

Supreme Court Commission on Children in the Courts

Summary of March 17, 2006 Meeting

Attending: Chief Judge Everett Inbody, Judge Douglas Johnson, Michaela Kubat (for Senator Patrick Bourne), Judge Vernon Daniels, Judge Lawrence Gendler, Rebecca Harling, Alicia Henderson, Tami Soper (for Senator Gwen Howard), Judge Patrick McDermott, Nancy Montanez, Kathy Moore, Elizabeth Neeley, Nicole Neesen, Judge Linda Porter, Amy Prenda, Senator Ron Raikes, Judge Gerald Rouse, James Ruby, Judge Patrick Runge, Jane Schoenike, Dick Stafford, Roberta Stick, Carolyn Stitt, Judge Kenneth Vampola, Janice Walker, Elizabeth Waterman, Vicky Weisz, Kirs Wertz, Todd Reckling, JoAnn Emerson, Chris Costantakos.

The minutes of the December 16, 2005 meeting were approved.

Supreme Court Action on Commission Recommendations

The Supreme Court Response to the Report of the December 16 meeting were distributed and discussed.

In response to the Commission's recognition and approval of recent changes in the appellate process, the following Supreme Court Action was taken:

Having been informed by the Supreme Court Commission on Children in the Courts that the amendment to Supreme Court Rule 11B(2), together with strict enforcement of briefing schedules, has reduced the appellate time in juvenile cases involving abuse, neglect, and termination of parental rights from 11 months to 7 months, the Court approves continuation of the current rule and practice with respect to strict enforcement of briefing deadlines.

In response to the Commission's recommendation that the Supreme Court adopt a rule regarding a requirement that appeals be signed, dated, and notarized by the appellant and signed by attorney after the judgment has been entered, the following Supreme Court Action was taken:

The Supreme Court approves the concept and directs its Commission to work with the Chief Justice, the Clerk of the Supreme Court/Court of Appeals, and the staff attorneys of the Supreme Court and Court of Appeals to propose a rule for the Court's consideration.

In response to the Commission's recommendation that the Supreme Court adopt a rule requiring that guardian ad litem appointments be made by the judge appointing an individual attorney rather than a firm or coalition, the following Supreme Court Action was taken:

At this time the Supreme Court takes no action on this specific recommendation pending further information from the Commission.

In response to the Commission's recommendation that the Supreme Court develop and make available mandatory training for guardians ad litem, the following Supreme Court Action was taken:

The Supreme Court approves the concept of mandatory training for guardians ad litem, and defers further action pending more detail from the Commission.

Guardian ad Litem Training

The Guardian ad Litem Subcommittee presented a recommendation regarding the details of the mandatory training requirement. This recommendation was discussed and several minor changes were recommended and incorporated into the recommendations. The training recommendation was approved unanimously by the Commission. The training recommendation is attached in Appendix A.

Report on the Children's Summit Subcommittee

Judge Rouse reported that the keynote speakers at the National Children's Summit, Chief Justice Kathleen Blatz and Judge William Byars, will be the keynote speakers for the Nebraska Summit. The National Council of Juvenile and Family Court Judges and the American Bar Association Center on Children and the Law have committed faculty for the Summit. Attendance by judges with juvenile court jurisdiction will be required by the Supreme Court.

Report on the Expedited Appeals Subcommittee

Judge McDermott gave a brief report. After a brief discussion of the matter, Judge McDermott indicated that this subcommittee will look at the issue as to whether cross-appeals should also be required to be signed, dated and notarized after the judgment has been entered. Chief Judge Inbody also indicated that he would refer this question on to the staff attorneys of the Supreme Court who are currently developing a court rule regarding the Commission's recommendation regarding notarized and dated signatures of appellants.

Report on Children in District Court

Vicky Weisz reported on behalf of Judge Korslund. The first meeting of this subcommittee will be a telephone organizational meeting scheduled for April 18. The (corrected) list of individuals who have agreed to serve on this subcommittee that will be chaired by Judge Korslund are: Judge Jodi Nelson; Judge Brian Silverman; Judge Michael Owens; Judge Patricia Lamberty; Professor Alan Frank; Lori Wood; Lorin Galvin; Mary Kaye Hansen; Ann Davis; Cathy Allen; Dick Stafford; Kathy Moore; Amy Sherman Geren; Michael Lustgarten; Marlene Vetick; Michael Piccolo.

There was a discussion of possible overlap between this subcommittee and the Child Centered Justice Committee. Kathy Moore agreed to serve as a liaison between these two committees.

Report and Discussion of GAL Subcommittee proposed standards

The Subcommittee brought several issues to the Commission that have not been resolved in the Subcommittee. The issue of whether GALs should be permitted to testify was discussed and sent back to the subcommittee for resolution. The motion on whether GALs should provide reports to the courts and what should be in the reports was tabled. The role of the GAL was discussed and a majority of the Commission voted to approve that the current GAL statute (§43-272 and §43-272.01) be retained and that the role of the GAL be defined in the standards as follows:

Nebraska law (§43-272) authorizes a guardian ad litem in juvenile proceedings to fulfill a “dual role,” with respect to the juvenile, that is, to serve as:

1. An advocate for the juvenile who is deemed as the parent of the juvenile and charged with a duty to investigate facts and circumstances, determine what is in the juvenile’s best interests, report to the court and make recommendations as to the juvenile’s best interest, and to take all necessary steps to protect and advance the juvenile’s best interests; and

2. As legal counsel for the juvenile.

Commission members voting in support of the above GAL role definition were: Lynette Boyle; Hon. Vernon Daniels; Hon. Lawrence Gendler; Rebecca Harling; Hon. Everett Inbody; Hon. Douglas Johnson; Nancy Montanez; Kathy Bigsby Moore; Hon. Linda Porter; Jane Schoenike; Dick Stafford; Carolyn Stitt; Hon. Kenneth Vampola; Hon. Gary Washburn; Elizabeth Waterman; Kirs Wertz.

Commission members opposing the above role definition were: Amy Prenda; James Ruby; Hon. Patrick Runge; Roberta Stick.

Commission members abstaining were: Senator Patrick Bourne; Senator Gwen Howard.

Other issues that were discussed and sent back to the subcommittee for further resolution were confidentiality of the GAL-attorney relationship, case-load limits, a court rule clarifying the judge’s authority to remove a GAL for cause, and contracts.

Respectfully submitted by
Vicky Weisz
April 19, 2006

Appendix A

THE COMMISSION RECOMMENDS THAT THE SUPREME COURT ADOPT THE FOLLOWING RULE:

Commencing January 1, 2007, no person shall be appointed as a guardian ad litem without first completing six (6) hours of specialized training. Thereafter, in order to maintain eligibility to be appointed and to serve as a guardian ad litem, an attorney shall complete three (3) hours of specialized training per year.

THE COMMISSION RECOMMENDS THAT THE FOLLOWING PLAN BE ADOPTED TO IMPLEMENT THE MANDATORY TRAINING REQUIREMENT FOR GUARDIANS AD LITEM:

The Nebraska Supreme Court shall assume responsibility for providing specialized training for guardians ad litem, at no or nominal cost, which shall take place at various intervals throughout the year and at various locations throughout the State. The Supreme Court, through its office of Judicial Branch Education, shall be responsible for the development of the specific curriculum for the training of guardians ad litem in the State of Nebraska. The Commission recommends that the office of Judicial Branch Education shall develop the specific curriculum with consultation from qualified experts, groups, or organizations, including but not limited to the American Bar Association Center on Children and Law, the National Council of Juvenile and Family Court Judges, and the Child Welfare League of America with any potential costs of this consultation paid by the Nebraska Court Improvement Project. This office, under the authority of the Supreme Court, shall provide training that ensures statewide uniformity. The Supreme Court shall provide the initial six-hour training in each judicial district prior to the time that this Rule goes into effect. The training should be provided by a core group of presenters to ensure statewide uniformity. Responsibility for payment of the costs of the training itself shall be assumed by the Supreme Court through the Court Improvement Project. Travel and meal costs shall not be provided by the Court. An overview of the initial GAL training shall be provided to all judges with juvenile court jurisdiction at the 2006 annual fall meeting.

After the initial year of this Rule's implementation, the office of Judicial Branch Education shall arrange and provide training at no or nominal cost which shall take place at various intervals throughout the year and at various locations throughout the State. These trainings should include the six-hour basic training for new guardians ad litem as well as three-hour advanced trainings for guardians ad litem who have completed the six-hour training.

The office of Judicial Branch Education shall also assume responsibility for providing notice regarding scheduled training sessions. The Nebraska Supreme Court

shall maintain a list of attorneys who are current in their required guardian ad litem training and shall make such list available to all judges with juvenile court jurisdiction.

The specialized training sessions shall provide training, information and education regarding the role, duties and responsibilities of a guardian ad litem, that should include but are not limited to following areas:

1. Overview of the Juvenile Court System;
2. Statutory duties and authority of a guardian ad litem, including performance standards adopted by the Nebraska Supreme Court;
 - a. Requirements of guardian ad litem report.
 - b. Nuts and bolts of preparing a guardian ad litem report.
3. Issues which impact or impair the functioning of families, including but not limited to:
 - a. Dynamics of child abuse and neglect;
 - b. Substance abuse issues and domestic violence issues;
 - c. Physical and mental health issues;
 - d. Educational issues;
 - e. Visitation issues.
4. Training in the techniques of gathering relevant information and resources:
 - a. Interviewing skills, regarding both children and adults;
 - b. How to obtain and interpret reports from other professionals and providers;
 - c. Inquiry into appropriateness of juveniles' placement.
5. Psychological aspects of children, including child development issues and suggestibility of children;
6. Family preservation and permanency planning;
 - a. Bonding, attachment, and effects of separation and loss;
 - b. Developmental considerations in family preservation, visitation, and permanency planning, with particular emphasis on the needs and vulnerabilities of children age 0-5.
7. Cultural, ethnic diversity and gender issues;
8. Relevant state and federal statutes and case law;
9. Indian Child Welfare Act;
10. Legal advocacy, mediation, and negotiation skills.