

MINUTES

CHILD PROTECTION ADVISORY TEAM COMMITTEE MEETING

April 9, 2014
SpringHill Suites Clearwater Room – Boise, Idaho

Wednesday, April 9, 2014

ATTENDANCE:

Judge Greg Kalbfleisch, Judge Ralph Savage, Judge Lori Meulenberg, Judge Carolyn Minder, Judge Calvin Campbell, Judge Ryan Boyer, Judge Barry Watson, Judge Mick Hodges, Judge Karen Vehlow, Judge Frank Kotyk, Judge Paul Laggis, Kerry Hong, Deena Layne, and Debbie Alsaker-Burke

1. Welcome and Introductions – Judge Kalbfleisch welcomed members of the CPAT. A request was made to schedule future CPAT meetings at the SpringHill Suites.
2. A motion to approve the Minutes from the October 9, 2013 CPAT meeting was made by Judge Watson and seconded by Judge Laggis. The motion was unanimously approved.
3. Debra reported on the Child Welfare Specialist Certification process in Idaho.
 - a. She encouraged judges to encourage attorneys to apply for NACC Child Welfare Law Specialist Certification. Federal grant to subsidize testing will end in 2015.

ACTION ITEM: Send NACC link to Child Welfare Specialist Certification and Family Law Training.

- b. Kerry – The Administrative Office of the Courts (AOC) held the research and drafting of a white paper for CPAT regarding party status for IDHW until October. The AOC is meeting regularly with the Attorney General's office and is requesting time for the Attorney General to work with the Idaho Prosecuting Attorney Association to propose a plan to address this issue. Kerry requested that the CPAT “hold off” on discussing this issue until October. The AOC is meeting with the AG's office again in June.

CPAT members discussed the length of time party status and representation for IDHW has been an issue for the child protection system and the Child Protection Committee. Judges commented that we need to make progress on this issue. Judges commented on need for research and again requested a white paper on party status for IDHW.

CPAT members expressed concern that IDHW performance in the child protection system is declining, and judges have no remedy. Judges discussed the

usefulness/effectiveness of increased frequency of “no reasonable efforts” findings.

There was also discussion about the inaccurate perception that courts no longer need to make IV-E findings. Judges comment that party status is a court issue and that legal representation is a collateral issue not involving the court. Judge Savage raised the possibility of separation of powers issues.

Judge Campbell moved to table the white paper request until October with a message that the CPAT will review the white paper and recommend some action if the issue is not resolved by October. Motion seconded by Judge Savage and approved unanimously.

- c. Debra reported that information about psychotropic drugs should be included in every report to the court and that IDHW staff is aware that information should be in their reports to the court. The court can inquire if information is not present or if the court desires additional information.
- d. Idaho Juvenile Rule 16

Issues identified by judges:

- i. NCO from juvenile court contrary to child protection practice.
- ii. IDHW investigates and says there is no CP case.
- iii. ISTARs does not allow consolidation of juvenile and CP cases.
- iv. §16-1613 expanding CP case to involve juvenile issues: what does expansion really mean? Judge Vehlow says Dr. Carter at DJC in Ada County has some research on this issue.
- v. Separation of powers – does the court have the authority to order a prosecutor to move forward on a case? Ethical issues for prosecutor are the same in civil and criminal cases.

4. Child Protection by the Numbers – Data on Timeliness, Days in Care, and IV-E Funding – Collected in the 2013 Calendar Year

- a. Trends in CP Petitions Filed: In FY2014, there is an upward tick in the number of child protection petitions filed in Idaho. Other states are reporting a similar trend. The cause of the uptick in the number of child protection petitions filed is not known at this time.
- b. Timeliness: The 4KA report has been in place for many years. The 4KA report measures compliance with timelines set forth in the Child Protective Act. The benchmark is an informal measure/goal that will be replaced by the new Advancing Justice time standards.
- c. Youth with Pending Cases: Judges requested that we break out data by permanency goal. They also requested that we identify children who are in the protective supervision of IDHW.

Renae Bieri noted that we are in the process of validating TPR data and will present this to judges as soon as it is validated.

A question was raised regarding whether Odyssey will track by child, and will Odyssey show separate timelines for each child. At this time, we are not certain how Odyssey will track child protection data, but the request was to have data tracked by child.

- d. IV-E Funding Report: IV-E data is IDHW data; IDHW has given us permission to share aggregate data with judges and detailed data by judge on an individual basis. Judges request that IV-E data show Rule 16 cases by District. A request was also made to add a code indicating when efforts made by IDHW are considered not reasonable by the judge.

5. Proposed Legislation and Rules

- Legislative Review 2014 Session (Agenda Item 5D)

Deena shared the legislative review process as well as history and outcomes for House Bills 464, 465, and 499.

- Possible Legislation from IDHW in 2015 Legislative Session (Agenda Item 5F)

Rob Luce, Division Administrator for Family and Community Services outlined the legislative process for IDHW. Proposed legislation goes from FACS → Deputy Attorney General for approval → Governor for approval → Legislature.

IDHW is interested in collaborating with the courts and other stakeholders on proposed legislation:

- Increase ability of older youth in care to drive. One issue: who is financially liable for foster youth who is driving? IDHW does not currently pay the increase in premium to put youth on a foster family's policy. IDHW would like to make it easier for youth in care to drive.
- Safe Haven Act. Compliance with ICWA requires the ability to get ancestry information from a parent about whether the child is Native American or an Alaskan Native. Failure to comply with ICWA threatens the stability of a subsequent or recently completed adoption.
- Reinstating Parental Rights. IDHW still considering whether they will proceed on this issue. Currently, parents whose rights have been terminated can adopt the child. There is currently no process for reinstating parental rights.
- Rehoming. Use of social media to find a different home for a child if adoption does not work out. IDHW is contemplating legislation that would make rehoming illegal.

Discussion: Don't we allow parents to determine where their child can live? Rob noted that Florida and Wisconsin are also trying to address this issue.

- Removal of Offender. Rob noted that currently 200 kids in care return home within 30 days or less of being removed from their homes. This occurs most frequently in Kootenai (Post Falls), Ada, and Canyon Counties.

IDHW's question: Is there a way we could have avoided bringing these children into care? Could law enforcement remove the offender instead? The CPA does not provide detail for removing offenders. For example: No clear immunity for officers removing an offender instead of a child.

ACTION ITEM: DAB to ask Rob for IDHW's data and research on this issue as well as a citation to the Mueller case.

ACTION ITEM: Rob to investigate and provide further detail on reasons why youth returned home in 30 days or less.

- Remove unstable home environment as grounds for jurisdiction under the CPA. There has been an increase in the number of cases where the court is finding jurisdiction based on an unstable home environment.
 - a. Can we define unstable home environment?
 - b. Should we remove children as a result of an unstable home environment?
 - c. Parents want to avoid findings of abuse or neglect and abandonment to prevent placement on IDHW's Central Child Protection Registry.

Rob notes that for all ideas, the deadline for proposed legislation from IDHW is July 1st.

Recommendation: Rob contact the AOC and or Judge Murray to request input of the courts on proposed legislation from IDHW.

- GAL Allocation (Agenda Item 5E)

Kerry Hong provided a brief history of the request for \$262,000 in additional funding for GAL programs in FY2015. The Legislature was not able to fund the full request for FY2015 but did give the programs an additional \$40,000. As stewards of GAL funding, Kerry asked the CPAT to comment on whether the \$40,000 should be used for statewide recruitment and training efforts or included in the GAL Allocation.

Kerry asked CPAT members for thoughts on GAL programs:

- Can we define problem in recruitment/retention? Judges felt they do not currently have an assessment to define the problem(s).

In general, for CP cases, judges felt that a GAL's information is more objective, more accurate, and more comprehensive than IDHW. A question was raised if some jurisdictions were reporting recruitment issues?

ACTION ITEM: DAB to research if Judges can recruit GALs. Would there be a problem with the judicial ethics cannons?

There is some support for Statewide GAL training. One judge supported passing through the funds to the GAL programs. Several judges noted the blurring of roles between social workers and GALs, and efforts by social workers to “control contact” of the GAL with collateral resources, content of reports, etc. Concern expressed by several judges that the court is not getting crucial information it needs to make good decisions.

- Fee Waiver for GAL to check IDHW Child Protection Registry (Agenda Item 5E)

Judges noted that this is a Department rule and so the court should not influence the rule of a separate agency.

Judge Savage made a motion to approve the proposed amendment to §16-1632, but not IJR 35, to provide waiver for GALs required to submit to a CP Central Registry Check. Motion seconded by Judge Watson and unanimously approved.

- IJR 40 (Agenda Item 5A)

Proposed amendment to IJR 40 to provide notice and opportunity to be heard for all CP hearings for youth age 8 and over.

A perception exists by CPAT members that IDHW is actively discouraging youth from attending hearings. The CPAT also feels that that IJR 40 does not need to include process for objecting to a child’s presence in court.

Consensus is that attorneys need to contact client and not expect child to be at shelter care.

Judge Lee made a motion to approve proposed amendment to IJR 40 to provide notice and opportunity to be heard at all proceedings under the CPA. Motion seconded by Judge Vehlow and the motion passed with one no vote recorded (Judge Watson).

- IJR 37 (Agenda Item 5B)

Judge Boyer made a motion to refer IJR 37 to the Statute and Rules Subcommittee of the Child Protection Committee to bring the rule into alignment with §16-1614 and IJR 40. Motion was seconded by Judge Campbell and unanimously approved by the CPAT.

- IJR 16 (Agenda Item 5C)

A motion was made to refer IJR 16 to the Statute and Rules Subcommittee of the Child Protection committee to conduct a comprehensive review of best practices regarding possible child protective issues in expansion cases.

Issue: Is there a need for a process that allows a judge in a guardianship of a minor case to order an investigation of possible child abuse? Statute and Rules Subcommittee to research and make recommendations.

Issue: Can IJR 16 expansion orders include language that parents shall not be placed on the Child Protection Registry?

ACTION ITEM: DAB will request training for judges: Webinar on Child Protection Central Registry.

Judge Campbell made a motion to refer IJR 16 to the Statute and Rule Subcommittee of the Child Protection Committee for a comprehensive review of the Rule 16 expansion process. Motion seconded by Judge Hodges, and unanimously approved.

Judges Campbell, Vehlow, and Minder volunteered to work with Statute and Rules Subcommittee on this issue.

6. Review of Case from First District

Judge Watson reviewed a case on appeal to the District Court in First District, in which a child protection case was dismissed for failure to serve summons on one parent.

Discussion: Does this case require service on both parents to have jurisdiction over the child? Unclear from the opinion. Judge Watson stressed the importance of making sure that the technical aspects of service are completed in every case.

7. Shared Data Working Group

- a. Debbie reviewed history of Shared Data Working Group and asked that the CPAT review the measures provided there. She asked CPAT members if anything was missed. Debbie requested that CPAT members review and send any comments, questions, or concerns to her.
- b. The members of the CPAT were asked about the ability to conduct timely TPR trials in their county. In Canyon, some attorneys that do child protection also do TPR trials. Neither judges nor attorneys have the time to do TPR trials at one time, so they often are broken up over weeks or months. They also have a challenge with conflicting calendars between child protection and TPR trials when Senior Judges hear TPR trials.

However, the consensus is that it works well to have TPRs heard by Senior Judges.

Questions Raised:

1. Do we need a court reporter for TPR trials?

2. An unintended negative consequence in some counties of appointing an attorney for children/GAL/parents is a delay in the TPR trial.
3. 1st District (Bonner) – Bonner County has cleared up a backlog of TPR trials. A contract with new attorneys with no CP experience with TPR trial put other calendars on hold. An 18-month timeline to complete TPRs is challenging.

1st District (Kootenai) – Rotation of six judges in Kootenai is working well. In the 1st TPR hearing, the question is whether the parents will contest the motion. In the 2nd hearing, if it is contested, it goes to trial. TPR trials are set with divorce trials but with a higher priority. Judge Watson observed that TPR trials generally go in “waves” with peaks and valleys.

8. (Agenda item #9) – Norma Jaeger provided an update on the CPDC Enhancement Grant.

Meeting adjourned.