

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

June 13, 2014

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 13, 2014, 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

Hon. Vernon Daniels; Hon. Curtis Evans; Hon. Larry Gendler; Hon. Thomas Harmon; Hon. Michael Heavican; Hon. Everett O. Inbody (Co-chair); Hon. Douglas F. Johnson (Co-chair); Hon. Anne Paine; Hon. Michael Piccolo; Hon. Linda Porter; Hon. Randin Roland; Hon. Linda Senff; Hon. Kenneth Vampola; Nathan Busch (for Vicky Maca); Michelle Chafee for Sen. Kathy Campbell; Christine Costantakos; Bob Goodwin; Kim Hawekotte; Carla Heathershaw-Risko; Sarah Helvey; Alycia Henderson; Corrie Kielty; Carole McMahon-Boies; Kathy Moore; Kathy Olson; Amy Peters; Liz Neeley; Julie Rogers; Dick Stafford.

MEMBERS PRESENT BY TELEPHONE

Robert Goodwin

MEMBERS NOT PRESENT

Hon. Paul Korslund; Hon. Patrick Runge; Hon. Elizabeth Waterman; Sen. Bob Krist; Sen. Brad Ashford; Lynnette Boyle; Marsha Fangmeyer; Rebecca Harling; Mary Jo Pankoke; David Pantos; Thomas Pristow; Carolyn Rooker; Kerry Winterer.

OTHERS IN ATTENDANCE

Ellen Brokofsky [**State Probation**]; Jeanne Brandner [**State Probation**]; Debra Brownyard, [**Administrative Office of the Courts**]; Shawne Johnson Coonfare [**Douglas County Juvenile Assessment Center**]; Kelli Hauptman, [**Staff attorney, Through the Eyes of the Child Initiative**]; Nick Juliano [**Crossover Youth Proactive Model Co-chair**]; Corey Steel [**State Court Administrator**]; Vicky Weisz, [**Nebraska Court Improvement Director**]

Minutes of the December 6, 2013, meeting were approved by the Commission.

I. SUBCOMMITTEE REPORTS AND UPDATES

➤ **Tribal and State Court Collaboration Subcommittee (Judge Runge):**

Judge Runge is the new Chair of this subcommittee. Because he was unable to be present, **Vicky Weisz** reported on his behalf, indicating that Judge Runge has been meeting with and talking to tribal judges individually, and also is arranging a lunch meeting to include a few tribal judges and a few State court judges to focus upon whether there is a need for better State court-tribal court collaboration; and if so, to identify some of the ideas and issues.

➤ **Guardianship Subcommittee**

Judge Harmon reported on 3 areas of concern for the subcommittee:

1. *Complaints regarding training for guardians.* The existing guardian training programs are geared almost exclusively for those serving as guardians for elderly individuals. Little is available in the way of training for those individuals involved in the juvenile court system who have foster children with the potential for adoption or legal guardianship. A couple of pilot programs for guardians are available in the Eastern part of the State. However, these programs have not been certified by the Court Administrator's office. The issue is that some of these programs for guardians are very light on training in the requirements necessary for guardians in order to report to judges re the wards in their charges. There is no legal or educational component to increase understanding of what needs to be done to meet the guardianship reporting requirements.
2. *Multiple aspects of guardianship law.* Judge Harmon stated that he has spoken with Judge Bazis (Douglas County Court) regarding these same issues. One concern is the fact that the majority of the training programs are centered in Omaha. Judge Harmon asked that the members of the Commission contact or email him if they encounter any kinds of issues with guardianships relating to children involved in court.
3. *The educational issue.* The current training program sponsored by NFAPA (Nebraska Foster and Adoptive Parent Association) might not be able to continue the educational portion of its guardianship training throughout the State.

Carole McMahan-Boies indicated that the new online guardian ad litem training program might suggest a model for developing a similar distance-

learning program to train legal guardians for children involved in juvenile court.

➤ **Parenting Act---Research Initiatives (Deb Brownyard)**

Deb Brownyard presented a Power Point regarding the “2002-2012 Custody Court File Research Study” relating to the Nebraska Parenting Act as it impacts children in district court custody proceedings. The first component of the research study constitutes a preliminary research study/custody court file analysis using case files examined through the Justice software system as well as paper files. The purpose of the study is to provide the Legislature and the public with a baseline of facts regarding what is happening for children in district court custody cases. An additional purpose was to provide a preliminary assessment of how the 2007 parenting act revisions have impacted custody cases, as well as to show the differences between the pre-2000 Parenting Act and the post-2007 Parenting Act revisions.

The second part of the research study was the 2014-2015 Comprehensive Evaluation of the Nebraska’s Parenting Act Revisions which examined data to assess whether the Parenting Act is achieving the legislative intent by meeting needs and expectations, thereby producing the outcomes of reducing children's exposure to parental conflict and reducing pressure on the court system.

The custody research study has been posted on the Nebraska Supreme Court’s website. The July, 2014 issue of the *Nebraska Lawyer* magazine will feature a summary of the Nebraska research study article by Professor Blankley.

The National Center for State Courts will conduct an evaluation of the entire Parenting Act research study including a custody court file analysis of 600 court files. The NCSC evaluation will: 1) Conduct a process evaluation to assess compliance with the statutory provisions; 2) assess outcomes of the Parenting Act Revisions, (e.g., are there less modification actions, less trials, and less re-openings of cases because parents are mediating and/or creating parenting plans? 3) conduct a cost-efficiency analysis, to determine whether the Parenting Act is cost-effective for families, taxpayers and the court system; and 4) incrementally examine some parenting plans to determine whether they contain the statutorily-required components and meet the needs of the children

A discussion was had among Commission members, after which the following Motion was made, using language offered by Deb Brownyard.

Motion: *We recommend that the Nebraska Supreme Court create a subcommittee within the Nebraska Supreme Court Commission on Children in the Courts called the "Parenting Act Subcommittee," to address issues regarding the court and justice system's implementation of Nebraska's Parenting Act as it affects parents and children, including such activities as:*

(a) Review and analyze the Nebraska 2002-2012 Custody Court File Research Study, as Supplemented by 2014 additional data, in order to forward recommendations to the Nebraska Supreme Court, Administrative Office of the Courts, and others;

(b) Review and analyze the National Center for State Courts' 2014/2015 comprehensive evaluation of the Parenting Act, due April 2015; and

(c) Other matters identified by the Commission and the Supreme Court.

(Movant: Dick Stafford)

Motion passed by unanimous vote on June 13, 2014.

➤ **Facilitated Conferences in Juvenile Court—(Deb Brownyard)**

Deb Brownyard provided a handout and presented an update reporting on system-level changes to the use of alternative dispute resolution services in juvenile court child welfare and juvenile justice cases, such as mediation, family group conferences or facilitated prehearing conferences, and victim-offender mediation.

She reported that HHS funding for family group conferencing will end on September 30, 2014, after which it will shift to the Supreme Court budget, with funding to come from the Legislature, subject to a first-year ceiling of \$215,000.00. However, HHS will continue to pay for these kinds of conferences in situations where participation by families is at the voluntary level, at least up until the point that the matter becomes a formally filed case. Where the matter becomes a formally filed case, services should be available as a resource for judges to order in juvenile court cases. As of October 1, 2014, the Office of Dispute Resolution (ODR) will be coordinating the payment for these services in juvenile court cases, as well as tracking utilization of the services and outcomes.

Thus, the main shift in payment will be that as of October 1, 2014, judge-referred service types in child welfare cases such as family group conferences; pre-hearing conferences; pre-hearing permanency review conferences; and pre-hearing conferences before termination of parental rights proceedings, will be paid for by the Supreme Court.

The Office of Probation Administration [OPA] will continue to pay for “Expedited Family Group Conferencing” [placement-only conferencing service] in juvenile justice cases, while the Administrative Office of the Courts [AOC] will pay for it in 3(a) [abuse/neglect/dependency] cases.

Child Dependency Mediation [CDM] (case-by-case mediation of *any issue* in a juvenile case) will end in September, 2014. Ms. Brownyard was uncertain how or whether it will be picked up, in order that judges can continue to utilize that service.

The ODR is working on a Statewide pilot program to offer “victim-offender mediation” [VOM] that will start in January, 2015, with actual services to begin next summer. Currently, VOM is included in the probation service-array so that juvenile court judges can order it.

She advised that the mediation centers are the best resources to help one learn which approach would be best in a given situation.

➤ **Improving Education Outcomes of Children in Foster Care (Chair: Judge Gendler)**

Judge Gendler presented the Commission with the new “Nebraska Juvenile Courts: Education Court Report” form created by the Subcommittee which is designed to assist judges in ensuring that the academic needs of court-involved children and youth are addressed, as well as the developmental needs of infants and toddlers. This form contains a series of questions designed to provide the court with pertinent information about a child’s educational needs and development. It is contemplated that the form would be distributed to all parties and other providers in both child welfare and juvenile justice cases. Judge Gendler indicated that the form will be used in connection with a pilot program, which will include core classes to assess whether a juvenile is performing at appropriate levels. The form is to be completed by the caseworker or the probation officer in conjunction with the school.

Discussion ensued, and it was noted that a space should be added to the form to reflect the juvenile’s preference as one of the factors bearing on the issue of best interests.

➤ **Guardian ad Litem Subcommittee (Judge Paine)**

Judge Paine requested guidance from the Commission regarding the future direction of the Subcommittee. The Subcommittee re-convened in 2010 to review the issues

raised by the NACC evaluation of guardian ad litem representation of juveniles in juvenile court proceedings authorized by the Nebraska Legislature in 2009. The Subcommittee also has explored several topics, including the creation of a more definite court order of appointment of a guardian ad litem setting forth duties and authorities; the formation of a clearinghouse for complaints concerning guardians ad litem; guardian ad litem-specific training for judges to deal with underperforming guardians ad litem; the creation of instructional sheets to be provided to interested parties at the outset of a case to explain the role and duties of the guardian ad litem; exploration of the feasibility of long-distance communication between the guardian ad litem and the juvenile using electronic means such as SKYPE; a guardian ad litem mentoring program; working with the NSBA to develop email links for guardians ad litem to communicate with more experienced guardians ad litem; and issues faced by outstate guardians ad litem. The Subcommittee also discussed that there is a need for recognition to be given to outstanding guardians ad litem rather than focusing only upon those who are underperforming. The Subcommittee also made efforts to have the Guardian ad Litem Guidelines become enforceable court rules; prepared and submitted a response to proposed uniform standards for court-appointed counsel; developed a standardized report form for guardians ad litem which was used by four different judges in connection with a pilot program covering three different counties, which form is now available on the Supreme Court's website; and developed two proposed court rules, one relating to caseload limits for guardians ad litem and the other relating to compensation for guardians ad litem on an hourly basis rather than a flat-fee basis. Members of the Subcommittee also assisted with the development of curriculum content for the new online basic guardian ad litem training.

It was suggested that possible issues for the Subcommittee to re-explore could include asking the Supreme Court re-consider elevating *the Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings* from guidelines to enforceable court rules; as well as to re-consider adopting the proposed rules on guardian ad litem caseload limits and compensation structure previously approved by the Commission.

A discussion ensued as to the value/of lack of value of using either the standardized guardian ad litem report form, or a type of checklist of guardian ad litem duties. Concern was expressed that the required initial basic 6-hour guardian ad litem training be considered for MCLE credit. A consensus of the Commission agreed that the Subcommittee should continue its work, with its primary focus to be on education and training relating to guardian ad litem representation.

Carole McMahon-Boies gave a presentation on the new online version of the mandatory initial 6-hour guardian ad litem training that is now available for attorneys. She stated that to-date, over 50 lawyers have signed up to take the course. She gave a PowerPoint presentation to convey to Commission members an idea of what the course actually looks like, and also explained the mechanics of accessing

and completing the course. The online course is divided into 7-modules and is progressive in that each module must be completed by an attorney before starting the next one. The course also contains interactive scenarios as well as quizzes that must be completed by the attorney.

Carol also explained that the Supreme Court Rule regarding guardian ad litem training recently was amended to require all attorneys desiring to be appointed as a guardian ad litem to take the basic course as sponsored by Judicial Branch Education. The basic training course can be live, but must follow the curriculum content of the online course. A nominal fee of \$25.00 will be assessed to access the online course. Once an attorney completes the course, then his or her name will be posted on the searchable list of approved guardians ad litem.

➤ **Children in the District Court Subcommittee (Judge Korslund)**

Vicky Weisz gave a report on behalf of Judge Korslund, who was not present. The Supreme Court recently agreed to post for public comment the proposed standards for court-appointed attorneys and investigators for children in district court proceedings. The standards will be posted within the next week or two, with closure of the comment period by the end of August, 2014.

Also, a report summarizing the results of a survey regarding current practices of judicial interviewing of children (included in handouts) addresses how courts obtain information from children involved in divorce/custody proceedings, e.g., talking to children in chambers, or eliciting information from children when they testify. Weisz pointed out that the “bottom line” of the survey indicates that the majority of judges talk to children in chambers with attorneys and court reporters present, although this is not the uniform practice in all courtrooms. The Subcommittee has decided that it does not want to create any proposed standards relating to judges obtaining information from children, partly due to the fact that there is no case law on the matter.

II. UPDATES

➤ **Juvenile Justice Reform Updates (Ellen Brokofsky)**

Ellen Brokofsky, Administrator of State Probation, commented upon the status of affairs since the passage of LB 561 and LB 464, (which expands juvenile probation services on a State-wide basis). She noted that things are positive and appear to be going really well and noted that the Office of Probation Administration [OPA] will be adding approximately 90 new officers in the Fall. She also indicated that overall the judiciary has responded very

cooperatively to the reform. OPA has been contacted by OJJDP (Office of Juvenile Justice Delinquency which is very interested in reporting on the Nebraska juvenile justice reform.

She indicated that OPA is very focused upon building infrastructure, and identifying and partnering with key stakeholders, in order to move away from State-sponsored payment and move toward community-based services.

She stated that OPA is working toward the goal that every judicial district have the same service opportunities, or service options. Although every judicial district might not have a residential group home, she stated that the goal is for every judicial district to have a template in place that offers the district certain kinds of things such as detention alternatives, foster care, or electronic monitoring, and access to certain levels of service. Probation is very involved in JDAI—including pre-adjudication supervision and detention alternatives, and also supports the Crossover Youth program in Douglas County.

Ms. Brokofsky stated that OPA and HHS are working together to find a better way to address mental health issues for children, and are focusing on insuring that services are matched to the child's treatment needs. OPA has also partnered with behavioral health, another "pillar" in the infrastructure. She reported that the Sherwood Foundation has approached OPA and agreed to provide a planning grant to provide MST (Multisystemic Therapy) and provide certification for providers in all of the judicial districts so that providers do not have to pay on their own to get certified in training.

OPA is also working on very comprehensive reentry program so that when juvenile exits the YRTC he/she will have meaningful interaction with the family as well as a court-approved plan that will carry on into the community when the juvenile returns home.

Corey Steel advised that Court Administration is now the source of funding for crossover expansion, and indicated that any jurisdiction that wishes to become involved in the program to contact him.

➤ **Crossover Youth Project (Judge Johnson and Nick Juliano)**

Judge Johnson and Nick Juliano, co-chairs of the Crossover Youth Practice Model, reported positive outcomes from Douglas County's implementation of Georgetown University's Center for Juvenile Justice Reform Crossover Youth

Practice Model (CYPM). “Crossover Youth” are juveniles involved in both the child welfare and the juvenile justice systems, who typically remain involved in the system for a longer period of time. Because there is a clear correlation between child abuse/neglect as a risk-factor for delinquency, preventing child abuse and neglect can become a deterrent for delinquent behavior.

Goals of national crossover youth practice model are to reduce recidivism; reduce crossover youth; reduce out of home care; and reduce detention. However, Douglas County opted to look at additional factors such as where youth are residing; school attendance; legal involvement regarding recidivism at different levels; the prosocial activities in which youth were involved both prior to and after the project. Douglas County's form of the crossover youth practice model is the “collaborative process” that engages both the youth and the parent/guardian when a filing occurs. Specifically, results in Douglas County have shown fewer filings and better case management, with the overall result of helping youth and families.

Nick Juliano, along with **Shawne Johnson Coonfare**, a community resources analyst at the Juvenile Assessment Center in Douglas County, provided explanation and commentary in conjunction with a Power Point presentation showing research results from the use of the crossover practice model in Douglas County. Douglas County’s target population is much narrower than the overall target population insofar as the Douglas County model identified as its initial target population those juveniles who were referred to the county attorney’s office for delinquency/truancy/status offense and who had an open/closed child welfare case as a victim within the last 12 months.

Shawne discussed case planning and team meeting outcomes from the project, as well as research findings regarding the public-private partnership involvement in the project, including but not limited to the Omaha public Schools and Nebraska Families Collaborative. Nick also discussed the practice goals and the process goals as well as long-term outcomes for foster children and children involved in juvenile justice system.

➤ **Court Improvement Project Updates (Vicky Weisz)**

Vicky Weisz reported that a new project, the Infant-Toddler Project, will begin on July 1, 2014, funded by the Sherwood Foundation, as an extension of our court improvement project. She also indicated that the 4-year grant from the

federal HHS SAMHSA (Substance Abuse and Mental Health Services Administration) for drug court will be ending.

III. NEW BUSINESS:

➤ Foster Care Review Office (Kim Hawekotte)

Kim Hawekotte indicated that the FCRO would like to track probationary youth, in and out of the home, in connection with its case reviews. She stated that there is a conflict between the probation statutes which authorize the release of probation records only upon order of the court and the FCRO statutes which authorize the Office to review case files. She indicated that the Office is working on developing proposed court orders to address the issue.

➤ Miscellaneous

Judge Johnson reported that Douglas County may have a Trauma audit. He also indicated that Douglas County celebrated its 5th annual National Reunification Day picnic.

The meeting was adjourned at 3:16 p.m.

Respectfully Submitted,

Chris Costantakos
Recording Secretary

NEXT COMMISSION MEETING:

December 5, 2014