

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

December 2, 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, December 2, 2011, at 9:00 a.m., with Co-chairman Hon. Everett O. Inbody presiding.

Roll call was taken, as follows:

MEMBERS PRESENT

In Person:

Hon. Vernon Daniels; Hon. Curtis Evans; Hon. Everett O. Inbody (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; Sen. Kathy Campbell; Fran Cassell (for Sen. Howard); Stacey Conroy (for Sen. Ashford); Christine Costantakos; Marsha Fangmeyer; Tom Harmon; Carla Heathershaw-Risko; Sarah Helvey; Alicia Henderson; Sen. Gwen Howard; Gwen Hurst-Anderson; Carole McMahon-Boies; Kathy Olson; Mary Jo Pankoke; David Pantos; Carolyn Rooker; Jane Schoenike; Carolyn Stitt; Elizabeth Waterman; Kerry Winterer.

By Telephone: Hon. Larry Gendler; Lynnette Boyle; Robert Goodwin; and Rebecca Harling.

MEMBERS NOT PRESENT

Hon. Douglas F. Johnson; Vicki Maca; Dick Stafford; Janice Walker.

OTHERS PRESENT

Chief Justice Michael Heavican [**Nebraska Supreme Court**]; Ellen Brokofsky, [**State Probation Administrator**]; Debra Brownyard, [**Administrative Office of the Courts**]; Michelle Chafee [**Legal Counsel to HHS Legislative Committee**]; Sheryl Connelly [**Administrative Office of the Courts**]; Sarah Forrest [**Voices for Children**]; Kelli Hauptman, [**staff attorney, Through the Eyes of the Child Initiative**]; Kathy Moore [**Interested Citizen**]; Jenna Perkins [**Center on Children, Families and the Law**]; Melissa Townsend, [**Center on Children, Families and the Law**]; Vicky Weisz, [**Nebraska Court Improvement Director**].

Minutes of the June 3, 2011, meeting were approved by the Commission with no additions or corrections.

I. LR 37 UPDATE

➤ **Sen. Kathy Campbell, Chairperson of the Health and Human Services Committee of the Nebraska Legislature**, presented a detailed report on the Committee's work to implement LR 37, the Legislative Resolution designed to investigate the child welfare reform initiative through the privatization of case management in 2009, and to report back by December 15, 2011. Sen. Campbell thanked the various collaborators who helped the Committee with the process in terms of providing reports, data, and surveys. While outlining the process utilized in implementing the requirements of LR 37, Sen. Campbell did not discuss the specific recommendations she anticipated the Committee to make. However, she did provide the Commission with her own specific observations, summarized as follows:

- That all of the reports, surveys, and briefings provided to the Committee, as well as the public hearings, conveying the viewpoint of others regarding the privatization effort were fairly consistent in the information and concerns reported.
- Privatization is a tool that can be used and has variations, and is presently the "lead agency model." At best, this tool is struggling mightily; at worst, in some cases, it is not succeeding at all.
- Privatization is not the same thing as child welfare reform. They are separate. But we have tried to look at this privatization effort, in some cases, as a panacea for all that we think might be wrong with the system and expect the private entities to solve everything that is wrong. However, in reality, much of the problems that the lead agencies have encountered have been somewhat of the same problems that existed before privatization. However, there is a need to look seriously at: what *do* we want in child welfare reform? And how would we use the different tools, of which privatization is one of them?
- From the beginning, there was no strategic plan. And to this date, there still is not a strategic plan for what we want in child welfare in the State of Nebraska. Over the last couple of months, the Department has put together an operational plan for how they see this working and a great deal of effort has gone into plan.
- At best, there has been only a rudimentary financial oversight and monitoring mechanism, and this caused great problems not only for the State, but for all contractors, including subcontractors.
- There is a lack of confidence that the reform initiative effort can succeed. The loss of services in the central western and northern service areas has been critical. Sen. Campbell noted that it is inspiring to look for the future in two of these service areas, the western and central, commenting that they have some of the very best statistics in terms of meeting national benchmarks, so that in spite of the problems, they are still very focused on moving forward and protecting

children. And to some extent, the spotlight has not shown on those services areas, and that should be done.

- A great amount of public dollars have been inserted into this effort, adding \$30.5 million at the end of last year. On top of that, great effort went into the private dollars that were put into this initiative. Some of the lead agencies have also put in over \$30 million into this effort. We have no way of accounting of knowing the amount of dollars that have been put into this also by the private subcontractors.
- We continue to struggle finding solutions to help the subcontractors in the central western and northern service areas in terms of their being left with unpaid bills.
- There is a continuing effort on the part of the judiciary committee, which will also be that of the HHS committee, to take a look at what is the proper location for the OJS juveniles. From our own research, the Committee has looked at this terminology of the “crossover kids,” meaning those who are in both the juvenile justice system and the child welfare system, also, or who previously had been.
- The LR 37 report’s emphasis is really on a pathway to the future. We want to try to put into place what needs to be done from a comprehensive stance in child welfare reform. Then, it will be up to our colleagues at legislature to determine the aspects of the plan that we put forward that they wish to adopt and put into place.
- Key point: in any place where child welfare reform has been a success in States, all three branches of government have come together. It cannot be done by the judiciary, the legislature, or the executive branch alone. What the Committee has seen is that there has not been a consistent way to formally bring all three branches of government together regarding the issue, and keep in place those three branches to work on this problem. And in the future, that is going to have to be the commitment of all three branches.

Sen. Campbell indicated that the Committee is involved in the process of developing specific legislation to be introduced in the January 2012 legislative session. She also advised that all written reports will be made available online.

- **Senator Gwen Howard, a member of the Health and Human Services Committee of the Nebraska Legislature,** also addressed the reform initiative, expressing concern that the safety of children has become minimized in the privatization process because child welfare cases that by policy, previously would have been referred to the county attorney for formal court filings, are now being referred to “voluntary services.” However, voluntary services may or may not be provided, and these families might be seen 30% of the time, at best. Sen. Howard also expressed concern that so many children now are being placed out of State and were never referred to Nebraska facilities for consideration.

- **Vicky Weisz, Nebraska Court Improvement Director**, referred the Commission to the written reports handed out, and summarized that judges and Through the Eyes of Child teams have seen a degradation in services in both the southeastern and eastern parts of the State, and also the rest of the State. The judges and Through the Eyes teams in the southeastern and eastern parts of the State continue to see a degradation in the case work following the move to complete privatization. In the rest of the State where it reverted back to Health and Human Services casework, there is an uptick and people are seeing it getting a little better. The aggregate perception of people is that things are worse now, than prior to the implementation of privatization.
- **Sarah Helvey** reported that the results of the Appleseed survey of attorneys who are guardians ad litem, and attorneys who represent birth parents and foster parents, disclose trends very similar to the trends reflected in the surveys of the judges and the Through the Eyes teams. There is a generalized lack of confidence in the system as privatization has unfolded.
- **Carolyn Stitt, Executive Director of the Nebraska Foster Care Review Board**, reported that the Board has observed an increase in worker changes, as well as HHS workers, as case management shifted back and forth between the systems. This has led to a repeated issue namely, the loss of case knowledge due to the number of people involved with the case, or the frequent changes in workers. This has led to another problem, i.e., missing documentation in the file regarding the case or the family. This documentation is essential for the courts, attorneys, federal reviews, and directly affect child safety. Ms. Stitt also expressed concern over the loss of infrastructure, in terms of therapists, placements, group homes and other providers. The Board will be releasing its report on December 5, 2012.
- **Kathy Moore** discussed the fact that Voices for Children compiled a lengthy history of child welfare effort which was provided to the Health and Human Services Committee in conjunction with LR 37, and which is currently available on the Voices website. She also concurred with Sen. Campbell's observation that the three branches of government need to work together in this effort.

- **Kerry Winterer, CEO of the Nebraska Department of Health and Human Services** concurred that collaboration with the three branches of government is extremely critical in terms of moving forward. He advised that it is not all up to HHS, but there are other entities that are and should become involved. He also emphasized that it important to engage the public and the private sector to assist, as well. Mr. Winterer explained that “reform” is not the same as privatization, stating that reform is a much larger effort aimed at improving the system and obtaining better outcomes, while privatization is a mechanism that can be used to accomplish that goal. Mr. Winterer acknowledged that thus far, the process has been a “bumpy ride” and has cost more money than the Department anticipated at the beginning, and it has been a difficult process. Nevertheless, he stated that he thinks progress is being made in the right direction. Mr. Winterer remained to field several questions and concerns expressed by numerous members of the Commission regarding the reform initiative.

- **Chief Justice Michael Heavican** commented regarding the importance of cooperation and working together, acknowledging that all present are trying to do that in a big way, and reminding everyone that this Commission has been offered to HHS as a forum to help find a way to move forward with a host of children’s issues. The Chief Justice encouraged everyone to remain as positive as possible through this very difficult situation, to focus upon “this is where we are at, and how can we do this better?”

- **Carla Heathershaw-Risko, Special Asst. Attorney General or the Nebraska Department of Health and Human Services**, presented information relating to a new risk assessment tool to be utilized by the Department that is intended to provide more consistency in assessing the risk of harm in the present as well as in the future.

Motion: *To establish a sub-committee from the Commission after the release of the Health and Human Services Committee’s report on LR 37 to study the recommendations of that report and to discuss how the Commission might be able to assist with the implementation of those recommendations. (Movant: Judge Gendler by telephone through Kelli Hauptmann)*

Motion passed unanimously by voice vote.

II. SUBCOMMITTEE UPDATES:

- **Parenting Act Implementation Panel. Debra Brownyard (Nebraska Office of Dispute Resolution)** reported that Speaker Flood has asked the Chief Justice to form a panel to evaluate how the Nebraska Parenting Act has been implemented thus far. Ms. Brownyard stated that the panel has two phases: 1) to advise what the evaluation should look like, and 2) to ascertain what information is desired.
- **Tribal and State Court Collaboration Subcommittee (Judge Orr):** Judge Orr led the discussion regarding ICWA training for new judges. Carole McMahon-Boise indicated that if there is a real need for training, a day-long training could be conducted for judges. Judge Inbody suggested that the tribal courts be included in such training, and also suggested that it might be helpful to build a State court-tribal court collaboration.

Jane Schoenike informed the Commission of the meeting of the National Consortium on Racial and Ethnic Bias to be held in Omaha on May 12 & 13, 2012.

***Motion:** That the tribal and State Court Collaboration subcommittee be directed to work with the Minority and Justice Commission and the NSBA to include a component regarding ICWA, to be added to the program of the National Consortium on Racial and Ethnic Bias meeting to be held in Omaha on May 12 & 13, 2012. (Movant: Judge Evans)*

Motion passed unanimously by vote.

- **Court Improvement Project (Vicky Weisz)** Vicky Weisz reported that the Nebraska Court Improvement Project was one of few bills passed by the Congress and signed into law by the President in September, 2011. She pointed out that there are new federal guidelines within the bill, including new timeframes for data collection and reporting, and new requirements designed to measure effectiveness. The new requirements are set forth in the handout provided to Commission members. She asked Commission members for feedback regarding things that they thought were being done well by the CIP, and what things should continue. A discussion was had, with numerous responses. One

suggestion was made for the CIP to explore what it might be able to do to help facilitate use of the “Justice” system.

- **Case Progression Standards (Judge Porter)** Judge Porter reiterated the case progression standards proposed by the sub-committee: first temporary custody hearing within 10 days; adjudication hearing within 60 days, unless good cause shown; disposition hearing within 45 days of adjudication. Judge Porter stated that the comments received in response to the proposed progression standards were predominantly negative, especially from judges. She indicated that judges would like to evaluate their performance in relation to *existing* statutory timeframes for hearings, before making changes to those timeframes. To that end, judges have expressed a desire for data about the case, such as how many children are in out-of-home care, length of placements, etc. to help them determine if they are doing a good job.

Judge Porter inquired as to whether the court administrator could provide this information. Gretchen Wiebe, a “Justice” business analyst for the court administrator’s office was available by telephone and confirmed that such data is obtainable and can be generated for review. Judge Porter indicated her willingness to provide Ms. Wiebe with information regarding the criteria to measure timelines between hearings, length of time to permanency, etc. Judge Porter indicated that the subcommittee will wait to see the data to determine if there is, in fact, a problem before making further recommendations.

II. NEW BUSINESS:

- A. **Mother-and-young child contact in jails: Vicky Weisz reported on behalf of Dick Stafford** that there is a lack of uniformity throughout the counties of Nebraska with respect to jail policies that govern contact between incarcerated mothers and their infant children. Overall, the trend appears to be toward permitting less contact, especially as more jails are acquiring video capability to accommodate such parent-child visits. If the Commission chooses to examine the issue further, it was recommended that the jails themselves be included in the assessment of the issue. Jane Schoenike suggested that the Jail Standards Board be contacted and to that end, offered to facilitate communication between

Dick Stafford, and the NSBA representative on the Jail Standards Board. Judge Inbody asked that Carolyn Rooker be included in that process.

III. SUBCOMMITTEE REPORTS AND DISCUSSIONS

A. Delinquency Guidelines Subcommittee (Judges Daniels and Roland)

Judge Roland led the discussion by way of follow-up to inquiries into diminished resources for children and families. He described the “Sydney Project” a concept involving the development of a substance abuse treatment commission. Judge Roland reported regarding potential buildings that may be used for the project. A small team has been formed which has outlined a rough 1-3-5 year program, and assuming they can get people there and funding, they would be ready to accept their first family. Vicky Weisz noted that the same model is also being explored in Omaha and Lincoln.

B. Guardian ad Litem Subcommittee (Judge Paine)

Judge Paine reported on the work of the subcommittee, which has met several times via telephone conference since the last Commission meeting. Judge Paine reported that the subcommittee had considered and discussed the following items relative to the goal of improving guardian ad litem representation:

- 1) Establishment of a clearing-house for complaints, possibly through the office of the Counsel for Discipline. Some sub-committee members expressed concern that this could easily target certain practitioners, especially effective guardians ad litem where parties, or others connected to the family, might disagree with the actions or recommendations of the guardian ad litem.
- 2) Inclusion in court orders of appointment a specific delineation of duties and authorities of the guardian ad litem.
- 3) Posting of complaint forms on the Supreme Court’s website that could be completed online in order to file a complaint against guardians ad litem.
- 4) Development of a hand-out containing an outline of the guardian ad litem duties, to be given to parties at hearings, or to be included in the current foster care provider information forms.
- 5) More training for guardians ad litem.
- 6) Development of a mentoring system, in which experienced guardians ad litem would help new guardians ad litem.
- 7) Increase the number of training hours required to be completed by guardians ad litem.

- 8) Conversion of the “Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings” to become enforceable court rules. All subcommittee members are in support of this.

Discussion was had regarding these topics and various concerns surrounding them. Judge Inbody proposed the preparation of a short checklist to assess how guardians ad litem—by name--are performing on all cases, which checklist would be disseminated to teams and judges, and then returned to Vicky Weisz and Kelli Hauptmann so they can review and determine whether there is a problem.

Motion: *That a short checklist be prepared by the guardian ad litem subcommittee to assess how guardians ad litem—by name--are performing on all cases, which checklist would be disseminated to teams and judges and then returned to Vicky Weisz and Kelli Hauptmann so they can review whether there is a problem. (Movant: Marsha Fangmeyer)*

Discussion had.

Friendly Amendment to Motion: *That a short checklist be prepared by the guardian ad litem subcommittee to assess guardian ad litem performance on all cases with respect to all hearings of substance, the exact details of said checklist to be left to the guardian ad litem subcommittee. (Movant, Patrick Runge)*

Motion as amended, passed unanimously by voice vote.

The meeting was adjourned at 3:09 p.m.

Next meeting: June 22, 2012

Respectfully Submitted,

Chris Costantakos
Recording Secretary

