

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

**December 5, 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. 14<sup>th</sup> Street in Lincoln, Nebraska, on Friday, December 5, 2014, at 9:10 a.m., with Co-chairman Judge Everett O. Inbody presiding.

**MEMBERS PRESENT**

Hon. Vernon Daniels; Hon. Curtis Evans; Hon. Larry Gendler; Hon. Everett O. Inbody (Co-chair); Hon. Paul Korlund; Hon. Anne Paine; Hon. Michael Piccolo; Hon. Linda Porter; Hon. Randin Roland; Kathy Bigsby Moore; Lynnette Boyle; Ellen Brokofsky; Chris Costantakos; Debora Denny; Marsha Fangmeyer; Annette Farnam; Robert Goodwin; Rebecca Harling; Kim Hawekotte; Carla Heathershaw-Risko; Sarah Helvey; Alicia Henderson; Corrie Kielty; Carole McMahon-Boise; Liz Neeley; Mary Jo Pankoke; Thomas Pristow; Julie Rogers; Carolyn Rooker; Dick Stafford; Liz Waterman; Kerry Winterer

**MEMBERS NOT PRESENT**

Hon. Douglas Johnson (Co-chairman); Hon. Patrick Runge; Hon. Linda Caster Senff; Hon. Kenneth Vampola; Sen. Brad Ashford; Sen. Kathy Campbell; Sen. Bob Krist; Tom Harmon; Vicki Maca; Kathy Olson; Amy Peters

**NON-MEMBERS PRESENT**

Deanna Brinkage (DHHS); Sarah Frankel (Court Improvement Project); Lori Hoetger (Court Improvement Project); Tricia Kinglsey (DHHS); Juliet Summers; Vicky Wiesz (Court Improvement Project director)

Minutes of the June 13, 2014 were approved by the Commission.

**I. UPDATE ON JUVENILE JUSTICE**

**Ellen Brokofsky** reported on updates in juvenile justice. Probation has hired new staff members and juveniles who had been adjudicated as law violators or status offenders were transferred to Probation. Payment for services was discussed. Counties are financially responsible for all pre-adjudication services. However, because of the lack of in-home services for juvenile offenders, Probation will try to take responsibility for alternatives to detention once a juvenile comes before a judge. Probation is currently coordinating with communities to try to build alternatives to

detention based on existing infrastructures. There is also community-based aid available that can help with establishing new services. Probation has applied for a grant from the Sherwood Foundation to bring evidence-based in-home services to Nebraska, including Multisystemic Therapy and Functional Family Therapy. Probation has reached out to Medicaid/Magellan and the Behavioral Health Regions to look at the feasibility of sustained funding.

## II. UPDATE ON NDHHS

**Thomas Pristow** reported that the Bridge to Independence program started in October 2014; so far, 88 young adults had enrolled. The Sherwood Foundation helped to bridge the gap for services between January and October for the young adults who wanted to take advantage of the program. Alternative Response also started October 1<sup>st</sup>. 54 families in 5 pilot counties are currently involved with the program; families are getting prevention-type services and are not placed on the central-registry.

Since March 2012, the state ward count declined 43%; as of December 1<sup>st</sup>, 2014, there were 4,051 state wards. **Ellen Brokofsky** stated that approximately 1,200 juveniles moved to Probation. **Thomas Pristow** clarified that prior to the transfer of OJS juveniles to Probation, there was still a decreasing trend in the number of state wards. However, there is an increase in 3(a) no fault and 3(c) filings. DHHS is currently undergoing an investigation to examine why these filings have recently increased.

## III. SUBCOMMITTEE BRIEF UPDATES

- **Guardianships (Judge Harmon):** Because Judge Harmon was unable to be present, **Vicky Weisz** reported on his behalf. The subcommittee expressed concerns that the training for guardians in district court provided inadequate information for the reporting requirements, and will try to meet with the training staff and attorneys who are responsible for that part of the training. Judge Harmon also has observed a recent influx in complaints regarding juvenile court guardianships. It is Judge Harmon's understanding that the AOC is working on a manual or a guide to assist guardians in juvenile court. The subcommittee will compile a list of concerns or questions to send to the AOC regarding this guide. If anyone has any questions or concerns to be included, please contact Judge Harmon.
- **Children in District Court (Judge Korslund):** **Judge Korslund** reported that the standards regarding children in district court have not been approved by the Supreme Court. The Standards approved by the Commission provided for an appointment of an attorney for the children, appointment of a best-interests attorney, or appointment of a special investigator. The Supreme Court allowed for a period of public comment on the Standards and decided to not adopt them. Judge Korslund reported that the Supreme Court was concerned that the Standards created an unfunded mandate.

- A survey of district court judges found that many judges do on occasion interview children in domestic cases, but some judges feel it is inappropriate to do so.
- Judge Randall will be replacing Judge Korslund as the Chair of the subcommittee.
- **Parenting Act: Judge Piccolo** reported that the Parenting Act subcommittee started last June has met several times. The National Center for State Courts is currently conducting a study on the Parenting Act in Nebraska; the subcommittee will report to the Commission about the findings of this study.

#### **IV. SUBCOMMITTEE ON TRIBAL AND STATE COURT COLLABORATION**

**Judge Runge** was unable to attend the meeting, but provided a written report to the Commission. The written report in its entirety is as follows:

“First of all, please accept my apologies for not being able to present this update in person.

On November 21, 2014, we had our first meeting at the WinnaVegas Resort in Sloan, Iowa. Present were myself, Judge Mick Scarmon from the Omaha Tribal Court, Judge Thayne Glenn from the Santee Sioux Tribal Court, Judge Ross Stoffer from Madison County, and Judge Larry Gendler from Sarpy County, along with Christine Henningsen from Through the Eyes and Sarah Hansen from the Court Improvement Project.

The meeting was an initial discussion on how we can best establish a forum and a mechanism where frictions between tribal and state entities can be discussed and resolved. Barriers to that cooperation were identified, including unfamiliarity on both sides with their counterparts, fear from state-based entities as to the nature of tribal proceedings, and fear and distrust from tribal-based entities in the ability to work with state-based entities.

Short-term and long-term solutions were discussed and proposed, including:

- Increasing interaction between tribal court and state court judges, including but not limited to including tribal court judges in state court judge meetings and trainings. Not only would this strategy have the benefit of providing technical assistance to tribal courts that the tribal courts may not have the resources on their own to afford, it would also build an informal judge-to-judge network between tribal and state court judges. Such a network would provide tribal court (and state court) judges the opportunity for mentors and models from judges who have been on the bench longer, and would also lay the groundwork for relationships between tribal and state entities which could be called upon when areas of conflict between the two sovereigns may arise.
- Facilitating discussions and relationship-building between tribal and state caseworkers in abuse/neglect cases. The subcommittee reached a consensus that, in such cases, the caseworkers provided the primary opportunity to create the kind of

collaboration between sovereigns envisioned. The upcoming Children's Summit looks ideal as a goal to start bringing practitioners in that area together. In the interim, smaller regional programs designed for areas with significant Native American populations (such as Thurston County and Madison County) were envisioned. To increase the potential for tribal participation and investment, the subcommittee proposed having part or all of the program be presented by tribal entities.

The subcommittee is intending to reconvene in 2015 to make action plans to realize some of the conceptual goals discussed in our first meeting. Anyone who would be interested in participating would be more than welcome."

#### **V. Subcommittee on Improving Educational Outcomes**

**Judge Gendler** reported the Education Court Report has been implemented state-wide following testing in pilot states. In addition, Probation is using the form. The Education Court Report should be included in every case plan or court report and may be incorporated as part of the pre-disposition report.

The subcommittee developed a sample change of placement form that includes an educational best interests recommendation. **Tricia Kingsley** stated the goal is to keep children in their home district except where the best interests of the child dictates the child should change schools. **Judge Porter** suggested separating the issue of child's placement from the issue of the child's school to prevent delay the motion for placement change. **Tricia Kingsley** stated the form may be in a different format for Lancaster County to accommodate how placement changes are handled.

#### **VI. COURT IMPLEMENTATION OF BRIDGE TO INDEPENDENCE**

**Sarah Helvey** invited discussion regarding three issues on implementation of the Bridge to Independence program.

- Initial hearing to make a best interests' finding: discussion indicated that judges vary in their procedures; some judges do an initial hearing but some do not.
- Confidentiality: discussion resulted in several options for handling confidentiality of Bridge to Independence cases, such as marking the files as confidential or allowing the young adult to determine whether proceedings are confidential.
- Procedures for appointing counsel: discussion indicated that DHHS is advising young adults of the procedures for requesting counsel; Foster Care Review Office is also advising the young adults at the case review meetings.

## VII. COORDINATION BETWEEN DISTRICT AND JUVENILE COURTS TO ACHIEVE TIMELY PERMANENCY FOR CHILDREN INVOLVED IN BOTH SYSTEMS

**Judge Inbody** invited discussion on the issue of children who are involved with both the district court and juvenile court systems. **Vicky Weisz** reported the case reviews of children who have been in a trial home visit with a parent for longer than six months revealed a potential systemic problem: children may remain involved in the juvenile court system for long periods of time waiting for custody issues to be resolved in district court. Discussion resulted in a motion from **Lynnette Boyle** to table the issue until the next commission meeting, which will be attended by district court judges newly added to the Commission. **Carla Heathershaw-Risko** seconded the motion. The motion passed by unanimous vote.

## VIII. SUBCOMMITTEE ON GUARDIANS AD LITEM

**Chris Costantakos** is the new Chair of the GAL subcommittee as of June 2014. **Judge Daniels** moved to adopt a resolution to place on the Supreme Court Commission on Children in the Courts website to recognize the work of guardians ad litem in Nebraska. **Judge Piccolo** seconded the motion. **Judge Inbody** called for discussion. Following discussion, the resolution was amended to read:

*“The Nebraska Supreme Court Commission on Children in the Courts focuses on improving the effectiveness of the Courts when dealing with issues surrounding children. Over the last nine years the Commission has drafted guidelines for practicing attorneys serving as Guardians ad litem, recommended standards of practice, instituted education requirements for attorneys in juvenile court and is involved in on-going efforts to enhance the quality and effectiveness of the work of the juvenile courts. There are currently 344 attorneys that have complied with the education requirements for Guardian Ad Litem work and are eligible for appointments in Juvenile Court.*

*The Commission on Children in the Courts hereby recognizes the contribution of Guardians Ad Litem working in the Nebraska Juvenile Courts. Many dedicated attorneys work tirelessly to improve the outcomes for children in the Courts. These attorneys are called upon to be the eyes of the judge in insuring the court is fully aware of the circumstances of the child. They must act as mediators, protectors and advocates. In addition to the many hours of work in the courts, Guardians ad Litem are subject to stringent annual education requirements. The hard work of these attorneys is invaluable to the work of the Juvenile Courts.*

*There is no more important work that an attorney can do and we wish to thank the guardians ad litem committed to serving the needs of the children in the courts.”*

**Judge Daniels** and **Judge Piccolo** accepted the resolution as modified. **Judge Inbody** called for a vote. The resolution passed unanimously (with **Lynette Boyle** abstaining).

**Chris Costantakos** moved to ask the Nebraska Supreme Court to revisit the issue of making the guidelines for guardians ad litem in juvenile court proceedings enforceable court rules. **Lynette Boyle** seconded the motion. Following discussion, **Judge Inbody** called for a vote. The motion was approved unanimously.

#### **IX. NEW BUSINESS/WRAP UP**

**Judge Inbody** reported a current issue of concern is why the number of juveniles adjudicated under 3(c) is increasing.

**Judge Inbody** stated the next meeting will be held June 12, 2015. At that time, there will be a new director of the Court Improvement Project as Vicky Weisz is leaving the organization.

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

**2015 Commission meetings: June 12 and December 4.**