

# MINUTES

## CHILD PROTECTION COMMITTEE MEETING

*April 28 and 29, 2011  
Idaho Supreme Court Building – Boise, Idaho*

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**Thursday, April 28, 2011**

### *ATTENDANCE:*

Judges Bryan Murray, Ryan Boyer, Roger Harris, Gregory Kalbfleisch, Gregory Frates, Barbara Buchanan, and Cathleen MacGregor-Irby, Barry Black, Shirley Alexander, Rob Luce, Mary Jo Beig, Elizabeth Brandt, Jennifer Gose, Andrew Ellis, Julie Kane, Karlene Behringer, Adam Kimball, Scott Davis, Michael Scholl, Chuck Halligan, and Cori Hadley. Administrative Office of the Court Staff: Corrie Keller, Nanci Thaemert, Kim Halbig-Sparks, Taunya Jones, Debra Alsaker-Burke, and Janice Beller.

### **Agenda Items:**

#### **1) Welcome**

Judge Murray welcomed all attendees and requested that Committee members fill out match time sheets and expense reports. Committee members and new attendees introduced themselves to each other. Judge Murray welcomed new Committee members: Adam Kimball, Scott Davis and Rob Luce.

#### **2) Comments from Chief Justice Eismann**

The chief thanked members of the Committee for their important work and specifically asked the Committee to consider:

- i) Whether a statute like § 19-2524 would be helpful in child protection cases.
- ii) The use of problem-solving practices post-disposition in child protection cases.

#### **3) Review and Approve Minutes**

The minutes from the September 9-10, 2011, CP Committee meeting were approved unanimously. Motion by Julie Kane, second by Karlene Behringer.

#### **4) Announcement of Events:**

- CFI in Boise, Idaho Falls, and Moscow.
- CIP Annual Meeting in Washington, D.C.
- Judicial Institute in McCall.
- GAL Subcommittee Meeting in Pocatello.
- Governor's Children at Risk Task Force – Patti Toth and a former prosecutor to speak about preparing for court and Roger Bourne will moderate a mock trial.
- Next CP Committee Meeting – **NEW DATE** – October 20 and 21<sup>st</sup> in Boise.

## 5) Statutes and Rules Subcommittee

### a) §16-1614

The proposed amendments deal with two issues that must be dealt with at some point:

- i) Attorney with power and duties of a guardian *ad litem*. Conflict in roles creates ethical issues for attorneys.
- ii) Appointment of GAL or an attorney for child(ren). Sometimes if only GAL is appointed, no attorney to put case forward in legally appropriate and useful way.

Proposed amendments also deal with third issue:

National trend is to appoint counsel for all children in *all* child protection cases. This also creates ethical issues for attorneys when the child client cannot or will not direct the objectives of the representation.

This is also a resource issue: both financial and in the availability of attorneys in smaller counties. However, a child has a defined liberty interest in juvenile cases. CP cases also involve an issue that may constitute a liberty interest.

Proposal:

For children under 12, appoint a GAL in all cases and appoint an attorney for the GAL. For children over 12, appoint attorney, BUT if for any reason this is not practicable or is inappropriate, appoint a GAL with counsel.

Discussion:

Child is not a party to the child protection case. On what basis is counsel appointed? At termination, a child becomes a party. What happens at this point if no attorney has been previously appointed? What is the fiscal impact of the proposed amendments?

Motion:

Motion to approve proposed amendments to IC §16-1614 made by Judge Buchanan and seconded by Judge Kalbfleisch. Proposed amendments approved.

Approved text is as follows:

### **“16-1614. Appointment of guardian ad litem, counsel for guardian ad litem, counsel for child.**

(1) In any proceeding under this chapter, for a child under the age of twelve (12) years, the court shall appoint a guardian ad litem for the child, and shall appoint counsel to represent the guardian ad litem unless the guardian ad litem is already represented by counsel.

If a court does not have available to it a guardian ad litem program or a sufficient number of guardians ad litem, the court shall appoint counsel for the child.

In appropriate cases, the court may appoint a guardian ad litem for the child and counsel to represent the guardian ad litem, and may in addition appoint counsel to represent the child.

(2) In any proceeding under this chapter, for a child (12) years of age or older, the court: (a) shall appoint counsel to represent the child and may, in addition, appoint a guardian ad litem; or, (b) where appointment of counsel is not practicable or not appropriate, may instead appoint a guardian ad litem for the child and shall appoint counsel to represent the guardian ad litem, unless the guardian ad litem is already represented by counsel.

(3) Counsel appointed for the child under the provisions of this section shall be paid for by the county unless the person for whom counsel is appointed has an independent estate sufficient to pay such costs.”

- b) Proposed amendments to IC 16-1615 (5) (b) and IJR 39 (i)(4): Burden of proof in shelter care hearings.**

Motion:

Motion to approve amendments to § 16-1615(5)(b) and IJR 39(i)(4) as presented: deleting paragraph (4) from IJR 39 to eliminate potential ambiguity regarding the burden of proof in a shelter care hearing. Motion to approve the proposed amendments made by Judge Frates and seconded by Barry Black No discussion.

Proposed amendments to IC § 16-1615 (5) (b) and IJR 39 unanimously approved.

IJR 39(i) will now read:

**RULE 39. SHELTER CARE HEARING (C.P.A.)**

- (i) Pursuant to I.C. § 16-1615(5), and following receipt of evidence at the shelter care hearing, the court shall enter an order of shelter care/protective order if shown that:
- (1) A petition has been filed; and
  - (2) Reasonable cause exists to believe that the child comes within the jurisdiction of the C.P.A.; and
  - (3) The department made reasonable efforts to eliminate the need for shelter care but the efforts were unsuccessful; or the department made reasonable efforts to eliminate the need for shelter care but was not able to safely provide preventative services; and
  - ~~(4) The child could not be placed in the temporary sole custody of a parent having joint legal or physical custody; and~~
  - (5) It is contrary to the welfare of the child to remain in the home; and
  - (6) It is in the best interest of the child to remain in shelter care pending the adjudicatory hearing.

The court’s findings as to reasonable efforts to prevent removal shall be in writing, and case-specific. If the shelter care order is the first order sanctioning removal of the child from the home, the court shall make written, case-specific findings that remaining in the home is contrary to the child’s welfare and that vesting custody with the department or other authorized agency is in the best interest of the child.

- c) Proposed amendment to § 16-1602(28): Amending the definition of “protective order” by removing specific reference to a domestic violence protection order, and thereby clarifying that protective orders may be issued in situations other than those involving domestic violence.

Discussion: There was a concern raised that the new definition limits issuance of a protection order to a party. The suggestion was made that the language could be broadened so as not to limit to just parties in a case under the CPA.

Motion: A motion was made to strike language in the proposed amendment: “against a party” and to read instead “...by the court in a child protection case...”, and approve as amended by the committee.

Motion to approve proposed amendments with modification made by the Committee made by Julie Kane. Second by Judge Buchanan. Proposed amendment approved as modified.

§ 16-1602(28) now will read:

“Protective order” means an order issued by the court in a child protection case, prior to the adjudicatory hearing, to enable the child to remain in the home pursuant to Idaho Code § 16-1615(5)(f). Such an order shall be in the same form and have the same effect as domestic violence protection order issued pursuant to Idaho Code, title 39, chapter 63. A protective order shall be for a period not to exceed three (3) months unless otherwise stated in the order.

- d) Modification of § 16-1633 to clarify that GAL confidentiality extends beyond the close of the case.

Motion to approve proposed amendment to IC § 16-1633 made without discussion. Seconded. Proposed amendments approved.

§ 16-1633 will now read:

16-1633. Guardian ad litem -- Duties.

(1) Subject to the direction of the court, the guardian ad litem shall advocate for the best interests of the child, and shall have the following duties which shall continue until resignation of the guardian ad litem or until the court removes the guardian ad litem or no longer has jurisdiction, whichever first occurs:

(a) To conduct an independent factual investigation of the circumstances of the child including, without limitation, the circumstances described in the petition.

(b) To file with the court prior to any adjudicatory, review or permanency hearing a written report stating the results of the investigation, the guardian ad litem's recommendations and such other information as the court may require. In all post-adjudicatory reports, the guardian ad litem shall inquire of any child capable of expressing his or her wishes regarding permanency and, when applicable, the transition from foster care to independent living and shall include the child's express wishes in the report to the court. The guardian ad litem's written report shall be delivered to the court, with copies to all parties to the case at least five (5) days before the date set for the hearing. The report submitted prior to the adjudicatory hearing shall not be admitted into evidence at the hearing and shall be used by the court only for disposition if the child is found to be within the purview of the act.

(c) To act as an advocate for the child for whom appointed at each stage of proceedings under this chapter. To that end, the guardian ad litem shall participate fully in the proceedings and to the degree necessary to adequately advocate for the child's best interests, and shall be entitled to confer with the child, the child's siblings, the child's parents and any other individual or entity having information relevant to the child protection case.

(d) To monitor the circumstances of a child and assure that the terms of the court's orders are being fulfilled and remain in the best interest of the child.

(e) Such other and further duties as may be expressly imposed by the court order.

(2) Subject to the direction of the court, the guardian ad litem shall maintain all information regarding the case confidential and shall not disclose the same except to the court or to other parties to the case. This duty of confidentiality is not extinguished by the resignation of the guardian ad litem; the removal of the guardian ad litem, or the dismissal of the case.

e) Proposed amendment to IC 16-1602 (29) : Definition of protective supervision.

Discussion on § 16-1602 and the definition of protective supervision:

Judge Frates moved to approve the proposed amendment to the definition of protective supervision to state "Protective Supervision" so that it reads:

"Protective supervision is a legal status created by court order in child protection cases whereby the child is permitted to remain in his home under supervision by the department".

Judge Kalbfleisch seconded the motion. Proposed amendment approved.

Subsequently, an additional motion was made to send the proposed amendments to IC 16-1602 (29) to the Rules Subcommittee to address the following question:

Do we need to delete the reference in IC § 16-602 (29) to “in the home.” How do we define the relationship between child and caregiver “in the home”, embracing that the caregiver could be someone other than the parent and as such, the home could be different than the child’s original residence?

Motion by Debra Alsaker-Burke to remand the proposed amendments to IC § 16-1602 (29) to the Rules subcommittee in order to address the concern raised about the phrase “in the home”. Seconded by Liz Brandt. Approved.

Corrie Keller clarified for Committee members that if members decline to vote or are silent, the vote presented to the Administrative Conference shows no dissenting votes.

- f) Proposed amendments to § 16-2002(3)(b) and § 16-1629(9): in regard to the definition of neglect due to failure to comply with case plan.

Discussion: Neglect due to failure to comply with a case plan. Court of Appeals case in 2011 (#9), at footnote 4, seems to be inferring that termination on this ground may not be asserted prior to the 15<sup>th</sup> month.

Mary Jo noted that the Supreme Court may have addressed this issue in a 2010 case. She provided members with a copy of 245 P.3d 953.

Motion: Debra Alsaker-Burke moved to remand this issue to the Rules Subcommittee for further discussion. Seconded and unanimously approved.

- g) Proposed amendment to IC § 16-2008(b): IDHW report to the court in TPR cases.

Discussion: Currently, the court can and does order IDHW to conduct and submit to the court a report of investigation prior to a TPR trial. Judges are indicating that they do not feel the report to the court is admissible evidence and do not read it. IDHW is wondering why, then, these reports are required?

Of the seven judges on the CP Committee, none read the report of investigation prior to the TRP trial. Some judges use the report in default judgment cases. § 16-2009 infers that the court can read the report, but practice appears to be different. Prosecutors offered that they do find the report to be extremely valuable in preparing the termination case.

No changes to I§ 16-2009 approved at this time.

- h) Proposed adoption of IC § 1-2223 in Child Protective Act for judges hearing child protection cases.

Discussion: Juvenile judges are currently required to receive training in juvenile matters. The question before the Committee is whether it would be appropriate for judges who hear child protection cases to have a similar training requirement?

Motion: Judge Murray moved that this question be remanded to the Rules Subcommittee for consideration and the development of a proposal in regard to statutorily mandated training for magistrate judges who hear child protection cases. Seconded by Judge Frates and approved unanimously.

- i) Proposed amendment of the definition of aggravated circumstances in Idaho statutes to include the new definitions as provided in the Child Abuse and Prevention Treatment Act (CAPTA) § 106(a)(2)(A)(xii).

No discussion. Motion was made by Judge Frates to amend as recommended. Seconded by Judge Buchanan. Approved unanimously.

New text of CAPTA reads:

- xii. provisions, procedures, and mechanisms to be effective not later than 2 years after the date of the enactment of this section that assure that the State does not require reunification of a surviving child with a parent who has been found by a court of competent jurisdiction--
- I. to have committed murder (which would have been an offense under section 1111(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;
  - II. to have committed voluntary manslaughter (which would have been an offense under section 1112(a) of title 18, United States Code, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of such parent;
  - III. to have aided or abetted, attempted, conspired, or solicited to commit such murder or voluntary manslaughter; or
  - IV. to have committed a felony assault that results in the serious bodily injury to the surviving child or another child of such parent; and...

- j) Discussion on IJR 50 – Change of Venue.

Discussion: Judge Frates presented concerns about current change of venue process in terms of timely case processing when a case is transferred between adjudicatory and case plan hearings. This is particularly acute when aggravated circumstances are alleged.

Motion: Remand issue to Strike Team to see if proposal can be developed to resolve this issue. Approved unanimously.

**6. Review of recent case law**

Kim Halbig-Sparks reviewed recent Idaho Supreme Court and Court of Appeals case law in the area of child protection.

**7. CAP Awards**

The committee reviewed the recommendation of CAP nominee reviewers (Judge Kalbfleisch and Julie Kane) and selected a recipient.

It was moved by Judge Harris and seconded by Mary Jo Beig that **Emily Carroll** be selected as this year's recipient. Approved unanimously.

**ACTION ITEM: Debra will coordinate the presentation of the award in Moscow (at CFI), as well as explore making a presentation at Emily's high school, with Judge Buchanan making the presentation. Deb will also coordinate with Patti to send out a press release.**

**8. Resources**

- a. CP Manual and Bench Cards / Advisement of Rights Form – Moved by Judge Frates and seconded by Judge Boyer to approve both the CP Manual and Bench Cards for printing and distribution with the understanding that some last minute changes may be made to the Manual and Bench Cards prior to printing without further review and approval of the Committee. Approved unanimously. Member so of the Committee also recommended that the Advisement of Rights Bench Card be reviewed and possibly revised to make them more understandable to parents.
- b. Booklet for Parents – Motion was made by Judge Buchanan and seconded by Judge Frates to update the book for parents, simplifying the language. Approved unanimously.
- c. Review of CP Website by Nanci Thaemert.

**9. ISTARS – Julie Cottrell**

- a. Late appearing parent update will be in the next ISTARS release, slated for the 2<sup>nd</sup> week of May.
- b. Reports showing waiver of time will be part of the same release.
- c. "Unique Child Identifier" – JSI is still working on this project. Will facilitate future data sharing and access by IDHW of data in our repository. May have to implement separately in each county to complete the three-point validation.
- d. 4KA (Timeliness Report) – Will show cases where time was waived by parents. Will not be reflected in cases prior to May release.
- e. New Case Pending Report – Will be in the May release. The report was reviewed by magistrate judges on the CP Committee and clerks.



## **10. Early Justice Initiative – John Peay**

John Peay shared with members of the CP Committee the new initiative to look at how the judiciary can function effectively and efficiently in the future, with fewer resources. This will involve, in part, empowering individuals to review practices and ask: “Why do we practice this way?” Particular effort will be focused on identifying and sharing current effective best practices that judges are already implementing.

*Adjourned for the day.*

## **Friday, April 29, 2011**

### *ATTENDANCE:*

Judges Bryan Murray, Ryan Boyer, Roger Harris, Gregory Kalbfleisch, Gregory Frates, Barbara Buchanan, and Cathleen MacGregor-Irby, Barry Black, Shirley Alexander, Rob Luce, Mary Jo Beig, Elizabeth Brandt, Jennifer Gose, Andrew Ellis, Julie Kane, Karlene Behringer, Adam Kimball, Scott Davis, Michael Scholl, Chuck Halligan, and Cori Hadley. Administrative Office of the Court Staff: Corrie Keller, Nanci Thaumert, Kim Halbig-Sparks, Taunya Jones, Debra Alsaker-Burke, and Janice Beller.

### **Agenda Items:**

#### **11. ICWA Practice Tip**

Kim Halbig-Sparks presented information on active efforts vs. reasonable efforts, aggravated circumstances in an ICWA case, and the reasonable efforts finding. In an ICWA case, both the RE and active efforts findings must be made.

**ACTION ITEM: DAB to explore adding Kim’s memo to the Idaho Supreme Court Child Protection website.**

#### **12. Pilot “Circuit Judge/Attorney”**

Rob Luce presented an idea to have a circuit team (Judge, Prosecutor, and Public Defender) for smaller counties that do only infrequent child protection cases.

A motion was made by Judge Frates to support a circuit team project by the court. Seconded by Judge Buchanan and approved unanimously.

#### **13. Updates**

- a) GAL Update – Nanci discussed the Court’s role in Adoption Day, asking the Committee if they would support a statewide adoption day observance. Committee members would be involved locally. The only concern noted was that proceedings should not delay any adoptions.

Shirley Alexander made a motion to develop an “Adoption Day” packet from Nanci’s office for use around the state to facilitate local, coordinated events. Second from Judge Buchanan and approved unanimously.

It was further recommended that the TCA's be utilized to disseminate information. Shirley also volunteered Stephanie Miller from IDHW to work with Nanci on this project.

Nanci also reported that the 2011 "No Forgotten Children" event is scheduled to coincide with the next GAL Subcommittee meeting, in Pocatello on September 8<sup>th</sup> and 9<sup>th</sup>.

Nanci Thaumert reviewed with Committee members the proposed FY 2012 allocation to the GAL programs. Judge Buchanan moved that the proposed FY 2012 allocations to the GAL programs be approved as presented. The motion was seconded by Andrew Ellis and approved unanimously.

A report was also provided by Cori Hadley, Executive Director of the 6<sup>th</sup> District CASA program.

- b) Education** – Judge Boyer reported for the Education working group. Judge Boyer reported that the Education working group recommends training for judges on the new requirement so Fostering Connections in regard to educational stability. A presentation was made by Karen Seay from the Idaho Department of Education on the McKinney-Vento Act and its application in child protection cases. Discussion of what "awaiting foster care placement" means in Idaho. Currently, it is decided by each school district. In Idaho, the Act most likely applies prior to a child's adjudicatory hearing. This provision may be deleted in the reauthorization of the Act.
- c) Older Youth in Care** – Falon LeBlanc provided Committee members with an overview of Independent Living and Transition services from IDHW for older youth. Some judges hold a transition plan hearing prior to vacating the case.

Judge MacGregor-Irby also reported to the Committee that the working group is gathering information about what other states are doing in this area. They will report back to the Committee in October.

- d) Preparing Youth for Court** – Judge Frates reported that Canyon and Twin Falls counties will share their progress in engaging youth in the court process at the statewide CFI's held in May and June.
- e) Phased Case Planning** – report from Judge Harris regarding the recent process evaluation of the phased case plan process in Twin Falls. He discussed some of the challenges that have arisen, including changing old practices, concern about returning children and youth home too early, and how to implement phased case planning while ensuring parents are aware of what they are required to do.
- f) Uniform Reports to the Court** – Shirley Alexander reported on implementation of new uniform reports to the court over the summer of 2011. She thanked Judge Frates,

Judge Murray, and Judge MacGregor-Irby as well as Mary Jo Beig for their work on the Uniform Reports to the Court work group.

- g)** PIP II - Shirley also reported that IDHW has successfully completed the PIP II. A celebration ensued!
- h)** Dually Adjudicated Youth – Judge Murray reported on new projects with IDHW, Courts, and the Department of Juvenile Corrections to share data.
- i)** Casey Family Programs – Mike Scholl talked about Casey’s goal to safely reduce the number of children in case by 50% by 2020, and the concept of the permanency round table as a means to expedite legal permanency for older youth in care.

**Adjourn.** *Next meeting scheduled for October 20<sup>th</sup> and 21<sup>st</sup>, 2011. Agenda/Times to follow.*