

## MINUTES

### CHILDREN AND FAMILIES IN THE COURTS COMMITTEE

September 28, 2016 from 1:00 p.m. to 5:30 p.m. MST  
Boise, Idaho

**Call to Order:** Honorable Russell Comstock (chairperson) Called to Order a committee meeting of the Children and Families in the Courts Committee (CFCC) held in Boise, Idaho, September 28<sup>th</sup> of the year 2016 at 1:00 p.m. MST.

**CFCC Members in Attendance:** Judge Russell Comstock (Chair) 4<sup>th</sup> Judicial District; Judge Rick Bollar 5<sup>th</sup> Judicial District; Judge Jerold Lee, 3<sup>rd</sup> Judicial District; Judge Steven Thomsen, 6<sup>th</sup> Judicial District; John Sahlin, 1<sup>st</sup> Judicial District; Judge Scott Hansen, 7<sup>th</sup> Judicial District; Tom Dial, 6<sup>th</sup> Judicial District; Dr. Virginia Allen 6<sup>th</sup> Judicial District; Seth Platts, 5<sup>th</sup> Judicial District; Burt Butler, TCA 7<sup>th</sup> Judicial District; Janet Meserve, FCS, 1<sup>st</sup> Judicial District; Judge Anna Eckhart, 1<sup>st</sup> Judicial District; Judge Laurie Fortier, 4<sup>th</sup> Judicial District; Judge John Meienhofer, 3<sup>rd</sup> Judicial District; Dr. Todd Bennett, Fourth Judicial District.

**Court Staff Attending:** Cori Erickson, Family Court Services; Amber Moe, Domestic Violence Court; Deena Layne, Deputy Attorney; Kerry Hong, Community and Family Justice Service Director; and Janice Beller, Administrative Assistant/Reporter; Nanci Thaemert, Senior Manager Court Services for Families and Children

**Presenters in Attendance:** Janica Bisharat, Director of Court Management; Michael Mehall, Court Operations Manager, also joined for specific presentations.

**Guest:** Representative Kelley Packer, Idaho House, District 28-B; Judge Cockerille, 4th Judicial District;

**Opening Comments:**

Judge Comstock opened the meeting with announcements and introductions of new members and guests.

**A. Mission Statement, Values and Strategic Goals and Objectives of the Idaho Courts and the CFCC:**

Judge Comstock reviewed the mission statement from the Idaho Supreme Court.

**B. Approve the Minutes**

The Minutes from the September 23<sup>rd</sup> 2015, CFCC meeting were reviewed.

**Motion: Made my Judge Bollar to approve the minutes. A second to this motion came from Judge Thompson. The Minutes were unanimously approved.**

**C. Court Assistance Office**

Judge Cockerille discussed the creation of the new CAO committee. The committee was formed as a merger of the Standard Forms Committee and the Committee to Increase Access to the Courts. The CFCC made a request to the CAO committee to draft issues and solutions they would like the CFCC to consider. The CFCC will assist the CAO committee as needed.

#### **D. Brief Focused Assessment (BFA)**

Report from Judge Merica and Judge Bollar on proposed changes to IRFLP 720.

Judge Bollar opened the discussion introducing the proposed changes to the IRFLP 720. He stated that most changes consist of syntax and not substance. However, he noted there were two areas of substantive change that related to (i) qualifications of the assessor and (ii) removal of the requirements that assessments be conducted in accordance with the AFCC guidelines.

The proposed change to section 720.D (Qualification of Assessor) was to substitute IRE 702 for IRFLP 719.D.1. Judge Merica reasoned that IRE 702 would allow a court more flexibility to determine who will qualify as an expert to be appointed as an assessor.

Judge Merica stated that the goal of the rules subcommittee was to streamline and simplify the rule. He felt the AFCC guidelines were not necessary because a judge is already the ultimate decision maker if an assessment and assessor meet the criteria a judge needs. It is ultimately the trial judge's responsibility to decide what assessor is sufficiently qualified to provide an assessment.

Janet Meserve provided information that in 2012 Family Court Services (FCS) Managers proposed using AFCC guidelines. She also stated that the state had training specifically for Brief Focused Assessments. The managers proposed the guidelines due to numerous complaints. Janet stated that there is 100% agreement among the FCS district managers and they agree to the need for and the use of the AFCC guidelines and qualification as set forth in IRFLP 719.D.1.

A discussion ensued with several members in support of using AFCC guidelines and several members who felt it is not necessary. A question was posed, "What if the guidelines change?"

Members of the committee discussed the difference between clinical and observational functions of an assessor. For example, there is a difference between "Why is a child afraid to visit?" – Clinical - and "Is a child afraid to visit?" – Observational.

Several members were supportive of licensure and others felt it was not necessary to narrowly define qualifications when a Judge may use IRE 702. Some BFA's may require a license and others may not. The committee discussed the need for a complaint process. More important is to define the process and qualification necessary for any given assessment. It is important that a BFA is understood and used the same way across the state. A member offered up renaming the assessment to reflect the objective of a BFA: Issue Focused Investigation.

Judge Comstock - Judges who appoint someone who is not an expert is subject on appeal to a review of what qualified them under IRE 702 to appoint that assessor. It needs to be done with the foundation and record for the reason they were appointed, if not the judge would be looking at a reversal. The rule, limited by nature, is not meant to reach conclusions about a custody schedule that is in the child's best interests.

Dr. Bennett added that he does not do BFA's but it's important to narrow down the focus to a couple of issues if conclusions are to be drawn then a license is necessary. BFA's were misused in the beginning and he sees BFA's as a clinical process and that is different than a fact finding process. If people are going to be interviewing people and interacting with kids and drawing

conclusions. Assessors must know what they are doing and have proper qualification to do so. BFA's must have a distinction between fact-finding and a clinical evaluation/assessment.

After an extensive discussion by all the members of the committee, proposed changes to the rule were adopted by the committee with the exception to the sections below.

Changes to 720.D.

It reads now: Qualifications of Assessors. A qualified assessor is an individual who meets or exceeds the qualifications set forth in IRFLP Rule 719.D.1.

Proposed changes were: An assessor is an individual who is qualified pursuant to Idaho Rules of Evidence 702.

Changes approved: Subject to an appointment pursuant to Idaho Rule of Evidence 702, a qualified assessor is an individual who meets or exceeds the qualifications set forth in Idaho Rule of Family Law Procedure 719.D.1.

**Motion: Made my Judge Thomsen to amend IRFLP as submitted with changes and to further modify the qualifications and, removing "clinician or agency" and adding assessor to section D.; removing "or not" from E. 5 and 6; change F. 2. f. to "provide for the assessor to have access to all records, public or private, identified in the court order"; change to 720 D., Subject to an appointment pursuant to Idaho Rule of Evidence 702, a qualified assessor is an individual who meets or exceeds the qualifications set forth in Idaho Rule of Family Law Procedure 719.D.1. A second to this motion came from Judges Hansen and Judge Bollar. The Committee voted 9 to 6 in favor of the changes to the Rule.**

**E. CFCC Domestic Violence Advisory Team**

Judge Lee presented a change in scope for the Advisory Team. The Team will be looking at domestic violence in its entirety across the state and not just DV courts. The team weighed in on the criminal no contact order form. The Team is focusing on monitoring and offers trainings. A new law was passed related to stalking and malicious harassment. New forms were created to reflect the law and feedback or questions can be sent to Judge Hansen, Judge Lee or Amber Moe.

**E. Forensic Evaluator Training**

Judge Comstock and Cori Erickson shared with the committee that the Supreme Court has set aside funds to help offset the cost of a forensic evaluator training in late winter or early spring of 2017. Planning for the training will begin in November 2016 and the program development committee is looking for input from judges about the training. Comments or questions can be sent to Cori Erickson.

**F. Odyssey and Statewide Forms Update**

Janica Bisharat and Michael Mehall updated the committee on Odyssey implementation and rollout. The Forms Workgroup will send updated forms to the CFCC in small batches for approval and loading into Odyssey. Odyssey will then have these forms as templates that a judge could modify if needed.

**G. Future of Family and Children Court Services**

Judge Comstock gave the committee an overview of where we are going with the Family Court Services Development Subcommittee. A lot of work has been done in the past several years gathering information about needs of the courts and families. The new goal will be the long range plan for FCS. The business plan will continue to stress the needs of self-represented parties and answer questions such as “are there services that can be considered strictly an administrative function?” For consideration will be a better understanding of external forces that influence the business practices of the program. The subcommittee will meet in the coming months. CFCC members are encouraged to contact Cori if they are interested in being on the committee.

*Judge Comstock adjourned the meeting at 5:30 p.m. Next meeting date/time to be announced.*

DRAFT