legislature. He will approach this new legislative session with the belief that we will succeed in getting the funding OJD needs to continue with services and improvements. He believes problem solving courts, including family court as it intertwines with problem solving services, are a priority and must be preserved. In these economic times, it is necessary to preserve the judicial budget in order to meet the needs of our communities.
- **Self Representation**—The Chief attended the Harvard Conference and stated that it was a valuable and eye-opening experience. He shares the commitment to provide access to self-represented litigants. However, the Chief believes that there are two parts to this issue: 1) change the mindset or attitudes of judges as they work with self-represented litigants, and 2) the self-representation trend (85% of domestic relations cases where at least one party is self-represented) can have a destabilizing effect on the recruitment and retention of judges. If we turn resources away from other case types to meet this increasing need, we may be hindering our ability to recruit and retain highly qualified and dedicated judges.

For example, if the business community no longer wants to bring their issues to court, we could lose interesting commercial litigation. It would change the courts

as we see them now if all we had were self-represented family cases and criminal cases. The Chief chooses to approach the issue of recruitment and retention of judges by presenting the courts as a dynamic and interesting place to be.

The Chief believes that the forms we develop need to help move these cases through the system more smoothly. The Conference of Chief Justice has been reviewing the civil Gideon concept but it has not developed into a resolution yet. It would be very difficult to implement this concept in Oregon.

The Chief is committed to supporting the committee's efforts with regard to facilitating access to justice for people who are not represented by lawyers. But we need to have a balance in order to attract the best and brightest lawyers so that we preserve the judicial system.

- Oregon eCourt—The Chief stated that in every group, privacy and confidentiality comes up as a serious concern. The OJD has already built an appellate case management system (ACMS) and has already faced, on a policy level, all of the issue brought forth today. The new Law and Policy Committee has been established and will meet later this month. The Chief stated that an SFLAC member should be on the Law and Policy Committee.

The ACMS has already identified which screens the lawyers and the public can view. By March 2009 there will be an ECM system for the appellate courts and this system will identify which documents can be viewed. The Oregon Constitution has an open courts provision that must be abided by as we look at confidentiality issues. One of the things that Oregon eCourt has allowed us to do is expand our communication and education efforts. Education staff has now developed an Office of Education and Training Outreach (OETO). Judge McKnight has developed a relationship with Mollie Croisan, the Education Manager, and has discussed the issues of forms.

The Oregon eCourt governance structure is being revamped by a consultant and the Chief is hoping to have this complete by January 2009. One of the issues that will be addressed is stakeholder communication.

- The Chief acknowledged that OJD's intention was to have SFLAC comments with regards to the OJD Strategic Plan, but due to an error, the committee did not receive the draft document. The Chief stated that the Strategic Plan is intended to guide us and also to let the legislature know OJD's priorities. Much of the SFLAC work falls within the access to justice area.

Judge Brownhill thanked the Chief for spending his time with the committee today.

## **Discussion of citizen correspondence and concerns:** *John Lundeen*

**Spousal Support Survey:** In 2001, the Clackamas County Family Law Group (CCFLG) did a comprehensive evaluation of spousal support decisions made in Clackamas. They used an undergraduate student from Kalamazoo College to compile the information from approximately 260 divorce judgments. This Survey proved to be a popular resource for family law practitioners and judges.

In 2005, in conjunction with the Oregon Academy of Family Law Practitioners, the CCFLG did another survey of spousal support awards, evaluating 1,161 cases in Multnomah, Washington, and Clackamas Counties. Six Kalamazoo College students and a couple of legal assistants helped compile data with the assistance of an OJD analyst. Since its publication, nearly 200 copies of this report have been sold.

Mr. Lundeen receives weekly requests for this information on a statewide basis. He believes that it would be a valuable resource for practitioners and judges. Mr. Lundeen proposes that the SFLAC support a project to compile this information. He suggests that every court clerk receive a supply of the Oregon Spousal Support Survey form that he has included in today's materials. Before a judgment that includes spousal support is awarded, parties would need to complete the 1-page form. Court clerks would collect the forms for 6 months and return them to Mr. Lundeen for compilation. Cost would be minimal and absorbed by Mr. Lundeen, but the OJD would need to impose upon court clerks the responsibility to make sure that the survey form is completed and returned to Mr. Lundeen.

Mr. Lundeen believes that this information will help Oregon develop a formula to calculate spousal support taking into consideration child support payments as well. He does acknowledge that the comment section of the form can be burdensome.

Brian De Marco reported for BeaLisa Sydlik who stated that this would make the court clerks responsible for reviewing judgments and facilitation program staff will be needed to supply additional explanation to parties who are completing additional forms. This places an additional burden on already over-burdened court staff. It would add to the frustration and confusion for parties whose paperwork would be delayed until for form was completed.

The value of the data was discussed; however, Judge McKnight stated that there are no SLRs that would support the "requirement" of submitting this document prior to signing a judgment. Attorneys could voluntarily fill out the form, but this would not get the data from the self represented litigants.

Bill recommended that the SFLAC take no action on this topic. He suggested that Oregon eCourt could incorporate fields that could mine the data. This would give statewide, consistent data from all judgments.

**Unbundled Legal Services:** *Bill Howe*

Leslie Lowe, an attorney/mediator from Klamath county, contacted Bill to voice support of the promotion of unbundled legal services, especially in Klamath County. Judge McKnight, as liaison to the Klamath County FLAC and chair to the Self Representation Subcommittee, volunteered to contact Leslie Lowe to solicit involvement in the development of an Attorney Assistance Manual. The subcommittee will be working to finalize this project once the Oregon canons are revised.

Charlie Asher, developer of “Up to Parents” materials, contacted Bill and asked that he encourage counties in Oregon (possibly through local FLAC liaisons) to use these online materials.

Teresa Schmidt, past Executive Director of the Arizona State Bar, contacted Bill recently expressing an interest in completing research relating to self-represented litigants. She has graduate students who would complete the work if Oregon has a desire to develop a project.

**Risk Analysis on Privacy Issues and Public Documents:** *Bill Howe*

Bill will have his intern develop a brief paper for committee review.

Meeting adjourned at 4:30 p.m.

**Scheduled Meetings:**

Friday, March 6, 2009	12:30 p.m. - 4:30 p.m.	Portland CPSD Office
Friday, June 5, 2009	12:30 p.m. - 4:30 p.m.	Portland CPSD Office
Friday, September 11, 2009	12:30 p.m. - 4:30 p.m.	TBA
Friday, December 4, 2009	12:30 p.m. - 4:30 p.m.	Portland CPSD Office