

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

**June 14, 2013**

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. 14<sup>th</sup> Street in Lincoln, Nebraska, on Friday, June 14, 2013, 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. Larry Gendler; Hon. Thomas Harmon; Hon. Michael Heavican; Hon. Everett O. Inbody (Co-chair); Hon. Douglas F. Johnson (Co-chair); Hon. Paul Korslund; Hon. Anne Paine; Hon. Linda Porter; Hon. Randin Roland; Hon. Patrick Runge; Hon. Linda Senff; Hon. Elizabeth Waterman; Lynnette Boyle; Sen. Kathy Campbell; Stacey Conroy (for Sen. Ashford); Christine Costantakos; Marsha Fangmeyer; Rebecca Harling; Kim Hawekotte; Carla Heathershaw-Risko; Sarah Helvey; Alicia Henderson; Corrie Kielty; Carole McMahon-Boies; Kathy Moore; Kathy Olson; Amy Peters; Mary Jo Pankoke; Julie Rogers; Carolyn Rooker; Dick Stafford; Kerry Winterer.

**MEMBERS PRESENT BY TELEPHONE**

Robert Goodwin

**MEMBERS NOT PRESENT**

Hon. Curtis Evans; Hon. James Orr; Hon. Kenneth Vampola; Sen. Bob Krist; Vicki Maca; David Pantos; Jane Schoenike

**OTHERS IN ATTENDANCE**

Ellen Brokofsky [**State Probation**]; Debra Brownyard, [**Administrative Office of the Courts**]; Sheryl Connelly [**Administrative Office of the Courts**]; Shannon-Jo Hamilton [**Voices for Children**]; Kelli Hauptman, [**Staff attorney, Through the Eyes of the Child Initiative**]; Barb Nissen, [**Nebraska Foster and Adoptive Parents Association**]; Thomas Pristow [**Nebraska Department of Health and Human Services**]; Corey Steel [**State Probation**]; Melissa Townsend [**Center on Children, Families and the Law**]; Janice Walker [**State Court Administrator**]; Vicky Weisz, [**Nebraska Court Improvement Director**]

Chief Justice Heavican addressed the Commission members and thanked them for their dedication and perseverance in pursuing good outcomes for children.

Minutes of the December 7, 2012, meeting were approved by the Commission with no additions or corrections.

## I. PRELIMINARY MATTERS

### ➤ Training for Legal Guardians

**Sheryl Connelly, [Administrative Office of the Courts]** explained that there are no educational requirements for persons appointed to serve as guardians for juveniles pursuant to the Nebraska Juvenile Code, as there are for guardians appointed under the Nebraska Probate Code. In addition, much of the current training in county court is geared toward guardians for elderly or incapacitated adults. The Nebraska Foster and Adoptive Parents Association (“NFAPA”) has requested approval as a provider of education for guardians appointed for juveniles under the Nebraska Juvenile Code. To that end, written materials prepared by NFAPA were provided to Commission members regarding the NFAPA training proposal. **Barb Nissen**, appearing on behalf of NFAPA, explained that the NFAPA training proposal seeks to give guardians the tools they need to understand their rights and responsibilities as guardians for juveniles appointed under the Juvenile Code. She also summarized portions of a letter written by a former guardian detailing concerns relating to the need for guardians to understand what their duties are as a guardian and the need to fulfill those responsibilities, such as the need to report a payment received or concerns with the child’s birth family. Families would pay out-of-pocket for the guardian training sponsored by NFAPA. **Judge Harmon** indicated that he would be open to using the NFAPA training in Douglas County and is willing to attend one of the NFAPA guardian training sessions to assess the program.

**Kathy Moore** suggested that judges might prepare a videotaped presentation on the legal aspects of guardianships for juveniles for use by NFAPA in their training, which would dispense with the necessity of requiring a judge to attend each training. **Judge Gendler** raised certain issues that he felt are in need of clarification regarding guardianships established under the juvenile code and expressed the desire that there be one uniform system or practice regarding these kinds of guardianships.

**Motion:** *“That a guardianship subcommittee be created immediately.” (Movant: Judge Gendler)*

Motion passed unanimously by voice vote.

## II. SUBCOMMITTEE REPORTS AND UPDATES

### ➤ **Immigration Subcommittee (Judge Runge):**

**Judge Runge** reported that the Subcommittee has started developing educational resources for members of the bench and of the bar in order for both to have readily-available information regarding immigration issues.

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

**Judge Paine** reported on the status of the pilot project which began on June 1, 2013, to use the new standardized guardian ad litem report forms in four different juvenile court courtrooms in Nebraska: Judge Daniels; Judge Johnson; Judge Paine; and Judge Senff. The subcommittee has formulated survey questions for attorneys and judges prior to the use of the new form and will re-survey again at a later time. Initial reaction to the use of the form by some attorneys has been positive, insofar as the form tends to be helping guardians ad litem better organize their information.

**Carole McMahon-Boies** reported that work has begun on building courses for the mandatory initial 6-hour guardian ad litem training, with the hope of launching the program in the late Fall. This will also include a distance-learning platform. \$30,000 was given for this project from the SJI, as well as additional funding from the Court Improvement Project, for a total of approximately \$42,000. Because of the extra funding, some additional 3-hour courses will be launched which will meet the annual 3-hour guardian ad litem training requirement.

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

**Judge Orr** has resigned as the Chair of this subcommittee and from the Commission. Judge Inbody announced that a new Chair is needed for this subcommittee and invited suggestions from any member of the subcommittee who might have any ideas about possible candidates to fill this position. A discussion ensued regarding ICWA cases and tribal court issues in various counties.

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

**Judge Korslund** reminded the subcommittee that Chief Justice Heavican had asked that this subcommittee be reconvened largely because of the Parenting Act. The subcommittee has met 3 times telephonically since the last Commission meeting. The subcommittee has revised its "Proposed Standards for Attorneys and Court Appointed Investigators for Children in District Court"

which had been previously submitted to the Supreme Court in 2006, but with no action taken on them. Revisions to the standards have been made to accommodate the Parenting Act, and a handout including the original proposed standards along with the new revisions was provided to Commission members.

Given that the role and abilities of a guardian ad litem for children in district court proceedings are not the same as those of a guardian ad litem in juvenile court proceedings, Judge Korslund explained that the subcommittee is calling for the creation of a court-appointed “best interests attorney” for children and a fact-finding “investigator” in district court proceedings.

He pointed out the most important revisions, which are found in the Commentary on page 3; the list of reasons as guidance for judges on page 22, outlining some guidance for judges regarding situations under which a judge might consider appointing either a lawyer for the child or a best interest attorney and a court-appointed investigator; and on page 30, which contains a sample order of appointment listing the reasons for appointment as shown on page 22. The subcommittee is also examining the possibility of developing standards for interviewing children.

**Vicky Weisz** outlined the changes to the proposed standards in more detail.

**Judge Korslund** stated that the subcommittee would like the Counsel for Discipline to review the ethical aspects of the proposal for the best interests attorney, such as the duty to report any alleged abuse, as well as other nuanced issues such as disclosure of the children’s preferences by the best interests attorney, to make certain that the proposal comports with appropriate ethical procedures. Subcommittee member **Lynnette Boyle** conveyed the concern regarding “who is the client?” when the best interest attorney represents only the concept of the child’s best interest but is not an attorney or guardian ad litem for the child. She also conveyed concern regarding the situation where the best interest attorney is appointed to represent the best interest of several children in a situation such as one involving inter-sibling sexual abuse, where the recommendations of the best interests attorney are likely to favor one child, but oppose or inadequately represent those of another child.

The Commission recessed for approximately 26 minutes to continue review and consideration of the proposed standards, after which the meeting resumed and further discussion took place.

**Motion:** *To send the proposed standards for attorneys and court-appointed investigators for children in district court to the Nebraska Supreme Court for review and to the Lawyers Ethics Advisory Committee of the Nebraska State Bar Association for its input. (Movant: Judge Korslund)*

Discussion was had. Alicia Henderson pointed out that the language on page 17 of the proposed standards should be revised from reading that the child's attorney "may" have a duty to report child abuse and neglect, to "shall" or "has" a duty to report child abuse and neglect.

**Motion for Friendly Amendment to Main Motion:** *To do everything in the main motion, and to change the language on page 17 which presently reads "the child's attorney 'may' have a duty to report child abuse or neglect" to "the child's attorney 'has' a duty to report child abuse and neglect." (Movant: Alicia Henderson)*

Discussion was had on the friendly amendment. Judge Gendler suggested using language of the statute which requires everyone to report child abuse or neglect, instead of using the phrase, "report child abuse and neglect." That statute is Neb. Rev. Stat. §28-711. Alicia Henderson accepted the suggestion and altered the friendly Amendment to reflect the same.

**Final language of motion:**

*To send the proposed standards title as revised on June 11, 2013, to the Nebraska Supreme Court for review and to the Lawyers Ethics Advisory Committee of the Nebraska State Bar Association for its input, and to revise the language on page 17 of the proposed standards as per the friendly amendment. (Movant: Judge Korslund)*

Vote taken on the amendment to change the language on page 17 of the proposed standards as detailed above. Amendment was passed unanimously by voice vote.

Vote taken on the main motion to send the proposed standards for attorneys and court-appointed investigators for children in district court, as amended, to the Nebraska Supreme Court for review and to the Lawyer's Ethics Advisory Committee of the Nebraska State Bar Association for its input.

Motion passed unanimously by voice vote.

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

**Judge Gendler** reminded Commission members of the reason for this subcommittee, i.e., to address the educational problems experienced by State wards as compared to non-State wards and provided statistics in that regard. He reported that this subcommittee has met 5 times telephonically since the

last Commission meeting, during which time the subcommittee has identified two main goals: 1) to create an educational form to be distributed to all parties and other providers in a juvenile case to address the juvenile's educational needs, and 2) to address the lack of educational information when the child's placement is changed, by including educational information on the HHS change of placement form. The educational form that was developed by the subcommittee, along with HHS's current change of placement form, were distributed to Commission members. Judge Gendler explained that HHS is concerned that if educational information is included on the agency's change of placement form, the Department will be driven to make a placement decision based on the child's educational best interests, and not the overall best interests of the child vis-à-vis the foster care placement. **Carla Heathershaw-Risko** presented information on the educational information issue from the perspective of HHS. Judge Gendler asked for a motion to have a pilot project approved by the Nebraska Supreme Court authorizing use of the new educational information form developed by the subcommittee. A discussion was had.

***Motion:** "To approve the education court report and to commence a pilot project."  
(Movant: Bob Goodwin)*

Extended discussion was had subsequent to the motion.

Main motion passed unanimously, by voice vote.

#### ➤ **Rules of Discovery in Juvenile Court Proceedings.(Judge Evans)**

**Chris Costantakos and Alicia Henderson**, subcommittee members, reported on the action taken by this Subcommittee, as Judge Evans was unable to attend the Commission meeting. The subcommittee has met in person three times since the last Commission meeting, and reviewed the Nebraska Rules of Discovery in civil proceedings, as well as discovery rules used by other States in connection with juvenile court proceedings. The subcommittee has focused upon what, if any changes should be made to the discovery rules, given the differences between juvenile proceedings and ordinary civil proceedings, e.g., that the timelines between hearings in juvenile court proceedings tend to be shorter than those in ordinary civil proceedings, or that juvenile proceedings are to be expedited to meet the goal of achieving permanency. The subcommittee reviewed the discovery rules with a view toward revising some of the start times and response times contained within the existing discovery rules, in order to accommodate the realities of juvenile court proceedings. A

handout was sent to Commission members summarizing the work of the subcommittee this far, and showing proposed minor changes to the Nebraska Rules of Discovery to accommodate the shorter timelines of juvenile court proceedings.

The subcommittee is in clear agreement that the current rules of discovery for civil proceedings would apply to 3(a) cases in juvenile court. However, the issue is not as clear regarding juvenile delinquency and status offense cases. The subcommittee invited comment from the Commission regarding this question: are delinquency and status offense proceedings are “civil” proceedings for purposes of coming under the rules of discovery for civil proceedings, or are they are quasi-criminal proceedings which should fall under the rules of discovery rules in criminal cases? If delinquency and status offense cases are quasi-criminal, **Alicia Henderson** discussed the need to make special adjustments to those rules to address juvenile law-violation or status offense cases. Another area of concern is the situation where there is an ongoing parallel criminal investigation which relates to the same facts or allegations of the pending juvenile case and the county attorney does not want to release documents in the juvenile case which might compromise the investigation in the criminal case.

A suggestion was made that the subcommittee contact county attorneys throughout the State to ascertain the policies and practices they use for the disclosure of information of documents. Alicia Henderson agreed to follow up.

### **III. LEGISLATIVE UPDATES**

➤ **LB 216: The Young Adult Voluntary Services and Support Act (Sarah Helvey)**

**Sarah Helvey**, of Appleseed Center for Law and Public Advocacy, reported that on June 4, 2013, LB 216 was signed into law. This bill extends services and support for juveniles exiting foster care and transitioning into adulthood until they reach the age of 21. The bill applies only to those juveniles adjudicated under Neb. Rev. Stat. §43-247(3)(a), and participation by former State wards is on a purely voluntary basis. Participants have the right to request a hearing by the juvenile court to review any issue of services or support with which the participant and HHS do not agree. Helvey walked through the key elements of LB 216, based upon two handouts that were made available to Commission members: “The Young Adult Voluntary Services and Support Act: *Legislative*

*Bill 216: Key Provisions You Should Know,*” and “Timeline of Service Provisions.” Mary Jo Pankoke circulated applications for any Commission members who might be interested in serving on the Young Adult Voluntary Services and Support Advisory Committee, which will make recommendations for a statewide implementation plan for the Act.

Commission members engaged in a discussion of and asked questions of Helvey regarding various aspects of LB 216. Because the bill incorporates the Former Ward Program funding, the latter program will be incorporated into the extended services program authorized by LB 216.

Vicky Weisz called for judges and lawyers to volunteer to form a small working group to address some implementation issues of the Act, as well as to develop some recommended protocols or procedures.

➤ **LB 561 (Ellen Brokofsky and Corey Steel)**

**Ellen Brokofsky, Administrator of State Probation, and Corey Steel, Asst. Administrator of State Probation,** reported to the Commission on the passage of LB 561, which expands juvenile probation services on a Statewide basis. **Brokofsky** stated that a positive feature of the bill is that it provides an opportunity to get back to community-based programming, matching the treatment with the child’s need. **Steel** presented an overview of LB 561, based upon a handout summarizing key provisions of the bill along with their effective dates, which handout was made available to the Commissioners. He emphasized that there will be complete judicial oversight while the juvenile is at the YRTC and also upon discharge from the YRTC. He explained that certain aspects of the bill are still fluid and need to be worked out, especially as they pertain to the 60-day transition process in which the juvenile transitions from the YRTC and re-enters the community. This process will require probation and OJS together to work out the transition plan to be presented to the court for a review hearing. Steel also addressed other issues such as court-ordered evaluations; front-loading of cases in which the court will have authority to order services on a voluntary basis, from pre-adjudication through probation; and explained when probation will pay for juvenile detention stays and when the county will be obligated to pay for detentions.

Steel answered numerous questions from Commissioners.



#### IV. NEW BUSINESS:

➤ **Rights Advisory**

**Carole McMahon-Boies** reported that the Judicial Implementation Committee will meet in June to review the issue of rights advisory, and will also address that issue as it applies to juveniles placed in the YRTC. She stated that by July 1, 2013, the Committee hopes to have recommended a rights advisory.

➤ **Nebraska Juvenile Justice Court Improvement Project**

**Ellen Brokofsky** pointed out that the federal government does not provide funding to the Court Improvement Project for delinquent juveniles. She stated that State Probation has contracted with the Court Improvement Project to include the juvenile justice aspect. **Vicky Weisz** discussed the formation of the Nebraska Juvenile Justice Court Improvement Project (JJCIP), which will be designed to focus upon the goals of improving the juvenile justice system to advance the goals of treatment and rehabilitation of juveniles, rather than punishment. The JJCIP will follow the already-established Court Improvement Project model and will initiate specific activities to improve juvenile justice cases in the juvenile court. A descriptive handout was made available to Commission members.

➤ **Crossover Youth Practice Model**

**Judge Johnson** announced that since November, 2012, Douglas County Separate Juvenile Court has been a site within the Georgetown University's Center for Juvenile Justice Reform Crossover Youth Practice Model (CYPM). The practice model is designed to prevent youth from being dually adjudicated, i.e., as both abuse/neglect case and a delinquency/status case. The goal is to better serve these youth through diversion and/or increase of child welfare services on the 3a side, without deeper penetration of the juvenile into the delinquency system.

The meeting was adjourned at 3:13 p.m.

Respectfully Submitted,

Chris Costantakos  
Recording Secretary

**NEXT COMMISSION MEETING:**

**December 6, 2013**