

Voluntary Implementation Workgroup of the Oregon Task Force on Dependency Representation January 11, 2017

Background

When the Oregon Task Force on Dependency Representation (Task Force) concluded their work in August 2016, the Task Force asked for volunteers to serve on a workgroup to support the implement of the recommendations of the Task Force. The Voluntary Implementation Workgroup (Workgroup) included a subgroup of Task Force members as well as other child welfare and legal community stakeholders. The Workgroup met on a monthly basis, from September 2016 - January 2017. The Workgroup established a "Further Inquiries Subcommittee" to address areas that the Task Force said warranted further discussion, including: increased judicial resources; development of law school programs that foster a dedicated and diverse dependency workforce; reduction in the disproportionate placement of children of color in out-of-home care across the state; and improved compliance with the Indian Child Welfare Act. Additionally, the Further Inquiries Subcommittee was asked explore and recommend possible system efficiencies that could help reduce the costs of representation and maximize limited court time without negatively impacting the parents and children involved in these cases. This document includes the recommendations of the Further Inquiries Subcommittee as approved by the Voluntary Implementation Workgroup of the Oregon Task Force on Dependency Representation

Judicial Resource Recommendations

Recommendation #1: The Chief Justice should direct the Juvenile Court Improvement Program (JCIP) Advisory Committee to 1) study the education requirements other states have established for judges who handle juvenile cases, and 2) make a recommendation to the Chief Justice on whether or not Oregon should establish minimum educational and annual reporting requirements for Oregon Judicial Officers who regularly preside over dependency cases, and 3) if so, make a recommendation on what those educational requirements should be. Dependency law, child welfare policies, the science around child development, and methods for incorporating trauma-informed practices are constantly changing and improving. A minimum training requirement for judges could increase the likelihood that decisions made in dependency cases are based on the most recent law and policy and the most up-to-date science. It also would promote consistency and continuity in judicial practice around the state. However an educational requirement may be difficult to implement in small rural counties with only one or two judges, and if courts can only assign dependency cases to specially trained judges this may well limit the amount of docket time available for dependency cases as a whole. The JCIP Advisory Committee should examine how other states have addressed these and other potential challenges prior to making a recommendation to the Chief Justice.

Recommendation #2: Provide OJD with the resources necessary to implement recommendations from the recent National Center for State Courts' workload study. The National Center for State Courts, after conducting an in-depth study of Oregon's juvenile courts, recommended that OJD allot an additional 50 minutes of judicial time to each dependency case. At current filing rates, implementation of this recommendation would require three additional full-time juvenile judicial officers across the state.

Providing resources for OJD to implement this recommendation will allow for higher quality hearings, fewer problems in scheduling contested matters, more efficient and effective processing of dependency cases and ultimately a better use of attorneys' and parties' time across the state.

Recommendation #3: The Chief Justice should direct presiding circuit court judges to review the recent judicial workload study and assess whether or not their resource allocation for juvenile court is in line with the study's recommendations. NCSC's study of Oregon juvenile courts assessed the juvenile court needs of each judicial district, in addition to the needs of the state as a whole. This information may be helpful to presiding court judges' resource allocation and judicial management.

Recommendation #4: The Chief Justice should direct presiding circuit court judges to strive to increase the amount of judicial time spent on dependency cases in accordance with the National Center on State Courts' workload study recommendations. The addition of an average of 50 minutes per dependency case would allow for judges to spend additional in-court time implementing best practices and off-bench time to prepare for hearings and complete post-hearing work. To implement this recommendation effectively, presiding circuit court judges may need to consider whether or not implementation of the workload study recommendations requires reallocation of resources to juvenile court and/or a request for additional Juvenile Judicial Officers or Juvenile Court Clerks.

Disproportionality Recommendations

Recommendation #1: Require dependency practitioners, such as judges, CASAs, and attorneys for parents, children, the agency, and the state, to participate in trainings on cultural competence, trauma-informed practice, and reasonable/active efforts. National experts have identified these training topics as most critical to attorney efforts to decrease disproportionality and improve the treatment of children and families of color in the child welfare system. To ensure that practitioners have access to these trainings, entities that typically offer continuing legal education to Oregon dependency practitioners are strongly encouraged to seek out national and local experts and integrate these topics into training curriculums. Partners in child welfare work, including the Tribes, Department of Human Services, Citizen Review Board volunteers, foster parents, and community partner organizations should be included in these training efforts.

Disproportionality Recommendation #2: All entities in the juvenile dependency system should work together to actively engage in efforts to recruit and retain a dependency workforce that better reflects families in the dependency system. Entities that supervise or contract with dependency practitioners should perform internal assessments to determine how to better recruit and support a diverse workforce and then implement these findings. Efforts may include creating or expanding mentorship programs, pro bono programs, affinity groups, and/or new attorney recruitment efforts.

Indian Child Welfare Act Recommendations

ICWA Recommendation #1: All entities in the juvenile dependency system should work to ensure that dependency practitioners - such as judges, CASAs, and attorneys for parents, children, the agency, and the state - have access to at least one ICWA expert who can provide regular training, technical assistance and case consultation, if appropriate, to practitioners around the state. ICWA experts

engaged in dependency practice would provide training, technical support, and system oversight to improve ICWA compliance statewide. This could be done by attorneys who carry a small ICWA caseload. All entities in the juvenile dependency system should monitor court filings to ensure the prompt identification of ICWA eligible children, consult with practitioners on ICWA cases statewide, provide regular trainings to child welfare stakeholders and build relationships with tribal attorneys and Indian Child Welfare workers who have ICWA cases in Oregon courts.

ICWA Recommendation #2: Encourage the Oregon State Bar Performance Standards Work Groups to include specific standards related to education and training requirements on the ICWA for those attorneys who handle cases involving AI/AN children. Developing qualified ICWA expertise in regions where AI/AN children are overrepresented in foster care will improve ICWA compliance. Entities contracting with ICWA specialists should take into account the additional practice requirements and costs of cultivating ICWA expertise when structuring payment schedules and caseloads.

Recommendation #3: Revise Oregon Uniform Trial Court Rule 3.170 to waive the fee requirement and in-state attorney association requirement for tribal attorneys appearing in child welfare proceedings in Oregon courts. As a source of federal law, ICWA preempts state laws and rules regarding the unlawful practice of law. Under the reasoning of *Shuey*, tribal attorneys, just like non-attorney tribal child welfare representatives, should be able to exercise their right to represent the tribe in state child welfare proceedings involving their member children regardless of state law. Modifying Oregon UTCR 3.170 will reduce the burden on tribal-attorneys and increase compliance with ICWA requirements.

Juvenile Dependency System Efficiency Recommendation

The Chief Justice should direct presiding judges to convene a local, multidisciplinary work group to review and assess each court practice listed below with a goal of improving the effectiveness and efficiency of the juvenile dependency system for all system stakeholders. The Chief Justice should direct presiding judges to submit their report on their review to the Chief Justice and JCIP Advisory Committee. Presiding judges should ensure that the local multidisciplinary workgroup includes, at a minimum: the lead juvenile court judge; court administrator or supervisor; local CRB Field Manager; DHS branch management; attorneys who represent the state, agency, parents, and children; and a CASA program representative. (Local model court programs, where they exist, can serve as the local multidisciplinary work group.) At a minimum, the local multidisciplinary work group shall review and assess the need for and feasibility of implementing the following juvenile court practices:

- ***Allowing attorneys to appear telephonically or via video conference for certain brief, routine or short-notice dependency hearings when it can be done without compromising the rights of a parent or child***
- ***Establishing a consistent daily time for shelter hearings***
- ***Establishing consistent times and days for other juvenile court matters***
- ***Implementing a frequency of review schedule that is tailored to the nature of the case, respects the time of all parties, achieves better outcomes, and expedites permanency.***
- ***Preparing dependency judgments efficiently and timely by utilizing available court technology***
- ***Ensuring all parties have adequate opportunity to review judgments before they are signed by a judge***

- *Identifying specific procedures when complex judgments need more time and whether and when certain judgments should be prepared by the prevailing or moving party*
- *Increasing the use and effectiveness of settlement opportunities, including in-court conferences*
- *Establishing a local policy that elevates the priority of juvenile permanency matters (termination of parental rights and dependency trials) when court resources are not available to hear all matters scheduled for trial on a specific day.*

Differing county level practices in Oregon’s juvenile court system provide unique challenges for practitioners. There are certain practices that, if implemented statewide, could help reduce the costs of representation and maximize limited court time without negatively impacting the parents and children involved in these cases. However, because each community is unique, trying to adopt statewide solutions to improve the effectiveness and efficiency of the juvenile dependency system would be a challenge.

Since resources for all entities involved in the child welfare system are limited, or even strained, courts must take a leadership role in bringing local community stakeholders together for frank discussions of the obstacles that they face and how they might be overcome. These issues are best discussed and resolved at the local court through a court improvement work group, model court team, or other multidisciplinary group. Many Oregon courts have used local court improvement groups to address local system improvement issues specifically related to timeliness of hearings and permanency. Local courts and practitioners could benefit from reviewing how other counties may have successfully addressed similar challenges and made practice improvements.

OJD has acknowledged the leadership role it plays creating the culture of the court and justice system as it relates to docket and caseload management to ensure timely and affordable justice for Oregonians. The OJD has adopted the following overarching principles of caseload management:

1. The court controls the pace of litigation.
2. The court creates and maintains expectations that events will occur when they are scheduled.
3. The court schedules diverse case types differently and employs differentiated case management techniques where appropriate.
4. The court sets case processing goals and uses consistent data to monitor compliance with the goals.

Adherence to these principles and supporting practices is intended to provide maximum predictability of court procedures and outcomes.

This is our opportunity to make the system work –