

DRAFT MINUTES
STATE FAMILY LAW ADVISORY SFLAC MEETING
June 9, 2006

123 NE 3rd Avenue
Portland, Oregon

Judge Brownhill called the meeting to order at 12:35 p.m.

Members Present: Chair-Judge Paula Brownhill, Vice Chair-Bill Howe, Judge Robert Selander, Judge Maureen McKnight, Stephen Adams, Linda Scher, Ernie Mazorol, Ed Vien, Ramona Foley, Robin Selig, Lauren Mac Neill

Members Absent: Judge Terry Leggert, Dave Hakanson, Jim Adams

Guests: Alison Taylor, Kathy McLoughlin, Chris Walls, Christopher Hamilton, S. Jane Patterson

Staff: Bealisa Sydlik, Maria Hinton, Sarah Davis

Introductions were made of members and guests present.

CONSENT CALENDAR

Minutes for April 7, 2005: A motion was made to adopt the minutes, with one spelling correction. The motion was seconded and carried unanimously.

POLICY CONCERNS AND DEVELOPMENTS–Old Business

SFLAC Focus Regarding Subcommittees: Stephen Adams reported that not enough SFLAC members were able to meet to effectively discuss this topic and he would prefer to report at the September meeting. The SFLAC agreed to hear the report in September.

Judicial Involvement in Encouraging Pro Bono: Judge McKnight reported that the discussion at the Circuit Judges Association meeting in April concerning this topic was brief. Dr. Zorza's presentation and materials were discussed. There was support for a continuum of ideas for facilitating cases involving self-represented attorneys. Some judges appreciated receiving affirmation of their practices, some were in support of additional liberality, and others expressed concerns about over-stepping boundaries

The discussion regarding judicial support for pro bono was more guarded, and Judge McKnight opined that she did not get the impression there would be widespread support

for efforts that had been implemented in other states to involve judges in supporting pro bono services.

Judge Selander observed that there appeared to be less resistance to judges taking a more active role in the courtroom, but concerns were expressed on the topic of facilitators getting more involved with filling out forms and other activities that they were not legally authorized to perform. Bill Howe mentioned that he just attended a AFCC (Association of Family and Conciliation Courts) Conference and in Australia, effective July of this year, judges will be summarizing rulings and giving that information to facilitators so they can complete the paperwork. Judges will be using check lists in juvenile judgments.

The subgroup of the Self-represented Legal Services Subcommittee met by phone after the conference and thought it would be beneficial to talk to Judge Rosenblum regarding the advisability of attempting to revise the judicial canons to clarify the role of judges in pro bono efforts. They will discuss with Judge Rosenblum what this process entails and gain a realistic understanding of what is involved. It was noted that Chief Justice De Muniz has agreed that the rules with respect to judicial involvement need to be clarified and supports the SFLAC's pursuit of this issue. It was suggested that the subcommittee needs to proceed with caution given the reluctance to embrace strategies implemented in other states as evidenced at the meeting of the circuit judges in April. Bealisa mentioned that the Bar Bulletin dedicates its December issue each year to pro bono matters and the Self-Represented Legal Services Subcommittee and the Bar's Pro Bono SFLAC will be working to develop an article for this December's issue.

Stephen Adams suggested that there are four issues the SFLAC needs to think about:

1. Ethics
2. Effectiveness to solve problems
3. Self-representeds
4. Pro Bono

POLICY CONCERNS AND DEVELOPMENTS–New Business:

SFLAC Task Force regarding Alternative Methods of Resolving Family Matters:

Bealisa Sydlik referred to the SFLAC Strategic Plan's Dispute Resolution Goal: To Help People Choose the Best Way to Resolve Their Disputes. One objective was to form a task force to research and make recommendations in this area. The time frame listed in the strategic plan is January 2006 thru December 2006, and to date the task force has not been established. Volunteers for this task force were requested and several members volunteered to serve: Lauren MacNeill will chair the task force, with Judge Selander, Ernie Mazorol, Stephen Adams, William Howe, Robin Selig and possibly Hugh MacIsaac serving as task force members. It was suggested they contact the OSB Family Law Section for input. The scope of the task force was not discussed at this meeting. There will be a reminder for the task force on the September agenda of the SFLAC, and a report will be presented at the December meeting.

SUBCOMMITTEE REPORTS:

Annual Family Law Conference: Budget Worksheets were distributed to SFLAC members, and Judge Selander expressed his thanks to Maria Hinton for her help. The budget worksheet detailed conference expenses and revenues, with an ending balance of \$565.29 in the positive. BeaLisa expressed her thanks to the OJD Education Department for their financial assistance in providing scholarship/training dollars to cover the registration fees for presenters as well as absorbing the cost of the audio taping. Judge Selander suggested that the conference should continue to be linked with the judicial conference. The SFLAC set the date for the next Annual Family Law Conference in April 2008.

Legislative Planning: It was suggested that this subcommittee be disbanded in place of the SFLAC responding to individual legislative issues as they arise. BeaLisa proposed e-mailing the SFLAC as legislative concepts develop, collect feedback, and then take the recommendation of the SFLAC to the SCA for action or follow-up. She could also place legislative issues that require further discussion on the agenda for the next SFLAC meeting. A discussion followed and it was decided that Judge Brownhill will contact Judge Leggett to see if she agrees that the subcommittee should be disbanded. If the need arises, a new subcommittee could be formed.

BeaLisa stated that she had received two legislative proposals from the Oregon Military Department that implicate family law: (1) revising ORS 109.056 to authorize a deployed servicemember to delegate custody or parenting time rights to a new spouse who is not the biological parent of the child; and (2) another involving extending the stay of relief to administrative, in addition to judicial, proceedings. The SFLAC voiced concerns about the first proposal, indicating it would most likely involve *Troxel* constitutional considerations. SFLAC members with additional feedback were asked to respond to BeaLisa.

BeaLisa indicated that the SCA has requested drafting of a legislative proposal that all statutory forms in the ORS Chapter 107 be removed and substituted with the phrase "form and content to be as prescribed by the State Court Administrator." The SFLAC determined it would be appropriate for it to take a stand on this proposal. Judge McKnight pointed out that the rationale for statutory forms may no longer apply; i.e., when forms weren't available through the courts, it was deemed advisable to have them in a statute. The SFLAC discussed the fact that there may be a need for forms to exist in statutes in the beginning of a new law or process, but this need decreases as time goes by. Another rationale for forms prescribed by SCA is that it will encourage consistency of relief. The legislature should be encouraged to refer responsibility for all forms drafting to a modern 21st century judicial department with appropriate staffing and funding for forms creation and maintenance; i.e. it should not be an unfunded mandate. When the legislative concept has been drafted by Legislative Counsel's Office, BeaLisa will distribute it to the SFLAC for further input and recommendation. Ramona pointed out that DHS has a number of legislative proposals that might be of interest to the SFLAC, and that Nancy Miller would most likely have copies of these.

Domestic Violence Subcommittee: Robin Selig reported that the subcommittee held one meeting since the last SFLAC meeting. The DV website was discussed and the issue of information for respondents on the website was addressed. The subcommittee was concerned about the lack of resources to develop the website and it was decided that the website would use links to existing resources for respondents. Robin will join the group working on the DV website, and the group will “google” for existing resources, bringing the revised plan back to the SFLAC. The work group will meet in late June and report at the September meeting. After a draft has been created, the subcommittee will work with Stephen Adams on suggestions and comments he may have on the draft.

The FAPA bench guide is now complete and looks great. Christopher Hamilton has been working on revising the query process for the DV Protocols and queries will be run soon on the number of Exceptional Circumstances hearings.

The confidentiality pamphlet needs to be revised. However, the SFLAC tabled this until January when the Address Confidentiality Program will be operational.

SB 424 remains a standing agenda item, monitoring forms and changes.

BeaLisa stated that currently there is no benchbook for elder abuse.

Several SFLAC members questioned whether courts have protocols for mediation where there are both a FAPA and domestic relations matter pending. There are varying practices in this regard. The policy interpretation coming out of the SCA’s office is that there is no mediation allowed in FAPA-only cases, even of parenting time or custody issues. If, however, there is a parallel domestic relations case, the court can order mediation of parenting time and custody issues through that matter, even though there is a concurrent FAPA pending.

The SFLAC asked that the DV Subcommittee research and gather existing DV Protocol Plans as required by ORS 107.755. Robin indicated she would put this on the Subcommittee’s agenda. Judge Brownhill stated that Clatsop Circuit Court has a protocol and she will send a copy of it to Robin.

Parenting Plan Outreach Workgroup: Linda Scher reported that the Parenting Plan PowerPoint presentation was presented at the Family Law Conference in April and was very well received. She and Lauren MacNeill be reviewing and revising the material for presentation at a national conference in Cape Cod in July.

The on-line parenting plan is close to completion.

A discussion ensued regarding using funds from the Family Law Account to purchase a LCD projector, the approximate cost for which would be \$1,500. These funds have been held in reserve in the past to use for conference development and support. The SFLAC considered whether or not to use the Family Law Account funds for this purpose, and discussed alternative sources of funding. Ernie Mazorol stated that he

would contact several courts to see if they would be willing to “donate” sums that could be used to purchase the projector. If successful, this option would leave the funds in the Family Law Account in tact.

BeaLisa reported that the Access to Justice for All SFLAC was asked to help locate funds to translate the Umatilla county local parenting plan into Spanish in order to better serve their community’s large Hispanic population. It was reported that other counties have also asked for translations of local parenting plans, documents and forms. The SFLAC voiced concerns that only the safety focused parenting plan guide was translated into Spanish on the OJD Website and this leaves a large statewide gap in services for families where safety is not an issue. Stephen Adams volunteered to speak with Joan Howard, the coordinator for Umatilla County Mediation Services, and obtain more information about the need for translations in that county. He also expressed concerns that the SFLAC needs to be proactive about the issue of translating forms. Other jurisdictions have even decided that it is constitutionally mandated that all forms available in English also be available in alternative languages so as to avoid claims of unequal access to justice. The cost to translate forms is approximately \$.25 per word.

Court/Child Support Agency Child Support Coordination: Judge McKnight reported that William Castor is the new Director of the Child Support Program of the DOJ and the new co-chair on the subcommittee. The subcommittee held a two hour meeting revisiting cultural differences, styles of communication, and subcommittee affiliations to help understand processes. Both Judge McKnight and BeaLisa Sydlik thought the meeting was very positive. The co-chairs would like to re-establish the education function of the subcommittee, offering CLEs for attorneys, as well as circuit court and administrative law judges. Ernie indicated these educational opportunities would be beneficial for TCAs as well.

Butch is committed to being an active member of the subcommittee, however, he is unsure if it would be beneficial to act as a SFLAC member. Ramona Foley from DHS, and other SFLAC members, thought that it would be very beneficial for him to be on the SFLAC for reasons of information sharing, updates and networking, and will encourage him to become part of the SFLAC. Butch has agreed to attend several SFLAC meetings to see if he would want to join the SFLAC.

Self-Represented Legal Services Subcommittee: This subcommittee has not met since their workshop at the Family Law Conference. Judge McKnight stated that, due to her trial schedule and judicial commitments, the continued functioning of the subcommittee will require a co-chair. The SFLAC had a discussion about whether or not it was mandated that chairs of subcommittees be SFLAC members. The SFLAC determined this may be preferred, but not necessary. Given this determination, it was suggested that existing subcommittee members be contacted to determine whether any would be interested in serving as co-chair. Allison Taylor offered to support the subcommittee in any way necessary. Judge McKnight also stated time changes were necessary to the monthly meetings, typically held during the noon hour, and that she

could continue to attend for so long as meeting were scheduled at least four months in advance and the time changed from the noon hour. BealLisa will contact subcommittee members for volunteers and nominations to be co-chair, and to establish a new meeting schedule that will start up in October.

OTHER BUSINESS:

Pilot Evaluation of Family Law Facilitation Programs – Christopher Hamilton, Court Programs Analyst with the Oregon Judicial Department, presented. The Court Programs and Services Division (CPSD) is looking to conduct an in-depth evaluation at one pilot family law facilitation site that would be used as a model for evaluations of other OJD facilitation programs in the future. Christopher solicited feedback and input from the SFLAC as to what aspects of the programs might best be evaluated.

Ramona Foley suggested that the evaluation look at the intent/scope of the programs as outlined in the Oregon Family Law Legal Services Commission report, and this suggestion was agreed upon by the SFLAC. It was also suggested that the evaluation look at a cross section of programs, from rural vs metro, to small, medium and large programs. Other questions might be:

- When customers work with the facilitation program, is there a decrease in the filing of inaccurate and incomplete forms?
- Are there fewer people experiencing dismissals?
- Are more people finding relief (finalization of cases)?
- Do self-represented litigants understand forms and where they are in the process?
- Do self-represented litigants know that this service is available?
- Is the path to final resolution efficient and timely?
- Are the use of commercially-generated forms decreasing in favor of state forms?
- What is the income level of people using the program?
- How many requests for fee deferrals does the program receive?
- What are the issues that self-represented litigants cannot get help with from the facilitation program?
- What do facilitators see as a need for additional training?
- Do facilitators feel “solid”, is there backup, is there supervision?
- Is there before and after judicial supervision?
- How well is the word that the program exists getting to your community?

Suggested counties for evaluation:

Deschutes
Tillamook

It was suggested that Christopher be placed on the September agenda for an update of the evaluation.

Christopher also reported on the Performance Measure #10. He stated that the

Performance Measure Advisory Committee (PMAC) has considered the thirteen components that identify adequate and quality Facilitation programs, and would like to have at least five core elements or standards to measure quality programs against. Ernie Mazorol will chair a work group to refine this measurement. Jim Adams, Judge McKnight, Judge Brownhill, Doug Bray, Alice Phalan and BeaLisa Sydlik will work with Ernie on these efforts. Communication will be done by e-mail and teleconference calls. Suggestions will be ready for the September SFLAC meeting.

Guest Presentation from the OSB Elder Law Section – S. Jane Patterson presented at the request of the SFLAC on the intersection of issues in the elder and family law arenas. S. Jane Patterson is the current chair of the Elder Law section of the Oregon State Bar which has approximately 500 attorneys addressing issues arising in the following subject areas:

- Elder Abuse
- Adult Disabilities
- Benefits Planning
- Power of Attorney or Health Care in dealing with future incapacities
- Estate Planning
- Guardianship/Conservatorship
- Medicaid Planning – OHP
- Elder and Financial Abuse Orders
- Commitment Proceedings
- Temporary Guardianships
- Income Cap Trusts

Information provided by Ms. Patterson included the following:

- While Alternative Dispute Resolution (ADR) is encouraged in probate case, it is used infrequently.
- Pro bono representation for senior and disabled is seriously under-represented. In cases where there are court-appointed attorneys for protective proceedings (guardianship/conservatorship), respondents are under-represented.
- There is a need for forms development for self-represented litigants in the areas of grandparent guardianships, guardianship and conservatorship.
- There are many issues that the Elder Law SFLAC struggle with, e.g., court visitors who do investigations in guardianship cases; medicare/medicaid rules and the intersect with family law proceedings

The SFLAC brain-stormed suggestions for consideration by the OSB Elder Law Section:

- The Oregon Family Institute is working to develop a model for ADR, and it would be helpful to have someone attend the next Elder Law meeting or write an article for their newsletter to share information
- Train facilitators in guardianship and conservatorship (there is little information or forms available). Model after the Family Law Facilitators

- Have the Elder Law section categorize and prioritize problems that intersect with the Oregon Judicial Department and bring to table
- Invite a SFLAC member to an Elder Law meeting to present the global picture and structure of the SFLAC. Bill Howe volunteered to share information at the meeting
- Consider developing a SELAC (State Elder Law Advisory SFLAC) and have other agencies/interested parties at the table
- Invite Bruce Goldberg, the new DHS Director to a meeting
- The Governor has appointed a task force to look at Elder issues. Make connections with that task force and work together. Ramona will check and send contact information to Bealisa for sharing

The next Executive Committee meeting of the OSB Elder Law Section is scheduled for July 14, 2006 at 2:00 p.m. at the Oregon State Bar office in Lake Oswego.

The SFLAC thanked Ms. Patterson for attending and sharing information and concerns.

The meeting was adjourned at 4:30 p.m.

FUTURE MEETING DATES:

Friday, Sept 29, 2006	12:30 p.m. - 4:30 p.m.	Multnomah County Juvenile Justice Center, Portland
Friday, Dec 1, 2006	12:30 p.m. - 4:30 p.m.	Multnomah County Juvenile Justice Center, Portland