

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

**June 22, 2012**

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 22, 2012, at 9:05 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. 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. Linda Senff; Lynnette Boyle; Michelle Chafee (for Sen. Kathy Campbell); Stacey Conroy (for Sen. Ashford); Christine Costantakos; Robert Goodwin; Carla Heathershaw-Risko; Sarah Helvey; Gwen Hurst-Anderson; Kathy Moore; Kathy Olson; Mary Jo Pankoke; David Pantos; Carolyn Rooker; Dick Stafford; Corey Steele (for Ellen Brokofsky); Kerry Winterer.

**MEMBERS NOT PRESENT**

Marsha Fangmeyer; Rebecca Harling; Hon. Thomas Harmon; Hon. Michael Heavican; Alicia Henderson; Sen. Gwen Howard; Vicki Maca Carole McMahon-Boies; Hon. Patrick Runge; Jane Schoenike Hon. Kenneth Vampola; Elizabeth Waterman

**OTHERS PRESENT**

Lindsay Belmont [**Appleseed Center for Law and Public Advocacy**]; Debra Brownyard, [**Administrative Office of the Courts**]; Sheryl Connelly [**Administrative Office of the Courts**]; Kelli Hauptman, [**staff attorney, Through the Eyes of the Child Initiative**]; Thomas Pristow [**Nebraska Department of Health and Human Services**]; Melissa Townsend, [**Center on Children, Families and the Law**]; Janice Walker [**State Court Administrator**]; Vicky Weisz, [**Nebraska Court Improvement Director**].

Minutes of the December 2, 2011, meeting were approved by the Commission with no additions or corrections.

## I. PRELIMINARY MATTERS/UPDATES

### ➤ **Overview of Plans for HHS Division of Children and Family Services**

**Thomas Pristow, the new Director of Child and Family Services Division of the Nebraska Department of Health and Human Services,** was introduced to Commission members. He described some of the major initiatives upon which the Department is working. Those include outcome-based performance measures for contractors; examination of rate structures for contracts and foster parents, with a view toward establishing a more uniform base-pay for providing services for children. He also stated that the State system will be moving to a more aggressive prevention-and-intervention based system designed to assist families when they are struggling, which will require the use of more funds at the front-end. He stated that in the early Fall, the Department plans to have a summit at which it will present more information regarding preventative care and delivery systems. Mr. Pristow also stated that after having met with Judge Daniels, HHS will assemble a special project committee that will develop solutions for transportation in the Western Service Area. Mr. Pristow estimates that by 2014 the Department should be able to examine data relating to performance outcomes.

### ➤ **LR 37 Update: Child Welfare Reform**

**Michelle Chafee, Legal Counsel to the Health and Human Services Committee, appearing for Sen. Kathy Campbell, Chairperson of the Health and Human Services Committee of the Nebraska Legislature,** gave a quick summary of bills enacted in the January 2012 legislative session as the result of 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. That legislation includes but is not limited to: LB 820, 821, 949, 961, 1160, 774, and 926.

Ms. Chafee answered numerous questions from the Commissioners and also provided them with handouts, including copies of the complete report to the Legislature resulting from LR37 entitled, *Legislative Resolution 37 (2011): Review, Investigation and Assessment of Child Welfare Reform.*

➤ **LB 985: The Nebraska Juvenile Services Delivery Project**

**Corey Steele, appearing for Ellen Brokofsky, State Probation Administrator**, discussed LB 985, enacted in the 2012 legislative session, which expands the Nebraska Juvenile Services Delivery Project, to include judicial districts 4, 11, and 12. This Project, previously conducted with success over the last 3 years in Douglas County, provides a “funding stream” to assist with payment for the service needs of delinquent juvenile/status offenders placed on probation, but only after all other financial avenues have been exhausted. The parameters of the project have been expanded to include payment for: a single-focus evaluation for juveniles (thus eliminating the need for an OJS/CCAA evaluation); out-of-State placements (if needed); placement in a PRTF; and family therapy, but only as long as the juvenile is involved. Mr. Steele indicated that the expansion will take effect on July 1, 2012.

- **Kathy Moore, Interim Executive Director of the Nebraska Foster Care Review Board**, reported that her term of service will end on July 1, 2012, given the new legislation affecting the composition of the Foster Care Review Board. She reported that Linda Cox, the Board’s Special Projects director, will serve as interim director until such time as the new Foster Care Review Office members are chosen.

## **II. SUBCOMMITTEE REPORTS AND UPDATES**

➤ **Delinquency Guidelines Subcommittee (Judges Daniels and Roland)**

**Judge Daniels** discussed the concerns affecting Districts 11 and 12, and the Western Service Area as a whole, regarding lack of services, specifically transportation of children to court-ordered services, pointing out that this is not just an issue of reimbursement for services, but foster parents often cannot take off work or case managers are too busy to provide such transportation at all hours of the night. It is imperative that someone be identified to provide transport in these arenas. The other concern is the recruitment of foster homes. Judge Daniels stated that these 2 issues are material issues to any properly functioning juvenile justice system. Judge Daniels stated that he has shared these concerns with Thomas Pristow, HHS director of Children and Family Services, and hopes that these issues can be resolved within 90 days.

He also suggested that these problems may be appropriate for investigation by the new child welfare “Inspector General” created by LB 821.

It was noted that Julie Rogers has been appointed as the new Inspector General. Judge Inbody suggested that she be invited to join the Nebraska Supreme Court Commission on Children in the Courts. Judge Daniels indicated that the Subcommittee hopes to have a full report with recommendations at the next Commission meeting.

➤ **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 concept of developing a short checklist to assess guardian ad litem performance on all cases with respect to all hearings of substance, which had been the subject of a motion passed by the Commission at its December 2, 2012, meeting. In deliberating upon all of the details and aspects of such a checklist, the guardian ad litem subcommittee unanimously recommended that it would be best not to develop a separate form for this, but instead to have courts and attorneys utilize the questionnaire already being used by the Foster Care Review Board for this purpose. Kathy Moore, interim Foster Care Review Board executive director, advised the Commission that the Board is revising its questionnaire regarding guardian ad litem participation, and that the new form will give guardians ad litem the option to provide the Board a copy of their most recent guardian ad litem reports.

**Motion:** *To table the discussion on whether a guardian ad litem should use the FCRB questionnaire for reporting on compliance, or whether the guardian ad litem should be required to complete a separate, self-report form.*

Motion passed unanimously.

**Second Motion (after extended discussion on the Foster Care Review Board questionnaire regarding Guardian ad Litem compliance):** *That guardians ad litem should use the FCRB questionnaire for reporting on compliance with guardian ad litem requirements, as opposed to submitting a separate, self-report form. (Movant: [Unintelligible])*

Second Motion passed unanimously.

The discussion turned to the topic of required guardian ad litem training and the possibility of participation by the guardian ad litem subcommittee in the

development of the curriculum for the guardian ad litem training. Janice Walker, speaking on behalf of Carole McMahon-Boies, reported on a meeting she attended with Vicky Weisz, Carole McMahon-Boies, and Melissa Townsend. Ms. Walker stated that since Nebraska now has mandatory CLE, the thought is to have the required guardian ad litem trainings count for CLE credit. Judge Paine proposed that three volunteers from the Guardian ad Litem Subcommittee be appointed to work with Carole McMahon-Boies to assist in developing curriculum for the initial guardian ad litem training. Lynnette Boyle, Bob Goodwin and Chris Costantakos volunteered to assist. Judge Inbody confirmed with Janice Walker that these volunteers be appointed to help with the development of the curriculum. When it was pointed out that a curriculum for the initial guardian ad litem training is already included in the Court Rule, Judge Inbody clarified that this group should develop the curriculum first, then consider a Rule change, if needed.

Judge Paine also reported on the Subcommittee's work, led by Bob Goodwin, in producing a printed as well as an electronic form that can be used by attorneys for required guardian ad litem reports to the court. The proposed report form includes categories for the guardian ad litem to document the dates and locations of the guardian ad litem's contacts/interviews with the child. The proposed form represents the minimum of information the guardian ad litem should provide to the court and is not intended to be a substitute for a narrative report, where such narrative is necessary. Copies of the proposed report form were handed out to Commission members.

***Motion:** That the guardian ad litem report form developed by the Guardian ad Litem Subcommittee be submitted to the Nebraska Supreme Court for publication, as an approved form that can be used on a voluntary basis for a guardian ad litem report. (Movant: Chris Costantakos)*

Motion passed unanimously.

➤ **Case Progression Standards (Judge Porter)**

At the December, 2011, Commission meeting, **Judge Porter** reported that that judges would like to evaluate their performance in relation to existing statutory time-frames for hearings, before deciding to make changes to those time-frames. Accordingly, judges have expressed a desire for data about their cases, 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 had initiated

contact with an analyst from the Court Administrators' office to determine if the "Justice" system could obtain and generate such data for review.

Judge Porter reported that "Justice" does have the capability of showing certain timelines in 3(a) juvenile cases, e.g., the detention and adjudication hearings. She indicated that one problem, however, is whether and to what extent data has been entered properly into the system over the last 10 years. She will continue to explore the possibility of generating a document that judges can obtain each month, to show all 3(a) cases which have been adjudicated.

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

**Judge Orr** reported that the Tribal and State Court Collaboration Subcommittee did participate in an ICWA training session at the National Consortium on Racial and Ethnic Bias held in Omaha on May 12 & 13, 2012. He indicated that the Subcommittee had arranged for a tribal judge from North Dakota to talk about their collaboration.

He discussed a resolution encouraging State-Tribal court judges to talk with each other, to provide descriptions, and contact information for each tribal court in each State, and to offer tribal courts the same State court management system module. Judge Orr indicated that they continue to work on increasing tribal court representation on the Subcommittee.

### **III. NEW BUSINESS:**

#### **A. Mother-and-Young Child Contact in Jails**

**Dick Stafford** reported that both he and Vicky Weisz have polled jails in 28 counties in Nebraska, as to whether incarcerated mothers are able to have contact with their children. Many jails do not permit such contact based upon their institutional policy of "no physical contact" between inmates and others. Weisz pointed out that the women's correctional facility at York is the first in the U.S.A. to have allowed children to visit incarcerated mothers in prison.

Out of the number of jails polled, 1 responded affirmatively; 4 indicated that they do not house females; and 1 indicated generally no, unless requested; and the remainder were negative.

Stafford suggested the need to finance an expert to address the Sheriff's Association to present psychological evidence that parent-child contact is necessary to avoid increasing the number of criminals. Vicky Weisz proposed that there might be a greater chance of success, if the issue is limited initially to contact involving mothers only, and not both parents.

Judge Inbody indicated that he will contact the Nebraska Supreme Court requesting permission to form a new subcommittee regarding visits between children and mothers in jail. Stafford agreed to circulate an email to solicit interest in membership on the subcommittee.

## **B. Judicial Oversight of Education**

**Judge Gendler** discussed the issue created when the juvenile court changes the placement of a child which, in turn, results in the child's transfer from one school to another, but the data from one school district does not necessarily match the data from the others. Schools are sometimes unaware of what credits a child might have completed at a prior school, or academic credits might have not been transferred properly. He proposed the formation of a new subcommittee to promote liaisons designed to eliminate this problem, to coordinate data regarding a child who transfers from one school to another, as well as the creation of an "educational packet" to be provided in order that everyone will have information regarding the educational status of a child in foster care.

***Motion:** To create a subcommittee to improve the educational outcomes for children in foster care. (Movant: Judge Gendler)*

Motion passed unanimously.

## **C. Re-Convening the Children in the District Court Subcommittee**

**Debra Brownyard** requested that the Commission re-convene the Children in District Court Subcommittee for the reason that different collateral issues have arisen for consideration, e.g., should there be a presumption of sole/joint custody in custody proceedings?

***Motion:** That the Children in the District Court subcommittee be re-convened. (Movant: Debra Brownyard)*

Motion passed unanimously.

#### **D. Guardianships/Conservatorships for Children**

**Debra Brownyard** suggested examining whether there should be uniformity in the manner in which legal guardianships are established for all minor children. Presently, there are two different methods by which guardianships are established for children: in the juvenile court under the Nebraska Juvenile Code, for those children who have been adjudicated in the juvenile court; and in the county court under the Nebraska Probate Code, for all other children. Sheryl Connelly announced that Sen. Coash, who sponsored the new guardian-conservatorship law, along with Chief Justice Heavican, are interested in collecting information and input from those concerned about the guardianship/conservatorship laws, and indicated that the next meeting would be held on July 20, 2012. She invited Commission members or others to provide input to her regarding the subject of guardianships for children, indicating that she will forward such input to the Chief Justice, those attending the meeting, and to Sen. Coash. Judge Evans proposed that there should be only one uniform method for establishing guardianships/conservatorships for children.

***Motion:** That a Subcommittee be formed to examine the guardianship of children issue. (Movant: Judge Evans)*

Motion passed by majority vote, with one abstention.

#### **E. Detention Review Hearings Within 24 Hours**

**Judge Johnson** referred to a 1997 letter from Chief Justice White, requiring juvenile courts to conduct a detention review of juveniles within 24 hours of detention. Judge Johnson explained that because this is not always taking place, and in light of the *Riverside* case, adults tend to receive better judicial oversight regarding their confinement than do children, resulting in a due process issue. Judge Daniels indicated that the Delinquency Subcommittee will address this issue in its next meetings, and also consider the issue in relation to (3)(a) cases.

The meeting was adjourned at 2:25 p.m.

Respectfully Submitted,

Chris Costantakos  
Recording Secretary