

OFFICIAL MINUTES
OF
THE NEBRASKA SUPREME COURT
COMMISSION ON CHILDREN IN THE COURTS

JUNE 3, 2011

The regular meeting of the Nebraska Supreme Court Commission on Children in the Courts was called to order at the Nebraska State Bar Association at 635 S. 14th Street in Lincoln, Nebraska, on Friday, June 3, 2011, at 9:00 a.m., with Co-chairmen Hon. Everett O. Inbody and Hon. Douglas F. Johnson presiding.

Roll call was taken, as follows:

MEMBERS PRESENT

In Person:

Hon. Vernon Daniels; Hon. Larry Gendler; Hon. Everett O. Inbody (Co-chair); Hon. Douglas F. Johnson (co-chair); Hon. Paul Korslund; Hon. James Orr; Hon. Anne Paine; Hon. Linda Porter; Hon. Randin Roland; Hon. Patrick Runge; Hon. Linda Senff; Hon. Kenneth Vampola; Lynnette Boyle; Sen. Kathy Campbell; Christine Costantakos; Robert Goodwin; Rebecca Harling; Tom Harmon; Carla Heathershaw-Risko; Sarah Helvey; Alicia Henderson; Gwen Hurst-Anderson; Carole McMahon-Boies; Mary Jo Pankoke; Todd Reckling (for a part of the meeting); Carolyn Rooker; Dick Stafford; Stacey Conroy (for Sen. Ashford)

By Telephone: David Pantos; Fran Cassell (for Sen. Howard); Todd Reckling (for a part of the meeting)

MEMBERS NOT PRESENT

Hon. Curtis Evans; Hon. Patrick McDermott; Hon. Jodi Nelson; Jane Schoenike; Carolyn Stitt; Mark Ells; Marsha Fangmeyer; Elizabeth Waterman

OTHERS PRESENT

Ellen Brokofsky, [**State Probation**]; Debra Brownyard, [**Nebraska Office of Dispute Resolution**]; Kelli Hauptman, [**staff attorney, Through the Eyes of the Child Initiative**]; Melissa Townsend, [**Center on Children, Families and the Law**]; Corey Steele, [**State Probation**]; Janice Walker, [**State Court Administrator**]; and Vicky Weisz, [**Nebraska Court Improvement Director**].

I. SUBCOMMITTEE UPDATES:

- **Immigration Subcommittee (Judge Runge): Vicky Weisz** began the report until Judge Runge arrived. She reported that there has been progress in securing special immigrant juvenile status for children involved in juvenile court proceedings. A sample court order relating to the determination of the legal status of children will be posted on the “Through the Eyes of the Child” website. Report was also given by members of the Subcommittee who had attended the May, 2011, training entitled “Immigration Issues in Juvenile Court” given by Kristen Jackson, a presentation of the Spring lecture series sponsored by the Through the Eyes of the Child. The videotape of the training lecture will be posted on the “Through the Eyes of the Child” website in order that guardians ad litem and judges may access the training. Judge Inbody requested that efforts be made to explore setting up the training video as an interactive training event in order that it can count toward CLE credit.

- **Tribal and State Court Collaboration Subcommittee (Judge Orr):** Judge Orr reported that progress continues toward achieving collaborative efforts between State and tribal courts, as well as equal representation on this Subcommittee. He indicated that the Subcommittee has been working on a mission statement and also held an informal telephonic meeting during which they discussed various ideas, such as support for guardians ad litem who encounter ICWA issues, and the possibility of establishing an informational clearinghouse. The National Council of Family and Juvenile Court Judges has invited Judge Orr to participate in their planning efforts to help improve handling of ICWA cases.

- **Parenting Time Guidelines Subcommittee (Judge Senff):** Judge Senff reported on the status of implementing the parenting time guidelines which had been approved by the Commission on June 12, 2009. Specifically, she referred the Commission to Administrative Memo #7-2011, recently issued by the Nebraska Department of Health and Human Services on April 28, 2011, a copy of which was distributed to all Commission members. The purpose of the new Memo is to make Departmental staff aware of the parenting guidelines approved by the Commission, by imposing a directive requiring that the Department develop and submit to the court a parenting plan in all cases in which a

child is removed from the parent, or if no plan is developed, to state the reason for the deviation.

II. NEW BUSINESS:

- A. **Judge Inbody** read a letter from Judge Curtis Evans, who was unable to attend the meeting. Through his letter, Judge Evans suggested the formation of a new Subcommittee to discuss and propose the creation of a set of tailored rules of discovery for all juvenile court proceedings, especially given the potential for conflict between the timelines of existing discovery rules and new guidelines to conduct adjudication hearings earlier. Discussion was had regarding the suggestion.

Motion: *To create a Subcommittee to discuss the issue of discovery in juvenile court proceedings, subject to approval by the Nebraska Supreme Court (Movant: Carla Heathershaw-Risko)*
Motion passed by majority vote.

A sign-up sheet was circulated for those interested in participating in this Subcommittee, if created. Judge Inbody stated that he would approach the Nebraska Supreme Court regarding the proposal.

- B. **Bob Goodwin** inquired regarding the possibility of expanding the use of the videoconferencing pilot project being used by State probation. Specifically, he suggested 2 potential uses of videoconferencing: 1) by guardians ad litem to communicate with their children, and 2) by members of the Commission to participate in the Commission's regular meetings. He urged consideration of the fact that such uses of videoconferencing would be cost-saving to both the State and to counties. In addition, videoconferencing would result in better quality of representation by guardians ad litem, although not a complete substitute for in-person visits between the guardian ad litem and children in their placements.

Judge Paine indicated that the Guardian ad Litem Subcommittee will address the issue of videoconferencing for preliminary consideration, as the use of videoconferencing could impact the existing *Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings*. Bob Goodwin suggested that the Subcommittee involve Hank Robinson, of the Court I.T. division, to assist in this regard.

Janice Walker advised that it might be possible to use the State teleconferencing system for members to participate in NSCCCC meetings.

- C. **Dick Stafford** raised a concern regarding the fact that Madison County jail has a policy of “no contact” regarding visits between parents and their children. He proposed that the Commission consider looking at jail standards/policies as they apply to visitation between inmates and their children, in an effort to get the issues clearly focused.

II. SUBCOMMITTEE REPORTS AND DISCUSSIONS

A. Collaborative Practices in Child Welfare Subcommittee (Judge Roland):

Judge Roland reported that efforts for the Casey Foundation to become involved in research regarding the effectiveness and efficiency of the facilitated pre-hearing conferences were unsuccessful. He also stated that the Subcommittee had been concerned about the issue of funding running out regarding the provision of services for the facilitated pre-hearing conferences. Debora Brownyard, director of the Nebraska Office of Dispute Resolution (ODR), reported that a new 2-year contract is about to be signed between ODR and HHS regarding facilitated pre-hearing conferences, and that the program is no longer in the “pilot” stage, but a service resource for juvenile court judges through all phases of the case. Judge Inbody inquired as to whether the Fall agenda for judges can include a presentation regarding facilitated conferencing as a resource, to inform judges of its availability.

B. Delinquency Guidelines Subcommittee (Judges Daniels and Roland)

Judge Daniels identified that the initial charge of the Subcommittee was to review the revocation process with youth who would be committed to OJS for purposes of probation supervision. Judge Daniels reported that the Subcommittee began by reviewing the OJS statutes. He presented two main concerns on the part of the Subcommittee after their review of the OJS statutes: 1) the lack of statutory authority to directly commit a child to OJS for purposes of probation supervision, and 2) the absence of any process in the OJS statutes for revocation of a direct commitment to OJS custody for supervision purposes. He noted that there is inconsistency among counties as to how the issue of revocation is handled, e.g., in some counties, a motion for

revocation replicating a motion to revoke probation is filed, while in other counties, a motion for alternative disposition is used.

Additional questions and concerns raised by the Subcommittee resulting from their review of the OJS statutes include: 1) the source of authority for the position of juvenile services officer; 2) the source and scope of authority for a juvenile services officer to “supervise” a juvenile for purposes of probation supervision, in light of the lack of direct statutory authorization and the absence of case law; 3) while a juvenile committed to probation is required to be supervised by a State employee, it is possible that a juvenile committed to OJS for probation supervision could be supervised by a non-State employee, assuming OJS can contract out or delegate its supervisory authority to others such as KVC, NFC, etc.; 4) the ethical concerns for judges and attorneys arising from the fact that there appears to be no basis in law authorizing either a commitment to OJS for direct probation supervision, or for the “conditions of liberty” contract currently utilized by OJS in connection with its supervision of juveniles, and 5) the need for uniformity among the counties in these matters. Judge Daniels reported that the Subcommittee’s ultimate conclusion is that the clarification of these matters will be decided either by case law or by the Legislature. Handouts containing the Subcommittee’s concerns and a response by HHS/OJS were distributed to Commission members.

A lengthy discussion ensued among NSCCCC members regarding the origins and purposes of OJS; how a commitment to OJS operates; whether OJS has authority to conduct direct supervision of a juvenile comparable to that of a probation officer; whether there is a process for revocation of a juvenile committed to OJS; the effectiveness of a commitment to the YRTC; and the potential consequences if, in fact, OJS does not have legal authority to conduct direct supervision of juveniles, e.g., the fallout effect upon youth currently or previously committed to OJS custody for supervision, and the personnel implications for OJS employees, and potentially for the probation system; the success of the pilot project in Douglas County in reducing the number of cases under probation; the growing loss of services and care facilities for youth across the State; and L.R. 37, the interim study mandated by the Nebraska Legislature, regarding the issue of privatization of service coordination and its impact upon the delivery of services to juveniles and families.

Judge Gendler proposed that the NSCCCC require policymakers to come before the Commission and address the crisis caused by the “drying up” of services

for youth across the State, and by the lack of uniformity in the delivery of those services.

Motion: *“We are concerned about a lack of consistent resources available across our State and urge the policymakers within our State to address concerns, and to that end, we offer our resources to convene a meeting that will allow the opportunity for these issues to be discussed and addressed.”* (Movant: Judge Gendler) Discussion was had on the motion. Motion passed unanimously.

Further discussion was had and there was general agreement that the Delinquency Guidelines Subcommittee---as well as all other interested NCSSS members who might wish to participate---should meet with policy-makers to address these issues. Potential policymakers identified include but are not limited to NDHHS; the Nebraska Legislature; the Governor’s office; office of State probation; Medicaid provider; NACO; contracted service providers; and representatives of chambers of commerce.

Judge Roland reported that the Subcommittee had submitted an official Comment in opposition to the proposed court rules regarding court-appointed counsel, and discussed some of the deficiencies noted by the Subcommittee with respect to the proposed court rules. A handout was provided to NSCCC members regarding the Subcommittee’s concerns. Judge Paine interjected that the Guardian ad Litem Subcommittee also had submitted a written Comment opposing the proposed Court Rules regarding court-appointed counsel.

Motion: *That the NSCCCC ratify the act of the Delinquency Guidelines Subcommittee in submitting its comment to the proposed court rules regarding court-appointed counsel to the Nebraska Supreme Court.* (Movant: Judge Roland) Motion passed by majority vote.

Motion: *That the NSCCCC ratify the act of the Guardian ad Litem Subcommittee in submitting its comment to the proposed court rules regarding court-appointed counsel to the Nebraska Supreme Court.* (Movant: Judge Paine) Motion passed by majority vote.

C. Guardian ad Litem Subcommittee (Judge Paine)

Judge Paine reported that the Subcommittee was charged with the duty to review the report and recommendations of the NACC study of guardian ad litem representation in Nebraska, which study was mandated by the Nebraska Legislature in 2008. (***Evaluation of the Guardian Ad Litem System in Nebraska Conducted by the National Association of Counsel for Children, Pitchal, et. al., 2009***) After reviewing the report, the Subcommittee was to determine whether it wanted to make any recommendations.

Judge Paine reported that the Subcommittee has focused upon the issues of caseloads and compensation of guardians ad litem. The Subcommittee also produced a written comment to the proposed court rules regarding court appointed counsel, insofar as those proposed rules would impact guardian ad litem representation. She indicated that the next task the Subcommittee will address are concerns relating to inadequate guardian ad litem representation.

Two handouts produced by the Subcommittee were presented to Commission members for approval, consisting of proposed court rules that would: 1) limit to 60 the number of juveniles who can be represented by a guardian ad litem in all juvenile court proceedings at any one time, and 2) provide that all guardians ad litem for juveniles be compensated for services on an hourly fee, and not a flat-fee scale, and also require guardians ad litem to prepare and submit for approval by the court, a detailed billing statement of hours expended and services rendered. Discussion was had regarding both proposed court rules.

Motion: *That the NSCCC adopt the proposed Court Rule regarding limitation upon the number of juveniles represented by a guardian ad litem for juveniles, and forward the same to the Nebraska Supreme Court for approval. (Movant: Judge Daniels)* Motion passed, 16-8-1.

Motion: *That the NSCCC adopt the proposed Court Rule regarding compensation of guardians ad litem on an hourly, rather than a flat-fee basis, and forward the same to the Nebraska Supreme Court for approval. (Movant: Judge Daniels)* Motion passed, 20-4.

The meeting was adjourned at 3:01 p.m.

Next meeting: December 2, 2011

Respectfully Submitted,

Chris Costantakos
Recording Secretary

