

Oregon Family Law: Building for the Future

Family Law Conference

May 9th and 10th 2019

Salem, OR

Presented By:

Statewide Family Law Advisory Committee

In partnership with:



Written Materials and Presentations are available on the Family Law Website:

<https://www.courts.oregon.gov/programs/family/sflac/Pages/conference.aspx>



Oregon Family Law: Building for the Future

May 9-10, 2019

Salem Convention Center

Presented by: Statewide Family Law Advisory Committee



Thursday, May 9, 2019

8:00 – 8:45	Registration Willamette Foyer – 2 nd Floor			
8:45 - 9:00	Opening and Welcome <i>Hon. Karrie McIntyre and Bryan Marsh</i> Willamette AD- Stage			
9:00 - 10:15	Keynote Speaker <i>Professor Andrew Schepard</i>			
10:15 - 10:30	Break			
Workshop Rooms	Willamette AD	Willamette B	Willamette C	Croisan BC
10:30 - 12:00	UCCJEA Full Faith and Credit Tribal Protective Orders <i>Hon. Karen Costello</i> <i>Hon. Valeri Love</i>	Eliminating Bias Against Parents with Disabilities; Legislative, Procedural and Practice Updates for Family Law and Child Welfare Communities <i>Kristen Jocums</i>	The Road To and From Third Party Custody: ORS 109.119 or Guardianship? – Modifications and Terminations <i>Mark Kramer</i>	But...someone saw this on social Media! Admissibility of Electronic Evidence <i>Hon. Bethany Flint</i> <i>Hon. Patrick Henry</i>
12:00 - 1:30	Lunch Buffet in Willamette Foyer SFLAC Wallace Carson Award presented by Chief Justice Martha Walters Willamette AD - Stage			
1:30 - 3:00	Immigration and Family Law <i>Yema Measho</i> <i>Lorena Reynolds</i>	Family Law Reform Trends- Past, Present and Future <i>Andrew Schepard</i> <i>William J. Howe</i>	Enhancing Services to Survivors: Understanding Trauma and the Dynamics of Domestic Violence, Sexual Assault and Stalking <i>Erin Greenawald</i> <i>Debra Dority</i>	Facilitator Breakout <i>Hon. Karrie McIntyre</i> <i>Colleen Carter-Cox</i> <i>Elizabeth Vaughn</i> <i>LeeAnn O'Neill</i> <i>Hannah Marchese</i> <i>Holly Rudolph</i>
3:00 - 3:15	Break			
Discussion Room	Willamette AD	Willamette B	Willamette C	Croisan BC
3:15 - 4:00	Legislative Updates Inc. Chapter 125 <i>Ryan Carty</i>	Best Practices in Parent Education <i>Linda Scher</i> <i>Judith Swinney</i> <i>Dennis Morrow</i> <i>Teala Sunderman</i>	Mediation: Data Collection Project and Best Practices <i>Lauren Mac Neill</i>	Remote Delivery of Services: Assisting Self-Represented Litigants in the Future <i>William Howe</i> <i>Colleen Carter-Cox</i> <i>Linda Hukari</i> <i>Brian Marsh</i> <i>Stephen Adams</i> <i>Jodi Harvey</i>
4:00 - 4:15	Break			
4:15 - 5:00	Plenary- ERPO and Protective Orders <i>Hon. Maureen McKnight</i> Willamette AD- Stage			
5:00 - 6:00	Networking Time Willamette Foyer – 2 nd Floor Check in at Registration table if you are interested in Dinner Reservations at a Local Restaurant			

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Oregon Family Law: Building for the Future

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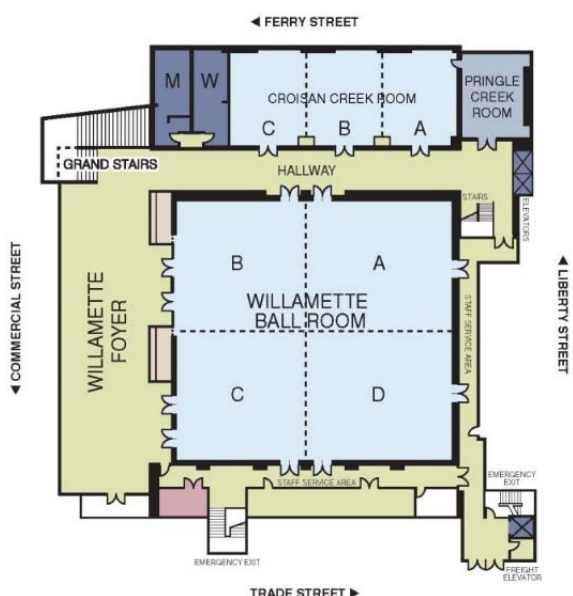
Salem Convention Center

Presented by: Statewide Family Law Advisory Committee



Friday, May 10, 2019				
7:30 - 8:15	Breakfast Willamette Foyer – 2 nd Floor			
8:15 - 8:30	Welcome <i>SFLAC Update, Hon. Karrie McIntyre, William Howe</i> Willamette BC			
8:30 – 9:30	Plenary Speaker <i>Justice Adrienne Nelson</i> Implicit Bias			
9:30 -10:30	Plenary Speaker <i>Aaron Eichenbaum</i> Changes to Tax Laws			
10:30 - 10:45	Break			
Workshop Rooms	Croisan A	Croisan B	Croisan C	Willamette A
10:45 – 12:15	ECOURT: The Life of a Case File <i>Sam Dupree</i> <i>Holly Rudolph</i> <i>Mario Ius</i> Statistics Update <i>Conor Wall</i>	Domestic Violence, Firearms, and The Future (technology/social media and DV) <i>Debra Dority</i> <i>Sarah Sabri</i>	Oregon Child Support- New and Improved! <i>Kate Cooper-Richardson</i> <i>Dawn Marquardt</i> <i>Michael Ritchey</i> <i>Claudia Garcia Groberg</i> <i>Hope Hicks</i>	Intersect of Dependency and Family Law <i>Tracey Naumes</i> <i>John A. Hamilton</i> <i>Hon. Jay McAlpin</i>
12:15 – 1:00	Boxed lunch will be available in Foyer to eat in Willamette BC or take with you on the road.			

SECOND FLOOR



SFLAC Members:

- ❖ The Honorable Karrie McIntyre, Judge, Lane County Circuit Court, Chair
- ❖ William J. Howe, III, Family Law Attorney, Vice Chair
- ❖ Stephen Adams, Attorney and Mediator
- ❖ Amy Bonkosky, Trial Court Administrator, Crook & Jefferson County Circuit Courts
- ❖ Colleen Carter-Cox, Family Court Coordinator, Lane County Circuit Court
- ❖ Ryan Carty, Family Law Attorney
- ❖ Kate Cooper Richardson, Director, Oregon Child Support Program
- ❖ Debra Dority, Family Law Support Unit Attorney, Oregon Law Center
- ❖ Dr. Adam Furchner, Clinical Psychologist and Mediator
- ❖ Jodiann Harvey, Deschutes County Mediation
- ❖ Linda Hukari, Trial Court Administrator, Benton County Circuit Court
- ❖ Laurie Hart, Family Law Attorney
- ❖ Lauren Mac Neill, Director, Clackamas County Resolution Services
- ❖ The Honorable Dawn McIntosh, Judge, Clatsop County Circuit Court
- ❖ The Honorable Maureen McKnight, Judge, Multnomah County Circuit Court
- ❖ Tina Qualls, Trial Court Administrator, Jackson County Circuit Court
- ❖ The Honorable Keith Raines, Judge, Washington County Circuit Court

Please express your thanks to the SFLAC Conference Planning Subcommittee Members:

- ❖ The Honorable Karrie McIntyre, Judge, Lane County Circuit Court, Co-Chair
- ❖ Linda Hukari, Trial Court Administrator, Benton County Circuit Court, Co-Chair
- ❖ The Honorable Keith Raines, Judge, Washington County Circuit Court
- ❖ Colleen Carter-Cox, Family Court Coordinator, Lane Circuit Court
- ❖ Debra Dority, Family Law Support Unit Attorney, Oregon Law Center
- ❖ LeeAnn O'Neill, Facilitator, Deschutes County Circuit Court
- ❖ Leola McKenzie, Director, Juvenile & Family Court Programs Division, OJD
- ❖ Bryan Marsh, Policy Analyst, Family Law Program, OJD
- ❖ Melissa Dablow, Management Assistant, Family Law Program, OJD



Please recycle this agenda.

Thursday Program

8:45 a.m. -9:00 a.m. Opening and Welcome

- ♦ *The Honorable Karrie McIntyre, Lane County Circuit Court Judge*
- ♦ *Leola McKenzie, Director of Juvenile & Family Court Programs Division, OJD*

9:00 a.m. - 10:15 a.m. Key Note

- ♦ **Professor Andrew Schepard**, Siben & Siben Distinguished Professor of Family Law, Maurice A. Deane School of Law at Hofstra University and Director of Hofstra University's the Center for Children, Families, New York.

Andrew Schepard is one of the most respected family law reform thinkers, writers and activists in our country. He graduated from Harvard Law School in 1972, authored *Children, Courts and Custody: Interdisciplinary Models for Divorcing Families*, for many years was the editor of the *Family Court Review* and has participated in and presented at innumerable law commissions and law associations, including keynote presentations at the Oregon State Bar Family Law Section.

10:15 a.m. -10:30 a.m. Break

10:30 a.m. -12:00 p.m. Workshops

UCCJEA Full Faith and Credit Tribal Protective Orders Willamette AD

- ♦ *The Honorable Valeri Love, Lane County Circuit Court Judge*
- ♦ *The Honorable Karen L. Costello, Associate Judge of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians*

In this session, participants will learn about full faith and credit as it relates to the Violence Against Women Act (VAWA) and protection orders, the current impediments to enforcement of tribal protection orders in Oregon, and the work of the Tribal Court/State Court Judicial Forum to ensure that all foreign protection orders are given full faith and credit in Oregon to ensure that the most vulnerable survivors are protected.

Eliminating Bias Against Parents with Disabilities; Legislative, Procedural and Practice Updates for Family Law and Child Welfare Communities

Willamette B

- ♦ *Kristen Jocums, J.D., Mediator and Parent Coordinator, Peaceful Family Solutions, LLC*

This session presents research regarding how parents with disabilities function, their experiences in custody and placement systems, and a Road Map for ensuring that decision makers treat parents with disabilities fairly in the processes before them. In addition, model legislation which strengthens the standard of review for cases involving children of parents with disabilities will be explored. An overview of the legislation, specific Oregon case studies and practitioner best practices shall be discussed.

Thursday Continued

10:30 a.m. –12:30 p.m. Workshops Cont.

The Road To and From Third Party Custody: ORS 109.119 or Guardianship?

– Modifications and Terminations

Willamette C

♦ *Mark Kramer, Attorney, Kramer & Associates*

A summary of the statutes and case law governing third parties who seek custody or guardianship of children in circuit court. The distinctions and overlap between seeking custody under ORS 109.119 and guardianship under Chapter 125. Recent trends and developments in the interpretation of overcoming the presumption that a legal parent acts in the best interests of a child.

But....someone saw this on social media! Admissibility of Electronic Evidence

Croisan BC

♦ *The Honorable Bethany Flint, Deschutes County Circuit Court Judge*

♦ *The Honorable Patrick Henry, Multnomah County Circuit Court Judge*

In this session, Judge Bethany Flint and Judge Patrick Henry will present on the challenges of admissibility of electronic evidence including social media in contested family law matters. The presentation will discuss foundation and the rules of evidence regarding ever emerging technology.

12:00 p.m.—1:30 p.m. Lunch

SFLAC Wallace Carson Award Presented by Chief Justice Martha Walters

1:30 p.m.—3:00 p.m. Workshops

Immigration and Family Law

Willamette AD

♦ *Yema Measha, Attorney, Law Offices of Yema Measho, LLC*

♦ *Lorena Reynolds, Attorney, The Reynolds Law Firm, PC*

An overview of the intersection between family law and immigration law including recent developments. Discussion will include: consequences that can stem from family court findings; prenuptial agreements when parties intend to file immigration petitions shortly after the marriage; representing immigrants in vulnerable marriages; self-petitions for domestic violence immigrant spouses; and how to build rapport with immigrant clients before discussing immigration issues.

Family Law Reform Trends– Past, Present and Future

Willamette B

♦ *Andrew Shepard, Siben & Siben Distinguished Professor of Family Law, Maurice A. Deane School of Law at Hofstra University and Director of Hofstra University's the Center for Children, Families, New York.*

♦ *William J. Howe III, Of Counsel, Gevurtz Menashe, P.C.*

Family law has changed dramatically in the last twenty years to promote safety, encourage family self-determination and incorporate procedures to serve the needs of self-represented litigants. What is the next wave of change going to produce? This interactive session will attempt to glimpse the future and highlight trends in family law reform in Oregon and around the World.

Thursday Continued

1:30 p.m.—3:00 p.m. Workshops Cont.

Enhancing Services to Survivors: Understanding Trauma and the Dynamics of Domestic Violence, Sexual Assault, and Stalking

Willamette C

- ♦ *Erin S. Greenawald, Attorney, Greenawald Law*
- ♦ *Debra Dority, State Support Unit Attorney, Oregon Law Center*

This session will explain the complicated dynamics and underpinnings of domestic violence, sexual assault and stalking. Attendees will also learn about the acute and long-lasting effects such traumatic experiences have on Survivors. Attendees will gain understanding of how engaging with a trauma-survivor impacts our work. Finally, the presenters will provide attendees with concrete tips and techniques on how to engage with Survivors in a trauma-sensitive manner that will enhance the Survivor's experience with the legal system, strengthen their safety plan, and provide for better case outcomes.

Facilitator Breakout

Croisan BC

- ♦ *The Honorable Karrie McIntyre, Lane County Circuit Court Judge*
- ♦ *Colleen Carter-Cox, Family Court Coordinator, Lane County Circuit Court*
- ♦ *Elizabeth Vaughn, Family Court Coordinator, Clackamas County Circuit Court*
- ♦ *Holly Rudolph, Oregon Judicial Department Forms Manager, OJD*
- ♦ *LeeAnn O'Neill, Bilingual Family Law Facilitator, Deschutes County Circuit Court*
- ♦ *Hannah Marchese, Family Law Facilitator, Jackson County Circuit Court*

Calling all Family Law Facilitators! You've sent us your questions, we have answers! This panel presentation is intended for family law facilitators and includes discussion areas of Guide & File, New Forms, Legal Advice versus Legal Information, and Trauma Informed Services.

3:00 p.m. —3:15 p.m. Break

3:15 p.m.— 4:00 p.m. Workshops

Legislative Updates Inc. Chapter 125

Willamette AD

- ♦ *Ryan Carty, Family Law Attorney*

In this session attendees will have a chance to gather information, provide input, and ask questions on proposed legislation in Family Law, including Chapter 125.

Thursday Continued

3:15 p.m.— 4:00 p.m. Workshops Cont.

Best Practices in Parent Education

Willamette B

- ♦ *Linda Scher, Family Mediator*
- ♦ *Judith Swinney, Parent Educator*
- ♦ *Dennis Morrow, Parent Educator*
- ♦ *Teala Sunderman, Family Law Coordinator Civil Dept. Lead, Union County*

What are best practices for Parent Education in Oregon? What are special challenges that Oregon's counties face in delivering Parent Education to parties throughout the state? What innovations have been created? How can we improve our parent education programs? This workshop will seek to answer these questions through presentation and group discussion.

Mediation: Data Collection Project and Best Practices

Willamette C

- ♦ *Lauren Mac Neill, Director, Clackamas County Resolution Services*

In this session, participants will learn about the court-connected domestic relations mediation data collection project and the data that has been collected from the project. Attendees will participate in a facilitated discussion of how the data collected can be used to develop statewide best practices in mediation, as well as a discussion of next steps in the data collection project.

Remote Delivery of Services: Assisting Self-Represented Litigants in the Future

Croisan BC

- ♦ *William Howe III, Of Counsel, Gevurtz Menashe*
- ♦ *Colleen Carter-Cox, Family Court Coordinator, Lane County Circuit Court*
- ♦ *Linda Hukari, Trial Court Administrator, Benton County Circuit Court*
- ♦ *Bryan Marsh, Family Law Analyst, Juvenile and Family Court Program Division, OJD*
- ♦ *Stephen Adams, Attorney and Mediator*
- ♦ *Jodiann Harvey, Deschutes County Mediation*

Discuss Oregon's efforts to provide self-representeds with remote delivery of legal information (telephone, email, text, video, etc). Summarize most effective programs of remote delivery currently operating in the U.S. as well as other innovations being considered by the Futures Committee.

4:00 p.m.— 4:15 p.m. Break

4:15 p.m.—5:00 p.m. Plenary Speaker

The Honorable Maureen McKnight, Multnomah Circuit Court Judge

Willamette AD

ERPO and Protective Orders

5:00 p.m.— 6:00 p.m. Networking Time

Friday Program

8:15 a.m.—8:30 a.m. Welcome

State Family Law Advisory Committee (SFLAC) Update

Willamette AD

- ◆ *The Honorable Karrie McIntyre, Lane County Circuit Court Judge*
- ◆ *William Howe III, Of Counsel, Gevurtz Menashe*

8:30 a.m. —9:30 a.m. Plenary Speaker

The Honorable Adrienne Nelson, Oregon Supreme Court Justice

Willamette AD

Justice Nelson, Oregon's first African American Supreme Court Justice, will share information on recognizing implicit bias in our lives and work place. Her presentation is focused on providing insight into utilizing a variety of tools to address our own implicit biases.

9:30 a.m.— 10:30 a.m. Plenary Speaker

Aaron Eichenbaum, Certified Public Accountant, Aaron M. Eichenbaum, CPA, LLC

Willamette AD

The Tax Cuts and Jobs Act: implications for spousal support, claiming children as dependents, and valuing pre-tax assets

10:30 a.m. –10:45 a.m. Break

10:45 a.m. -12:15 p.m. Workshops

Intersect of Dependency and Family Law

Willamette AD

- ◆ *Tracey Naumes, Attorney, Hamilton & Naumes, LLC*
- ◆ *John A. Hamilton, Attorney, Hamilton & Naumes, LLC*
- ◆ *The Honorable Jay McAlpin, Lane County Circuit Court Judge*

There are many family law attorneys in Oregon, but very few who are willing or able to interact effectively with DHS on behalf of their clients. This presentation gives an overview of how to effectively advocate for clients that become DHS-involved and how to assist clients who want to be resources for children involved in DHS cases. The presentation contains an overview of how dependency cases work, at what stages a non-dependency attorney can assist their client, what pit-falls to avoid, and how to communicate with DHS to resolve cases in the family law arena.

Domestic Violence, Firearms, and the Future (technology/social media and DV)

Willamette B

- ◆ *Debra Dority, Support Unit Attorney, Oregon Law Center*
- ◆ *Sarah Sabri, Domestic Violence Resource Prosecutor/St. AAG, Oregon Department of Justice*

This presentation will discuss the various state and federal laws that restrict domestic violence perpetrators from possessing firearms and ammunition. The presentation will also provide information on the connection between technology/social media and domestic violence.

Friday Continued

10:45 a.m. -12:15 p.m. Workshops Cont.

Oregon Child Support—New and Improved!

Croisan C

- ◆ *Kate Cooper-Richardson, Director , Oregon Child Support Program & Division of Child Support, DOJ*
- ◆ *Dawn M. Marquardt, Deputy Director & Policy Section Chief, Division of Child Support, DOJ*
- ◆ *Michael L. Ritchey, Sr. Assistant Attorney General & Program General Counsel, DOJ*
- ◆ *Claudia Garcia Groberg, Attorney-in-Charge, Civil Recovery, DOJ*
- ◆ *Hope Hicks, Policy Development Manager, Division of Child Support, DOJ*

There has been a great deal happening lately with the Oregon Child Support Program, administered by the Department of Justice. This session will cover changes in law, rule, and policy at the state and federal level, the significant impact from the Program's conversion to a modern child support system—and more. An interactive open Q&A portion will ensure that all session attendees take away exactly what they wanted to know!

Intersect of Dependency and Family Law

Willamette A

- ◆ *Tracey Naumes, Attorney, Hamilton & Naumes, LLC*
- ◆ *John A. Hamilton, Attorney, Hamilton & Naumes, LLC*
- ◆ *The Honorable Jay McAlpin, Lane County Circuit Court Judge*

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12:15 pm. — 1:00 p.m. Lunch

Boxed lunches will be available in foyer for guests to eat in Willamette BC or take on the road.

Please help us improve the Oregon Family Law Conference! take our survey:

<https://www.surveymonkey.com/r/EvalFLC2019>

Oregon Family Law: Building for the Future

May 9-10, 2019

Key Note Speaker



Professor Andrew Schepard

Andrew Schepard is the Siben & Siben Distinguished Professor of Family Law, Maurice A. Deane School of Law at Hofstra University. He is the founding Director of Hofstra University's Center for Children, Families and the Law. Professor Schepard is the editor emeritus of the *Family Court Review*, the research and policy journal of the Association of

Family and Conciliation Courts. He is the author of *Children, Courts and Custody: Interdisciplinary Models for Divorcing Families* (Cambridge University Press 2004). He has written many law review articles in family law and alternative dispute resolution.

He was a member of the New York State Permanent Judicial Commission on Justice for Children and a founding member of the American Bar Association's Commission on Youth at Risk. He served as a consultant to the Institute for the Advancement of the American Legal System Honoring Families Initiative for the development of its interdisciplinary Resource Center for Separating and Divorcing Families at the University of Denver. Professor Schepard is a founder of Hofstra's Child and Family Advocacy Fellowship Program, a Fellow of the Educating Tomorrow's Lawyers Project of IAALS and a founder of the Family Law Education Reform Project (FLER). He created the P.E.A.C.E. (Parent Education and Custody Effectiveness) one of the nation's first court-affiliated. education programs for separating and divorcing parents. He was the Reporter for the Drafting Committee for the *Uniform Collaborative Law Act* sponsored by the Uniform Law Commission. He also served as Reporter for a coalition of national groups that drafted the *Model Standards of Practice for Family and Divorce Mediation*. He has served as a Program Director and Faculty of the National Institute for Trial Advocacy. He has taught litigation skills and trial advocacy courses at some of the nation's leading law firms, and for many public service organizations.

Professor Schepard has received numerous awards from the American Bar Association and the Association of Family and Conciliation Courts for his work with families and children. He received the American Bar Association's Lawyer as Problem Solver Award in 2013. Professor Schepard is an elected member of the American Law Institute and a Fellow of the American Bar Foundation. Professor Schepard is a 1972 graduate of Harvard Law School, where he served as Articles Editor of the *Harvard Law Review*, served as a Law Clerk to former Chief Judge James L. Oakes of the United States Court of Appeals for the Second Circuit.

**Family Law
Reform- Past,
Present and
Future**

**Oregon
Family Law
Conference**

May 9, 2019

Andrew Schepard

Siben & Siben Distinguished
Professor of Family Law
Maurice A. Deane School of Law
at Hofstra University



What is the SFLAC Prouddest Of?

“The primary thing to be most proud of is the creation of the SFLAC itself. This statutory committee has been the breeding ground for family law reforms throughout the years, along with providing education and training for judges and staff. It has been a think tank of family law experts whose goal is to do their best to help Oregon’s families through this stressful time in their life while going through a system (the judicial system) that might seem foreign to them. “





What is the Center?

- Coordinated services
- Problem-solving oriented- facilitate self-determined solutions
- Interdisciplinary: law, psychology, social work, financial planning
- Mediation – also education, therapy, financial planning
- Two settings- campus based and community based
- Empirical evaluation built into process.
- Builds on Australian Family Relationship Centre model

If We Build It, They Might Come: Bridging the Implementation Gap Between ADR Services and Separating Parents

Co authored with:

Marsha Kline Pruett,

Associate Dean of Academic Affairs
and Maconda Brown O'Connor
Professor, Smith College School for
Social Work

Rebecca Love Kourlis,

Executive Director

Institute for the Advancement of
the American Legal System (IAALS)

Citation:

24 *HARV. NEGO. L. REV.* 25
(Fall 2018)

Self-Representation- The Committee's Prediction

The Committee “estimated that in at least 42% of the family law filings in Oregon neither side had a lawyer, although many could afford to employ counsel.”

“Assistance must be made available to those who either choose self-representation or have no alternative to make their way without a lawyer.”



IAALS Self Represented Litigant Study 2016

Annual Income

43.4 % of participants- under \$20,000;
27 % between \$20,000 and \$40,000;
15.6% between \$40,000 and \$60,000.

**Financial
Factors Key**

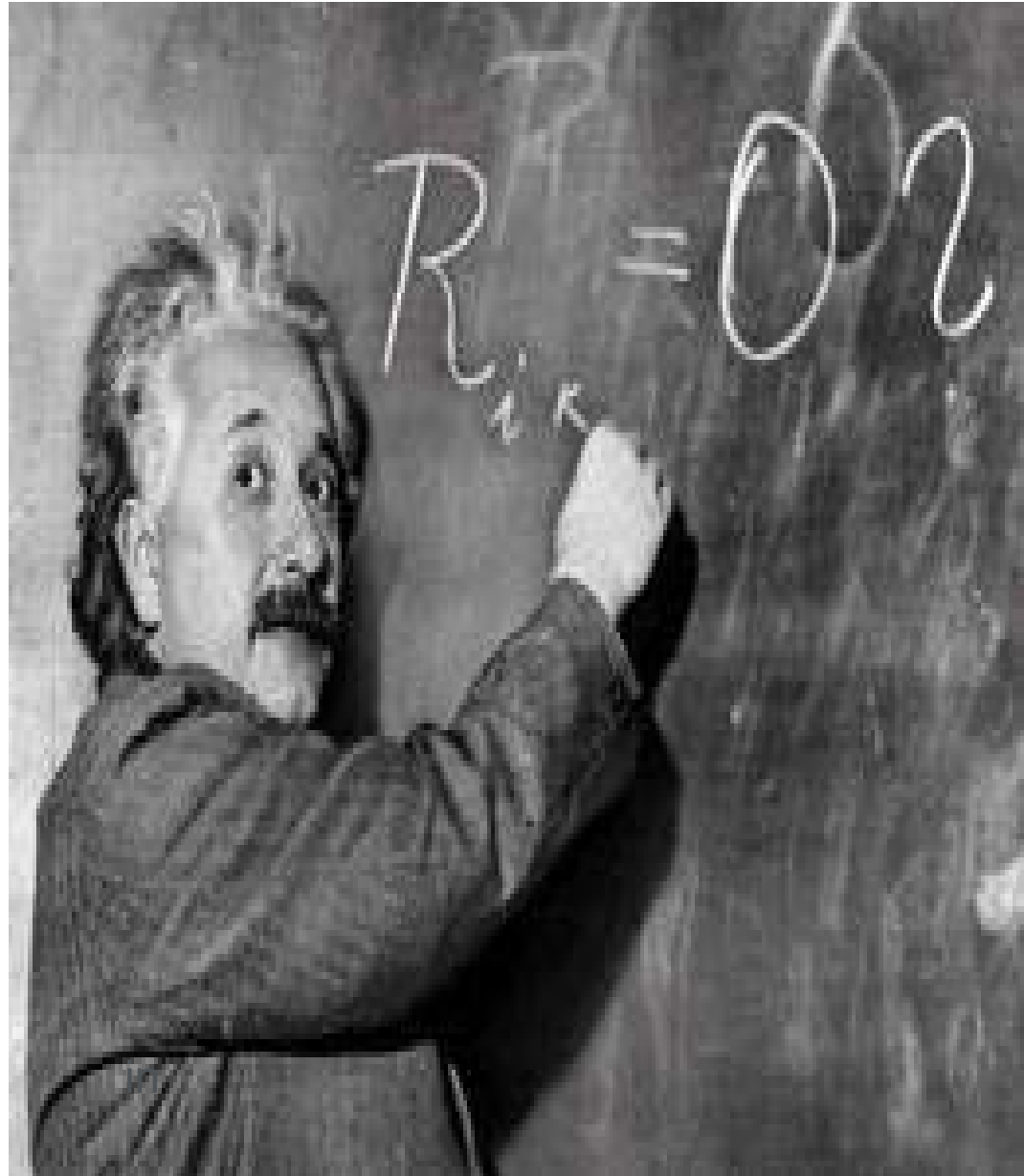
Over 90% indicated that financial issues influenced—if they did not determine entirely—their decision to self- represent

**Desire to self-
represent**

Under 25% expressed a desire to represent themselves, regardless of whether they believed they could do so adequately and regardless of financial considerations.

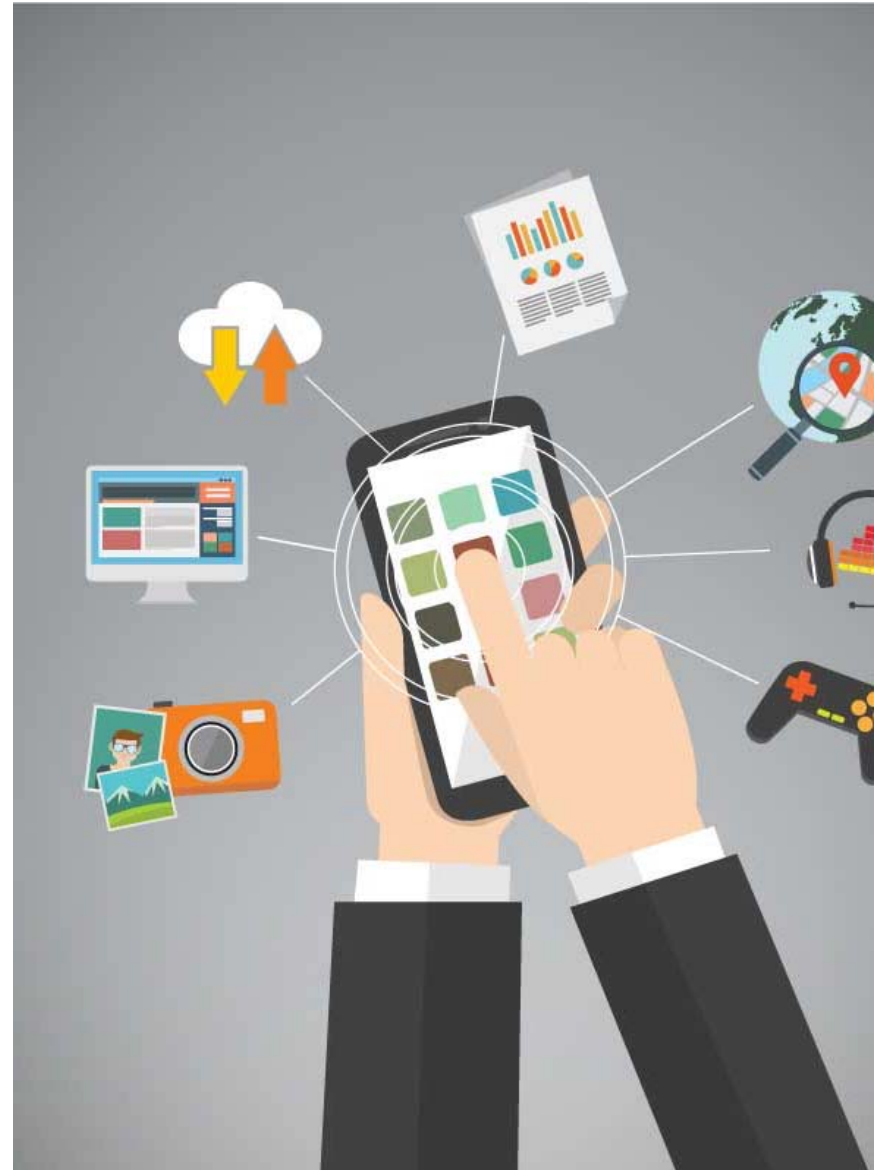
Plain Language

*“Everything Should
Be Made as Simple
as Possible, But
Not Simpler”-*
Albert Einstein



Technology- The Committee's Prediction

"Those without proficiency in technology in the new technologies will fall further and further behind. In the twenty-first century, technology will be fundamental."





“Privatizing” Family Law- The Committee’s Predications

- "Many families will be defined by more by their private agreements and common living arrangements more than traditional marriage."
- "We recognize the tension between letting individuals determine their family forms and mores and the need for the state to insist on certain conduct and define the legal effects of marriage, cohabitation and the like."
- "The growing division between rich and poor is troubling."



“Coming Together”- The Committee’s Prediction

"The Subcommittee envisions the community coming together through its institutions, governmental and private, to reestablish a sense of community , and address the concerns facing all of its members, especially the needs of adolescents, minorities and the elderly"



Effective Interventions— The Committee's Prediction

"We predict that in 20 years much more will be known about what interventions are most effective with particular families and children."

AFCC Interdisciplinary Think Tank

Assessments of ADR

“ADR processes are markedly better than litigation for separating parents and their children....”

- Mediation is desirable for families who have not attempted ADR.
- These dispute resolution options are preferred to litigation, with the exception of some situations involving family violence or when a family member has been harmed or when one parent contends that the other is substantially interfering with his or her access to their child,

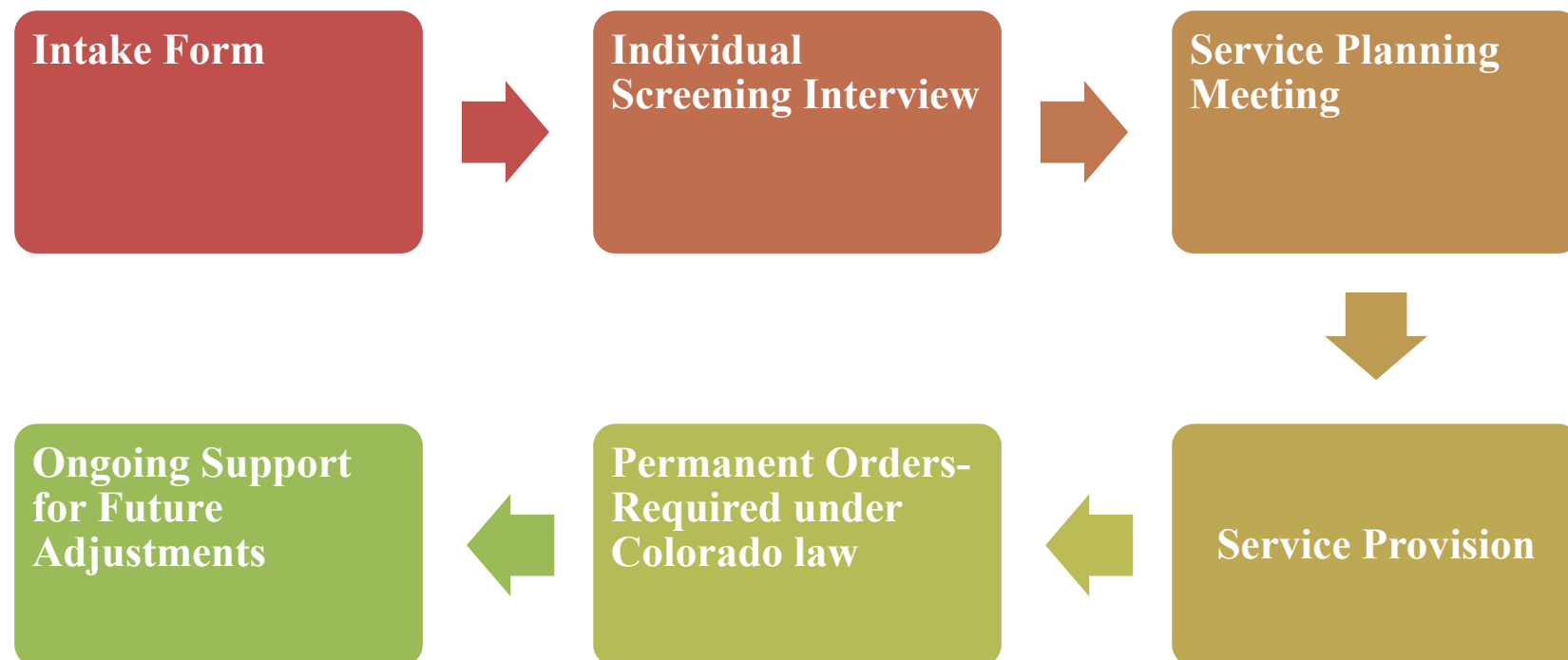


Canadian Task Force Evaluation of ADR

Parents respond positively to ADR interventions:

- they are “widely experienced as ‘user friendly’ and
- participants tend to report high rates of satisfaction.”
- evaluations of ADR processes convincingly establish that “with the appropriate support and protections, they are a safe, fair and efficient way to resolve many family disputes.
...
- [T]hey are more affordable and better adapted to the needs of most separating families.”.

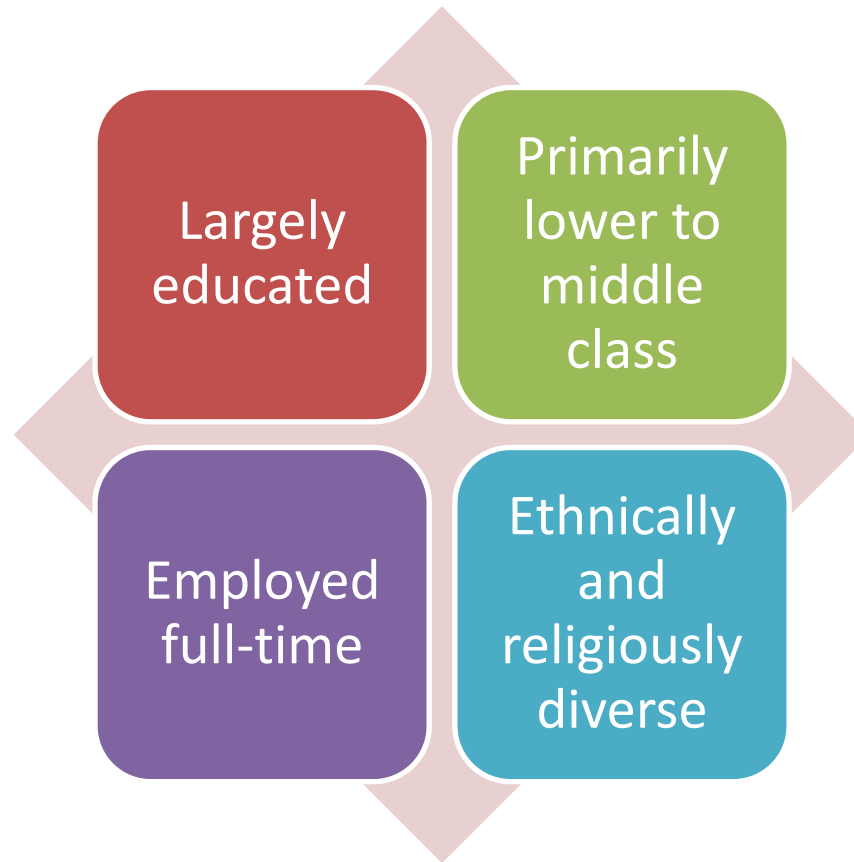




Center Process

Eligibility

<i>Both Parents Must Have...</i>	An interest in participating in the program and cooperating with the other parent on services.
	A case or potential case with Colorado court jurisdiction.
	No history of lengthy parental litigation.
<i>Neither Parent Can Have...</i>	An extensive history of mental health issues.
	A history of serious substance abuse.
	A history of domestic violence or child abuse and neglect.



Characteristics of Center client families

Comprehensive evaluation

- Multiple data sources
 - Parents
 - Students
 - Center leadership
 - Community partners
- Evaluation was over time- before, after and during service delivery
- Includes information from focus groups
- Brief summary can only hint at what rich data shows



Statistically significant improvements in family well-being

Negative Emotional States	<i>Decreases</i> in depression, anxiety, and stress levels.
Acrimony	<i>Decrease</i> in levels of acrimony between the parents.
Shared Decision-making	<i>Increased</i> ability to co-parent
Couple Communication	Improved communication skills, especially with respect to violent conflict style and collaborative conflict style.
Confidence in Co-parenting	<i>Increased</i> degree of confidence in the co-parenting relationship.
Parenting Stress	<i>Decreased</i> levels of parenting stress in terms of parental distress, parent-child dysfunction, and difficulties with children.
Appropriate Emotional Expectations	<i>Positive changes</i> in attitudes regarding appropriate emotional expectations of children.
Internalized Anxiety and Depression in Children	<i>Improved adaptive behaviors</i> in children with respect to internalizing anxiety and depression.

Parents' report of overall impact of Center interventions

	Good	Neutral	Bad
Child(ren)	81.7%	16.7%	1.7%
Self	85.2%	11.5%	3.3%
Family	86.7%	10.0%	3.3%



Judicial Leadership for Problem Solving Family Lawyers- the Committee's Prediction

"The court will lead the Bar and law schools in developing family court lawyers who create child-centered practices. At present, lawyers representing parents may cause harm to children by focusing on advocacy- not education, winning- not reduction of conflict- rights- not responsibilities, parents' needs, not child's needs and law, not other disciplines."

Law student learning at the Center

- A key component of Campus based model
- How do law students involved in the Center learn?
- What do law students learn?
 - Knowledge
 - Skills
 - Values
- Empirically validated



How do law students learn at the Center?- process

- Interdisciplinary education
- Intensive simulation based training program -includes mediation training
- Introduction to Denver divorce courts and community- speakers, tours
- Careful supervision of work
- Workshops during semester on cases in program and selected topics



What do law students learn at the Center? - knowledge



Law of divorce and parentage



Law and ethics rules of mediation



Basic mental health concepts



Basic financial planning

What do law students learn at the Center?- skills



COUNSELING



MEDIATION



DRAFTING



COLLABORATION

What do law students learn at the Center?- values

- Lawyer as problem solver and counselor
- Satisfaction of service to others
- Importance of collaboration- family law disputes require holistic solutions
- Diversity of service delivery models
- Belief that positive change in the legal system is possible



Oregon and the the Uniform Collaborative Law Act

- Earliest comment in support of a state adapting the UCLA was:

Patrick Fornan, *Adoption of the Uniform Collaborative Law Act in Oregon: The Right Time and The Right Reasons*, 13 LEWIS & CLARK L. REV. 787 (Fall 2009)

- Has been adapted by 19 states
- But not Oregon

Oregon State Bar “Futures” Task Force Report (2017)

“The legal services market has entered a period of intense disruption. Technological advances are transforming how we deliver legal services, resolve legal disputes, and engage in legal learning. Consumers of legal services... are demanding more for less and are apt to employ self-help rather than hire a professional.” (at 2)

“It will not do for Bar members to stand still or rage against the tide as the world around us evolves.” (at 2 quoting 27 2009 *OSB Task Force Report on Lawyer Advertising*)

IAALS On Line Survey of Family Lawyers (2014)

73%
disagree

**Current system adequately meets
needs of majority of litigants**

88% agree

**Less adversarial system would be
better**

95% agree

**Would support comprehensive
change even if had to change
practice**

Most important lesson learned

“[J]udicial reform is no sport for the short-winded or for lawyers who are afraid of temporary defeat... When enlisted in a good cause, never surrender, for you can never tell what morning reinforcements in flashing armor will come marching over the hilltop.” - Chief Justice Arthur T. Vanderbilt of New Jersey and noted expert on judicial administration.

Source: *Introduction* in MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION at xix (Arthur T. Vanderbilt ed., 1949)



Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Plenary Speaker

Aaron Eichenbaum, Certified Public Accountant, Aaron M. Eichenbaum, CPA, LLC

The Tax Cuts and Jobs Act: implications for spousal support, claiming children as dependents, and valuing pre-tax assets.

Aaron M. Eichenbaum is a Certified Public Accountant, managing a small accounting practice in Hillsboro, Oregon. His firm serves a diverse range of businesses and individuals as trusted advisors; doing complex tax research, planning, and preparation of tax returns for individuals, businesses, and tax-exempt organizations. Aaron's focus is primarily tax compliance, forensic accounting, and the provision of analysis and expert witness testimony in family law cases. He has been a consultant on more than three hundred family law cases and has testified at approximately seventy family law trials.

Aaron is also actively engaged in the greater Washington County community: he is a graduate of the Leadership Hillsboro program and currently serves as the treasurer of the Oregon Defense Attorney Consortium and the Hillsboro Chamber of Commerce. Professionally, he has developed and presented continuing education curriculum to the Washington County Bar Association and law firms throughout the Portland metro area.

THE TAX CUTS & JOBS ACT: IMPLICATIONS FOR SPOUSAL SUPPORT, CLAIMING CHILDREN AS DEPENDENTS, AND VALUING PRE- TAX ASSETS

AARON M. EICHENBAUM, CPA

Married Filing Joint Tax Brackets

Prior Law	2018	TCJA	2018
Taxable income	Rate	Taxable Income	Rate
\$0 – 19,050	10%	\$0 – 19,050	10%
\$19,051 – 77,400	15%	\$19,051 – 77,400	12%
\$77,401 – 156,150	25%	\$77,401 – 165,000	22%
\$156,151 – 237,950	28%	\$165,001 – 315,000	24%
\$237,951 – 424,950	33%	\$315,001 – 400,000	32%
\$424,951 – 480,050	35%	\$400,001 - \$600,000	35%
Over 480,050	39.6%	Over \$600,000	37%

Head of Household Tax Brackets

Prior Law	2018	TCJA	2018
Taxable income	Rate	Taxable Income	Rate
\$0 – 13,600	10%	\$0 – 13,600	10%
\$13,600 – 51,850	15%	\$13,601 – 51,800	12%
\$51,850 – 133,850	25%	\$51,801 – 82,500	22%
\$133,850 – 216,700	28%	\$82,501 – 157,500	24%
\$216,700 – 424,950	33%	\$157,501 – 200,000	32%
\$424,950 – 480,050	35%	\$200,001 – 500,000	35%
Over 480,050	39.6%	Over \$500,000	37%

- All dependency criteria met + >50% overnights, household & support requirements still apply!
- The TCJA did not do away with reference to IRC §152 (definition of a dependent) for the HOH, child tax credit, etc.

Single Tax Brackets

Prior Law	2018	TCJA	2018
Taxable income	Rate	Taxable Income	Rate
\$0 – 9,525	10%	\$0 – 9,525	10%
\$9,526 – 38,700	15%	\$9,526 – 38,700	12%
\$38,701 – 93,700	25%	\$38,701 – 82,500	22%
\$93,701 – 195,450	28%	\$82,501 – 157,500	24%
\$195,451 – 424,950	33%	\$157,501 – 200,000	32%
\$424,951 – 480,050	35%	\$200,001 – 500,000	35%
Over 480,050	39.6%	Over \$500,000	37%

Comparative: Single & Head of Household Tax Brackets-Post TCJA

Single	2018	HOH	2018
Taxable income	Rate	Taxable Income	Rate
\$0 – 9,525	10%	\$0 – 13,600	10%
\$9,526 – 38,700	12%	\$13,601 – 51,800	12%
\$38,701 – 82,500	22%	\$51,801 – 82,500	22%
\$82,501 – 157,500	24%	\$82,501 – 157,500	24%
\$157,501 – 200,000	32%	\$157,501 – 200,000	32%
\$200,000 – 500,000	35%	\$200,001 – 500,000	35%
Over 500,000	37%	Over \$500,000	37%

- All dependency criteria met + >50% overnights, household & support requirements still apply!
- The TCJA in IRC §2 did not do away with reference to IRC §152 (definition of a dependent) for the HOH, child tax credit, etc.

Standard Deduction and Personal Exemption

Prior Law	2018	TCJA
Single	\$6,500	\$12,000
Head of Household	\$9,550	\$18,000
Joint	\$13,000	\$24,000
Dependent	\$1,050	\$1,050
Increase: Elderly or Blind		
Single	\$1,600	\$1,600
Married (each)	\$1,300	\$1,300
Personal Exemption	\$4,150	\$0 / N/A

Increase in child tax credit and a new family tax credit

	2018 AGI Phase-out*	Maximum Credit	TCJA AGI Phase-out*	Maximum Credit
Joint Tax Return	\$110,000 – \$130,000	\$1,000	\$400,000 – \$???	\$2,000
All Others	\$75,000 – \$95,000	\$1,000	\$200,000 – \$???	\$2,000

- All credits subject to phase-out of \$50 for every \$1,000 of AGI exceeding phase-out beginning range;
- Maximum credit **per qualifying child** = \$2,000
- Refundable child tax credit increased from \$1,000 to \$1,400
- Refundable portion = 15% of earned income > \$2,500
- + **NEW \$500 non-refundable credit for non-child dependents**

Kiddie Tax Brackets

Prior Law	2018	TCJA	2018
Taxable <u>Unearned</u> income	Rate	Taxable <u>Unearned</u> Income	Rate
\$0 – 2,100	Child's Rate	\$0 – 2,550	10%
Over 2,100	Parent's Rate	\$2,550 – 9,150	24%
		\$9,150 – 12,500	35%
		Over 12,500	37%

- Gone are the days of using the parent's tax rate for (18 yrs. and younger) child's unearned income;
- Trust tax rates are now required for child's unearned income.

AMT

- Alternative Minimum Tax (enacted in 1969) has drawn in an ever-increasing number of taxpayers, due many years of the AMT exemption having not been indexed for inflation;
- The AMT is an alternative tax structure which exists in a parallel universe to the ordinary tax system. AMT Income is calculated by adding a portion of deductions (up to 100%), such as home mortgage interest, state and local income and property taxes, and net operating losses, back to taxable income to arrive at AMTI. Then, tax payers pay the higher of AMT (26% or 28% tax rate) or ordinary tax;
- Under TCJA, AMT Phase-out thresholds and exemptions are indexed for inflation until 2025.

AMT

	2018 Pre-TCJA	TCJA
Joint		
Exemption	\$86,200	\$109,400
Phase-in threshold	\$164,100	\$1,000,000
Single/HOH		
Exemption	\$70,300	\$70,300
Phase-in threshold	\$123,100	\$500,000
Married Separate		
Exemption	\$43,100	\$54,700
Phase-in threshold	\$82,050	\$500,000

Other Tax Deductions

- Alimony

- Alimony payments no longer deductible;
- The recipient will no longer have taxable income;
- Effective for divorce agreements executed after December 31, 2018;
- Effective for agreements before Dec 31, 2018 and modified after that date, **when an election to apply TCJA law is made.**

Spousal Support: \$		2,000 per month			
		DEDUCTIBLE SPOUSAL SUPPORT		NON-DEDUCTIBLE SPOUSAL SUPPORT	
	Ms. Smith	-	Mr. Smith	Ms. Smith	- Mr. Smith
Tax Filing Status	Head of Household		Head of Household	Head of Household	Head of Household
Tax Deductions	Standard		Standard	Standard	Standard
Tax Personal Exemptions	3		3	3	3
<u>Income</u>					
Wages*	80,440		204,187	80,440	204,187
Pensions & Annuities	-		16,486	-	16,486
Spousal Support	24,000		-	-	-
Total Income	104,440		220,672	80,440	220,672
<u>Above The Line Deductions</u>					
Non-taxable Annuity	-		3,133	-	3,133
Spousal Support*	-		24,000	-	-
Federal Standard Deduction	18,000		18,000	18,000	18,000
Total Deductions	18,000		45,133	18,000	21,133
Federal Net Taxable Income	86,440		175,539	62,440	199,539
Federal Income Tax	13,307		35,718	8,282	44,151
Oregon Income Tax	7,432		14,857	5,472	17,338
Social Security Taxes	4,987		7,979	4,987	7,979
Medicare Taxes	1,166		2,961	1,166	2,961
Medicare Surcharge Tax	-		38	-	38
Federal Tax Credits	(4,000)		(4,000)	(4,000)	(3,100)
Total Taxes*	22,893		57,553	15,908	69,367
Spousal Support	-		-	24,000	(24,000)
Net Yearly Cash Flow	\$ 81,547		\$ 139,119	\$ 88,532	\$ 127,305
Net Monthly Cash Flow	\$ 6,796		\$ 11,593	\$ 7,378	\$ 10,609
TOTAL:	\$18,388.89			\$17,986.47	

	Spousal Support: \$ 5,000 per month			
	DEDUCTIBLE SPOUSAL SUPPORT		NON-DEDUCTIBLE SPOUSAL SUPPORT	
	<u>Ms. Smith</u>	<u>Mr. Smith</u>	<u>Ms. Smith</u>	<u>Mr. Smith</u>
Tax Filing Status	Head of Household	Head of Household	Head of Household	Head of Household
Tax Deductions	Standard	Standard	Standard	Standard
Tax Personal Exemptions	3	3	3	3
<u>Income</u>				
Wages*	80,440	204,187	80,440	204,187
Pensions & Annuities	-	16,486	-	16,486
Spousal Support	60,000	-	-	-
Total Income	140,440	220,672	80,440	220,672
<u>Above The Line Deductions</u>				
Non-taxable Annuity	-	3,133	-	3,133
Spousal Support*	-	60,000	-	-
Federal Standard Deduction	18,000	18,000	18,000	18,000
Total Deductions	18,000	81,133	18,000	21,133
Federal Net Taxable Income	122,440	139,539	62,440	199,539
Federal Income Tax	21,947	26,051	8,282	44,151
Oregon Income Tax	10,672	11,347	5,472	17,338
Social Security Taxes	4,987	7,979	4,987	7,979
Medicare Taxes	1,166	2,961	1,166	2,961
Medicare Surcharge Tax	-	38	-	38
Federal Tax Credits	(4,000)	(4,000)	(4,000)	(3,100)
Total Taxes*	34,773	44,376	15,908	69,367
Spousal Support	-	-	60,000	(60,000)
Net Yearly Cash Flow	\$ 105,667	\$ 116,296	\$ 124,532	\$ 91,305
Net Monthly Cash Flow	\$ 8,806	\$ 9,691	\$ 10,378	\$ 7,609
TOTAL:	\$18,496.97		\$17,986.47	

Pre-Tax Assets Tax Discount

EXAMPLE 1

<u>Income (W/O IRA Distributions)</u>		<u>Federal Tax</u>	<u>Oregon Tax</u>
Interest	\$ 6,000		
Dividends	\$ 7,500		
Social Security	\$ 1,186		
Standard deduction	\$ 12,000		
Taxable Income	\$ 2,686	\$ 269	\$ 363

Income with IRA RMD (Required Minimum Distribution)

Interest	\$ 6,000		
Dividends	\$ 7,500		
Social Security	\$ 23,582		
RMD	\$ 59,799		
Standard deduction	\$ 12,000		
Taxable Income	\$ 84,881	\$ 14,661	\$ 5,286

Tax attributable to IRA Distributions	\$ 14,392	\$ 4,923
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Federal and Oregon combined tax rate on IRA Distributions	32.299%
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<u>Federal Tax Rates (Single)</u>	<u>Tax Rates</u>	<u>Oregon Tax Rates (Single)</u>	<u>Tax Rates</u>
<u>Taxable Income</u>		<u>Taxable Income</u>	
\$0 – 9,525	10%	\$0 - 3,350	5%
\$9,526 – 38,700	12%	\$3,351 - 8,700	7%
\$38,701 – 82,500	22%	\$8,701 - 125,000	9%
\$82,501 – 157,500	24%	Over \$125,000	9.9%

Pre-Tax Assets Tax Discount

EXAMPLE 2

<u>Income (W/O IRA Distributions)</u>		<u>Federal Tax</u>	<u>Oregon Tax</u>
Interest	\$ 6,000		
Dividends	\$ 7,500		
Rental	\$ 20,000		
Social Security	\$ 15,866		
Standard deduction	\$ 12,000		
Taxable Income	\$ 37,366	\$ 4,295	\$ 1,982

Income with IRA RMD (Required Minimum Distribution)

Interest	\$ 6,000		
Dividends	\$ 7,500		
Rental	\$ 20,000		
Social Security	\$ 23,582		
RMD	\$ 59,799		
Standard deduction	\$ 12,000		
Taxable Income	\$ 104,881	\$ 19,461	\$ 7,356

Tax attributable to IRA Distributions	\$ 15,166	\$ 5,374
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Federal and Oregon combined tax rate on IRA Distributions	34.348%
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<u>Federal Tax Rates (Single)</u>	<u>Tax Rates</u>	<u>Oregon Tax Rates (Single)</u>	<u>Tax Rates</u>
<u>Taxable Income</u>		<u>Taxable Income</u>	
\$0 – 9,525	10%	\$0 - 3,350	5%
\$9,526 – 38,700	12%	\$3,351 - 8,700	7%
\$38,701 – 82,500	22%	\$8,701 - 125,000	9%
\$82,501 – 157,500	24%	Over \$125,000	9.9%

Pre-Tax Assets Tax Discount

EXAMPLE 3

<u>Income (W/O IRA Distributions)</u>		<u>Federal Tax</u>	<u>Oregon Tax</u>
Interest	\$ -		
Dividends	\$ -		
Rental	\$ -		
Social Security	\$ -		
Standard deduction	\$ 12,000		
Taxable Income	\$ (12,000)	\$ -	\$ -

Income with IRA RMD (Required Minimum Distribution)

Interest	\$ -		
Dividends	\$ -		
Rental	\$ -		
Social Security	\$ 23,582		
RMD	\$ 59,799		
Standard deduction	\$ 12,000		
Taxable Income	\$ 71,381	\$ 19,461	\$ 7,356

Tax attributable to IRA Distributions	\$ 19,461	\$ 7,356
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Federal and Oregon combined tax rate on IRA Distributions	44.845%
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<u>Federal Tax Rates (Single)</u>	<u>Tax Rates</u>	<u>Oregon Tax Rates (Single)</u>	<u>Tax Rates</u>
<u>Taxable Income</u>		<u>Taxable Income</u>	
\$0 – 9,525	10%	\$0 - 3,350	5%
\$9,526 – 38,700	12%	\$3,351 - 8,700	7%
\$38,701 – 82,500	22%	\$8,701 - 125,000	9%
\$82,501 – 157,500	24%	Over \$125,000	9.9%

NEW (Up To) 20% Qualified Business Income Deduction

- Generally a deduction of 20% of qualified domestic business income from a sole proprietorship, partnership or S corporation
- The deduction reduces taxable income but not AGI
- The deduction is limited by the greater of:
 - 50% of W2 wages paid by the qualifying business or
 - 25% of W2 wages paid plus 2.5% of unadjusted basis of all qualified property
- The limitation does not apply if taxable income on the 1040 is less than \$157,500 (\$315,000 on a joint return)
- The limitation phases in as taxable income increases by \$50,000 (\$100,000 joint) over the above thresholds as follows:

20% Qualified Business Income Deduction (Continued...)

	Joint Return*	All Others*
Deduct 20% of income - No W2 limitation	\$0 – 315,000	\$0 – 157,500
W-2 limitation phased in	\$315,000 – 415,000	\$157,500 – 207,500
Deduction limited to 50% of W2	Over \$415,000	Over \$207,500

* Taxable Income

20% Qualified Business Income Deduction (Continued...)

- Specified service business
 - Fields of health, law, consulting, athletics, financial services, brokerage services, or any trade or business where principal asset is the reputation or skill of one or more employees or owners
- Specified service businesses are subject to two limitations:
 - Limited to 50% of W2 wages or 25% of W2 wages plus 2.5% of unadjusted basis of property (same as all businesses)
 - Limited as taxable income on 1040 exceeds the threshold \$157,500 (\$315,000 joint returns)

Other Business Deductions and Modifications

- Business losses for non-corporate taxpayers limited to \$500,000 joint (\$250,000 for others) in any given year: excess are treated as an NOL carryover;
- NOL carryover or carry back will be limited to 80% of taxable income;
- Losses carried forward will no longer be limited to 20 years;
- No carryback allowed after 2017:
 - Except for a one-year carryback for small business in the case of casualty or disaster losses and a two- year carryback for farmers
- Increased bonus depreciation to 100% and increase section 179 to \$1,000,000;
- Cash method of accounting allowed for businesses with gross receipts of \$25 million or less;
- Only real property is qualified for §1031 like-kind exchanges;
- Meals & entertainment deductions significantly curtailed:
 - 50% limitation for travel and employer convenience meals: no deduction for other business meals and no deduction for any entertainment.

Other Business Deductions and Modifications (Continued...)

- **New credit for employer paid family and medical leave**
 - A business credit of 12.5% of wages paid for family or medical leave if employee receives at least 50% of normal pay
 - The credit increases (to not more than 25%) if employees receive more than 50% of normal pay
 - All qualifying employees would have to receive at least two weeks of family and medical leave. Part time employees would receive a pro rata amount of time off
 - Maximum leave for calculating the credit is 12 weeks

Concluding Thoughts

- Tax rules and regulations have increased in complexity;
- Make plans to avoid Kiddie Tax;
- The Head of Household filing status is not as lucrative as in the past;
- For some, tax liabilities will increase, for others, their tax liabilities will decrease—the “tax cuts” will not be realized by some;
- AMT concern has been greatly reduced;
- For post-2018 divorces, no need to worry about alimony recapture;
- Monthly spousal support amounts will likely see decreases from historical (tax-deductible) amounts

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Plenary Speaker

The Honorable Maureen McKnight, Multnomah Circuit Court Judge
Restraining Order Ratatouille: Oregon's Protection Orders— Separately and Combined

Judge Maureen McKnight is the Chief Family Court Judge in Multnomah County, Oregon, handling family, juvenile, and criminal matters. Prior to her appointment to the bench in March 2002, she worked for Oregon's legal aid programs for over two decades. In that role she handled individual cases as well as provided statewide assistance on policy and litigation matters involving family law and later served as Director of the Multnomah County office of Legal Aid Services of Oregon. Her interest both before and after taking the bench has focused on systemic family law issues affecting low-income Oregonians, including access to justice issues, operation of the state's child support program, and the response of Oregon's communities to domestic violence. She was involved as an attorney with a wide range of legislative efforts and as a judge and attorney has authored and presented materials on legislation, the Family Abuse Prevention Act, the Violence Against Women Act, modifications, child support, evidence, and self-representation issues. She is a member of the Oregon Judicial Department's (OJD) Statewide Family Law Advisory Committee, chairing its Self-Representation Subcommittee and co-chairing its Court/Agency Child Support Subcommittee. She is also a member of OJD's Judicial Education Committee, several Oregon eCourt committees, the Multnomah County Family Violence Coordinating Council Executive Committee, and the Advisory Board for the Gateway Center for Domestic Violence Services. She is the recipient of awards for advocating improvement in Oregon's Child Support Program (2002), for Public Service to the Oregon State Bar (2000), and for Promoting Women in the Legal Profession and the Community (Oregon Women Lawyers 2000 Justice Betty Roberts Award). Judge McKnight is a 1979 graduate of the University of Oregon School of Law.

TYPES OF PROTECTIVE ORDERS AVAILABLE

Petitioner is the person wanting to be protected. The *Respondent* is the person you're getting order against.

	FAPA <i>(Family Abuse Prevention Act Order)</i> ORS 107.700	EPPDAPA <i>(Elderly Persons and Persons with Disabilities Abuse Prevention Act Order)</i> ORS 124.005	SAPO <i>(Sexual Assault Protective Order)</i> ORS 163.760	Stalking <i>(Stalking Protective Order)</i> ORS 30.866
Who may ask the court for protection?	<ul style="list-style-type: none"> Adults Minors involved in sexually intimate relationship with Respondent Minors under 18 need Guardian ad Litem 	<ul style="list-style-type: none"> Adults who are 65 years old or older Adults or Minors with a disability Minors under 18 need Guardian ad Litem 	<ul style="list-style-type: none"> Adults Minors Minors under 12 need Guardian ad Litem 	<ul style="list-style-type: none"> Adults Minors Minors under 18 need Guardian ad Litem
What is the required relationship between Petitioner and Respondent?	<ul style="list-style-type: none"> Adults related by blood, marriage (including former spouses), or adoption Adults who are/were in an intimate relationship within the past two years Adults who are unmarried parents of a minor child 	No relationship between Petitioner and Respondent required.	<ul style="list-style-type: none"> Cannot be a member of family or household Cannot have any other protective orders against the Respondent Respondent must be an adult 	Any person who knows you did not want contact, but continued to contact you anyway.
Duration of Orders:	<ul style="list-style-type: none"> Good for 1 year from date signed Can be renewed before expiration date 	<ul style="list-style-type: none"> Good for 1 year from date signed Can be renewed before expiration date 	<ul style="list-style-type: none"> Good for 1 year from date signed Can be renewed before expiration date 	<ul style="list-style-type: none"> Good for lifetime Can be vacated on respondent's motion if circumstances change

What abuse must have occurred to qualify for the order?	<ul style="list-style-type: none"> • In the last 180 days*, Respondent injured you or tried to injure you; and/or • Respondent's actions or words placed you in fear that they would cause you injury very soon; and/or • Respondent caused you to have sexual contact with them by using force or threatening to use force <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> • You are in immediate danger of further abuse by the Respondent 	<ul style="list-style-type: none"> • In the last 180 days*, Respondent caused physical abuse, neglect, harassment (including inappropriate language and sexual comments that threatened significant harm), sexual abuse, keeping/taking your property, or financial abuse <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> • You are in immediate danger of further abuse by the Respondent 	<ul style="list-style-type: none"> • In the last 180 days*, Respondent made you have sexual contact without your consent (or to which you are/were unable to consent) <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> • You are in reasonable fear of your physical safety (injury, threats, and use of physical force are not required) 	<p>Two or more unwanted contacts, in the past 2 years, that put you in fear for your or your family's physical safety.</p> <p>Contacts can include:</p> <ul style="list-style-type: none"> • physical violence • threatening messages (mail, email, in person, text, phone) • following you • spying on you • coming to your work or home
What are some things the Court can order?	<ul style="list-style-type: none"> • Custody and parenting time orders • Removal from (legally) shared home • Restrict from going certain places • Restrict ability to have firearms • Limit or restrict contact 	<ul style="list-style-type: none"> • Removal from (legally) shared home • Restrict from going certain places • Restrict ability to have firearms • Limit or restrict contact 	<ul style="list-style-type: none"> • Removal from (legally) shared home • Restrict from going certain places • Restrict ability to have firearms • Limit or restrict contact 	<ul style="list-style-type: none"> • No contact • No possession of firearms in certain family situations

*There are some exceptions. For more information speak to an advocate or go to: <http://courts.oregon.gov/OJD/OSCA/JFCPD/Pages/FLP/FAPA.aspx>

**This is a summary of the orders and not a substitute for legal advice.
Other handouts and resources have more information about each type order.
You may qualify for more than one order.**

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Workshop

Plenary Speaker

The Honorable Adrienne Nelson, Oregon Supreme Court Justice

Justice Nelson, Oregon's first African American Supreme Court Justice, will share information on recognizing implicit bias in our lives and work place. Her presentation is focused on providing insight into utilizing a variety of tools to address our own implicit biases.

Justice Adrienne Nelson was appointed to the Oregon Supreme Court on January 2, 2018, making her the first African American to sit on the state's highest court and on any appellate state court. Her election to a six-year term in November 2018 made her the first African American woman elected statewide in Oregon. In 2006, she was appointed as a trial judge on the Multnomah County Circuit Court in Portland, Oregon, making her the second African American female judge in the state of Oregon. Justice Nelson is a sought-after speaker on a variety of topics including diversity, inclusion, equity, community engagement, leadership and professional development. Throughout her career, Justice Nelson has been involved in many national, state, local, and specialty bar associations, often serving in a leadership capacity. In the Portland community, she sits on the Reed College Board of Trustees and the Oregon Community Foundation Portland Leadership Council where she chairs the Outreach to the Black Community committee. She also sits on the Girl Scouts Beyond the Bars (GSBB) Advisory Board and the Self-Enhancement, Inc. (SEI) Board of Directors both of which she formerly chaired. In addition, Justice Nelson serves as a mentor to many people. She is often recognized by a wide variety of community and professional organizations for her service and mentorship to others. Justice Nelson is a connector and encourager, helping people succeed by living their best lives.



The Lens of

Implicit Bias

By Shawn C. Marsh, Ph.D.

Consider for a moment the number of people and decisions involved in even the most common situations within our justice system. Take an adolescent who is accused of shoplifting. The store security officer first decides whether or not the youth actually shoplifted merchandise, then the store owner decides whether or not the act warrants involving the police. Law enforcement, if called, then decides whether or not to charge or even arrest the youth. Depending on that decision, detention or probation staff may become involved and make decisions around detainment or diversion. Decisions continue to accumulate as the youth moves through the system—up to and including decisions made by juvenile and family court judges.

Decision points exist from the moment of initial contact with the justice system until case resolution, and each decision point is an opportunity for dozens (if not many dozens) of people to make a choice that can have a profound effect on the life of the juvenile and his or her family. Given the impact of these decisions on children, youth, families, victims, and communities, it is in our best interest to understand factors that shape our thinking—particularly those that can lead to unintentional, but real, disparate treatment in cases before juvenile and family courts.

Social psychologists are fundamentally interested in understanding how people think, feel, and behave in the presence of others. Accordingly, social psychological research tends to focus on groups of two or more people (e.g., juries or gangs) and how people respond to social information (e.g., perceived norms and power). Many social psychologists have joined the “cognitive revolution,”

born in part from advances in neuroscience, which has refocused the science of psychology on developing a fuller understanding of how our brains process information and influence behavior. For social psychologists, this shift means exploring social cognition—or how we actually perceive and process information about others and our interactions with others. One area of research in social cognition that has gained substantial attention from social and cognitive psychologists alike is implicit bias. This phenomenon also has gained pop-culture recognition after being explored in Malcolm Gladwell’s best-selling book *Blink*. Before providing an overview of implicit bias, however, it is important to set a foundation for the discussion.

THE PROS AND CONS OF AUTOPILOT

We process a lot of information in a typical day, and not just the steady stream of phone calls, e-mails, and paperwork most of us face. For example, in one fashion or another, you are at this moment receiving information about the temperature of the room, the boldness of the typeset in this article, the hum of lights or nearby appliances, the feeling of being hungry or full, to name just a few possible sensory inputs. We are literally bombarded by stimulus and information. Imagine for a moment if you had to attend to and accurately process all of this data. Most would agree this would be a daunting or even impossible task. In fact, if we did have to attend to and fully process all of the stimulus and information we face, we likely could not function or at least not function well.

Fortunately for us, we have a (relatively) sophisticated brain. As human beings, we possess the ability to deal efficiently with the

KEY DEFINITIONS

Explicit bias is a conscious preference (positive or negative) for a social category.

Implicit bias is a preference (positive or negative) for a social category that operates outside of awareness.

Schemas are mental “maps” by which we process routine information with little or no conscious thought.

The components of bias include:

- **Stereotypes:** generalizations about the perceived “typical” characteristics of a social category (cognitive component).
- **Prejudice:** how one feels about members of a given social category (affective component).
- **Discrimination:** how one acts toward members of a given social category (behavioral component).

onslaught of stimulus and information we experience day-to-day. Based on our cumulative life experiences and understanding of how the world works, we develop schemas, or “mental maps,” that help us process information automatically. Automatic processing helps us preserve cognitive resources and is related to what is called the “primitive brain.” For example, once we master driving, we don’t spend a lot of energy thinking about how to do it—we just do it. This is possible because we have developed a schema for how to accelerate, brake, and steer that requires little or no effortful thinking. Another example is reading. When presented with groups of letters on a page, most people will automatically begin trying to process the series of letters as a word. If you see the three letters R-E-D, it is quite easy to process them as the word RED.

Sometimes, however, things don’t work so smoothly when our schemas compete or interfere with one another. If we were to present the letters R-E-D in the color green, and ask you to not read the word but state the color of the letters—you will probably experience difficulty in doing so with the same speed as just reading the word. This is an example of automaticity interference based on the Stroop Task. Basically, when faced with an incongruent task such as saying the color of a word versus reading the word (which is how we are accustomed to interpreting a string of letters), our response times are longer, we are less accurate, and it takes a lot of concentration to improve our performance. So depending on the situation or task, automaticity can be helpful or it can lead to diminished performance. This is an important point to keep in mind as we move on to the inner workings of bias.

SAMPLE STROOP TASK

Directions: From left to right, read out loud each word as quickly as you can. Pretty easy, right? Now, go back and from left to right, say out loud the color of each word as quickly as you can. Notice any difference? Most people will often say the word versus the color or take substantially more time to do the task.

RED GREEN BLUE YELLOW BLACK GREEN
BLACK RED BLUE RED YELLOW

OLD HABITS DIE HARD

Shortly after we are born we begin categorizing information. Often categories form around observables such as color, shape, and size. As infants we form attachments with our caretakers. Eventually, we develop a sense of self and the subsequent capacity to assess whether “you look like me and my caretakers” or “you don’t look like me or my caretakers.” Not far behind this rudimentary categorization process is developing associations of characteristics with social groups. Often, these groups fall along the lines of people like you (i.e., the “in-group”) and people not like you (i.e., the “out-group”). These generalized characteristics come from many different sources, including your parents, friends, and the media—and can be either positive or negative (e.g., Asians are good at math, teenagers are self-absorbed). Over time these associations strengthen and become automatic, and the seed of implicit bias is planted. Implicit bias is a preference—positive or negative—for a group based on stereotypes or attitudes we hold and that tend to develop early in life. In contrast to explicit bias, whereby we are aware of our biases toward a group, implicit bias operates outside our awareness: we don’t even know it is there.

We can think of implicit bias as a lens through which we view the world. It automatically filters how we take in and act on information. It is always present. Sometimes, if we pay attention, we can notice the results of implicit bias in ourselves. For example, most of us have had the following experience: You are in the car racing to an important meeting for which you are late. As you navigate through frustrating stop-and-go traffic, you come to a crosswalk where pedestrians have the right-of-way. Just as you approach the crosswalk—which has been clear for the half-dozen cars in front of you—a person steps out and forces you to stop suddenly. It happens that this person is “not like you,” perhaps in terms of age, body type, skin color, or gender. Suddenly you find yourself thinking (or even saying) a derogatory remark about that person—something you would typically find offensive and would never dream of saying in public. Remember, even though you don’t personally endorse the prejudiced attitude, the lens of implicit bias develops early and old habits do die hard.

GOT BIAS?

You might be wondering how we know implicit bias exists if it operates outside of awareness. Good question. We could just ask people about their biases. This approach, however, is likely to be ineffective since most people now realize it is not socially acceptable to admit to or act on prejudice. Further, since implicit bias is by definition nonconscious, people might not even be capable of reporting about its existence.

Although some researchers use physiological methods to get at implicit bias (e.g., functional magnetic resonance imaging), the most popular method involves latent response or reaction time measures. This approach is based on the idea that two pieces of information that are tightly associated in our minds should be easier to sort together. For example, for many European Americans, it is easier, based on response time, to pair a white face with a “good” word (e.g., honest) than it is for them to pair a black face to a “good” word. Further, for many European Americans, it is easier, based again on response time, to pair a black face with a “bad” word (e.g., violent) than it is for them to pair a white face with a “bad” word. Latent response time measures assess the speed with which you make these pairings. (An example of this kind of test is

IMPLICIT OR EXPLICIT BIAS? YOU BE THE JUDGE

Susan Boyle, an aspiring singer, recently appeared on a national talent show televised in the United Kingdom. Millions of people have seen the clip of her initial performance (which can be found easily by searching the Internet with her name). However, for those who have not seen her debut performance, Ms. Boyle presents as a somewhat naïve and awkward 40-something. In contrast to younger and more “hip” contestants, she appears in a conservative dress and tousled hair, gyrates unexpectedly, admits she has never been kissed, and reveals she lives alone in a small village. During her discussion with the judges, the camera pans the face of the audience and catches eyes rolling, heads shaking, muffled laughs, and even groans. Based on their body language and questions, the judges seem to share the same assessment of Ms. Boyle: her performance is going to be a train wreck. Ms. Boyle then began to sing. We won’t ruin the ending in case you have not seen the clip. (Hint: you should.) Was this implicit bias? Explicit bias? Both? You be the judge.

the Implicit Association Test (IAT) which can be found at <https://implicit.harvard.edu/implicit/> Regardless of method, the body of research on implicit bias suggests it operates not just as a function of race but also gender, age, and other categories—although not consistently or in the same manner or degree for all participants.

Recognizing that implicit bias appears to be relatively universal provides an interesting foundation for broadening discussions on issues such as minority over-representation (MOR), disproportionate minority contact (DMC), and gender or age discrimination. In essence, when we look at research on social cognitive processes such as implicit bias we understand that these processes are normal rather than pathological. This does not mean we should use them as an excuse for prejudice or discrimination. Rather, they give us insight into how we might go about avoiding the pitfalls we face when some of our information processing functions outside of our awareness.

“TRIAL” AND ERROR

As noted in the introduction, moving a case through the courts and allied systems involves a lot of decision makers and decisions. So how much attention is the role of implicit bias in decision making getting from the field? Quite a bit. (For an example of recent activities involving courts and implicit bias, see the article “Racial and Ethnic Fairness the Focus of NCSC Campaign” on page 26.) The most obvious context for discussions about implicit bias and the justice system are the issues of MOR and DMC. Few would disagree that minorities are over-represented in the justice system relative to their proportion in the general population. Substantial effort has been made to identify sources of this over-representation and enact legislation to encourage its reduction (e.g., the Juvenile Justice and Delinquency Prevention Act). Often, historical and sociological factors are presented to frame why MOR and DMC exist—and this context is absolutely critical to understanding the issue of disparate treatment and outcomes. Not until recently, however, has implicit bias and decision making been seriously explored as a potential contributor to MOR and DMC.

Although implicit bias is receiving increased attention in legal education, it is important to emphasize several key points. First,

the impact of implicit bias on issues such as MOR and DMC in the justice system is not being narrowed to imply any one person or role in the system is responsible. Rather, it is likely that implicit bias is operating at every single decision point as a person enters, moves through, and exits the system. In fact, some research suggests early biased decisions “load the pipeline” in terms of who tends to penetrate the system furthest—a condition that could strengthen certain stereotypes for later decision makers. Second, we must remember that finding associations between implicit bias and discriminatory behavior in controlled settings does not necessarily mean these associations will operate consistently in the real world (e.g., when we are motivated to monitor and change our thinking and behavior). Third, we also must remember that those who are subject to the justice system also have implicit biases coloring their responses to decision makers. The reciprocal process between actors sets the stage for a self-fulfilling prophecy that can “confirm” one’s implicit beliefs. Lastly, even if we were able to eliminate biased decision making at all points of the justice system, it still would not quickly overcome the inertia of societal

“We... have to more aggressively address disproportionate minority confinement (DMC), a phenomenon that is evident in almost every state. This means not only focusing on data and on policy changes, but at looking more closely at how implicit bias is likely affecting decision-making processes of teachers, school administrators, police, judges, probation and parole officers. There is new research on implicit bias that, if we can figure out how to effectively weave it into professional and educational training of law enforcement professionals, may actually begin to remedy some of the root causes of DMC.”

—Professor Charles Ogletree of Harvard University Law School in response to the question: “In your opinion what is the most pressing issue regarding juvenile justice today?” (*The American Bar Association, Criminal Justice Section Newsletter, Winter 2009.*) Professor Ogletree also served as the moderator for the historic Juvenile Justice Town Hall Meeting held in November 2008, two days after the election of President Barack Obama.

bias and history. Nonetheless, by acknowledging implicit bias and making efforts to limit its role in decision making in justice systems, we can begin to ensure the process is fair and equitable for all concerned.

CLEANING THE LENS...A LITTLE

How do we reduce implicit bias in our decision making when it is automatic and pervasive? There are some promising strategies for checking implicit bias including:

- **Education.** Simply being aware that implicit bias exists and that it is a normal and widespread consequence of “being human” is a good first step to help us reduce its influence on our decisions.
- **Cognitive load.** In general, cognitive load pertains to the amount and complexity of information one has to process in any given time frame. A judge hearing six truancy cases on the morning docket likely experiences a relatively low

cognitive load. In contrast, a judge hearing back-to-back complex and emotional dependency hearings all morning likely experiences a relatively high cognitive load. Under conditions of high cognitive load, it can be difficult to thoroughly and carefully analyze all the information presented. Reducing cognitive load can provide critical time to consider information and make decisions. In the context of decision making in justice systems, providing more time to process information—particularly large amounts of difficult information—is likely to result in better decisions if one is motivated.

- **High effort processing.** In contrast to low effort or “peripheral” processing that is relatively quick and dirty, high effort or “central” processing requires motivation and a concerted effort. This effort includes careful examination of the information with which you are faced and consideration of your potential thinking errors. Often these errors are rooted in heuristics (our gut instincts or “mental rules of thumb”) that reflect our “ordinary personology” – or our day-to-day understanding of how the world works. For example, many people employ heuristics around probability that lead to thinking errors when gambling (i.e., “I’m due to hit it big!”).
- **Mindfulness.** Mindfulness is a concept drawn from the cognitive behavioral therapies that encourage being in the moment, understanding your thought processes, developing awareness, and challenging thinking errors. It can be encouraged by reflecting on how and what you think, and purposefully focusing on the task at hand versus “what’s next.”
- **Exposure.** There is some evidence that exposure to people different than you can help counteract biased thinking about that group. This suggests, for example, that if you spend most of your time with male managers in your workplace, it would be good practice to spend time with female managers as well. In lieu of spending time with out-group members, research suggests that even thinking hard about out-group exemplars (those in an out-group that do not represent your stereotypical beliefs about that group) can be helpful.
- **Environment.** Cues within our environment can have subtle but pronounced influence on our thinking and behavior. For example, aggressive stimuli, such as weapons, have been associated with more aggressive actions by those exposed to the weapons. Similarly, there appears to be merit in conducting a thorough check of your workplace for stereotypical materials. For example, do your informational brochures reflect race or gender bias? Are symbols and signs reflective of a masculine stereotype? If so, these stimuli could be contributing to biased decision making.
- **Organizational review.** An honest review of roles and power structures can help illuminate inherent organizational bias. For example, are most judges in your jurisdiction male? White males? If a Latina woman was being considered for a judgeship, would she truly have the same consideration as another candidate who more closely resembles the judge you tend to envision in your mind’s eye? These types of questions, while difficult to consider at times, are critical for assessing the diversity and attitudes of your organizations. If imbalance in power is present or bias is uncovered, spending time with atypical hires or managers can help—as can hiring

“outside of the box.” Further, such exercises help encourage open and honest communication in the workplace, which can improve accountability.

- **Checklists.** Developing and employing checklists at various key decision points (e.g., detention intake) can encourage less biased decisions by providing an objective framework to assess your thinking and subsequent decisions. The methodical approach encouraged by checklists also can serve to reduce cognitive load by introducing more time into the decision-making process.
- **Debiasing.** Debiasing is a term that has been used in different ways depending on context, but in this case refers to external checks and balances. This approach assumes that implicit bias will occur, thus puts safeguards in place to “correct for” biased decisions. One oft-cited example of debiasing is affirmative action. In the justice system, it might include regular audits of decisions at various points, and ongoing monitoring of data regarding relative ratios of race, gender, and age, and other groups that experience bias.
- **Look to other fields.** Although implicit bias has some history in psychology and the law, it is important to remember that business, education, and medicine all have explored the effects of social cognition and implicit bias on organizational functioning, and we can learn much from them as we move forward in our own efforts.

THE EXPLICIT END

Evidence suggests that implicit bias exists for nearly everyone and can shape our decisions. Fortunately, if motivated to do so, it appears we have the capacity to control our biases. Although we should remember that completely eradicating bias will be difficult if not impossible, understanding how it develops and knowing that it is malleable is critical to moving toward social justice. With the right combination of strategies, we can begin to make meaningful progress toward reducing the impact of implicit bias on decisions involving the diverse populations with whom we work.

SUGGESTED READING AND RESOURCES

- Banaji, M. R., Bazerman, M. H., & Chugh, D. (December 2003). How (un)ethical are you? *Harvard Business Review*, 1-10.
- Carpenter, S. (2008). Buried prejudice. *Scientific American Mind*, 19, 32-39.
- National Center for State Courts Web site (includes links to other articles and resources on implicit bias): http://www.ncsconline.org/D_Research/ref/implicit.html/
- Project Implicit® Web site: <http://projectimplicit.net/index.php>



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White Privilege: Unpacking the Invisible Knapsack

by Peggy McIntosh

*"I was taught to see racism only in individual acts of meanness,
not in invisible systems conferring dominance on my group"*

DAILY EFFECTS OF WHITE PRIVILEGE

I decided to try to work on myself at least by identifying some of the daily effects of white privilege in my life. I have chosen those conditions that I think in my case attach somewhat more to skin-color privilege than to class, religion, ethnic status, or geographic location, though of course all these other factors are intricately intertwined. As far as I can tell, my African American coworkers, friends, and acquaintances with whom I come into daily or frequent contact in this particular time, place and time of work cannot count on most of these conditions.

1. I can if I wish arrange to be in the company of people of my race most of the time.
2. I can avoid spending time with people whom I was trained to mistrust and who have learned to mistrust my kind or me.
3. If I should need to move, I can be pretty sure of renting or purchasing housing in an area which I can afford and in which I would want to live.
4. I can be pretty sure that my neighbors in such a location will be neutral or pleasant to me.
5. I can go shopping alone most of the time, pretty well assured that I will not be followed or harassed.
6. I can turn on the television or open to the front page of the paper and see people of my race widely represented.
7. When I am told about our national heritage or about "civilization," I am shown that people of my color made it what it is.
8. I can be sure that my children will be given curricular materials that testify to the existence of their race.
9. If I want to, I can be pretty sure of finding a publisher for this piece on white privilege.
10. I can be pretty sure of having my voice heard in a group in which I am the only member of my race.
11. I can be casual about whether or not to listen to another person's voice in a group in which s/he is the only member of his/her race.
12. I can go into a music shop and count on finding the music of my race represented, into a supermarket and find the staple foods which fit with my cultural traditions, into a hairdresser's shop and find someone who can cut my hair.
13. Whether I use checks, credit cards or cash, I can count on my skin color not to work against the appearance of financial reliability.
14. I can arrange to protect my children most of the time from people who might not like them.
15. I do not have to educate my children to be aware of systemic racism for their own daily physical protection.
16. I can be pretty sure that my children's teachers and employers will tolerate them if they fit school and workplace norms; my chief worries about them do not concern others' attitudes toward their race.
17. I can talk with my mouth full and not have people put this down to my color.
18. I can swear, or dress in second hand clothes, or not answer letters, without having people attribute these choices to the bad morals, the poverty or the illiteracy of my race.
19. I can speak in public to a powerful male group without putting my race on trial.
20. I can do well in a challenging situation without being called a credit to my race.
21. I am never asked to speak for all the people of my racial group.

Peggy McIntosh is associate director of the Wellesley Collage Center for Research on Women. This essay is excerpted from Working Paper 189. "White Privilege and Male Privilege: A Personal Account of Coming To See Correspondences through Work in Women's Studies" (1988), by Peggy McIntosh; available for \$4.00 from the Wellesley College Center for Research on Women, Wellesley MA 02181. The working paper contains a longer list of privileges. This excerpted essay is reprinted from the Winter 1990 issue of Independent School.

22. I can remain oblivious of the language and customs of persons of color who constitute the world's majority without feeling in my culture any penalty for such oblivion.

23. I can criticize our government and talk about how much I fear its policies and behavior without being seen as a cultural outsider.

24. I can be pretty sure that if I ask to talk to the "person in charge", I will be facing a person of my race.

25. If a traffic cop pulls me over or if the IRS audits my tax return, I can be sure I haven't been singled out because of my race.

26. I can easily buy posters, post-cards, picture books, greeting cards, dolls, toys and children's magazines featuring people of my race.

27. I can go home from most meetings of organizations I belong to feeling somewhat tied in, rather than isolated, out-of-place, outnumbered, unheard, held at a distance or feared.

28. I can be pretty sure that an argument with a colleague of another race is more likely to jeopardize her/his chances for advancement than to jeopardize mine.

29. I can be pretty sure that if I argue for the promotion of a person of another race, or a program centering on race, this is not likely to cost me heavily within my present setting, even if my colleagues disagree with me.

30. If I declare there is a racial issue at hand, or there isn't a racial issue at hand, my race will lend me more credibility for either position than a person of color will have.

31. I can choose to ignore developments in minority writing and minority activist programs, or disparage them, or learn from them, but in any case, I can find ways to be more or less protected from negative consequences of any of these choices.

32. My culture gives me little fear about ignoring the perspectives and powers of people of other races.

33. I am not made acutely aware that my shape, bearing or body odor will be taken as a reflection on my race.

34. I can worry about racism without being seen as self-interested or self-seeking.

35. I can take a job with an affirmative action employer without having my co-workers on the job suspect that I got it because of my race.

36. If my day, week or year is going badly, I need not ask of each negative episode or situation whether it had racial overtones.

37. I can be pretty sure of finding people who would be willing to talk with me and advise me about my next steps, professionally.

38. I can think over many options, social, political, imaginative or professional, without asking whether a person of my race would be accepted or allowed to do what I want to do.

39. I can be late to a meeting without having the lateness reflect on my race.

40. I can choose public accommodation without fearing that people of my race cannot get in or will be mistreated in the places I have chosen.

41. I can be sure that if I need legal or medical help, my race will not work against me.

42. I can arrange my activities so that I will never have to experience feelings of rejection owing to my race.

43. If I have low credibility as a leader I can be sure that my race is not the problem.

44. I can easily find academic courses and institutions which give attention only to people of my race.

45. I can expect figurative language and imagery in all of the arts to testify to experiences of my race.

46. I can choose blemish cover or bandages in "flesh" color and have them more or less match my skin.

47. I can travel alone or with my spouse without expecting embarrassment or hostility in those who deal with us.

48. I have no difficulty finding neighborhoods where people approve of our household.

49. My children are given texts and classes which implicitly support our kind of family unit and do not turn them against my choice of domestic partnership.

50. I will feel welcomed and "normal" in the usual walks of public life, institutional and social.



ABA Diversity and Inclusion 360 Commission Toolkit Introduction

Dear User,

The information provided in this Toolkit is designed to help you recognize some of the biases that we all have, including, specifically, the implicit biases of judges, prosecutors, and public defenders. The goals of this toolkit are to:

1. Explain the social science term *implicit bias*;
2. Provide some examples of where implicit biases live and thrive;
3. Explain how they exist;
4. Raise consciousness about the power of these unknown “mind bugs,” as some have called them, and their ability to negatively impact decision-making;
5. Help you identify some of your own implicit biases;
6. Examine how implicit biases might show up in the performance of your job;
7. Provide some tools to help you catch and correct snap decision-making that may be linked to harmful implicit biases; and
8. Provide you with the knowledge that will allow you to help others catch decision-making that might be based on implicit biases.

We all have biases. Every one of us. This is not a finger-pointing expedition. Rather, we are sharing with you the evidence of this science, offering strategies for you to find the implicit biases hidden within you to help you reduce their harmful effects. As you learn more about how these biases work in society and in your life, you will not only become more mindful and deliberate in your decision-making but also be able to help others in the profession with whom you interact regularly: court personnel, including law clerks, officers of the court, other lawyers, parties to litigation, witnesses, and jurors.

Implicit biases are unwitting and unconscious cognitions that include stereotypes, beliefs, attitudes, intuitions, gut feelings, and related intangibles that we categorize in our brains—without conscious effort—every fraction of a second.¹ For instance, if we think that a particular category of human beings is frail—the IAT (Implicit Association Test) indicates that many of us categorize the elderly in this way²—we will not raise our guard around them. That is a stereotype in action. If we identify someone as having graduated from our beloved alma mater, we will feel more at ease—that is an attitude in action.

Your ever-efficient brain automatically organizes all of the information it receives and places the information into cognitive boxes, shorthands, or schemas, if you will. A more colloquial way to think of a schema is the aforementioned “stereotype,” though the two terms are not entirely interchangeable. Consider some of the data collected about what many people think when they see an Asian male. The data shows that many people believe Asians and Asian-Americans are extremely smart, excellent students, excellent in mathematics, and pretty good at some martial art; play, *really well*, some musical instrument; and are also really polite, kind, and shy—in other words, the model minority.³ These labels have

1.) JERRY KANG, NAT'L CTR. FOR STATE COURTS, IMPLICIT BIAS: A PRIMER FOR COURTS 1 (Aug. 2009), available at <http://jerrykang.net/research/2009-implicit-bias-primer-for-courts/>.

2.) You will learn much, if you have not already, by taking an “implicit association test,” or “IAT” as it is commonly known. The IAT is explained in other parts of your Toolkit. One of the IATs deals with how people implicitly view the elderly. The fragile and the elderly are always paired together. For more about this result in particular or the IAT generally, visit <https://implicit.harvard.edu/implicit/>.

3.) <https://www.bing.com/videos/search?q=jerry+kang+ted+talk+view=detail&mid=C199BFAA2157E6F0C7FBC199BFAA2157E6F0C7FB&FORM=VIRE>; see also Bernadette Lim, “Model Minority” Seems Like a Compliment, but It Does Great Harm, N.Y. TIMES (Oct. 16, 2015), <http://www.nytimes.com/roomfordebate/2015/10/16/the-effects-of-seeing-asian-americans-as-a-model-minority/model-minority-seems-like-a-compliment-but-it-does-great-harm>.

implicit origins. Based on information that we are fed in society through television, movies, the media, work, and social exposures, our mind quickly creates schemas and puts these associations into one box. These social schemas form based on everything that we've ever consciously and unconsciously seen and heard. So when we see an Asian male, we immediately think of many of the characteristics and adjectives referenced above even though we do not know *that* individual. These judgments, assumptions, and attitudes require no contemplative, deliberate thought. It just happens.

Social scientists categorize our dual ways of thinking into two systems: System 1 and System 2. System 1 is the unconscious mode, which helps us make snap judgments and is where our schemas live. System 2 is our deliberative mind, i.e., the conscious mode that is active in explicit biases. The focus of this Toolkit is to get you more conscious of System 1, that place where, as it turns out, 90 percent of your mind operates.

In a similar vein, we also must think about coded words and microaggressions. Take coded language, for example. It is not uncommon for women to be referred to as aggressive or bossy, characteristics viewed positively with male employees but considered negatively with female employees.⁴ Is the woman "opinionated" or "sassy"? Why? And why are men not ever similarly categorized?⁵ Consider some race-related terms and words. *Inner city* and *urban education* are terms most quickly associated with predominantly black, brown, and poor areas.⁶ *Thugs* is a word almost exclusively used in connection with black men.⁷

Microaggression is another type of behavior the ABA is hopeful that this Toolkit will help reduce and ideally eliminate. Microaggressions are "commonplace daily indignities, whether intentional or unintentional, that communicate racial slights and insults towards [minorities]."⁸ Studies have shown that the recipients of microaggressions experience greater degrees of loneliness, anger, depression, and anxiety.⁹ There are many examples of microaggressions in daily life, some of which include assuming that a black student in an elite school is there because of affirmative action, confusing black attorneys for court staff, telling an LGBT person that s/he does not "look like" an LGBT person, telling a black person that s/he is "articulate," touching someone else's hair without permission, asking people of color where they are from, and assuming that all Asian-Americans are Chinese and/or speak an Asian language.¹⁰ An attempt to be aware of microaggressions and taking a thoughtful approach to language when speaking with minority groups are part of this process of consciousness raising, education, and correction.

This program is designed to help with all of these areas. It includes a PowerPoint presentation that focuses on the aforementioned goals. It includes a video, too—just a short 10 to 12 minutes, designed to allow you to hear from experts and others who perform the very same role that you do in the judicial system. Implicit biases are analyzed in the video; and others, whether judge, prosecutor, or public defender, share their own implicit biases and strategies for how they work to be continually mindful of them in order to interrupt them. Finally, this Toolkit contains a comprehensive bibliography and resource list, including a large category of books, articles, and websites that focus on implicit bias generally for those who want to learn more about this fascinating social science; material specifically addressed to judges; material specifically addressed to prosecutors; and material specifically addressed to defenders.

Whether you are a judge, a prosecutor, or a defender, we hope that you find this Toolkit useful. This is fascinating yet challenging work. It is not rocket science, but because biases are in our DNA, it will require great determination and conscious effort to catch assumptions that are made and applied automatically. The Toolkit will reveal the benefits of deliberation, i.e., slowing down to take a few extra moments to focus on the person in front of you before making decisions that will or might affect that person.

We are confident that you will not only learn about that stranger that lives within you but also actually enjoy the materials contained herein and this journey.

Thank you



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8.) *Microaggressions: Be Careful What You Say*, NATIONAL PUBLIC RADIO (Apr. 4, 2014, 10:23AM), available at <http://www.npr.org/2014/04/03/298736678/microaggressions-be-careful-what-you-say>.

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10.) See Tanzina Vega, *Students See Many Slights as Racial "Microaggressions,"* N.Y. TIMES (Mar. 21, 2014), <http://www.nytimes.com/2014/03/22/us/as-diversity-increases-slights-get-subtler-but-still-sting.html>; Heben Nigatu, *21 Racial Microaggressions You Hear on a Daily Basis*, BUZZFEED (Dec. 9, 2013, 10:27AM), <http://www.buzzfeed.com/hnigatu/racial-microaggressions-you-hear-on-a-daily-basis#.ouAPDQo8L>.

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Oregon Family Law: Building for the Future

May 9-10, 2019

Workshop

Best Practices in Parent Education

What are best practices for Parent Education in Oregon? What are special challenges that Oregon's counties face in delivering Parent Education to parties throughout the state? What innovations have been created? How can we improve our parent education programs? This workshop will seek to answer these questions through presentation and group discussion.

Speakers

- ♦ *Linda Scher, Family Mediator*
- ♦ *Judith Swinney, Parent Educator*
- ♦ *Dennis Morrow, Parent Educator*
- ♦ *Teala Sunderman, Family Law Coordinator Civil Dept. Lead, Union County*

Linda Scher has maintained a private practice in Portland offering mediation services on all aspects of family issues since 1990. She received her J.D. from the University of Washington. Linda was a member of the State Family Law Advisory Committee for 12 years, chaired the Parenting Plan Workgroup and serves on the Parental Involvement Outreach Subcommittee. She is a member of the Association for Family and Conciliation Courts (national and local chapter) and a member and Past President of the Oregon Mediation Association. Linda frequently serves as a presenter on current family mediation issues and is a regular mediation role play coach and assistant trainer for public and private training programs in Oregon.

Judith Swinney, J.D., is a trainer in the court-connected parenting classes in Multnomah and Clackamas Counties since 1997, and serves as an Adoption and Guardianship mediator with the Oregon Department of Human Services. A parent educator and parenting time supervisor in the Portland area, Judith facilitates the Parenting Beyond Conflict class for high-conflict parents. She sits on the SFLAC Parental Involvement and Outreach Sub-Committee and is a member of the Multnomah County LFLAC Steering Committee. Judith is a board member of the Oregon Association of Family and Conciliation Courts.

Dennis Morrow, M.A.Ed., MBA has been the Executive Director of Janus Youth Programs, Inc. since 1980. The agency provides a wide array of services to high-risk adolescents and young adults. Dennis is also a management consultant working with both nonprofit and for-profit businesses, and he serves as an Adjunct Assistant Professor at Portland State University (Public Administration) and an Instructor at Portland Community College (Addictions Counselor Education). Dennis has facilitated Parent Education classes for Multnomah and Clackamas Counties for over 20 years reaching over 20,000 parents going through separation or divorce. He has also taken an active role in curriculum development and provides orientation for all new parent educators.

Teala Sunderman has served families and children within the legal profession for nearly 20 years. She worked for many years as a family law paralegal before becoming the Family Law Coordinator for Union County Circuit Court in 2013. Teala Sunderman has a B.S. Degree in Sociology and Public Health from Oregon State University. She is a fully trained mediator and has served as a court-connected mediator for both small claims and domestic relations matters. Teala has volunteered as a Court-Appointed Special Advocate ("CASA") and has served on the board of the Eastern Oregon Mediation Center. She currently serves on the Union County Family Law Advisory Committee.

BEST PRACTICES IN PARENT EDUCATION

Thursday, May 9th at 3:15 – 4:00 pm

Presentation Outline

Introductions

Review of ORS 3.425

Adult Learning Principles and Applications to Parent Education

Special Challenges in Rural Areas

SFLAC Parent Education Report highlights

Discussion: “What does your county need by way of support to best educate your parents?”

End

Index to Handouts

ORS 3.425

Adult Learning Outline

Union County Parent Ed excerpts

[Parent Education: What Works Best? \(SFLAC report 3/2011\)](#)

[Oregon Parent Education Index](#)

Survey

3.425 Family law education programs. (1) The family court department or, if there is no family court department, the presiding judge or designee of each circuit court may establish an education program designed to inform parents about the impact of family restructuring on children when the parent is a named party in any of the following proceedings:

- (a) An annulment or dissolution of marriage action.
- (b) A legal separation action.
- (c) A petition to establish custody or parenting time.
- (d) Post-judgment litigation involving custody or parenting time.

(2) An education program established under subsection (1) of this section must include, but need not be limited to, information about:

- (a) The emotional impact of a dissolution of marriage or a separation on children at different developmental stages.
- (b) Parenting during and after a dissolution of marriage or a separation.
- (c) Custody, parenting time and shared parenting plans.
- (d) The effect on children of parental conduct including, but not limited to, long distance parenting.
- (e) Mediation and conflict resolution.

(3) The family court department or, if there is no family court department, the presiding judge or designee of each circuit court may establish an education program designed to provide information about dissolution law and legal procedures, mediation and other dispute resolution alternatives to persons seeking to annul or dissolve a marriage or to separate from each other. The program must include, but need not be limited to, information about:

- (a) Shared parenting plans.
- (b) Division of marital property.
- (c) Spousal and child support.
- (d) Court procedures and time requirements.
- (e) Litigation, mediation and conflict resolution.
- (f) The role of attorneys in mediation.

(4) The court may order the parties in any action listed in subsection (1) of this section to participate in education programs described in this section unless:

(a) Subject to the approval of the court, the parties agree not to participate;

(b) On motion of either party or on its own motion, the court determines that participation is unnecessary; or

(c) With prior approval of the court, the parties select and participate in comparable education programs.

(5) The court may not require both parties to attend an education program established under this section at the same time.

(6)(a) The family court department or, if there is no family court department, the presiding judge or designee of each circuit court shall designate the program providers for the education programs.

(b) A program provider may charge a person a reasonable fee to attend education programs. A program provider may not exclude a person from attending education programs due to an inability to pay the fee if the court has indicated that the person is indigent or otherwise unable to pay the fee.

(c) A program provider shall issue a certificate of completion to a participant when the participant has satisfactorily completed the education programs. A certificate of completion must be filed with the court prior to the entry of the judgment in the action.

[1995 c.800 §10(1),(2),(3); 1997 c.249 §2; 1997 c.707 §4; 1999 c.59 §3; 2003 c.576 §271]

Effective Parent Education: Adult Learning...For Adults

I. Readiness Test

II. What we know about effective Parent Education

A. What does not work

1. Reading Power Points
2. Lecturing
3. Telling
4. “Therapizing”

B. Adult Brains

1. Hard to learn new things
2. Harder under stress
3. 3-hour class = 2-3 new concepts

III. Building Effective Parent Ed Model

A. How are participants feeling when they walk in?

1. Angry
2. Scared
3. Overwhelmed
4. Ashamed
5. Guilty

B. How do we want them to leave?

1. “Thank you”
2. “Better than I thought”
3. “I learned _____ about how to best support my kids”

C. Elements of effective Parent Ed

1. De-shaming
2. Keep it brief
3. Personalize
4. Humor
5. Interaction time
6. Role Play
7. Keep focus on kids

VI. Does it work?

- A. Written Feedback: Use it!
- B. What we hope to hear about presenters
 - 1. Entertaining
 - 2. Knowledgeable
 - 3. Great Presenters/Team
 - 4. Appreciate Humor
 - 5. Appreciate personal stories
- C. What we hope to hear about experience
 - 1. Exceeded my expectation
 - 2. Wish I had this sooner
 - 3. Should be required before you have a child

V. Does Not happen by accident

- A. Curriculum consciously designed
- B. Screening of potential trainers
- C. Pre-Training Orientation
- D. Mentoring
- E. Patience – It takes time

VI. Is it worth it?

- A. 20,000 parents attended
- B. 30,000 kids impacted
- C. Even if 10% learn something helpful....

A KID'S BILL OF RIGHTS

- * Not to have to choose between my parents-even if I want to.
- * To love both of you all the time wherever I am.
- * To be free of hearing bad things about either of you from the other-true or not.
- * To not hearing you arguing.
- * Not to be your messenger to the other.



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- ✗ To have a private relationship with each of you.
- ✗ Not to keep secrets from either parent.
- ✗ Access to each of you-face to face as often as possible.
- ✗ To be safe and supervised with each of you.
- ✗ To know both of my extended families.
- ✗ To have my medical and other needs attended to.
- ✗ To have both of you follow, and be as flexible as possible, with the parenting plan.
- ✗ To have each of you support the reasonable parenting of the other, and to have as much

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The Parent's Pledge

1. I will always love you.
2. I will never end my relationship with you.
3. I will regard and treat you as a growing and developing human being, and not as a piece of property and not as a award that I have "won."
4. I will do everything I can do to protect you from emotional and physical harm.
5. I will make decisions about you based on your best interests, and not on events of the past nor my own needs.

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Parent's Pledge *continued:*

6. Through my ongoing presence, my financial support, and my active involvement in your life, I will facilitate your healthy growth and development.
7. In my actions and words, I will treat the members of your family with understanding, compassion, and respect.
8. I will support your right to develop and maintain loving, respectful relationships with the people who are important to you.
9. I will help you develop your ability to deal with whatever losses may sadden you in the course of your life.

Signed by: _____ Date: _____



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Collaborative Process of a Domestic Relations Case



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Legal Process of a Domestic Relations Case – Minor Children



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Factors Considered in Determining Custody of a Minor Child

- The emotional ties between the child and other family members.
- The interest of the parents in and attitude toward the child.
- The desirability of continuing an existing relationship.
- The abuse of one parent by the other.
- The preference for the primary caregiver of the child, if the caregiver deemed fit by the court.
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child

Factors Considered in Determining Custody of a Minor Child continued...



"In determining custody of a minor child, the court shall consider the conduct, marital status, income, social environment or life styles only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child."

Effective Co-Parenting



"At the end of the day, the most overwhelming key to a child's success is the positive involvement of parents."

Jane D. Hull

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Communicating With Your Co-Parent

You need to be able to talk to each other. How do you leave old habits of misunderstanding and arguing?



The Starting Point

- Do some self examination and recognize your role in the conflict. This is the first step to solving it.
- Recognize the problems that you don't have any control over.
- Remember that you cannot control your co-parent, but you can alter your response to his/her behavior and can recognize any part you play in the conflict.
- The actions of one parent can make a huge difference in reducing the conflict.

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HOW CAN WE INCREASE OUR COMMUNICATION SKILLS?

- 1.) Effective listening skills
- 2.) How to make sure you understand what is being said
- 3.) Strategies for maintaining control of your emotions
- 4.) Suggestions for creating an appropriate response



So you need to send an email or text to your co-parent...



Challenges to Providing Parent Education in Rural Areas

Rural areas may lack....

- ✓ Qualified, available parent educators
- ✓ Classroom space
- ✓ Funding
- ✓ # of Participants

How does this effect delivery of parent education?

- ✓ Fewer sessions
- ✓ Quality of instruction
- ✓ Not always able to accommodate early participation
- ✓ Only one class curriculum available – parents may have to repeat several times
- ✓ Parents more likely to have to attend the same session (with exceptions)

Possible Solutions

- ✓ Communicate, early and often. Get the word out and encourage participation
- ✓ Tap in to community resources
- ✓ Online option in special circumstances
- ✓ Development of alternative curriculum

Parent Education in Union County

Inform: Communicate with Parents

- ❖ Requirements
 - Mandatory Attendance
 - Class Fee
 - Special Considerations
- ❖ Benefits of Early Participation
 - Fee Waiver
 - Learning about the legal process, mediation, parenting plan development and communication in the beginning stages can improve the total experience

Promote: Get the Word Out

- ❖ Flyers
 - Form packets, front counter
- ❖ Free Advertising
 - Newspaper, radio, community calendar
- ❖ Court Staff
- ❖ Community Partners
 - Attorneys, Schools, Mediators
- ❖ Friendly Reminders
 - Letter to appearing parties
- ❖ Monitor Attendance and Continue to Encourage and Remind

Deliver: Help Parents Get the Most Out of the Class Experience

- ❖ Qualified, engaging instructor
 - Personalize the experience
 - Relaxed format
 - Focus on children
 - Encourage sharing and discussion
- ❖ Comprehensive class materials
 - Helping Children Cope handbook
 - Supplemental materials - Power Point, handbook inserts
- ❖ Family Law Facilitator available
 - Familiar face reduces anxiety
 - Answer procedural questions
- ❖ Additional Resources available
 - Parenting plans, OJD publications, legal aid contacts, local resource guide, Our Family Wizard, etc.

PARENT EDUCATION: WHAT WORKS BEST?

A REPORT OF THE PARENTAL INVOLVEMENT WORKGROUP A SUBCOMMITTEE OF THE STATE FAMILY LAW ADVISORY COMMITTEE

March, 2011

COMMITTEE CHAIR PERSONS:

Linda Scher, Family Mediator and Facilitator, Portland

Dr. Ed Vien, Psy.D, Psychologist and Custody Evaluator, Portland

COMMITTEE MEMBERS:

Donna Austin, Director, Family Mediation Program, Lane County

Paul Edison-Lahm, Multnomah County Family Court Facilitator

Dr. Adam Furcher, PhD, Psychologist and Mediator, Portland

Janice Garceau, LCSW, Director, Family Court Services, Multnomah County

Kelly Lemarr, Attorney/Branch Manager, St. Andrew Legal Clinic, Washington County

Jane Parisi-Mosher, MA, LMFT, Therapist, Mediator, Parent Educator Yamhill County

Robin Selig, Attorney, Oregon Law Center, Portland

The Honorable Diana I. Stuart, Circuit Court Judge, Multnomah County

Judith Swinney, Parent Educator, Portland

I. RECOMMENDATIONS

The SFLAC Parental Involvement Workgroup makes the following recommendations:

- Parent education should be based on the core concepts of parent attunement to children's needs and fostering healthy, post-separation parenting relationships. Content and methods should draw from a broad research base and continue to evolve.
- The court and all other professionals involved in promoting or explaining the required parent education class should make clear that the class is specifically for divorcing/separating parents (vs. a general parenting skills class) and is designed to support them through this family change. Parents of minor children at all ages should be expected to complete the class. Non-parent custodians should be encouraged to enroll if the class is able to accommodate them.
- Materials available to parents regarding parent education classes (handouts, websites, recorded phone messages, etc.) should emphasize positive messages about the benefits of the class over the negative messages about the consequences for not completing the class.
- Classes should be offered regularly to attorneys and other professionals for continuing education credit so the professionals are encouraged to keep abreast of the current curriculum and can inform their clients of the benefits as well as requirements.
- Parents should be encouraged by the court, attorneys and mediators to complete the class early in the process, and if possible, even before a court matter is filed.
- Courts should consider offering positive incentives (i.e. discounted class fee) to parents who complete the class before or within thirty days of filing or being served.

- Courts should look for ways to remove systemic barriers by supporting a timely enrollment process, reasonable class sizes, language accommodations and clear rules for protecting personal safety.
- Parents should be afforded options to complete the class in an alternative way (online, video, in another county), if it taking it in person would pose a hardship in their own county. Parents should be encouraged to supplement the required class with additional educational resources to continue to expand their knowledge.

II. BACKGROUND AND DISCUSSION IN SUPPORT OF RECOMMENDATIONS

A. AN IMPORTANT OPPORTUNITY

A parent filing for divorce, separation or other matter resulting in a parenting plan may only have one contact with a professional during the process. Parent education is the one requirement that applies to all parents whether they are co-petitioners, self-represented, work with an attorney or mediator. The class may be our only opportunity to focus parents' attention on the needs of their children during and after the separation. The importance of this intervention cannot be underestimated if we want to give children and families the best possible chance to adjust and form healthy post-separation relationships. The broader community is beginning to appreciate the importance of parental behavior on infant attachment and early childhood development. Contemporary research confirms that the choices parents make at this vulnerable time are equally critical for adolescent developmental needs. Contrary to earlier assumptions about adolescent individuation and developmental competence, new research on adolescence reveals the brain does not reach adult maturity until age 25. This information spotlights the continued vulnerability of older adolescents to family stressors and parental conflict and underscores the critical role of ongoing parental involvement and support for older

adolescents. The court needs to support and encourage parents and parental figures for children of all ages to engage in the parent education classes, rather than allow parents of older children to opt out.

B. THE BASICS

ORS 3.425(b) provides a starting point for what a parent education class must include in its curriculum: (a) The emotional impact of a dissolution of marriage or a separation on children at different developmental stages; (b) Parenting during and after a dissolution of marriage or a separation; (c) Custody, parenting time and shared parenting plans; (d) The effect on children of parental conduct including, but not limited to, long distance parenting; and (e) Mediation and conflict resolution.

There is current research that gives further guidance on what educational factors can influence parents' post-separation behavior. A child-focused curriculum and the opportunity for parents to participate in the class appear to be important components, as well as the timing of the service. Several studies with skills-based parent education classes (as opposed to those that consist of mostly lecture or those that focus on inducing guilt in parents) have shown greater success.¹ Another study, using low re-litigation rates as a sign of positive outcome, concluded that parents who participated in parent education classes within three weeks of filing had the best outcomes.² Classes taken more than three months after filing did not affect re-litigation rates.

C. GETTING OUT THE MESSAGE

Some improvements in promoting the classes can be made simply by getting the word out to parents clearly and consistently from their first contacts with support people (court staff, counselors, mediators, attorneys, paralegals, teachers, church contacts, etc.). We can encourage this effort by educating support providers and providing reminders, handouts and computer links

so that parents can be easily informed about the class. Support providers should be regularly updated on the latest class content and registration process. Some jurisdictions have been successful in offering professionals the class or a condensed version of the class for continuing education credit. If this is not practical, encouraging support people to attend a regularly scheduled class can increase that person's awareness of the content of the class so he or she can promote it in an informed and enthusiastic way.

In addition, the tone of court materials can create a positive or a negative impression upon the parent receiving the information. Those that focus on the law and rules ("NOTICE: A certificate of completion is required to finalize your case") or on the negative impact of divorce ("Workshop Goal: To help parents become aware of how their conflict hurts their children and what they can do about it") may serve to discourage interest and motivation in the parent to attend the class. Materials that offer incentives and hope for parents ("Learn how divorce or separation impacts your children and what you can do to help them") appear to promote greater interest and motivation. Materials that include the notice about the completion requirement can also incorporate a message about the positive goals of the class. This increases the likelihood that parents will see the class as an opportunity for support. Titles such as "Co-Parenting: Children in Changing Families", "Kids First", "Focus on Children" may also encourage parents to participate

D. ENCOURAGING EARLY PARTICIPATION

In light of the research affirming the importance of early participation in parent education, we should continue and expand successful methods of bringing parents into classes earlier and try new techniques to see if early turnout can be increased further.

Individual judicial districts use various operational methods to encourage early participation. The “hurdle” approach requires proof of class completion within a certain time frame or before parents can access certain other services. For example: parents must register for class within a certain number of days after filing (14 for Washington and 15 for Clatsop); parents must complete class a certain number of days before a court appearance (30 days for Coos); parents must complete class prior to attending mediation (Columbia, Coos, Curry, Grant, Klamath, Polk, Tillamook, Washington). In addition, all counties require parents (at least the petitioner) to complete the class before a judgment that includes a parenting plan can be entered. A full [index](#) of Parent Education programs and the details for each county is available on the Oregon Judicial Department’s Family Law Page and is attached as Appendix 1.

“Incentive” approaches reward early enrollment. Two counties offer an incentive if the class is taken within a certain number of days of filing or completion of service. Multnomah and Clackamas Counties both offer a \$15 discount, in Multnomah if parents register within 60 days of filing and in Clackamas if parents register within 15 days of completed service. Yamhill County is in the process of implementing a discount for parents who attend before filing or within thirty days of filing. Another possible incentive that private attorneys and mediators could offer is a discount on their services for clients who complete the class within a certain number of days of their first meeting.

E. BARRIERS

Barriers, intentional and unintentional, may exist which discourage completion of a parent education class. The cost or time commitment may be a significant obstacle. By offering fee waivers, deferrals, and sliding scale fees, the cost burden can be eased. Where the population supports it, counties offer classes at various times so that missed work or inability to find child

care is less of an issue. Language barriers can make it difficult to learn about the class and enrollment process. Lack of translation resources can make it impossible to understand the information taught in class. Classes offered in Spanish or other languages give non English-speaking parents the best opportunity to gain a full understanding of the information.

All counties have some protocol for enrolling parents in separate classes when a restraining order has been filed. If professionals who interact with parents and the written materials about the class refer to broader safety concerns, any parent who has a safety concern can understand that he or she has the option to take the class separately or to ask that other safety measures be taken.

Where access is an issue for parents, due to geographical or physical barriers, safety concerns or other significant obstacles, alternatives to in-person participation may be offered. Of the 36 Oregon judicial districts, three-quarters allow for an online or video alternative to the in-person class: four accept specific online parent education classes, twenty-one others allow them on a case-by-case basis, and another two allow a video alternative. More research is needed to determine the effectiveness of in-person vs. online or video classes.

Other barriers may discourage early participation in particular. More densely populated counties may experience enrollment wait lists or lengthier response times, i.e. delays in returning calls. Less densely population counties may not have enough participants to cover the cost of offering classes frequently. A certificate may expire if the case is not filed within a certain time (6 months in Wallowa, for example). Some counties do not allow enrollment prior to filing (Polk and Curry, for example). In some cases the enrollment process may discourage pre-filing attendance, i.e. appearing to require case numbers and party designation on forms.

F. INVOLVING THE CHILDREN

Two judicial districts in Oregon (Washington and Coos) also offer a separate class for children. Both programs serve children ages 5-17, are voluntary, and do not charge for the children's class. Washington County offers the *Kids Turn* program, which consists of four 90-minute sessions held at the same time as their parents are attending class. Coos County created their own program, which consists of four 60-minute sessions held separately from the parent class. There are some online resources for children to use directly. One excellent example comes from Canada, www.familieschange.ca. This interactive and engaging site has one version for younger children and another for teens and preteens.

G. BASIC SKILLS AND HIGHER NEEDS

A few areas of parent education are particularly difficult for parents to access in Oregon. Some parents need basic parenting skills. Outside of Juvenile Dependency court, Family Courts have not had a lot of referral information for parents in this area. Multnomah County has developed a parenting skills resource list for their website. Similarly, for high conflict parents, resources have been limited. Parents in Multnomah and Clackamas counties can be ordered to take the [Parenting Beyond Conflict](#) class. Some decide to take it on their own. In either case parents must pay privately for the class. Other states have wrestled with how to serve high conflict parents. Missouri courts have teamed up with Missouri State University to offer the Common Ground program for high conflict parents and their children. The class provides an opportunity for parents and children to learn skills to improve their relationships using drama and art as tools for learning.

H. THE FUTURE

There is ample evidence that educational support helps parents look beyond simply containing conflict and setting a parenting time schedule. By focusing on the primacy of parent attunement to children's developmental and emotional needs, parents can move towards establishing and maintaining healthy post-separation parenting relationships. Zeroing in on the attitudes and behaviors that promote emotional repair and healthy restructuring can serve as a secure anchor for families in a sea of change. Seminal attachment research and recent groundbreaking developments in the neuroscience of human relationships offer insight into conditions which support children's long term well-being. The more we focus parents' attention on the essence of what will produce success and guide them to recognize their strengths, the more they will be able to develop a clear vision of their responsibilities and resources, and be empowered to act in their children's best interest.

III. ENDNOTES:

¹ Charles Martinez and Marion Forgatch, "Preventing Problems with Boy's Non-Compliance: Effects of a Parent Training Intervention for Divorcing Mothers," *Journal of Consulting and Clinical Psychology*, 69 (2001): 416-428; Mark A. Fine and John H. Harvey, eds., *Handbook of Divorce and Relationship Dissolution* (Mahwah, NJ: Lawrence Erlbaum Associates, 2006), 575-604; JoAnn Pedro-Carroll and AE Black, "The Children of Divorce Intervention Program: Preventative Outreach to Early Adolescents," (Final Report to the Gottscalk Mental Health Research Grant, University of Rochester, Center for Community Study, Rochester, New York, 1993); Sharlene Wolchik, et. al., "Six Year Follow-up of Preventative Interventions for Children of Divorce: A Randomized Controlled Trial," 288 (2002): 1874-1881; Gillard, L. & Seymor, F., "Children in the Middle: A Parent Education Programme for Separated Parents," (The University of Auckland, Department of Psychology, New Zealand, April, 2005).

² Jack Arbuthnot, Kevin M. Kramer, and Donald A. Gordon, "Patterns of Re-litigation Following Divorce Education," *Association of Family and Conciliation Courts FAMILY COURT REVIEW*, 35 No. 3 (1997): 269-279.

PARENT EDUCATION SURVEY

(conducted by the Parental Involvement and Outreach Subcommittee of the SFLAC 5/9/2019)

Please provide the answers you know and skip the ones you don't know. If you would like to finish the survey later, please email it to Linda@Schermediate.com

Name (optional) _____ Your County _____

Does your county offer a parent education class under ORS 3.425? _____
(if no, please skip to the "general" section of the survey, below)

Your county's class is offered: Online only _____ in-Person only _____ Both _____

If your county's class is offered online

What is the name of the program? _____

Cost to parents? \$ _____ Cost to your county? \$ _____

Your comments about the online class currently used:

Why do you offer the online rather than in-person class?

Have you considered a different way of doing things?

What impediments are there (if any) to having an in-person class?

If your county's class meets in-person:

What is the name of the curriculum? _____

How often is the class offered? _____ When does it meet? _____

Who facilitates it? Private company/individuals _____ County personnel _____
Contractors with the county _____ Other: _____

(please turn over)

If your county's class meets in-person: (ctd.)

How many facilitators per class? _____ Average # of attendees per class? _____

Where does the class meet? _____

What is the cost to parents? \$ _____

Do you have handouts/a booklet for the class? _____

What audio/visuals do you use (PowerPoint, slides, etc.) in the class?

Is there a particular book/publication you use (if yes, please provide the name)?

Are parents asked to complete an evaluation? _____ Do parents get a certificate? _____

Does your class break out into small groups (if yes, by what criteria)? _____

If your county has both an online and in-person class:

When do you allow parents to use the online program rather than the in-person class?

In General:

What are the needs of your county regarding parent education classes?

What kinds of support from the SFLAC PIOS subcommittee would be helpful to your program?

Other comments, suggestions: _____

Thank you!

Parent Education Classes in Oregon – Updated 5/1/19

	Fee	Program	Contact	Class Details	Alternative Requirement & Info
Baker	Included in filing fee	Children in Between Baker County Library 2400 Resort St Baker City, OR 97814	Tracy Martinez-Williams (541) 523-6303 ext. 4	2 Hours 6:30-8:30 PM 3rd Monday of each month Spanish class available online	Certificates of completion from other Oregon court approved programs Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation not required, but recommended
Benton	\$45	Co-Parenting: Children in Changing Families Old Mill Center 1650 SW 45 th Place Corvallis. OR 97333	(541) 757-8068 http://www.oldmillcenter.org	3 Hours 5:00-8:00 PM Two Tuesdays each month	Certificates of completion from other Oregon court approved programs Other program certificates with judge approval on case-by-case basis Mediation not required, but mediation must be completed no more than 45 days from receipt of the Court's notice requiring a parent to attend class
Clackamas	\$75	Parents Helping Children Cope with Family Change Clackamas County Family Court Services 2051 Kaen Rd., Rm. 369 Oregon City, OR 97045	Lauren Mac Neill (503) 655-8415	3.5 Hours 5:30-9:00 PM Wednesday Evenings Check website for posted dates	Certificates of completion from other Oregon court approved programs. Class is open to the public. Alternative on-line classes approved on a case-by-case basis. Requests must be in writing. Mediation not required, but recommended

Clatsop	\$50.00	Children in Between First Lutheran Church 725 33 rd Street Astoria, OR 97103	Hope House of LCSNW (503) 325-6754	3 Hours 6:00-9:00 p.m. Second Monday of each month Spanish speaking class 6:00 p.m. – 9:00 p.m. 3 rd Monday of each month Spanish class available online	Cash or money orders only Certificates of completion from other Oregon court approved programs Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation not required, but recommended
Columbia	\$50	Parents Helping Children through Divorce Rainier Head Start Building 305 W 3 rd St Rainier, OR 97048 <hr/> St Helens Head Start Building 2750 Columbia Blvd St Helens, OR 97051	Julianne Cullen (503) 556-3736 jcullen@nworheadstart.org https://www.nworparenting.com/	3.5 Hours 6:00-9:30 PM Fourth Thursday of each month <hr/> 3.5 Hours 6:00-9:30 PM Second Thursday of each month OR 9:00-12:30 PM Third Wednesday of each month (pre- registration required)	Mediation required
Coos	\$49.95	Children in Between Online www.divorce-education.com "Ninos En Media En Linea": www.online.divorce-education.com/es	Center of Divorce Education 1-877-874-1365	Online, 3-5 hrs. Spanish class available online	Certificates of completion from other Oregon court approved programs Mediation not required

Crook	\$49.95	<p>Children in Between www.divorce-education.com</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p>	<p>Robin Loxley Center of Divorce Education 1-877-874-1365</p>	<p>4:00 p.m. – 7:00 pm</p> <p>Online, 3-5 hrs.</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Mediation not required</p>
Curry	X	<p>Mediation Orientation and Child Divorce Education</p> <p>Curry County Courthouse 29821 Ellensburg Ave. Gold Beach, OR 97444</p>	(541) 247-4511 ext. 2	<p>4 Hours</p> <p>10:00 am-2:00 PM Third Thursday of each month</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation not required</p>
Deschutes	\$70.00	<p>Children in Between https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Family Resource Center 1130 NW Harriman Street Ste. B Bend, Oregon 97703</p>	<p>(541) 389-5468 (541) 280-5345 (espanol)</p>	<p>4 hours</p> <p>First Tuesday of each month from 8:00-Noon and the first Wednesday of each month 5:30 p.m. – 9:30 p.m.</p> <p>Spanish class available online</p>	<p>Fee is non-refundable and includes \$20 materials fee that cannot be waived</p> <p>Call for on-line class information</p> <p>Certificates of completion from other Oregon court approved programs on a case-by-case basis</p> <p>Mediation not required</p>
Douglas	<p>\$45.95</p> <p>Various</p>	<p>Children in Between https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Online Parenting Programs https://douglasor.onlineparentingprograms.com/</p>		<p>3.5 Hours</p> <p>Once every 3 weeks on Saturday morning or evening</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Mediation required</p>

Gilliam	\$20	<p>Children in Between</p> <p>"The Next Door" Hood River</p> <hr/> <p>The Dalles/Wasco "The Next Door"</p> <p>965 Tucker Road Hood River, Oregon 97031</p> <p>1113 Kelly Avenue The Dalles, Oregon 97058</p>	<p>Jennifer Whitfield (541) 387-6902</p> <hr/> <p>Julie Proffitt (541) 506-2707</p>	<p>2 Hours 6:00-8:00 PM Fourth Tuesday of each month</p> <p>6:00-8:00 PM Classes offered in Spanish on the third Tuesday of each month</p> <p>Spanish class available online</p> <hr/> <p>6:30 – 8:30 PM Second Tuesday of each month</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation is required</p>
Grant	x	<p>Children in Between</p> <p>Families First 401 S. Canton Blvd. John Day, OR 97845</p>	<p>Jennifer Whitfield (541) 575-1438</p>	<p>Various times and days</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation required</p>
Harney	x	<p>Children in Between</p> <p>Harney County Circuit Court 450 N. Buena Vista #16 Burns, OR 97720</p>	<p>Kasi Blecher (541) 573-5207</p>	<p>2.5 Hours</p> <p>Contact the Court for days and times of class.</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation required</p>

Hood River	\$20.00	Children in Between "The Next Door" Hood River	Jennifer Whitfield (541) 387-6902	2 Hours 6:00-8:00 PM Fourth Tuesday of each month	Certificates of completion from other Oregon court approved programs Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation is required
		<hr/> The Dalles/Wasco "The Next Door" 965 Tucker Road Hood River, Oregon 97031 1113 Kelly Avenue The Dalles, Oregon 97058	<hr/> Julie Proffitt (541) 506-2707	6:00-8:00 PM Classes offered in Spanish on the third Tuesday of each month <hr/> 6:30 – 8:30 PM Second Tuesday of each month Spanish class available online	
Jackson	\$48.45 for 30 day access.	Children in Between https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es		Available in both English and Spanish	Other program certificates accepted with judge approval on case-by-case basis. Court approved fee waivers accepted Mediation required unless waived
Jefferson	\$45	Bridging the Gap: Seminar for Divorcing Parents Best Care Treatment Services 850 SW 4 th St Suite 302 Madras. OR 97741	(541) 475-6575	2.5 Hours 5:30-8:00 PM First Tuesday every other month	Certificates of completion from other Oregon court approved programs Mediation not required, but recommended
Josephine	\$55	Children in Between Call for location	(541) 660-8110	3 Hours Classes offered two to three time a month Call for details Spanish class online	Local rule requires in person attendance. Motion is available for parties to request a waiver, online attendance, or satisfaction of the requirement of the co-parenting education program at online . Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation not required, but recommended

Klamath	x	Children in Between Klamath County Museum Meeting Room 1451 Main Street Klamath Falls, OR 97601	Darlene Breazeal (541) 892-5763	3 Hours 6:00-9:00 PM First Friday each month OR 9:00 AM-12:00 PM First Saturday each month Spanish class available online	On-line attendance may be requested. Certificates of completion from other Oregon court approved programs Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation required, requests for waivers, deferrals or satisfactions may be requested
Lake	x	Children in Between Lake County Courthouse 513 Center Street Lakeview, OR 97630	Steven Torre (541) 274-0525 court.oregon.gov/lake	3-4 Hour Once each month by appointment Spanish class available online	Certificates of completion from other Oregon court approved programs Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation scheduled and begins the same week as class
Lane	\$60	Lane County Youth Services Focus on Children 2727 Martin Luther King Jr. Blvd Eugene, OR 97401	Caitlyn Jackson (541) 682-3962 https://familybuildingblocks.org/cope-registration/ Email mediation@co.lane.or.us	3 Hours 5:30-8:30 PM Class meets requirement for parent education and mediation orientation	Lane County Youth Services must pre-approve alternatives Mediation is scheduled upon completion of Focus on Children for parents without a written mutually agreed upon parenting plan for the current court action.
Lincoln	\$45.95	Children in Between https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es		Spanish class available online	Certificates of completion from other Oregon court approved programs Mediation not required
Linn	x	Parent Education Class Linn County Courthouse 300 4 th Avenue Albany, OR 97321	Mediation Coordinator (541) 967-3952	2 Hours Twice per month as part of mediation orientation	4 hour Co-Parenting/Divorce class from OnlineParentingProgram.com Mediation required unless waived

Malheur	\$45.95	Children in Between https://www.divorce-education.com/or/ / "Ninos En Media En Linea": www.online.divorce-education.com/es		Spanish class available online	Certificates of completion from other Oregon court approved programs with prior judge approval Mediation required, unless waived
Marion	\$60	Children Cope with Divorce Family Building Blocks 2425 Lancaster Drive Salem, OR 97305	(503) 581-9922 https://familybuildingblocks.org/cope-registration/	4 Hours 5:30-9:30 PM Every other Thursdays OR 9:00 AM-1:00 PM Every other Saturday	Certificates of completion from other Oregon court approved programs Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation not required, but recommended
Morrow	X <hr/> \$45.95	Children in Between 915 S.E. Columbia Drive Hermiston, OR 97838 Children in Between 216 SE 4 th Street Pendleton, OR 97801 <hr/> https://www.divorce-education.com/or/	Vicki Evans (541) 278-0341 ext. 3240	2 Hours Once per month in Pendleton and once per month in Hermiston Morrow and Umatilla residents can attend either class. Spanish class available online	Certificates of completion from other Oregon court counties Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation not required, but recommended

Multnomah	\$70*	<p>Parents Helping Children Cope with Family Change</p> <p>Multnomah County Courthouse, Room 350 1021 SW Fourth Avenue Portland, OR 97204</p> <hr/> <p>Juvenile Justice Complex 1401 NE 68th Ave, Room 1201 Portland, OR 97204</p> <hr/> <p>East Courthouse 18480 SE Stark St, Room G-190 Portland, OR 97204</p>	<p>Hannah Crites (503) 988-3037</p> <p>http://www.multco.us/dcj/fcs/parent-education-class</p>	<p>3.5 Hours</p> <p>Tuesday evening Saturday morning In room 130</p> <hr/> <p>Thursday evening</p> <hr/> <p>Saturday</p>	<p>Online class - Two Families Now, offered on a case-by-case basis.</p> <p>Spanish class every other month on Saturday at Multnomah County Courthouse</p> <p>*Fee reduced to \$55 if registered before or 60 days after filing</p> <p>Mediation not required, but recommended</p>
Polk	x	<p>Parent Education Class</p> <p>Polk County Courthouse 850 Main Street, Room 301 Dallas, OR 97338</p>	<p>Cassandra (Sandy) Moore (503) 623-3154 ext. 1277</p> <p>http://www.courts.oregon.gov/polk</p>	<p>4 Hours</p> <p>1:00-5:00 PM Every other Tuesday in first floor conference room of courthouse</p>	<p>Certificates of completion from other Oregon court approved programs.</p> <p>Mediation required.</p> <p>Class certificates expire after 5 years.</p>
Sherman	\$20	<p>Children in Between</p> <p>"The Next Door" Hood River</p> <hr/> <p>965 Tucker Road Hood River, Oregon 97031</p> <p>1113 Kelly Avenue The Dalles, Oregon 97058</p>	<p>Jennifer Whitfield (541) 387-6902</p> <hr/> <p>Julie Proffitt (541) 506-2707</p>	<p>2 Hours 6:00-8:00 PM Fourth Tuesday of each month</p> <p>6:00-8:00 PM Classes offered in Spanish on the third Tuesday of each month</p> <hr/> <p>6:30 – 8:30 PM Second Tuesday of each month</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation is required</p>

Tillamook	\$45	Helping Children Cope with Divorce Tillamook County Courthouse 201 Laurel Avenue Tillamook, OR 97141	Abbie Hurliman (503) 842-2596 ext. 2222 http://www.lanecounty.org/mediation	3 Hours 6:30-9:30 PM Once every five weeks on Monday evenings	Certificates of completion from other Oregon court approved programs Mediation required
Umatilla	x <hr/> \$45.95	Children in Between 915 S.E. Columbia Drive Hermiston, OR 97838 Children in Between 216 SE 4 th Street Pendleton, OR 97801 <hr/> https://www.divorce-education.com/or/	Vicki Evans (541) 278-0341 ext. 3240	2 Hours Once per month in Pendleton and once per month in Hermiston Morrow and Umatilla residents can attend either class. Spanish class available online	Certificates of completion from other Oregon court counties Online alternative on case-by-case basis at: https://www.divorce-education.com/or/ "Ninos En Media En Linea": www.online.divorce-education.com/es Mediation not required, but recommended
Union	\$30*	Helping Children Cope with Divorce LaGrande Misener Conf. Rm. 1001 4th Street LaGrande, OR 97850	Teala Sunderman (541) 962-9500 x42	3 Hours 6:00-8:30 PM Offered every 4-6 weeks	Certificates of completion from other Oregon court approved programs Online alternative on a case-by-case basis at: https://www.twofamiliesnow.com/ *Participants may qualify for a fee waiver Mediation not required, but recommended.
Wallowa	x	Helping Children Succeed with Divorce OSU Extension Office Conference Room 668 NW 1st Street Enterprise, Oregon 97828	Jary Homan (541) 426-4991	3 Hour 5:30-8:30 PM Every other month	Certificates of completion from other Oregon court approved programs Online alternative on a case-by-case basis at: https://www.twofamiliesnow.com/ *Participants may qualify for a fee waiver Mediation not required, but recommended.

Wasco	\$20	<p>Children in Between</p> <p>"The Next Door" Hood River</p> <hr/> <p>The Dalles / Wasco</p> <p>The Next Door 965 Tucker Road Hood River, Oregon 97031</p> <p>The Next Door 1113 Kelly Avenue The Dalles, Oregon 97058</p>	<p>Jennifer Whitfield (541) 387-6902</p> <hr/> <p>Julie Proffitt (541) 506-2707</p>	<p>2 Hours</p> <p>6:00-8:00 PM Fourth Tuesday of each month</p> <p>6:00-8:00 PM Classes offered in Spanish on the third Tuesday of each month</p> <p>Spanish class available online</p> <hr/> <p>6:30 – 8:30 PM Second Tuesday of each month</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation is required</p>
Washington	\$280*	<p>Kids' Turn</p> <p>447 SE Baseline Hillsboro, OR 97123</p>	<p>Many Ramsey</p> <p>OR</p> <p>Rachel Garcia</p> <p>Youthcontact.org</p>	<p>4 consecutive weeks</p> <p>6:30-8:00 PM Tuesday-Thursday</p> <hr/> <p>10:00-11:30 AM Saturday (Spanish)</p>	<p>Certificates of completion from other Oregon courts with pre-approval from a judge.</p> <p>*Participants may qualify for a reduced fee Child included, ages 5-16</p> <p>Mediation not required</p>

Wheeler	\$20	<p>Children in Between "The Next Door" Hood River</p> <hr/> <p>The Dalles/Wasco</p> <p>The Next Door 965 Tucker Road Hood River, Oregon 97031</p> <p>The Next Door 1113 Kelly Avenue The Dalles, Oregon 97058</p>	<p>Jennifer Whitfield (541) 387-6902</p> <hr/> <p>Julie Proffitt (541) 506-2707</p>	<p>2 Hours / 6:00-8:00 PM Fourth Tuesday of each month</p> <p>6:00-8:00 PM Classes offered in Spanish on the third Tuesday of each month</p> <p>Spanish class available online</p> <hr/> <p>6:30 – 8:30 PM Second Tuesday of each month</p> <p>Spanish class available online</p>	<p>Certificates of completion from other Oregon court approved programs</p> <p>Online alternative on case-by-case basis at: https://www.divorce-education.com/or/</p> <p>"Ninos En Media En Linea": www.online.divorce-education.com/es</p> <p>Mediation is required</p>
Yamhill	\$40	<p>Kids First Yamhill County Courthouse 535 E. 5th St, Room 32 McMinnville, OR 97128</p> <hr/>	<p>Family Law (503) 434-7487</p> <p>Information (503) 434-7530 ext. 4000</p> <hr/>	<p>2.5 Hours 1:30–4:00 PM</p> <hr/>	<p>Certificates of completion from other Oregon court approved programs on case-by-case basis (must comply with ORS 3.425.)</p> <p>Alternative online class allowed only by court order.</p> <hr/> <p>Spanish available online only</p> <p>Class Certificates expire after 5 years</p>

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

But....someone saw this on social media! Admissibility of Electronic Evidence

In this session, Judge Bethany Flint and Judge Patrick Henry will present on the challenges of admissibility of electronic evidence including social media in contested family law matters. The presentation will discuss foundation and the rules of evidence regarding ever emerging technology.

Speakers

- ◆ *The Honorable Bethany Flint, Deschutes County Circuit Court Judge*
- ◆ *The Honorable Patrick Henry, Multnomah County Circuit Court Judge*

Judge Bethany Flint was appointed to the Deschutes County Circuit Court by Governor Kate Brown in February, 2016, and was elected to her position in the general election that same year. Judge Flint has also served as the Municipal Court Judge for the City of Bend from 2014-2016. She earned her law degree in 2003 from Whittier College School of Law, *summa cum laude*, with recognition as Outstanding Fellow in the school's Center for Children's Rights and obtained her undergraduate degree from the University of California at Irvine, *magna cum laude*, in 1999. Prior to her work on the bench, Judge Flint practiced family law litigation and mediation for nearly 13 years. Judge Flint has presided over Deschutes County's Family Drug Treatment Court throughout 2018, and in January 2019 transitioned to presiding over the Court's Dependency Docket. Additionally, she represents the Court on the local Access to Justice Committee, LFLAC, and the SFLAC Parental Involvement Outreach Subcommittee, and is a founding board member of the Oregon Chapter of the Association of Family and Conciliation Courts.

Judge Patrick Henry took office on October 16, 2015 after being appointed to the Multnomah County Circuit Court bench by Governor Kate Brown. Judge Henry serves in the Family Law Department, and handles a variety of family law, probate, and juvenile law cases. Since January 1, 2019, Judge Henry has been the lead probate judge in Multnomah County.

Judge Henry received a Bachelor of Arts degree from the University of Virginia and his Juris Doctorate from the University of Notre Dame where he was a Thomas J. White Scholar and the Editor-in-Chief of the Journal of Law, Ethics, and Public Policy. He began his legal career in 1993 as a litigator with the Schwabe, Williamson & Wyatt law office and joined Office of Multnomah County Attorney in 1999. Judge Henry served as general counsel to the Department of County Human Services which includes the Aging, Disability, and Veterans Services Division, the Mental Health and Addiction Services Division, the Domestic Violence Coordination Office, and the Developmental Disabilities Services Division.

Judge Henry serves on the Steering Committee overseeing the implementation of the Unified Child and Youth Safety Plan which was developed to address identified gaps in the Child Welfare Program and child caring systems throughout the State of Oregon, Interagency Committee on Abuse Prevention, and the Multnomah County Domestic Violence Fatality Review Committee.

“BUT...SOMEONE SAW THIS ON SOCIAL MEDIA...”

**ADMISSIBILITY OF ELECTRONIC EVIDENCE,
CYBERVIOLENCE AND TECHNOLOGY RESPONSIVE
DISPOSITIONS**





Hon. Bethany Flint and Hon. Patrick Henry
Oregon Family Law: Building for the Future
May 9, 2019, 10:30-12:00





TECHNOLOGY USE, ABUSE AND CYBERVIOLENCE

- What it tells us about the parties' relationships
- The Context of the communications reveals substantial information
- Domestic Relations: ORS 107.137(1)(d) and (2) – Abuse and Abuse under FAPA
- Protective Orders: FAPA ORS 107.700 et. Seq. and Stalking ORS 30.866
- Context. Context. Context.

Modalities

- Social Networking
- Messaging and Video Chat
- Discussion Forums
- Location Services
- Anonymous Browsers

Devices

- Phones
- Tablets
- Desktop/Laptop
- Watches
- Game Consoles

The list continues to change and grow...

TECHNOLOGY USE, ABUSE AND CYBERVIOLENCE



TECHNOLOGY MISUSE/ DOMESTIC VIOLENCE BEHAVIOR

- Impersonation/Account hacking
- Spoofing
- Surveillance/Hidden cameras
- GPS/Tracking
- Reputational harm
- Masked/Temporary Email addresses
- Login and Location Information
- Recovered Passwords/Password emails



FOUNDATIONS, IT'S ALL THE SAME, REALLY...

- Relevancy
- Authentication
- Prejudice
- Completeness
- Weight, Not admissibility?
- Hearsay?
- EDUCATE, EDUCATE, EDUCATE



RELEVANCY



OEC 401 : Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable that it would be without the evidence.

OEC 403 : Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by misleading the jury, or by considerations of undue delay or needless presentation of cumulative evidence.

NOTE: Difference between relevancy and weight.

AUTHENTICATION (BASIS FOR RELEVANCY)

OEC 901(1): The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

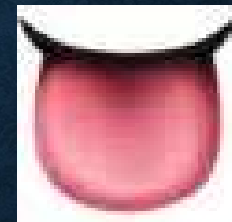
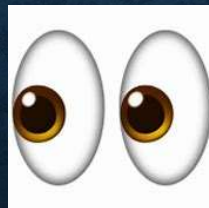
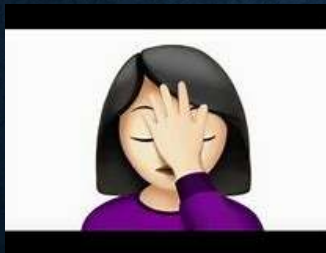
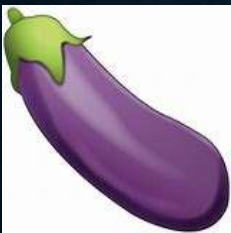
- Author, recipient; BY NUMBER ASSIGNED - NOT CONTACT NAME ASSIGNMENT (See 901(2)(f))
- Social Media indicators self-authenticating? See OEC 902(1)(g)
- Signature under OEC 902(2)? Any symbol executed or adopted by a party with present intention to authenticate a writing?
- Dates and times of day
- GEOLOCATION
- How did the witness become aware of post?
- Likes, comments – elapsing time – make it meaningful to the factfinder!

AUTHENTICATION CONTINUED...

- OEC 1001 (4): Writings and recordings mean letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, optical imaging, mechanical or electronic recording, or other form of data compilation.
- OEC 901(b)(4): Distinctive characteristics of writer or content
- Note the platform and research how to create the best possible foundation for the evidence to be relevant and weighty.
- EDUCATE THE FACTFINDER! Your witness can be the one if there is sufficient knowledge!

COMPLETENESS RELEVANCY AND UNDUE PREJUDICE?

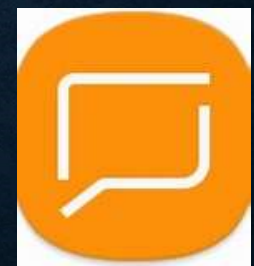
- Context of conversation
- Meaning of emojis, emoticons or GIFs
- Dates and Times
- Interval; Duration; Volume!



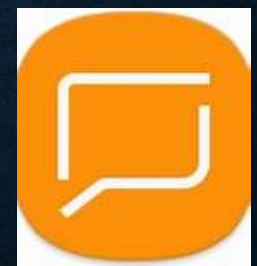
HEARSAY?

- Be prepared for multiple layers of potential hearsay and objections thereto. Note: effect on the listener/reader!
- Each layer must either not be hearsay or be subject to an exception. See OEC 801 and 803.
- If a witness is told something then makes herself directly aware of the information this may not pose a problem...Query: FAPA general/public posting vs. direct messaging?

PLATFORM, PLATFORM, WHO'S GOT THE PLATFORM?



WHO CARES, REALLY?



IT'S POSSIBLE...

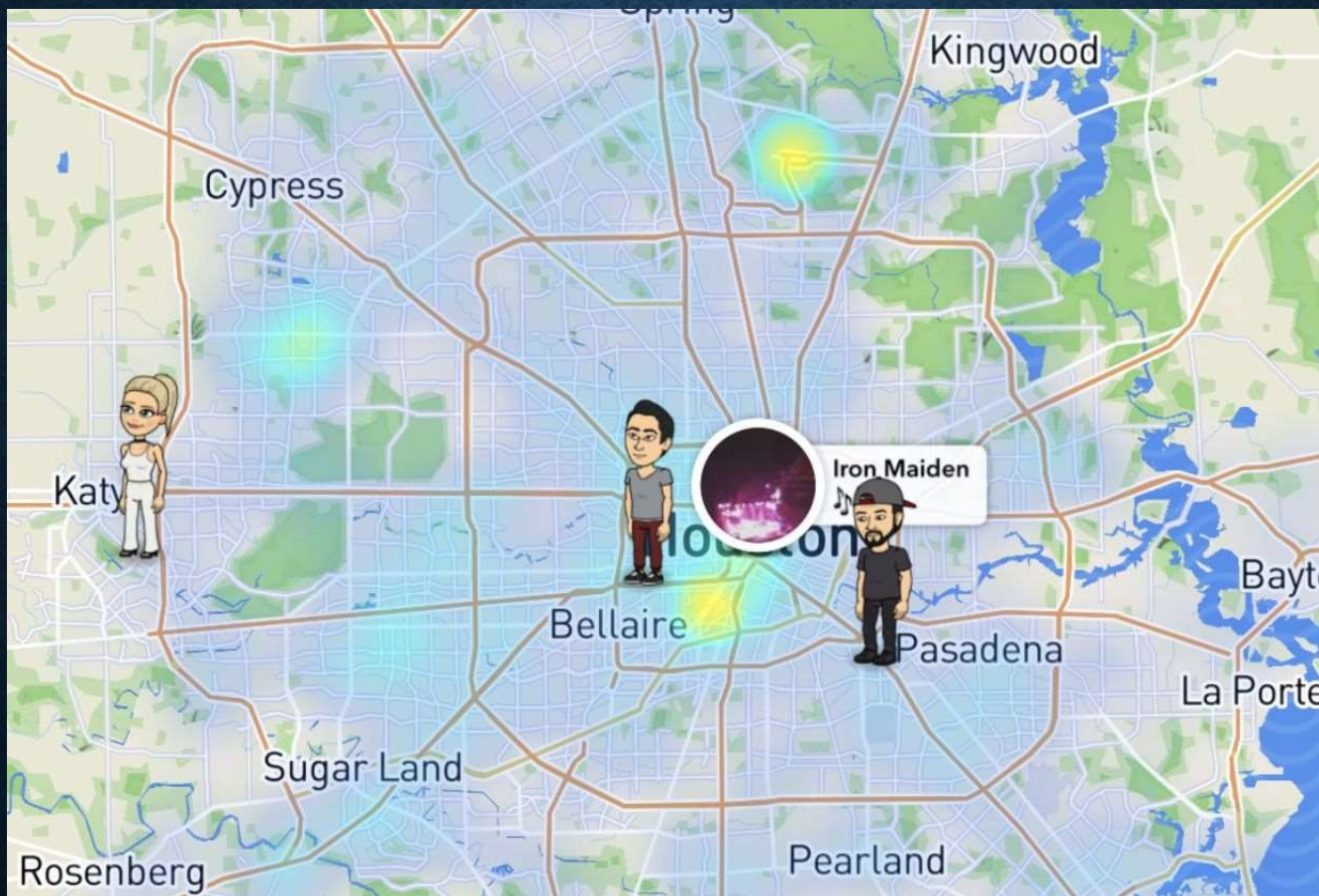


PRESENTATION OF EVIDENCE FOR YOUR FACTFINDER!



EVIDENCE THAT IS MEANINGFUL TO YOUR FACTFINDER





TRACKING YOUR KIDS OR STALKING YOUR PARTNER?

Why can't it be both?



SOMETIMES YOU JUST CAN'T BE PERFECT

- Testimonial evidence + corroborating evidence = weight
- But you CAN have just testimony alone...
- Workarounds...



PRESENTATION OF EVIDENCE FOR APPELLATE RECORD



PRESENTATION OF EVIDENCE FOR APPELLATE RECORD

- Don't offer the phone!
- Come prepared to know how your court can view/review digital evidence
 - Bring your own media viewing device
 - Be aware that you CANNOT plug into OJD devices!
- Screenshots – PRINTED OUT
- Video recording of screen – self recording or phone recording of recording – SNAPCHAT proviso – disk or flashdrive
- Audio - disk or flashdrive

PRESENTATION CONTINUED...

- Work arounds?
 - Play into record?
 - Judge describe into record?
- NCJFCJ Handouts / Instruction for clients or self-represented litigants
 - <https://www.ncjfcj.org/How-to-Gather-Tech-Abuse-Evidence-for-Court>
 - <https://www.ncjfcj.org/helping-survivors-gather-evidence-technology-abuse>
 - <https://www.ncjfcj.org/10-Steps-Presenting-Evidence>
- www.techsafety.org



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

TECHNOLOGY RESPONSIVE DISPOSITIONS

- Consider the following:
 - What technology is being misused
 - Access and ownership of information and devices
 - Limit the misuser/abuser not the recipient
 - Return or destroy content?
 - Children's technology
- Analyze the following:
 - Function of the technology/platform
 - Security/Privacy/Safety Features
 - Access points
 - Access Keys



**THANK YOU AND
GOOD LUCK!!**



Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Domestic Violence, Firearms, and the Future (technology/social media and DV)

This presentation will discuss the various state and federal laws that restrict domestic violence perpetrators from possessing firearms and ammunition. The presentation will also provide information on the connection between technology/social media and domestic violence.

Speakers

- ◆ *Debra Dority, Support Unit Attorney, Oregon Law Center*
- ◆ *Sarah Sabri, Domestic Violence Resource Prosecutor/St. AAG, Oregon Department of Justice*

Debra Dority is a State Support Unit (SSU) Attorney at the Oregon Law Center (OLC) and provides mentoring and technical assistance on family law and domestic violence to attorneys at the OLC and Legal Aid Services of Oregon (LASO). Before joining the SSU, Debra worked at the Pendleton LASO office and the Hillsboro OLC office. A graduate of the University of Cincinnati College of Law, she has been a legal aid lawyer since 2005. Throughout her legal career, Debra's practice focused on providing legal services to rural victims/survivors of domestic violence, sexual assault, and stalking in protective order and family law cases. She has also represented clients in a Title IX sexual discrimination case and an international abduction case. Debra's move to the SSU has allowed her work on a statewide policy issues related to domestic and sexual abuse and stalking. Debra serves on the State Family Law Advisory Committee, co-chairing its Domestic Violence Subcommittee and is a member of the Oregon Judicial Department's Law and Policy Work Group.

Sarah Sabri, J.D. is a Senior Assistant Attorney General with the Oregon Department of Justice. She received her B.A. from Portland State University and her J.D. from the University of Oregon. Sarah began working in the field of domestic violence in 2005 as a prosecutor in Lincoln County, Oregon. She joined the Lane County District Attorney's Office in October 2007, and continued her work in the field of domestic violence, and was an active member of Lane County's pre-trial monitoring program, child abuse MDT, DV Child Witness Project, and the Domestic Violence Council. Sarah has been coordinating the Lane County Domestic Violence Council since 2017. Sarah is a founding member of the Lane County Domestic Violence Prosecution Team, and served as the Trial Team Leader from 2016-2018. Sarah joined the Oregon Department of Justice Criminal Justice Division in July of 2018 as the statewide Domestic Violence Resource Prosecutor. In that role, she acts as a resource to prosecutors, law enforcement, and partner agencies around the state on legal and policy issues related to domestic violence and sexual assault. Sarah has provided training on the subject of domestic violence to community organizations, community-based advocacy groups, prosecutors, multi-disciplinary teams, and law enforcement, including the Lincoln and Lane County Reserve Academy programs. Sarah is a Federal Law Enforcement Training Center (FLETC) certified DV Instructor.

Domestic Violence, Firearms, and The Future of Technology, Social Media and DV

SFLAC Family Law Conference

May 10, 2019

Sarah Sabri, Sr. Assistant Attorney General, Department of Justice

Debra Dority, Support Unit Attorney, Oregon Law Center

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I EVEN STOLE THIS SLIDE!

Disclaimer #2

- I often use female pronouns when talking about victims/survivors.
- I often use male pronouns when talking about perpetrators.
- I know that men, women, trans and non-binary persons are survivors of and perpetrate violence.
- I know that interpersonal violence happens in all types of relationships.

Link Between DV & Firearms

LOW INCIDENCE BUT HIGH LETHALITY

- Abuser's access to firearms → **5x higher risk of death**
- DV assaults involving a gun → **12 x higher risk of death** than those involving other weapon or bodily force
- Abuser's prior threat/assault with firearm → **20 x higher risk of death** in intimate partner context

✓ Where an order of protection existed with a firearms possession ban, female intimate partner deaths were 13% lower (Vigdor & Mercy 2006)

DV Firearm Deaths in Oregon

Between 2003 and 2012, **60%** of all DV-related homicides in Oregon were caused by a firearm.

In 2015 SIXTY Oregonians were killed in DV incidents. **50%** of the victims were murdered with a firearm.



Factors Correlated to DV Lethality

(OTHER THAN PRIOR PHYSICAL ABUSE, FOUND IN 70% OF DV HOMICIDES)

Within Preceding 2 years

- ✓ High Control + Separation
- ✓ Access to firearms
- ✓ Unemployment
- ✓ Threats with weapon
- ✓ Any threat to kill
- ✓ Victim has non-joint child in home

At Time of Incident

- ✓ Access to firearms
- ✓ New relationship by victim
- ✓ Unemployment
- ✓ Threats with weapon
- ✓ Victim separating from Def.
- ✓ High Control + Separation

Protective Factors

Never cohabited
Prior arrests for dv

Topics

- Overview of Relevant Federal and State Firearms Laws
 - Misdemeanor Crimes of Domestic Violence
 - Qualifying Protective/Court Orders
 - Stalking Convictions [State only]
- Judicial Notifications
- Firearms Findings
- Database Entry Requirements
- Extreme Risk Protection Orders (ERPO)
- Firearm Dispossession Protocols
- Firearm Legislation Updates
- Technology, Social Media and Domestic Violence



Tools to Disarm Domestic Violence Offenders- State and Federal Laws

- Federal Law: Two major crimes aimed at domestic violence perpetrators: each amended Gun Control Act of 1968
 - 18 USC §922(g)(8) (protective orders) in 1994 at same time as VAWA and
 - 18 USC §922(g)(9) (MCDVs) in 1996, known as Lautenberg Amendment.
- State Law:
 - ORS 166.250 and ORS 166.255 (expanded by HB 4145 in 2019)
 - FAPA, Stalking Citation, Stalking Protective Order, EPPDAPA, SAPO, Release Agreements, Standard Conditions of Probation, ERPO.
- Criminal Background Checks to Prevent Firearms Purchases
- Firearm Surrender Protocols

Federal Laws Prohibiting Gun Possession

- Convicted felons
- Unlawful users of controlled substances
- Fugitives from justice
- Persons who have renounced their U.S. citizenship
- Persons dishonorably discharged from the armed services
- Illegal aliens
- Persons adjudicated as mentally defective or committed to a mental institution
- **Persons subject to a final protection order**
- **Persons convicted of misdemeanor domestic violence**

FEDERAL LAW PROHIBITS THE POSSESSION OF FIREARMS OR AMMUNITION BY:

- ☞ A person subject to a final protection order
- ☞ A person convicted of domestic violence
- ☞ An unlawful user of or a person addicted to a controlled substance¹
- ☞ A fugitive² from justice, having fled a State
- ☞ A person who has renounced their U.S. citizenship
- ☞ A person convicted of a felony
- ☞ A person adjudicated a mental defective or committed to a mental institution
- ☞ A person dishonorably discharged from the armed services
- ☞ An illegal alien

IT IS ALSO ILLEGAL TO:

- Carry or use a firearm while selling illegal drugs
- Possess most short-barreled shotguns or rifles
- Possess a firearm with an obliterated serial number
- Possess a firearm, knowing it was stolen
- Possess a handgun, if under the age of 18³

Federal Laws: The Brady Act

- In 1993, Congress enacted the “Brady Handgun Violence Prevention Act (Brady Act)”.
- The Brady Act requires all federally licensed gun dealers to obtain a criminal background check of firearm purchasers before completing a sale.
- In Oregon, the background checks are completed by the OSP ID Services division.

Federal Laws:

USC 922(g)(8): QPO

In 1994, Congress amended the Gun Control Act of 1968.

18 USC 922 (g)(8) made it a federal crime for a person who is subject to a “qualifying protection order” to possess a firearm or ammunition, to ship or receive a firearm or ammunition in interstate or foreign commerce.

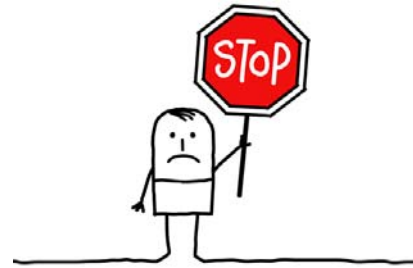
QPO: Necessary Components

1. Hearing: The order was issued after a hearing and the respondent:
 - Received actual notice of the hearing and
 - Had an opportunity to participate or did participate in the hearing.
2. Intimate Partner Relationship
3. Restrains Future Conduct
4. Credible Threat Finding or Physical Force Prohibition.

Protective Orders... Just FAPA?

So long as 4 qualifying elements exist:

- ✓ FAPA Restraining Orders;
- ✓ EPPDAPA Restraining Orders;
- ✓ Stalking Protective Orders;
- ✓ Sexual Assault Protective Order;
- ✓ ORS 107.095 (in family law cases) no contact orders; and
- ✓ No contact provisions in release agreements, probation orders, etc.



Protective Order: Hearing

Protective Order must:

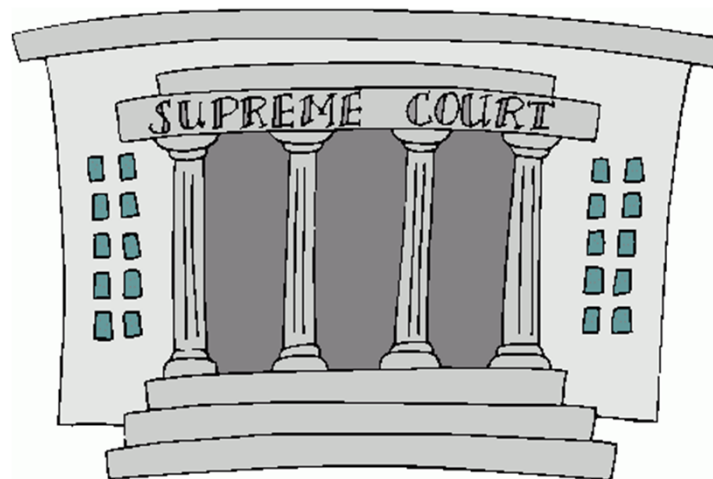
- Be issued after a hearing of which the individual received actual notice and at which the individual had an opportunity to participate. 18 USC §922(g)(8)(A).

Is an *ex parte* FAPA order, a qualifying protective order under federal law? No.



Does Failing to Attend Noticed Hearing Still= Opportunity?

- *U.S. v. Miles*, 2006 U.S. Dist. Lexis 27123 (W.D La. 2006) Didn't matter that Def. was never served with order issued there or otherwise didn't receive a copy of order resulting from that hrg.



Was There a “Hearing?”

- In-court stipulation to Order is enough
 - *US v. Banks*, 339 F.3d 67 (5th Cir. 2003); *U.S. v. Lippman* 369 F.3d 1039 (8th Cir. 2004)
 - Contrast: Stipulation about an order done out of court where no hearing was scheduled or occurred=not enough. *U.S. v. Spruill*, 292 F.3d 207 (5th Cir. 2002). *Especially when DA provides the stipulation and Respondent has no attorney.*
- *In-court request for set-over is enough*
 - *U.S. v. Calor*, 340 F.3d 428 (6th Cir. 2003).

QPO: Intimate Partner Relationship

Definition at 18 USC §921(a)(32)

- The person protected by the order must be:
 - A spouse or former spouse of the respondent;
 - The parent of respondent's child;
 - A person who does or did cohabit (live in a sexually intimate relationship) with respondent;
 - Respondent's child; OR
 - A child of an intimate partner of Respondent (spouse/former spouse, cohabitant/former cohabitant, or parent of respondent's child).

Relationship Status:
it's complicated

Not All FAPA Relationships Qualify

- Federal law doesn't protect all relationships protected under Oregon's FAPA.
- RELATIONSHIPS COVERED BY FAPA BUT NOT FEDERAL LAW:
 - Sexually intimate partners with no cohabitation; and
 - Adults related by blood, marriage, or adoption.

QPO: Must Restrain Future Conduct

18 USC §922(g)(8)(B)

- The protective order must restrain the individual from:
 - Harassing, stalking, or threatening the individual's intimate partner, or the intimate partner's child
- OR**
- Engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or child.



QPO: Credible Threat Finding *or* Physical Force Prohibition Required

- Must include a finding that: the individual represents a credible threat to the physical safety of the intimate partner or child of intimate partner or child of individual

OR

- By its terms explicitly prohibits the attempted/threatened/use of physical force reasonably expected to cause bodily injury against intimate partner or child
- 18 USC §922 (g)(8)(C)

Federal Laws:

USC 922(g)(9): QCDV

In 1996, Congress amended the Gun Control Act again in the “Lautenberg Amendment”.

18 USC 922 (g)(9) made it a federal crime for a person convicted of a “qualifying misdemeanor crime of domestic violence” to possess a firearm or ammunition.

QCDV: Necessary Components

- **Qualifying relationship between the parties**
 - Current or former spouse, parent, or guardian of the victim
 - A person with whom the victim shares a child in common
 - A person who was cohabiting or had cohabited with the victim as a spouse, parent, or guardian;
 - A person similarly situated to a spouse, parent, or guardian of the victim
 - **Does not include dating partners***
- **Statutory elements of the crime are met**
 - Has as an element:
 - The use or attempted use of physical force or
 - The threatened use of a deadly weapon.
- **Procedural requirements**
 - Represented by counsel or knowingly waived right to counsel
 - Jury trial or knowingly waived
 - Doesn't apply if conviction expunged; person pardoned or rights restored

BREAK THE SILENCE



THE TRUTH ABOUT GUNS + DOMESTIC VIOLENCE



1,707 women were murdered by men in 2011, not including mass shootings*

▶ At least **1,509** knew their killer

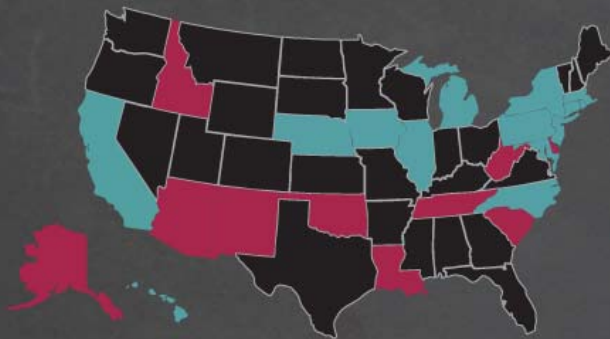
▶ **926** were killed by their husband or partner

▶ **51%** were killed with a gun, more than all other weapons combined

*2011 stats are single victim/single offender incidents



In **57%** of recent mass shootings, a shooter killed his wife, girlfriend, ex, or other family member



The states with **HIGHEST murder rates** for women **DON'T** require universal background checks.

(SC, AK, OK, DE, AZ, TN, ID, WV, LA, NM)



In states with fewer background check loopholes **38% FEWER WOMEN** are killed by partners.

(CA, CT, IA, HI, IL, MD, MA, MI, NE, NJ, NY, NC, PA, RI)



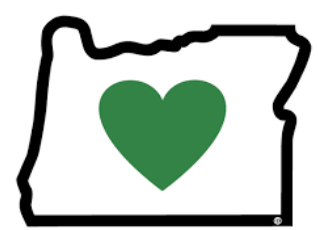
Background checks have stopped **250,000** gun sales to domestic abusers

But in 2012, **6.6 MILLION GUNS** were sold or transferred without any background check

October is Domestic Violence Awareness month. SHARE THIS TO BREAK THE SILENCE.

ultra  violet

State Laws



ORS 24.190: Full Faith and Credit

- Full Faith and Credit compels **Oregon** to recognize qualifying ROs issued by *another* tribal or state court and enforce them as their own
- Other states and tribal jurisdictions may routinely prohibit firearm possession as a term of their protection orders. Violation of a foreign protection order is subject to **mandatory arrest** in **Oregon**.



State Laws

- **ORS 107.718 (1)(h): Order Firearm Dispossession**
- In FAPA order, the court has discretion to include firearm/ammunition prohibition as a term of RO if necessary to protect the safety of the children or Petitioner. (Model Protocol provides guidance)

Prohibition vs. Surrender

- Firearms prohibitions, box #10 on FAPA order: *“Respondent shall not purchase or possess any firearms or ammunition”*
- “Other Orders Regarding Firearms” under box #10 = opportunity to set out surrender requirements on a case-by-case basis or pursuant to local firearms surrender protocols.

☐ 10. Firearms. Respondent shall not purchase or possess any firearms or ammunition. 10. _____
[OJIN Event Code: FQOR]
Other orders regarding firearms (for court use only): _____

FIREARMS NOTIFICATION

If the firearms prohibition in Paragraph 10 is initialed by the judge, it IS unlawful under OREGON state law for you to possess or purchase a FIREARM, including a rifle, pistol, or revolver, and AMMUNITION.

You should consult an attorney if you have questions about this.

[OJIN EVENT CODE: NOGR]



State Laws



- **ORS 107.720:** Entry of FAPA into LEDS (Law Enforcement Data System)/NCIC (National Crime Information Center)
- Requires entry of FAPA orders into LEDS and NCIC. Requires procedures to ensure that an officer at the scene may be informed of the order and its terms: (Firearms Task Force developed model protocols for this!)



State Laws

- **ORS 133.535: Seizure of evidence**
- A firearm which is evidence of a crime (violation of ORS 166.255 (SB 525), for instance), may be seized.

State Laws



- **ORS 135.250: F/A Restriction in Release Agreement**
- ORS 135.250(2)(d) provides that **ORS 107.720** applies to release agreements in “DV” cases. (Entry into LEDS/NCIC)
- “DV” is defined at **ORS 135.230(3)**
- Per **ORS 132.586**, “Constituting Domestic Violence” may be added to a charge if meets definition of DV.



State Laws

- **ORS 135.250(c):** “If the defendant was provided notice and an opportunity to be heard, the court shall also include in the agreement, when appropriate, terms and findings sufficient under (g)(8) to affect the defendant’s ability to possess firearms and ammunition or engage in activities involving firearms.”
- IF the judge orders dispossession/surrender as a condition of release, a violation of that condition may result in an arrest warrant.

State Laws



- **ORS 137.540:** Standard Conditions of Probation
- ORS 137.540(1)(L): The probationer shall not possess weapons, firearms, or dangerous animals.



State Laws

- **ORS 166.250: Unlawful Possession of Firearms**
- **ORS 166.250(B)(i):** The Defendant while a minor was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a **misdemeanor involving violence, as defined in ORS 166.470**; and
- (ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section.

State Laws



- **ORS 166.470(1)(g):** Definition of “misdemeanor of violence”
- A misdemeanor described in ORS 163.160 (Assault IV), 163.187 (Strangulation), 163.190 (Menacing), 163.195 (REAP), or 166.155(1)(b) (Intimidation in the Second Degree—subjecting another person to offensive physical contact because of person’s perception of the other’s race, color, religion, sexual orientation, disability or national origin).

State Laws



- **ORS 166.291 -293:** Issuance and denial or revocation of concealed handgun license
- **ORS 166.291:** Prohibitions on issuance of a CHL
 - (e) Is on pre-trial release
 - (g) Has been convicted of a misdemeanor within the four years prior to the application
 - (k) Has been within the last four years prior to the application, adjudicated as a juvenile of a misdemeanor involving violence
 - (m) Subject to a Stalking citation or FAPA and/or Stalking Order



State Laws

- **ORS 166.293: Denial or revocation of license**
- **Per ORS 166.293(3)(a):** “Any act or condition that would prevent the issuance of a concealed handgun license *is cause* for revoking a concealed handgun license.”
- A sheriff may revoke a concealed handgun license
- A peace officer or corrections officer may seize a concealed handgun license and return it to the issuing sheriff if the license is held by a person who has been arrested or cited for a crime that can or would otherwise disqualify that person from being issued a CHL.

State Laws



- **SB 525: Possession of firearm or ammunition by certain persons prohibited**
- Until the passage of SB 525 in 2015 (ORS 166.255), there was no specific Oregon law which prohibited the possession of a firearm by qualifying protection order respondents or those convicted of qualifying domestic violence misdemeanors.
- ORS 166.255 was meant to mirror federal law (18 USC 922 (g)(8) & (9)).
- HB 4145, effective January 2019, changed the definition of protected persons (**from intimate partner to FHH member under ORS 135.230**), so it no longer mirrors the federal relationships.



State Laws: QCO

New
Jan. 2019

ORS 166.255(1)(a): The person is subject of a court order that

- Was continued after a hearing of which the person had notice and opportunity to be heard;
- Restrains the person (respondent-perpetrator) from stalking, intimidating, molesting or menacing a *family or household member*, a child of a *family or household member* or a child of the person.
- Includes a finding that the person (respondent-perpetrator) is a credible threat to the physical safety of a *family or household member*, a child of a *family or household member* or child of the person.

**New
Jan. 2019**

State Laws: QCO



- **ORS 135.230(4): Definition of family or household members*** means that the Petitioner (victim) is:
 - Spouse, former spouse,
 - **Adult person related by blood or marriage**
 - Cohabitant or former cohabitant []
 - **Persons who have been involved in a sexually intimate relationship**
 - A parent of the respondent's child
- **ORS 166.255 also protects**
 - A child of a **family or household member** of Respondent
 - Respondent's child

State Laws: QCO



In other words...



Relationship Status:
it's complicated



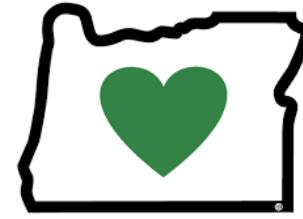


State Laws: QCO

- **ORS 166.255(1)(a): Qualifying court order**
- The ban last only for the duration of the order
- (2) There is an official use exemption (as in the federal law)
- Federal, state and local governmental employees when acting in their **official capacities** are exempt from the prohibition against possession under 18 USC §922(g)(8) and ORS 166.255(2), BUT **they remain subject to it in their personal capacities.**

**New
Jan. 2019**

State Laws: MCDV



- **ORS 166.255(1)(b):** Person has been convicted of a **qualifying misdemeanor** and, at the time of the offense, the person was a **family or household member** of the victim of the offense.
- **Family or household member** means (ORS 135.230):
 - Victim was spouse of former spouse
 - Person with victim shares a child in common.
 - Victim's parent or guardian (*per 166.255*)
 - Person cohabiting with victim or who has cohabited with victim []
 - **Persons who have been involved in a sexually intimate relationship**

State Laws: MCDV



In other words...



Relationship Status:
it's complicated





State Laws: MCDV

- **ORS 166.255(3)(f): Qualifying misdemeanor defined**
- Has as an element use or attempted use of physical force or threatened use of a deadly weapon.
- Deadly weapon means any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury. ORS 161.015

State Laws: MCDV



- **ORS 166.255** doesn't specify which crimes qualify, so....
which crimes qualify?
- **Under 18 USC 922 (g)(9)**, the FBI designated six **Oregon** crimes which qualified:
 - ORS 163.160 – Assault in the Fourth Degree
 - ORS 163.187 – Strangulation
 - ORS 163.435 – Contributing to the Sexual Delinquency of a Minor
 - ORS 163.445 – Sexual Misconduct
 - ORS 166.025 – Disorderly Conduct
 - ORS 166.190 – Pointing Firearm at Another



State Laws: MCDV

- Despite the FBI designation, and recent US Supreme Court cases like *U.S. v. Castleman*, the US Attorney's Office has historically only considered two of those crimes to be qualifying misdemeanors: **Assault and Strangulation (or attempts thereof)**.
- There have been on-going discussions about whether the federal analysis and conclusion should or must be adopted in state level investigations and prosecutions of ORS 166.255.
- We are hoping we have a compromise that clarifies the distinction in the Firearms Findings form but, this is where you come in: **they must be appropriately pled!**

State Laws: MCDV



- **ORS 166.255(1)(b): Qualifying Misdemeanor Crimes**
- **BOTTOM LINE:** Until we expand or modify the language of our state statute, the best practice seems to be to stick to the crimes that the FBI has determined qualify.
- **ALSO:** There is **no “official use exemption”** under 18 USC 922 (g)(9) or ORS 166.255(1)(b).
- **Another question:** Does the Defendant have to know that s/he was convicted of a qualifying misdemeanor conviction and/or of the consequences of the conviction?
 - **The short answer is No.**

State Laws: Stalking



HB 4145 also made it unlawful for a person to knowingly possess a firearm or ammunition if the person has been convicted of stalking under ORS 163.732!

ORS 166.255 applies when respondent is:

1. Subject to a QCO
2. Convicted of a MCDV
3. Convicted of Stalking ←**new!**



If only they were this easy to identify.

Judicial Notifications

- **VAWA notice requirements:**
- The Violence Against Women Reauthorization Act of 2005 (VAWA), requires as a condition of eligibility for VAWA grants that the state certify that its judicial and administrative policies and practices include notification to domestic violence offenders of the requirements of the Brady firearm laws and any applicable related federal, state, or local firearms laws. Failure to notify in at least 90% of Oregon's domestic violence cases will cause Oregon to lose VAWA STOP grant funds.
- **Notice can be given orally or in writing.**
- OJD model FAPA, Stalking Protective Orders, SAPO, and EPPDAPA Notice to Respondent/Request for Hearing forms include the notice.

Judicial Notifications

- **ORS 135.385 Notice**
- **ORS 135.385(2)(f)** requires judges to inform a defendant at a plea of guilty or no contest that, if the defendant enters a plea of guilty or no contest to an offense involving domestic violence, **federal law** may prohibit the defendant from possessing, receiving, shipping, or transporting a firearm or ammunition, and the conviction may negatively affect the defendant's ability to serve in the Armed Forces of the United States or to be employed in law enforcement.
- **Many OJD forms** already include this language, including the Firearms Notification form, as well as the OJD arraignment video, the Uniform Plea Petition, and the Uniform Criminal Judgment. Some local courts have amended their plea petitions to provide this notice.

Brady Findings

- “Brady” findings are judicial findings to indicate that the terms of a protective order or a misdemeanor conviction may disqualify a respondent or defendant from possessing or other use of firearms and ammunition under federal law; document is labeled “Firearms Findings (Brady)” and often is called a “Brady certificate.”



“Brady” Findings Are Important

- Vital step in preventing firearms sales to those who cannot possess firearms under federal/state law.
- Provides initial determination that a protective order is qualifying for federal/state law purposes
- Drives home a clear message to defendants and respondents that possession of firearms and ammo is crime under federal and state law.
- Important for prosecutors in criminal misdemeanor cases and lawyers in protective orders cases to urge completion by judges.
- Failure to complete findings does **not** mean that laws do not apply.

Database Entry Requirements

- **ORS 107.720(1)(a)** requires the sheriff to enter FAPA orders into **Law Enforcement Data System (LEDS)** and **National Crime Information Center (NCIC)** once service is complete.
- **ORS 135.250(2)(d)** provides that ORS 107.720 applies to no contact orders (NCO) in release agreements executed by defendants charged with domestic violence offenses.
- Court staff should forward orders containing federal and state firearms findings to the Sheriff's Office for entry into LEDS and national databases.

Database Entry Requirements

- OJD tracks the issuance of judicial orders and notices related to firearms. Odyssey data entry codes have been assigned and should be entered by court staff when applicable.

Codes are:

- **Firearms Notification:** **NOGR**
(Notice of Gun Restrictions)
- **Federal Firearms Findings (Brady):** **ORBY**
(Order re Brady)
- **Order Restricting Firearms under State law:** **FQOR**
(Firearms Restrictions Order)
- POSSIBLE that ORBY should be used an indicator for both federal and state firearms findings.
- **CHECK WITH YOUR COURT ADMINISTRATOR**

Database Entry Requirements

- **OJD's Odyssey Business Processes** on Flagging Domestic Violence in Criminal Cases and Criminal Charges "Constituting Domestic Violence" provide guidance on when to use and how to add the flag and charge modifier for domestic violence in criminal cases.
- In addition, the **Odyssey Business Processes** on Brady Indicators provide direction as to the steps necessary to capture the appropriate firearms data entry codes .



DOMESTIC VIOLENCE, WOMEN, AND GUNS IN THE US

5x

Abused women are 5 times more likely to be killed by their abuser if the abuser has access to a gun.

$\frac{1}{2}$

More than half of all murders of women are committed with a gun.

11x

Women in the US are 11 times more likely to be murdered with a gun than women in other countries.

12x

Domestic violence assaults involving a gun are 12 times more likely to result in a death than those involving other weapons or bodily force.

Extreme Risk Protection Orders

ORS 166.525- 166.543

The logo for NEWISH, with the word "NEW" in green and "ISH" in white, set against a dark grey rectangular background.

NEWISH

January 1, 2018

ERPO Showing and Relief



Petitioner must show:

Respondent presents a risk in the near future, including an imminent risk, of suicide or causing physical injury to another person

Sole Relief:

Dispossession of **deadly weapons (includes firearms)** & surrender of concealed handgun license

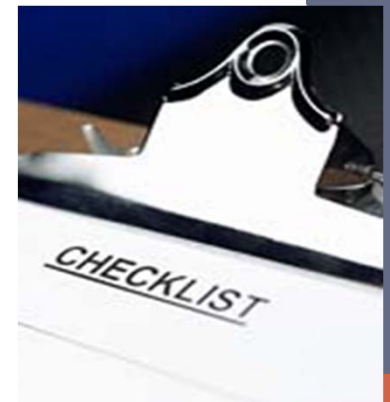
Who Can Petition?

- Law Enforcement Officer or
- "Family or Household Member"
 - ~*not synonymous with FAPA or criminal definitions~*
 - Current spouse or intimate partner,
 - Parent, child, or sibling, or
 - Person living in same household (no "cohabitation/sexual intimacy " required)
 - *Not include: former spouses, former cohabitants, unmarried parents, former sexual intimates w/in 2 years, adults related by blood or marriage*

Relationship Status:
it's complicated

Procedure: similar to FAPA *EXCEPT*:

- Judge **MUST consider certain factors**:
 - History of suicide attempts/violence/use of force;
 - prior convictions for Assault IV, Menacing, Strangulation, Recklessly Endangering, Intimidation II, Stalking, DV, DUII, cruelty to animals
 - recent substance abuse;
 - prior use/display of deadly weapon;
 - prior FAPA violation;
 - recent acquisition of weapon
 - any other reliable information
- Findings **cannot** include MH diagnosis or nexus between risk and mental illness



Firearm Dispossession Protocols

- MODEL FIREARM DISPOSSESSION PROTOCOL: Developed by the **Oregon** Firearms and Domestic Violence Task Force
- **What:** Protocol and court orders to prohibit Respondents/Defendants from possessing firearms
 - No need to reinvent the wheel. The hard work has been done for you!
- **Why:** No **Oregon** statute sets out how firearms should be removed from a person after a judge orders dispossession

PROTOCOL

Firearm Dispossession Protocols

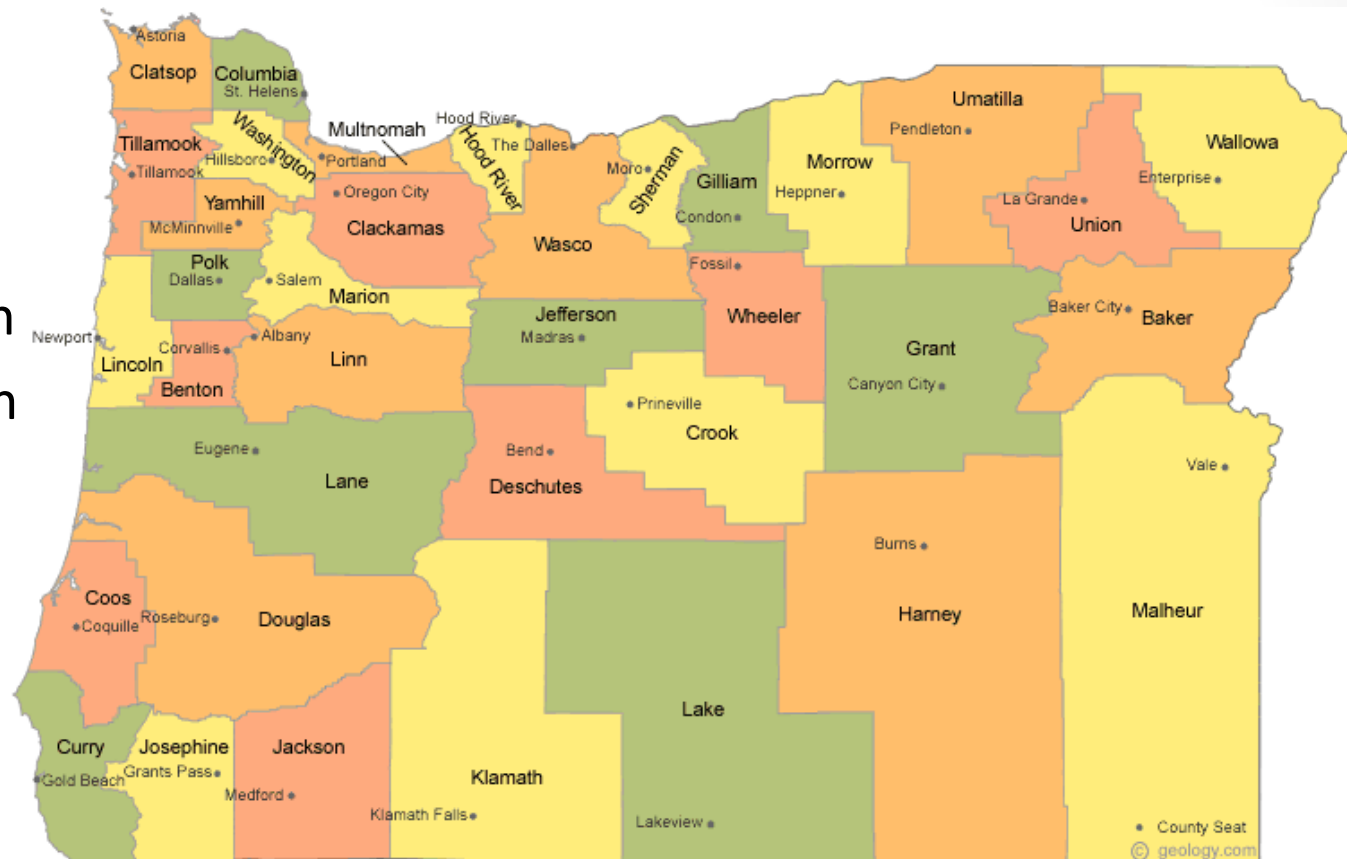
- **How:** To be used in DV cases *or* other cases in which:
 - Court orders dispossession, and
 - A nexus exists between the incident and firearms to be surrendered
- **Nexus exists** when:
 - Defendant/Respondent used, attempted to use or threatened to use a firearm against Victim/Petitioner in the current case; *or*
 - D/R has a history of firearm use against the V/P
 - **Cases where it may be ordered:** FAPA, Stalking orders, EPPDAPA, Release Agreements, Judgments

Common Protocol Components

- Respondent typically must:
 - Declare they have no firearms
 - Transfer firearms to a third party who is not barred from possessing (passes criminal background check) OR
 - Surrender to law enforcement
- Some protocols rely only on filing of affidavit or declaration of respondent while others schedule a “compliance” hearing that can be cancelled if affidavit or declaration filed.
- Return of firearms by third party or law enforcement only after a background check confirms respondent is eligible to possess.
- Commitment of law enforcement and DAs to enforce and prosecute violations of surrender terms.

Firearm Dispossession Protocols

- Clatsop
- Clackamas
- Marion
- Multnomah
- Washington



Firearm Resources*

Information on Firearms Restrictions in Domestic Violence Cases

- [Summary of Firearms Information](#)
- [Firearms Prohibitions in Domestic Violence Cases: A Guide for](#)
- [Oregon Courts Misdemeanor Crimes of Domestic Violence – Oregon Benchsheet](#)
- [Qualifying Order of Protection/Restraint - Oregon Benchsheet](#)

<https://www.courts.oregon.gov/forms/Documents/Firearms%20Information.pdf>

*Not updated since Jan 2019; HB 4145

Upcoming bills re: firearms

- HB 2013:
 - Firearm prohibition will attach after the time a respondent has to contest the order → IE, not able to escape the prohibition by not contesting the order
 - Will require that judges order that the respondent in a RO dispossess of firearms and provide a declaration that the dispossession has occurred
 - Will require that judges order that defendants convicted of qualifying misdemeanor offense under ORS 166.255, to dispossess of firearms and provide a declaration that the dispossession has occurred
- Failure to submit declaration to court → contempt of court may be filed by DA.

Other Upcoming Fixes and Ideas

- **What makes it a “qualifying misdemeanor” for purposes of the firearm prohibition and the dispossession order requirement?**
- Proposal: to give prosecutors the authority to plead the language of use or threatened use of physical force or use of a deadly weapon as an additional element
- There would be no additional finding that would need to be made for it to be clear that it is a qualifying offense.

Technology, Social Media and Domestic Violence

Technology and DV

- Legislation had not caught up to the ways in which technology and social media can be used to exert power and control
- Lack of definitions and caselaw that define things like “contact” or “follow” as it applies to social media/ internet websites
- However, new stalking case law finds electronic tracking can be a qualifying contact for a stalking protective order: *A.A.C. v. Miller-Pomlee*, 296 Or App 816 (2019)

Use of Technology to Stalk

- Phones
- Cameras
- Computers
- Spyware
- Global Positioning Systems (GPS)
- Email and Instant Messaging programs
- Assistive technologies
- Social networking sites/ applications
- Phone applications



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Eric 212.639.5555
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Display a different number to protect yourself or pull a prank. It's easy to use and works on any phone.

[Sign Up For SpoofCard](#)

Social Media Communications

- Is the comment, post, “like,” a contact?
- Instagram, Facebook, Snapchat, etc
 - Does it require follower status?
 - Who sees the post?
 - Communication through a third party?

Unlawful Dissemination of an Intimate Image

- ORS 163.472
 - With the intent to harass, humiliate or injure another person, knowingly causes to be disclosed through an Internet website an identifiable image of the other person whose intimate parts are visible or who is engaged in sexual conduct
 - The person knows or reasonably should have known that the other person doesn't consent to the disclosure
 - The other person is harassed, humiliated, or injured (reasonable person standard)
 - Class A; Class C Felony if prior conviction
- HB 2393 (PENDING)
 - Would remove the need for the disclosure to be "through an internet website"
 - Adds the allowance for a civil action (regardless of criminal prosecution) to secure an injunction, damages or other appropriate relief
 - Removes the crime of harassment by distribution of a visual recording of a person under the age of 18.

From **National Network to End Domestic Violence (NNEDV) Safety Net Project:**

- *Primer: Understanding & Investigating Tech Misuse*
- *Approaches to Evidence Collection:*
 - *Survivor Considerations*
 - *Criminal vs. Civil Cases*
 - *Emails*
 - *Internet of Things (IoT)*
 - *Messages & Messaging Platforms*
 - *Spoofing Calls and Messages*
 - *Mobile Spyware*
- *Evidence Tips for Prosecutors: Technology Abuse*
- *How to Gather Technology Abuse Evidence for Court (SRLs)*

Please feel free to call/email with questions & hypotheticals!

Sarah Sabri

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For your work to help end
domestic and sexual violence.



Acknowledgements

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- Sarah Sabri, Oregon Department of Justice
- Judge Maureen McKnight, Multnomah County Circuit Court (ERPO)

Oregon Family Law: Building for the Future

May 9-10, 2019

Workshop

ECOURT: The Life of a Case File and Statistics Update

Have you wondered how a case moves through Oregon's e-Court systems? Or what the process looks like for attorneys, self-represented litigants, and court staff? Have you wondered what your case looks like to court staff? Have you ever wondered how many documents are filed of different types, in different courts? Have you wondered what other data can be gleaned from the e-Court system, and it matters?

Oregon Judicial Department staff will show how a case is initiated and moves through File & Serve, Guide & File, and Odyssey. We will discuss the process, especially the need for correct input and coding. The presentation will include discussion of the data collecting power of the e-Court systems.

Speakers

- ◆ *Sam Dupree, OJD eServices Legal Liaison, OPE*
- ◆ *Holly Rudolph, Oregon Judicial Department Forms Manager, OJD*
- ◆ *Mario Ius, Lead Analyst, Enterprise Technology Services Division, OJD*
- ◆ *Conor Wall, Data Analyst, Juvenile and Family Court Program Division, OJD*

Sam Dupree works as a Staff Attorney for the Oregon Judicial Department's (OJD) Office of Policy and Education. He is the public point of contact for OJD's eServices, which includes File and Serve. Other projects Sam has worked on include the OJD's Civil Justice Improvements Task Force, the Oregon Docket Management Initiative, and OJD's Specialty Court Case Management System. Sam has worked for OJD since 2014, when he was hired as a Judicial Clerk for the Honorable Michael C. Wetzel in Clackamas County.

Holly Rudolph moved to Portland from the Philadelphia area, having worked in the healthcare field for over twelve years and graduating summa cum laude from Rutgers University. She graduated from Lewis and Clark Law School in 2010 with a certificate in criminal law, having served as an editor for the Animal Law Review and officer in multiple student organizations. While studying at Lewis and Clark, she produced several writings on equine law, including a presentation for the National Equine Law Conference in Lexington, KY and an article published in the Kentucky Journal of Equine, Agricultural, and Natural Resources Law. Holly has worked for the Office of the State Court Administrator since 2010 developing both paper and interactive forms for self-represented litigants, as well as electronic forms for court use.

Mario Ius began working for the Oregon Judicial Department in 2012 as a civil clerk in Polk County. After the transition to Odyssey, he became the lead clerk for the civil department, including general Civil, Small Claims, FED, Family, and Probate case types. In 2014, he transitioned to working in the Office of Education, Training, and Outreach (OETO) in Salem as an analyst, where he led or assisted multiple courts and OJD programs to transition into the Odyssey case management system. After the restructuring of OSCA in 2018, he has been working in the Enterprise Technology and Services Division (ETSD) to develop and maintain the statewide help system used by court staff for case processing.

Conor Wall is a Data Analyst in the Oregon Judicial Department's Juvenile and Family Court Program Division, where he works on juvenile statistical reports and other data-related projects. Prior to joining JCIP in 2013, Conor worked as a teaching assistant at Oregon State University, and coordinated volunteering and meal service at a shelter for homeless women and children in Baltimore, Maryland. Conor grew up in Southern New Jersey and holds a Master of Public Policy from Oregon State University and a Bachelor of Arts from Loyola University Maryland.

SFLAC Data Subcommittee
Domestic Relations Data Priorities

Phase One

Self-Represented Litigants:

- The % of petitioners who are self-represented at the time of filing
- The % of respondents who are self-represented at the time of filing the response
- The % of cases where both parties/one party/no parties are represented at the time of judgment entry

Mediation:

- Number of cases with each type of mediation result: Full Agreement, Partial Agreement, No Agreement, Failure to Appear for Mediation
- Number of objections received within 2 weeks of filing of mediator's report

Contested Restraining Orders:

- Number and percentage of initial restraining orders on which a request for a hearing is filed
- Number and percentage of renewal orders on which a request for hearing is filed

Phase Two

Post-Judgment Actions: Number of post-judgment motions to show cause and motions for parenting time enforcement filed

Case Resolution: Number and percentage of cases resolved by the type of resolution (default judgment, stipulated judgment, mediated judgment, Rule 7 dismissal, dismissal at party request, trial)

Timeliness of Modification Judgments: The percentage of motions for modification that result in a judgment within 180 days (this is an OJD Timely Disposition Measure proposed by the CREW Time to Disposition Workgroup)

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Eliminating Bias Against Parents with Disabilities; Legislative, Procedural and Practice Updates for Family Law and Child Welfare Communities

This session presents research regarding how parents with disabilities function, their experiences in custody and placement systems, and a Road Map for ensuring that decision makers treat parents with disabilities fairly in the processes before them. In addition, model legislation which strengthens the standard of review for cases involving children of parents with disabilities will be explored. An overview of the legislation, specific Oregon case studies and practitioner best practices shall be discussed.

Speakers

- ♦ *Kristen Jocums, J.D., Mediator and Parent Coordinator, Peaceful Family Solutions, LLC*

Kristen Jocums J.D. has focused on non-litigation solutions to conflict as a mediator and parenting coordinator for the past 8 years. She previously practiced family law for 9 years. Kristen has a wide range of presentation experience ranging from mini sessions to full day neutrals training and she has 26 years' experience coordinating conferences for people with disabilities.

Roadmap for Analyzing Cases Involving Parents with Disabilities

<p style="text-align: center;">1: Bias Pre-Evaluation</p> <ul style="list-style-type: none"> • What disability(ies) are present in this parent(s)? • What are common stereotypes for this type of disability • What might my own stereotypes be? • Do I have fitness concerns beyond my potential stereotypes? • If both parents are disabled, does this add to my perceptions about potential parenting difficulties? • How do I separate my stereotypes or lack of knowledge from true fitness concerns? 	<p style="text-align: center;">2: Gather Information</p> <ul style="list-style-type: none"> • What accommodations are used to manage life effectively with this disability? • What common accommodations are made for parenting for this type of disability? • What parenting success stories are available for this disability type? • Where can I find the best information on managing this disability type?
<p style="text-align: center;">3: Case Evaluation</p> <ul style="list-style-type: none"> • What fitness claims are being made against the parent with a disability? • Is each claim one that is commonly made against parents without disabilities? • Does the level or severity of the “claimed” unfitness rise to the level at which a parent without a disability would have their parenting investigated/evaluated? • Are unfitness issues being claimed because of accommodations (i.e., parent with a disability is less capable because of accommodations?) • Do I need more information about how this parent performs tasks? • Is the parent aware of accommodations and using them? • Do I need more information about how this parent nurtures and cares for their own child(ren)? • Are there any assumptions of unfitness that are being made but not articulated? • Is there an accommodation and/or support to solve each claimed or perceived unfitness issue? • Check your assumptions of “normal.” • Remember “normalization” need not be achieved here, just meet fit parenting level. • Are there aspects of this disability that cannot be accommodated? • If so, do the unaccommodated aspects constitute a remaining safety concern for the child(ren)? 	<p style="text-align: center;">4: Decision and Self Reflection</p> <p style="text-align: center;">Make preliminary decision/plan.</p> <p>Self-reflect with the following questions:</p> <ul style="list-style-type: none"> • What bias might I have had going into this? • What bias might someone else have had that influenced their input in this process? • Did I allow enough time/avenues for true fitness capabilities to be evaluated despite these potential biases? • Are my potential biases or someone else’s potential biases affecting my actions? <p style="text-align: center;">Make final decision/plan</p> <p>Double-check your final decision with these questions:</p> <ul style="list-style-type: none"> • Is the child safe? • Is the child receiving benefit from each parent at each parents’ fullest potential? • Has my image of “normal” parenting been challenged? • Have I assured myself that I have separated my beliefs of “normal” from true fitness concerns? <p style="text-align: right;">©Peaceful Family Solutions, LLC. 2019</p>

Research Summary on Reducing Implicit Bias

Stereotype replacement

This strategy involves replacing stereotypical responses for non-stereotypical responses. Using this strategy to address personal stereotyping involves recognizing that a response is based on stereotypes, labeling the response as stereotypical, and reflecting on why the response occurred. Next one considers how the biased response could be avoided in the future and replaces it with an unbiased response (Monteith, 1993). A parallel process can be applied to societal (e.g., media) stereotyping.

Counter-Stereotypic Imaging

This strategy involves imagining in detail counter-stereotypic others (Blair et al., 2001). These others can be abstract (e.g., smart Black people), famous (e.g., Barack Obama), or non-famous (e.g., a personal friend). The strategy makes positive exemplars salient and accessible when challenging a stereotypes validity.

Individuation

This strategy relies on preventing stereotypic inferences by obtaining specific information about group members (Brewer, 1988; Fiske & Neuberg, 1990). Using this strategy helps people evaluate members of the target group based on personal, rather than group-based; attributes.

Perspective Taking

This strategy involves taking the perspective in the first person of a member of a stereotyped group. Perspective taking increases psychological closeness to the stigmatized group, which ameliorates group-based evaluations (Galinsky & Moskowitz, 2000)

Increasing Opportunities for Contact

This strategy involves seeking opportunities to encounter and engage in positive interactions with out-group members. Increased contact can ameliorate implicit bias through a wide variety of mechanisms, including altering the cognitive representations of the group or by directly improving evaluations of the group (Pettigrew, 1998; Pettigrew and Tropp, 2006)

Implicit Bias Toolkit

1. Increase Motivation
 - Prioritize equity, inclusion, and diversity
 - Action plans with measurable outcomes
 - Culture of the organization
2. Normalize Bias
 - Separate implicit bias from conscious bias
 - Separate bias from discrimination
 - We all have it
 - In many ways it serves people well
 - It takes time to unlearn
3. Awareness: Understand Implicit Bias Processes
 - Understand neuroscience of schemas and implicit bias
 - Require hiring committees to take and discuss the Implicit Association Test (IAT)
 - Surface potential biases prior to analysis and decision-making
4. Unlearn Implicit Bias
 - Exposure
 - Stereotype replacement
 - Counter-stereotyping , counter stories, and positive exemplars
 - Individuation
 - Perspective taking
 - Increasing opportunities for contact
5. Accountability Procedures: Mitigating the effects of bias
 - Practices and policies
 - Review and re-write job descriptions
 - Diversify selection committees
 - Revise interview questions
 - Ask follow-up questions in interviews
 - Higher level processing – slowing down
 - Reduced cognitive load
 - Checklists and protocols
 - Procedural/organizational changes
 - Evaluate Outcomes

John Lenssen and Associates

Implicit Bias Resources – Parents with Disabilities

1. Through the Looking Glass

URL: www.lookingglass.org

- Stated mission: "To provide and encourage respectful and empowering services—guided by personal disability experience and disability culture—for families that have children, parents, or grandparents with disability or medical issues."
- Philosophy: The name "through the looking glass" implies that people with disabilities have unique perspectives and can empower one another.
- Nearly 80% of staff are disabled themselves, or family members of disabled children
- Staff includes psychologists, therapists, educators, rehab professionals, nurses, family law attorneys, and childbirth educators
- Emphasis on understanding and lessening social barriers to parenting with a disability.

2. National Center for Parents with Disabilities:

Provides information, consultation, materials and training regarding parenting with disabilities.

URL: <http://heller.brandeis.edu/parents-with-disabilities/>

- A number of free publications, most focusing on parents with physical, cognitive or hearing disabilities.

3. Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children:

URL: <https://www.ncd.gov/publications/2012/Sep272012>

2012 report by the National Council on Disability. Appears to be the most recent comprehensive data source about parental rights and termination issues. Highlights include:

- Reports 4.1 million parents with disabilities, roughly 6% of the parent population with children under 18.
- Estimated child removal rates are 70-80% for psychiatric disabilities, 40%-80% for parents with intellectual disabilities; 13% for parents with physical disabilities; removal rates for deaf and blind parents are unspecified, but described as "extremely high" As of 2012, two-thirds of state dependency statutes allowed disability to be used as a criterion for parental fitness.
- Need for more data on the numbers of parents with disabilities, their needs, and their experiences
- The report points to discrimination in involvement of child welfare systems, decisions about parental rights and custody, bias in parental fitness assessments, and discrimination in adoption and access to assisted reproductive technology.
- Need for funding so that personal assistants can assist parents with disabilities (particularly physical).
- Lack of accessible, affordable, appropriate housing for families.
- Barriers to accessing paratransit services with children. housing for families.
- Income and healthcare barriers.
- Lack of peer support for parents with disabilities.

- Court-appointed attorneys may harbor biases and may not provide good representation to parents with disabilities. These attorneys may have excessive caseloads and not be sufficiently trained.
- Need for federal legislation protecting the parenting rights of people with disabilities, similar to the Indian Child Welfare Act.

6. Disability Tool Kit – Christopher and Dana Reeves Foundation

URL: http://s3.amazonaws.com/reeve-assets-production/Parenting-Booklet-Digital_Finalv2.pdf

7. Disability specific organizations

a. Blind/visually impaired

-National Federation of the Blind

URL: www.blindparents.org

b. National Association of the Deaf

c. Spinal Cord - Christopher and Dana Reeve Foundation www.ChristopherReeve.org

d. Intellectual

American Association on Intellectual and Developmental Disabilities

URL: www.aaidd.org

Intellectual and developmental disabilities (IDDs) are disorders that are usually present at birth and that negatively affect the trajectory of the individual's physical, intellectual, and/or emotional development. Many of these conditions affect multiple body parts or systems.

Intellectual disability¹ starts any time before a child turns 18 and is characterized by problems with both:

- Intellectual functioning or intelligence, which include the ability to learn, reason, problem solve, and other skills; and
- Adaptive behavior, which includes everyday social and life skills.

e. Mental Illness

- National Alliance on Mental Illness
- MI, NAMI the National Alliance on Mental Illness, is the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness.

- HD
- Anxiety Disorders

- Bipolar Disorder
- Borderline Personality Disorder
- Depression
- Dissociative Disorders
- Eating Disorders
- Obsessive-Compulsive Disorder
- Posttraumatic Stress Disorder
- Schizoaffective D
- Isorder

f. Spinal cord

National Spinal Chord Injury Association

URL: <https://www.unitedspinal.org/>

Implicit Bias Source and Reading List

1. Correll, Shelley J. *Gender and Racial Bias in Hiring*. 21 Mar. 2006, provost.upenn.edu/uploads/media_items/gender-racial-bias.original.pdf.
2. Berghoef, Kacie. "What Does Implicit Bias Really Mean?" *ThoughtCo*, ThoughtCo, 18 June 2018, www.thoughtco.com/understanding-implicit-bias-4165634.
3. Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children 2012 report by the National Council on Disability."
<https://www.ncd.gov/publications/2012/Sep272012>"
4. Parenting Tool Kit. Christopher and Dana Reeve Foundation www.ChristopherReeve.org
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6. Parenting Experiences of Blind and Visually Impaired Adults - Executive Summary
7. Professional Development and Research Institute on Blindness - Louisiana Tech University
 - Edward Bell, Ph.D. Completed January 2019; contact Kristen if you need it, not published yet

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Facilitator Breakout

Calling all Family Law Facilitators! You've sent us your questions, we have answers! This panel presentation is intended for family law facilitators and includes discussion areas of Guide & File, New Forms, Legal Advice versus Legal Information, and Trauma Informed Services.

Speakers

- ♦ *The Honorable Karrie McIntyre, Lane County Circuit Court Judge*
- ♦ *Colleen Carter-Cox, Family Court Coordinator, Lane County Circuit Court*
- ♦ *Elizabeth Vaughn, Family Court Coordinator, Clackamas County Circuit Court*
- ♦ *Holly Rudolph, Oregon Judicial Department Forms Manager, OJD*
- ♦ *LeeAnn O'Neill, Bilingual Family Law Facilitator, Deschutes County Circuit Court*
- ♦ *Hannah Marchese, Family Law Facilitator, Jackson County Circuit Court*

Judge Karrie McIntyre was appointed to the bench in May 2015 and was subsequently elected in 2016. Prior to her appointment she practiced for more than 15 years in both criminal and domestic relations law. Judge McIntyre attended Oregon State University earning a Bachelor's of Science in Forestry and graduated from University of Oregon Law School in 1998. She currently serves as Chair of the State Family Law Advisory Committee and the Lane County Family Law Advisory Committee.

Colleen Carter-Cox is the Family Court Coordinator at the Lane County Circuit Court and runs the Court's Family Court Assistance Office. Prior to coordinating the program, she worked as a family law facilitator for 8 years and was involved in the initial development of Lane County's facilitation program in 2001. She currently is vice chair to the Lane County Family Law Advisory Committee and is also a member of the State Family Law Advisory Committee and is active in both the Futures and Education Subcommittees of the SFLAC. Colleen is a member of the OJD Domestic Relations Forms Taskforce and of the Standardized Forms Subgroup of Law and Policy.

Elizabeth Vaughn started working for Oregon Judicial Department in 1999, working briefly in Small Claims and Evictions, and then moving to the Family Law Department as a front counter clerk reviewing restraining orders, answering questions, and entering judgments. In March of 2004, Elizabeth was hired in Clackamas County to design and facilitate their new Family Law Self-Help Program. Over the years, she has been fortunate enough to work on many work groups and sub-committees in Salem; helping to write and review certain UTCRs, statewide forms, and participating in statewide family law training events. She is a member of the Clackamas County FLAC as well as an advisory committee member for Clackamas County Resolution Services. About a year ago, she joined the SFLAC Child Support Subcommittee, and is happy to be a part of today's discussion.

Oregon Family Law: Building for the Future
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Facilitator Breakout Cont.

Holly Rudolph moved to Portland from the Philadelphia area, having worked in the healthcare field for over twelve years and graduating summa cum laude from Rutgers University. She graduated from Lewis and Clark Law School in 2010 with a certificate in criminal law, having served as an editor for the Animal Law Review and officer in multiple student organizations. While studying at Lewis and Clark, she produced several writings on equine law, including a presentation for the National Equine Law Conference in Lexington, KY and an article published in the Kentucky Journal of Equine, Agricultural, and Natural Resources Law. Holly has worked for the Office of the State Court Administrator since 2010 developing both paper and interactive forms for self-represented litigants, as well as electronic forms for court use.

LeeAnn O'Neill is the bilingual Family Law Facilitator for the Deschutes County Circuit Court and is a member of the Deschutes County Family Law Advisory Committee and the State Family Law Advisory Committee's Education Subcommittee and Domestic Violence Stalking Bench Guide Workgroup. She is a former attorney and prior to joining OJD, ran the legal advocacy program at Saving Grace, Central Oregon's domestic violence agency.

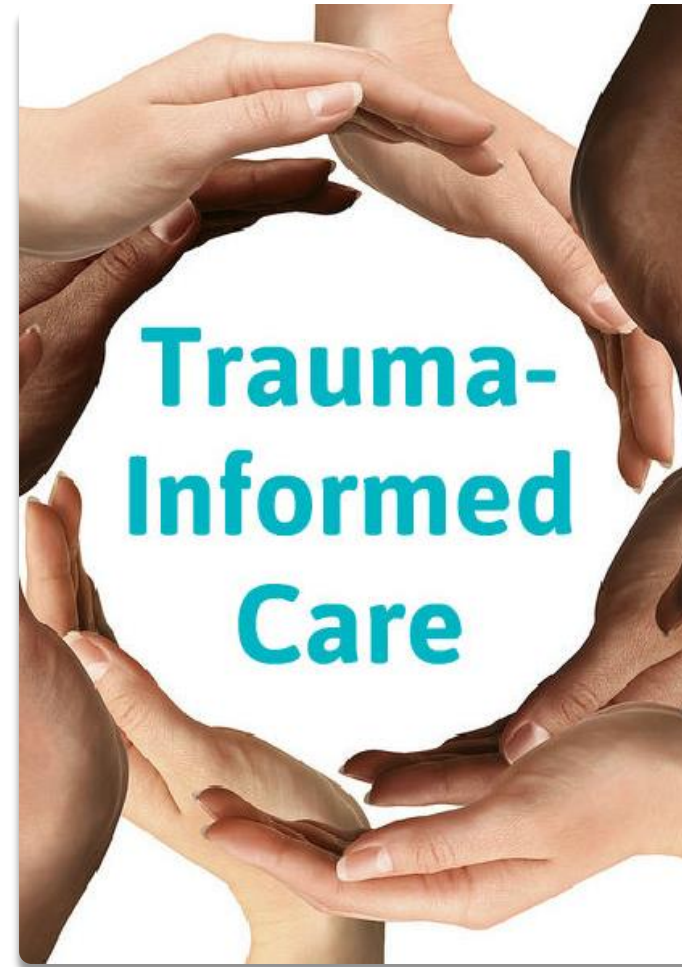
Hannah Marchese is the Family Law Facilitator with the Jackson County Circuit Court. She started as a clerk at the Small Claims window in 2015 and was immediately fascinated with being a public servant. Her passion for people came to light in 2016 when she was offered the opportunity to take her knowledge and compassion to a higher level by becoming the Family Law Facilitator. The power of information was her theme moving forward. She knew that she could be a reliable and powerful resource for the community. In her current position, she has worked diligently to develop and create an innovative resource center for litigants and has worked closely with community partners to strengthen her understanding of the local needs. She is excited to be a part of the Family Law Conference this year and looks forward to meeting with others in her field.



Trauma-Informed Family Law Facilitation Services

What is Trauma-Informed Care?

Trauma-Informed Care is a framework that involves understanding, recognizing, and responding to the effects of all types of **trauma**. **Trauma-Informed Care** also emphasizes physical, psychological and emotional safety for both consumers and providers, and helps survivors rebuild a sense of control and empowerment.



What can we do?



- ▶ Providing trauma-informed facilitation services does not mean that the facilitator is responsible for providing trauma care to pro se litigants. It means that facilitators recognize the people they work with have personally experienced acts of violence or other traumatic life events and are also cognizant of the stress the courthouse environment has on trauma survivors. The paradigm needs to be changed from “what’s wrong with you” to “what’s happened to you.”

Six Key Principles of a Trauma-Informed Approach

- ▶ Safety
- ▶ Trustworthiness and transparency
- ▶ Peer support
- ▶ Collaboration and mutuality
- ▶ Empowerment, voice, and choice
- ▶ Cultural, historical, and gender issues

An abstract painting with a dark blue border. The artwork features a crowd of figures rendered in soft, blended colors of orange, yellow, green, and blue. The figures are somewhat indistinct, suggesting a collective rather than individual focus. The background is a mix of these colors, creating a sense of depth and movement. The overall mood is contemplative and artistic.

How can we incorporate
this in our daily job?

Communication

We communicate everyday whether it is verbal, visual, written or non-verbal. As facilitator's we have the ability to set the tone of a litigant's experience with the court. Whether they are walking in and seeing posters or talking to us during review, litigants need to feel like they are being heard and that they are being treated with dignity and respect in a safe environment.



Practices

Court practices are in place to provide a consistent and organized system to litigants. These processes can be confusing and hard to follow. As facilitator's we have the job of helping litigants understand the court's processes and workflow.



Office and Document Review Environment



- ▶ The environment and space for document review can send a message to pro se litigants. The court is an intimidating place. Letting the litigants know we care about their safety and providing a trauma informed space will increase their willingness to view the court as a resource.

“

People start to heal the
moment they feel heard

”

CHERYL RICHARDSON

Sources

- ▶ https://www.nasmhpd.org/sites/default/files/JudgesEssential_5%201%202013finaldraft.pdf
- ▶ <https://intranet.ojd.state.or.us/ojdintra/osca/cpsd/jcp/Documents/2018%20Facilitator%20Training%20Materials/Trauma-Self%20Care.pdf>
- ▶ <https://intranet.ojd.state.or.us/ojdintra/docs/osca/jfcpd/FLP/Trauma-Informed-Services.pdf>
- ▶ <https://www.10e11.com/blog/trauma-informed-courts>
- ▶ <https://multco.us/file/35823/download>
- ▶ <http://justicespeakersinstitute.com/the-trauma-informed-courtroom/>
- ▶ Ogroup.com.au, hipaasecurenaw.com, hbr.org
- ▶ <http://traumainformedcareproject.org/>

Oregon Family Law: Building for the Future

May 9-10, 2019

Workshop

Immigration and Family Law

An overview of the intersection between family law and immigration law including recent developments. Discussion will include: consequences that can stem from family court findings; prenuptial agreements when parties intend to file immigration petitions shortly after the marriage; representing immigrants in vulnerable marriages; self-petitions for domestic violence immigrant spouses; and how to build rapport with immigrant clients before discussing immigration issues.

Speakers

- ♦ *Yema Measho, Attorney, Law Offices of Yema Measho, LLC*
- ♦ *Lorena Reynolds, Attorney, The Reynolds Law Firm, PC*

Yema Measho is an attorney in private practice in Corvallis, Oregon. Yema focuses her practice in representing individuals and businesses throughout Oregon in all aspect of immigration related matters. Yema represents families, individuals and business in family-based, employment-based immigration, naturalization, green card and DACA applications before U.S. Citizenship and Immigration Services as well as in removal proceedings before the immigration court.

Lorena Reynolds graduated magna cum laude from the University of Colorado, Boulder, with a degree in Philosophy. She obtained her law degree from the UCLA School of Law in 1997. During law school, she interned at the Los Angeles District Attorney's office in the Hard Core Gang Unit and worked at Protection and Advocacy, Inc. as a law clerk representing children and young adults with disabilities in administrative hearings, as well as providing litigation support on individual and class action law suits. Lorena has been in private practice in Corvallis since 2004. She specializes in family law, victims' rights, and children's issues. She is the 2006 recipient of the Mary Zelinka Advocate for Social Justice Award for her dedication to stopping domestic and sexual violence. She is a member of the Board of Directors for the Center Against Rape and Domestic Violence, having served as the agency's President, Treasurer, and as Chair of many committees since 2000. In 1997, Lorena was hired by Oregon Legal Services, which is now known as Legal Aid Services of Oregon (LASO), as an AmeriCorps attorney. Stationed in Ontario, Oregon, she spent a year representing low-income survivors of domestic violence, sexual assault, and stalking. In 1998, she was hired as a Staff Attorney for the Albany Regional Office of LASO. For the next six years, she represented low-income clients in a variety of areas, including family law, special education, and administrative hearings. She represented clients at hundreds of hearings and trials and handled many appeals on impact cases. She also worked on legislative committees and statewide task forces, representing the interests of impoverished Oregonians and survivors of domestic violence, sexual assault, and stalking. In private practice her cases focus on family law and victims' rights. She is a trained mediator and has served on the Linn County Arbitration Panel since 2004.

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Intersect of Dependency and Family Law

There are many family law attorneys in Oregon, but very few who are willing or able to interact effectively with DHS on behalf of their clients. This presentation gives an overview of how to effectively advocate for clients that become DHS-involved and how to assist clients who want to be resources for children involved in DHS cases. The presentation contains an overview of how dependency cases work, at what stages a non-dependency attorney can assist their client, what pit-falls to avoid, and how to communicate with DHS to resolve cases in the family law arena.

Speakers

- ◆ *Tracey Naumes, Attorney, Hamilton & Naumes, LLC*
- ◆ *John A. Hamilton, Attorney, Hamilton & Naumes, LLC*
- ◆ *The Honorable Jay McAlpin, Lane County Circuit Court Judge*

Tracey RH Naumes & John A. Hamilton founded the law offices of Hamilton & Naumes LLC in July 2015. They both have brought extensive experience in criminal, juvenile, and dependency law to their firm. Both currently handle court- appointed dependency matters and private family law matters. Their experience enables them to navigate the interplay between child welfare and domestic relations law, and they work to help their clients achieve creative, appropriate, and equitable solutions.

Judge Jay McAlpin was appointed to the Circuit Court in 2012. After graduating from law school, Judge McAlpin worked as a law clerk in Lane County Circuit Court, a prosecutor in the Lane County District Attorney's Office and as a civil defense attorney. He has tried numerous cases to juries in various counties throughout Oregon. Judge McAlpin currently handles Juvenile Dependency matters.

The background of the slide is a soft, misty landscape. It features rolling hills or mountains in the distance, partially obscured by a light fog or mist. In the foreground, there is a calm body of water, likely a lake or a wide river, which reflects the surrounding landscape. The overall color palette is dominated by various shades of teal, light blue, and pale green, creating a serene and ethereal atmosphere.

Navigating the Conflux:

Where Family & Dependency Law Meet

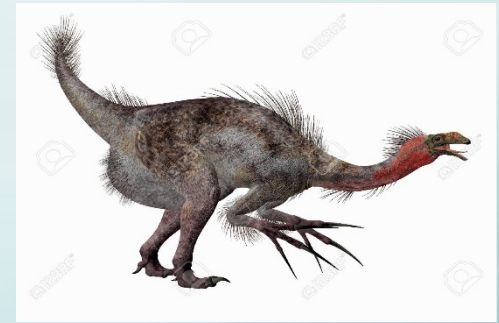
A “Fair and Balanced” Presentation By:
Hon. Jay A. McAlpin (Lane County Circuit Court)
John A Hamilton &
Tracey RH Naumes

Presentation Overview

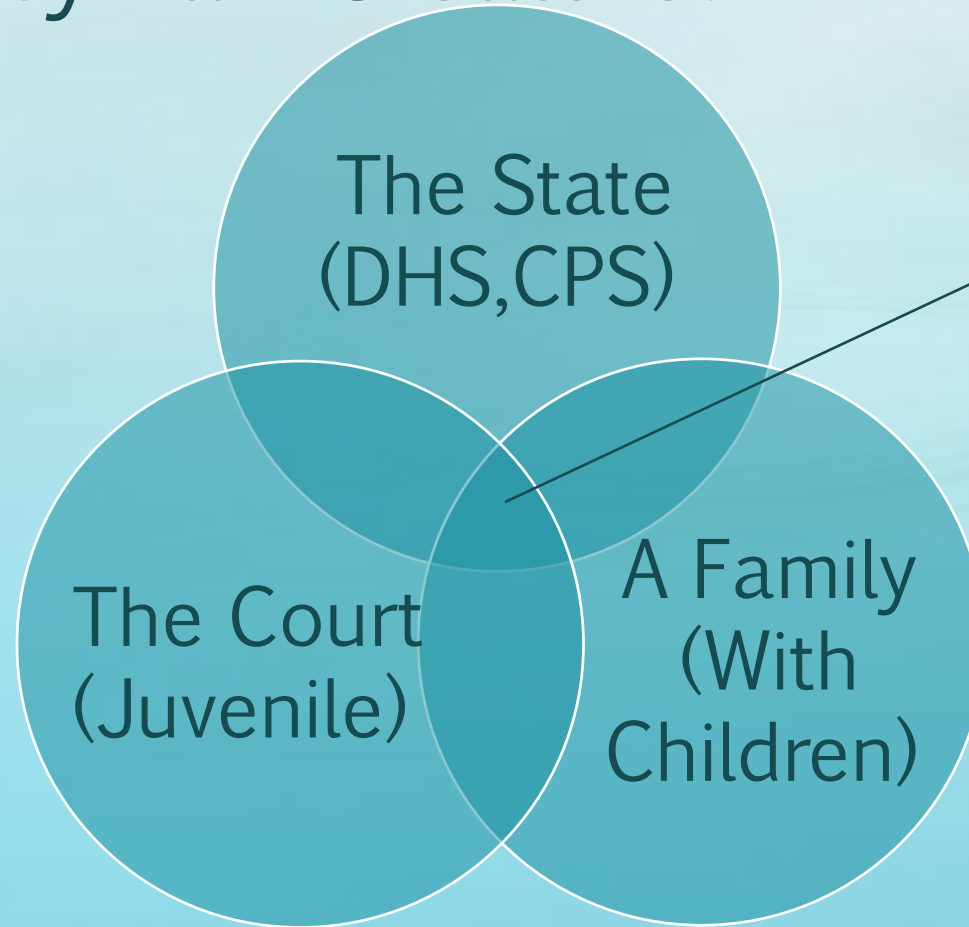


- Dependency Law Overview
 - What it is/who is involved
 - How it relates to Civil and Criminal Law
- Advising a DHS-Involved Parent (Pre Petition)
 - Dealing with DHS
- Advising a DHS-Involved Parent/Third Party
 - Custody Agreements
 - Probate Guardianship
 - Third Party Custody
 - Administrative Appeals
- Advising a DHS-Involved Third Party (Post Petition)
 - Intervention
- Appeals

What IS This Strange Dependency Law Creature?



(Therizinosaurus)



Where the Three Come
Together =
Dependency Law

Applicable Statutes:

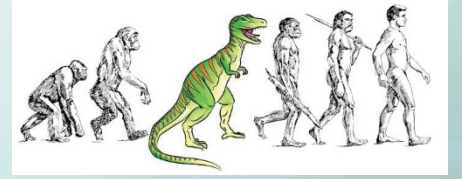
419A (Juvenile Code, General Provisions and Definitions)
419B (Juvenile Code, Dependency)



The Names in the Games

- DHS/CPS = Department of Humans Services/Child Protective Services = the agency that investigates child abuse/neglect
- ICWA = Indian Child Welfare Act = special rules that apply when a child is eligible for enrollment in a Native American tribe
- CW = Caseworker = someone that works for DHS
- SA = Substance Abuse OR Sexual Abuse = big difference, same acronym
- A&D = Alcohol and Drug Treatment = Most common service offered to parents by DHS
- RP/CR = Confidential Reporter = person that originally made reports of concern to DHS (frequently a mandatory reporter)
- PTC/TR/PERM = Pretrial Conference/Trial/Permanency Hearing = the three hearings always set by the dependency court at arraignment
- TPR = Termination of Parental Rights = the final court hurdle on the path to adoption for a dependency case

The Evolution of a Dependency Case



1. Someone Makes a Report
2. DHS Screens the Report
3. DHS Opens an Assessment and CW Conducts an Assessment**
4. DHS Files Petitions
5. Shelter Hearing – Arraignment and Placement
6. Jurisdictional Hearing (Trial) **
7. Implementation of Case Plan**
8. Review Hearings** / Permanency Hearings**
9. Termination of Parental Rights**

** = Times in the case where a family law attorney can have a direct impact

The parties to the case:



Mom +
Attorney



Dad +
Attorney



Child(ren)
+
Attorney



CASA



State
(DHS) +
Attorney

NOT parties to the case (aka also potential clients):

Grandparents

Psychological Parents

Other Relatives

Third Party Caregivers

Court-Appointed Dependency Attorneys

What they get paid by the state to do:

1. Represent moms
(1/3 of the time)
2. Represent dads
(1/3 of the time)
3. Represent kids
(1/3 of the time)

*****ONLY IN THE
DEPENDENCY CASE



What they don't get paid to do:

1. Represent moms/
dads/children in family
law proceedings
2. Represent third parties
3. Administrative appeals

*****THIS IS WHERE YOU
COME IN

A Quick Note about “Non-Parties”

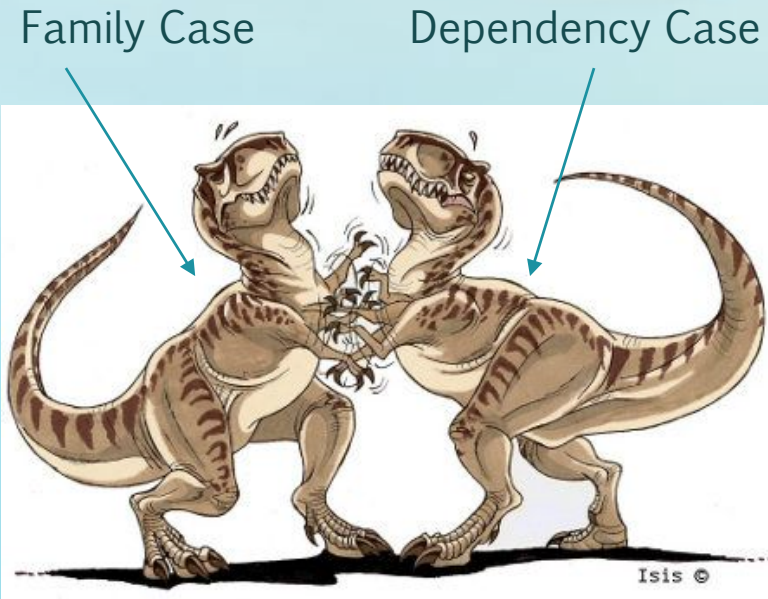
Granted SOME special rights by statute and administrative rule:



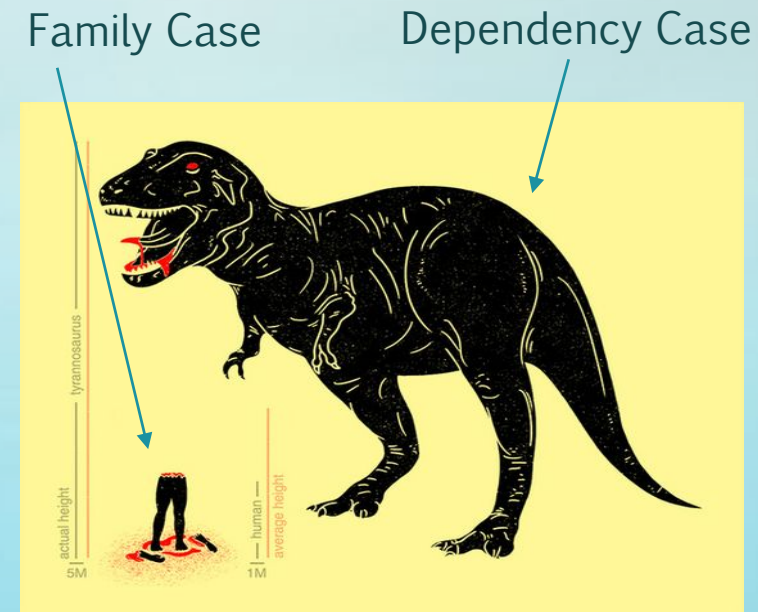
Stay gold, Ponyboy stay gold.

- Placement Preference for Relatives (ORS 419B.192 & 419B.116; OAR 413-120-0730 to 413-120-0760)
- Rights of Relatives and Responsibilities of DHS Regarding Involvement of Relatives (419B.875; OAR 413-010-0300 to 413-010-0340; 413-070-0060 to 413-070-0087)
- Right to request intervention/rights of limited participation (more on this later) (419B.116)
- Grandparent Rights to Notice and Visitation (419B.875 & 419B.876)
- Foster Parent Bill of Rights (ORS 418.648)

Family Law Case Orders v. Dependency Case Orders



Inaccurate

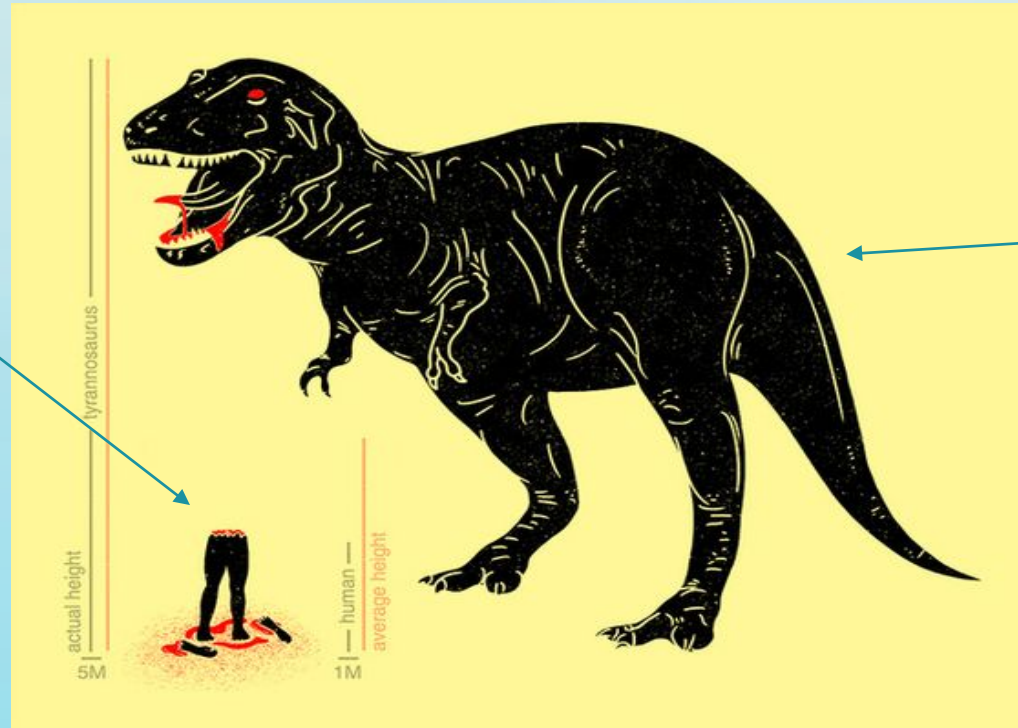


Accurate

Dependency Law Overview: Relationship to other cases

Dependency Case

Criminal Case



Also Accurate

Advising a DHS-involved Parent (Pre-Petition): Dealing with DHS

- What to do when DHS comes knocking
- When to shut up and lawyer up
- The pros and cons of cooperation
- How to talk to the caseworker

DHS is at my door, what do I do?



Not this...



Or this...

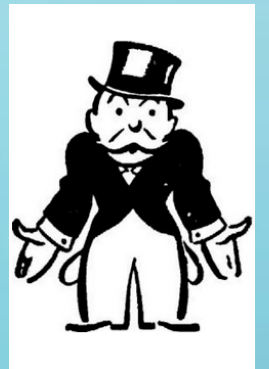
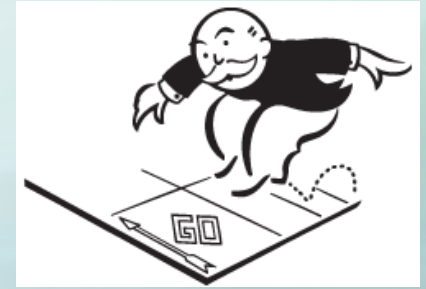
- If DHS is at a client's door, DHS has already screened the case, opened a case, and is conducting an assessment
- The client has two options:
 - 1. Cooperate (let DHS have whatever they want)
 - 2. Not Cooperate (stonewall)
 - Secret Option No. 3 = Sort of Cooperate (Get an Attorney Pre-Petition)

Quick Note:

- If the allegation DHS is investigating
 - = a prior conviction of sex abuse...
 - = current sex abuse...
 - = current physical abuse of a child...

**DO NOT COOPERATE, DO NOT PASS
GO, DO NOT SIGN ANYTHING, ADVISE
CLIENT TO RETAIN AN ATTORNEY**

**** These cases have the potential to become serious criminal cases**



To Cooperate or Not to Cooperate? Pre Petition

Cooperation Benefits

- Cooperation up front can alleviate DHS's concerns and lead to the case being unfounded and closed or to a voluntary case plan
- Cooperation is advisable if the client truly has nothing to hide or if the client needs/wants help (especially substance abuse)

Cooperation Drawbacks

- Cooperation can bolster DHS's allegations or lead to accompanying criminal charges
- Cooperation can be invasive, uncomfortable, and disruptive to the family unit

**One phone call to the caseworker can inform your entire strategy regarding cooperation

To Cooperate or Not to Cooperate? Pre Petition

Non-Cooperation Benefits

- Vindication of the parent's right *not* to cooperate (parents do NOT need to let DHS into their home without a court order)
- Sometimes DHS will simply drop the case and close the assessment as “unable to determine” (rare)

Non-Cooperation Drawbacks

- Upset DHS and lead to petitions or pick up orders (removal)
- DHS may resort to more invasive techniques, like interviewing the children at school without notice, or speaking to third parties about the parent to gather information

**One phone call to the caseworker can inform your entire strategy regarding cooperation

Calling the Caseworker

- Provide a release
- Assure the Case Worker of your role and goals (stroke that power ego)
- Ask what the allegations are
- Ask what concerns the case worker still has
- Ask what they'd like to see to resolve their concerns
- Talk to your client and see what information they are willing to turn over to assuage DHS's concerns
 - Treatment provider letter NOT a release
 - Statements of independent observers
 - Voluntarily enrollment in services or safety planning



Family Lawyer Tools: Pre/Post Petition



Custody Agreement b/t Parents

- Usually Pre Petition Only
- ORS 125.055

Probate Guardianship

- Pre/Post Petition
- ORS 125.055

Third-Party Custody

- Pre/Post Petition
- ORS 109.119

Administrative Appeals

- Pre/Post Petition
- OAR 413-010-0700

Intervention

- Post Petition Only
- ORS 419B.116
- Has been generally denied

Adoption

- Pre/Post Petition
- ORS 109.300s
- Not covered here

Custody Agreements



In General: Custody Agreements between Parents

- Resolving custody issues can sometimes resolve the dependency case

Why would you want to do this?

1. DHS's role is usually more invasive than a Civil Court's
2. Civil Court tends to be more liberal with parenting time than DHS for the noncustodial parent
3. Parenting time can be supervised by a private agency rather than at the DHS Annex

Why wouldn't you want to do this?

1. DHS may be more favorable to your particular client than the Civil Court has been in the past
2. DHS will finance your client or the other parent accessing services
3. DHS will finance supervised visits at the Annex

Pre Petition: Custody Agreements

When to do it:

- If sole allegation against one parent is no legal custody and cannot protect from other parent
- If DHS is more supportive of one parent over the other, custody with conditions of parenting time for other parent can resolve the dependency case

How you know if it will resolve the dependency case:

- Ask the Caseworker

Post Petition: Custody Agreements

When to do it:

- If sole allegation against one parent is no legal custody and cannot protect from other parent
 - DHS intervention = almost always a substantial change in circumstances WITH competent evidence from a DHS caseworker
- If DHS is more supportive of one parent over the other, custody with conditions of parenting time for other parent can resolve the dependency case

How you know if it will resolve the dependency case:

- Ask the AAG/DA (whoever represents DHS in your county)
- Get the attorneys appointed in the Dependency Case to help you craft restrictions that will satisfy them and their clients

Third Party Custody and Probate Guardianship

The Pegasus v. The Pony



Third-Party Custody v. Guardianship

Two Mechanisms to Achieve Similar Results

Custody

- More difficult to get
 - More difficult to undo
 - Desirable when:
 1. Parents' recovery is unlikely
- AND
2. The parties don't get along

Guardianship

- Easier to get
 - Easier to undo
 - Desirable when:
 1. Parents' recovery is likely
- AND
2. The parties get along

Third Party Custody & Probate Guardianship

Pre Petition

- If DHS is going to file, the CW may agree not to file
- Best case scenario = DHS is cool
- Worst case scenario = DHS is not cool
 - You can still file BUT...
 - If DHS has safety concerns about your client they can prove, DHS will just add your client to the petition and remove the children anyway
 - This will most likely require a contested shelter where you must be prepared to show your client does NOT have safety issues
 - If you lose, DHS is alienated and will exclude your client moving forward

Post Petition

- If DHS has already filed, the AAG may agree to dismiss
- Best case scenario = AAG dismisses
- Worst case scenario = AAG does NOT dismiss
 - Your client is out a bunch of \$
 - The Court here will likely NOT allow your client to intervene and will likely NOT dismiss the case upon motion by another party
 - You have alienated DHS and they will exclude your client moving forward

Third Party Custody & Probate Guardianship

The Waiting Game

- How long does an alternate care provider need to wait to file a Family Law case?

Third Party Custody = 6 months + your client has developed a child-parent relationship

Guardianship = 0 time + your client is willing to serve + it's in the child's best interests for your client to be their guardian

***Watch out for Burk v. Hall, 186 Or App 113 (2003)

Intervention ORS 419B.116

Good in theory, difficult to achieve in practice...



(John and Tracey)

- Hurdles to becoming an intervenor:
 - Must establish caregiver relationship as defined in statute
 - Must show that intervention is in best interests of child
 - Must show that the reason for intervention and specific relief sought are consistent with the best interests of the child
 - Must show that existing parties cannot adequately present the case*
(insert death knell here)

419B.806 Consolidation: The Urge to Merge

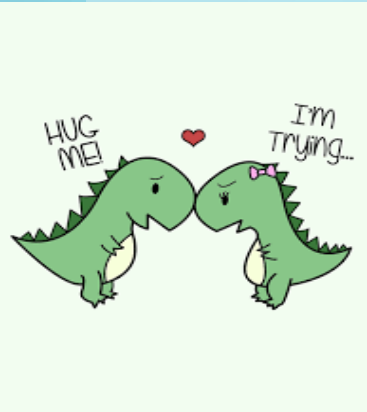
*Statute provided in full on following slide

Key Points:

- Mandatory
- Time of Filing = Irrelevant (this used to matter A LOT)
- Judicial Officer Selection Depends
- Order of Hearing Depends and MATTERS

(custody v. third party v. dependency)

- Consistent yet Separate



419B.806

- (1) As used in this section, “consolidated” means that actions are heard before one judge of the circuit court to determine issues regarding a child or ward.
- (2) In any action filed in the juvenile court in which the legal or physical custody of a child or ward is at issue and there is also a child custody, parenting time, visitation, restraining order, filiation or Family Abuse Prevention Act action involving the child or ward in a domestic relations, filiation or guardianship proceeding, the matters shall be consolidated. Actions must be consolidated under this subsection regardless of whether the actions to be consolidated were filed or initiated before or after the filing of the petition under ORS 419B.100 (Jurisdiction).
- (3) Consolidation does not merge the procedural or substantive law of the individual actions. Parties to the individual consolidated actions do not have standing, solely by virtue of the consolidation, in every action subject to the order of consolidation. Parties must comply with provisions for intervention or participation in a particular action under the provisions of law applicable to that action.
- (4) Upon entry of an order of consolidation, all pending issues pertaining to the actions subject to the order shall be heard together in juvenile court. The court shall hear the juvenile matters first unless the court finds that it is in the best interest of the child or ward to proceed otherwise.
- (5) A judge shall make and modify orders and findings in actions subject to the order of consolidation upon the filing of proper motions and notice as provided by law applicable to the actions. Any findings, orders or modifications must be consistent with the juvenile court orders, and persons who were parties to the juvenile court action may not relitigate issues in consolidated actions.
- (6) The judge shall set out separately from orders entered under this chapter or ORS chapter 419C any orders or judgments made in other actions subject to the consolidation order. The trial court administrator shall file the orders and judgments in the appropriate actions subject to the consolidation order. An order or judgment in an individual juvenile court action is final if it finally disposes of the rights and duties of the parties to that action, without reference to whether the order or judgment disposes of the rights and duties of the parties to another action with which the action has been consolidated.

The Moral of the Story:

- It behooves you to treat DHS with respect and make sure they are on the same page as you—they have significant power and they frequently exercise it in retaliation and without the benefit of education and experience
- The AAG/DA's ability to advise and direct DHS is limited—it's usually retroactive and there are a LOT of cases and CWs
- If you are going to alienate DHS,
 1. Make sure you are ready for a fight that you can win;
 2. Prepare your client for the consequences of losing that fight;
 3. Get a hefty retainer.

A Few Notes on Transitioning out of Dependency Jurisdiction to Family Law



Assisting your client in becoming self-directed and not DHS-directed can be INVALUABLE

- Access conflict management tools in the civil realm
- Educate on family law tools available in the event of disagreement
- Resolve custody issues—thinking parenting time v. visitation

A Quick Note on Adoption

- Consent of both parents + no petitions? Consult with an adoption attorney
- No consent? Hire an adoption attorney
- DHS involvement? Hire an adoption attorney with dependency law background

*Adoptions on their own are difficult/complex. Adding the additional complexity of consent issues or DHS involvement requires a great deal of expertise.

Administrative Appeals

How it Feels to Appeal:



(Spoiler alert: Artax dies in the Swamp of Sadness)

When to Appeal

- There is an internal “founded” (reasonable cause to believe that child abuse/neglect occurred) disposition against your client;

AND

- Petitions weren’t filed or, if they were, jurisdiction was never established

Why to Appeal

- An internal founded disposition against your client can impact their professional and personal lives tremendously
- Loss/denial of licensure/certification
- Loss of job
- Inability to be a safety service provider, child care provider, or future foster parent

*Only your client will get notice of a disposition via snail mail, theoretically within 30 days of the adverse agency decision

Administrative Appeals

Procedure OAR 413-010-0700s





**THIS
STHE
END...**

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Legislative Updates Inc. Chapter 125

In this session attendees will have a chance to gather information, provide input, and ask questions on proposed legislation in Family Law, including Chapter 125.

Speaker

♦ *Ryan Carty, Family Law Attorney*

Ryan Carty Lawyer. Litigator. Problem-solver. Negotiator. Peacemaker. Arguer. Bargainer. Troublemaker. Those are just a few of the titles thrown at Ryan Carty with some regularity. Ryan is a family law practitioner, which is the polite way to explain at a fancy dinner party that he is a divorce lawyer without the word divorce ever spilling out across the table. Ryan spends most of his days in court, preparing for court, or explaining to his clients why they should attempt to avoid court at all costs. Ryan plays an active role in Oregon's legislative arena. Ryan serves as a Member of the State Family Law Advisory Committee where he chairs the Legislative Subcommittee. He has chaired or co-chaired the Legislative Subcommittee for the Oregon State Bar Family Law Section since 2010. Ryan frequently testifies at the Oregon State Legislature on issues related to family law and is a recurring speaker at state-wide CLEs. Ryan has played bass guitar in a punk rock band. He once coached a 1st and 2nd grade flag football team to an undefeated season (not that anyone was keeping score). And he can often be seen on stage with Theatre 33 (most recently voicing sixteen different characters in a world-premiere production of A Christmas Carol, A 1940s Radio Show). Ryan and his wife, Allison, reside in Salem where they daily attempt to keep up with the escapades of their three young boys.

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Mediation: Data Collection Project and Best Practices

In this session, participants will learn about the court-connected domestic relations mediation data collection project and the data that has been collected from the project. Attendees will participate in a facilitated discussion of how the data collected can be used to develop statewide best practices in mediation, as well as a discussion of next steps in the data collection project.

Speaker

- ◆ *Lauren Mac Neill, Director, Clackamas County Resolution Services*

Lauren MacNeill has spent nearly 30 years providing services in various settings to families and children in conflict. As a licensed attorney and clinical social worker, Lauren is the director of the Clackamas County Resolution Services program as well as an adjunct professor of Family Mediation and Mediation and Negotiation Skills Seminar at Lewis and Clark Law School. Lauren is the chair of the SFLAC Mediation Subcommittee.



Mediation: Data Collection and Best Practices

Lauren Mac Neill, JD, LCSW

COUNTY: _____

**DOMESTIC RELATIONS
MEDIATOR REPORT**

CASE NO. _____

CASE NAME _____

☐ FINANCIAL ISSUES INCLUDED IN
MEDIATION

☐ AMENDED REPORT

TIME SPENT IN MEDIATION:

	MINUTES	EXPLANATION
ORIENTATION	_____	<i>Time the mediator spent orientating the participants to the mediation process – do NOT include group orientation</i>
MEDIATION	_____	<i>Time spent in mediation activities: mediation sessions, case management, collateral contacts, scheduling, and related tasks</i>
DRAFTING AGREEMENT	_____	<i>Time spent drafting mediation agreement</i>
TOTAL	_____	<i>Total number of minutes spent on this case</i>

OUTCOME OF MEDIATION (*select one*):

- ☐ **FULL AGREEMENT** {Parties reached agreement on all issues that the parties raised.}
[Odyssey Code: AGME]
- ☐ **PARTIAL AGREEMENT** {Parties reached agreement on some, but not all, of the issues they raised.}
[Odyssey Code: MEPA]
- ☐ **FAILURE TO APPEAR FOR MEDIATION** {At least one party failed to appear for mediation.}
[Odyssey Code: FTAM]
- ☐ **NO AGREEMENT** {Agreement on none of the issues. Parties appeared for mediation but did not reach any agreement.}
[Odyssey Code: MENA]

REASON FOR NO AGREEMENT:

- ☐ Parties unable to reach agreement during mediation
- ☐ The case issues were not appropriate for mediation; one or both parties lacked the capacity to participate in the mediation; mediation was not appropriate due to domestic violence; parties resolved issues prior to mediation or reconciled; none of the other mediation outcomes apply.

NUMBER OF JOINT CHILDREN UNDER THE AGE OF 18: _____

Date: _____

Form Generated By: _____

Oregon Circuit Courts

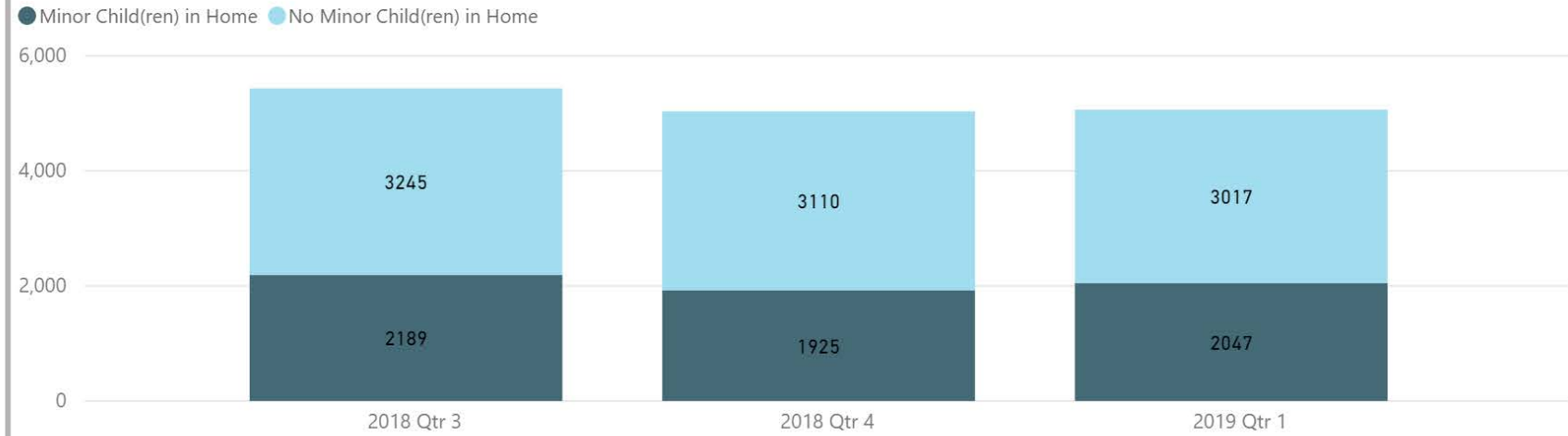
Domestic Relations - Mediation

(Includes Information on Dissolution, Separation, and Custody/Support/Visitation Cases)

Year: Quarter: Month:

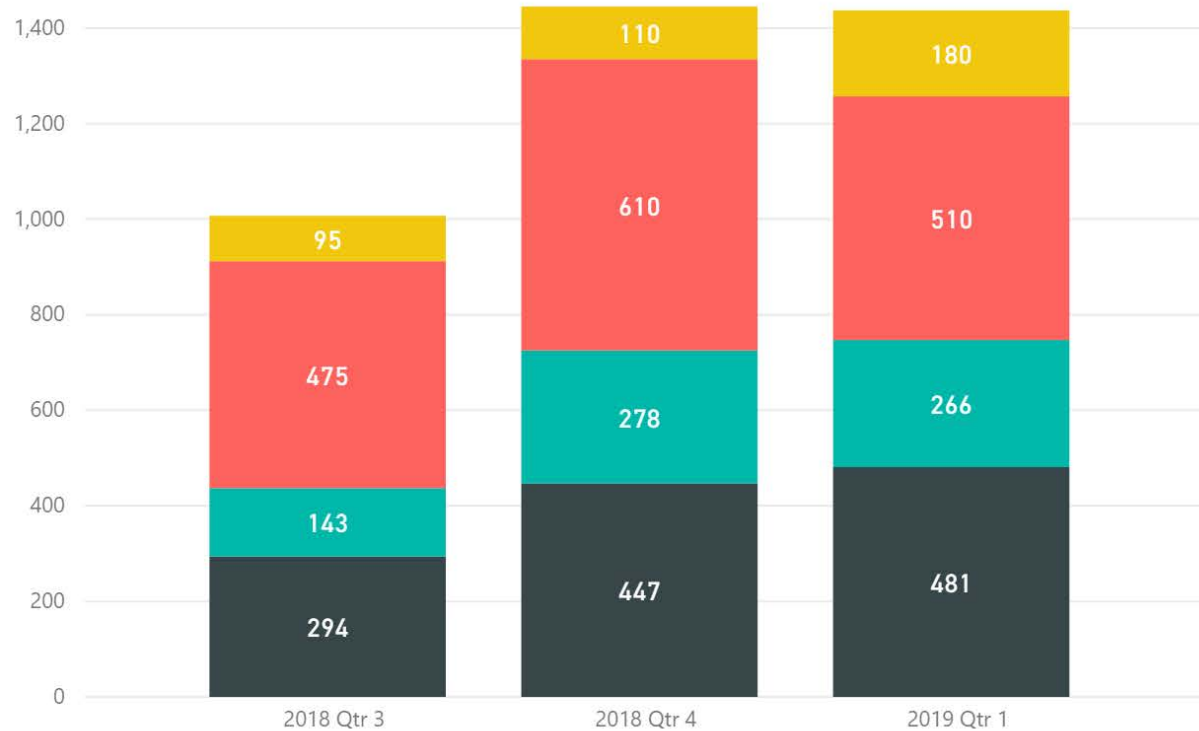


Domestic Relations Cases Filed, by Whether There Is a Minor Child in the Home



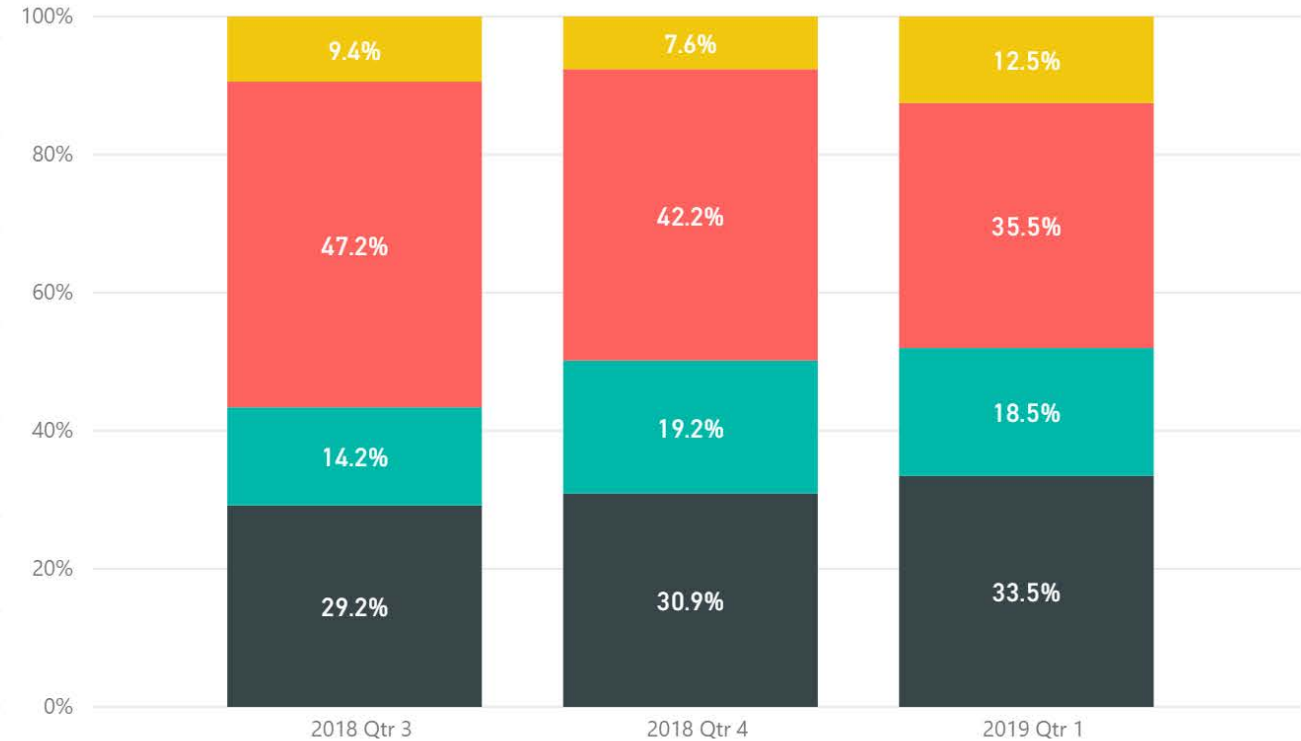
Domestic Relations Mediation Results (Number of Mediation Reports)

● Full Agreement ● Partial Agreement ● No Agreement ● Failure to Appear for Mediation



Domestic Relations Mediation Results

● Full Agreement ● Partial Agreement ● No Agreement ● Failure to Appear for Mediation



What the data will show us:

- ▶ How many eligible cases are being referred to court-connected domestic relations mediation (mediation)?
- ▶ What is the outcome of the mediation (full agreement, partial agreement, no agreement, failure to appear for mediation)?
- ▶ Which counties have the highest/lowest number of eligible cases referred to mediation? Which counties have the highest number of full agreements from mediation? Which counties have the highest number of no agreement from mediation?

How we can use the data to inform best practices:

- Are the counties with a high number of cases referred to mediation also having a high percentage of cases reaching full or partial agreement in mediation? Or, in counties where every or nearly every case is referred to mediation, are the outcomes better than in counties where only select cases are referred?
- Of the cases where full agreement is reached, how many hours of mediation were needed?
- Oregon courts use both “program mediation” and “panel mediation” models; is there a difference in outcomes between the two mediation models?
- In counties where a high number of cases reach full agreement, what factors are contributing to this success rate (mediation model, mediators themselves, court emphasis on mediation, mediation orientation, availability of mediators, etc.)?

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Oregon Child Support—New and Improved!

There has been a great deal happening lately with the Oregon Child Support Program, administered by the Department of Justice. This session will cover changes in law, rule, and policy at the state and federal level, the significant impact from the Program's conversion to a modern child support system—and more. An interactive open Q&A portion will ensure that all session attendees take away exactly what they wanted to know!

Speakers

- ◆ *Kate Cooper-Richardson, Director , Oregon Child Support Program & Division of Child Support, DOJ*
- ◆ *Dawn M. Marquardt, Deputy Director & Policy Section Chief, Division of Child Support, DOJ*
- ◆ *Michael L. Ritchey, Sr. Assistant Attorney General & Program General Counsel, DOJ*
- ◆ *Claudia Garcia Groberg, Attorney-in-Charge, Civil Recovery, DOJ*
- ◆ *Hope Hicks, Policy Development Manager, Division of Child Support, DOJ*

Kate Cooper Richardson is the director of Oregon's federal Title IV-D program, the Oregon Child Support Program, and the Division of Child Support in the Oregon Department of Justice. Kate joined the DOJ Division of Child Support in 2010 and was appointed by Attorney General Ellen Rosenblum in January 2013 as director. A graduate cum laude of Willamette University College of Law, her 22-year public service career spans work in all three branches of state government, including eight years as Chief of Staff to State Treasurer Randall Edwards. Kate serves on the board of directors of NCSEA, the national child support professional leadership organization, and co-chairs the Policy & Government Relations Committee. She is an active member of the National Council of Child Support Directors and is Secretary of the board of directors of a local affordable housing and community development non-profit organization. Kate is currently leading the Oregon Child Support Program through a multi-year \$130+ million replacement of Oregon's legacy child support system. Her favorite role is "Gran" to two granddaughters who live too far away from her.

Dawn Marquardt is the Deputy Director and Policy Section Chief for the Oregon Child Support Program at the Oregon Department of Justice Division of Child Support. Dawn also serves as the Statewide Tribal Liaison for the Program. She is licensed to practice law in Wisconsin, Oregon, and Colorado. Prior to her move to Oregon in 2014, she was an Assistant Corporation Counsel with the Dane County Child Support Agency in Madison, Wisconsin. Dawn previously worked for Columbia County, Wisconsin, as the Deputy Corporation Counsel/Director of the Child Support Agency and Assistant Human Resources Director. In addition to serving as the attorney for the child support agency, she handled mental commitments, guardianships, collections, and zoning enforcement cases for the county. Dawn received the Wisconsin Child Support Enforcement Association's Attorney of the Year Award in 2009, served on its Board of Directors from 2010 to 2014, and received the 2014 WCSEA's Hall of Fame Award. Prior to joining the public sector and after graduating from the University of Wisconsin Law School, Dawn was in private practice in Columbia County, Wisconsin, focusing on family law-related issues.

Cont.

Oregon Family Law: Building for the Future
May 9-10, 2019
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Oregon Child Support—New and Improved! Cont.

Mike Ritchey is a Senior Assistant Attorney General with the Oregon Department of Justice. During law school, Mike worked as a legislative aide to state Representative Kip Lombard. Following graduation from Willamette University College of Law, Mike spent two years working as a judicial clerk for the Oregon Court of Appeals. He spent 20 years in private practice as an attorney and partner with Bricker Zakovics and Querin in Portland from 1985 to 2005, representing injured railroad workers in state and federal court throughout the western United States. From 2005 to 2009, Mike remodeled houses, served as a mediator for the Oregon Court of Appeals, and had a private mediation practice. He has served as general counsel for the Oregon Child Support Program at the Department of Justice since 2009.

Claudia Garcia Groberg earned her B.A. from Idaho State University in 1994 and her J.D. from the University of Oregon School of Law in 2003. After law school, Claudia clerked at the Lane County Circuit Court for the Honorable Lauren Holland, worked as a staff attorney at the Workers' Compensation Board, and joined the Oregon Department of Justice in 2006. She is currently the Attorney-in-Charge of the Civil Recovery Section. Claudia provides legal advice to the Division of Child Support and supervises a team of AAGs who represent the Division statewide. She also represents the agency in several counties. She also appears at monthly wage withholding hearings at the Siletz Tribal Court and once a year for per capita distribution hearings. When she's not working, Claudia enjoys spending time with her family, which includes her husband, three grown sons, a granddaughter, three dogs, and an assortment of cats.

Hope Hicks currently serves as the Policy Development Manager for the DOJ Division of Child Support, where she is responsible for the management and development of Program policy to ensure that the objectives of the agency are fulfilled. Prior to her current position, she managed two centralized teams for the agency, the Child Attending School Team and Employer Services. In addition to spending several years as a Policy Analyst for the Division of Child Support, Hope served as the Child Support Program Analyst for the Oregon Judicial Department from 2016 to 2018. A self-proclaimed "Jersey Girl," Hope received her law degree from Berkeley Law, a Master's in American History from Purdue University, and a Bachelor's from the University of New Mexico.

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

Remote Delivery of Services: Assisting Self-Represented Litigants in the Future

Discuss Oregon's efforts to provide self-represented with remote delivery of legal information (telephone, email, text, video, etc). Summarize most effective programs of remote delivery currently operating in the U.S. as well as other innovations being considered by the Futures Committee.

Speakers

- ◆ *William Howe III, Of Counsel, Gevurtz Menashe*
- ◆ *Colleen Carter-Cox, Family Court Coordinator, Lane County Circuit Court*
- ◆ *Linda Hukari, Trial Court Administrator, Benton County Circuit Court*
- ◆ *Bryan Marsh, Family Law Analyst, Juvenile and Family Court Program Division, OJD*
- ◆ *Stephen Adams, Attorney and Mediator*
- ◆ *Jodiann Harvey, Deschutes County Mediation*

William J. Howe, III has practiced law for 44 years, for over 20 years devoted exclusively to family law with Gevurtz Menashe, P.C. Bill has devoted enormous amounts of time and energy to family court reform. He has served as the Vice-chair of the SFLAC since 1998; currently serves as Chair of the Family Justice Initiative of IAALS; currently serves as President of the Oregon Family Institute and formerly of the Oregon Academy of Family Law Practitioners; served on the Board of Directors of AFCC; and was Chair of the Oregon Task Force on Family Law from 1993 to 1997. He also served as Pro Tem Judge and a mediator. He was awarded the 2003 Pro Bono Challenge Award for donating the Highest Number of Pro Bono Public Service Hours by the Oregon State Bar. In addition, Bill has made over 140 presentations at family law conferences and at other venues in the United States, Canada, Australia, Europe and South Africa, and has authored several articles on family law-related matters.

Colleen Carter-Cox is the Family Court Coordinator at the Lane County Circuit Court and runs the Court's Family Court Assistance Office. Prior to coordinating the program, she worked as a family law facilitator for 8 years and was involved in the initial development of Lane County's facilitation program in 2001. She currently is vice chair to the Lane County Family Law Advisory Committee and is also a member of the State Family Law Advisory Committee and is active in both the Futures and Education Subcommittees of the SFLAC. Colleen is a member of the OJD Domestic Relations Forms Taskforce and of the Standardized Forms Subgroup of Law and Policy.

Linda Hukari is the trial court administrator in Benton County. She began her career with OJD in 1993 as a release assistance officer in Marion County. In 1995, she became a supervisor in Marion County where she stayed until she was hired in Benton County in 2008. She is a member of the State Family Law Advisory Committee and is a member of the Futures and Education Sub Committees and is a co-chair of the Data Subcommittee.

Cont.

Oregon Family Law: Building for the Future
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Remote Delivery of Services: Assisting Self-Represented Litigants in the Future
Cont.

Bryan Marsh has been working for the Oregon Judicial Department since 2003, when he began as a court facilitator in Washington County. He began as a volunteer while in law school, then took a paid temporary position. He graduated from Lewis and Clark Law School in 2005 and joined the Bar in 2006. He became a full time family court facilitator in Clackamas County in 2008. After that position was eliminated, he was clerk for Judge Jones. In 2011, he took over as the Probate Coordinator. In 2014 he became supervisor for the Multnomah Probate Department. He is now the family law analyst for the Juvenile and Family Courts Program Division in Salem.

Stephen Adams is an Attorney and Mediator from Enterprise, Oregon. He has served on the Statewide Family Law Advisory Committee since 1999.

Jodiann Harvey has been working for Deschutes County providing court connected domestic relations mediations for the past 4 years. She has worked extensively in student/judicial affairs at various colleges and universities and off campus in the fields of domestic violence, anger management and high conflict parenting. Jodi has an MA in counseling. She resides in Bend, OR where she enjoys the outdoors and working on the family hobby farm.

FUTURES COMMITTEE – REMOTE ACCESS INITIATIVE REPORT TO SFLAC- DECEMBER 7, 2018

FUTURES COMMITTEE PARTICIPANTS: Bill Howe, Chair; Stephen Adams, Colleen Carter-Cox, Jodi Harvey, Linda Hukari, Judge Karrie McIntyre, Bryan Marsh, OJD staff; and Eric McClendon, Manager of the OSB Lawyer Referral Service.

SUMMARY: At the September 7, 2018 meeting, the SFLAC expressed strong support for the creation of a program to provide centralized remote access of legal information. The SFLAC instructed the Futures Committee to generate a specific proposal and, also, to collaborate with Nancy Cozine, Helen Hirschbiel and other partners and stakeholders. The Futures Committee has accomplished these tasks and recommends that an initial version of Oregon's remote access program become operational by mid-2019 and be operated in collaboration with the Oregon State Bar (subject to BOG approval), State Court Administrator's office, OJD and others, all as outlined below.

ACTIONS BY FUTURES COMMITTEE SINCE SEPTEMBER SFLAC MEETING:

Helen Hirschbiel, CEO of the Oregon State Bar, asked Eric McClendon, the Manager of the OSB Lawyer Referral Service, to contact the Futures Committee and explore whether the remote access program could be operated in collaboration with the OSB. Eric did so, and has been extensively involved with this project for the past two months.

Bill Howe visited the Lawyer Referral service facility located in the OSB center in Tigard in mid-October. Eric and Bill met with Helen. Since then Eric has been intimately involved with the Futures Committee, has had extensive discussions with OSB staff, Stacey Marz of the Alaska program, Melanie Snider of Northern California and has reached out to other programs. Eric has participated in the two Futures Committee conference calls held since October. Bill has spoken with Nancy Cozine, who is very supportive of this effort and the collaboration with the OSB. She sees no organizational impediment with this collaboration between OSB and the State Court Administrator's office.

(Important Note: The OSB Board of Governors' (BOG) approval is required for remote access to be operated by the OSB. OSB staff considers this program to be totally consistent with the BOG's commitment to access to justice initiatives and will likely be looked upon favorably. However, it is always impossible to predict if a particular program will be approved, or even the timing of a decision. The earliest the BOG could consider this proposal would be at its meeting on February 22, 2019.)

DESCRIPTION OF THE OREGON STATE BAR LAWYER REFERRAL SERVICE:

Referral and Information Services (RIS) is designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels. While the Lawyer Referral Service (LRS) is the largest and most well-known program, it is just one of several programs administered by RIS.

The LRS began as a mandatory program in 1971 when attorney advertising was limited by ethics rules. A voluntary program since 1985, LRS is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. Approximately 550 OSB members participate as LRS panel attorneys. The RIS Department also offers several other programs that help both the people and the lawyers of Oregon. The Modest Means Program (MMP) is a reduced-fee program assisting low to moderate-income clients in the areas of family law, landlord-tenant disputes, foreclosure, and criminal defense. Problem Solvers is a pro bono program offering legal advice for youth ages 13-17. Lawyer to Lawyer connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The Military Assistance Panel (MAP) connects military personnel and their families in Oregon with pro bono legal assistance. Attorneys volunteering for this program are provided training on the Servicemembers' Civil Relief Act (SCRA) and other applicable law.

RIS is located on the third floor of the Oregon State Bar (OSB) Center in Tigard, Oregon. The current office setup is a small call center, with eight .5 FTE, two 1.0 FTEs, and one 1.0 FTE manager. The staff are trained to triage calls and identify what legal issue the caller needs assistance with. They then use a custom, proprietary database to refer the caller to an attorney based on their geographical location. The software has the state divided into sixteen regions, and it can filter based on a wide variety of criteria, including secondary areas of law, language, accessibility, venue, additional license states and payment options.

RIS has all the infrastructure of a modern call center, including phones, dual-screen computers, headsets, and a somewhat complicated phone-tree. There are both English and Spanish speaking lines and employees. The OSB has a sophisticated webcasting platform that allows presentations in real-time, along with the ability to display documents and take questions in real time via the internet. The OSB also employs a full-time multi-media specialist and an IT department. In fact, the RIS referral software was designed, created and implemented by the OSB's IT programmer. This gives RIS the ability to maintain and improve its software in-house at no additional expense.

In 2017 RIS received 75,799 calls and is on track to receive 80,000 calls and 6,000 email requests in 2018. Out of these 75,799 calls in 2017, RIS made 49,642 referrals to participating attorneys. The other 26,157 callers were referred to a variety of community resources and government agencies for further assistance. RIS maintains a resource guide containing over 200 resources that can be searched by area of law, specialty group and location.

HOW THE OSB LRS MIGHT INTEGRATE WITH REMOTE ACCESS FACILITATION:

RIS employees are currently doing a significant amount of the work that many remote facilitation programs do, which is the triaging of calls to various resources. Adding facilitation to the RIS department would not affect current call triage significantly. However, in order to do actual facilitation - assisting with form selection and instruction - RIS would either need to significantly increase staffing, or come up with a creative solution to maximize the effectiveness of a limited number of employees

As an alternative to increased staffing, the California North (CN) program utilizes technology and cooperation between participating counties. While CN also does facilitation over the phone, they rely heavily on live webcasts that people can attend in person or from a remote location. The director has created presentations on the major family law topics (divorce, custody, child support, etc.) that can be given by different staff members in a consistent manner. Eric attended one of these webcasts and it was very effective. The staff member showed the forms, was able to answer questions in real-time, and could circle and point to things on the form using their webcast platform.

The CN system allows one staff member to assist an unlimited amount of people instead of just one-on-one, which vastly reduces the number of actual facilitators needed on the phones. As more counties join the system, the burden of conducting the webcasts is spread among an ever-increasing pool of staff. For example, Butte County staff can do the child custody webcast at 1:00pm on Monday, and Lake County can do the exact same webcast on Tuesday using the boilerplate presentation.

OSB staff has met and discussed the feasibility of this system using OSB webcasting services. A possible setup would utilize one "super-facilitator," located in the RIS Department, who would be responsible for creating webcast presentations on the most frequent topics in collaboration with OJD court facilitators. They would also ensure the webcasts are staffed, and be responsible for registering callers for the webcasts and sending links or information necessary to log in. Once the presentations are created, to conduct the presentations on a regular basis. In order for this model to work effectively, OJD would need to continue to maintain all the family law forms to alleviate the enormous workload that form maintenance requires. We could do a limited rollout to gauge demand and effectiveness, and phase in additional facilitators and topics over time as the program expands.

This model would vastly reduce the anticipated cost of starting a robust and fully staffed remote facilitation program on day one. It would also allow the use of limited resources to reach the widest audience. CN webcasts are attended by dozens of individuals. Clearly it is more efficient to have a staff member helping dozens at a time versus one-on-one interactions.

A stable funding source will be a necessary component of any successful remote access facilitation program, a concern that was echoed by every program director. As noted above, OSB involvement is contingent upon obtaining BOG approval, which would require identifying a funding source within the OSB budget. The next BOG committee meetings occur January 11, 2019 at the OSB center. If this

committee decides to move forward with the remote facilitation program and would like the OSB to continue exploration of funding this program, it should be prepared to submit a memorandum at that time, with the details of its request, including the model it prefers, and the role envisioned for the OSB. If this turnaround time is too short, and the committee wants more time to explore alternate funding sources, the next BOG committee meetings and full board meeting occur on February 21-22 in Salem.

INTEGRATION OF REMOTE ACCESS MANAGED THRU THE LAWYER REFERRAL SERVICE WITH COURTHOUSE FACILITATORS:

In order for the Super-Facilitator to be most effective (whether managed by the OSB or the Courts), several things would need to happen:

First, facilitator points of contact would need to be identified in each courthouse and clear lines of communication established between the various facilitation programs. Oregon is diverse in its court rules and procedures between jurisdictions. Additionally, Oregon has a well-established foundation for courthouse facilitation programs and these programs also vary in capacity and scope of service between jurisdictions. The quality and success of a remote access program involves not only an understanding and knowledge of this diversity, but clear lines of communication between programs. We can achieve this by identifying internal contacts between the remote service program and the individual jurisdictions, collaboration to create webinars and materials, and continued accurate referral to the existing courthouse facilitation programs.

Second, in-person facilitation services in courthouses throughout Oregon must continue, and be adequately funded. Each type of program fulfills different litigants' needs. While some litigants may struggle with transportation or childcare or live hours away from the courthouse and would benefit from remote access services, others may struggle with technology or have limited education and literacy and require the individual, in person assistance provided by a courthouse facilitation program. As evidenced by programs in Minnesota, Utah and California, the Futures Committee strongly feels that the programs will work in tandem and greatly benefit one another. The ability to provide both remote delivery and in-person services in Oregon is the ideal to improve access to justice and services to Oregon residents.

The beneficial collaboration with OSB should not diminish OJD's commitment to providing access to justice for all the litigants it serves. The value of a "super-facilitator" is that it provides a central place to triage a large number of cases, filtering out the simpler questions, and directing the public to resources to assist with the more complex questions that are best answered in-person. The collaboration with OSB allows for immediate referral to a telephone hotline which is why this resource dovetails nicely with the LRS and Modest Means Programs. While this collaboration provides a potentially cost-effective and immediate way to some level of remote facilitation service on a statewide basis, it should not be viewed as a panacea or complete substitute for OJD facilitation services. Instated, it is our strong recommendation that OJD prioritize facilitation within a short period of time by also funding employees

to provide both remote and in-person facilitation services to ensure public need is fully met. For example, a dedicated Facilitator at the state level could be the contact person to work collaboratively with all entities who develop training, informational packets, websites, and videos so that there is a central repository of information and an efficient use of any shared resources. And, it is still the recommendation of the Futures Committee that OJD be steered to have, ultimately, a stable of remote access facilitators who are trained on customer service, phone communication, website, and local resources to which to direct litigants. The circumstance remains that many Oregon litigants cannot afford any representation and therefore, the obligation of OJD to make sure that access exists for all litigants.

FUTURES COMMITTEE RECOMMENDATION TO THE SFLAC:

The Futures Committee strongly recommends that a remote access program be initiated involving a partnership of the OSB and OJD/State Court Administrator's office and do so as soon as possible utilizing such funding as the OSB identifies within its budget.

We propose that OJD commit to a fully robust remote access program and sequence a budget request that offers a sustainable steady stream of funding to support this program. The Futures Committee is willing to continue working with the State Court Administrator and OSB to accomplish this objective.

Respectfully submitted,

SFLAC FUTURES COMMITTEE

**REMOTE SERVICE DELIVERY
DRAFT REPORT OF THE FUTURES COMMITTEE
TO STATEWIDE FAMILY LAW ADVISORY COMMITTEE (SFLAC)
SEPTEMBER 7, 2018**

FUTURES COMMITTEE PARTICIPANTS: Bill Howe, Chair; Stephen Adams, Colleen Carter-Cox, Jodi Harvey, Linda Hukari, Judge Karrie McIntyre, Bryan Marsh, OJD staff

SFLAC CHARGE TO FUTURES COMMITTEE:

Oregon courts continue to struggle to deal with the burden of a very large and growing number of self-represented litigants (SRLs). This is most problematic in family law where approximately 80% of cases have at least one SRL. Many litigants who self-represent cannot afford legal representation, though there is a significant minority who choose to self-represent even though they could afford an attorney. Many self-represented litigants underestimate the complexities of navigating the court system without legal counsel.

Regardless whether self-representation is out of necessity or choice, it imposes a significant challenge for judges and the court system to manage these cases. This is an access to justice issue. Without some assistance, most SRLs cannot successfully navigate the court system, and unfair outcomes become far more likely. The societal cost of inappropriate outcomes in family law matters, particularly those involving children, is huge.

Oregon has sought to assist SRLs by offering an increasingly robust library of forms and written instructions which are available at little or no cost, by offering courthouse facilitation programs and other innovations such as the informal domestic relations trial procedure with relaxed evidentiary rules.

The most effective assistance program for SRLs is the courthouse facilitation program. Thirty-four of Oregon's thirty-six counties provide courthouse facilitation services¹. However, the level of facilitation services across the state varies greatly; some counties share facilitation services and have very limited hours. Lincoln County, for example, offers facilitation services only on Fridays and Polk County only on Wednesdays. See Attachment 1: Summary of Facilitation Services. Further, even where robust facilitation programs are offered, accessing services commonly requires a trip to the courthouse and often entails a long wait for assistance. As a result, those who live a significant distance from the courthouse without adequate transportation, or those with small children or disabilities that make travel challenging, cannot effectively access facilitation services.

To provide better access to justice for SRLs, several jurisdictions in the U. S. have devised programs that can take advantage of sophisticated remote communication technology.

The Futures Committee investigated the possibility of providing remote family court facilitation services in Oregon. We studied those programs that have a strong virtual component to their

¹ Columbia and Curry Counties do not offer facilitation services.

services because we do not want to replace local courthouse facilitation programs. Instead, the goal is for remote services to complement local facilitation programs by being accessible to those who cannot easily access facilitation in a county courthouse.

The Futures Committee has investigated different models of remote services and has developed recommendations based on our findings.

FUTURES COMMITTEE RECOMMENDATION TO THE SFLAC:

The Futures Committee strongly urges the creation of a centralized remote access program to deliver legal information and greater access to justice to family law litigants initially, and later expand to include other areas of law.

This remote access program should be designed and function to supplement, not replace, Oregon's current courthouse facilitation programs. The goal of the remote delivery of services is to expand the reach of facilitation services by allowing litigants to access legal information by interacting with trained personnel through email, phone and multiple other modalities. A remote access service will provide access to justice for both those who do not have access to courthouse facilitators and to those who, for whatever reason, prefer a remote access portal to obtain the assistance that they need. Providing for remote access will increase the efficiency of the current facilitation programs by serving those litigants who do not need or desire in-person service, freeing facilitators to give in-person assistance to more litigants.

The policy goals achieved by instituting remote access service include:

1. Generate fairer outcomes and judicial efficiency by enabling self-represented litigants to become more fully informed about the judicial process and court procedures relevant to their concerns.
2. Promote access to justice by serving the customers of judicial services in the manner best suited to their needs and wishes.

BACKGROUND OF FUTURES COMMITTEE STUDY:

The subcommittee was initially informed by the comprehensive report "Serving Self-Represented Litigants Remotely: A Resource Guide" (SRLN 2016) by John Greacen. This guide discusses the programs in Alaska, California, Idaho, Maryland, Minnesota, Montana and Utah. It became apparent from this report and early investigations that the early groundwork was laid by the courts in Australia and then in the U.S. by the State of Alaska. The Alaska remote services program, pioneered by Stacey Marz, has been the inspiration and model for many other states' programs. Therefore, it seemed natural that our first investigations would be into Alaska and then to other jurisdictions that were influenced by that very successful program. Some programs were not only influenced by Alaska's, they were begun by people who had worked in the Alaska system.

After researching and considering the many programs throughout the states, we reached out to seven and interviewed the directors of those programs. We then narrowed our consideration

to the five programs that seemed most successful and which seemed to offer the most guidance to crafting a remote access program for Oregon. Various committee members had further discussions with representatives of these program and the following personal site visits were made: Alaska - Colleen and Jodi; Minnesota - Judge McIntyre; Northern California - Stephen; Orange County, California - Linda; and Utah - Bryan. Detailed reports of these site visits are attached. We did not visit Idaho and Montana because their programs are not fully developed, nor Maryland because its program is beyond the scope of what we contemplate for Oregon.

SUMMARY OF SITE VISITS: Note - complete surveys of site visits are attached.

ALASKA

Alaska is the prototype for most of the remote delivery programs in the country. Stacey Marz is the pioneering founder of the program. Under her direction is a system that serves the widespread and often remote population of Alaska in family law matters. Alaska helps self-represented litigants via a centralized phone-based system. This was considered the best means for the following reasons:

- Centralized system allows for far better quality control, staff training and staff support
- Providing information by phone or email eliminates the security concerns of in-person consultation
- Staff burnout has been virtually eliminated. They found that it was far less stressful for staff to work with customers on the phone than to endure the intense emotions these cases generate face to face. Staff also has the opportunity to consult with other staff if they have a question or concern about how to proceed and can recess then later call back the customer if the communication becomes too intense.
- This model allows for anonymity (though most choose to identify themselves)
- Customers increasingly expect on-line delivery of information
- Cost effective in that it is far less expensive than in person service
- Customers overwhelming like it
- Provides efficient access to information for those with disabilities, small children, travel challenges and the like
- Remote access was critical in Alaska since many areas are inaccessible by road. In many areas of the state the delivery of in-person facilitation would be impossible.

CALIFORNIA NORTH

The key components from Northern California for Oregon System are:

- Funding:
 - Use 4D reimbursement
 - Grant applications
 - Funding from districts through data showing cost savings
- Location and Oversight: FLF office in courthouse
- Staff:
 - Attorney manager
 - Non-attorney staff
 - Strong customer service, problem-solving skills
 - Multi-tasking ability
 - Bilingual and knowledge of court procedures a bonus

- Scope of services:
 - Family law and child guardianships
 - Later expansion to landlord-tenant and small claims
- Delivery of Services and Program needs:
 - Content-rich website including links to referrals
 - Technology for delivery of services:
 - Phone
 - Email
 - Chat
 - Intercounty video workshops via Zoom or Skype
 - Equipment:
 - Computers
 - Fax
 - Copier
 - High quality headsets
 - Phones
- Integration with existing Family Law Facilitation:
 - Seamless staff transition among remote and in person services
- Collaboration with Internal and Community Partners:
 - Strong partnerships with bench and bar and networks/contacts/LFLACS in each district
- Public access to computers/internet at each courthouse/law library and from home
- Collaboration with OJD forms groups

CALIFORNIA ORANGE COUNTY

The Orange County program is funded primarily by the court, but also through a State grant. It has five locations in the county. The program is managed by an attorney. Each location is staffed by attorneys (who act as site supervisors), paralegals and clerical staff.

They offer a continuum of services, remote, walk-in, document reviews, judicial referrals from courtrooms. They also support a number of Family Law self-help calendars. They hold workshops in multiple languages both remotely and in person. The Manager and Senior Attorney also serve as Family Law Temporary Judges as needed for procedural calendars. In 2017 they served 132,000 SRLs in person and over 120,000 remotely.

Items for Oregon to consider:

- A robust web site is essential to a successful self-help center
- Develop one to two-minute videos a month on a specific topic and post to YouTube
- Looking at online classes, Facebook Live- that type of service takes a lot of time
- Provide telephone assistance, no option to leave a message
- Use law school students as interns
- 84% of the family law cases are self-represented on at least one side
- Have good statistics and data gathering, “Data is money”

MINNESOTA

Minnesota has a consolidated Court system with budgeting addressed with a statewide Judicial Branch budget. They currently use Tyler Odyssey and have very similar court procedures to Oregon. Like Oregon they have a primary population center and remote rural counties who have

significantly less court activity. They began their program based on Alaska but immediately recognized it was beneficial to have it complement the in-person services they offered. They have strong web-based resources and staff who are intimately familiar with online resources. They have a substantial form bank and remote computer viewing to allow staff to work with people on filling out forms. Staff assist callers via phone, remote computer viewing and follow up emails. Many callers are referred to in-person facilitation in Judicial Districts that offer it. Minnesota staff provided significant start up advice and indicated a willingness to assist us in the future in the event we have questions.

UTAH

Utah presents a situation similar to Oregon in that, like the Willamette Valley, there is a heavy concentration of population along the Wasatch Front, but the rest of the state is more sparsely populated. Jessica VanBuren worked with Stacey Marz in Alaska and adapted the Alaska program to Utah's needs. Intrinsic to Utah's services is its comprehensive self-help website.

Staff assist people via phone, email and text. Utah, however, employs only attorneys, believing they are necessary because they help SRLs with every type of state court case, not just family law. They currently help an average of 20,000 customers a year, half of whom need help with family law cases. Half of the people contact them by phone, a third by email, and a sixth by text.

Utah faces some struggles with limited funding, which keeps them from operating full business hours. They also routinely travel to the various courts across the state for outreach and training. Jessica expressed a desire to implement courthouse facilitation because it was a definite need that the state was not filling.

The centralized remote delivery system that Utah has would be fairly simple to implement. They said they began with just an attorney with a desk and a phone. They encouraged us to 'just do it!' They also strongly advised that we strive for full funding at the start to avoid many of the struggles they have faced.

PROGRAM CONSIDERATIONS FOR OREGON

FUNDING

The greatest impediment to Oregon joining the ranks of states that provide universal remote court services is funding. There are varied models for funding among the states we have investigated.

Some funding comes from Federal IV-D reimbursements. Alaska and Northern California take advantage of this program, which reimburses two thirds of their program costs.

Programs may be funded by allocation from the court budget. This pays for the remainder of Alaska's program, and a large portion of the cost for the Orange County and Minnesota programs.

Utah receives statutory general budget funding from the Legislature.

Other sources of funding include grants and fees. Both California programs benefit from the California Legislature's Innovation Grant. Minnesota's program is partially funded by Bar fees.

Oregon's program could be funded by any of these sources, or a combination of them. It is important that the program receive adequate funding and that the funding sources be secure enough to weather the vicissitudes of budgets.

OVERSIGHT

There may be differing levels of oversight, but most programs are overseen by their own management, which in turn operate under the State Court Administrator. The Utah program, for example, has a Director who operates under the State Law Librarian, who reports to the State Courts, which includes an oversight committee. The Oregon program may be formed under an existing court division or constitute its own division.

A vital part of oversight is the need to collect data. All programs collect data to report on various metrics such as how many people they serve, in what case types and how much time was spent. They may also capture demographic, and staff performance data. The data informs the State on the need for continued and expanded funding, among other things.

LOCATION

The location of the 'centralized remote delivery' program is, in itself, not critically important because all services will be delivered virtually. Incidentally, we recommend that no in-person services be provided at the remote location. Some programs learned that to do so unfairly prejudiced litigants in other jurisdictions and, most importantly, sabotaged the efficient operation of the remote service center. However, the Minnesota program believed that cross training staff in both in-person and remote access services was a benefit since it allows staff to recognize and learn the difficulties with in-person facilitation, and to keep those issues fresh when addressing the litigants' needs remotely.

Placing the program in a location outside of the usual Willamette Valley locations could send a message that we are serious about serving the people all over the state, not just in the most populous counties.

On the other hand, siting the program in Salem or Portland may offer some logistical efficiency and allow access to a large pool of potential skilled employees. Also, access to strong IT services is a critical component, as demonstrated by the Northern California program. This either means that the program includes IT staffing or proximity to IT services that can fill the need.

SCOPE OF SERVICES

The Futures Committee proposes that the program begin by providing services for family law cases only. We would include guardianships of minors in that scope of services. Should the

program be able to expand to other case types to meet future need is something that can be addressed after the program is in place.

Virtual services include delivery by telephone, email, chat, fax, video/skype, webinars, website and virtual workshops. While, each of these has been implemented to varying degrees in the programs investigated, all use telephone and email. We propose that these forms of communication be implemented, and others as the SFLAC and others believe will be most efficacious. Typically, contacts are handled on a first come, first served basis, and the programs do not provide voice mail, having found that playing telephone tag is very inefficient. However, litigants are allowed to contact the program as many times as they wish. Telephone calls average about 20 minutes each.

Several of the programs that we studied also provide referral assistance to litigants to legal services, housing, domestic violence shelters, healthcare and the like, and consider this an important part of their mission.

STAFFING

Interestingly, our investigations revealed two different philosophies about what skill set makes the best staff. The two focuses are either legal background or customer service.

The founders and directors of the Utah program are invested in the idea that attorneys are the most capable persons to staff their program. They require that applicants all be law school graduates. They feel that attorneys are needed because they cover every type of case, not just family law. Minnesota and Orange County also hire attorneys and felt strongly that legal oversight was a necessary component for success.

The subcommittee is of the opinion that, generally speaking, customer service-oriented people can give the service needed because they have the people skills needed to successfully interact with the court's customers and can be trained in the law. However, particularly in the formative stages, it may be beneficial to have someone with legal training involved. The focus of the programs in Alaska and Northern California is on customer service.

APPENDIX:

- Remote Services Delivery Survey – Alaska
- Remote Services Delivery Survey – Minnesota
- Remote Services Delivery Survey – Northern California
- Remote Services Delivery Survey – Orange County, California
- Remote Services Delivery Survey – Utah
- John Greacen, Serving Self-Represented Litigants Remotely: A Resource Guide, Self-Represented Litigation Network, SRLN.org (2016) at https://www.srln.org/system/files/attachments/Remote%20Guide%20Final%208-16-16_o.pdf
- Courthouse Facilitation Summary (as of May 2018, self-reported by Oregon Courts)

Remote Service Delivery Site Visit Reports

	Alaska	California- North	California O.C.	Minnesota	Utah
Contact	Stacy Marz, Director Anchorage Alaska 907-264-0877 smarz@akcourts.us	Melanie Snider, 530-532-7166 msnider@buttecourt.ca.gov	Maria Livingston, Manager of Self-Help Services SHS and Family Law Facilitator	Melissa Kantola: Manager SRL Program PH: 612-596-8812 Melissa.Kantola@courts.state.mn	Nathanael Player, Director nathanaelp@utcourts.gov Jessica VanBuren, Utah State Law Librarian (801-238-7991)
Website	http://courts.alaska.gov/shc/family/selfhelp.htm	Sharpcourts.org	www.occourts.org/self-help		https://www.utcourts.gov/selfhelp/contact/ https://www.utcourts.gov/ocap/
Visitors	Colleen Carter-Cox and Jodi Harvey	Stephen Adams	Linda Hukari	Hon. Karrie McIntyre	Bryan Marsh
Date of Visit	May 14-17, 2018	July 17, 2018	June 18, 2018	June 7-8, 2018	August 1, 2018
Funding and Management					
Source of Funding	State funded: 4D reimbursements offset court's cost - 66% 4D / Courts 34%. (Stacey can provide more specifics if needed)	The California legislature's \$25m Innovation grant, of which a significant share is to the Administrative Office of the Courts, which has funded SHARP as a model for eventual statewide release. SHARP is actively pursuing long-term funding, primarily by demonstrating cost savings to the court system over previous practices. It does not replace existing FLF services; it supplements them, while offering standalone services also.	1. General Trial Court funding earmarked for Self-Help Services, CRC 10.960 2. Statewide Competitive Innovation Grant. 3. Additional funding budget by the Court- Over \$1,000,000 a year.	MJB – General Budget funding, IOLTA Bar fees.	The current program is funded by the Legislature, per statute. However, funding is insufficient to meet current need, or to maintain full-time staffing.
Type of Oversight	Alaska has a unified Court system. Alaska's self-help program is operated by the State Court Administrator's Office. Stacy Marz is the current director of Self-Help Services and directly oversees the Self-Help Program.	A project of the Butte County FLF, housed in that office within that and other local courthouses, with a managing attorney director (the FLF), a data analyst/educator, and several non-attorney staff, plus interns from a local university.	Self-Help Attys report to the manager and supervise the staff at the assigned Self-Help Center. Self-Help Center Manager/Family Law Facilitator is an attorney. Ms. Livingston reports to one of the Chief Deputies of Operations	Within MJB as a separate agency/division. The state Court administrator's office is organized into an Executive Office and six divisions. Melissa heads the Statewide Self-help and the 4 th District Self-Help.	The Director of the Self-Help Center supervises the staff attorneys, and is in turn supervised by the State Law Librarian

Remote Service Delivery Site Visit Reports

Reporting Requirements	Monthly reports to State Court Administrator	There is a separate position for design and supervision of a sophisticated and comprehensive website and for real-time analysis of customer data. The program considers this element to be one of the key elements for success, alongside a charismatic founder, high-speed internet, customer service by any means desired by individual customers, and outreach to new jurisdictions. One of its primary goals is to support via detailed data the contention that the program will save a court system money.	They are part of Court Operations and as with all operations, they are quarterly, annual and ad hoc reports Also do reports for the statewide Judicial Council	They do collect data at the in-person facilities through Q-Flow and the newly implemented call center application and system they use. They also manually input information on a spreadsheet that is compiled and shared but they hope to get away from that with the new software. They are searching for ways to make their data collection meaningful.	There are no formal reporting requirements, but the Librarian makes a quarterly report to the Legislature However, they do gather a lot of data. After each person is helped, staff enter information into a Survey Monkey. They track various data, depending what they want to track at the time. Some complete the surveys after each contact, others tally it up and complete the surveys at the end of the day. In the past they also surveyed customers for other information, such as demographics. Currently they do not feel a need for this information.
	Alaska	California- North	California O.C.	Minnesota	Utah
Operation Guides or Manuals	Forms, Website , and Facilitation Services under one roof and managed by the Director of Self-Help Services. The comprehensive website is used as a 'manual' by staff facilitators.	The program has very detailed manuals of internal procedure, policy and substantive information.	Statewide Self-Help Guidelines document	<ul style="list-style-type: none">- They have training materials but are reorganizing and gathering materials. This is a struggle because they prefer to promote from within so there is so much institutional knowledge that is hard to put into a training module.- They are working on standard templates to incorporate into email responses.- They meet/coordinate routinely within their units to share information and ideas.- They are interested in Utah theory of learn the resources, rules, protocols and then get pop quizzed but don't think it's practical.	The staff attorneys have a general procedure "wiki" that contains information that new employees use a lot at first, but experienced staff do not use it, nor have they updated or maintained the information

Remote Service Delivery Site Visit Reports

				- They recognize their lack of formal policy and procedure as a weakness and urge us to consider clear guidelines on the outset of the project. (See Below for additional information on this.)	
	Alaska	California- North	California O.C.	Minnesota	Utah
Protocols (screening, triage)	<ul style="list-style-type: none"> - No pre-screening or screening out of calls. - No eligibility requirements. - Whenever possible, any information gathered in a call regarding issues such as financial troubles, DV, substance abuse, or mental health results in referral to the appropriate social service or government agency. 	The program does not screen or limit the type of initial customer. Where a direct service is not appropriate, the program makes extensive use of referrals to vetted community or online services. Most non-walk in contact is by prior appointment (in person or remote), but there are protocols for emergency service which can override the schedule.	We have protocols for all interactions and we track using Microsoft Customer Relations Management (CRM) which has been customized for our use.	<p>Remote services calls come in on first come first serve for 4 active lines.</p> <p>In-Person facility has an intake desk who does initial questioning and queue.</p>	Customers are taken first come – first served. There are no screening requirements or procedures. Some believe that triage would slow down the system, others think it would be a good way to weed out the simple information requests so the attorneys can focus on substantive questions.
Coordination with Other Service Providers (ie. Bar, Courts, Facilitators)	<ul style="list-style-type: none"> -Alaska DV Network -Alaska Bar (The Bar has a recently established Unbundled Service Panel) (Stacey regularly attends bar section meetings for continued networking) - Alaska Legal Services - Coordination with community resources and other government and private services to provide appropriate referral, ie. DV shelters, food banks, emergency assistance for housing/utility payments 	The program is an integral part of the court and of the FLF. It is physically adjacent to the clerks processing family law cases and has access to files. Callers include attorneys, paralegals and judicial officers. The local bar is very supportive.	The Self-Help Services Manager serves as the Court liaison with non-profit legal services provider, Bar and other Courts on issues related to Self-Help Services	<p>The remote delivery is on site court dedicated space with limited help to direct them to the computers and the help line. For remote services there is little interaction with the Bench since not “on-site” with the Courthouses. Any “partnerships or pairing with resources” are generally limited to online resources.</p> <p>Bar Volunteer Lawyer Network, Legal Aid and pro bono services for in person Self-Help Clinic.</p>	There are no in-court facilitators. But they do work with community groups and the Bar Assoc. to make sure that people are aware of the services. Beyond advertising the Self Help Center, there are programs with the Bar for lawyer referrals. There are some legal clinics they can refer people to, but also a program called “Lawyer of the Day,” an attorney who is available by phone for immediate referral from Center staff. Staff can give the attorney information and even forward documents to the attorney so that the customer gets immediate help from the attorney.

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Location and Development					
	Alaska	California- North	California O.C.	Minnesota	Utah
Location	Anchorage	All staff are within local courthouses. The program began in one county, but now serves in person a cohort of four counties at other courthouses. Nine more counties have begun to use its remote services and several others have expressed interest.	There are currently 5 locations. There was a steering committee that met for a year and developed a plan when the first manager was hired in 2008.	This is interesting - The Remote Services Statewide Call center for support (called “Statewide”) sprang from the metro center at 4 th District - Hennepin County. First at Hennepin Government Center with 2 people onsite, then grew over time to 2 facilities in Hennepin (Gov’t Center Facility - with 5 staff (2 attorneys and 3 paralegal) and Family Law Facility with 8 staff (3 staff attorneys and 5 paralegals)) then “statewide” which is housed in Hennepin. Statewide is a call center with 3 staff attorneys and one paralegal. Only two other judicial districts offer in-person self-help, the rest offer a computer terminal and phone to reach the Statewide call line (aka the Bat phone.)	The offices are in the State Law Library building, in Salt Lake City.
How was the location selected?	Anchorage is where Court Administration is located as well as the highest concentrated volume of population and resources in the state	The program’s fundamental philosophy is that the customer must be served via the method the customer chooses. This is done whether face-to-face, by telephone, at a workshop, by Skype, FaceTime or Zoom, by chat, by email, webinars, or remotely processing forms online. The staff adapts to the customer’s choice and is cross-trained accordingly. There is training for county differences.	The committee wanted Self-Help Centers at all Justice Centers. There is one justice center where we have temporarily ceased services due to budget reductions.	Statewide ended up beginning and being housed in Minneapolis because that is where the experienced staff attorneys lived and were already working as former staff attorneys at the Hennepin In Person Self-Help Centers.	The decision was based solely on which agency would take charge of the program, therefor it is housed within the State Law Library, which appears to have ample space. They did note that the offices could have been anywhere in the state, it didn’t really matter since all services are remote.

Remote Service Delivery Site Visit Reports

	Alaska	California- North	California O.C.	Minnesota	Utah
Program Model	<p>California.</p> <ul style="list-style-type: none"> -Stacey observed programs and communicated frequently with Maria Livingston. -Alaska survey is based on California's -Stacey studied hotlines and call centers prior to setting up the Alaska program. <p>The Alaska self-help center offers a comprehensive state-wide centralized phone based self-help legal information services—a toll free number where anyone can call with legal questions that relate to family law.</p>	<p>The program emerged from the structure of the local FLF. It has borrowed from the successes and methods of Alaska, among others, but it does not limit its method of access as many other programs do. It envisions itself as having the eventual capacity to serve all 58 California counties.</p>	<p>In the process of a program review. Currently the program is staffed by attorneys who act as site supervisors, paralegals and clerical staff All are trained in the procedures of all case types.</p>	<p>The Remotes services model was Alaska (and they think the world of Stacy Martz.) However, MJB feels strongly that in-person and remote delivery are important and intend to continue to have both available. Interestingly, many callers to Statewide were residents of districts that offered in-person self-help, like Hennepin County. Once initial questions were answered by phone, they were directed to the in-person facility for continued follow up like form review, legal clinic, and filing. Because they were able to get help on the phone first, they felt it lead to faster, more efficient use of time in-person.</p>	<p>The model for the program was originally taken from Alaska. Jessica, the State Law Librarian came from Alaska where she trained with the founders of that program, Katherine and Stacy. However, there are differences. For example, Utah’s program covers all areas of the law, not just family law.</p> <p>It is a central office that gives remote service to the entire state. They have found that the only way to give equal service to all the state was to make all services ‘virtual’ – they take phone calls, emails, and texts only. There is no face-to-face interaction or videos, or workshops</p>
Program Hours	<p>Monday - Thursday, 7:30-6:00</p> <p>The helpline is closed on Fridays and the program provides a mandatory (for all self-represented litigants) Family Law Education Class (FLEC) taught by the facilitators in teams of 2, alternating weeks with an optional “Hearing and Trial Preparation” class taught by staff attorney.</p>	<p>The office opens at 8:00. Customers are admitted at 8:30, take a number, and are served until the office closes at 5:00. No new numbers are distributed after 4:00. The program considers it important to serve every timely arrival, if only by making future appointments, appropriate referrals and provision of forms packets. The director personally steps in when needed.</p>	<p>Mon-Thurs 8-4 Fri – 8-3 Quarterly close at noon for staff meeting</p>	<p>In Person: 8-4pm. Statewide: 9-3:30 but this will be changing to 4:30 and this is something that the staff is concerned about for morale and burn out potential. The staff felt that the end of the day time to finish the data entry spreadsheet and confer with colleagues about the calls they received helped with morale and also helped to prep each other for future calls from people who were currently in the process.</p>	<p>The self-help center is open Monday through Thursday from 11am to 5pm. They cite an ABA report that recommends self-help personnel do no more than 4 hours a day to avoid burnout. They also indicated that states like Maryland have high rates of staff turnover due to burnout</p>

Remote Service Delivery Site Visit Reports

	Alaska	California- North	California O.C.	Minnesota	Utah
Program Equipment	<ul style="list-style-type: none"> - Computers with dual screens, - Fax machine, - Copier, - Printer, - High quality headsets with wide mobility range, - Phones (no call center software, simply 800 number and private line) 	The program requires all counties to have excellent internet (1.5mb minimum). Zoom is the preferred software for the interactive, multicounty workshops.		Statewide just recently upgraded to “call center technology” which they view as critical and they had researched several models before settling on the one that they chose, because this system fields calls without constantly ringing through to everyone’s line and allows for statistical data gathering i.e. Number of calls, length of calls, and where the calls are coming from.	<p>Phones with headsets. Computers with 2 large screens. Sit/stand desks. Projector and screen for presentations to local courts.</p> <p>Staff have access to the statewide electronic court records, including juvenile and adoption cases.</p> <p>They are using free Google email and text programs. They said that the services were quite good and have the ability to track prior conversations with the same persons.</p>
Challenges when establishing the program?	Initial resistance from Bar (many lawyers believed it would take their business). Stacey created an advisory board that included local Bar members for "buy-in." They have since established a great relationship with the Bar (especially the Unbundled Services Panel that they refer to on a regular basis).	The program has found that other counties and their administrators and judicial officers must be individually shown via repeated visits the benefits of participation.	Coverage has been an on-going issue. This is geographically a large urban county. Distance and traffic make coverage an issue. There are 22 staff providing Self-Help services.	<ul style="list-style-type: none"> - Budget/Fiscally who pays, where located, and how to incorporate the Statewide and in person staff - Lack of protocols and guidance, they felt they were making things up as they go - Scope of services - No formalized training 	<p>Funding was and is the primary challenge to establishing and maintaining the program. Because the initial ideas came from Alaska, they had some idea how it should work. They began in 2010 with a 2 year pilot program in just 2 judicial districts. About that time the country went into the recession and they had to scramble to get funding through grants and donations. They stuck it out and in 2012 were able to expand the program statewide when they got funded by the legislature.</p> <p>They also had trouble with the Bar Assoc., primarily in rural areas where some attorneys saw the program as a threat to their livelihoods. Some judges did not like the notion of encouraging people to do cases on their own.</p>

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Laws Regarding Services	No. Stacey mentioned she often steers clear of implementing court rules about processes/services in order to not overcomplicate an issue. She drafted the program to be in compliance with existing rules and statutes.	The program is explicit that it provides legal information, not legal advice. There is no confidentiality. It explains local county practices when necessary.	See California Rule of Court 10.960 Also, no legal advice may be provided by any court employees. We are neutrals providing procedural options.	They are established by Court Rule 110. They provide legal information to both parties and no legal advice to either party. They felt they more liberally construe legal information vs. legal advice compared to some other states.	A statute was enacted that created the authority for, scope, and funding of the program. (It does not indemnify the staff, but they don't see why they would need that protection.)
Staffing					
	Alaska	California- North	California O.C.	Minnesota	Utah
Staff Qualifications	-Facilitators are not lawyers -Customer Service background is a must -Problem solving skills -Multi tasking ability *Bilingual and knowledge of court procedures a bonus	The program's senior management consists of two: one attorney and one IT/education specialist. Hiring focus is on customer service, with the "legal side" trained in house, rather than the reverse. Local law- student interns fill in.	Manager must have at least 5 years experience as an attorney. Self-Help Attorneys need a minimum of 1 year. Paralegals need 1 year of experience. Most candidates have considerably more.	Staff Attorneys – generally they have worked in the Courts or with Legal Aid. Then they went to Self-help in person centers and are promoted from within. As an attorney they are sought after positions. The MJB is considering reclassifying them to be Legal professionals instead of lawyers but this a bone of contention right now. Paralegals – chosen for customer service skills and many are multi-lingual.	They are adamant that staff must be attorneys because of the often highly technical nature of the questions they handle, and the breadth of law they must be familiar with. However, they do not have to be licensed in Utah. (All the staff are current members of at least one Bar.) They must have a commitment to access to justice, and be able to work well with people. High preference for those who can speak Spanish.
Staff Training	-Director gives Legal Advice v Legal Information training -The rest is "on the job" training in stages: <ul style="list-style-type: none">•Practice finding and filling out forms•Court observation•Website "tests" to locate information/forms•Practice call "scenarios"•First calls made w/ handoff to experienced facilitator•Assisted and observed Calls	Ongoing and important. A comprehensive manual, plus cross-training on methods and close observation by managers.	On-going. We close at noon quarterly for a 4 hour staff meeting which includes training from other operations.	On the job, most are well-versed in Self-Help from working at the in person center before rotating to Statewide Remote Services.	There is no training regimen, but it takes months of one-on-one training for staff to become proficient in all the areas of the law, court procedures, and in how to help people properly.

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	-Use website and FLEC manual as resources -Has staff read SRLN study by John Greacen				
Number of Staff	Alaska population: 752,439 with 4 judicial districts Oregon population: 4.2 million; 27 judicial districts Staff: 6 (Director, Staff Attorney, and 4 Family Law Facilitators). The program started with 2 facilitators, and moved to 3 before adding a 4th approximately 4 years ago. Stacey would like to add yet another facilitator position to her staff.	About 7	Total of 27 but some are funded by another grant and that work is specific to child support, spousal support and health insurances issues. Most of the triage staff is promoted from within. They are coveted jobs within the Court. The court staff are union represented while the attorneys and paralegals are not, leads to some challenges but nothing that can't be overcome.	Statewide: 4 (three attorney and 1 paralegal) 4 th District In Person Center: 3 staff attorney and 5 paralegals (Family law) 4 th District In Person Center (General SRL) – 2 staff lawyers and 3 paralegals.	There are 6 attorneys total: One full-time Director, and 5 part time staff attorneys
Services					
	Alaska	California- North	California O.C.	Minnesota	Utah
Scope of Services	-Phone based services with email follow-up -Family Law (divorce, custody, paternity, 3rd party custody) -In general, no document review , on very limited occasions staff has provided the service for those with disability issues that limit computer access. It is a statewide service so Stacey strives to make the service level and scope equal to all around the state. -Self-represented litigants may call the Center's 800 number or email as many times as they wish during the course of their case. There is no charge. They are provided legal "information" but	At intake, forms, instructions to complete them, legal information, and community referrals.	They offer a continuum of services, remote, walk-in, document reviews, judicial referrals from courtrooms, support a number of Family Law self-help calendars , workshops in multiple languages	Self Help Center: In person, help with form selection, form review, scribing, delivery of packets, referral to legal help clinic Statewide: - referral to in-person centers, - Website direction - web-based direct interface access (Team Viewer) - triage - limited scope tasks - General overview, no scribing but will confirm correct packet selection.	From their website: <i>Self-Help Center staff attorneys can:</i> <ul style="list-style-type: none">• answer questions about the law, court process and options• provide court forms and instructions and help completing forms• provide information about cases• provide information about mediation services, legal advice and representation through pro bono and low cost legal services, legal aid programs and lawyer referral services• provide information about resources provided by law

Remote Service Delivery Site Visit Reports

	<p>not legal “advice.” Options are explained. For example, a caller may ask about spousal support and receive an explanation of the two types of spousal support available in Alaska, but no recommendations are made about which to choose. As Stacey explained, “we try to never say ‘you should’ when providing information.”</p> <p>-When the customer decides to take some action, they are provided the necessary forms and instructions for filing, service, etc. The Facilitator will email links to the forms and instructions, as well as links to excellent short, plain-language youtube videos available on the Court’s website. In rare cases, if email or internet is not available to the customer, the Center will mail forms and information to the party.</p> <p>-During the initial call, the Facilitator makes inquiries about issues and offers referrals. This has proven to be one of the most valuable aspects of the service. For example, if a customer has no money, or is the victim of intimate partner violence, or a party is dealing with substance abuse or mental health issues, referrals will be made to the appropriate government, social service, or other agency. The Center is not limited to merely assisting with the legal steps or</p>				<p><i>libraries</i></p> <p>They cover family law, probate, civil cases, small claims, landlord-tenant, and some criminal matters. They help with all courts; juvenile, justice, district, and appellate. Roughly ½ of their work is in Dom Rel cases</p>
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	paperwork to pursue a legal action. In this way, it functions as a phone based “Family Relationship Center.”				
	Alaska	California- North	California O.C.	Minnesota	Utah
Service Delivery	<ul style="list-style-type: none"> -Phone (800 number has first priority followed by private lines) -20 min limit to call, unlimited ability to place calls - Calls anonymous unless give case info but identifying information is not recorded or tracked - Disclaimer about services not being legal advice is given to every new caller (<i>see notes</i>) -Task oriented- always leave client with “to do” (only one or two tasks assigned, not comprehensive because customer can call again as needed) -Trouble shooting to avoid “downstream consequences” -Email follow-up that includes Facilitator’s private number -Separate office phone number specifically for rural courts that includes option to leave message -Extensive website that includes forms, procedural and legal topic information, and instructional videos. 	The program’s fundamental philosophy is that the customer must be served via the method the customer chooses. This is done whether face-to-face, by telephone, at a workshop, by Skype, FaceTime or Zoom, by chat, by email, webinars, or remotely processing forms online. The staff adapts to the customer’s choice, and is cross-trained accordingly. There is training for county differences.	Remotely and in person. Manager and Senior Attorney also serve as FL Temporary Judges as needed for procedural calendars. Visit our website @ www.occourts.org/self-help	Statewide: Phone calls, interactional computer experience, and limited email contact through a general email address that all 4 staff review and respond to.	Staff answer questions as they come in by phone, email, and text message. They tried chat, but it was problematic. Roughly ½ of all services are provided by phone. After each contact, staff often follow up with people by sending emails with links to forms and other resources.
Areas of law addressed or specifically not addressed	<ul style="list-style-type: none"> -No current forms for Legal Separation -Child welfare (CHINA – Child in Need of Aid) -Adoption -Probate (may be implementing 	Family law, including guardianships of the person, family-law trial advocacy, also unlawful detainer and small claims.		General Self Help on all topics for court. Lawyers and SRLs on variety of topics: Location of courthouse, hours, legal topic specific, landlord/tenant, conciliation, family law, criminal	Information and forms for all areas of the law are provided, except for Federal matters (such as bankruptcy or immigration), but they will provide referrals

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	this soon due to parallels with family law) (a recent grant allowed for the addition of a web page about guardianship and conservatorship on the Self-Help website, but other than to refer to the site, there aren't forms and facilitators do not currently assist in this area)			expungements and violations etc.	
Other Languages	-Spanish -Tagalog	Spanish is available immediately, often by a seamless remote connection from a participating county. Others are available with notice.		The staff was multilingual. Spanish, Somali, Arabic, Amharic, Oromo	They use the courts' interpreter services when needed, either over a language line, or they may schedule with an interpreter via a conference call, or the interpreter will go to their office. All current staff speak Spanish

Quantitative Information

	Alaska	California- North	California O.C.	Minnesota	Utah
Volume	-7,000 calls/year -track by contact not by customer (all survey entries in database are anonymous)	The program began with 20/day. Now about 100 based on word-of-mouth recommendation.	132,000 in person and over 120,000 remotely in 2017 FL assistance is provided at all SHCs. The SHC at Lamoreaux Justice Center where there are 17 FL courtrooms averages 200-300 walk-ins per day.	Self-Help In Person: Numbers through Q-flow. No phone contacts and limited email follow up. They have limited data but keep copies of all emails sent so can quantify it. Statewide: Each person inputs on a spreadsheet to keep track of 1) Number of calls, 2) length of calls, 3) County served, 4) Topic area. The call center programs they use now will assist with data and there are other things that they can utilize with the program that they haven't started yet.	They average 20,000 customers served each year. Roughly half by phone, a third by email, and a sixth by text. Follow up is nearly always by email

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Average Time per Client Contact	-17.5 min average (they try and cap call at 20 min and end by assigning a “task”) -parties can call back as many times as needed	No arbitrary duration limits. Workshops: 3 hours. Telephone: 5 minutes, with unlimited callbacks (no messages or staff assignments). Appointments: 20 minutes, with unlimited returns as forms are completed.		Varies by staff member. 8-15 mins. First come first served and no appointments.	This is not formally tracked at this time. (but averaging the number of people they help, with the number of staff, and operating hours, yields an average of about 12 minutes per contact)
Qualitative Information					
	Alaska	California- North	California O.C.	Minnesota	Utah
Advice for a new program in its development al stages	Define your business process (can help drive best practices and create platform for state) -Choose office space that provides easy contact/collaboration between employees -Invest in high quality headsets that provide employee with mobility -Develop strong partnership with Bar (in particular unbundled services) -Establish network within communities where public can access internet (ie. Libraries, Churches, Community Centers)	Key: A charismatic and committed founder/leader. Next: A specialized IT/education manager. Begin locally, out of an existing FLF. Then: High-speed internet. Customer-oriented and cross-trained staff. Comprehensive manuals. Offer all methods customers choose, including interactive multicounty workshops. Collect, analyze and use evaluations and feedback. As multicounty rollout begins, vigorous, repeated inperson demonstrations to each county, backed by comprehensive data and analysis showing cost savings.	Start your remote services by creating a great website. It will be static but you can post videos and provide a lot of information. Training for staff and collaboration with other units and the bench is essential Start with a program like SharePoint to collect data from day one.	See Notes	Everyone said “Just do it!” They started with just one attorney in a room with a computer and a phone. It would take a dedicated and experienced attorney who has access to the information needed (such as referral options). They recommend that we push for full finding right off the bat. They did mention that they had explored facilitation in the courthouses. They abandoned those ideas in favor of the remote services, because once they offered help by phone, email, and text, people preferred the virtual services. Also, it was more balanced and equal across the state. People anywhere can access their help, without having to go to a courthouse that may or may not have the same level of services that are found in the more populous areas. They strongly recommended that we use attorneys. And that staff extend themselves by being active

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					with committees and work groups. They recommend that the services be entirely virtual because, among other things, it allows people who are physically outside the state receive help too.
In hindsight, what might be done differently	<p>-No phone messages (Initially they allowed messages and have since stopped. They found that it took too much time to listen to messages and try and return calls).</p> <p>-Research survey tool. Stacey said she may have used different tool, they use Microsoft Access.</p> <p>- No in person services – Initially experimented for a 6 month period with sending a facilitator to Fairbanks and found it took up a disproportionate amount of time and resources</p>	Use Zoom, not PolyCom, for remote services.	Due to increasing staffing costs which have not been met by the grant, perhaps not expanding so quickly. Otherwise, it has been very successful.	See Notes	Initially they were very fiscally conservative, which has back-fired. They can’t get the funding they need now. The advice was to “shoot for the moon” with the funding.
Current challenges and/or needs	<p>-More staff</p> <p>-Expand services to include Probate</p> <p>-Interested in tool used by MN for remote viewing software</p> <p>-Possible video interaction with customers (Some data suggests that video interactions can make people uncomfortable)</p>	Long-term funding, demonstrated by current success, shown by comprehensive data.	We are excited about a Family Law texting project the SHS manager has done for a National Center for State Courts Fellowship. The pilot will be expanded to collect more data through a project with Stanford University School of Law & Design	More staffing. Remote services are best delivered in conjunction with referral to in-person help centers. The staff felt very strongly that people in the rural areas of the state who do not have access to in-person help centers are at a disadvantage compared to those in the urban areas who can easily and readily get assistance. Many counties because they have no in-person access they do not even know of the options that are available to them. All felt this was an access justice issue.	<p>They seem to have the program dialed in. But for all the people they help, there are many they can’t because they don’t have the full time staff they need.</p> <p>It is a challenge to find attorneys who are willing to work on a part time basis only.</p> <p>It is important to keep up with contacts and relationships. They do outreach to courts across the state, and with various clinics, and the Bar. Assoc</p>
Other					

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	Alaska	California- North	California O.C.	Minnesota	Utah
Do your courts have family law facilitation programs? If so, how do the programs work together?	There are no in-person facilitation programs in Alaska. The helpline at FLSHS provides all facilitation services remotely by phone, follow up email. The centralized phone-based model was initially chosen out of necessity. It was less expensive and Alaska's vast wilderness, lack of roads, harsh weather and sparse population made it impossible to provide the more traditional personalized courthouse facilitation.	Yes, each and every county, funded whenever possible by 4-D sources. Interactive multicounty workshops are supplemented by local in person FLF follow up.		Three judicial districts have self-help in person that includes access for family law. As a whole they feel very strongly that the programs work in tandem and benefit each other greatly. They gave several examples of the referrals and interplay between the two groups.	There are no local court facilitation services in Utah. However, the Self-Help staff occasionally visit and train local courts on how to answer basic questions, and how to direct people to the comprehensive website. Jessica mentioned that local facilitation would be a good thing – a compliment to their services rather than a competitor
Childcare	No	Children are discouraged and there is no child care, but the occasional child is tolerated, especially in emergencies.		No and this was a conscious choice by staff to keep things serious, quiet and free from distraction.	Because services are provided entirely remotely, there is no need for childcare
Where/How does mediation fit into this program?	Mediation (or orientation) is not mandatory in Alaska for family law cases. Mediation is voluntary, available for custody/parenting time issues, and offered as a free service for parents whose combined net income is less than \$100,000. The Court has a Mediation Coordinator who works at the Court Administrator's Office and she organizes private mediators who contract with the courts. A party must file a motion asking for the court to order mediation. Alaska law restricts the court's ability to order mediation if DV has occurred between the parties.	Each county has a separate mediation service and requirement. Services are cross-referred and are physically adjacent.		Like Oregon the family law mediation is run by the county and not the MJB, so they were entirely separate. (But they do have some very interesting programs.)	Staff may refer parties to mediation services. Also, self-help center staff have access to mediation information – whether mediation was concluded, and if so what was the outcome

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Notes					
Notes	<div>ALASKA<ul style="list-style-type: none">• Database provides statistics that help with program development and geographic information• Standard notification given to all callers about Alaska FLSHC services:<ul style="list-style-type: none">- <i>Before we talk anymore, I need to tell you something about where you have called. We are the Family Law Self-Help Center.</i>- <i>The most important thing to know about us is that we are part of the court. What that means is that we have to be neutral and impartial, we can't take sides.</i>- <i>Also, we can only provide legal information, not legal advice. What that means is that we can give you information about court procedures or forms, but not advice on interpretation of laws or strategies for your case.</i>- <i>Conversations with us are not confidential in the way they would be with a lawyer.</i>- <i>We help both sides. What that means is that if the other side calls, we will give him/her exactly the same kind of help we give you. Is this okay with you?</i>- <i>Do you have a lawyer representing you in this case?</i>• Data tracked is based on individual call, not on client• Call Survey includes 2 parts<ul style="list-style-type: none">- Demographic Info from caller- Services provided• Facilitators help with child support calculations• 10% of calls received are from outside of Alaska• Benefits of phone services:<ul style="list-style-type: none">- Quality control, conformity in staff training, increased staff support (staff all in one location)- No security concerns that are present with in person consultation- Increased access for public (removes barriers of childcare, transportation, parking, missing work)- Reduction in overt/implicit bias (can't see caller to make judgments based on race, color, clothing, odors, etc.- Decreased staff burnout (They have found that it is far less</div>	<div>California North<p>SHARP is an outstanding program. My visit confirmed that it delivers on its founding principles and proves their worth. Remote workshops and local FLFs supplement each other. The two managers (law/IT) are a vital team. The two are ready to come to Oregon to present to us in person and later to advise our startup. They are very familiar with the needs of small counties and the local-variation issue.</p><p>After studying the website (sharpcourts.org), the very best way for our subcommittee members to get a sense of its effectiveness is to participate in an interactive workshop. This is easy to do. Every Tuesday, from 9:30 to 12:30, the topic is guardianships of the person. Every Wednesday, from 9:00 to 10:00 child custody, 10:30-11:30 child support, 1:30-3:30 divorce.</p><p>To access from a computer or tablet go to zoom.us/, press “join a meeting” (you may need to download the app), and choose meeting # 968-838-4827, then disable your own microphone. You will see and hear the leader and all the customers, as well as the same screen and pointer that is viewed in each location. No need to join at the start, but it helps. For help, call</p></div>		<div>Minnesota<p>My observations of watching the call center operator:</p><ol style="list-style-type: none">1) Directed the caller to one task at a time and suggested a return after they have completed that task.2) Thorough knowledge of website and online resources with a clear communication ability to direct people through the web based interfaces.3) Often the callers are not prepared, no pen, calling in the car, drive thrus, workplaces, have children.4) The caller was very clear in managing expectation with phrases such as “they MAY be able to assist you“ or “they might have some information for you”.5) Lots of multitasking on various computer screens and multiple applications were up.6) Skilled at intake/orienting with the person to determine exactly what they are calling for, pointed directions, and skilled at focusing communication.7) Had a broad scope of knowledge regarding the various court proceedings including confidential matters.<p><u>Things they have learned from or would otherwise suggest:</u></p><ol style="list-style-type: none">1) Allow for designated time to have “back office functioning” without customer interface for tasks like data collection, template building, office organization and clean up.2) Be thoughtful about shared office or workspace. It is not practical or efficient to have folks share a space because they can serve better if they know where things are.</div>	

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	<p>stressful for staff to work with customers on the phone than to face the high volume of intense emotions present in these cases in face to face interactions. Staff has the ability to consult and debrief with other staff, and recess make follow up contacts with customers if a communication becomes too intense.)</p> <ul style="list-style-type: none">- Phone services allows for anonymity (although most choose to identify themselves)- Cost effective <ul style="list-style-type: none">• Service by publication – newer rule allows publishing on Court’s website “legal notices” section (This is worth checking out considering the changing ways people access media, the decrease in newspapers around the country, and the limits to access presented to parties who cannot afford the hundreds of dollars it costs to publish in a paper. The NCSC has an article about this issue and the Alaska rule, please read for further discussion)• Anchorage Court has Family Law Education Class (FLEC) (includes 20 min parent education element) required for all self-represented litigants (See attached Exhibit B)<ul style="list-style-type: none">- Can be waived based on hardship (in which case, the class PPT is mailed to the party)- If no DV, parents can attend same class- Parties who live far from Anchorage can take mini FLEC over phone• Alaska has started IDRT• Family Law Self-Help Services Staff Attorney teaches bi-monthly “Hearing and Trial Preparation” class<ul style="list-style-type: none">- Grant funded- Class has been recorded and snapshots available in Youtube video links on Court’s website• Alaska Bar Association created Unbundled Service Panel several years ago and the SFLHC office has networked quite successfully with the Panel to refer cases both ways <p>Key Components from Alaska to apply to proposal for Oregon’s Remote Services Delivery System:</p> <p>1. Funding</p> <p>a. Utilize 4D reimbursements to offset court’s cost</p> <p>2. Location</p>	<p>SHARP at 530-532-7186 (Melanie Snider) or 530-532-7218 (Wendy Trafton). Mention my name.</p> <p>My bottom line: we could not do better than to replicate this excellent program. They are ready to come and help us to do that.</p>		<p>3) Their motto is “Inform. Instruct. Inspire.” - Meaning let people know what is out there, instruct them on how to get things filed and inspire the confidence to allow them to do it themselves.</p> <p>4) When people are calling over the phone it is important to remember confidentiality in many of the Court cases. They will routinely have people who are calling to be a party to a proceeding who are not actually the party. So, training is needed to be conscious of those distinctions because even acknowledging that a case exists can be a breach.</p> <p>5) Be conscious of statewide forms versus the forms that are specific to different counties. They have a form developer much like Oregon who is pushing for uniformity between the Courts and acknowledge that it is a struggle.</p> <p>6) When things are very busy it is a high energy, high brain power job it is important to have strong administrative support who can help manage and keep an eye on rising stress levels throughout the day.</p> <p>7) There should be more marketing about the resource that is available. It took folks a while to learn that the resource was out there.</p> <p>8) When implementing and designing a program designate a point person who has the knowledge and skill to do it and avoid a committee approach, it is confusing and can bog down the process.</p> <p>9) Be thoughtful about where to place the service, there are often very practical reasons to house it in a particular location, preferably close to an in-person facility so that potential for cross training can help round out the skills of the call taker.</p> <p>10) Have vicarious trauma training for the</p>	
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	<ul style="list-style-type: none">a. Close to court administrationb. Proximity to tech support and high concentration of state’s resources <p>3. Oversight a. State Court Administrator’s Office</p> <p>4. Staff</p> <ul style="list-style-type: none">a. Qualifications for facilitators<ul style="list-style-type: none">i. Non lawyersii. Strong customer serviceiii. Problem solving skillsiv. Multi-tasking abilityv. Bilingual and prior knowledge of court procedures a bonusb. Training Protocolc. Numbers <p>5. Scope of Services</p> <ul style="list-style-type: none">a. Family Lawb. Plan for future incorporation of probate issues due to parallels with family law <p>6. Delivery of Services and Equipment Needs</p> <ul style="list-style-type: none">a. Content rich websiteb. Technology for Delivery of Services<ul style="list-style-type: none">i. Phone systemii. Emailiii. Video interaction softwareiv. Remote viewing softwarec. Equipment<ul style="list-style-type: none">i. Computers with dual screensii. Fax machineiii. Copieriv. Printersv. Headsetsvi. Phones <p>7. Collaboration with Internal and Community Partners</p> <ul style="list-style-type: none">a. Develop strong partnership with Barb. Establish contacts in each jurisdiction where public can access computers and internetc. Establish contacts with social service providers and government agenciesd. Identify contacts within each courthousee. Collaborate with OJD forms groups			<p>employees.</p> <p>11) Have a supportive environment within the staff of people who have the same degree of work ethic because then they feel the load is being shared and they can rely on each other to avoid burn-out. Because in-person Self – Help there are natural breaks between helping one person and the next but on the phone the call taker goes from one to the next instantaneously. They have a “take 10” philosophy that anyone of them can call for the break and then they ALL take it together to provide support.</p> <p>12) Cross training in person and on the phone is critical. If one is only ever providing help on the phone then it can create tunnel vision.</p> <p>13) Develop clear policies from the beginning on things such as:</p> <ul style="list-style-type: none">a. Legal Advice vs. Legal Informationb. Confidentialityc. Security issuesd. Problem callerse. Procedure for handling the work <p>14) Get and keep good data.</p> <p>15) Invest in good call center software. Melissa Giernoth was in charge of sampling and suggesting. She remains available as a resource for any questions. Make the investment for what you want on the front end. Be clear on what data collection tools are important.</p> <p>16) Try to build support with local and state bar organizations for free legal advice, law clinics and the like as a referral resource.</p> <p>17) Be sure the call taker has a clear understanding of regional vs. state information.</p> <p>18) Pay people what they are worth and they will stay.</p>	
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	8. Integration with existing Facilitation Services a. Alaska doesn't have in person services, however, as noted in section 7 above, the proposal should include a plan to establish a contact within each facilitation program			19) Used Alaska as a model in the beginning and then created a hybrid model between the 4 th and Statewide services.	
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Remote Services Delivery Survey

Alaska Family Law Self Help Center (FLSHC)

Colleen Carter-Cox and Jodi Harvey

Date of Site Visit: May 14 - 17, 2018

Program Location: Anchorage, Alaska

Contact Name: Stacey Marz, smarz@akcourts.us, 907-264-0877

Program Website: <http://www.courts.alaska.gov/shc/family/selfhelp.htm>

Helpline Phone Number: 907-264-0851

Funding and Management	
Source of funding?	State funded: 4D reimbursements offsets court's cost (66% 4d/Courts 34% (Stacey can provide more specifics if needed)
Type of oversight?	Alaska has a unified Court system. Alaska's self-help program is operated by the State Court Administrator's Office. Stacy Marz is the current director of Self-Help Services and directly oversees the Self-Help Program.
Reporting requirements?	Monthly reports to State Court Administrator
Operation guides or manuals?	The forms, Website , and Facilitation Services are all under one roof and managed by the Director of Self-Help Services -The comprehensive website is used as a "manual" by staff facilitators
Protocols (screening, triage)?	-No pre-screening or screening out of calls -No eligibility requirements -Whenever possible, any information gathered in a call regarding issues such as financial troubles, DV, substance abuse, or mental health results in referral to the appropriate social service or government agency
Coordination with other service providers (ie. Bar, Courts, Facilitators)?	-Alaska DV Network -Alaska Bar (The Bar has a recently established Unbundled Service Panel) (Stacey regularly attends bar section meetings for continued

	<p>networking)</p> <ul style="list-style-type: none"> -Alaska Legal Services -Coordination with community resources and other government and private services to provide appropriate referral, ie. DV shelters, food banks, emergency assistance for housing/utility payments
Location and Development	
Location?	Anchorage
How was location selected?	Anchorage is where Court Administration is located as well as the highest concentrated volume of population and resources in the state
Program model?	<p>California</p> <ul style="list-style-type: none"> -Stacey observed programs and communicated frequently with Maria Livingston -Alaska survey is based on California's -Stacey studied hotlines and call centers prior to setting up the Alaska program <p>The Alaska self-help center offers a comprehensive statewide centralized phone based self-help legal information services—a toll free number where anyone can call with legal questions that relate to family law.</p>
Program Hours?	<p>Monday – Thursday, 7:30am – 6pm.</p> <p>The helpline is closed on Fridays and the program provides a mandatory (for all self-represented litigants) Family Law Education Class (FLEC) class taught by the facilitators in teams of 2, alternating weeks with an optional “Hearing and Trial Preparation” class taught by staff attorney.</p>
Program Equipment?	<ul style="list-style-type: none"> -Computers w/ dual screens -Fax machine -Copier -Printer -High quality headsets with wide mobility range -Phones (no call center software- simply 800 number and private line)
Challenges when establishing the program?	Initial resistance from Bar (many lawyers believed it would take their business). Stacey created an advisory board that included local Bar members for “buy-in.” They have since established a great relationship with the Bar (especially the Unbundled Services Panel that they refer to on a regular basis).

Laws regarding services?	No. Stacey mentioned she often steers clear of implementing court rules about processes/services in order not to overcomplicate an issue. She drafted the program to be in compliance with existing rules and statutes.
Staffing	
Staff qualifications?	<ul style="list-style-type: none"> -Facilitators are not lawyers -Customer service background is a must -Problem solving skills -Multi tasking ability *Bilingual and knowledge of court procedures a bonus
Staff training?	<ul style="list-style-type: none"> -Director gives Legal Advice v Legal Information training -The rest is “on the job” training in stages: <ul style="list-style-type: none"> • Practice finding and filling out forms • Court observation • Website “tests” to locate information/forms • Practice call “scenarios” • First calls made w/ hand off to experienced facilitator • Assisted and observed Calls -Use website and FLEC manual as resources -Has staff read SRLN study by John Greacen *See attached “Facilitator Training Outline” attached as “Exhibit A.”
How many staff?	<p>Alaska population: 752,439, 4 judicial districts Oregon population: 4.2 million, 27 judicial districts</p> <p>Staff: 6 (Director, Staff Attorney, and 4 Family Law Facilitators). The program started with 2 facilitators, and moved to 3 before adding a 4th approximately 4 years ago. Stacey would like to add yet another facilitator position to her staff.</p>
Services	
Scope of services?	<ul style="list-style-type: none"> -Phone based services with email follow-up -Family Law (divorce, custody, paternity, 3rd party custody) -In general, no document review, on very limited occasion, staff has provided the service for those with disability issues that limit computer access. It is a state-wide service so Stacey strives to make the service level and scope equal to all around the state. -Self-represented litigants may call the Center’s 800 number or email as many times as they wish

	<p>during the course of their case. There is no charge. They are provided legal “information” but not legal “advice.” Options are explained. For example, a caller may ask about spousal support and receive an explanation of the two types of spousal support available in Alaska, but no recommendations are made about which to choose. As Stacey explained, “we try to never say ‘you should’ when providing information.”</p> <p>-When the customer decides to take some action, they are provided the necessary forms and instructions for filing, service, etc. The Facilitator will email links to the forms and instructions, as well as links to excellent short, plain-language youtube videos available on the Court’s website. In rare cases, if email or internet is not available to the customer, the Center will mail forms and information to the party.</p> <p>-During the initial call, the Facilitator makes inquiries about issues and offers referrals. This has proven to be one of the most valuable aspects of the service. For example, if a customer has no money, or is the victim of intimate partner violence, or a party is dealing with substance abuse or mental health issues, referrals will be made to the appropriate government, social service, or other agency. The Center is not limited to merely assisting with the legal steps or paperwork to pursue a legal action. In this way, it functions as a phone based “Family Relationship Center.”</p>
How are services delivered?	<p>-Phone (800 number has first priority followed by private lines)</p> <p>-20 min limit to call, unlimited ability to place calls</p> <p>-Calls are anonymous, however, most callers choose to identify themselves or give otherwise identifying information needed to locate essential court information or determine case status but this identifying information is not recorded or tracked</p> <p>-Disclaimer about services not being legal advice is given to every new caller (<i>see notes below</i>)</p> <p>-Task oriented- always leave client with “to do” (only one or two tasks assigned, not comprehensive because customer can call again as needed)</p> <p>-Trouble shooting to avoid “downstream consequences”</p> <p>-Email follow-up that includes Facilitator’s private number</p> <p>-Separate office phone number specifically for rural courts that includes option to leave message</p>

	-Extensive website that includes forms , procedural and legal topic information, and instructional videos
Areas of law addressed or specifically not addressed?	-No current forms for Legal Separation -Child welfare (CHINA – Child in Need of Aid) -Adoption -Probate (May be implementing this soon due to parallels with family law) (A recent grant allowed for the addition of a web page about guardianship and conservatorship on the Self-Help website, but other than to refer to the site, there aren't forms and facilitators do not currently assist in this area)
Are services provided in other languages? (If so, what languages?)	-Spanish -Tagalog
Quantitative Information	
Volume? (Tracked per client or per contact?)	-7,000 calls/year -Track by contact not by customer (all survey entries in database are anonymous)
Average time per client contact?	-17.5 min average (they try and cap call at 20 min and end by assigning a "task") -Parties can call back as many times as needed
Qualitative Information	
What advice would you provide a new program in its developmental stages?	-Define your business process (can help drive best practices and create platform for state) -Choose office space that provides easy contact/collaboration between employees -Invest in high-quality headsets that provide employee with mobility -Develop strong partnership with Bar (in particular unbundled services) -Establish network within communities where public can access internet (ie. Libraries, Churches, Community Centers)
In hindsight, what might be done differently?	-No phone messages (Initially they allowed phone messages and have since stopped. They found that it took too much time to listen to messages and try and return calls.) -Research survey tool. Stacey said she may have used different tool, they use Microsoft Access. -No in person services – Initially they experimented for a 6 month period with sending a facilitator to Fairbanks and found it took up a disproportionate amount of time and resource

Current challenges and/or needs?	-More staff -Expand services to include Probate -Interested in tool used by MN for remote viewing software -Possible video interaction with customers (Some data suggests that video interactions can make people uncomfortable)
Other	
Do your courts have family law facilitation programs? If so, how do the programs work together?	There are no in-person facilitation programs in Alaska. The help-line at FLSHC provides all facilitation services remotely by phone, follow up email. The centralized phone based model was initially chosen out of necessity. It was less expensive and Alaska's vast wilderness, lack of roads, harsh weather and sparse population made it impossible to provide the more traditional personalized courthouse facilitation.
Is childcare available at the courthouse?	No
Where/How does mediation fit into this program?	Mediation (or orientation) is not mandatory in Alaska for family law cases. Mediation is voluntary, available for custody/parenting time issues, and offered as a free service for parents whose combined net income is less than \$100,000. The Court has a Mediation Coordinator who works at the Court Administrators Office and she organizes private mediators who contract with the courts. A party must file a motion asking for the court to order mediation. Alaska law restricts the court's ability to order mediation if DV has occurred between the parties.

Notes:

- Database provides statistics that help with program development and geographic information
- Standard notification given to all callers about Alaska FLSHC services:

Before we talk anymore, I need to tell you something about where you have called. We are the Family Law Self-Help Center.

The most important thing to know about us is that we are part of the court. What that means is that we have to be neutral and impartial, we can't take sides.

Also, we can only provide legal information, not legal advice. What that means is that we can give you information about court procedures or forms, but not advice on interpretation of laws or strategies for your case.

Conversations with us are not confidential in the way they would be with a lawyer.

We help both sides. What that means is that if the other side calls, we will give him/her exactly the same kind of help we give you. Is this okay with you?

Do you have a lawyer representing you in this case?

- Data tracked is based on individual call, not on client
- Call Survey includes 2 parts
 - Demographic Info from caller
 - Services provided
- Facilitators help with child support calculations
- 10% of calls received are from outside of Alaska
- Benefits of phone services:
 - Quality control, conformity in staff training, increased staff support (staff all in one location)
 - No security concerns that are present with in person consultation
 - Increased access for public (removes barriers of childcare, transportation, parking, missing work)
 - Reduction in overt/implicit bias (can't see caller to make judgments based on race, color, clothing, odors, etc.)
 - Decreased staff burnout (They have found that it is far less stressful for staff to work with customers on the phone than to face the high volume of intense emotions present in these cases in face to face interactions. Staff has the ability to consult and debrief with other staff, and recess make follow up contacts with customers if a communication becomes too intense.)
 - Phone services allows for anonymity (although most choose to identify themselves)
 - Cost effective
- Service by publication – newer rule allows publishing on Court's website "legal notices" section (This is worth checking out considering the changing ways people access media, the decrease in newspapers around the country, and the limits to access presented to parties who cannot afford the hundreds of dollars it costs to publish in a paper. The NCSC has an [article](#) about this issue and the Alaska rule, please read for further discussion)
- Anchorage Court has Family Law Education Class (FLEC) (includes 20 min parent education element) required for all self-represented litigants (See attached Exhibit B)
 - Can be waived based on hardship (in which case, the class PPT is mailed to the party)
 - If no DV, parents can attend same class
 - Parties who live far from Anchorage can take mini FLEC over phone
- Alaska has started IDRT
- Family Law Self-Help Services Staff Attorney teaches bi-monthly "Hearing and Trial Preparation" class
 - Grant funded
 - Class has been recorded and snapshots available in [Youtube video links](#) on Court's website
- Alaska Bar Association created Unbundled Service Panel several years ago and the SFLHC office has networked quite successfully with the Panel to refer cases both ways

Key Components from Alaska to apply to proposal for Oregon's Remote Services Delivery System:

1. Funding

- a. Utilize 4D reimbursements to offset court's cost

2. Location

- a. Close to court administration
- b. Proximity to tech support and high concentration of state's resources

3. Oversight

- a. State Court Administrator's Office

4. Staff

- a. Qualifications for facilitators
 - i. Non lawyers
 - ii. Strong customer service
 - iii. Problem solving skills
 - iv. Multi-tasking ability
 - v. Bilingual and prior knowledge of court procedures a bonus
- b. Training Protocol
- c. Numbers

5. Scope of Services

- a. Family Law
- b. Plan for future incorporation of probate issues due to parallels with family law

6. Delivery of Services and Equipment Needs

- a. Content rich website
- b. Technology for Delivery of Services
 - i. Phone system
 - ii. Email
 - iii. Video interaction software
 - iv. Remote viewing software
- c. Equipment
 - i. Computers with dual screens
 - ii. Fax machine
 - iii. Copier
 - iv. Printers
 - v. Headsets
 - vi. Phones

7. Collaboration with Internal and Community Partners

- a. Develop strong partnership with Bar
- b. Establish contacts in each jurisdiction where public can access computers and internet
- c. Establish contacts with social service providers and government agencies
- d. Identify contacts within each courthouse
- e. Collaborate with OJD forms groups

8. Integration with existing Facilitation Services

- a. Alaska doesn't have in person services, however, as noted in section 7 above, the proposal should include a plan to establish a contact within each facilitation program

Facilitator Training Outline

Exhibit A

Day 1:

Structure of the Alaska Court System

Right court for your case

Policies

- Legal information, not legal advice
 - Power point presentation slides
- Ex parte communication
- Confidentiality
- E-mail
- Sexual harassment

Orientation for trial court clerks:

[http://courtrecords.alaska.gov/clerkmanual/Trial Court Employee Orientation Program/Page 1.Introduction.pdf](http://courtrecords.alaska.gov/clerkmanual/Trial_Court_Employee_Orientation_Program/Page_1.Introduction.pdf)

Observe facilitators on Helpline

Observe Early Resolution Program

Website questions

Day 2:

8:25 am Orientation at HR (Snowden Administration Building – first floor by the entrance on 4th Ave.)

Legal information, not legal advice

- Power point presentation slides Observe facilitators on Helpline

Observe facilitators on helpline

Website questions

New Facilitator Training Schedule

- Week 1: overview of the court system
Policies (email, internet, harassment and discrimination)
HR orientation
Helpline observation
ERP observation
- Week 2: helpline observation
website questions
on-line workplace harassment training
- Week 3: helpline observation
website questions
dissolution petition review
- Week 4: DVPO hearing observation
Hearing and trial observation
Helpline observation
Observe Family Law Education Class
Child support power point review
Child support exercise
- Week 5-10: weekly give 10 scenarios and options (including 1 child support calculation with increasing difficulty each week) and provide answers; go over each scenario and answer and provide additional information and helpful approaches
Helpline observation
More court observation
- Week 11: see if ready to answer calls to ask screening questions but not give out self-help information; refer to facilitators for calls back the next day and listen to how they approach the call, noting what they do
Helpline observation
- Week 12-13: continue taking calls and gathering screening information and hand off to others but outline approach you think should be taken with the call; compare what the other facilitator does with the call; discuss approach with Director
Practice giving disclaimer
Practice doing surveys with other facilitators' callers
- Week 14-15: continue taking calls and gathering screening information; start answering simple questions and providing forms but hand off more difficult issues; discuss approach with Director
Give disclaimers
Do surveys when provide information to callers

Transition to answering phones – getting screening sheet info

Thanks to everyone for helping _____ during her training period – explaining calls that she observes and helping her answer my endless scenarios and child support calculations. She is doing really great and learning a lot. You are all an excellent team and so supportive of each other. I really appreciate your fantastic external and internal customer service. You are the best!

We are going to have _____ transition to answering the phones at the end of the day to collect information on the screening sheet and then hand off the calls to other facilitators the next morning. She will sit with the facilitator to whom she hands off the screening sheet. Before the other facilitator returns the call, I've asked that she discuss the approach she thinks she would take if she was giving the information and options and hear what options the other facilitator would provide. Then the other facilitator will return the call so _____ can hear the approach taken. Let me know if you have any questions.

Website Questions

What is the document called that someone files to start a case?

What is the document called that someone files to request something from the court?

Why does the court require every document filed to be served on the opposing party?

What Civil Rule deals with child support?

What does someone file if he/she wants to change a custody order?

What does "arrear" mean?

In a divorce case, what does Civil Rule 26.1 require?

What are the best interest factors?

What are the Merrill factors?

What classes does the FLSHC teach in Anchorage?

Website Questions - 2

How much is the filing fee to start a case?

What is a Domestic Relations Procedural Order?

How many days does a defendant have to file an answer to a complaint?

What is a legal separation?

What does legal custody mean?

What does shared custody mean?

What are the two kinds of spousal support?

What is a Qualified Domestic Relations Order (QDRO)?

What is the difference between child support orders issued by the court and child support orders issued by the court?

How do you change a custody order?

Website Questions - 3

What form does someone file if he/she wants to request a filing fee waiver because they don't have the money?

What is unbundled legal services?

What are the 3 steps for dealing with a couple's property and debt in a divorce case?

What is the difference between a divorce case and a dissolution case?

What does a custody order include?

Can the court divide the property and debt of unmarried parents in a custody case?

What is a default?

How long does spousal support last?

What are the steps in motion practice?

What are the names of the 2 documents that are issued at the end of a divorce or custody case?

Website Questions – 4

What is the difference between a civil case and a criminal case?

What are the different court levels in the Alaska Court System?

If someone wants to look up their trial court case on the internet, how do they do that search?

If someone wants to get a domestic violence protective order, what form should he/she fill out?

How long does a long-term protective order last?

Are there any free lawyers available to poor people?

How does someone starting their case serve the complaint on the opposing party?

What do you fill out to show the court you served the opposing party with a copy of the document you filed in court?

How much time does someone have to file an opposition to a motion?

What is a trial brief?

Website Questions – 5

What can someone file if he/she wants the court to issue an order before a final judgment or order is entered?

What form is useful to list out a married couple's property and debt?

What is an example of a change of circumstances needed to modify a custody order?

What kind of change is needed to modify a child support order?

What is mediation?

What forms can a married couple file if they want to end their marriage and agree on all of the issues (custody, visitation, property and debt division)?

What is a judgment?

What is the residency requirement to file a divorce case?

How much time does a child need to be in Alaska before the court has jurisdiction (decision-making authority) over the child?

What does the defendant file after receiving the plaintiff's complaint for divorce or custody?

Website Questions – 6

What kind of adoption situations can we help callers with?

Is the discussion that happens in a mediation confidential?

Where would you suggest that a caller go to find an attorney that does unbundled legal services?

What is the presumption about the paternity of a child born during marriage?

If the parents agree that they don't want the court to issue a child support order, will the court not order child support?

What is the calculation for a primary custody arrangement for 2 children?

What is an "affidavit"?

What is three steps in motion practice?

What is a "settlement conference"?

How many days do you have to file an objection if you disagree with how the opposing party wrote up the final documents?

Website Questions – 7

What does “venue” mean?

In which part of the answer form does the defendant state what they want to happen in the case?

What is the easiest way to serve someone in a foreign country?

Why would someone register a court order issued by another court outside of Alaska?

Is there any advantage to starting the case compared the person answering the complaint?

Can someone file to end their marriage if he/she doesn't know where their spouse is located?

What does the Servicemember's Civil Relief Act say about whether a military service member be defaulted in a divorce or custody case?

Does common law marriage exist in Alaska?

Who is responsible to make an “objection” during a hearing or trial if inadmissible or irrelevant evidence is being introduced?

Can someone get an annulment in Alaska?

Scenario 1:

Your caller is an unmarried mother of a 2 and 5 year old. She is no longer in a relationship with the children's father. She doesn't have a court case but wants the children's father to pay child support. What are her options?

Scenario 2:

You caller is a man who wants to end his 7 year marriage. He and his wife have one 16 year old son. He wants to do a week on week off parenting schedule and share decision making with the mother. The couple has a marital home that he wants to sell, he has a retirement account that he thinks he should keep, they have \$2000 in a bank account that he thinks they should split, and \$10,000 in medical bills that his wife incurred from a recent surgery and she has a \$25,000 student loan. What are his options?

Scenario 3:

Caller is a woman who is a victim of domestic violence from her husband who is in the military. She says she is scared of him because he has threatened her and has many guns. She says he will kill her if she doesn't do what he says about letting him have everything in the divorce and full custody of their twin sons. What are her options?

Scenario 4:

Your caller is the mother of her adult son who has had a long drawn out custody case with his ex-wife. Grandma is helping him do the paperwork because he wants to change their current parenting arrangement because she thinks it is not fair that he only sees his three kids every other weekend for one overnight. She is also concerned that the mother's new boyfriend is a registered sex offender and wants to make sure the kids are protected. How do you help her?

Scenario 5:

Your caller is a mother who is mad that her ex-husband refuses to pay his 50% share for their daughter's uncovered medical bills that currently amount to \$2,400. Their divorce decree and final paperwork require that the parents split the uncovered medical bills. What are her options?

Scenario 6:

Your caller is the husband who had a divorce case six months ago. The judge had ordered the wife to refinance the marital home which was in both spouse's names to get it only in her name. The judge also had ordered the wife to make the mortgage payments. She failed to refinance it and didn't make any mortgage payments so now the husband learned the bank is planning to foreclose on the property in the next month. What are her options?

Scenarios – Part 2:

1. Wife and Husband are in the middle of a divorce case. She wants the court to award her the 1 car that they own because she wants to get a job and needs transportation. Husband has a job and walks to work. Wife calls and during the call, she mentions they are considering filing for bankruptcy because they have so much debt, they feel like they will never be able to pay it off. What would you discuss with Wife?

2. Mother and Father have 2 children. They did a dissolution case three years ago and agreed to a parenting plan of week on, week off with each parent. Father is moving to Washington for a new job. He calls you to ask how to change the parenting plan so he can take the kids with him and enroll them in school in Washington? What would you discuss with Father?

3. Grandma calls. She is concerned about her 4 year old grandson who is living primarily with his mother who is divorced from Grandma's son. She is worried that mother's new boyfriend is possibly abusing the grandson because Grandma saw bruises on his back when he was visiting with her last weekend. Grandma also thinks the mother drinks too much so is thinking whether she should try to get custody of the grandson. What would you discuss with Grandma?

4. A man calls and complains that he pays too much child support so he wants to terminate his parental rights. What would you discuss with him?

5. A man calls and complains that he owes \$85,000 in back child support and that he will never be able to pay the debt. He wants the court to reduce the arrears. What would you discuss with him?

6. A woman calls because she wants to get a divorce from her husband. After asking her how many children she has, she states 2 children. You ask her whether her husband is the father of both kids and she says no, just the older child and her boyfriend is the father of the younger child. What issue jumps out that you would discuss with her?

7. A man calls about ending his marriage. He is concerned because he has a chronic illness and is on his wife's health insurance. He states that he and the wife get along well and she would keep him on the insurance if she could. What do you discuss with him?

8. A woman calls because she is in the middle of a divorce case from a man she married 14 years ago. Her husband is in the Air Force and has been for the last 12 years. She is wondering what type of issues the judge will look at in dividing their marital property and debt. What do you discuss with her?

9. A man calls who has been cohabitating with a woman for the last seven years. They own a home together, have 2 small children, each have a retirement account through

their jobs, each have a car and they both paid for household furniture and items in the house. They broke up and he is living on his friend's couch while he and his girlfriend try to figure out how to divide their stuff and parent their kids. What do you discuss with him?

10. A woman has three children with her husband whom she is divorcing. They agree that they will each have one child live with each parent and will share custody of the youngest child with that child living with Mother Monday – Friday and with Father Friday to Monday. She works as a personal care attendant, making \$15/hour, 30 hours/week. Father works as a carpenter and makes \$20/hour, 40 hours/week. He pays \$12/month union dues. He pays \$42/month extra for health insurance which covers his family. He pays \$146/month to cover just himself. Mother calls with two problems:

(1) She doesn't understand how to fill out the DR-305, Child Support Guidelines Affidavit form.

(2) She need help figuring out what the child support order will be.

Please explain how to address Nos. 1 and 2 above.

Scenarios - 3

1. Your caller is the mother of a 4-year old child who tells you that the father of her child unexpectedly died. He is not on the birth certificate. The caller is interested in getting children's insurance benefits through Social Security for her child. What would you discuss?

2. Your caller is married to a woman with a 7-year old child. She was pregnant when they got married and they knew it was not his child. However, they were in love so when the baby was born, the couple agreed to put the husband's name on the birth certificate. The couple is now divorcing and he doesn't want to pay child support for a child that is not his. What would you discuss with him?

3. Your caller has two children with his ex-wife. Their parenting plan states that the kids are with each parent on a week on / week off schedule. According to that schedule Dad was supposed to pay Mom \$400/month of child support. At the end of the school year in 2013, mother was having a hard time with their teen-aged son and he went to live with Dad for the summer and then they agreed he would stay for the school year. Since Dad had the son full time since then, he reduced his child support amount to \$200, figuring that it made sense to cut it in half since each parent had 1 child in their house. Mom recently lost her job and went on public assistance. CSSD just started garnishing extra money from Dad's paycheck for the child support arrears he wasn't paying. He doesn't want to pay the extra support because it is too much and not fair. What do you discuss with Dad?

4. Your caller is the father in a divorce with children case that happened in Washington in 2009. The court order from Washington that says the child comes to Alaska for summer parenting time with Mother who lives in Palmer and returns to Seattle to live with Dad during the school year. The exchange is supposed to happen by August 15 and it is now August 16 and Mother is refusing to return the child to Washington, stating the child wants to stay in Alaska and live with her now. Dad wants to get the child back and is panicked because school starts soon. What do you discuss with Dad?

5. Your caller is a military spouse whose husband has had a 21 year career with the Air Force. They have 3 children together. Mother is a stay at home parent who takes care of the kids and house. Father has had three deployments in the last 7 years. They are now splitting up and agree that they will share custody of the children. Regarding the property, he'll keep the house and mortgage and she is going to move in with her sister's family. He'll keep his military retirement. They will each keep their own car (she has a 2000 Subaru and he has a 2012 F-250). They agree to split the household goods. They have 3 credit cards, each with \$3000 debt. He'll pay off one card but she is responsible for 2, they reason that she is the one that spent a lot when he was deployed. She wants to know what they should file?

6. Your caller is a man who got a dissolution in Fairbanks 10 months ago. In the agreement, the couple agreed that wife would refinance the marital home that was in

both of their names and be responsible for the continuing mortgage payments. Turns out she could not get the bank to refinance the mortgage into her name and she lost her job so couldn't make the monthly payments. Now the house is about to go into foreclosure. The caller is very concerned because his name is on the mortgage and he wants to protect his credit. What do you discuss with him?

7. Your caller is suspicious that her child's mother makes more money than she reported on his DR-305 Child Support Guidelines Affidavit. He knows she recently bought a fancy car and has seen photos from an trip to Las Vegas that she posted on her Facebook page. He wants to know how to find out what her sources of income area and how to let the court know she makes more money but is hiding it to avoid paying extra child support. What do you discuss with him?

8. In the divorce case, your caller received an order stating that the other spouse was to pay her \$20,000 as an equalizing payment in the property division by 60 days. It is now 90 days and the husband never paid the wife and in fact told his best friend that he would never pay her another dime. The ex-wife now calls you to ask how to get the money. What do you discuss?

9. A caller recently had a divorce trial at which the judge said that he was dividing the wife's military retirement pension 50-50 and told the wife she needed to get a QDRO prepared before the judge would finalize the divorce. She is now calling you to ask for help with the QDRO. What do you discuss?

10. A caller needs help with a child support calculation. The parenting schedule is 2 weeks on / 2 weeks off during the school year in Bethel, but during the summer starting one week after school ends and one week before it starts again, their child lives with Mother at her family's fish camp in western Alaska. Father makes \$85,000 / year on the slope, pays \$24 per pay check for union dues, contributes \$4200/year to his 401(k) plan; Mother makes \$35,000 as a health aide. Father has medical insurance available for the child that costs \$200 (he pays \$82/month to cover his new wife, new baby and child in this case). What would you discuss with Dad?

Scenarios 4

1. Grandma calls because she is caring for her grandson. His mother is homeless and an alcoholic. His father is in jail. She wants to register the child for school and be able to get him medical treatment. She wants to know what steps she needs to take. What do you discuss with her?
2. A woman calls from Ketchikan who is very fearful of her husband because he told her when he gets home from work at the mine on Wednesday, he will kill her because he thinks she is having an affair. They have a child together. She doesn't work and have any access to money. She has no friends or family in the area. What do you discuss with her?
3. A man who lives in Juneau calls and wants a divorce from his wife. They married in 2001 but they separated in 2006 and he hasn't seen her since. They have no kids or property. He doesn't know where she lives. He knows how to get in touch with her sister who lives in Seattle. What do you discuss with him?
4. A man who lives in Fairbanks calls and wants a divorce from his wife. They have been separated for the last 2 years. They have 2 kids who have been living with him. They have a marital home and he has a retirement account. He has no contact info for the wife but believes she is homeless in Anchorage. What do you discuss with him?
5. A woman calls who wants a custody order for her 4 year old son. The dad is in jail at Lemon Creek in Juneau. He will be incarcerated for the next 6 years. What do you discuss with her?
6. A man calls who filed a divorce with children case against his wife. He served her by a process server 45 days ago. She has not filed an answer. What do you discuss with him?
7. Both parents call together because they want a custody order for their 6 year old daughter. They want to work together to figure out a parenting plan. What do you discuss with them?
8. A mother calls because there is a custody case going on but her father suddenly passed away so she wants to take the 12 year old son to the funeral in California. However, the child's father won't give permission to take the son. She is concerned about violating the standing order and doesn't want to get in trouble with the court but wants to have the son at his grandfather's funeral. What do you discuss with her?
9. A woman calls because she received divorce papers from her husband and he has an attorney representing him. She disagrees with what he said in the complaint because he asked for sole legal and primary physical custody of their 3 young children but he has never taken care of them. She also disagrees with his statement about the property division because he says there is nothing to divide but she says there is a

house, cars, bank accounts, retirement and credit card bills. What do you discuss with her?

10. A man wants help figuring out his child support for his 2 year old daughter. The mom will have primary custody so he is willing to pay his fair share. He has a new job so only has 3 pay stubs for 2 week pay periods. He works different hours with overtime sometimes. His first pay stub shows he made \$14/hour for 40 hours and \$21/hour for 12 hours OT. His second stub shows \$14/hour for 40 hours and \$21/hour for 2 hours OT. His third pay stub shows \$14/hour for 40 hours and 6 hours OT. He doesn't pay union dues. He is putting away retirement of \$50/month. He mentions he has an older child living with him half-time. He pays \$120/mo for health insurance that covers his 2 kids and his new wife and himself. What do you discuss with him and what is the child support amount?

Scenarios 5

1. Your caller served her husband with a complaint for divorce and she got the green card back. She talked to her friend who thought she was crazy that she wasn't requesting half of his military retirement because they had been married for 17 years and she had been a stay at home Mom during all of his deployments. Now that she has thought more about it, she agrees with her friend and she wants what she thinks is rightfully hers – ½ of his retirement. What do you discuss with her?

2. Your caller is a man who recently got his final divorce paperwork. He is really mad because he thinks the judge didn't listen to his side of the story and gave the wife too much of their property and he got too much of the debt. What do you discuss with him?

3. Your caller recently joined the military and has to go to basic training in Georgia for three months; she leaves in 6 weeks. She wants her parents to take care of her 8 year-old daughter and they live in Wasilla. She never filed a custody case against her daughter's father because they have gotten along ok and she has been able to have the daughter live with her no problem. Now that she's going to basic training and she's concerned that the father might want to have the daughter live with him but he drinks too much and lives in a one bedroom apartment with his girlfriend so there is no room for the daughter to have her own space. What do you discuss with her?

4. Your caller just split up with her long- time boyfriend of 12 years. They have 2 kids - 5 and 7 years old and own a home, 2 cars and household goods together. She states, however, that the home is only in the boyfriend's name because when they bought it, she had bad credit and couldn't qualify for a mortgage so they put it in his name. They each have student loans and credit card debts from the relationship. She wants to make sure she protects her interest and gets ½ of everything. She thinks he is a good Dad so wants to do a shared parenting arrangement with him. What do you discuss with her?

5. Your caller married a woman after knowing her for just 2 days. He now regrets it and wants an annulment? What do you discuss with him?

6. Your caller is the step-dad to a 12-year old girl that he has helped raise since she was 1 ½ years old in Fairbanks. He and his wife have been getting along badly for a while now and counseling hasn't helped. He is concerned that his wife is unstable because she has been lashing out at the daughter. He wants out of the relationship but wants to continue to spend time with the daughter, especially if the wife and the daughter's relationship gets worse. The bio Dad has not been involved in the daughter's life, although he lives in Ketchikan. What do you discuss with him?

7. Your caller is suspicious that his 4 year-old son is not really his child. The child doesn't look like him and he was in jail some parts of the year before his child was born so his ex-girlfriend could have been messing around on him. Nobody has filed anything

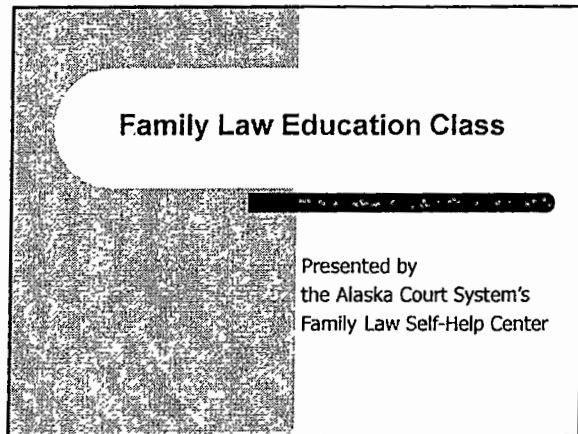
because they just split up but he doesn't want to pay child support for a kid that isn't his. What do you discuss with him?

8. Your caller received divorce papers from his wife. He lives in Florida and has never been to Alaska. The wife just came to Alaska with their 3 year old daughter. They own a home in Florida. He doesn't want to do the case in Alaska and thinks it should be in Florida. What do you discuss with him?

9. Your caller got divorced in Kenai 4 months ago. She kept her married name, but now she decided she wants to take back her maiden name. She asks how to do this. What do you discuss with her?

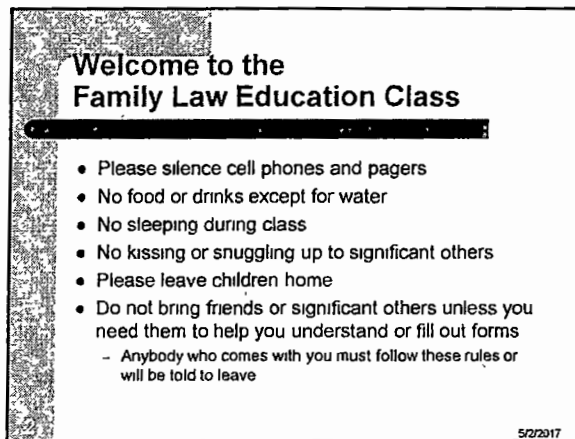
10. Your caller recently changed jobs so he wants his child support reduced. He was ordered to pay \$200/mo in a primary custody calculation. He had been making \$18/hour working at Fed Ex in the warehouse but he lost that job. Now the best job he can get pays \$15/hour changing tires at a tire shop. He doesn't have health insurance for the child who is on Denali KidCare, doesn't pay union dues and doesn't pay toward retirement. What do you discuss with him?

**Family Law Education Class
(FLEC)
Exhibit B**



Family Law Education Class

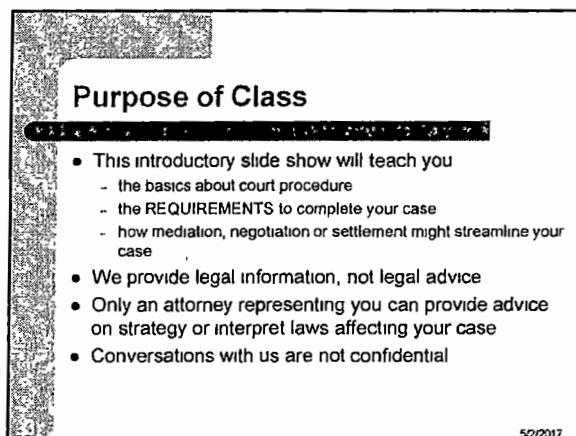
Presented by
the Alaska Court System's
Family Law Self-Help Center



**Welcome to the
Family Law Education Class**

- Please silence cell phones and pagers
- No food or drinks except for water
- No sleeping during class
- No kissing or snuggling up to significant others
- Please leave children home
- Do not bring friends or significant others unless you need them to help you understand or fill out forms
 - Anybody who comes with you must follow these rules or will be told to leave

5/2/2017



Purpose of Class

- This introductory slide show will teach you
 - the basics about court procedure
 - the REQUIREMENTS to complete your case
 - how mediation, negotiation or settlement might streamline your case
- We provide legal information, not legal advice
- Only an attorney representing you can provide advice on strategy or interpret laws affecting your case
- Conversations with us are not confidential

5/2/2017

Keep Your Eyes on the Ball

- CUSTODY CASE
 - Custody and Visitation Plan
 - Child Support
 - Paternity (if necessary)
- DIVORCE CASE
 - Ends the marriage
 - Divides the property (assets and debts)
 - Restores a former name if requested
 - And if there are children, decides a parenting plan and support amount & possibly paternity

5/2/2017

Know What Your Standing Order Says

- When you filed your case, or when you were served with the complaint, you also received an order from the court, which set out some basic rules
- It is called the Domestic Relations Initial Order & Order to File Financial Documents (also called "Standing Order")
- According to this Order
 - You cannot remove your children from the state of Alaska without the other parent's agreement or the court's permission
 - You cannot sell or dispose of marital property without your spouse's agreement or the court's permission
 - There is more -- READ IT CAREFULLY & UNDERSTAND IT!
- Violating this order is very serious -- don't do it!
- [Video 1 Standing Orders \(3:23\)](#)

5/2/2017

Where to Find the Laws About Divorce and Child Custody

- Title 25 of the Alaska Statutes
- Civil Rules of Court
(www.courts.alaska.gov/civ.htm)
- Decisions issued by the Alaska Supreme Court
 - Reporters
 - Internet
 - Summarized in both the statute and rules books

5/2/2017

Understand the Roles

You

- You decide what you and the other person can agree on and what the court needs to decide
- It is a party-propelled process you are responsible for your case, which can move very quickly if you want

The Judge

- The Judge decides issues that the parties cannot agree on
- The Judge reviews agreements to see whether they provide for a "fair and equitable" division of property and/or are in the "best interests" of the children

5/2/2017

Keep Your Case Moving

- Figure out what the two of you can resolve
 - on your own
 - with the help of a mediator - "substantive" (www.courtsofalaska.gov/mediation.htm)
 - with the help of a settlement Judge
 - Settlement Conferences available at your request
 - Call Judge's chambers
 - Submit forms - Joint Motion for Settlement Conference (www.courtsofalaska.gov/forms/10c2.pdf)
- The Judge will decide the things you have not been able to resolve between yourselves
- Remember the purpose of all pre-trial activity is to **narrow** and **identify** the issues
- Video 2: Resolution options (7:00) ***

5/2/2017

Timeline or Roadmap

- 1-2 months after the Answer is filed you'll be ordered to meet with the Judge
 - Select a trial date and other deadlines
 - Judge will mail a scheduling order with deadlines after meeting
- The Judge will ask about the following:
 - Discovery Civil Rule 26.1
 - Mediation and / or Settlement Conference
 - Custody Investigator & Guardian ad Litem
 - Interim Motions - do you need any temporary orders before trial?

5/2/2017

What is Discovery?

- Discovery is the legal word used to refer to the process of finding out (or discovering) facts from the other side that are necessary for your case.
 - See generally Civil Rules 26 –37
- In divorce cases, there is a special discovery and disclosure rule (CR 26 1) that streamlines the process for people to get information.
- Video 3: Disclosure and Discovery (4:26) ***

5/2/2017

Civil Rule 26.1: Getting the Details about the Marital Property

- Civil Rule 26 1 requires you to tell the other side about your finances and property AND to give them permission to talk to your bank, employer or plan administrator
- You must exchange the information and give releases to the other side within 45 days of the *Answer* being filed
- You may use this disclosure form
- If the other person does not give you the information, you may file a *Motion to Compel Disclosure*

5/2/2017

Dividing Marital Property & Debt

- Once you know the details about the marital property, you are ready to propose a division of that property
- Follow this 3-step process
 - 1) Identify the property & debt (what is there and is it marital?)
 - 2) Value the property & debt (fair market value at time of trial)
 - 3) Propose a fair and equitable division of property & debt
- Judgment for Property AS 25 24 160
- Use the Property & Debt Worksheet
- See FLSHC website for more information www.courts.alaska.gov/property.html
- Video 4: Marital Property and Debt (5:31)

5/2/2017

Custody and Visitation Plan

- Make a Custody & Visitation Plan (Parenting Plan)
What works for your family and situation?
 - Legal Custody (decision making)
 - Physical Custody (where the children live)
- This plan must be in the children's
 - "Best Interests"
 - The statute, AS 25.24.150 defines what the best interests factors are
 - The Best Interests Affidavit, SHC 1125, allows you to address each factor with respect to your custody and visitation plan
- See our parenting and custody page for more information
www.courts.alaska.gov/shcparenting.htm.
- Video 5: Custody and Visitation Plans (8:05)

5/2/2017

Review

- What are you preparing?
 - If married: Plan for Dividing Marital Property
 - Civil Rule 26.1
 - Property & Debt Worksheet
 - If have children
 - Custody and Visitation Plan
 - Best Interests Affidavit
 - Financial information for child support
- What if you need an order from the Judge before your trial?
 - You file a *motion*

5/2/2017

How Motions Work: see details at: www.courts.alaska.gov/motions.htm

- Motion, Affidavit & Order
- Opposition, Affidavit & Order
- Reply

} 10 days
} 5 days

Must serve the other party by 1st class mail or hand delivery AND

Fill out the *certificate of service* stating that this has happened. Be sure to include the date, name of party and your signature

Usually, the Judge will not even read a motion until all the papers are in and the timeline has run

- Video 6: Motions Part 1 (5:45) ***

5/2/2017

Sample Motion Forms

- Sample Motion for Return of Boat
- Sample Affidavit for Return of Boat
- Sample proposed Order for Return of Boat

5/2/2017

Certificate of Service

It is found at the end of most forms (see example below) or you can use a separate form

Certificate of Service
I certify that on 6/05/10, a copy of this Motion, Affidavit & Proposed Order were mailed / hand delivered to
Opposing Party John Doe
Opposing Lawyer _____
AG _____ CI _____
Your signature Jane Doe

For more information about serving someone and the Certificate of Service form, see www.courts.alaska.gov/serve.htm

5/2/2017

Serving the Opposing Party & Certificate of Service

- You must give a copy of EVERY document you file in court to the opposing party (or their attorney if represented) – this is called "serving" the other side
- File a Certificate of Service at the court, stating
 - How you gave a copy to the opposing party
 - 1st class US mail or hand delivery
 - What documents you gave them – list all
 - When you mailed or hand-delivered them –state date
 - Where you gave them – provide address
 - With your signature

Video / Service (6.12)

5/2/2017

Motion for Interim/Temporary Orders

- Motion for Interim/Temporary Order
 - If things are very unsettled between the two of you, you may need an interim or temporary order while you are waiting for trial
 - Custody, visitation & child support
 - Attorney Fees
 - Spousal Support (if you are married to the other party)
 - Other?
- Use only if you really need it, generally it is best to put your energy towards getting a final order
- See www.courts.alaska.gov/motions.htm#1g
- Video & Spousal Support (3:05)

5/2/2017

Motion for Custody Investigator (CI) or Guardian Ad Litem (GAL)

- Parties may file a motion or the Judge may decide to appoint a CI or GAL to assist in determining what plan is in the child(ren)'s best interests
 - Usually when things between the parents are very volatile and very serious accusations are being hurled back and forth
- The CI is the Judge's expert witness who prepares a report about the child and parents, recommending a specific parenting plan
- The GAL is a party to the case and actively represents a child's interests in the case. GALs are appointed rarely and usually only when serious allegations of abuse occur or the parents are limited in their ability to advocate for their children

5/2/2017

Review: Timeline or Roadmap

1-2 months after the Answer is filed you'll be ordered to meet with the Judge to select a trial date and discuss how you'll proceed

- Finish discovery / Civil Rule 26.1
- Mediation and / or Settlement Conference
- Custody Investigator & Guardian ad Litem
- Interim Motions

3 - 15 months after the first meeting, you'll have your final hearing or trial. The following documents will be due before that date

- Trial Brief, Witness Lists & Exhibit Lists
- Final Child Support Affidavit

5/2/2017

Hearings and Trial

- If your case does not resolve by agreement (mediation or settlement conference), you will need a trial for the judge to decide the issues. Court will send an order setting a trial date and giving you deadlines to file the following
 - Witness List
 - Exhibit List (exchange with opposing party only)
 - Trial and/or Settlement Conference Briefs
 - Property & Debt Worksheet
 - Custody and Visitation Plan & Best Interests Affidavit
 - Final Child Support Affidavit

5/2/2017

How the Final Hearing or Trial Works

- You may get a last chance at settlement
- Choose trial type – informal trial or formal trial. See <http://courts.alaska.gov/shc/trial.htm>
- Each party presents his or her case
- The Judge will focus on the things the two of you could not reach agreement on
- After hearing all of the evidence and legal argument, the Judge will issue a decision "on record" or take it "under advisement."
- Learn more www.courts.alaska.gov/shc/trial.htm or attend a Hearing and Trial Preparation Class

5/2/2017

Hearings & Trial Preparation Class

- #1 complaint judges have is people aren't prepared
- Hearing & Trial Preparation Class (1 Friday / mo at 9 am)
 - The difference between informal and formal trials
 - What to expect at hearing or trial
 - What the judge expects from the parties
 - How to organize your testimony
 - How to select, prepare and introduce exhibits
 - How to select, prepare and question witnesses (formal trials)
 - How to make objections (formal trials)
- Fill out Data Sheet, page 2 to let us know how to notify you about upcoming Hearing & Trial Preparation Classes
- Take green flyer with class schedule and information
- Visit our website www.courts.alaska.gov/clinics.htm#2
- Watch Hearing and Trial Preparation videos

5/2/2017

Review: Timeline or Roadmap

1-2 months after the Answer is filed, meet with the Judge to select a trial date and discuss how you'll proceed

- Finish discovery / Civil Rule 26.1
- Mediation and / or Settlement Conference
- Custody Investigator & Guardian ad Litem
- Interim Motions

3 - 15 months after the first meeting, have your final hearing or trial. The following documents will be due before that date

- Trial Brief, Witness Lists & Exhibit Lists
- Final Child Support Affidavit

After the final hearing or trial, you may need to file the following documents to close the case and finalize the Judge's decisions

- Findings of Fact and Conclusions of Law
- Final Decree
- Child Support Order

5/2/2017

Finishing the case

- The case is not over until the Judge has signed the final documents (www.courts.alaska.gov/shc/finish.htm)
 - Findings of Fact and Conclusion of Law
 - Decree of Divorce/Custody
 - Child Support Order
- The Judge may assign the job of writing these up to one side (common if someone is represented by an attorney)
 - Make sure you understand who is supposed to write them up
 - When you get your copies, remember it is your responsibility to review them for accuracy
 - If you think the document says something different than what the Judge ruled, you have 5 days to object. Use the [Civil Rule 78 Objection Form, SHC-1635](#) to do this. [Review log notes or audio recording of hearing to clarify oral orders](#) (www.courts.alaska.gov/shc/shc-1635.doc)

Video 9: Writing Up Court Orders (1:22) ***

5/2/2017

What About Child Support?

- There are federal and state laws that require child support
 - Civil Rule 90.3
 - See www.courts.alaska.gov/support.htm for detailed information
- Child support is not optional
- Child support cannot be waived
- Children are entitled to support

Video 10: Child Support (9:25)

5/2/2017

What about CSSD?

Main job is to

- Collect
- Enforce

They can also

- Establish
- Review

*CSSD is not automatically involved in your case unless a public benefit is being received
Usually, one party must apply for services*

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The difference between a CSSD Order and Court Child Support Order

- CSSD Orders are issued as part of an administrative process outside of court
- Court Child Support Orders are issued as part of a custody, divorce or dissolution case.
- Court Orders ALWAYS take precedence over CSSD Orders

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Accessing Court On-Line Information

- To View Your Case On-Line
 - www.courtrecords.alaska.gov/
 - Enter Case Number or Name and click "Search"
 - "Events" for hearing information
 - "Dockets" for papers filed
- To View Court Calendars On-Line
 - www.courts.alaska.gov/trialcts.htm#cal
 - Click on "Superior Court"

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Where Can You Get More Help?

- Family Law Self-Help Center
 - Web page www.courts.alaska.gov/selfhelp.htm
 - Helpline @ 264-0851 or 866-279-0851 (from an Alaska-based number that is outside of Anchorage) Monday - Thursday, 7:30 am - 6 pm
 - we do NOT meet with people in the office - ONLY ON PHONE
- Private Attorney
 - How to Find One - see www.courts.alaska.gov/findlawyer.htm
 - Word of Mouth
 - Unbundled List from AF Bar Association
 - Yellow Pages
 - Lawyer Referral Line - (907) 272-0352 / (800) 770-6399
 - Types of Representation
 - Full Representation
 - Unbundled Services - limited representation, drafting forms or giving you advice to represent yourself - "pay as you go"
- The Internet, your local bookstore or law library
- Video 11 [Getting Legal Advice \(2:25\)](#)

5/2/2017

Video Links

- Video 1 www.youtube.com/watch?v=CX-yyDrzdQ
- Video 2 www.youtube.com/watch?v=4EuW9HET3nM
- Video 3 www.youtube.com/watch?v=q0jBvAAq20
- Video 4 www.youtube.com/watch?v=PToeFwVSY-o
- Video 5 www.youtube.com/watch?v=ZO8icd1fSQ
- Video 6 www.youtube.com/watch?v=2irmxT0_QEA
- Video 7 www.youtube.com/watch?v=8K-xQnZGJwM
- Video 8 www.youtube.com/watch?v=EIV62Tq9IM
- Video 9 www.youtube.com/watch?v=11OBik-BH8c
- Video 10 www.youtube.com/watch?v=m4japz01nq
- Video 11 www.youtube.com/watch?v=GOWcZacqOaA
- Hearing and Trial Preparation videos
www.youtube.com/playlist?list=PL82509B66ED712B4B

5/2/2017

REMOTE SERVICES DELIVERY SURVEY

Date: July 17, 2018

Program Location: Chico, California

Contact Name: Melanie Snider, Director, msnider@buttecourt.ca.gov, 530-532-7166

Website: sharpcourts.org

SFLAC site visitor: Stephen Adams

SHARPCOURTS

2018-07-22 2018-07-22 1355

Report on personal all-day visit to SHARP in Chico, California, on July 17, 2018 by Stephen Adams:

SHARP is an acronym for Self-Help and Referral Program, offered by the Family Law Facilitator's (FLF) office of the Butte County (California) Superior Court. Their comprehensive website is sharpcourts.org. The director is Melanie Snider, a California attorney, who previously practiced family law. msnider@buttecourt.ca.gov, 530-532-7166.

SOURCE OF FUNDING:

The California legislature's \$25m Innovation grant, of which a significant share is to the Administrative Office of the Courts, which has funded SHARP as a model for eventual statewide release. SHARP is actively pursuing long-term funding, primarily by demonstrating cost savings to the court system over previous practices. It does not replace existing FLF services; it supplements them, while offering standalone services also.

STRUCTURE:

A project of the Butte County FLF, housed in that office within that and other local courthouses, with a managing attorney director (the FLF), a data analyst/educator, and several non-attorney staff, plus interns from a local university.

DATA COLLECTION AND ANALYSIS:

There is a separate position for design and supervision of a sophisticated and comprehensive website and for real-time analysis of customer data. The program considers this element to be one of the key elements for success, alongside a charismatic founder, high-speed internet, customer service by any means desired by individual customers, and outreach to new jurisdictions. One of its primary goals is to support via detailed data the contention that the program will save a court system money.

MANUALS:

The program has very detailed manuals of internal procedure, policy and substantive information.

PROTOCOLS:

The program does not screen or limit the type of initial customer. Where a direct service is not appropriate, the program makes extensive use of referrals to vetted community or online services. Most non-walk-in contact is by prior appointment (in person or remote), but there are protocols for emergency service which can override the schedule.

COORDINATION:

The program is an integral part of the court and of the FLF. It is physically adjacent to the clerks processing family law cases and has access to files. Callers include attorneys, paralegals and judicial officers. The local bar is very supportive.

LOCATION:

All staff are within local courthouses. The program began in one county, but now serves in person a cohort of four counties at other courthouses. Nine more counties have begun to use its remote services and several others have expressed interest.

WHY THERE?

The program's fundamental philosophy is that the customer must be served via the method the customer chooses. This is done whether face-to-face, by telephone, at a workshop, by Skype, FaceTime or Zoom, by chat, by email, webinars, or remotely processing forms online. The staff adapts to the customer's choice, and is cross-trained accordingly. There is training for county differences.

PROGRAM MODEL:

The program emerged from the structure of the local FLF. It has borrowed from the successes and methods of Alaska, among others, but it does not limit its method of access as many other programs do. It envisions itself as having the eventual capacity to serve all 58 California counties.

HOURS:

The office opens at 8:00. Customers are admitted at 8:30, take a number, and are served until the office closes at 5:00. No new numbers are distributed after 4:00. The program considers it important to serve every timely arrival, if only by making future appointments, appropriate referrals and provision of forms packets. The director personally steps in when needed.

EQUIPMENT:

The program requires all counties to have excellent internet (1.5mb minimum). Zoom is the preferred software for the interactive, multicounty workshops.

STARTUP CHALLENGES:

The program has found that other counties and their administrators and judicial officers must be individually shown via repeated visits the benefits of participation.

LEGAL STRUCTURE:

The program is explicit that it provides legal information, not legal advice. There is no confidentiality. It explains local county practices when necessary.

STAFF QUALIFICATION:

The program's senior management consists of two: one attorney and one IT/education specialist. Hiring focus is on customer service, with the "legal side" trained in house, rather than the reverse. Local law-student interns fill in.

TRAINING:

Ongoing and important. A comprehensive manual, plus cross-training on methods and close observation by managers.

HOW MANY STAFF?

About 7.

SCOPE OF SERVICES?

At intake, forms, instructions to complete them, legal information, and community referrals.

HOW ARE SERVICES DELIVERED?

Any medium the customer chooses (see above).

AREAS OF LAW ADDRESSED OR SPECIFICALLY NOT ADDRESSED?

Family law, including guardianships of the person, family-law trial advocacy, also unlawful detainer and small claims.

LANGUAGES:

Spanish is available immediately, often by a seamless remote connection from a participating county. Others are available with notice.

VOLUME?

The program began with 20/day. Now about 100 based on word-of-mouth recommendation.

AVERAGE TIME PER CLIENT CONTACT:

No arbitrary duration limits.

Workshops: 3 hours.

Telephone: 5 minutes, with unlimited callbacks (no messages or staff assignments).

Appointments: 20 minutes, with unlimited returns as forms are completed.

WHAT ADVICE TO A NEW STARTUP?

Key: A charismatic and committed founder/leader.

Next: A specialized IT/education manager.

Begin locally, out of an existing FLF.

Then: High-speed internet. Customer-oriented and cross-trained staff. Comprehensive manuals. Offer all methods customers choose, including interactive multicounty workshops. Collect, analyze and use evaluations and feedback.

As multicounty rollout begins, vigorous, repeated inperson demonstrations to each county, backed by comprehensive data and analysis showing cost savings.

DONE DIFFERENTLY?

Use Zoom, not PolyCom, for remote services.

CURRENT CHALLENGES AND NEEDS?

Long-term funding, demonstrated by current success, shown by comprehensive data.

COURT FLF SERVICES?

Yes, each and every county, funded whenever possible by 4-D sources. Interactive multicounty workshops are supplemented by local inperson FLF followup.

CHILDCARE?

Children are discouraged and there is no child care, but the occasional child is tolerated, especially in emergencies.

MEDIATION INTERFACE?

Each county has a separate mediation service and requirement. Services are cross-referred and are physically adjacent.

NOTES:

SHARP is an outstanding program. My visit confirmed that it delivers on its founding principles and proves their worth. Remote workshops and local FLFs supplement each other. The two managers (law/IT) are a vital team. The two are ready to come to Oregon to present to us in person and later to advise our startup. They are very familiar with the needs of small counties and the local-variation issue.

After studying the website (sharpcourts.org), the very best way for our subcommittee members to get a sense of its effectiveness is to participate in an interactive workshop. This is easy to do. Every Tuesday, from 9:30 to 12:30, the topic is guardianships of the person. Every Wednesday, from 9:00 to 10:00 child custody, 10:30-11:30 child support, 1:30-3:30 divorce.

To access from a computer or tablet go to zoom.us/, press “join a meeting” (you may need to download the app), and choose meeting # 968-838-4827, then disable your own microphone. You will see and hear the leader and all the customers, as well as the same screen and pointer that is viewed in each location.

No need to join at the start, but it helps. For help, call SHARP at 530-532-7186 (Melanie Snider) or 530-532-7218 (Wendy Trafton). Mention my name.

My bottom line: we could not do better than to replicate this excellent program. They are ready to come and help us to do that.

Stephen

Remote Services Delivery Survey

Date: June 18, 2018

Program Location: Superior Court of California, County of Orange

Contact Name: Maria Livingston, Manager of Self-Help Services (SHS) and Family Law Facilitator

Funding and Management	
Source of funding?	1. General Trial Court funding earmarked for Self-Help Services, CRC 10.960 2. Statewide Competitive Innovation Grant. 3. Additional funding budget by the Court-Over \$1,000,000 a year.
Type of oversight?	Self-Help Attys report to the manager and supervise the staff at the assigned Self-Help Center. Self-Help Center Manager/Family Law Facilitator is an attorney. Ms. Livingston reports to one of the Chief Deputies of Operations
Reporting requirements? .	They are part of Court Operations and as with all operations, they are quarterly, annual and ad hoc reports Also do reports for the statewide Judicial Council
Operation guides or manuals?	Statewide Self-Help Guidelines document
Protocols (screening, triage)?	We have protocols for all interactions and we track using Microsoft Customer Relations Management (CRM) which has been customized for our use.
Coordination with other service providers (ie. Bar, Courts, Facilitators)?	The Self-Help Services Manager serves as the Court liaison with non-profit legal services provider, Bar and other Courts on issues related to Self-Help Services
Location and Development	
Location?	We currently have 5 locations. There was a steering committee that met for a year and developed a plan when the first manager was hired in 2008.

How was location selected?	The committee wanted Self-Help Centers at all Justice Centers. There is one justice center where we have temporarily ceased services due to budget reductions.
Program model?	In the process of a program review. Currently the program is staffed by attorneys who act as site supervisors, paralegals and clerical staff All are trained in the procedures of all case types.
Challenges when establishing the program?	Coverage has been an on-going issue. This is geographically a large urban county. Distance and traffic make coverage an issue. There are 22 staff providing Self-Help services.
Laws regarding services?	See California Rule of Court 10.960 Also, no legal advice may be provided by any court employees. We are neutrals providing procedural options.
Staffing	
Staff qualifications?	Manager must have at least 5 years experience as an attorney. Self-Help Attorneys need a minimum of 1 year. Paralegals need 1 year of experience. Most candidates have considerably more.
Staff training?	On-going. We close at noon quarterly for a 4 hour staff meeting which includes training from other operations.
How many staff?	Total of 27 but some are funded by another grant and that work is specific to child support, spousal support and health insurances issues. Most of the triage staff is promoted from within. They are coveted jobs within the Court. The court staff are union represented while the attorneys and paralegals are not, leads to some challenges but nothing that can't be overcome.
Services	
Scope of services?	They offer a continuum of services, remote, walk-in, document reviews, judicial referrals from courtrooms, support a number of Family Law self-help calendars , workshops in multiple languages
How are services delivered?	Remotely and in person. Manager and Senior Attorney also serve as FL Temporary Judges as needed for procedural calendars. Visit our website @ www.occourts.org/self-help

Volume?	132,000 in person and over 120,000 remotely in 2017 FL assistance is provided at all SHCs. The SHC at Lamoreaux Justice Center where there are 17 FL courtrooms averages 200-300 walk-ins per day.
Hours?	Mon-Thurs 8-4 Fri – 8-3 Quarterly close at noon for staff meeting
Qualitative Information	
What advice would you provide a new program in its developmental stages?	Start your remote services by creating a great website. It will be static but you can post videos and provide a lot of information. Training for staff and collaboration with other units and the bench is essential Start with a program like SharePoint to collect data from day one.
In hindsight, what might be done differently?	Due to increasing staffing costs which have not been met by the grant, perhaps not expanding so quickly. Otherwise, it has been very successful.
Current challenges and/or needs?	We are excited about a Family Law texting project the SHS manager has done for a National Center for State Courts Fellowship. The pilot will be expanded to collect more data through a project with Stanford University School of Law & Design

SELF-HELP CENTERS SERVICES INCLUDE:

- Workshops,
- How to booklets and form packets, and
- Public computers with access to legal websites and easy to use document preparation software and SmartForms.

SERVICES INCLUDE PROCEDURAL ASSISTANCE FOR:

- Divorce, Legal Separation, Custody, Visitation Support,
- Establishing a legal parent relationship for a child/children when there is no marriage,
- Restraining Orders,
- Guardianship,
- Name Change,
- Landlord/Tenant (Eviction),
- Cleaning up your criminal record,
- Small Claims,
- Civil Lawsuits,
- Traffic Tickets,
- Conservatorships, and
- Adoptions.

Customers are assigned a court card that is scanned every time they use the center. This allows for statistics to be run on number of visits, length of time of visits. What services are being accessed at the center, Etc.

TRIAGE

Triage customer service windows are open during work hours. These windows are staffed by court staff who are usually promoted from within. Unlike other programs that were visited, the managers in Orange County prefer to hire staff with court and/or legal experience and most are promoted from within the court system. The average length of time at a triage window is 3 minutes.

Triage staff provides and explain forms, refer to the domestic violence office, Refer to facilitators or paralegals, help with what is the next step. No charge for forms.

People come to the center with what kept them up last night, may be a problem, but not a court or legal problem. Triage staff are familiar with community resources and can direct them if needed.

FACILITATORS

The Family Law Facilitator is an experienced Family Law attorney who works for the Superior Court.

The Office of the Family Law Facilitator is restricted to issues relating to child support. Assistance with the following:

- Prepare your paperwork to establish, modify or terminate child support
- Prepare your Answer to a DCSS complaint
- Prepare your Response to a DCSS Notice of Motion for Judgment
- Prepare your Motion and/or Request for Order or Response to establish, modify, or terminate a child support order, determine arrears, release your license
- Prepare your [Request for Order regarding Medical and Dental Reimbursement](#) (Accounting)
- Prepare your [Income and Expense Declaration](#) or [Use a Simple Guided Interview to complete the Income and Expense Declaration \(FL-150\)](#)
- Prepare your Request for Order to establish new custody and visitation orders
- Get information on outside resources for services we do not provide
- Get contact information for low cost attorneys, legal aid and low cost legal clinics

Services are offered in a group setting on a first come first served basis.

WORKSHOPS

Workshops are offered for those who prefer receiving general information about the legal process and want to be assisted with preparing their case documents in a group setting. These workshops are presented by Self-Help attorneys or paralegals under attorney supervision.

Available Workshops

Divorce:

- ["How to Start a Divorce Case" Flyer + Registration Forms](#)
- ["Como Iniciar un Caso de Divorcio" Volante + Formas de Registro](#)
- ["Huong Dan Dien Don Ly Di, Ly Than Hoac Huy Bo Hon Thu – Phan 1"](#)
- ["How to Respond to a Divorce Case" Flyer + Registration Forms](#)
- ["Como Responder a un Caso de Divorcio" Volante + Formas de Registro](#)
-

Parentage:

- [How to Establish Parentage and/or Get Custody/Visitation Orders \(Unmarried Parents\)" Flyer + Registration Forms](#)
- ["Como Establecer la Relacion de Padre y/o Obtener Ordenes de Custodia/Visitacion \(Padres No Casados\)" Volante + Formas de Registro](#)

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Child Support:

- "How to Prepare Court forms to Request a Hearing Regarding Accounting (Determination of Child Support/Spousal Support Arrears or Unreimbursed Expenses)"
- "How to Prepare an Answer to Complaint or Supplemental Complaint Regarding Parental Obligations (FL-610)"
- "How to Prepare a Request for Order to Establish or Modify Child Support, Spousal Support (When Child Support is also at Issue) Health Insurance & Child custody and/or Visitation (Support Only or Combination)"
- "How to Prepare any of the Following: A.) Answer to Complaint or Supplemental Complaint Regarding Parental Obligation (FL-610); B.) Responsive Declaration to Request for Order Child Support, Spousal Support (when child support is also at Issue), Health Insurance (FL-320); C.) Responsive to Governmental Notice of Motion (FL-685)"
- "Como Preparar: A.) La Respuesta A Una Demanda Y Citacion Judicial (FL-610); B.) La Respuesta A Una Orden De Presentar Motivos Justificativos Sobre El Establecimiento O Modificacion De Manutencion De Hijos, Manutencion De Conyuge, O Seguro Medico (FL-320); C.) La Respuesta Al Aviso De Peticion Gubernamental (FL-685)"
- "Como Preparar Una Orden Para Presentar Motivos Justificativos Para Establecer O Modificar La Manutencion De Los Hijos Manutencion Del Conyuge Seguro Medico, Custodia O Visitacion (Combo Workshop)"
- "How to Prepare an Income Withholding Order for Support (IWO) (FL-195) (Child Support only or Child and Spousal Support)"
- "How to prepare a Request for Hearing to Set Aside Voluntary Declaration of Paternity (POP Set Aside)"

Child Custody and Visitation:

- "How to File a Request for Order for Custody & Visitation"
- "Como Presentar Una Solicitud de Orden de Custodia & Visitas"

COMMENTS

A robust web site is essential to a successful self-help center.

Develop one to two minute videos a month on a specific topic and post to YouTube.

Looking at on line classes, Facebook Live- that type of service takes a lot of time.

Provide telephone assistance, no option to leave a message. They would like to expand phone service into the evening-staff and cost issues.

Use law school students as interns. They learn the triage process, document procedures and under supervision can instruct a work shop.

84% of the family law cases are self-represented on at least one side.

Have good statistics and data gathering. "Data is money".

Remote Services Delivery Survey

Date: June 7-8 2018

Program Location: Hennepin County, Minneapolis MN

Contact Name: Melissa Kantola: Manager SRL Program

PH: 612-596-8812 Email: Melissa.Kantola@courts.state.mn

OJD/SFLAC Visitor: Karrie McIntyre, Lane Circuit Court.

Funding and Management	
Source of funding?	MJB – General Budget funding, IOLTA Bar fees.
Type of oversight?	Within MJB as a separate agency/division. The state Court administrator's office is organized into an Executive Office and six divisions. Melissa heads the Statewide Self-help and the 4 th District Self-Help.
Reporting requirements?	<p>They do collect data at the in-person facilities through Q-Flow and the newly implemented call center application and system they use. They also manually input information on a spreadsheet that is compiled and shared but they hope to get away from that with the new software.</p> <p>They are searching for ways to make their data collection meaningful.</p>
Operation guides or manuals?	<ul style="list-style-type: none">- They have training materials but are in the midst of reorganizing and gathering materials. This is a struggle because they prefer to promote from within so there is so much institutional knowledge that is hard to put into a training module.- They are working on standard templates to incorporate into email responses.- They meet/coordinate routinely within their units to share information and ideas.- They are interested in Utah theory of learn the resources, rules, protocols and then get pop quizzed but don't think it's practical.- They recognize their lack of formal policy and procedure as a weakness and urge us to consider clear guidelines on the outset of the project. (See Below for additional information on this.)

Protocols (screening, triage)?	<p>Remote services calls come in on first come first serve for 4 active lines.</p> <p>In-Person facility has an intake desk who does initial questioning and queue.</p>
Coordination with other service providers (ie. Bar, Courts, Facilitators)?	<p>The remote delivery is on site court dedicated space with limited help to direct them to the computers and the help line. For remote services there is little interaction with the Bench since not “on-site” with the Courthouses. Any “partnerships or pairing with resources” are generally limited to online resources.</p> <p>Bar Volunteer Lawyer Network, Legal Aid and pro bono services for in person Self-Help Clinic.</p>
Location and Development	
Location?	<p>This is interesting - The Remote Services Statewide Call center for support (called “Statewide”) sprang from the metro center at 4th District - Hennepin County. First at Hennepin Government Center with 2 people onsite, then grew over time to 2 facilities in Hennepin (Gov’t Center Facility -with 5 staff (2 attorneys and 3 paralegal) and Family Law Facility with 8 staff (3 staff attorneys and 5 paralegals)) then “statewide” which is housed in Hennepin. Statewide is a call center with 3 staff attorneys and one paralegal. Only two other judicial districts offer in-person self-help, the rest offer a computer terminal and phone to reach the Statewide call line (aka the Bat phone.)</p>
How was location selected?	<p>Statewide ended up beginning and being housed in Minneapolis because that is where the experienced staff attorneys lived and were already working as former staff attorneys at the Hennepin In Person Self-Help Centers.</p>
Program model?	<p>Remotes services model was Alaska (and they think the world of Stacy Martz.) However, MJB feels strongly that in-person and remote delivery are important and intend to continue to have both available. Interestingly, many callers to Statewide were residents of districts that offered in-person self-help, like Hennepin County. Once initial questions were answered by phone, they were directed to the in-person facility for continued follow up like form review, legal clinic, and filing. Because they were able to get help on the phone first, they felt it lead to faster, more efficient use of time in-person.</p>

Program Hours?	<p>In Person: 8-4pm. Statewide: 9-3:30 but this will be changing to 4:30 and this is something that the staff is concerned about for morale and burn out potential. The staff felt that the end of the day time to finish the data entry spreadsheet and confer with colleagues about the calls they received helped with morale and also helped to prep each other for future calls from people who were currently in the process.</p>
Program Equipment?	<p>Statewide just recently upgraded to “call center technology” which they view as critical and they had researched several models before settling on the one that they chose, because this system fields calls without constantly ringing through to everyone’s line and allows for statistical data gathering i.e. Number of calls, length of calls, and where the calls are coming from.</p>
Challenges when establishing the program?	<ul style="list-style-type: none"> - Budget/Fiscally who pays, where located, and how to incorporate the Statewide and in person staff - Lack of protocols and guidance, they felt they were making things up as they go - Scope of services - No formalized training
Laws regarding services?	<p>They are established by Court Rule 110. They provide legal information to both parties and no legal advice to either party. They felt they more liberally construe legal information vs. legal advice compared to some other states.</p>
Staffing	
Staff qualifications?	<p>Staff Attorneys – generally they have worked in the Courts or with Legal Aid. Then they went to Self-help in person centers and are promoted from within. As an attorney they are sought after positions. The MJB is considering reclassifying them to be Legal professionals instead of lawyers but this a bone of contention right now.</p> <p>Paralegals – chosen for customer service skills and many are multi-lingual.</p>
Staff training?	<p>On the job, most are well-versed in Self-Help from working at the in person center before rotating to Statewide Remote Services.</p>
How many staff?	<p>Statewide: 4 (three attorney and 1 paralegal) 4th District In Person Center: 3 staff attorney and 5 paralegals (Family law) 4th District In Person Center (General SRL) – 2 staff lawyers and 3 paralegals.</p>
Services	

Scope of services?	<p>Self Help Center: In person, help with form selection, form review, scribing, delivery of packets, referral to legal help clinic</p> <p>Statewide:</p> <ul style="list-style-type: none"> - referral to in-person centers, - Website direction - web-based direct interface access (Team Viewer) - triage - limited scope tasks - General overview, no scribing but will confirm correct packet selection.
How are services delivered?	Statewide: Phone calls, interactional computer experience, and limited email contact through a general email address that all 4 staff review and respond to.
Areas of law addressed or specifically not addressed?	General Self Help on all topics for court. Lawyers and SRLs on variety of topics: Location of courthouse, hours, legal topic specific, landlord/tenant, conciliation, family law, criminal expungements and violations etc.
Are services provided in other languages? (If so, what languages?)	The staff was multilingual. Spanish, Somali, Arabic, Amharic, Oromo
Quantitative Information	
Volume? (Tracked per client or per contact?)	<p>Self-Help In Person: Numbers through Q-flow. No phone contacts and limited email follow up. They have limited data but keep copies of all emails sent so can quantify it.</p> <p>Statewide: Each person inputs on a spreadsheet to keep track of 1) Number of calls, 2) length of calls, 3) County served, 4) Topic area. The call center programs they use now will assist with data and there are other things that they can utilize with the program that they haven't started yet.</p>
Average time per client contact?	Varies by staff member. 8-15 mins. First come first served and no appointments.
Qualitative Information	
What advice would you provide a new program in its developmental stages?	See below.
In hindsight, what might be done differently?	See below.

Current challenges and/or needs?	More staffing. Remote services are best delivered in conjunction with referral to in-person help centers. The staff felt very strongly that people in the rural areas of the state who do not have access to in-person help centers are at a disadvantage compared to those in the urban areas who can easily and readily get assistance. Many counties because they have no in-person access they do not even know of the options that are available to them. All felt this was an access justice issue.
Other	
Do your courts have family law facilitation programs? If so, how do the programs work together?	Three judicial districts have self -help in person that includes access for family law. As a whole they feel very strongly that the programs work in tandem and benefit each other greatly. They gave several examples of the referrals and interplay between the two groups.
Is childcare available at the courthouse?	No and this was a conscious choice by staff to keep things serious, quiet and free from distraction.
Where/How does mediation fit into this program?	Like Oregon the family law mediation is run by the county and not the MJB, so they were entirely separate. (But they do have some very interesting programs.)

My observations of watching the call center operator:

- 1) Directed the caller to one task at a time and suggested a return after they have completed that task.
- 2) Thorough knowledge of website and online resources with a clear communication ability to direct people through the web based interfaces.
- 3) Often the callers are not prepared, no pen, calling in the car, drive thrus, workplaces, have children.
- 4) The caller was very clear in managing expectation with phrases such as “they MAY be able to assist you “ or “they might have some information for you”.
- 5) Lots of multitasking on various computer screens and multiple applications were up.
- 6) Skilled at intake/orienting with the person to determine exactly what they are calling for, pointed directions, and skilled at focusing communication.
- 7) Had a broad scope of knowledge regarding the various court proceedings including confidential matters.

Things they have learned from or would otherwise suggest:

- 1) Allow for designated time to have “back office functioning” without customer interface for tasks like data collection, template building, office organization and clean up.
- 2) Be thoughtful about shared office or workspace. It is not practical or efficient to have folks share a space because they can serve better if they know where things are.
- 3) Their motto is “Inform. Instruct. Inspire.” - Meaning let people know what is out there, instruct them on how to get things filed and inspire the confidence to allow them to do it themselves.

- 4) When people are calling over the phone it is important to remember confidentiality in many of the Court cases. They will routinely have people who are calling to be a party to a proceeding who are not actually the party. So, training is needed to be conscious of those distinctions because even acknowledging that a case exists can be a breach.
- 5) Be conscious of statewide forms versus the forms that are specific to different counties. They have a form developer much like Oregon who is pushing for uniformity between the Courts and acknowledge that it is a struggle.
- 6) When things are very busy it is a high energy, high brain power job it is important to have strong administrative support who can help manage and keep an eye on rising stress levels throughout the day.
- 7) There should be more marketing about the resource that is available. It took folks a while to learn that the resource was out there.
- 8) When implementing and designing a program designate a point person who has the knowledge and skill to do it and avoid a committee approach, it is confusing and can bog down the process.
- 9) Be thoughtful about where to place the service, there are often very practical reasons to house it in a particular location, preferably close to an in-person facility so that potential for cross training can help round out the skills of the call taker.
- 10) Have vicarious trauma training for the employees.
- 11) Have a supportive environment within the staff of people who have the same degree of work ethic because then they feel the load is being shared and they can rely on each other to avoid burn-out. Because in-person Self –Help there are natural breaks between helping one person and the next but on the phone the call taker goes from one to the next instantaneously. They have a “take 10” philosophy that anyone of them can call for the break and then they ALL take it together to provide support.
- 12) Cross training in person and on the phone is critical. If one is only ever providing help on the phone then it can create tunnel vision.
- 13) Develop clear policies from the beginning on things such as:
 - a. Legal Advice vs. Legal Information
 - b. Confidentiality
 - c. Security issues
 - d. Problem callers
 - e. Procedure for handling the work
- 14) Get and keep good data.
- 15) Invest in good call center software. Melissa Giernoth was in charge of sampling and suggesting. She remains available as a resource for any questions. Make the investment for what you want on the front end. Be clear on what data collection tools are important.
- 16) Try to build support with local and state bar organizations for free legal advice, law clinics and the like as a referral resource.
- 17) Be sure the call taker has a clear understanding of regional vs. state information.
- 18) Pay people what they are worth and they will stay.
- 19) Used Alaska as a model in the beginning and then created a hybrid model between the 4th and Statewide services.

Remote Services Delivery Survey

Date: August 1, 2018 (Site Visit)

Program, Location: Utah Courts Self-Help Center, Salt Lake City, Utah

Contact Name: Nathanael Player, Director nathanaelp@utcourts.gov
Jessica VanBuren, Utah State Law Librarian (801-238-7991)

Funding and Management	
Source of funding?	The current program is funded by the Legislature, per statute. However, funding is insufficient to meet current need, or to maintain full-time staffing.
Type of oversight?	The Director of the Self-Help Center supervises the staff attorneys, and is in turn supervised by the State Law Librarian.
Reporting requirements?	<p>There are no formal reporting requirements, but the Librarian makes a quarterly report to the Legislature</p> <p>However, they do gather a lot of data. After each person is helped, staff enter information into a Survey Monkey. They track various data, depending what they want to track at the time. Some complete the surveys after each contact, others tally it up and complete the surveys at the end of the day.</p> <p>In the past they also surveyed customers for other information, such as demographics. Currently they do not feel a need for this information.</p>
Operation guides or manuals?	The staff attorneys have a general procedure “wiki” that contains information that new employees use a lot at first, but experienced staff do not use it, nor have they updated or maintained the information.
Protocols (screening, triage)?	Customers are taken first come – first served. There are no screening requirements or procedures. Some believe that triage would slow down the system, others think it would be a good way to weed out the simple information requests so the attorneys can focus on substantive questions.
Coordination with other service providers (ie. Bar, Courts, Facilitators)?	There are no in-court facilitators. But they do work with community groups and the Bar Assoc. to make sure that people are aware of the services. Beyond advertising the Self Help Center, there are programs with the Bar for lawyer referrals. There are some legal clinics they can refer people to, but also a program called “Lawyer of the Day,” an attorney who is available by phone for immediate referral from Center staff. Staff can give the attorney information and even forward documents to the attorney

	so that the customer gets immediate help from the attorney.
Location and Development	
Location?	The offices are in the State Law Library building, in Salt Lake City.
How was location selected?	The decision was based solely on which agency would take charge of the program, therefore it is housed within the State Law Library, which appears to have ample space. They did note that the offices could have been anywhere in the state, it didn't really matter since all services are remote.
Program model?	The model for the program was originally taken from Alaska. Jessica, the State Law Librarian came from Alaska where she trained with the founders of that program, Katherine and Stacy. However, there are differences. For example, Utah's program covers all areas of the law, not just family law. It is a central office that gives remote service to the entire state. They have found that the only way to give equal service to all the state was to make all services 'virtual' – they take phone calls, emails, and texts only. There is no face-to-face interaction or videos, or workshops.
Hours of Operation?	The self-help center is open Monday through Thursday from 11am to 5pm. They cite an ABA report that recommends self-help personnel do no more than 4 hours a day to avoid burnout. They also indicated that states like Maryland have high rates of staff turnover due to burnout.
Equipment?	Phones with headsets. Computers with 2 large screens. Sit/stand desks. Projector and screen for presentations to local courts. Staff have access to the statewide electronic court records, including juvenile and adoption cases. They are using free Google email and text programs. They said that the services were quite good and have the ability to track prior conversations with the same persons.
Challenges when establishing the program?	Funding was and is the primary challenge to establishing and maintaining the program. Because the initial ideas came from Alaska, they had some idea how it should work. They began in 2010 with a 2 year pilot program in just 2 judicial districts with Mary Chicarello as the only staff member. About that time the country went into the recession and they had to scramble to get funding through grants and donations. They stuck it out and in 2012 were

	<p>able to expand the program statewide when they got funded by the legislature.</p> <p>They also had trouble with the Bar Assoc., primarily in rural areas where some attorneys saw the program as a threat to their livelihoods. Some judges did not like the notion of encouraging people to do cases on their own.</p> <p>However, the program was designed to help the courts and the people. Courts are better off because people come in more prepared with decent documents. The attitude of most, judges and attorneys, is positive now.</p>
Laws regarding services?	A statute was enacted that created the authority for, scope, and funding of the program. (It does not indemnify the staff, but they don't see why they would need that protection.)
Staffing	
Staff qualifications?	They are adamant that staff must be attorneys because of the often highly technical nature of the questions they handle, and the breadth of law they must be familiar with. However, they do not have to be licensed in Utah. (All the staff are current members of at least one Bar.) They must have a commitment to access to justice, and be able to work well with people. High preference for those who can speak Spanish.
Staff training?	There is no training regimen, but it takes months of one-on-one training for staff to become proficient in all the areas of the law, court procedures, and in how to help people properly.
How many staff?	There are 6 attorneys total: One full-time Director, and 5 part time staff attorneys.
Services	
Scope of services?	<p>From their website:</p> <p><i>Self-Help Center staff attorneys can:</i></p> <ul style="list-style-type: none"> • <i>answer questions about the law, court process and options</i> • <i>provide court forms and instructions and help completing forms</i> • <i>provide information about cases</i> • <i>provide information about mediation services, legal advice and representation through pro bono and low cost legal services, legal aid programs and lawyer referral services</i> • <i>provide information about resources provided by law libraries</i> <p>They cover family law, probate, civil cases, small claims, landlord-tenant, and some criminal matters. They help with all courts; juvenile, justice, district, and appellate. Roughly 1/2 of their work is in Dom Rel cases.</p>

How are services delivered?	Staff answer questions as they come in by phone, email, and text message. They tried chat, but it was problematic. Roughly 1/2 of all services are provided by phone. After each contact, staff often follow up with people by sending emails with links to forms and other resources.
Areas of Law?	Information and forms for all areas of the law are provided, except for Federal matters (such as bankruptcy or immigration), but they will provide referrals.
Language Services?	They use the courts' interpreter services when needed, either over a language line, or they may schedule with an interpreter via a conference call, or the interpreter will go to their office. All current staff speak Spanish.
Quantitative Information	
Volume?	They average 20,000 customers served each year. Roughly half by phone, a third by email, and a sixth by text. Follow up is nearly always by email.
Time per Client?	This is not formally tracked at this time. (but averaging the number of people they help, with the number of staff, and operating hours, yields an average of about 12 minutes per contact)
Qualitative Information	
What advice would you provide a new program in its developmental stages?	<p>Everyone said "Just do it!" They started with just one attorney in a room with a computer and a phone. It would take a dedicated and experienced attorney who has access to the information needed (such as referral options). They recommend that we push for full funding right off the bat.</p> <p>They did mention that they had explored facilitation in the courthouses. They abandoned those ideas in favor of the remote services, because once they offered help by phone, email, and text, people preferred the virtual services. Also, it was more balanced and equal across the state. People anywhere can access their help, without having to go to a courthouse that may or may not have the same level of services that are found in the more populous areas.</p> <p>They strongly recommended that we use attorneys. And that staff extend themselves by being active with committees and work groups.</p> <p>They recommend that the services be entirely virtual because, among other things, it allows people who are physically outside the state receive help too.</p>
In hindsight, what might be done differently?	Initially they were very fiscally conservative, which has back-fired. They can't get the funding they need now. The advice was to "shoot for the moon" with the funding.

Current challenges and/or needs?	<p>They seem to have the program dialed in. But for all the people they help, there are many they can't because they don't have the full time staff they need.</p> <p>It is a challenge to find attorneys who are willing to work on a part time basis only.</p> <p>It is important to keep up with contacts and relationships. They do outreach to courts across the state, and with various clinics, and the Bar. Assoc.</p>
Other	
Family Law Facilitation?	<p>There are no local court facilitation services in Utah. However, the Self-Help staff occasionally visit and train local courts on how to answer basic questions, and how to direct people to the comprehensive website. Jessica mentioned that local facilitation would be a good thing – a compliment to their services rather than a competitor.</p>
Mediation?	<p>Staff may refer parties to mediation services. Also, self-help center staff have access to mediation information – whether mediation was concluded, and if so what was the outcome.</p>
Childcare?	<p>Because services are provided entirely remotely, there is no need for childcare.</p>

Other Notes:

See:

<https://www.utcourts.gov/selfhelp/contact/>

<https://www.utcourts.gov/ocap/>

Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

The Road To and From Third Party Custody: ORS 109.119 or Guardianship?
– Modifications and Terminations

A summary of the statutes and case law governing third parties who seek custody or guardianship of children in circuit court. The distinctions and overlap between seeking custody under ORS 109.119 and guardianship under Chapter 125. Recent trends and developments in the interpretation of overcoming the presumption that a legal parent acts in the best interests of a child.

Speakers

♦ *Mark Kramer, Attorney, Kramer & Associates*

Mark Kramer, Attorney, specializes in family law and civil litigation including personal injury, civil rights, and employment cases. He has more than 35 years of trial experience and extensive experience in family law issues ranging from adoption and contested custody to grandparent and psychological parent rights. Mark has served as a pro-tem judge for the Multnomah County Circuit Court. As co-counsel for the Oregon State Judiciary Committee and in private practice, Mark drafted family law legislation that is now Oregon law. Mark is the author of several articles about family law and is a frequent speaker on the subjects of grandparent and psychological parent rights.



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GRANDPARENTS AND PSYCHOLOGICAL PARENTS RIGHTS AND REMEDIES© (Rev. January 2018)

IMPORTANT LEGAL DEVELOPMENTS

DATE	LEGAL CHANGES AFFECTING GRANDPARENT AND THIRD PARTY VISITATION RIGHTS
June 2000	The United States Supreme Court issues <i>Troxel v. Granville</i> .
July 31, 2001	Oregon Laws Regarding Grandparent and Psychological Parent Rights were fundamentally modified by the 2001 Legislature. This legislation, amending ORS 109.119, which became law on July 31, 2001, was intended to make Oregon's law consistent with the US Supreme Court's decision in 2000, <i>Troxel v. Granville</i> and applies to all cases, including those filed or decided before the effective date of the new law.

June 10, 2004	<p style="text-align: center;">TROXEL APPLIED IN OREGON – THE NEW STANDARD</p> <p>In <i>O'Donnell-Lamont and Lamont</i>, 337 Or 86 (2004), the Supreme Court reversed the Court of Appeals and restored custody of the children to grandparents. The Supreme Court's decision brings some much needed clarity to the application of <i>Troxel</i> as well as the post-<i>Troxel</i> version of ORS 109.119. Contrary to several prior Court of Appeals decisions, the Supreme Court held that it is not necessary that a third party overcome the <i>Troxel</i> birth parent presumption by demonstrating that the birth parent would harm the child or is unable to care for the child. Rather, the Supreme Court adhered to the legislative standard that "the presumption could be overcome by a showing, based on a preponderance of the evidence, that the parent does not act in the best interest of the child." <i>Id.</i> at 107. While a parent's unfitness or harm to a child can be strong evidence to overcome the <i>Troxel</i> (and ORS 109.119) birth parent presumption, that presumption may be rebutted by evidence of any of the enumerated factors as well as other evidence not specifically encompassed by one of the statutory factors. "The statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interest of the child, not whether the evidence supports one, two, or all five of the nonexclusive factors identified in ORS 109.119 (4)(b)." <i>Id.</i> at 108.</p>
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1. The Presumption that a Legal Parent Acts in the Best Interest of the Child/Rebutting the Presumption.

Oregon law now establishes a presumption that a legal parent acts in the best interest of a child in cases where a third party seeks custody or visitation rights. The presumption may be rebutted by a number of factors, including:

- I. If the petitioning person is or recently has been the child's primary caretaker;
- ii. The legal parent is unwilling or unable to care adequately for the child;
- iii. If the child would be psychologically, emotionally or physically harmed if no custody or visitation relief was ordered;
- iv. The legal parent fostered, encouraged or consented to the relationship between the child and the third party;
- v. Granting the requested relief would not substantially interfere with the custodial relationship between the legal parent and the child; and
- vi. The legal parent unreasonably denied or limited contact between the child and the third party.

Upon the request of the legal parent or the third party, the court may order that a custody or visitation study be performed at the expense of either the legal parent, the third party or both. A attorney may be appointed for a children at the request of the child (mandatory appointment) or at the request of one of the parties (discretionary appointment).

2. Psychological Parents' Rights--Visitation.

- a. Authority. ORS 109.119.
- b. Eligibility.

Any person (not necessarily a blood relative) who has maintained "an ongoing personal relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality." The person must show a substantial degree of contact with the child for a period of at least a year. The person does not have to show that he or she had physical custody, only a relationship and substantial contact with the child. This statute applies to blood relatives and non-blood relatives, including grandparents, step-grandparents, stepparents and persons whose children have not established paternity. There is no longer a separate law that governs rights of grandparents. Grandparents must meet the same standards as other third parties. A petition may be filed in a new legal proceeding or through an existing guardianship or domestic relations proceeding. For interventions in juvenile court proceedings, see section 4B.

- c. Relief Available.

The petitioning party must rebut the presumption that the legal parent acts in the best interest of the child. If the court finds "from clear and convincing evidence" that the presumption has been rebutted, the court may order reasonable visitation or contact rights if it is in the best interest of the child. "Clear and convincing evidence" is a higher legal standard than is normally required. It means substantially more than a preponderance of the evidence (more than 51 percent), but not as high a standard as that used in a criminal case--"beyond a reasonable doubt." The presumption may be rebutted by a number of factors. Attorney fees are available to the prevailing party.

3. **Psychological Parents' Rights--Custody.**

- a. Authority. ORS 109.119.
- b. Eligibility.

A person petitioning for custody under this statute must show a "child-parent relationship." The statute defines "child-parent relationship" as follows:

"...a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months."

In other words, a person requesting custody must show that they had exclusive or shared physical custody of the child within six months before the petition. It does not include foster parents unless the relationship extended for a period of 12 months or more. Shared custody may not be sufficient unless the third party has "fulfilled the child's psychological needs for a parent as well as the child's physical needs."

- c. Relief Available.

If the required relationship is shown, and if the presumption that a legal parent acts in the best interest of the child is rebutted (see Section 1 above) the court may award custody to the third party or appropriate visitation rights if it is in the best interests of the child. Upon filing the petition, the court may also award temporary custody, pending a final hearing.

4. Intervention by Psychological Parents and Grandparents – ORS 109.119; ORS 419B.116; and ORS 419B.875.*

Except for grandparents who have some limited rights based upon their status as grandparents (see section 6D below), unless a person is allowed to “intervene” or granted rights of “limited participation”, they are not parties, are not given formal notice of legal proceedings, and are not entitled to formally address the Court. Both grandparents, psychological parents and third parties may seek to intervene in family law proceedings affecting a child. Such persons may also seek to intervene in Juvenile Court proceedings.

a. Intervention in Circuit Court. ORS 109.119.

To intervene in circuit court, a person must allege that they have either a child-parent relationship or an ongoing personal relationship, as well as alleging facts that the intervention is in the best interest of the child. If allowed, Intervention will provide the intervener with formal notice of legal proceedings and the right to present evidence to the court. It does not, however, guarantee any substantive relief in the form of custody, visitation or contact rights. To obtain such rights, the party must overcome the presumption of a legal parent (see Sections 1-3 above).

b. Intervention in Juvenile Court Proceedings. ORS 419B.116.

In order to intervene in a juvenile court proceeding, a person must allege and prove that he/she has had a “care giver relationship”. The care giver relationship must have existed during the year preceding the initiation of the juvenile court proceeding, for at least 6 months during the juvenile court proceeding (one year for nonrelated foster parents), or for at least one-half of the child’s life if the child is less than 6 months of age. In order to demonstrate the care giver relationship, the person must also show physical custody or shared residence with the child, and that the person has provided the child on a daily basis with the love, nurturing and other necessities required to meet the child’s psychological and physical needs. An intervener in a juvenile court proceeding will be given notice of court proceedings, the opportunity to present evidence and the opportunity to be considered as a visitation or placement resource for the child.*

c. Rights of Limited Participation In Juvenile Court. ORS 419B.875.

Persons who do not meet the care giver standards for full intervention may nevertheless qualify for rights of limited participation. The person must file a motion and affidavit with the juvenile court at least two weeks before a proceeding in the case in which participation is sought.* If the petition is granted, the court will determine what rights are given to the person, but rights will generally include at least notice of hearings and the right to present evidence.

** Obtaining intervention or rights of limited participation is very challenging. Persons seeking intervention or rights of limited participation in juvenile court must also prove to the court that the other participants (e.g., parents, child's attorney, Department of Human Services) cannot adequately present the case .*

5. Modification of Psychological Parents/Grandparent Visitation and Custody Orders.

Modification of Orders under Amended ORS 109.119.

Once a visitation or custody order is issued under ORS 109.119, there is no need to re-litigate the issue of the presumption of the natural parent. In visitation cases, the modification standard is the "best interest of the child." In custody cases, before the best interest standard is reached, a moving party will have to show that there has been a substantial and unanticipated change of circumstances.

6. Juvenile Court Proceedings.

- a. Authority. ORS Chapter 419B (dependency); ORS Chapter 419C (delinquency, criminal--dispositional stage only).
- b. How the State Obtains Custody of A Child.

The State of Oregon may obtain legal custody of a child if the child commits an act which would be a crime if they were adult, or if the child is subject to abuse, neglect, or abandonment by the parent or custodian. The state may also obtain custody of run-aways. When the state obtains custody, it almost always places the child with State Office for Services to Children and Families, now known as Department of Human Services (DHS), although it does have authority to place the child with a grandparent, blood relative or other appropriate person. DHS, by statute, must now take reasonable efforts to give notice to relatives and to favor relative placements over stranger placements. However, in the past this preference has often been ignored. Sometimes no contact is made with the extended family. Other times, DHS has a built-in prejudice against extended family because they fear the extended family will take the side of the former custodial parent and interfere with their efforts.

c. Rights of Third Parties in Juvenile Court.

Juvenile Court proceedings are usually open to the public, particularly in non-criminal matters. See Section 4 above for rights of intervention and limited participation by third parties. Apart from those rights, the court is not required to hear from an extended family member unless he or she is called as a witness by the state (through DHS) or a party (mother, father or the child--through their attorneys). However, if a legal grandparent of a child requests in writing and provides contact information to DHS, the agency must give the legal grandparent notice of a hearing concerning the child and give the legal grandparent an opportunity to be heard. This does not make the legal grandparent a party to the proceeding. Persons interested in obtaining or maintaining their relationship with a child in the custody of the state should consider hiring an attorney and filing for intervention or rights of limited participation (see discussion above) and stay in close contact with the following individuals:

- i. DHS caseworker (consult phonebook for branch office nearest your home).
- ii. Juvenile Court counselor (Multnomah County: **503.988.3460**; Washington County: **503.846.8861**; Clackamas County: **503.655.8342**).
- iii. Court Appointed Special Advocate (CASA)--(In Multnomah County: **503.988.5115**; Washington County: **503.992.6728**; Clackamas County: **503.723.0521**) an advocate appointed by the court to look after the best interests of the child and report information to the court. Check with the Juvenile Court counselor for the name of the CASA, if one exists.
- iv. Child's attorney -- a court may, but is not required to appoint an attorney for the child. Again, check with the court, through the Juvenile Court counselor, for the name of the attorney.
- v. Attorneys for mother and father--again, check with the court to get in contact with mother or father's attorney.
- vi. Citizens Review Boards (CRBs) – CRBs are volunteer panels established under state law assigned to review DHS cases approximately every six months. CRBs are volunteer citizens. While they do not participate directly in Juvenile Court proceedings, they prepare reports and make recommendations regarding whether DHS is on track in its placement and whether the child needs or is receiving appropriate representation from the CASA or attorney. (For general information about CRBs in Multnomah, Washington, or Clackamas Counties contact the Portland Regional office at 503.731.3007. Otherwise contact Rebecca Regello, Regional Field Manager for Multnomah and Washington Counties at 503.731.3206 or Dave Smith, Regional Field Manager for Clackamas County at 503.731.4356)

d. Rights of Grandparents and Foster Parents in Juvenile Court Proceedings.

I. Notice and the Opportunity To Be Heard (ORS 419B.875(7))

DHS is required to make diligent efforts to identify and obtain contact information for the grandparents of a child or ward committed to the department's custody. When the department knows the identity of and has contact information for a grandparent, the department shall give the grandparent notice of a hearing concerning the child or ward. Therefore concerned grandparents should give written notice and their contact information to DHS so they will be notified of hearings. If a grandparent is present at a hearing concerning a child or ward, the court shall give the grandparent an opportunity to be heard. This does not make the legal grandparent a party to the proceeding.

Foster parents present at a dependency hearing also have a right to be heard.

ii. Court Ordered Visitation and Contact (ORS 419B.876)

At a hearing concerning a child in the legal custody of DHS, a court may order visitation and/or contact and communication rights to a grandparent of the child. A grandparent seeking such rights must notify DHS and the other parties to the case at least 30 days before the date of hearing. To qualify, such grandparent must show that there was a pre-existing ongoing relationship with the child prior to the establishment of the wardship and that court ordered visitation or contact will not negatively impact the court's permanent plan for the child.

e. Special Concerns.

I. If you do not believe the child's interests are being adequately represented, you may ask the court, through the Juvenile Court counselor, to appoint an attorney for the child.

ii. It is important in Juvenile Court that your primary goal be the best interests of the child. The court, and particularly DHS, are extremely wary where an extended family member strongly takes the position of the parent who has lost custody. In such a case, DHS may feel that the extended family member is interfering with their attempts to rehabilitate the parent, and DHS fears that the extended family member may not be able to protect the child. In some cases, it may be appropriate to strongly advocate the position of the parent who has lost custody. In other cases, it may be more appropriate to give emotional (and sometimes financial) support to the parent, without "taking their side."

- iii. The state provides a foster care subsidy to children placed with strangers, but in many cases denies that subsidy to children placed with extended family members. An extended family member who receives physical custody of the child should make every effort to seek any foster care subsidy which may be available (TANF, Title IV(E); Non-Needy Relative Grant and/or the Oregon Health Plan).

7. Adoption.

- a. Authority. ORS 109.305-109.410.
- b. Eligibility.

Any person may seek to adopt a child. However, an adoption will not be granted unless the consent (or a waiver of the consent) is received from the child's birth parents. If the child's birth parents' rights have been terminated, then DHS must give its consent to the adoption. A birth parent's consent may be waived if paternity has never been established or if the birth parent willfully neglected or abandoned the child for at least one year prior to the adoption petition.

- c. Relief Available.

If the adoption is granted, the person becomes the legal parent of the child. The effect of the adoption is to terminate the birth parents' rights.

- d. Special Concern--Adoption and the Termination of Grandparents' Rights.

Since an adoption terminates the rights of the birth parents, it also has the effect of terminating the blood relationship of the grandparents. Therefore, it may be important to intervene in an adoption proceeding to protect your rights. Intervention has its own problems.

Notice to grandparents is required only in stepparent adoptions and then a motion for visitation rights must be filed within 30 days (see Section 6(e) below).

In non-stepparent adoptions, you may never find out about a pending adoption, because the law does not require notice to be given to extended family members--only to birth parents. Even if you do intervene, the court may permit the adoption to proceed and not award you any visitation with the child. Although it has not been conclusively determined, when a conflict exists between an extended family member and the new adoptive family, the court will give preference to the rights and concerns of the new adoptive family over the extended family member.

A grandparent or current caretaker who seeks but is denied a request to be the adoptive parent may seek a review by DHS of the denial and thereafter a limited right to appeal to the Circuit Court for a review of the agency (DHS) decision.

See also Section 6(d) above (notice to grandparents of DHS hearings) and Section 8 below regarding guardianship options as alternatives to adoption.

- e. Notice/Visitation Rights in Stepparent Adoptions. ORS 109.309; ORS 109.332.

In stepparent adoptions only, grandparents must be given notice of the proposed stepparent adoption by receiving a true copy of the adoption petition. Within 30 days of service of the petition, a grandparent may file a motion with the court seeking visitation rights after the adoption. Visitation rights will only be awarded if it can be established, by clear and convincing evidence, that visitation with the grandparent(s) is in the best interests of the child; that a substantial relationship existed prior to the adoption; and that establishing visitation rights will not interfere with the relationship between the child and the adoptive family. This law does not apply to independent or Department of Human Resources (DHS)-sponsored adoptions.

- f. Open Adoption Agreements. ORS 109.305.

In both stepparent adoptions and non-stepparent adoptions (including independent and DHS cases), birth parents and adoptive parents may sign an "open adoption" agreement, allowing visitation with grandparents. This agreement is enforceable by the courts but does not otherwise affect the adoption.

8. Guardianship.

- a. Authority. ORS 109.056, 125.055, ORS 419B.365, ORS 419B.366.

- b. Types of Guardianship.

- i. Juvenile Court Permanent Guardianship. The Juvenile Court may appoint a permanent guardian for a child *as an alternative to a formal termination of parental rights*. Although parental rights are not terminated, the parent could never have physical custody restored. The terms of contact between the child and the parent is determined by the Court and the guardian (ORS 419B.365).
- ii. Juvenile Court Non Permanent Guardianship. The Juvenile Court may now also terminate DHS involvement and, maintain wardship but award a more traditional guardianship to a foster parent, relative or third-party. Unlike a permanent guardianship, this guardianship option provides for modification and a potential future termination and restoration of a natural

parent's rights (ORS 419B.366).

- iii. Civil Court Guardianship. Any person may apply to the court to become a guardian of a minor under ORS 125.055. A person petitioning for a guardianship to the court must give appropriate notice to the child, the child's recent custodians, and the child's birth parents. In addition, the person must show a need for the guardianship, because the child's essential needs for physical health and safety are not being met. The court must find by clear and convincing evidence that the guardianship is necessary. The Court of Appeals has applied *Troxel v. Granville* to the guardianship context and therefore, to establish a guardianship, over the objection of a birth parent, it will be necessary to overcome the constitutional presumption in favor of the birth parent (see Section 1 above).
 - iv. Delegation of Parental Powers. Under another statute, ORS 109.056, a parent, through a "power of attorney," can delegate their parental powers to another for a period not exceeding six months. This does not need to be filed with a court, but the power of attorney should be properly drafted and signed before a notary.
 - v. Relative Caregiver Authority by Affidavit. ORS 109.575 authorizes a relative caregiver to consent to medical treatment and education for minors left in their care. The caregiver is required to complete a specific affidavit to utilize this authority and to attempt to give notice to the legal parent of his or her intent to exercise this authority.
- c. Relief Available.

A guardian has the powers and responsibilities of a parent, except that the guardian is not responsible to provide his or her personal funds to support the child. A guardian may petition for appropriate public assistance or child support from one or both of the child's parents.

9. Third Parties and Military Deployment of Parents

Oregon law now allows a deployed parent to petition the court for visitation, during deployment, between the child of the deployed parent and a stepparent, grandparent, or other family member related to the child. The court must consider whether visitation will facilitate contact between the child and the deployed parent, the best interests of the child, and the third-party visitation factors in ORS 109.119.

CAUTION: This information is a general guide to your rights. Specific rights and remedies will vary with each case. This guide is not a substitute for legal advice. You should consult with an attorney in any matter concerning your rights or the rights of your children or grandchildren. You may contact the Oregon State Bar Lawyer Referral Service for the name and number of an attorney who may be able to assist you. **Telephone: 503.684.3763 or toll-free in Oregon 1.800.452.7636.**

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GRANDPARENT AND PSYCHOLOGICAL PARENT RIGHTS IN OREGON AFTER *TROXEL*© - UPDATE (Rev. May, 2018)

The Rise and Fall of the Best Interests Standard

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INTRODUCTION

Grandparents, foster parents, and other third-parties play an increasing role in the care of children, statewide and nationally. According to a Pew Research Center analysis of recent US Census Bureau data, almost 7 million U.S. children live in households with at least one grandparent. Of this total, 2.9 million (or 41%) were in households where a grandparent was the primary caregiver, an increase of 16% since 2000. According to the Census Bureau (19%) percent of these families (551,000 grandparents) fall below the poverty line. There are on average 8000 children in foster care on any given day in Oregon. The relationship between these third parties and natural or biological parents has resulted in a significant and evolving body of case law and statutory changes.

In the seminal case of *Troxel v. Granville*, 530 US 57, 120 S. Ct. 2054, 147 L.Ed 2d 49 (2000), the United States Supreme Court held that awarding visitation to a non-parent, over the objections of a parent is subject to constitutional limitations. The court invalidated, as applied, a Washington statute authorizing “any person” to petition for visitation rights “at any time” and providing that the court may order such visitation if it serves the “best interest of the child,” on the ground that the statute violates a natural parent’s right to substantive due process. The court specifically recognized as a fundamental liberty interest, the “interest of parents in the care, custody and control of their children.” The *Troxel* case has affected laws in virtually all of the states, and has significantly reduced previously recognized rights of grandparents, step-parents and psychological parents in favor of birth parents.

In 2001, Oregon’s legislature responded to *Troxel* by radically restructuring Oregon’s psychological parent law (ORS 109.119) and in so doing, eliminated ORS 109.121-123, which gave specific rights to grandparents.

Before discussing the implications of *Troxel* and amended ORS 109.119, it is important to understand Oregon’s law before *Troxel*.

GRANDPARENT AND THIRD PARTY RIGHTS IN OREGON BEFORE *TROXEL*

Before *Troxel*, Oregon's jurisprudence evolved from a strict preference in favor of natural parents to a fairly straight-forward application of the best interests test. In *Hruby and Hruby*, 304 Or 500 (1987), the Oregon Supreme Court held that the best interest standard is not applicable in custody disputes between natural parents and other persons, and that in custody disputes, a natural parent would not be deprived of custody absent "some compelling threat to their present or future well-being." That standard remained in place until 1999 when in *Sleeper and Sleeper*, 328 Or 504 (1999), *Hruby* was effectively swept aside and the court ordered that the best interest standard be applied to psychological parent cases. In *Sleeper*, the stepfather, a primary caretaker, obtained custody over biological mother. (See also *Moore and Moore*, 328 Or 513 (1999)). Significantly, the court limited *Sleeper* holding, applying the best interests test under the statute, by making it limited by an undefined "supervening right" of a natural parent. Therefore, before *Troxel*, once a third party had met the test for being psychological parent (*de facto* custodian), the best interest standard was applied and the psychological parent competed on an equal footing with the natural parent, subject to the natural parent's "supervening right." This "supervening right" was defined and applied in the post *Troxel* cases.

TROXEL APPLIED – THE NEW STANDARD

In *O'Donnell-Lamont and Lamont*, 337 Or 86 (2004), the Supreme Court reversed the Court of Appeals and restored custody of the children to grandparents. The Supreme Court's decision brings some much needed clarity to the application of *Troxel* as well as the post-*Troxel* version of ORS 109.119. Contrary to several prior Court of Appeals decisions, the Supreme Court held that it is not necessary that a third party overcome the *Troxel* birth parent presumption by demonstrating that the birth parent would harm the child or is unable to care for the child. Rather, the Supreme Court adhered to the legislative standard that "the presumption could be overcome by a showing, based on a preponderance of the evidence, that the parent does not act in the best interest of the child." *Id.* at 107. While a parent's unfitness or harm to a child can be strong evidence to overcome the *Troxel* (and ORS 109.119) birth parent presumption, that presumption may be rebutted by evidence of any of the enumerated factors as well as other evidence not specifically encompassed by one of the statutory factors. "The statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interest of the child, not whether the evidence supports one, two, or all five of the non-exclusive factors identified in ORS 109.119 (4)(b)." *Id.* at 108.

Notwithstanding this broad and encompassing standard, the more-recent case law demonstrates that two factors, parental fitness and harm to the child, are by far the most significant. See also discussion below on "*Demonstrating Harm to the Child - What Is Enough?*"

DIGEST OF POST-TROXEL CASES IN OREGON

1. **Harrington v. Daum**, 172 Or App 188 (2001), CA A108024. Visitation awarded to deceased mother's boyfriend over objection of birth father, reversed. After *Troxel v. Granville*, application of ORS 109.119 requires that "significant weight" be given to a fit custodial parent's decision. The parent's constitutional right is a supervening right that affects the determination of whether visitation is appropriate and prevents the application of solely the best interest of the child standard.
2. **Ring v. Jensen**, 172 Or App 624 (2001), CA A105865. Award of grandparent visitation, reversed. Grandmother's difficulty in obtaining the amount of visitation desired does not demonstrate the pattern of denials of reasonable opportunity for contact with the child as required by ORS 109.121.
3. **Newton v. Thomas**, 177 Or App 670 (2001), CA A109008. Interpreting a prior version of ORS 109.119, the court reversed an award of custody to the grandparents in favor of the mother. Under ORS 109.119, a court may not grant custody to a person instead of a biological parent based solely on the court's determination of what is in the child's best interest. The court must give significant weight to the supervening fundamental right of biological parents to the care, custody and control of their children. In a footnote, the court declined to consider the impact of the amendments to ORS 109.119 enacted by the 2001 Legislature.
4. **Williamson v. Hunt**, 183 Or App 339 (2002), CA A112192. Award of grandparent visitation reversed. The retroactive provisions of amended ORS 109.119 apply only to cases filed under the 1999 version of that statute and former ORS 109.121. Parental decisions regarding grandparent visitation are entitled to "special weight." Without evidence to overcome the presumption that a parent's decision to limit or ban grandparent visitation is not in the best interest of the child, the trial court errs in ordering such visitation (but see *Lamont*, Case Note 6).
5. **Wilson and Wilson**, 184 Or App 212 (2002), CA A113524. Custody of stepchild awarded to stepfather, along with parties' joint child, reversed. Under *Troxel*, custody of the mother's natural child must be awarded to fit birth mother and because of the sibling relationship, custody of the parties' joint child must also be awarded to mother. [See Case Note 20 discussion below for Court of Appeals decision on remand from Supreme Court.]
6. **O'Donnell-Lamont and Lamont**, 184 Or App 249 (2002), CA A112960. Custody of 2 children to maternal grandparents, reversed in favor of birth father (mother deceased). To overcome the presumption in favor of a biological parent under ORS 109.119(2)(a) (1997), the court must find by a preponderance of the evidence either that the parent cannot or will not provide adequate love and care or that the children will face an undue risk of physical or psychological harm in the parent's custody. A Petition for Certification of Appeal has been filed by birth father with the US Supreme Court and is pending at this time. [See discussion at Case Note 12 for *en banc* decision and discussion above, and Case Note 16 below for Supreme Court decision.]

7. **Moran v. Weldon**, 184 Or App 269 (2002), CA A116453. *Troxel* applied to an adoption case. Adoption reversed where father's consent was waived exclusively based upon the incarceration provisions of ORS 109.322. *Troxel* requires that birth father's consent may not be waived without "proof of some additional statutory ground for terminating parental rights***."

8. **State v. Wooden**, 184 Or App 537, 552 (2002), CA A111860. Oregon Court of Appeals, October 30, 2002. Custody of child to maternal grandparents, reversed in favor of father (mother murdered). A legal parent cannot avail himself of the "supervening right to a privileged position" in the decision to grant custody to grandparents merely because he is the child's biological father. Father may be entitled to assert parental rights if he grasps the opportunity and accepts some measure of responsibility for the child's future. To overcome presumption in favor of father, caregiver grandparents must establish by a preponderance of the evidence that father cannot or will not provide adequate love and care for the child or that moving child to father's custody would cause undue physical or psychological harm. Rather than order an immediate transfer, the court ordered that birth father be entitled to custody following a 6-month transition period. [See also Case Note 20, *Dennis*, for an example of another transition period ordered.]

9. **Strome and Strome**, 185 Or App 525 (2003), *rev. allowed*, 337 Or 555 (2004), CA A111369. Custody of 3 children to paternal grandmother reversed in favor of birth father. The Court of Appeals ruled that where the biological father had physical custody for 10 months before trial, and had not been shown to be unfit during that time, Grandmother failed to prove by a preponderance of the evidence that father cannot or will not provide adequate love and care for the children or that placement in his custody will cause an undue risk of physical or psychological harm, in spite of father's past unfitness. [See discussion below Case Note 22 for Court of Appeals decision on remand from Supreme Court.]

10. **Austin and Austin**, 185 Or App 720 (2003), CA A113121. In the first case applying revised ORS 109.119 and, in the first case since *Troxel*, the Court of Appeals awarded custody to a third party (step-parent) over the objection of a birth parent (mother). The constitutionality of the revised statute was not raised before the court. The court found specific evidence to show that mother was unable to adequately care for her son. The case is extremely fact specific. Father had been awarded custody of three children, two of whom were joint children. The third child at issue in the case, was mother's son from a previous relationship. Therefore, sibling attachment as well as birth parent fitness were crucial to the court's decision. Petition for Review was filed in the Supreme Court and review was denied [337 Or 327 (2004)].

11. **Burk v. Hall**, 186 Or App 113, 121 (2003), CA A112154. Revised ORS 109.119 and *Troxel* applied in the guardianship context. In reversing a guardianship order the court held that: "****guardianship actions involving a child who is not subject to court's juvenile dependency jurisdiction and whose legal parent objects to the appointment of guardian are – in addition to the requirements of ORS 125.305 – subject to the requirements of ORS 109.119." The constitutionality of amended ORS 109.119 was not challenged and therefore not addressed by this court.

12. **O'Donnell-Lamont and Lamont**, 187 Or App 14 (2003) (*en banc*), CA A112960. The *en banc* court allowed reconsideration and held that the amended psychological parent law [ORS 109.119 (2001)] was retroactively applicable to all petitions filed before the effective date of the statute. The decision reversing the custody award to grandparent and awarding custody to father was affirmed. Although 6 members of the court appeared to agree that the litigants were denied the “***fair opportunity to develop the record because the governing legal standards have changed***,” a remand to the trial court to apply the new standard was denied by a 5 to 5 tie vote. [See discussion at Case Note 6 and Case Note 16 for Supreme Court decision.]

13. **Winczewski and Winczewski**, 188 Or App 667 (2003), *rev. den.* 337 Or 327 (2004), CA A112079. [Please note that the *Winczewski* case was issued before the Supreme Court's decision in *Lamont*.] The *en banc* Court of Appeals split 5 to 5 and in doing so, affirmed the trial court's decision, awarding custody of two children to paternal grandparents over the objection of birth mother, and where birth father was deceased. For the first time, ORS 109.119 (2001) was deemed constitutional as applied by a majority of the members of the court, albeit with different rationales. Birth mother's Petition for Review was denied by the Supreme Court.

14. **Sears v. Sears & Boswell**, 190 Or App 483 (2003), *rev. granted* on remand, 337 Or 555 (2004), CA A117631. The court reversed the trial court's order of custody to paternal grandparents and ordered custody to mother where the grandparents failed to rebut the statutory presumption that mother acted in the best interests of a 4-year old child. Mother prevailed over grandparents, notwithstanding the fact that grandparents were the child's primary caretakers since the child was 8 months old, and that mother had fostered and encouraged that relationship. *Sears* makes it clear that the birth parent's past history and conduct are not controlling. Rather, it is birth parent's present ability to parent which is the pre-dominate issue. [See Case Note 19 for decision on remand.]

15. **Wurtele v. Blevins**, 192 Or App 131 (2004), *rev. den.*, 337 Or 555 (2004), CA A115793. Trial court's custody order to maternal grandparents over birth father's objections. A custody evaluation recommended maternal grandparents over birth father. The court found compelling circumstances in that if birth father was granted custody, he would deny contact between the child and grandparents, causing her psychological harm, including threatening to relocate with the child out-of-state.

16. **O'Donnell-Lamont and Lamont**, 337 Or 86, 91 P3d 721 (2004), *cert. den.*, 199 OR App 90 (2005), 125 S Ct 867 (2005), CA A112960. The Oregon Supreme Court reversed the Court of Appeals and restored custody of the children to grandparents. Contrary to several prior Court of Appeals decisions, the Supreme Court held that it is not necessary that a third party overcome the *Troxel* birth parent presumption by demonstrating that the birth parent would harm the child or is unable to care for the child. Rather, the Supreme Court adhered to the legislative standard that “the presumption could be overcome by a showing, based on a preponderance of the evidence, that the parent does not act in the best interest of the child.” *Id.* at 107. While a parent's unfitness or harm to a child can be strong evidence to overcome the *Troxel* (and ORS 109.119) birth parent presumption, that presumption may be rebutted by evidence of any of the enumerated factors as well as other evidence not specifically encompassed by one of the

statutory factors. “The statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interest of the child, not whether the evidence supports one, two, or all five of the non-exclusive factors identified in ORS 109.119(4)(b).”

17. ***Meador v. Meador***, 194 Or App 31 (2004), CA A120628. Grandparents had previously been awarded visitation of two overnight visits per month with three grandchildren and the trial court’s original decision appeared to be primarily based upon the best interests of the children and the original ruling was considered without application of the *Troxel* birth parent presumption. After the Judgment, birth parents relocated to Wyoming and grandparents sought to hold parents in contempt. Parents then moved to terminate grandparents’ visitation. At the modification hearing, before a different trial court judge, parents’ modification motion was denied on the basis that birth parents had demonstrated no “substantial change of circumstances.” *Id.* at 40.

The Court of Appeals reversed and terminated grandparents’ visitation rights. The court specifically found that in a modification proceeding no substantial change of circumstances was required. *Id.* at 45. Rather, the same standard applied a parent versus parent case [see *Ortiz and Ortiz*, 310 Or 644 (1990)] was applicable, that is the best interest of the child. The evidence before the modification court included unrebutted expert testimony that the child’s relationship with grandmother was “very toxic; that the child did not feel safe with grandmother; that the child’s visitation with grandmother was a threat to her relationship with Mother and that such dynamic caused the child to develop PTSD.” The court also found “persuasive evidence” that the three children were showing signs of distress related to the visitation.

18. ***Van Driesche and Van Driesche***, 194 Or App 475 (2004), CA A118214. The trial court had awarded substantial parenting time to step-father over birth mother’s objections. The Court of Appeals reversed finding that the step-parent did not overcome the birth parent presumption. This was the first post - *Lamont* (Supreme Court) case. Although mother had encouraged the relationship with step-father while they were living together, and although such evidence constituted a rebuttal factor under ORS 109.119, this was not enough. The court found that such factor may be given “little weight” when the birth parent’s facilitation of the third-party’s contact was originally in the best interest of the child but was no longer in the best interest of the child after the parties’ separation. Step-father contended that the denial of visitation would harm the children but presented no expert testimony.

19. ***Sears v. Sears & Boswell***, 198 Or App 377 (2005), CA A117631. The Court of Appeals, after remand by the Supreme Court to consider the case in light of *Lamont* [Case Note 16], adheres to its original decision reversing the trial court’s order of custody to maternal grandparents and ordering custody to birth mother. Looking at each of the five rebuttal factors as well as under the “totality of the circumstances”, birth mother prevailed again. Grandparents’ strongest factor, that they had been the child’s primary caretaker for almost two years before the custody hearing, was insufficient. Specifically, grandparents did not show birth mother to be unfit at the time of trial, or to pose a serious present risk of harm to the child.

20. ***Dennis and Dennis***, 199 Or App 90 (2005), CA A121938. The trial court had awarded custody of father's two children to maternal grandmother. Based upon ORS 109.119 (2001) and *Lamont*, the Court of Appeals reversed, finding that grandmother did not rebut the statutory presumption that birth father acts in the best interest of the children. The case was unusual in that there was apparently no evidentiary hearing. Rather, the parties stipulated that the court would consider only the custody evaluator's written report (in favor of grandmother) and birth father's trial memorandum, in making its ruling on custody. Birth father prevailed notwithstanding the fact that he was a felon, committed domestic violence toward birth mother, and used illegal drugs. However, birth father rehabilitated himself and re-established his relationship with his children. Although grandmother had established a psychological parent relationship and had been the long-term primary caretaker of the children, she was not able to demonstrate that birth father's parenting at the time of trial was deficient or inadequate; nor was grandmother able to demonstrate that a transfer of custody to birth father would pose a present serious risk of harm to the children as grandmother's concerns focused on birth father's past behaviors. The case continued the Court of Appeals trend in looking at the present circumstances of the birth parent rather than extenuating the past deficiencies. The case is also significant in that rather than immediately transferring custody of the children to birth father, and because birth father did not request an immediate transfer, the case was remanded to the trial court to develop a transition plan and to determine appropriate parenting time for grandmother. Birth father's request for a "go slow" approach apparently made a significant positive impression with the court. [See also Case Note 8, *State v. Wooden*, for an example of another transition plan.]

21. ***Wilson and Wilson*** [see Case Note 5 above]. Birth father's Petition for Review was granted [337 Or 327 (2004)] and remanded to the Court of Appeals for reconsideration in light of *Lamont*. On remand [199 Or App 242 (2005)], the court upheld its original decision, which found both parties to be fit. Birth father failed to overcome the presumption that birth mother does not act in the best interest of birth mother's natural child/father's stepchild; therefore, for the same reasons as the original opinion, custody of the party's joint child must also be awarded to birth mother.

22. ***Strome and Strome***, 201 Or App 625 (2005). On remand from Supreme Court to reconsider earlier decision in light of *Lamont*, the court affirms its prior decision (reversing the trial court) and awarding custody of the 3 children to birth father, who the trial court had awarded to paternal grandmother. Although birth father had demonstrated a prior interference with the grandparent-child relationship, the rebuttal factors favored birth father. The court particularly focused on the 10 months before trial where birth father's parenting was "exemplary." Because the children had remained in the physical custody of grandmother for the many years of litigation, the case was remanded to the trial court to devise a plan to transition custody to father and retain "ample contact" for grandmother. [See Case Note 9 above.]

23. **Poet v. Thompson**, 208 Or App 442 (2006), CA A129220. Rulings made resulting from a pre-trial hearing to address issues of temporary visitation or custody under ORS 109.119, are not binding on the trial judge as the “law of the case.” A party who does not establish an “ongoing personal relationship” or “psychological parent relationship” in such a hearing may attempt to establish such relationships at trial notwithstanding their failure to do so at the pre-trial hearing. Note the procedures and burdens to establish temporary visitation or custody or a temporary protective order or restraint are not established by statute or case law.

24. **Jensen v. Bevard and Jones**, 215 Or App 215 (2007), CA A129611. The trial court granted grandmother custody of a minor child based upon a “child-parent relationship” in which grandmother cared for the child on many, but not all, weekends when mother was working. The Court of Appeals reversed, finding that grandmother’s relationship did not amount to a “child-parent” relationship under ORS 109.119 and therefore, was not entitled to custody of the child. Mother and grandmother did not reside in the same home.

Practice Note: It is unclear in this case whether grandmother also sought visitation based upon an “ongoing personal relationship.” [ORS 109.119(10)(e)]. If she had, she may have been entitled to visitation but would have had to prove her case by a clear and convincing standard. Where a third-party’s “child-parent” relationship is not absolutely clear, it is best to alternatively plead for relief under the “ongoing personal relationship,” which is limited to visitation and contact only.

25. **Muhlheim v. Armstrong**, 217 Or App 275 (2007), CA A129926 and A129927. The Court of Appeals reversed the trial court’s award of custody of a child to maternal grandparents. The child had been in an unstable relationship with mother and the child was placed with grandparents by the Department of Human Services (DHS). Although father had only a marginal relationship with the child, the court nevertheless ruled that he was entitled to custody, because the grandparents had not sufficiently rebutted the parental presumption factors set forth in ORS 119.119(4)(b). Grandparents had only been primary caretakers for 5 months proceeding the trial. Father had a criminal substance abuse history but “not so extensive or egregious to suggest that he is currently unable to be an adequate parent.” While stability with grandparents was important and an expert had testified that removal of the child would “cause significant disruption to her development,” those factors did not amount to “a serious present risk of psychological, emotional, or physical harm to the child.” As in *Strome* (Case Note 22 above), the court directed the trial court to establish a transition plan to transfer custody to father and preserve ample contact between the child and her relatives.

Practice Note: This case follows the general trend of preferring the birth parent over the third-party, and the downplaying of issues related to a birth parent’s prior history, lack of contact, and disruption to the stability of the child. It may have been important in this case that grandparents hired a psychologist to evaluate their relationship, but the psychologist never met with father, nor was a parent-child observation performed.

26. ***Middleton v. Department of Human Services***, 219 Or App 458 (2008), CA A135488. This case arose out of a dispute over the placement of a child between his long-term foster family and his great aunt from North Dakota, who sought to adopt him. DHS recommended that the child be adopted by his foster parents. The relatives challenged the decision administratively and then to the trial court under the Oregon Administrative Procedures Act (APA) (ORS 183.484). The trial court set aside the DHS decision, preferring adoption by the relatives. On appeal, the case was reversed and DHS's original decision in favor of the foster parent adoption was upheld. The court emphasized that its ruling was based upon the limited authority granted to it under the Oregon APA, and this was not a "best interest" determination. Rather, DHS had followed its rules, the rules were not unconstitutional, and substantial evidence in the record supported the agency decision. Since substantial evidence supported placement with either party, under the Oregon APA the court was not authorized to substitute its judgment and set aside the DHS determination.

27. ***Nguyen and Nguyen***, 226 Or App 183 (2009), CA A138531. Following the trend in recent cases, an award of custody to maternal grandparents was reversed and custody was awarded to birth mother. Mother had been the primary caretaker of the minor child (age 7 at the time of trial) but became involved in a cycle of domestic violence between herself, the child's father, and others; residential instability, and drug use. Mother also had some mental health issues in the past. At trial, the custody evaluator testified that mother was not fit to be awarded custody at the time of trial, but could be fit if she could make "necessary changes and provide stability and consistency ***." As to parental fitness, the most important issue according to the court, was that mother's history did not make her **presently** unable to care adequately for the child. As to the harm to the child element, the court repeated its past admonition that the evidence must show a "serious present risk" of harm. It is insufficient to show "****that living with a legal parent **may** cause such harm." As in *Strome* (Case Note 22), the court directed the trial court to establish an appropriate transition plan because of the child's long-term history with grandparents.

28. ***Hanson-Parmer, aka West and Parmer***, 233 Or App 187 (2010), CA A133335. The trial court determined that husband was the psychological parent of her younger son, and is therefore entitled to visitation with him pursuant to ORS 109.119(3)(a). Husband is not biological father. On appeal, the dispositive legal issue was whether husband had a "child-parent relationship." ORS 109.119(10)(a) is a necessary statutory prerequisite to husband's right to visitation in this case. Held: Husband's two days of "parenting time" each week is insufficient to establish that husband "resid[ed] in the same household" with child "on a day-to-day basis" pursuant to ORS 109.119(10)(a). Reversed and remanded with instructions to enter judgment including a finding that husband is not the psychological parent of child and is not entitled to parenting time or visitation with child; otherwise affirmed. See *Jensen v. Bevard* (Case No. 24).

29. ***DHS v. Three Affiliated Tribes of Port Berthold Reservation***, 236 Or App 535 (2010), CA A143921. In a custody dispute under the Indian Child Welfare Act (ICWA) between long-term foster parents and a relative family favored by the tribe of two Indian children, the Court of Appeals found good cause to affirm the trial court's maintaining the children's placement with foster parents. Although this was not an ORS 109.119 psychological parent case, it contains interesting parallels. Under the ICWA, applicable to Indian children, the preference of the tribe for placements outside the biological parent's home, is to be honored absent good cause.

Although the ICWA does not define the term “good cause”, the trial court concluded that it “properly and necessarily includes circumstances in which an Indian child will suffer serious and irreparable injury as a result of the change in placement.” The Court of Appeals agreed with the trial court that good cause existed based upon persuasive expert testimony that “the harm to [the children] will be serious and lasting, if they are moved from [foster parents’] home.” This analysis has its parallel in the ORS 109.119 rebuttal factor which provides for custody to a third-party if a child would be “psychologically, emotionally, or physically harmed” if relief was not ordered. It also parallels the Supreme Court’s analysis of the ORS 109.119 harm standard, as requiring proof of circumstances that pose “a serious risk of psychological, emotional, or physical harm to the child.” This case points to the necessity of expert testimony to support a third-party when they are seeking to obtain custody from a biological parent. See *Lamont* decision (Case Note 16).

30. ***Digby and Meshishnek***, 241 Or App 10 (2011), CA A139448. Former foster parent (FFP) sought third-party visitation from adoptive parents. FFP had last contact with children in July 2005 and filed an action under ORS 109.119 in June 2007, pleading only a “child-parent relationship” and not an “ongoing personal relationship.” Trial court allowed FFP visitation rights. Court of Appeals reversed finding that FFP did not have a “child-parent relationship” within 6 months preceding the filing of the petition and because FFP did not plead or litigate an “ongoing personal relationship.” *Lesson: Plead and prove the correct statutory relationship (or both if the facts demonstrate both).*

31. ***G.J.L. v. A.K.L.***, 244 Or App 523 (2011), CA A143417 (*Petition for Review Denied*). Grandparents were foster parents of grandson for most of his first 3 years of life. After DHS returned child to birth parents and wardship was terminated, parents cut off all contact with grandparents. Trial court found that grandparents had established a grandparent-child relationship and that continuing the relationship between them and child would be positive. Trial court denied Petition for Visitation because of the “*significant unhealthy relationship*” between grandparents and mother. No expert testimony was presented at trial. On appeal, the Court found that grandparents had prevailed on three statutory rebuttal factors (recent primary caretaker; prior encouragement by birth parents; and current denial of contact by parents). However, the Court of Appeals denied relief because grandparents failed to prove a “*serious present risk of harm*” to the child from losing his relationship with grandparents, and that grandparents’ proposed visitation plan (49 days per year) “*would substantially interfere with the custodial relationship.*” A Petition for Review was denied.

32. ***In the Matter of M.D., a Child, Dept. Of Human Services v. J.N.***, 253 Or App 494 (2012), CA A150405. (Juvenile Court) The court did not err in denying father’s motion to dismiss jurisdiction given that the combination of child’s particular needs created a likelihood of harm to child’s welfare. However, the court erred by changing the permanency plan to guardianship because there was no evidence in the record to support the basis of that decision- that the child could not be reunified with father within a reasonable time because reunification would cause “severe mental and emotional harm” to child. The “severe mental and emotional harm” standard parallels to the Oregon Supreme Court’s analysis of the ORS 109.119 harm standard, as requiring proof of circumstances that pose a “serious risk of psychological, emotional, or physical harm to the child.” See *Lamont* decision [Case No. 16].

33. ***In the Matter of R.J.T., a Minor Child, Garner v. Taylor***, 254 Or App 635 (2013), CA A144896). Non-bio parent obtained an ORS 109.119 judgment by default against child's mother for visitation rights with child. Later mother sought to set aside the default which was denied. Non bio parent later filed an enforcement action and also sought to modify the judgment seeking custody. The trial court set aside the original judgment, finding that non bio parent did not originally have a "child-parent" or "ongoing personal" relationship to sustain the original judgment; if she did have such a relationship, she could not rebut the birth parent presumption; and finally, that even if the birth parent presumption was rebutted, that visitation between non bio parent and the child was not in the child's best interest. On appeal, the Court of Appeals reversed the trial court for setting aside the original judgment *sua sponte*, finding no extraordinary circumstances pursuant to ORCP 71C. The Court of Appeals bypassed the issue as to whether there was originally an ongoing personal relationship with the child and originally whether the birth parent presumption had been rebutted. Instead, it simply upheld the trial court, finding that visitation should be denied because it was not in the child's best interests. Since this was not a *de novo* review, the court did not explain why visitation was not in the best interests of the child, but it would appear that the continuing contentious relationship between the parties was a significant factor.

34. ***Underwood et al and Mallory, nka Scott***, 255 Or App 183 (2013), CA A144622. Grandparents obtained custody of child by default. Although certain ORS 109.119 rebuttal factors were alleged, the judgment granting custody to Grandparents was pursuant to ORS 109.103. Mother later filed a motion to modify the original judgment citing ORS 107.135 and ORS 109.103, but not ORS 109.119. In response, Grandparents contended that Mother did not satisfy the "substantial change of circumstances" test, governing ORS 107.135 modifications. The trial court and the Court of Appeals agreed. The Court of Appeals also noted with approval the trial court's finding that a change of custody would not be in the child's best interest, noting in particular that Grandparents had been the primary caretaker of the child for the past 10 years and facilitated (until recently) ongoing relationships between the child, his siblings, and mother. Because the case had originally been filed (apparently erroneously) under ORS 109.103, the Court of Appeals avoided "*the complex and difficult question *** as to whether the provision of ORS 109.119(2)(c) that removes the presumption from modification proceedings would be constitutional as applied to a circumstance where no determination as to parental unfitness was made at the time the court granted custody to grandparents.*" Accordingly, where a custody or visitation judgment is obtained originally by default without a specific finding that the birth parent presumption had been overcome, it is unclear as to whether such presumption, under the United States Constitution, needs to be rebutted in modification or other subsequent proceedings.

35. ***Dept. of Human Services v. S.M.***, 256 Or App 15 (2013), CA A151376. This is a juvenile court case holding a trial court's order allowing children, as wards of the court, to be immunized pursuant to legal advice but over mother and father's religious objections. There is an insightful discussion of *Troxel v. Granville* at pp 25-31. The court found that the immunization order did not violate *Troxel* or the constitutional right of parents to "direct the upbringing of their children," but noted the possibility that certain state decisions might run afoul of constitutional rights. This case strongly suggests that legal parents may be fit in certain spheres of parenting, but unfit as to others. (Oregon Supreme Court review pending.)

36. **Dept. Of Human Services v. L. F.**, 256 Or App 114 (2013), CA A152179. This is a fairly standard juvenile court case where the Court of Appeals upheld the trial court's finding of jurisdiction as to mother. As applied to ORS 109.119 litigation, the court's holding as follows may be relevant to the rebuttal factor relating to parental fitness and harm to the child. Noting that child, L.F., had **** severe impairments of expressive and receptive language,* the Court of Appeals agreed with the trial court that **** mother's inability or unwillingness to meet [child's] medical and developmental needs of [child] to a threat of harm or neglect. *** [Child's] development and welfare would be injured if mother were responsible for his care because she does not understand how to meet his special needs. Without the ability to understand and meet [child's] developmental and medical needs, it is reasonably likely that mother's care would hinder [child's] development and fall short of satisfying his medical needs.* *Id.* at 121-122.

37. **Kleinsasser v. Lopes**, 265 Or App 195, 333 P3d 1239 (2014). In a marked departure from recent trends, the Court of Appeals upheld the trial court's judgment awarding custody of a child to Stepmother over the objections of biological Mother, where Father had died. Child had resided with Father and Stepmother for the prior four years. Mother had been in and out of Oregon and had not been active in the child's life until after Father's death. In contrast to a more rigid focus on the "parental fitness" and "harm to child" factors in prior cases, and although this was not a de novo review case, the Court of Appeals assessed all of the ORS 109.119 rebuttal factors and agreed with the trial court's findings that Stepmother satisfied the rebuttal factors except one. As to the parental fitness factor, the Court of Appeals disagreed with the trial court finding as to mother's past absenteeism as it related to her parental fitness. Consistent with prior rulings, it is the birth parent's present state of fitness, as of the date of the trial, that is most important. The trial court noted Mother's attitudes and conduct toward the child-Stepmother relationship which reflected poorly on her understanding of the child's best interests.

38. **Epler and Epler and Graunitz**, 258 Or App 464 (2013), (Court of Appeals); 356 Or 634 (2014) (Supreme Court). In the underlying divorce between Mother and Father, both parents stipulated that paternal Grandmother have custody of granddaughter. Grandmother had custody for most of the child's life, including the 5 years prior to Mother's modification motion. Mother filed to modify custody and argued that she was entitled to the Troxel /ORS 109.119 birth parent presumption. The trial court denied Mother's motion finding she had failed to prove a "change of circumstances" and that even if she had, the best interests of the child required that Grandmother retain custody. Mother appealed and the Court of Appeals upheld the trial court finding:

- When a biological parent stipulates to custody to a third-party in a ORS Chapter 107 proceeding and then seeks to modify such judgment, ORS 107.135 applies and such parent will be required to demonstrate a substantial change of circumstances. Such stipulation serves as a rebuttal to the *Troxel* presumption.
- ORS 107.135 does not expressly apply to modification proceedings in ORS 109.119 actions; rather ORCP 71C and the court's inherent authority applies. The *Troxel* presumption does not apply to ORS 109.119 modifications.
- The parental fitness standard in *Troxel*/third-party cases is broader than the parental fitness standard in ORS Chapter 419B juvenile court termination cases (and presumably broader than such fitness standard in ORS Chapter 419B juvenile court dependency cases).

The Supreme Court affirmed the Court of Appeals, but for different reasons, finding:

- Because the custody to Grandmother was pursuant to a Chapter 107 dissolution proceeding that this case is not governed by the psychological parent statute ORS 109.119, but rather the modification statute, ORS 107.135.
- "Mother is not entitled to the Troxel presumption that her custody preference is in the child's best interest (at least as to the facts of this case) and
- Mother was not prejudiced when she was held to the substantial change-in-circumstances rule."
- Because the trial court found properly that it was not in the child's best interests that custody be changed, the Supreme Court did not address Mother's argument that the application of the change of circumstances rule unduly burdened her due process rights under *Troxel*.

39. **Department of Human Services v. A.L.**, 268 Or App 391, 400 (2015). Parents successfully challenged the juvenile court's jurisdiction where, among other things, they had placed their children with paternal grandparents. "Because parents have entrusted their children to paternal grandparents who pose no a current threat of harm, the court did not have a basis for asserting jurisdiction over the children." A parent's inability to parent independently does not amount to a condition "seriously detrimental to the child," when such child is placed in a safe alternative placement. See also, **Matter of NB**, 271 Or App 354 (2015) - another juvenile court case in which juvenile court jurisdiction of a child was based in part by the parents' delegation/transfer of care to third parties (grandparents). Construing ORS 419B.100(2), the Court held that the fact of the delegation could indeed be a factor in determining whether juvenile court jurisdiction was appropriate, but the delegation *per se* was not sufficient. Rather the inquiry would have to be case specific and address particular facts, for example whether the child was exposed to risks of the parent(s) while in the third party's care. In the **NB** case, DHS didn't meet the burden to demonstrate such risks.

40. **Kennison v. Dyke**, 280 Or App 121 (2016). CA157378. ORS 109.119 judgement awarding grandmother visitation, reversed and remanded because trial court failed to make the required findings that grandmother rebutted, by clear and convincing evidence, the birth parent presumption prescribed by ORS 109.119. The Court of Appeals made it clear that "an order granting visitation rights must include 'findings of fact supporting the rebuttal of the presumption.' ORS 109.119(2)(b)" The trial court had made ten detailed findings including a finding that "it would be unreasonable for [grandmother] to have no visitation" but the Court of Appeals agreed with mother that the trial court must specifically find that a third party (here grandmother) rebutted the statutory presumption that mother acted in the best interest of the child, "*before determining whether visitation would be in the best interest of the child.*"

Although the trial court made specific findings it did not make a specific reference to the statutory presumption and specifically that grandmother had overcome the presumption by clear and convincing evidence [PRACTICE TIP: be prepared to provide the court with proposed findings of fact and conclusions of law at the conclusion of your case or attach the same to your trial memorandum].

41. **Husk v. Adelman**, 281 Or App 378 (2016). CA158504. Mother's former partner was awarded third party visitation under ORS 109.119. The trial court was (mostly) upheld by the Court of Appeals, on a clear and convincing standard. Mother and her former partner were originally going to adopt a child together but later mother changed her position and adopted the child as her own. Several experts testified regarding the child's needs and whether mother's limitations on her partner's visitation schedule was appropriate and in the best interests of the child or self-serving and retaliatory. *De novo* review was requested but not adopted by the Court. Apart from the interesting fact pattern and the battle of the experts, this case is interesting in other respects. As to the "clear and convincing" standard required in ORS 109.119, when an "ongoing personal relationship" is present, the Court of Appeals made it clear that "... the clear and convincing standard of proof applies only to the courts' ultimate determination. The courts' subsidiary factual findings including [any of the statutory rebuttal factors] need only be found by a preponderance of the evidence ..." Mother did prevail in one aspect. The Court of Appeals reversed the trial court's order that partner receive access to child's medical and educational records, finding that such an order was beyond the authority granted to the court under ORS 109.119(3)(b) which provides only "visitation or contact rights." Finally, in a footnote, the court reiterated prior holdings that the constitutional requirements set forth in *Troxel v. Granville* 530 US 57 (2000) are satisfied once ORS 109.119 is applied properly.

42. **Holt and Atterbury**, 291 Or. Ap. 813 (2018). The Court upheld an award of custody of child to grandparents. In doing so it validated the construct that the Court is to use when determining if the birth parent presumption has been rebutted:

*"Further, when determining whether the presumption the legal parent acts in the best interest the child has been rebutted, "the court's focus is not in whether one or more of the statutory factors are present, but on whether the evidence as a whole is sufficient to overcome the presumption that the parent acts in the best interest of the child. * * * Put another way, "[i]n specific cases, the weight to be given to each of the five statutory factors, to the evidence supporting those factors, and to other relevant evidence, will vary." Id. at 823-824 (internal citations omitted)*

In contrast to **Jensen** (see case note 24), here the Court found that the child's residence with grandparents 5-6 days a week met the "day to day" basis requirement to establish a child-parent relationship under ORS 109.119(10(a)).

DEMONSTRATING HARM TO THE CHILD - WHAT IS ENOUGH?

Query: Is the court expecting empirical or objective evidence that a transfer to a birth parent's full custody from a psychological parent would cause psychological harm to a child? How does one establish such evidence? Perhaps, some children may have to actually suffer psychological harm to form an empirical base. If a child is psychologically harmed as a result of the transition, does this constitute grounds for a modification? How long does one have to wait to assess whether psychological harm is being done - 6 months? One year? Some guidance is offered from the following cases.

Although Amended ORS 109.119 provides that the natural parent presumption may be rebutted if "circumstances detrimental to the child exists if relief is denied," summary evidence that a child would be harmed through a transition to the custodial parent will not be adequate. In *State v. Wooden* [Case Note 8], the testimony of noted child psychologist Tom Moran, that moving the child now "would be devastating and traumatic" was not sufficient. The court was critical as to the narrow scope of Dr. Moran's analysis - he did not perform a traditional custody evaluation "instead, he offered an opinion - - based solely on his limited contact with the child - - on the narrow issue of the probable effect of awarding custody 'right now'." Moran was also rebutted by Dr. Jean Furchner, who recommended that custody be awarded to father after a transition period of between 6 to 12 months.

In the *Strome* case [Case Note 9], the court majority discounted the testimony of Dr. Bolstad (who, in contrast to Dr. Moran in *Wooden*, did a comprehensive evaluation including mental health testing) that found the children to be "significantly at risk." The majority preferred the testimony of evaluator Mazza who evaluated Father and the children only, albeit in a more intensive fashion. *Strome* reversed the trial court and awarded custody to father drawing a dissent of 4 members of the court.

Five members of the *Winczewski* court [Case Note 13], agreed that the facts demonstrated that birth mother was unable to care adequately for the children and that the children would be harmed if grandparent's were denied custody. That decision relied in part on the opinion of custody evaluator Dr. Charlene Sabin, whose report contained extensive references to mother's inability to understand the needs of the children; her unwillingness to accept responsibility for the children's difficulties and her very limited ability to distinguish between helpful and harmful conduct for the children. Viewing the same evidence through a different prism, Judge Edmonds and 4 members of the court determined that such evidence was inadequate to meet the constitutional standard. Judge Schuman and Judge Armstrong would have required evidence "far, far more serious" than presented to deny mother custody.

In the Supreme Court's *Lamont* decision [Case Note 16], the court specifically interpreted the "harm to child" rebuttal factor, ORS 109.119(4)(a)(B). Although the statutory language appeared to include a "may cause harm" standard, the Supreme Court adopted a limiting construction finding that "circumstances detrimental to the child" (ORS 109.119(4)(a)(B) "***refers to circumstances that pose a **serious present risk** of psychological, emotional, or physical harm to the child." The use of the reference to "serious

present risk” is significant. The court specifically rejected an interpretation that the birth parent presumption could be overcome merely by showing that custody to the legal parent “may” cause harm. *Id.* at 112-113. While helpful, this does not end the analysis. Although the harm may occur in the future, arguably an expert can testify that a transfer of custody to a birth parent presents a serious present risk of harm even though the actual harm may occur in the future. Regardless of how one articulates the standard, it is clear from *Lamont* and *Van Driesche* [Case Note 18] that expert testimony will be required to demonstrate harm to the child and likely be necessary in order to demonstrate deficits or incapacity of a parent.

The trend in recent cases is to focus on the current, not past, parenting strengths and weaknesses of the birth parent, particularly where the birth parent has made a substantial effort at rehabilitation or recovery. Recent cases also suggest that the importance of preserving the stability achieved with a third-party and avoiding the trauma due to a change of custody may not be sufficient to meet the “serious present risk of harm” standard. This is particularly so where the third-party and birth parent are cooperating [*Dennis*, Case Note 20] and a reasonable transition plan can be developed. On the other hand, a third party may be given favorable consideration when he or she has acted as the primary caretaker for a substantial period of the child’s life. [*Kleinsasser*, Case Note 37; *Eppler*, Case note 38].

DO CHILDREN HAVE CONSTITUTIONAL RIGHTS?

In the ongoing battles between birth parents and third parties, it seems that the rights of children have been largely ignored, except to the extent that the best interests standard is still considered on a secondary level. In *Troxel*, Justice Stevens in dissent found that children may have a constitutional liberty interest in preserving family or family-like bonds. In a challenge that does not appear to have been taken root in post-*Troxel* jurisprudence, Justice Stevens warned:

“It seems clear to me that the due process clause of the 14th Amendment leaves room for states to consider the impact on a child of possibly arbitrary parental decisions that neither serve nor are motivated by the best interests of the child.” 120 S. Ct. at 2074.

Contrast Justice Stevens’ opinion with the recent case of *Herbst v. Swan* (Case No. B152450, October 3, 2002, Court of Appeals for the State of California, Second Appellate District), applying *Troxel* and reversing a decision awarding visitation to an adult sister with her half-brother (after their common father died). The statute was determined to be an unconstitutional infringement upon the mother’s right to determine with whom the child could associate.

In *Winczewski* [Case Note 13], Judge Brewer, citing a number of cases from other states and literature from journals, noted: “In the wake of *Troxel*, courts are beginning to recognize that ‘a child has an independent, constitutional guaranteed right to maintain contact with whom the child has developed a parent-like relationship.’” 188 Or App at 754. Judge Brewer recognized that “***it is now firmly established that children are persons within the meaning of the constitution and accordingly possess constitutional rights.” 188 Or App at 752. But such rights are not absolute: “When the compelling rights of child and parent are pitted against each other, a balancing of interest is appropriate.” 188 Or App at 750. In the final analysis, however, Judge Brewer did not articulate the parameters of a child’s constitutional right and how that is to be applied, concluding only that a child’s constitutional right “to the preservation and enjoyment of child-parent relationship with a non-biological parent is both evolving and complex.” 188 Or App at 756. It would appear that Judge Brewer would be content to consider a child’s constitutional right as part of the best interest analysis, but only if the *Troxel* presumption has been rebutted. 188 Or App at 756. Commenting upon Judge Brewer’s analysis, Judge Schuman and Judge Armstrong were sympathetic to “a more sensitive evaluation of the child’s interest than *Troxel* appears to acknowledge,” but refused to accord to a child a free-standing fundamental substantive due process right. Rather, Judge Schuman and Judge Armstrong would accord a child “an interest protected by the state as *parens patriae*” rather than as a right. 188 Or App at 761.

In the 2003 and 2005 legislative sessions, this author proposed legislation (SB 804 [2003], SB 966 [2005]) which would mandate the appointment of counsel for children in contested custody third party v. parent proceedings, unless good cause was shown. Counsel would be appointed at the expense of the litigants, but each court would be required to develop a panel list of attorneys willing to represent children at either modest means rates or pro bono. The legislation stalled in committee in 2003 and 2005 with opponents citing cost considerations to litigants and that the court’s discretionary power was adequate.

For further information about the implications of *Troxel* on children and families, see: Barbara Bennett Woodhouse, *Talking about Children’s Rights in Judicial Custody and Visitation Decision-Making*, 33 Fam. L.Q. 105 (Spring 2002); *Family Court Review*, An Interdisciplinary Journal, Volume 41, Number 1, January 2003, Special Issue: *Troxel v. Granville and Its Implications for Families and Practice: A Multidisciplinary Symposium*; Victor, Daniel R. and Middleditch, Keri L., *Grandparent Visitation: A Survey of History, Jurisprudence, and Legislative Trends Across the United States in the Past Decade*, 22 J. Am. Acad. Matrimonial Lawyers 22, 391 (Dec. 2009); and Atkinson, Jeff, *Shifts in the Law Regarding the Rights of Third Parties to Seek Visitation and Custody of Children*, 47 F.L.Q. 1, 34 (Spring 2013).

TIPS AND WARNINGS

- ORS 109.121-123 (former grandparent visitation statutes) were abolished. Now, grandparents are treated as any other third parties seeking visitation or custody. Therefore a grandparent-child relationship which has languished for more than a year

may result in the loss of any right to make a claim. (However Grandparents are given some special consideration in juvenile court proceedings. ORS 419B.876)

- Although ORS 109.119 does not require the specific pleading of facts to support the rebuttal of the parental parent presumption, some trial courts have required this and have dismissed petitions without such allegations.
 - ORS 109.119 requires findings of fact supporting the rebuttal of the parental parent presumption. Be prepared to offer written fact findings to the court.
 - It may be appropriate to seek appointment of counsel for the children involved. ORS 107.425 applies to psychological parent cases. It mandates the appointment of counsel if requested by the child and permits the appointment of counsel at the request of one of the parties. Expense for the appointment is charged to the parties.
 - Custody and visitation evaluations are authorized upon motion at the parties' expense. This evidence is critical to the issue of the presumption as well as best interests of the child. An evaluator should be prepared to speak to issues of attachment (both to the birth parent and the third party); potential short and long term emotional harm if the child is placed with the birth parent or third party.
-
- The application of third party rights in the juvenile court has been substantially restructured. See ORS 419B.116; 419B.192; 419B.875; 419B.876 In 2003, the legislature created a new form of guardianship that would permit third parties to have custody of children under a court's wardship, but without the involvement of the Department of Human Services (DHS). (ORS 419B.366).
 - Request findings of fact pursuant to ORCP 62 at the outset of your case and be prepared to draft the findings for the court. This will reduce the likelihood of remand if an appeal is successful.
 - Whether representing a birth parent or a third-party, counsel should consider and present to the court a detailed transition plan to guide the court's decision in the event that a change of custody is ordered.

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COMPARISON - GUARDIANSHIP VS. PSYCHOLOGICAL PARENT STATUTES

ISSUE	GUARDIANSHIP	PSYCHOLOGICAL PARENT	NOTES
Can you seek Custody?	Yes ORS 125.315	Yes ORS 109.119(3)(a)	
Relatives Preferred?	Yes ORS 125.200	No (Except in Juvenile Court)	
Can you seek Visitation/Contact?	Maybe ORS 125.315	Yes ORS 109.119(3)(b)	Court has authority as an incident of guardianship
Prior Custody or Relationship Status Required?	No	Yes ORS 109.119(1)	<i>Troxel</i> presumption and ORS 109.119 rebuttal factors apply if a legal parent object to a guardianship - See <i>Burk v. Hall</i> , 35 Or App 113 (2003)
Ex Parte Status Quo Order Possible?	No (But see temporary custody below)	Maybe ORS 109.119(3)(a), ORS 109.119(3)(b), ORS 107.097	
Temporary Custody Possible?	Yes ORS 125.600	Yes ORS 109.119(3)(a)	Guardianship temporary fiduciary requires proof that is an immediate and serious danger to the life or health of the child.
Can Custody Evaluation Be Ordered?	Maybe*	Yes ORS 109.119(7)(a)	Guardianship Court can order a visitor, but it is not clear that the court's authority extends to ordering a custody evaluation.

Can Child Support Be Ordered?	Yes ORS 125.025(3)(k)	No statutory authorization, but see ORS 109.010	Custodian/Guardian Can Seek to be Representative Payee of Social Security Benefits For Child
Can Attorney Fees Be Awarded?	No	Yes ORS 109.119(7)(b)	
Standard of Proof Required	Clear and Convincing ORS 125.305	Preponderance ORS 109.119(3)(a)	
Can Order Be Modified/Terminated?	Yes ORS 125.225	Yes ORS 107.135(a) Also see ORS 109.119(2)(c)	Change of Circumstances likely required for modifications of ORS 109.119 Custody Judgments; Only Best Interests required for termination of Guardianship
Post Judgment Obligations	Annual Report Required ORS 125.325; Mult. Co. SLR 9.075(4)	None	

TRAVERSING THE CHANGING LANDSCAPE IN THIRD PARTY CUSTODY AND VISITATION CASES



MARK KRAMER, ATTORNEY

KRAMER & ASSOCIATES

MAY 9, 2019

**SFLAC/ OJD Family Law Conference, "Oregon
Family Law: Building for the Future."**



ORS 109.119– Who Is Entitled to Relief?



Any person, including a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage

Who has established emotional ties creating

A child-parent relationship

OR

An ongoing personal relationship



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ORS 109.119(10)(a) : Parent-Child Relationship Defined

Time

- a relationship that exists or did exist, **in whole or in part**, within the six months preceding the filing of an action
- which relationship continued on a day-to-day basis
- **Entire six months? Or part of six months?**

Place

- a person having physical custody of a child or residing in the same household as the child

Acts

- supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities
- provided the child with necessary care, education and discipline
- through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs

NOT

Unrelated foster parent for less than 12 months

Providing child care while parent works.

Jensen v. Bevard, 215 Or App 215, 218, (2007)



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ORS 109.119(10)(e): Ongoing Personal Relationship Defined



- a relationship with substantial continuity for at least one year,
- through interaction, companionship, interplay and mutuality

ORS 109.119(2) – The Hurdle



The Presumption: “[T]here is a presumption that the legal parent acts in the best interests of the child.”

Findings of Fact Required: “[T]he court shall include findings of fact supporting the rebuttal of the presumption”





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ORS 109.119(2) & -(3)

How to Obtain Visitation Rights



- 
- Rebut presumption by preponderance of the evidence (“greater weight of the evidence”)
 - Visitation in child’s best interests

- 
- Rebut presumption by clear and convincing evidence (the facts are “highly probable”)
 - Visitation in child’s best interests

ORS 109.119: Comparison of Rebuttal Factors in Visitation and Custody Cases – Non Exclusive Factors/Totality of the Evidence



Factor	Visitation ORS 109.119(4) (a)	Custody ORS 109.119(4) (b)
The petitioner/intervenor is or recently has been the child's primary caretaker	X	X
The legal parent is unwilling or unable to care adequately for the child		X
Circumstances detrimental to the child exist if relief is denied (psychological, emotional or physical harm)	X	X
The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner/intervenor	X	X
Granting relief would not substantially interfere with the custodial relationship	X	
The legal parent has unreasonably denied or limited contact between the child and the petitioner /intervenor	X	X
The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner/intervenor	X	X



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ORS 109.119: Procedural Considerations



- Motion to Intervene
- ORCP 33 governs

- Petition for visitation or custody

What
about
dormant
cases?

Troxel v. Granville, 530 US 57 (2000)

Dissents –

J. Scalia (substantive due process not triggered)

J. Kennedy (no harm to child required)

“Any person may petition the court for visitation rights at any time, including, but not limited to, custody proceedings. The court may order visitation rights for any persona when visitation may serve the best interests of the child whether or not there has been any change in circumstances.” RCW 26.10.160 (3) (1994).

“Special weight” given to parent’s decision.

J. O’Connor, Chief Justice Rehnquist, J. Ginsburg, J. Breyer

Washington statute unconstitutional on face because court supplants parent. J. Souter

Strict scrutiny applied to any infringement on parent’s childrearing rights. J. Thomas



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Modification Proceedings: Epler & Epler & Graunitz



In the underlying divorce between Mother and Father, both parents stipulated that paternal Grandmother have custody of granddaughter. Grandmother had custody for most of the child's life, including the 5 years prior to Mother's modification motion. Mother filed to modify custody and argued that she was entitled to the *Troxel*/ORS 109.119 birth parent presumption. The trial court denied Mother's motion finding she had failed to prove a "change of circumstances" and that even if she had, the best interests of the child required that Grandmother retain custody.

Mother appealed, and the Court of Appeals upheld the trial court, finding:

* When a biological parent stipulates to custody to a third party in an ORS Ch. 107 proceeding and then seeks to modify such judgment, ORS 107.135 applies and such parent will be required to demonstrate a substantial change of circumstances. Such stipulation serves as a rebuttal to the *Troxel* presumption.



Modification Proceedings: Epler & Epler & Graunitz



- * ORS 107.135 does not expressly apply to modification proceedings in ORS 109.119 actions; rather, ORCP 71(C) and the court's inherent authority applies. The *Troxel* presumption does not apply to ORS 109.119 modifications.
- * The parental fitness standard in *Troxel* third-party cases is broader than the parental fitness standard in ORS Ch. 419B juvenile court termination cases. (but broader than in Ch. 419B juvenile dependency cases)

The Supreme Court affirmed the Court of Appeals, but for different reasons, holding:

- * Because the custody to Grandmother was pursuant to a Ch. 107 dissolution proceeding that this case is not governed by the psych parent statute, ORS 109.119, but rather the modification statute, ORS 107.135
- * "Mother is not entitled to the *Troxel* presumption that her custody preference is in the child's best interest (at least as to the facts of this case)."
- * Mother was not prejudiced when she was held to the substantial change in circumstances rule.



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ORS 109.119: Narrowing of Third Party Custody Rights



Peak of Third Party
Rights: pre-
O'Donnell-Lamont

Can deprive parent of
custody on bases less
egregious than parental
termination case, but
unclear what will satisfy
standard.

See, e.g., Winczewski

Downward Trending:
State v. Wooden (2002)
onward
(fit parent prevails)



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ORS 109.119(4)(a)(A):
Third Party Is Or Recently Has Been Primary Caretaker



- Factor “focuses on the interest in **continuity of caregiving** and relationship between parent and non-parent.” *O'Donnell-Lamont*, 337 Or at 111.
- Important in: *GJL v. AKL*,

ORS 109.119(4)(b)(A): Parent is Unwilling or Unable to Care Adequately for Child



- “[C]onsideration of this factor does not allow the court to substitute its judgment for that of a parent in determining that the nonparent is *better* able to care for the child.” *O'Donnell*, 337 Or at 110 (emphasis in original).
- Where father is a prior felon, has committed domestic violence, and used illegal drugs, he made “great effort to change his past behaviors,” and therefore is able to care for child. *Dennis*.
- Third party must show that risky behavior is continuing. Drug use, exposure to domestic violence, emotional issues, exposure to gangs in past insufficient. *Nguyen*.
- Job as truck driver, residential instability, drug use, personal shortcomings as parent not factors. *Mulheim*.
- Mother's independence and recent history of caretaking weighs in her favor. *Sears*.
- Where there is no evidence parent engages in risky behavior in children's presence, this factor is non-persuasive. *Dennis*; *Strome*.
- Previous 10 months of father's commitment establishes present ability. *Strome*.
- Factor persuasive when parent unable to meet children's emotional needs, providing inappropriate information and failing to segregate parent's and children's needs. *Winczewski* (Deitz concurrence).



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ORS 109.119(4)(a)(B) & -(4)(b)(C): Circumstances Detrimental to Child Exist if Relief is Denied



- To rebut presumption, “the nonparent must demonstrate that the circumstances of living with the legal parent pose a serious risk of psychological, emotional or physical harm to a child.” *O’Donnell*, 337 Or. at 113.
- Need “serious present risk” and cannot speculate as to future harm. *Van Driesche*, *O’Donnell*.
- Likely requires expert testimony. *Van Driesche*.
- Past and generally isolated circumstances not persuasive. *Sears*.
- Temporary detriment not sufficient. *Wurtele*, *Wooden*.



ORS 109.119(4)(a)(C) & -4(b)(D):
Legal Parent Fostered, Encouraged or Consented to Relationship



- If so, legal parent “at least at one point, apparently believed that the relationship was beneficial, or at least not detrimental, to the child.” *O’Donnell*, 337 Or. At 115.
- Is two of six months enough? Unclear. *Nguyen*.
- In third party custody case, must foster a parent-child relationship (e.g., placement). *Mulheim*.



ORS 109.119(4)(a)(D):
Granting Relief Would Not Substantially Interfere with Custodial Relationship



- Court examines amount of time sought by non-parent.
- 49 days represents “considerable interference.” *GJL v. AKL*.
- 2/3 of weekends and half of all holidays is substantial interference. *Van Driesche*.



ORS 109.119(4)(a)(E) & -4(b)(E): Parent Has Unreasonably Denied or Limited Contact



- Focuses on potential harm to a child's interest if a parent terminates or limits a relationship with a non-parent. *O'Donnell*, 337 Or at 116.
- Threats to terminate relationship are relevant. *Nguyen, GJL v. AKL*,
- Not compelling if there is acrimony. *Van Driesche*.
- Practice tips: Parent should phase in new custody arrangement. *Dennis, Strome, Nguyen, Wurtele* (holding father's insistent on immediate change against him). Parent should live near third party. *Nguyen*. Parent should carefully consider offering reasonable visitation. *Winczewski*. Parent should not overstate case. *Mulheim* (father criticized for stating DHS placement was kidnapping/hiding).
- Parent is allowed to "reevaluate past choices." *Van Driesche*.



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ORS 125.200 vs. 109.119: Guardianship or Psych Parent?



ISSUE	GUARDIANSHIP	PSYCHOLOGICAL PARENT	NOTES
Can you seek Custody?	Yes ORS 125.315	Yes ORS 109.119(3)(a)	
Relatives Preferred?	Yes ORS 125.200	No (Except in Juvenile Court)	
Can you seek Visitation/Contact?	Maybe ORS 125.315	Yes ORS 109.119(3)(b)	Court has authority as an incident of guardianship
Prior Custody or Relationship Status Required?	No	Yes ORS 109.119(1)	Troxel presumption and ORS 109.119 rebuttal factors apply if a legal parent object to a guardianship - See Burk v. Hall, 35 Or App 113 (2003)
Ex Parte Status Quo Order Possible?	No (But see temporary custody below)	Maybe ORS 109.119(3)(a), ORS 109.119(3)(b), ORS 107.097	
Temporary Custody Possible?	Yes ORS 125.600	Yes ORS 109.119(3)(a)	Guardianship temporary fiduciary requires proof that is an immediate and serious danger to the life or health of the child.



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ORS 125.200 vs. 109.119: Guardianship or Psych Parent?



Can Custody Evaluation Be Ordered?	Maybe*	Yes ORS 109.119(7)(a)	Guardianship Court can order a visitor, but it is not clear that the court's authority extends to ordering a custody evaluation.
Can Child Support Be Ordered?	Yes ORS 125.025(3)(k)	No statutory authorization, but see ORS 109.010	Custodian/Guardian Can Seek to be Representative Payee of Social Security Benefits For Child
Can Attorney Fees Be Awarded?	No	Yes ORS 109.119(7)(b)	
Standard of Proof Required	Clear and Convincing ORS 125.305	Preponderance ORS 109.119(3)(a)	
Can Order Be Modified/Terminated?	Yes ORS 125.225	Yes ORS 107.135(a) Also see ORS 109.119(2)(c)	Change of Circ, likely required for modifications of ORS 109.119 Custody Judgments; Only Best Interests required for termination of Guardianship
Post Judgment Obligations	Annual Report Required ORS 125.325	None	



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Thank You



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Oregon Family Law: Building for the Future
May 9-10, 2019
Workshop

UCCJEA Full Faith and Credit Tribal Protective Orders

In this session, participants will learn about full faith and credit as it relates to the Violence Against Women Act (VAWA) and protection orders, the current impediments to enforcement of tribal protection orders in Oregon, and the work of the Tribal Court/State Court Judicial Forum to ensure that all foreign protection orders are given full faith and credit in Oregon to ensure that the most vulnerable survivors are protected.

Speakers

- ♦ *The Honorable Valeri Love, Lane County Circuit Court Judge*
- ♦ *The Honorable Karen L. Costello, Associate Judge of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians*

Judge Valeri Love was appointed to the bench in 2011. Judge Love's practice included both criminal and civil litigation. She began her legal career as a judicial law clerk to the Honorable Darryl L. Larson in 1995. She has previously worked as a Deputy District Attorney for the Lane County District Attorney's Office where she primarily handled domestic violence and financial fraud cases. Her civil litigation experience includes work as an attorney with Kelly L. Andersen, P.C. and with Gleaves Swearingen Potter & Scott immediately prior to her appointment to the bench. A Native Hawaiian, Judge Love moved to Oregon in 1986 after graduating from Punahou School in Honolulu. She obtained her Bachelor's Degree from Linfield College and her Master of Management and Law degrees from Willamette University. Throughout her legal career Judge Love has been involved with numerous organizations and activities including the Lane County Bar Association, Oregon Asian Pacific American Bar Association, and Oregon Women Lawyers. Judge Love served as the primary Juvenile Court judge from 2014 through 2016. She received the Chief's Justice's Juvenile Court Champion Award in August 2014. She returned to the downtown courthouse in January 2017. In addition to her general trial assignment, Judge Love is also a member of the criminal team.

Judge Karen L. Costello is a graduate of the University of North Dakota School of Law. She also holds BA and MA degrees in Music Theory and Composition from UND. She is currently licensed to practice law in Oregon, and in tribal courts in Oregon, Washington, North Dakota, and Wisconsin. She started her legal career in North Dakota working for the Spirit Lake Lakota Tribe through the Tribal Law Project of the University of North Dakota's Legal Aid Clinic. This led her to a position with Indian Legal Services serving the eleven federally recognized tribes of Wisconsin. She has advised and represented tribes and tribal members, nationally, both in individual cases and in matters of legal policy and justice systems development. She was instrumental in the development and planning of the first "Walking on Common Ground: Pathways to Equal Justice" meeting of tribal, state, and federal judges, and worked with the Native American Rights Fund (NARF) on its Indigenous Peacemaking Initiative. Beginning in 2008 she practiced in the law firm of Corrigan, McClintock and Costello, LLP. She formed her own firm in 2014, Costello Law Office, PC.

Full Faith and Credit for Tribal Protection Orders

Honorable Valeri Love, Lane County Circuit Court

Honorable Karen Costello, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

What is “Full Faith & Credit”?

Article IV, Section 1 of the U.S. Constitution:

“full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, and the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof”

Full Faith and Credit ensures that when a state issues a license, court order, judgment, or other decree it is honored in every other state.

Examples: driver’s licenses, marriage licenses, birth certificates, divorce decrees

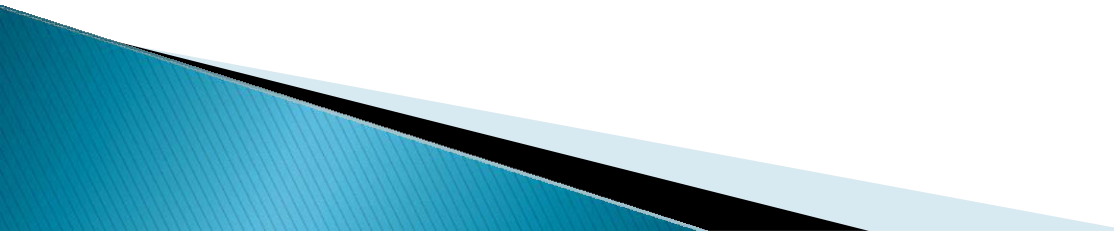


How are Protection Orders Given Full Faith & Credit?

VAWA's full faith and credit provision was enacted by Congress in 1994:

*“Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory [...] **shall be accorded full faith and credit by the court of another State, Indian tribe, or territory [...] and enforced by the court and law enforcement personnel of the other** State, Indian tribal government or Territory ... as if it were the order of the enforcing State or tribe.”*

-USC Title 18 § 2265



Protection Orders that Qualify for Full Faith & Credit

A protection order issued by a State, tribal, or territorial court is given full faith & credit under VAWA if:

- The issuing court has **personal and subject matter jurisdiction**, and
- **The respondent had reasonable notice and opportunity to be heard** sufficient to protect due process.
 - In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

Protection Orders that Qualify for Full Faith & Credit

A “protection order” is defined as any injunction, restraining order, or other order issued by a criminal or civil court for the purpose of prevention violence or harassment, sexual violence, physical proximity to another, or contact/communication with another. *18 U.S.C. §2266(a)*

This includes both temporary and final orders, as long as they were issued in response to a complaint, petition, or motion.

Protection orders can be called by many different names, but as long as it falls under the broad federal definition for “protection order,” it is given full faith & credit:

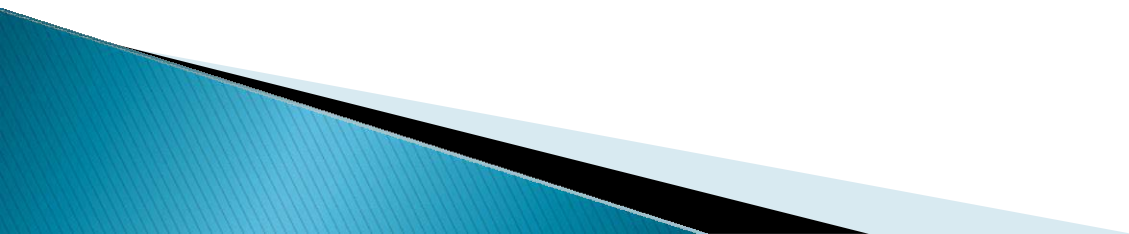
- Restraining orders
- No contact orders
- Stay away orders
- Injunction for protection
 - Ex parte order

Which protection orders AREN'T given full faith & credit?

Orders issued against both parties (where one petition or motion leads to a protection order issued for both the petitioner and the respondent) are not given full faith & credit

UNLESS...

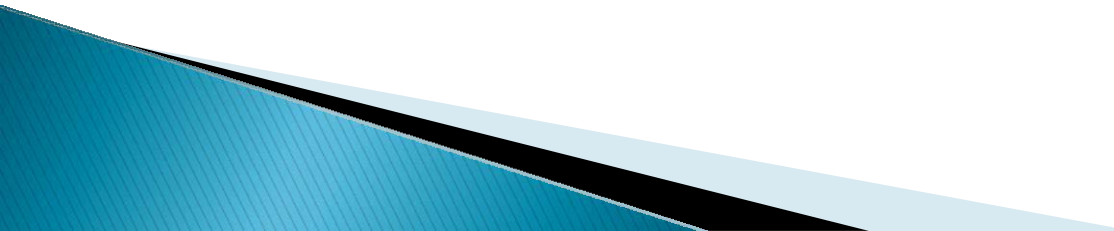
The respondent has filed a cross- or counter-petition for a protection order and the court made specific findings that each party was entitled to such protection.



Foreign Protection Orders

A “foreign judgment” is any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in Oregon. *ORS 24.105*

A foreign restraining order is any foreign judgment issued for the purpose of preventing violent or threatening acts or harassment against another person, contact or communication with another person, or physical proximity to another person. *ORS 24.190*



When does a foreign protection order become valid?

Immediately upon the arrival in this state of a person protected by a foreign restraining order, the foreign restraining order is enforceable as an Oregon order without the necessity of filing and continues to be enforceable as an Oregon order *without any further action by the protected person.*

UNLESS....



The Foreign Protection Order is NOT VALID when:

The person restrained by the order shows that:

- Lack of jurisdiction; **or**
- Lack of reasonable notice and an opportunity to be heard

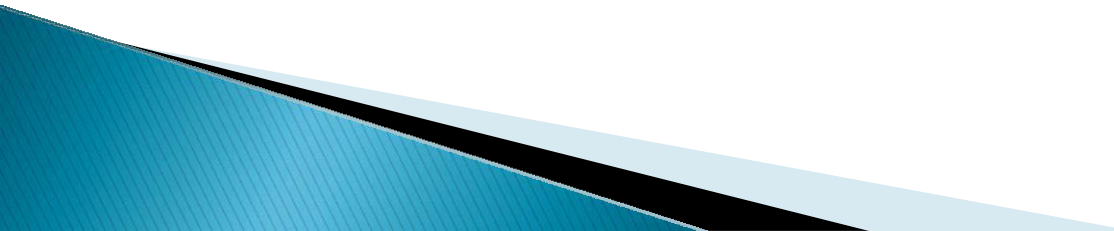
-- OR --

Dual restraining order was issued, unless:

- The person protected by the foreign restraining order filed a separate petition seeking the restraining order; **and**
- The court issuing the foreign restraining order made specific findings that the person was entitled to the order.

Enforcement of a Foreign Protection Order

Pursuant to the federal full faith & credit provision of VAWA:

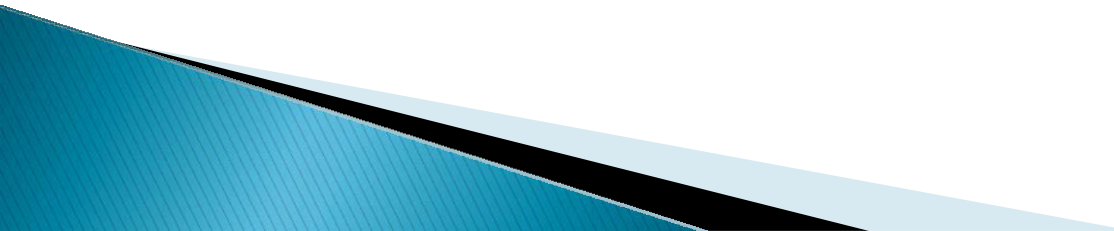
- Protection orders must be enforced even if they are not registered or filed with the enforcing jurisdiction's law enforcement or courts
 - The enforcing jurisdiction may not send notice to the respondent when a foreign protection order is registered or filed unless requested by the petitioner
 - States, tribes, and territories may not make publicly available on the Internet the filing, issuance, or registration of a protection order
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Enforcement of Protection Orders by Indian Tribal Courts

Tribal courts have jurisdiction to use their civil powers to enforce protection orders against non-Indians through civil contempt, exclusion, or other means.

Tribal courts have jurisdiction to enforce protection orders against Indians through misdemeanor criminal process, civil contempt, exclusion, or other means.

*Public Law 280 gives concurrent jurisdiction to some tribes and states over civil and criminal matters that arise in Indian Country. If a protection order issued by a PL 280 tribe is violated in Indian Country, the state shares concurrent criminal jurisdiction if the offense constitutes a crime under state law.



Mandatory Arrest- Protective Order Violation (ORS 133.310)

A peace officer shall arrest and take into custody a person without a warrant when the peace officer has **probable cause** to believe that:

There exists an order **issued pursuant to ORS 30.866**
(protective orders) restraining the person;

A true copy of the order and proof of service on the person **has been filed as required** in ORS 107.720 (proof of service to be delivered to sheriff); **and**

The person to be arrested has **violated the terms** of that order.



Mandatory Arrest- Foreign Protective Order (133.310)

A peace officer shall arrest and take into custody a person without a warrant if:

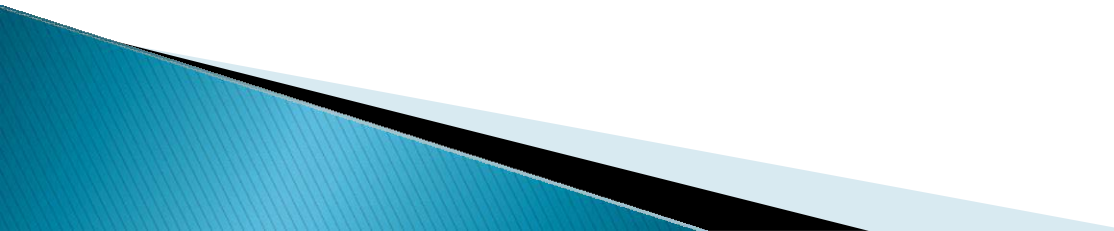
OPTION 1

- The person protected by a foreign restraining order as defined by ORS 24.190 **presents a copy** of the foreign restraining order to the officer and **represents** to the officer that the order supplied is the **most recent order** in effect between the parties and that the person restrained by the order has been **personally served** with a copy of the order or has actual notice of the order; **and**
- The peace officer has **probable cause** to believe that the person to be arrested has violated the terms of the foreign restraining order.

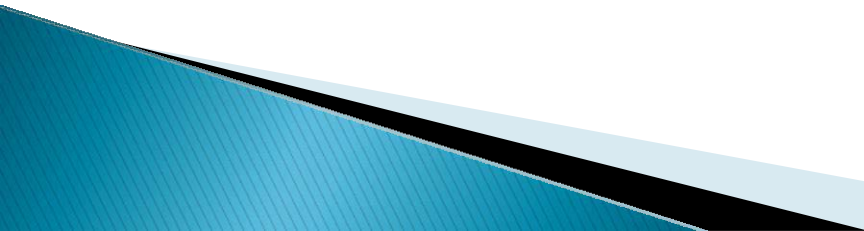
--OR--



Option 2:

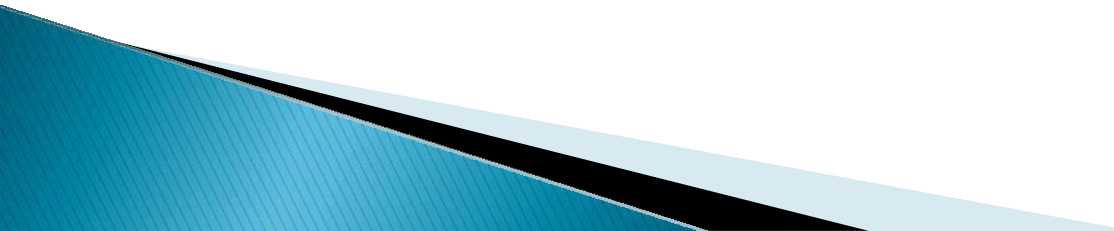
- The person protected by a foreign restraining order as defined by ORS 24.190 has **filed a copy of the foreign restraining order** with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data System or in the databases of the National Crime Information Center of the United States Department of Justice; **and**
 - The peace officer has **probable cause** to believe that the person to be arrested has violated the terms of the foreign restraining order.
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Options for Voluntary Entry Into LEDS

- A person protected by a foreign restraining order **MAY** present a true copy of the order to a county sheriff for entry into the Law Enforcement Data System maintained by the Department of State Police.
 - The county sheriff shall enter the order into the Law Enforcement Data System if the person certifies that the order is the most recent order in effect between the parties and provides proof of service or other written certification that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order.
 - Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the restraining order.
 - Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order.
 - The order is fully enforceable as an Oregon order in any county or tribal land in this state.
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VAWA- U.S.C. 18 § 2265

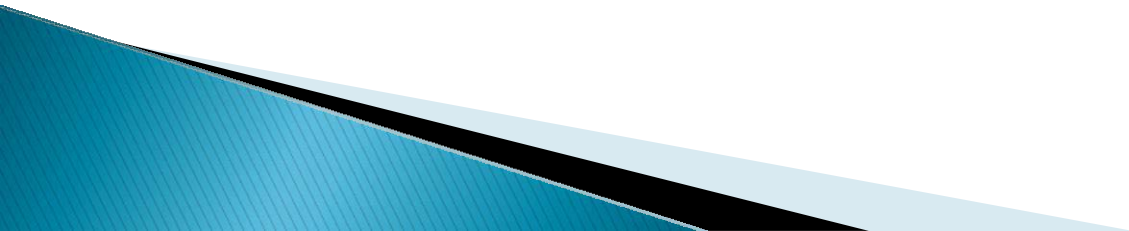
State, Indian tribe, or territory **shall not notify or require notification of the party against whom a protection order has been issued** that the protection order has been registered or filed in the enforcing state



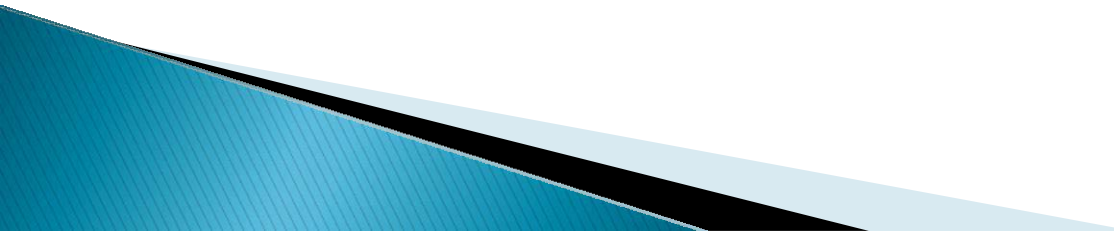
So...why is enforcement of a foreign protection order a problem in Oregon?

- Lack of coordination
- Lack of communication
- Lack of cooperation

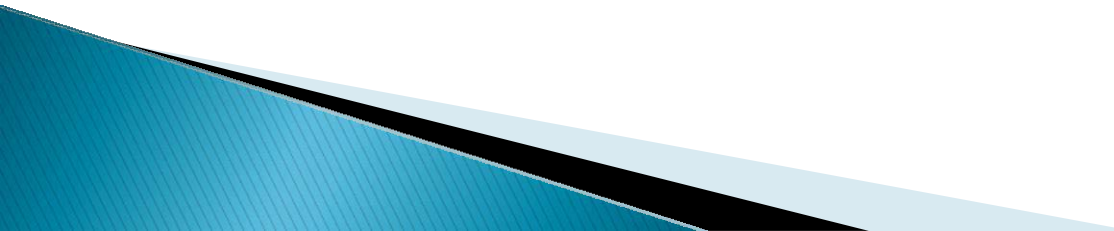
Collaboration, cooperation and education are crucial!



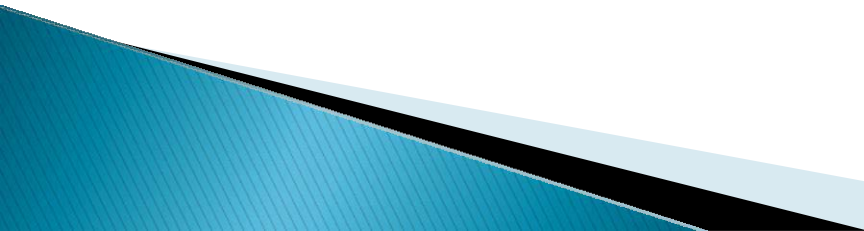
Issues We Are Facing

- Failure to meet full faith & credit requirements
 - Issues of law enforcement officers and prosecutors failing to recognize valid foreign protection orders
 - Issues with verification of protection orders and interjurisdictional sharing of information
 - Interpersonal obstacles
 - Limited service options
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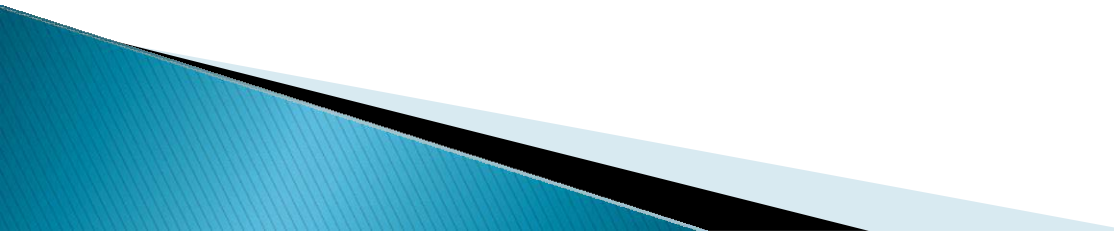
Issue 1: Failure to Meet Full Faith & Credit Requirements

- Lack of coordination and communication means that state law enforcement and prosecutors are unaware of the requirements for enforcement of a foreign order under VAWA
 - Law enforcement and prosecutors do not understand tribal code or the basis for tribal courts to issue the protection orders, putting the order's validity in doubt
 - Tribal courts' notice requirements may be different and this misunderstanding prevents enforcement of the order
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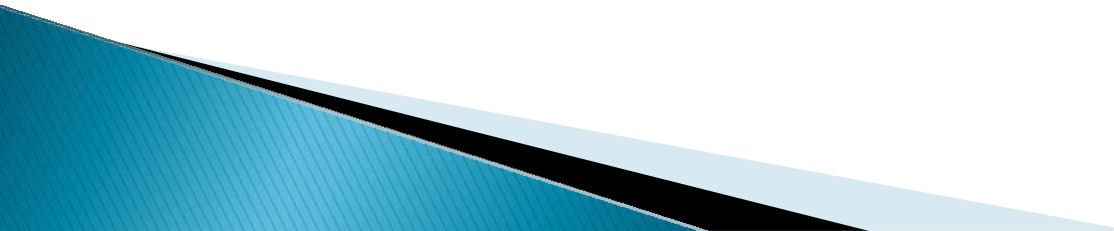
Issue 2: Law Enforcement Recognition of Protection Orders

- Tribal court orders look different from state court orders
 - Lack of training and understanding of what is required for the enforcement of a “foreign order” (ex. should law enforcement follow the laws of the issuing jurisdiction or the enforcing jurisdiction when enforcing a foreign protection order)
 - Lack of training and understanding that foreign orders do not need to be registered with new court/LEDS, and lack of training on how to enforce the order when the typical method of verification is not available (ie. LEDS)
 - Lack of training and understanding by prosecutors of their ability to file for a protection order violation
 - Lack of formalized process for survivors/petitioners to register their orders with the local county (if desired)
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Issue 3: Verification/Interjurisdictional Info Sharing

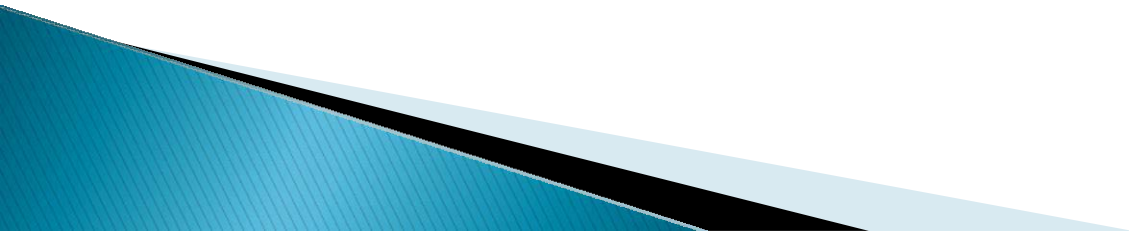
- Possible entry into State and Federal database systems
 - Sharing amongst Tribal and non-Tribal law enforcement
 - Sharing between Tribes and State prosecutors
 - Sharing among Tribal and State courts
 - Sharing between Tribes
 - Law enforcement officer's verification of orders is BEST PRACTICES, but violates VAWA/ Full Faith & Credit
 - Ability to prosecute requires a little more- need to confirm that the orders meet the necessary elements
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Issue 4: Interpersonal Obstacles

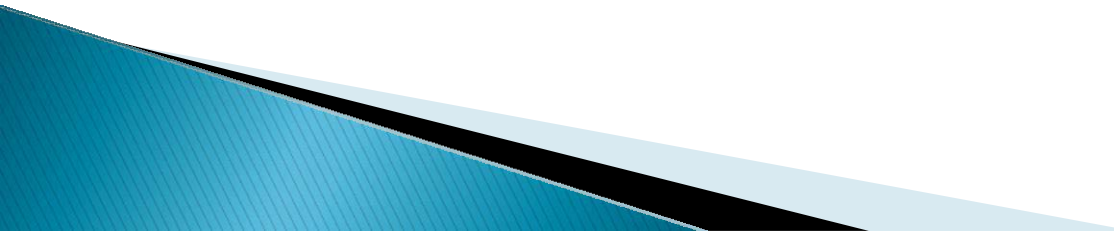
- Need to build trust, understanding and mutual respect between tribes and state agencies
 - Need to recognize the history and current concerns of individual tribes and their tribal justice systems
 - Need to recognize the sovereignty of tribal nations and understand that a solution that works “best” for the state courts and state law enforcement is not the goal, but rather a collaborative solution that works for everyone
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Issue 5: Limited Services

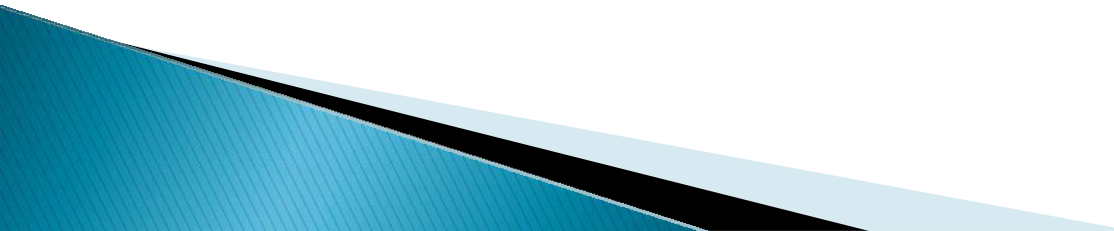
- Consider issues surrounding rural and isolated areas and the lack of services available to survivors
- Understand the limitations surrounding housing, transportation, emergency services, shelter services for native victims of domestic and sexual violence
- Differences in individual tribes



State/Tribal Court Forum Goals:

- Recognize the sovereignty of each tribal nation and their separate needs
 - Enhance collaboration between tribes and local county partners (courts, DAs, law enforcement) to determine the process, PO verification, enforcement plan
 - Potential Supreme Court order to appropriately enforce tribal (and all foreign) protective orders
 - Possible opinion letter from the AG's office to prosecutors to appropriately enforce tribal (and all foreign) protective orders
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State/Tribal Court Forum Goals:

- Understand what each tribe is able/ wants to do regarding verification of orders
 - Determine whether tribal courts can/want to enter the information for petitioners into NCIC database (through Tribal Access Program/ TAP)
 - Make sure that tribal advocates and petitioners know the process (if desired) to register orders ****NOT REQUIRED****
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State/Tribal Court Forum Goals:

- Create an enforcement guide for law enforcement and prosecutors that includes information on federal and state law, full faith and credit requirements, and tribe information
 - Create webinar training for enforcement of foreign protection orders
 - Deliver live trainings to state law enforcement agencies and prosecutors
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