

MINUTES
STATE FAMILY LAW ADVISORY COMMITTEE
June 5, 2009
12:30 p.m. to 4:30 p.m.

CPSD Large Conference Room
Portland, Oregon

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

Members Absent: Lauren Mac Neill, Chris Walls, Butch Castor, Jim Adams

Guest: Margaret Olney, Special Counsel to John Kroger, Janice Ashe, Erin Ruff

Staff: Maria Hinton

Welcome: After technical difficulties, the meeting came to order at 12:55 p.m.

Stephen moved that the minutes of the March 6, 2009, meeting be approved. March minutes were approved unanimously.

Qualifications and Guidelines Workgroup – *Dr. Edward Vien*

Dr. Vien reported that the work group reconvened in July 2008, and started working to revise the existing guidelines to more accurately reflect national standards. Dr. Vien expressed his appreciation to the work group and acknowledged the hard work, time and effort this work group dedicated to this project. The product reflects the desire to meet the needs of courts and service providers, and is designed to address the practical realities of rural communities and reachable, quality standards.

Dr. Vien distributed the final draft revisions of the “SFLAC Guidelines Re: Qualifications for Appointment and Training of Parenting Coordinators, Custody Evaluators and Supervised Visitation Providers, June 1, 2009” to the SFLAC for approval. On behalf of the work group, Dr. Vien requested that the SFLAC endorse this revised document and forward to the Chief Justice (CJ) and State Court Administrator (SCA) for review and approval to post on the OJD website. It was suggested that the document be placed in close proximity with the parenting time schedules, and have an abbreviated URL address for easy search capabilities. Bill Howe moved for the SFLAC to endorse this document and forward to the CJ and SCA for approval and posting on the OJD website. Motion passed unanimously. After an extended break, the work group will meet again to discuss the marketing of the document, and discuss the aspirational goals of providing services for reduced fees or no cost, where necessary.

Model Community Family Courts – Currently inactive

Parenting Plan Outreach Workgroup (PPOW) – Currently inactive

Domestic Violence Subcommittee –Robin Selig

Stalking Protective Order forms are posted on the OJD websites. The subcommittee voted to cancel the June meeting and wait until July 1, 2009, to hold their next meeting with the understanding that support from OJD is needed to continue the work of the subcommittee. Budget decisions will influence the continuation of the group.

The subcommittee has been monitoring DV related legislation, and the subcommittee will work with the Firearms Task Force on public awareness during their second year of funding. Other possible projects include an update of the Judges' Handbook on Firearms and possibly develop a DV Bench Guide. Judge Brownhill stated she has started revisions on the Firearms Handbook, but would welcome assistance from this subcommittee.

Becky Orf mentioned that the VAWA grant will provide funds for the translation of FAPA forms and Elder Abuse forms. There has been an extension granted until September 30, 2009, to submit the billings for the translations into four predominant languages in Oregon. Becky stated she is working to update the Elder Abuse forms prior to translation, and may ask the SFLAC to review the final revisions. Robin and Judge McKnight volunteered to review the revised forms. Robin stated that the elder abuse forms could possibly be reviewed by the Elder Section of the Bar. Judge Brownhill suggested contacting Steven Heinrich and Jane Patterson as members of the Elder Law Section.

Becky is working to apply for a VAWA STOP grant that would solely fund a half time domestic violence/family law attorney position within OJD. She will keep the SFLAC informed if additional grant opportunities become available.

Judge Raines brought up the issue of the court being unable to enforce a judgment for emergency monetary relief. Robin stated that the DV Subcommittee could look at this issue in the future.

Court/Child Support Agency Child Support Coordination – Margaret Olney for Butch Castor and Judge McKnight

Judge McKnight reported that the committee met twice since the March SFLAC meeting. Intersecting issues remain as follows: 1) assistance to self represented parties in calculating child support (DOJ is the likely entity to provide this assistance; however, it is acknowledged that budget issues pose a barrier to the re-development of the online calculator). 2) Confidentiality of Information required in court support orders needs to be received by CSP in a timely manner. 3) Standardized forms—development must be technologically compatible between CSP and OJD.

Margaret Olney stated that the CSP is conducting "guideline" review and has purchased new software that will allow forms to be more user friendly. Guideline changes may be implemented effective January 2010. Margaret will be requesting feedback on guideline

changes and rule updates. The CSP is looking for a new Director. They are looking for funding to revise the online calculator as they cannot use IV-D funds. Voluntary acknowledgment of paternity seems to be declining, which has an impact on child support. Emergency temporary modifications of child support are now available. Caseworkers are reporting that people are satisfied with talking on the phone rather than conducting business via paper and feedback has been positive.

The Uniform Support Affidavit relating to confidential information was discussed, and . Russ mentioned that the Uniform Support Affidavit will become the Uniform Support Declaration, but new form will require tax returns and other information to be included as attachments. Judge Raines said his original proposal was to file Uniform Support Affidavits without attachments. Information has been forwarded to the UTCR Committee, and Robin Selig will follow up with Bruce Miller.

Judge Raines reported that confidential information is attached to CSP pleadings again. Washington County puts the confidential information in sealed envelopes. Margaret Olney will follow up.

Legislative Subcommittee – Written update was submitted by Brian De Marco. Becky reported that things are moving very quickly at the legislature. The joint custody bill presented by the Dads of America organization did not make it on the summary sheet, but the bill is dead. Members commended Brian on the excellent written report.

Forms Review Subcommittee – Currently inactive
Becky reported that minor changes are being made by current staff, but there are no major changes or developments moving forward in the forms area and won't be until the budget is finalized and we know what resources are available. Judge Brownhill asked about the Brady Certificate and she will forward information regarding this form to Becky.

Self Representation Subcommittee – *Hon. Maureen McKnight*
Judge McKnight reported that the subcommittee meets monthly via teleconference call. Judge McKnight acknowledged each subcommittee member and thanked them for their dedication and hard work. Often this group is asked for their services in doing research or drafting recommendations on very short timelines, and they always meet the challenges.

The subcommittee was authorized by the SFLAC to begin discussion with the OSB regarding standardization of forms. This project was put on hold because of the budget situation and the request from the State Court Administrator to compile information regarding the possibility of charging for Facilitation Programs. This was one option that the SFLAC suggested as a means for increasing revenue for the OJD. SB 256 removes the ban on charging for these services.

The subcommittee has drafted and distributed to the SFLAC a copy of a proposal that outlines a suggested approach for Oregon to initiate a "charge" for facilitation services. This document was created as a means to potentially save the court Facilitation

Programs from elimination due to budget reductions. There was not unanimity in the subcommittee's belief that courts should be charging for this service, but the subcommittee did reach consensus. The subcommittee researched courts nationally and found that only Washington State charges for this service, and it is a county fee option, not a state fee.

Major concerns include:

- Once fees are in place, it will be extremely difficult to remove the fees for these services when the economy improves
- Access for the most needy will have another barrier
- Other states may follow if Oregon chooses to initiate a fee for facilitation services
- Varying levels of service exist currently and standard quality services should be developed if fees are to be charged for these services

The document raises the possibility of increasing the charge for forms to include the development and updating of forms that is an ongoing process. However, the SCA also needs to consider the fact that forms are available at no charge on the OJD website and only people who come to the courthouse to purchase forms would be paying for these forms (potentially people who are too poor to have their own computers).

The SFLAC discussed the suggested approach outlined in the document. OJIN data is not available that would support the premise that Facilitation Programs saves resources. The Chief Justice would be able to impose fees if SB 256 passes. However, with program and staff reductions looming in the near future, it is understood that the Chief Justice wants program cuts to be uniform across the state, so it is unclear if local Presiding Judges would have the option to maintain programs that have been designated as part of the service reduction plan. Ernie reported that the Budget Reduction Implementation Committee (BRIC) met last week and there are no final decisions yet. The Chief wants to wait until the actual budget is known and the BRIC meets again to look at equalizing cuts.

Judge McKnight requests the SFLAC endorse this document for forwarding to the SCA for further consideration.

The SFLAC suggests that the following issues be included in a cover letter or as a preamble to the document:

- standardization of quality services be developed statewide
- a judge would have authority to cancel a waiver once assets are determined
- SFLAC is concerned with the unintended consequences that could block access
- Maintaining FTE to create and update statewide forms is an essential function to assist self represented parties, especially if the facilitation programs are eliminated

Stephen stated that this proposal creates a barrier to access to justice, and asked for additional discussion. He suggested that the SFLAC might take a principled stand and state that they do not endorse charging for these services once a litigant has paid their

filing fees. After much discussion, the committee agreed that if there is a chance to prevent the elimination of the programs by initiating a fee schedule, then the committee should support the proposal. Although it will be difficult to reduce or eliminate these fees once the economic climate improves, it is believed that it would be more difficult to reinstate programs if they are eliminated.

Russ moved that the SFLAC endorse the proposal, Judge Raines seconded. SFLAC approved the motion with the suggestions outlined above. Judge McKnight will finalize the document and send to Judge Brownhill and Becky Orf for review before forwarding to the SCA.

Firearms and DV Task Force update – Hon. Paula Brownhill

The Task Force has secured Pete Helein, an expert speaker from Appleton, Wisconsin, to speak about domestic violence and firearms. A free training for law enforcement and prosecutors is scheduled for June 25, 2009, from 1:00-5:00 p.m. at the DPSST training facility in Salem. Topics will include federal firearms laws, seizure and storage, and return of firearms. All are welcome.

Discussion of SB 256 and the SFLAC's future: Judge Brownhill reported that SB 256 became known to members of the SFLAC in early May. The bill amendments would have repealed several statutes including ORS 3.405 (family courts and family court departments), 3.408, 3.412 (family court chief judge), 3.414 (one judge/one family), 3.417 (coordination of services), 3.420, 3.423, 3.425 (parent education), 3.432, 3.436 (SFLAC), 3.438 (duties of SCA), and 3.440 (family law account). It would have amended statutes providing for family law facilitation programs and family court advocate programs.

Contact was made with Nori Cross from the Office of the State Court Administrator who explained that if family court statutes were repealed, the Chief would still have authority to appoint committees and create specialized departments under ORS 1.002 and 3.225, and changes would not require legislative action. Nori stated the intent of the amendments was to give the Chief and SCA more flexibility, and it was more of a "housekeeping bill". After hearing concerns from several family law judges, Nori recommended that OJD submit new amendments to SB 256, and would send proposed changes to Judge Brownhill after they have been approved by the Chief and SCA. It is likely that parts of 3.426 will be amended and 3.438 and 3.440 will be deleted. Judge Brownhill has not seen any new amendments on the Oregon Legislature's website.

Judge Brownhill talked with Kingsley on May 14th and Kingsley stated that she does not anticipate changes to SFLAC except there could be a reduction in staff support. Maria is designated as 1/3 FTE for family law, which includes but is not limited to support for SFLAC and several of the subcommittees. Kingsley suggested that the SFLAC prioritize its work and focus on the most important projects since only limited staff support is available.

If SB 256 passes, the SFLAC will report directly to the Chief Justice rather than the Chief and the SCA. This will be consistent with other committees, and the Chief has, and always has had, authority to define the charge of the committee. After the legislative session is over and the budget is set, it was recommended that a meeting with the Chief be set to discuss future work, the committee's priorities, and the Chief's desires.

Judge Raines suggested that, for the September meeting, the committee be prepared to assume some tasks normally handled by OJD staff, e.g., appoint a secretary to take minutes, develop agendas, send notices, etc.

The September agenda should include:

- Prioritization of work (and available resources)
- Maintaining projects/work products currently in existence (forms, website, etc.)
- Parent education issues

SFLAC Liaisons:

Chris Walls sent an email in which she volunteered to serve as liaison for the 7th judicial district.

Bill Howe volunteered to serve as liaison for Grant/Harney counties.

Margaret Olney volunteered to serve as liaison for Lane County.

Marget Olney volunteered to serve as liaison for Morrow/Umatilla counties

Keith Raines volunteered to serve as liaison for Yamhill County

Judge McKnight, as liaison to Klamath County, will contact Val Paulson, TCA, to touch base regarding the Klamath LFLAC. At that time, she will also mention that the SFLAC Self-Representation Subcommittee is very interested in being a resource to the Law and Policy – Standardization of Statewide Forms Subcommittee, which Val chairs. This subcommittee was very recently reconvened and will be working on recommendations in the domestic relations area.

UTCR 2.1__ Discussion: -- Robin Selig

There are no recent updates on this topic. Finalization is expected after the legislature adjourns. Robin met with the Child Support Program and discussed revising the client safety packet that the agency uses, which may relate to the implementation of the Confidential Information Form.

Law and Policy Confidential Information Work Group Update – Robin Selig

Robin has been attending the weekly meetings. This work group has formed several sub groups:

- Redaction—Robin and Becky are on this work group
- Criminal-Robin is on this work group
- Civil
- Domestic relations-Robin and Becky will be on this work group

There is currently no group looking at juvenile. There will be very little online access to

juvenile records due to confidentiality statutes.

There have been no final products yet but with the sub group assistance, it is expected that things will move more quickly from this point forward. Judge Murphy is now Co-chair to the committee with Judge Burton.

There are draft proposals to amend UTCR 2.100 that address segregation and redaction of electronic information.

Becky Orf reported that the user matrix is developed and the committee is now working on how to associate all case types and individual documents with the user matrix. Becky will email a copy of the matrix to the SFLAC for review. Becky stated that there is no finalization to the issue of OSB attorneys having access to all domestic relations cases or to the recommendation from the SFLAC that only judgments be made available on the web.

Mediation in Probate Cases – *Ernie Mazorol and Don Cole, Mediation Coordinator*
Deschutes County started their “Mediation in Probate, Guardianship/Conservatorship” program on June 1, 2009. This is a grant funded project with the community mediation program and there are currently 15 people who completed two and one half days of training (including civil requirements and advanced guardianship training). Service providers will hold mediation sessions at their facilities and services will be scheduled within 14 days of request. Emergency requests will be scheduled in 4 days.

This new program is a work in progress and they are open to making adjustments for improvements, as necessary. The questions of appropriateness of cases will be refined as the program develops. This program is currently not supported by a SLR, but comes under ORS 3.408 and 3.417 (family court).

Guardianship of minor cases may need further exploration. Depending on the type of case filed (circuit court vs. probate court); referrals could either be referred to Deschutes County Mental Health or to Central Oregon Mediation Program.

The SFLAC requested an update of the program in six months.

Multnomah County is also starting a Probate Mediation Program. This project is working under a different model and works with their Civil Mediation Panel/Advisory Committee. Judge McKnight mentioned that she forwarded the Deschutes forms to Judge Tennyson in Multnomah and Judge Tennyson does plan to contact Deschutes County for additional information sharing.

Erin Ruff joined the meeting and stated that she was involved in both programs during the initial planning stages. She was unable to continue with the projects but wanted to [eliminate extra spacing]share some basic information. The Deschutes and Multnomah programs were developed under two different models and are different programs.

For Deschutes County – in part this program was started because the University of Oregon had many grants that they were awarding to Community Mediation Centers to meet emerging needs. Erin encouraged Community Mediation programs and the courts to work together to apply for these grants. The OJD received two grants, one for this program, and one for Coos County for Foster Parent/Foster Teen Mediation. Erin has high hopes for this model as it may prove to be the only option for expansion in this economic climate.

For Multnomah County—they have developed a “pay for service” model. Erin has expressed some concern to Judge Tennyson and her group about this model. If parties are given the option of choosing a judge for free or paying for a mediator, Erin is concerned most parties will choose the judge for free. However, she would love to be proven wrong in this and hopes the program develops successfully.

These are not the first programs in the state. Douglas County has been doing probate mediation very successfully for at least 10 years by a staff person mediator.

Closing remarks: Robin Selig and Judge McKnight gave a special thanks to Brian De Marco, Becky Orf, and Maria Hinton, in these very difficult times of uncertainty and staff shortages, for their continued support of the SFLAC and the SFLAC subcommittees.

Judge Brownhill and Maria will locate space for the September meeting.

Meeting adjourned at 4:30 p.m.

Scheduled Meetings:

Friday, September 11, 2009	12:30 p.m. - 4:30 p.m.	Law Offices of Gevurtz Menashe in Portland
Friday, December 4, 2009	12:30 p.m. - 4:30 p.m.	TBA