

Minutes of the Child Protection Committee

Thursday, October 10, 2013 // SpringHill Suites Hotel // Boise, Idaho

Attendees were: *Judge Bryan Murray (Chair), Judge Barry Watson, Judge Greg Frates, Judge Cathleen MacGregor-Irby (afternoon only), Judge Roger Harris, Judge Ryan Boyer, Judge Melanson, Judge Lynne Krogh (morning only), Judge John Varin (morning only), Jennifer Bergin, Gay Lewis, Mary Jo Beig, Julie Kane, Miren Unsworth, Rob Luce (morning only), Karlene Behringer, Elizabeth Brandt, Renae Bieri, Taunya Jones, and Debra Alsaker-Burke.*

Guests included: *Tina Freckleton, 3rd District CASA Program, Richard Johnson, 4th District CASA Program.*

1. **Welcome and Introductions** from Judge Murray.
2. **Minutes from the April 12, 2013.** A motion to approve the minutes from the April 12, 2013 meeting was made by Julie Kane and seconded by Mary Jo Beig. Motion passed unanimously.
3. **Membership on the Child Protection Committee**

Judge Murray shared with Committee members the new policy of the Administrative Office of the Court regarding Supreme Court committees. The Child Protection Committee currently has eight open seats. The Child Protection Committee roster is in the process of being restructured to fill empty seats, and to balance the committee by position and geography. Each Committee member will have a term. The GAL slot will be for a program but not an individual. Other program directors may attend at their own expense and will not have a vote.

Three new advisory groups will be developed: foster parents, parents, and youth. These groups will advise the Child Protection Committee as needed or directed by the Chair of the Child Protection Committee.

4. **Updates on Action Items and Other Topics**

- A. GAL Programs

Judge Varin reported on the status of the restructuring of the relationship between the GAL programs and the Administrative Office of the Courts. The Executive Directors, after due consideration and in light of their current responsibilities and finances, declined to set up a statewide network at this time.

The Executive Directors would like to act collectively through the Guardian ad Litem Subcommittee of the Child Protection Committee. And, in addition, there will likely be a

part-time employee in the Administrative Office of the Court to ensure that the Court's obligations as defined in the Child Protective Act and Idaho Juvenile Rules are met. The Court will continue to complete the fingerprints for GAL staff and volunteers and assist in the collection of data for the annual report to the legislature.

Judge Murray noted that the Child Protection Committee is well-positioned to support the Guardian ad Litem Programs. Judge Varin noted that the GAL Subcommittee has permission and authority to address statewide GAL program issues.

Richard Johnson, CEO of the Family Advocate Program reported on the merger of the GAL programs in the 3rd and 4th Districts under the umbrella of the Family Advocate Program. The programs will be functionally separate and data will be collected and reported separately, but governance of both will be in the Family Advocate Program in 4th District.

B. Amendment to I.C. 16-1614: Attorneys for GALs and Youth

Judge Varin asked how the implementation of I.C. 16-1614 is going around the state. Judge Murray noted that finding attorneys for children and GALs is difficult for rural counties. The Committee discussed the role of County Commissioners in funding legal representation. Judge Varin noted that the proposed amendments to I.C. 16-1614 were recommended by the Criminal Justice Commission and carried in the Legislature by the Idaho Association of Counties.

Jennifer Bergin noted that in her district, public defenders appointed for children are instructing others (prosecutors, GALs) that they may not speak with the child client. This presents issues for the GAL and the prosecutor. Judge Varin suggested that a work group be formed to offer guidance on this and other important issues relating to the representation of children. Judge Watson identified another possible unintended consequence: slowing down the process because a youth's attorney has not had contact with the child.

Judge Murray asked for volunteers for a work group to address issues related to the implementation of 16-1614. Volunteers include: Judge Watson, Judge Frates, Miren Unsworth, Karlene Behringer, Jennifer Bergin, and a GAL Representative.

ACTION ITEM: The work group will develop recommendations to share with the Child Protection Committee.

The Committee discussed the ongoing challenges presented by the lack of child protection cases and resources in rural counties. Committee members again discussed the concept of a traveling "team" to handle child protection cases in all rural counties in a district. Judge Varin suggested that the Committee explore the feasibility of having the state fund a circuit team to handle child protection cases in rural counties. In some areas, like indigent defense and capital cases, the state has already done this.

C. Best Practices when Appointing GALs for Children who are Represented by Counsel

Richard Johnson, CEO of Family Advocates, reported on best practices for appointing GALs for children who are represented by counsel. Richard explored the difference in the client-directed role of counsel and the “best wishes” driven representation by the GAL. NCASAA and the National Association of Counsel for Children identify representation by counsel with a GAL as the best practice model. Richard noted that GALs are a cost-effective way to providing extensive information to the court, and set forth the different strengths and weaknesses of each role. He also noted that national studies have shown that children represented by a GAL have more services that start earlier in the case.

Richard stated that the best outcomes for children will be achieved by appointing a GAL for all children regardless of age. Gay Lewis, Executive Director of the 2nd District GAL program, noted the importance of communication between the child’s attorney and the GAL.

D. October CPAT Meeting

Judge Murray shared the focus of the October CPAT meeting:

- Clarification of the process in Rule 16 Expansion cases;
- Identification of parties in a child protection case; and
- Question of whether the “party” issue can appropriately be addressed by court rule.

E. Amendments to I.C. 16-1621: A look at recent amendments, the case plan, and alternate care plan.

Mary Jo Beig stated that in Ada County, issues were raised about whether the current case plan and alternate care plan met the case plan content requirements in the recently amended I.C. 16-1621. Key shareholders in Ada County met to collaboratively discuss whether the case plan and alternate care plan meets the new requirements of I.C. 16-1621. In essence, the Ada County shareholders did a gap analysis, and identified several areas in which the case plan and alternate care plan do not provide sufficient information. The shareholders developed a plan for addressing the deficiencies in the current case plan/alternate care plan.

Jennifer Bergin noted that in her district, the public defenders are objecting to the Department filing a “service plan” not a case plan. Miren Unsworth noted that the “service plan” is the “case plan”. It was recommended that the Department call the document a case plan rather than a service plan.

ACTION ITEM: Add this issue to the next agenda to provide feedback from Committee members on the implementation of the contents of the case plan.

F. Idaho Child Protection Institute for Attorneys

Debra Alsaker-Burke reported on a child protection training for attorneys, held on September 24, 2013. Total attendance was about 90, of whom 75+ were attorneys from around the state.

A motion was made by Judge Watson that training for attorneys is a high priority for the Child Protection Committee. The Child Protection Committee encourages the Administrative Office of the Courts to take a leadership role in providing child protection training to Idaho attorneys. The motion was seconded by Jennifer Bergin and approved unanimously.

5. IJR 40 Implementation Evaluation

Taunya Jones spoke about the 2009 IJR 40 implementation evaluation. Taunya noted the variability of implementation among the counties. Renae Bieri wrote a report summarizing the key findings in the follow-up evaluation in 2011. Renae noted that in the five counties that participated in the evaluation, almost all participants said that having youth in court was positive and empowering.

First Key Finding: There is a statewide need for consistent and timely notice for youth and foster parents. Youth requested that notice be directed to them rather than foster parents. Foster parents noted that untimely notice made it hard to get off work. Also foster parents reported being discouraged by social works from attending hearings.

Second Key Finding: There is a need for consistent structured preparation and debriefing for youth. Increased preparation and debrief increases youth understanding of the court process. There is variability as to who is preparing youth across the state. Also, no consistency in content and delivery of preparation and debrief. Foster parents and youth asked for guidance on how best to participate in hearings.

Third Key Finding: Youth need a voice in what happens to them. Three key factors influence participation: 1) Interaction with judge; 2) Timing of participation; 3) Presence of other participants. Youth “really, really” want to be present for all of their hearings.

Judges discussed their practices in regard to excluding youth from hearings. Judge Watson shared that he identifies the child/youth as the most important person in the courtroom and engages the youth first. Youth prefer not to be heard at the end of the hearing as they feel they don't have an impact on the outcome. Some youth expressed happiness at seeing parents in court, others expressed concern.

Foster parents requested a structured report to the court so that they have a voice and they better understand what court would like to hear. Foster parents feel they express a unique voice unlike IDHW and GALs.

Fourth Key Finding: Youth and foster parents expressed a desire for more information about what is happening in their case. Youth asked for a plain language statement from the judge on what just happened and foster parents asked to be informed so they can know which “band aids” to apply when youth get home. Youth expressed a desire to sit by a person who can provide them with emotional support.

The evaluation raises questions, but does not provide an answer about what is best practice in Idaho. Further research needs to be conducted. Judge Watson shared his practice of engaging with youth in court: “I always start with the most important person in the room: the child. I engage them in general conversation and when I ask them specific questions about the case they are usually more relaxed. Another reason for starting with youth is that they can relax and listen to the rest of the hearing.”

Richard is a foster parent. He noted that foster parents get mixed messages and in many jurisdictions around the state, foster parents are excused from the hearing.

6. Returning to Updates on Previous Action Items and Other Topics

G. Judicial Monitoring of Psychotropic Drugs

Judge Murray shared with Child Protection Committee members the issues surrounding prescriptions for psychotropic drugs for children in foster care. He also shared with the Committee the resolution from the National Council for Juvenile and Family Court Judges (NCJFCJ) regarding judicial monitoring of psychotropic drugs.

Judge Murray asked Miren what information regarding psychotropic drugs will be included in the reports to the court. Miren stated that IDHW is finalizing a standard on psychotropic drugs. The new standard will encourage both parents to be present at appointments and ensure informed consent is obtained. Court reports will include information about what drugs are prescribed, dosage, and symptoms that are being treated. The IDHW standard is focusing on ensuring that IDHW staff and families are good consumers in this area. Miren noted that lack of treatment resources around the state contribute to higher rates of prescriptions for psychotropic drugs.

H. HUB Meetings

The Idaho Department of Health and Welfare has restructured to a “HUB” structure. The North HUB includes 1st and 2nd Districts, the West HUB includes 3rd and 4th Districts, and the East HUB includes the 5th, 6th, and 7th Districts.

Judge Watson reported on a successful first meeting of the North HUB. They anticipate holding HUB meetings twice a year. Individual districts are holding meetings in districts 3, 4, 5, 6, and 7. The East HUB is working with TCAs to schedule a HUB meeting. West HUB anticipates another meeting in the next several months.

I. New ICE Policy Update

Judge Murray shared the new Immigration and Custom Enforcement (ICE) policy on facilitating parental interests in the course of civil immigration enforcement activities. The Committee asked for further information on this issue.

ACTION ITEM: DAB to add this issue to the April Agenda with time for an immigration expert to answer questions the Committee may have.

J. Future Child Protection Committee Meetings

Child Protection Committee members asked that future committee meetings be scheduled at the SpringHill Suites Marriott on ParkCenter Blvd. **The next meeting of the Child Protection Committee is scheduled for April 10-11, 2014.**

K. Child Protection Drug Courts

Judge Murray updated the Committee on the work of the four child protection drug courts in Idaho. Debra Alsaker-Burke reviewed the new Idaho Child Protection Drug Court Standards and Guidelines for Effectiveness and Evaluation. These standards and guidelines were approved for Idaho's child protection drug courts, with one minor amendment regarding the proposed jail time sanction.

Committee members were also informed of the Department of Justice (DOJ) grant awarded to the Idaho Supreme Court to enhance the child protection drug courts in 5th and 6th Districts. The grant is for three years in the amount of \$550,000.

IDHW and the Court will conduct a business process mapping of the child protection process in regard to substance abuse issues and a full review to determine the extent of substance abuse issues in child protection cases. IDHW and the Courts will also work together to maximize the impact of the Court's new DOJ grant and IDHW's IV-E waiver. It was noted that IV-E eligibility requirements must still be met despite receiving the waiver.

7. Updating Child Protection Manual and Forms

Liz Brandt shared the highlights of her 12-month sabbatical, which included walking the Camino de Santiago in Spain. Liz is reviewing the child protection forms to prepare them for formatting and conversion to plain language.

8. Strengthening Legal Representation

Judge Varin reported on the work of the Joint Interim Legislative Committee and the Criminal Justice Committee, both of which are working on how to strengthen individual public defender representation as well as improvement in the system of providing public

defense in Idaho. Judge Varin will advocate on behalf of juvenile, child protection, and mental health cases that also involve public defense.

Committee members discussed the usefulness of minimum guidelines for attorneys who practice in this area. Some concern was expressed about whether minimum standards would be well received in Idaho. Liz Brandt encouraged a focus on a more positive approach: specialty certification and developing other incentives. Judge Murray suggested that we develop resources for attorneys. He also suggested that we explore what other states are doing. Concern was expressed about maintaining any resources we develop. Liz also suggested that there are graduate students at the University of Idaho College of Law who would be interested in projects.

Judge Boyer suggested we provide links to resources on the Child Protection website. Judge Frates noted that a shift in legal culture is important. Child protection cases should be among the most important cases handled by attorneys, rather than a short-term track for the newest attorneys. Judge Melanson noted that the Idaho State Bar would likely be interested in supporting child protection training for attorneys and possibly setting up a new section for the Idaho State Bar.

9. What's Working Well in Your County/District

Julie Kane in 2nd District reported success with a safe haven case. A Native American safe haven baby was born, enrolled in the Nez Perce tribe and adopted by a Nez Perce family in another state.

Mary Jo Beig reports that all is well in the 4th District.

Gay Lewis in 2nd District shared that a successful debriefing after a difficult case where the GAL and IDHW did not agree allowed the GAL Program and IDHW to maintain a good working relationship.

Tina Freckleton in the 3rd District noted that Canyon County was well represented at the recent attorney training and the participants found it useful.

Richard Johnson from the 4th District noted that CASA is meeting regularly with IDHW and cross training, improving the working relationship between IDHW and CASA.

Jennifer Bergin from the 5th District added that she and others are training IDHW staff on how to appear and testify in court. This is working very well.

Liz Brandt reports that "Children and the Law" will be offered annually at the U of I College of Law. Judge Ellis and Tara Wright will teach this course every other year.

Judge Melanson noted that the Court of Appeals is hearing many TPR cases. Most are about meeting the burden of proof and the Court is ensuring quick processing by assigning the

cases to a law clerk early and when possible, assigning the same judge to appeals by both Mom and Dad.

Judge Harris reports all is well in 5th District. The child protection team in his district is very professional and effective. “My job is so much easier when I have experienced attorneys who know the law and work well together.”

Judge Frates also reports an experienced team that is working well together. Many of the attorneys in Canyon County attended the attorney training.

Judge Boyer notes that getting more attorneys for youth is not stretch for his district; the 7th has been doing this for years. Training, however, is another question. He notes that he has two participants in his misdemeanor drug court who have open child protection cases, so he adds child protection folks to his drug court team. Judicial leadership involves convening and educating.

Miren Unsworth reports that the Department was awarded a IV-E waiver and that the Fatality Review Board of the Governor’s Children at Risk Task Force was recently established. The first report will be released in early 2014.

ACTION ITEM: The Committee would like to have Miren present the report of the Fatality Review Board at the April Committee meeting.

Judge Watson is happy to participate on the Child Protection Committee. He notes that he has learned about some new perspectives from this meeting. He notes that in the 1st District, they have new attorneys for GALs in Kootenai County and it is working well. He also notes that in his opinion, the focus of this Committee should be getting information to the judges.

Judge Murray thanked everyone for their participation and the meeting adjourned.