

MINUTES

CHILD PROTECTION COMMITTEE MEETING

April 12, 2013

Concordia University School of Law – Boise, Idaho

Friday, April 12, 2013

ATTENDANCE:

Judges Bryan Murray, Ryan Boyer, Roger Harris, Gregory Kalbfleisch, Gregory Frates, Cathleen MacGregor-Irby, and Judge John Melanson, Mary Jo Beig, Andrew Ellis, Julie Kane, Karlene Behringer, Adam Kimball, Scott Davis, and Gay Lewis. Not present: Miren Unsworth, Jennifer Bergin, Barry Black, Elizabeth Brandt, and Mike Scholl. Guest: Tina Freckleton. Administrative Office of the Court Staff: Renae Bieri, Debra Alsaker-Burke, Kim Halbig-Sparks, Judge Barry Wood, and Kerry Hong (afternoon only) and Janice Beller.

Agenda Items:

1) Welcome and Introductions

Judge Murray welcomed all attendees and introduced Renae Bieri, the new Research Analyst for the Children and Families Department of the Administrative Office of the Courts. Judge Murray also introduced Tina Freckleton, 3rd Judicial District CASA Executive Director and Gay Lewis, the 2nd District CASA Executive Director and new representative for the GAL programs on the committee.

2) Minutes

Judge Murray asked for any changes or additions to the minutes and it was noted that Judge Harris and Judge Walker both attended the January meeting. Julie Kane made a motion to approve the minutes from the January 2013 meeting as amended, and Karlene Behringer seconded. The minutes were unanimously approved as amended.

3) Strategic Plan

Debbie reviewed the projects outlined in the summary strategic plan for FY2013 and FY2014. Concern was expressed about the scope of work contained in the strategic plan. A suggestion was made that we limit the scope of projects. Debra identified those projects related to the Administrative Office of the Courts (AOC) and noted that the remainder were approved by the Child Protection Committee last year.

Judge Frates expressed support for the attorney specialization project and felt strongly that there is a need for ongoing training for attorneys who are appointed to child protection cases. Since I.C. 16-1614 was amended to require appointment of counsel for youth age 12 and over and for GALs appointed for children under age 12, it is even more important to support ongoing training for attorneys who practice in child protection cases. Committee members noted that there are limited attorney resources in smaller counties.

The Committee discussed ways to institutionalize training for attorneys. Suggestions include: better using pro bono attorneys or the ISB Pro Bono program; encouraging local communities to provide CLEs; and, collaborating with the Idaho Prosecuting Attorney's Association (IPAA) and the Idaho Association of Criminal Defense Lawyers (IACDL).

Discussion followed about the focus of the CP Committee: do we need to focus more on legal issues? For example: do we have a greater responsibility to educate attorneys than to focus on other areas of working with IDHW? There was no consensus on this question. One suggestion in regard to appointment of counsel for children is to engage the Trial Court Administrators (TCAs). TCAs can engage local bar and county commissioners. A Committee member suggested that the IPAA and IACDL be contacted and encouraged to provide training to attorneys who handle child protection cases. The Committee should offer this training – perhaps judges could contact the Presidents of the IPAA and IACDL.

The Committee wondered if a member of the Court of Appeals or Idaho Supreme Court could attend trainings and support improved practice in this area. Judge Melanson suggested that we work with the Public Defenders Commission to provide and encourage education and discuss how to improve representation in child protection cases around the state. Renae Bieri encouraged us to be thoughtful about whom we select to promote improved legal representation and change in legal culture regarding child protection cases. Identify natural “influencers”, those individuals who people list to, not who is most popular or well-known.

4) Work Group Assignments

Judge Murray asked for work groups to work on updating the bench cards, manual, and forms after the 2013 legislative session. The following groups were formed:

Update Bench Cards: Kim Halbig-Sparks (lead), Karlene Behringer, Judge Murray, Judge Kalbfleisch, Judge Harris, and Debbie. Note: Special review of the Advisement of Rights card is needed; concern it might not be ICWA compliant.

Update CP Manual: Liz Brandt (lead), Andrew Ellis, Adam Kimball, Mary Jo Beig, Judge Murray, and Debbie.

Forms: Judge Harris (lead), Barry Black, Scott Davis, Adam Kimball, Andrew Ellis, Mary Jo Beig, Jennifer Bergin.

Logistics coordinator for all groups: Janice

5) GAL Programs

Judge Murray reviewed the decision not to have a new Statewide GAL Coordinator at the Administrative Office of the Courts, and discussed the impact on the programs and the ongoing discussions with the programs about options for statewide leadership. Tina and Gay expressed concern over the decision and discussed the impact the restructuring of the state level leadership will have on the programs. They expressed concern that the programs would be negatively impacted in the following areas:

- Compliance
- Enforcement
- Training
- Cohesive group identity

Judge Murray expressed a need for Committee members, especially judges, to support programs during this time of transition.

ACTION ITEM: Tina will look at best practice when appointing a GAL if an attorney is appointed for a child.

6) Project Updates

a) Child Protection Advisory Team (CPAT) – Judge Murray advised the CP Committee about a judges advisory group on child protective issues. The Child Protection Advisory Team will work with the CP Committee and will address CP issues related to legal and court administrative issues. The judges who are on the CP Committee will also serve on the CPAT, to ensure good coordination between the Committee and CPAT.

b) Advancing Justice (Judge Wood) – Judge Wood updated the Committee on the Advancing Justice project. A Supreme Court Committee was created to develop district court time standards and magistrate judge time standards. The Advancing Justice Committee adopted the child protection time standards recommended by this committee. The “New ISTARs” will be better able to track time standards. It will be able to capture data across the state and measure it against time standards by case type. After we get valid time standards data, the Advancing Justice Committee will review time standards and adjust if needed.

The Advancing Justice committee has asked the new Chief Information Officer to make sure that the new case management system will be table driven (configurable) so that it can be changed by the Court as needed. The Committee is currently working on best practices for each case type, from start to finish. The Committee will be seeking feedback from trial judges, TCAs and others.

c) ISTARS (Case Management System) Update (Taunya) – Last year, a decision was made to transition to a new version of ISTARs, called Enterprise. Subsequently, and after careful consideration, a decision was made to re-examine possible vendors. ISTARs Enterprise might not meet our needs as much as we thought or at the price hoped. The IT Department is working on an RFP and the plan is to release the RFP at the end of April. The Design and Implementation team will review and score applicants through June. The vendor will be selected by the end of July. The project could return to design and implementation, getting back on track in August.

d) Shared Data/CP Measures for the New System (Taunya) – There is a work group working proactively to identify CP measures for the new system. The work group met in January with representation of the National Center for State Courts, to begin identifying measures that are needed in the new system. The NCSC representatives also

met with IDHW, DJC, County Probation, Medicaid, and the State Department of Education to identify shared data measures/elements that will be included in the new system.

The work group will meet in May to begin mapping the child protection processes of the Courts and IDHW. The work group hopes to map other business processes with DJC/Courts and DJC/IDHW over the summer.

- e) Child Welfare Specialization Work Group: Judge Murray asked for volunteers to create a Child Welfare Specialization work group. The following group was created: Judges Irby and Frates (leads), Adam Kimball, Mary Jo Beig, Scott Davis, and Karlene Behringer.

A motion was made by Judge Frates to authorize Judge Murray to contact the Supreme Court and request that the Court support the certification process by meeting with representatives of the Idaho State Bar (ISB), IPAA, and IACDL, to encourage them to stress the importance of training in child protection practice. Second by Judge Irby and Karlene Behringer. The motion was unanimously approved.

7) **Family Reunification Drug Courts**

All Idaho CP drug courts have requested that the courts be referred to as Family Reunification Drug Courts. The request will be made at the DMHCCC meeting with a request for approval. Scott Ronan provided an overview of the drug court budget that has dedicated treatment, testing, and coordination.

Budget Recommendations: FY 2014

We recommend that the FY 2014 one time funds be used to pay the salary of the Family Reunification Drug Court Coordinators (FRDC) in the Fifth and Sixth Districts. We also recommend funding the Seventh District Family Reunification Drug Court Coordinator in FY 2014, consistent with the Coordination Compensation Subcommittee recommendations.

We recommend that the Drug and Mental Health Court Coordinating Committee (DMHCCC) allocate four additional testing and treatment slots for the FRDC in Second District.

We recommend that Seventh District be allocated ten FRDC testing and treatment slots.

Budget Recommendations: FY 2015

Coordination: That ongoing legislative funding be requested for Coordinator salaries, consistent with the recommendations of the Hay Study Coordinator Compensation

Subcommittee, for the existing FRDCs in the Second, Fifth, Sixth, and Seventh Districts, as well as for Coordinators for new FRDCs in the First, Third, and Fourth Districts.

Treatment and Testing Slots: That ongoing funding for be approved for 58 testing slots at the current level of \$400 per slot and 58 treatment slots at the current level of \$3,945 per slot for the existing FRDC's (2nd-8, 5th- 20, 6th-20 and 7th-10). And, that additional legislative funding be requested for ** testing slots at \$400 per slot and ** treatment slots at \$3945 per slot for new FRDC's in the First, Third, and Fourth Districts.

Judge Frates expressed concerns about the clarity of the differences between responsibilities of the courts and of IDHW in the drug court model. Judge Frates elaborated that the CP Committee is asked to approve funding for treatment and testing slots. He does not feel that this is a responsibility of courts. Judge Frates expressed concern that having the court fund FRDCs could create an issue in a termination case. He indicated that he will submit a minority report to be attached to the minutes of this meeting. (*Attached as "A"*)

Julie Kane made a motion to approve the recommendations regarding FRDCs on pages 13 and 14 of the meeting materials.

Further discussion from Scott Davis, expressing a concern about the effectiveness of FRDCs and eligibility for FRDCs in the 7th District. He was supportive of the new proposed Guidelines, and believes that compliance will be enforced by peer review and plan to remedy deficiencies. It was also noted that all drug courts in Idaho are subject to a compliance evaluation.

Vote on motion: Frates votes no; all others vote in favor of the recommendations.

ACTION ITEM: Judge Frates will submit a "Minority Report" to Debbie to be attached to these minutes.

8) Legislative Review

Kim reviewed HB 148, signed by the Governor, which amends I.C. 16-1614 and addresses representation for children and GALs.

CP Committee implementation recommendations: Important to support appointment of GAL for youth 12 and over.

ACTION ITEM: Tina and Gay will research best practice on appointment of GAL in addition to an attorney for youth 12 and over.

Kim reviewed HB 256, signed by the Governor, and amending the CPA as recommended by this Committee. HB256 compliments the rules changes already approved by the Supreme Court and will likely take effect on July 1, 2013.

Committee members were asked for suggestions about how to implement changes to CPA. No suggestions were forthcoming. Judge Murray reviewed proposed national legislation

regarding the Interstate Compact for the Placement of Children (ICPC). This is essentially a process to facilitate communication between courts in different states and expedite interstate placement.

The Committee reached consensus that this is not the time to amend Idaho's ICPC statutes/rules and declined to make a recommendation or move forward with proposed ICPC legislation.

9) ICWA

Julie and Kim reviewed the agenda for the State and Tribal Court Forum, which met in March. The Forum will meet two times per year. This meeting mostly addressed criminal matters, but Kim, Julie Kane, and Debbie reviewed some issues regarding ICWA. Kim noted that significant concern was expressed at the Forum about using certified rather than registered mail as requested by ICWA.

Julie noted that right now, the relationship between IDHW and the tribes is not good. A second concern, identified at the Forum, was identifying appropriate placements for Indian children. Concern was also expressed about cultural awareness – or a lack of cultural awareness – when dealing with tribes.

The State and Tribal Court Forum recommended additional training on ICWA for states and tribal courts and others. Will put ICWA training on strategic plan for CP Committee. Perhaps focus on expert witnesses. Julie discussed new provisions of the Victims of Crime Act (VOCA) that allows tribal courts to have jurisdiction over non-native batterer. Tribal courts are working on addressing concerns about protecting the constitutional rights of the batterer.

10) New Items

Scott Davis noted the need for therapeutic foster homes in the 7th District. Judge Murray commented that he is aware of a therapeutic foster home in Salmon and Idaho Falls. He will discuss this further with Scott after the meeting.

Adjourn.

Attachment “A”

From: Gregory Frates
Sent: Tuesday, June 04, 2013 10:21 AM

Debra

I thought I sent this to you earlier, but apparently did not. This is my reasoning behind opposing **the courts** funding slots for substance testing in Family Reunification Courts. Feel free to share this with the rest of the committee.

The courts have a statutory obligation to determine if the Department Of Health and Welfare is making and has made reasonable efforts to reunify parents with their children. A finding by the court that the Department has not made reasonable efforts is one of the only areas of child protection where the courts have any remedy regarding the performance of the Department in its statutory duty. Such a finding affects the Departments Federal funding; it creates delays toward reunification with parents and/or termination of parental rights and in either event permanency for the child. Funding of these slots by the courts muddies the water. It puts the courts in a position of reviewing its own “reasonable efforts” as it acts in partnership with the Department to provide and pay from its budget testing slots. It clouds the separation of powers between an independent Judiciary and the Executive Branch. I believe it is a well-intended policy but it creates a conflict for the Child Protection Courts.

To the extent this budget proposal supplants the statutory obligations of the Department of Health and Welfare and creates a conflict of interests for the courts I oppose this budget proposal. Funding for reunification should be paid by and through budgets from Health and Welfare.

Greg Frates
Magistrate