

MINUTES
Family Court Advisory Committee
NC Judicial Center
December 5, 2008

The Family Court Advisory Committee (FCAC) met on Friday, December 5th at the NC Judicial Center in Raleigh. The Honorable A. Elizabeth Keever called the meeting to order at 10:00 a.m.

The following FCAC members were in attendance:

Kathy Arnette	Cheryl Howell
Jeff Barger	Justice Robin Hudson
Suann Bechtel	Tim Jordan
Judge Robert M. Brady	Judge A. Elizabeth Keever, Chair
Judge Stan Carmical	Bob Speight
Elisa Chinn-Gary	Becky Spragins
Judge Martha Geer	Marilyn Stevens
Nancy Grace	

The following visitors and staff also attended:

Stephanie Nesbitt, FCA, District 14	Billie Jo Garcia, AOC Court Programs
Mona Williams, FCA, District 3A	Alisa Huffman, AOC Court Programs
Brandi Clemmons, Juvenile Defender, IDS	Trish Oglesbee, AOC Court Services Division
Charles Lane, AOC Technology Services	Sandy Pearce, AOC Court Programs
Kiesha Crawford, AOC Court Programs	Gregg Stahl, AOC Senior Deputy Director
Lana Dial, AOC Court Programs	Lori Cole, AOC Staff to FCAC
	DeShield Smith, AOC Staff to FCAC

Welcome

Judge Keever welcomed everyone to the meeting.

District Presentation

District 3A: Mona Williams discussed the Pitt County Family Court (see handout). The District 3A Family Court is one of the newest family courts having just opened in March 2008. The Court is staffed by two case coordinators and an administrator. There are three judges that have been designated family court judges. The Court manages both domestic and juvenile cases. Currently, the FCA is managing the juvenile cases and the case coordinators are managing the domestic cases. Once the domestic backlog is reduced, the case coordinators will begin managing the juvenile cases as well as the domestic cases. The family court judges are assigned to domestic violence cases and IV-D child support court as much as possible.

Current programs include a quasi Access and Visitation program, pro bono custody clinic and a DSS social worker who serves as a court liaison in delinquency, AND and domestic violence court. The quasi Access and Visitation program is an agreement between the Court and Legal Aid to assist fathers in IV-D child support court who report that they are unable to visit their children. This format differs from the DSS grant funded programs elsewhere in the state. Once the Court refers fathers to Legal Aid, they might receive assistance with filing a visitation action; however, Legal Aid will not represent fathers in Court once the legal action has been filed. On November 13th, the first pro bono custody clinic in the district was hosted by Legal Aid and facilitated by local attorneys. These clinics will be scheduled on a quarterly basis. The DSS Social Worker liaison assists clients before they are in a crisis by offering preventative services.

Current court initiatives include reducing the IV-D child support case backlog with the assistance of the Clerk's office and reviewing juvenile cases to determine which cases are inactive in order to transfer them to the J Wise inactive database. The FCA is working with DSS and the juvenile clerk to ensure accuracy in this endeavor.

Future plans include a family drug treatment court; a court based truancy court which will begin in January 2009; and permanency mediation.

District 14: Stephanie Nesbitt gave a PowerPoint presentation for District 14 (see handout). Durham Family Court began in 2000 and was one of the three original family court pilot sites. Both domestic and juvenile AND cases are managed by the case coordinators. In addition to the Administrator, Durham Family Court is staffed by two domestic case coordinators (one of which is vacant), a juvenile case coordinator and an Access and Visitation Coordinator. There are two judges who hear domestic matters excluding IV-D child support and domestic violence. The city funds a domestic violence judge who hears all domestic violence matters in a specialized domestic violence court. There are five juvenile court judges; three preside in AND Court and two preside in Delinquency Court. The Chief District Court Judge is solely responsible for hearing all IV-D child support cases. There are a variety of court and community services, which includes a family drug treatment court, youth drug treatment court, adult drug treatment court, new life court and a court and school based truancy courts.

Current projects and goals for domestic court include: fully utilizing their new summary judgment divorce procedure; developing trainings for the domestic attorneys; increasing the percentage of cases settled through family financial mediation; and optimizing the use of Casewise as a management tool and providing meaningful reports from Casewise. Current projects and goals for juvenile court includes: completion of the revised local AND rules by December 31, 2008; improve compliance with statutory timelines; institute child planning conferences (CPCs) and permanency mediation; amend the local delinquency rules; increase the court's role in community efforts to prevent truancy, substance abuse and juvenile gang involvement; and optimize the use of JWisE and the use of the reports produced from JWisE.

Future plans for Durham Family Court includes: a structured mentoring program for new juvenile and domestic attorneys; a supervised visitation and exchange center; and a self help center staffed by at least one volunteer licensed attorney.

Discussion: Justice Hudson inquired as to what changes are being made to the juvenile AND local rules. Stephanie stated that the rules are being revised to incorporate CPCs and permanency mediation, institute block scheduling and ensure close monitoring of continuances to ensure that "good cause" is truly good cause for all continuance requests. Referring to a specific chart in Stephanie's presentation, Judge Carmical asked if the data meant that the presence of Family Court caused a decrease in domestic filings. Stephanie responded that she did not know the reasons for the decline, but that one possible explanation might be that since family court encourages maximizing alternate dispute resolution (ADR), cases that might have formally been filed in court, may be resolved through ADR prior to filing.

Initial Family Court Site Visit Reports

District 3A: DeShield Smith reviewed the site visit summary for Pitt County from October 2008 (see handout). At the time of the site visit, the clearance rate was 128.4% and the pending median case age was 85.5 days which was less than the Family Court average of 102 days. There are two local Family Court Advisory Committees (FCAC), one for juvenile and one for domestic, which actively meet in the district. DeShield stressed that judicial leadership was key in the successful implementation and continued operation of this Court. Judge Leech and the three Family Court judges have been supportive of Family Court since the inception and continue to provide leadership as the court continues to grow, which is visible by the close working relationship the judges maintain with the Family Court staff.

DeShield identified challenges and recommendations that were noted in the summary. The percent of domestic cases that are over one year old is 17.7%, which is higher than the best practice recommendation of 15%. However, the percentage is still lower than the Family Court average of 18.9% and the district continues to work on eliminating the domestic backlog. During the site visit, it was discovered that the attorneys are using one particular mediator which is causing that mediator to have to request extensions of time. A recommendation was made to encourage the local attorneys to use a variety of qualified, certified mediators on the list in order to increase compliance with the time standards and case resolution as early as possible.

District 14: Alisa Huffman reviewed the site visit summary for Durham County from December 2008 (see handout). Due to hiring a new FCA and the staff having to learn Casewise and JWisE (Durham was previously using a local program, Time Matters, for both domestic and juvenile case management), Durham is almost like a new Family Court. These challenges present a steep learning curve for the staff. However, Judge Bushfan's leadership has made a significant impact on the Court. She has used this time of transition to meet with both

domestic and juvenile court stakeholders to evaluate what is and is not working in a Family Court that has been operational for nine years. There was no reliable Casewise data to report since Durham has just begun using the system in 2008. However, J Wise is being used accurately and effectively. Judge Keever asked if funding will continue for the dedicated domestic violence judge. Stephanie responded that funding will continue. Alisa advised the Committee that this specialized domestic violence court has been in place since before Family Court began in 2000.

Follow-up Family Court Site Visit Reports

Court Programs staff is currently beginning their second year site visits to the Family Court districts. Site visits will be conducted on an annual basis for each fiscal year. The second year site visits will focus on the changes that occurred in the district during the past year and any obstacles that the district faced in implementing the recommendations contained in the initial site visits.

District 20A: Lori Cole provided the fiscal year 2008-2009 site visit summary for Anson, Richmond and Stanly Counties from her visit in October 2008. The initial site visit summary was conducted in June 2007. The rate of continuances as well as the number of cases that are pending has decreased in the past year. The clearance rate has also improved. Family Court collaborated with the community to conduct a Health Fair. At the time of the previous site visit, it was recommended that the district activate its local Family Court Advisory Committee. This recommendation was made again during this site visit.

Judge Keever added that there will be significant judicial changes in District 20A. Two of the four district court judges, Judge Wallace and Judge Bridges, were elected to the Superior Court bench in November. Judge Lisa Thacker will be the new Chief District Court Judge. Judge Keever stated that an invitation should be extended to her to attend the FCAC meetings since she is a new chief district court judge in a Family Court district.

District 25: Lori reviewed the site visit summary from Burke, Caldwell and Catawba Counties that she conducted in September 2008. During the past year, the percent of cases pending over a year decreased from 20% to 9%. A judicial assistant, Joy Brown, was hired to be the Juvenile Case Coordinator for the entire district. She travels between the three counties to perform child planning conferences and manage the juvenile AND cases. It was recommended that the Family Court staff develop written work plans to memorialize the job duties of each person. Work plans serve to assist new staff members although there has been little staff turnover in the district.

Discussion: Judge Brady attributed the reduction in pending cases to the judges imposing more sanctions, being made aware of their caseload statistics by their case coordinators and being able to compare statistics with other judges in the district. Tim Jordan stated that he has noticed an unusually high number of juvenile appeals originating from Burke County. A number of reasons were given for the increase in appeals including: an increase in the proficiency level of the juvenile court bar; increased participation by parent attorneys on list serves that spread word of the "appeal du jour"; and the fact that little thought may be given to many of the appeals since parents can just sign a notice of appeal that their local attorney hands off to another attorney who drafts the appeal. A question was posed whether anyone is tracking the number of appeals from each district. Justice Hudson advised that the split decisions from the Court of Appeals are increasing the caseload of AND cases at the Supreme Court and suggested that the FCAC may want to investigate this issue due to the pressure that the appeals are putting on the Appellate bench. She noted that the majority of appeals that are filed are related to TPRs. Alisa advised that, with the new J Wise codes, the number of appeals from each county could be tracked in J Wise in all counties beginning July 1, 2008.

Judge Keever asked whether CIP funds could possibly be used to research: 1) the number of appeals, 2) the allegations that are being appealed most frequently, and 3) the basis for the appeal. Sandy will explore whether there is CIP money available to fund this type of research. Justice Hudson said that there may be significant case law available that a law student or intern could review. Marilyn Stevens noted that GAL may have some useful data that the FCAC could use as well since GAL is involved in all of the appeals and they have a large amount of data.

District 26: Lori reviewed the site visit summary for Mecklenburg County from September 2008. She addressed the recommendations to increase juvenile case management and overall involvement in AND court by having a juvenile case coordinator. At the time of the previous site visit in January 2008, judges were being assigned to cases in geographic regions of the county. Parent attorneys are now being assigned to geo districts as well, which helps to limit the number of continuances because there is a smaller pool of parent attorneys. An annual

AND training has been implemented, the district has begun producing a juvenile newsletter, and the juvenile AND rules have been updated. At the initial site visit, it was recommended that the district implement CPCs. Mecklenburg considered that recommendation and decided that permanency mediation is working well. However, the recommendation to consider implementing CPCs was repeated because CPCs offer an opportunity to educate and introduce parents to the court process, ensure appropriate service referrals and front-load services for the family. Domestic relations case statistics have improved since the last site visit. In FY07-08, Mecklenburg had the largest number of domestic filings in the state (9,700) and yet still managed to have only 14.1% of their caseload pending for more than one year.

Judge Keever added that Chief District Court Judge Fritz Mercer was defeated in the November election but Chief Justice Parker has not yet appointed a new Chief. In addition, three other Mecklenburg judges were defeated, two of whom were family court judges. As a result of legislative changes, Mecklenburg is slated to receive two new judgeships.

Family Court Code of Conduct

DeShield introduced a draft Family Court Staff Code of Conduct for review and comment after it was formally emailed to committee members in November. The Code was drafted by a subcommittee of FCAs after several Family Court districts expressed the need for a Family Court Staff Code of Conduct, similar to the professional ethical codes of judges, custody mediators and attorneys that would provide ethical guidance in situations that are considered "gray areas." Most Family Court staff are not bound by a professional ethical code except that some FCAs and case coordinators are licensed attorneys and therefore they are bound by the Code of Professional Responsibility. The draft Code of Conduct is largely adapted from the current Model Code of Conduct promulgated by the National Association of Court Management and edited to specifically apply to North Carolina Family Courts.

Judge Keever suggested that the preamble be clarified to more specifically identify the court employees for whom the Code would apply. DeShield stated that the Code was intended to apply only to judicial staff and not to court staff outside of the District Court Judges' office, such as clerks and not to custody mediators who have their own ethics code. Cheryl Howell had a few suggestions that she would email to DeShield after the meeting. There was some discussion concerning reporting misconduct to a supervisor, confidentiality related to domestic cases and how this Code of Conduct would be enforceable—especially once the staff member is no longer an employee of the court. Justice Hudson suggested that the code be considered as more of an aspiration than an enforceable contract. Changes were also suggested about the wording for engaging in political activity during non-work hours. DeShield will make the recommended changes and disseminate the draft to the Committee for final review via email.

Proposed Legislation

Judge Keever spoke to Susan Horrell, District 6A FCA, who inquired if Family Courts are still a pilot program since that is how they began and also if there was a need for legislation to make it clear that Family Courts are no longer pilot programs. Gregg Stahl stated that the legislature considers a pilot program as a program that receives non-recurring funding and therefore Family Courts are not practically speaking considered pilot programs since they receive recurring funds. The session law that established family courts includes the word "pilot." Judge Keever agreed with Gregg Stahl's recommendation that no additional legislation is needed at this time.

At the September FCAC meeting, Judge Keever and Cheryl Howell asked the FCAC to consider drafting legislative proposals regarding (1) Affirmations and Orders of Paternity, and (2) Surrogacy. Judge Keever and Cheryl drafted legislation related to these topics, which was circulated to the Committee in November for review prior to the meeting (See handouts).

Affirmations and Orders of Paternity

Currently, a father who signs an acknowledgement of paternity (without the benefit of a DNA test) and later learns that he is not the biological father, cannot use this new information to stop paying his child support obligation. The proposed legislation prepared by Judge Keever and Cheryl allows a father who signed an acknowledgement of paternity a mechanism to stop paying prospective child support if a DNA test later proves he is not the biological father. The legislation also makes it clear that the father is not entitled to a return of any child support that has already been paid. Nancy Grace posed a question as to whether the father might be able to avoid paying any arrears that have accumulated. After some discussion, there was consensus that it would be unfair and a disincentive for fathers to pay child support if in the future they might be able to avoid paying

accrued arrears. Judge Keever asked the FCAC if they felt that there should be a time limitation for setting aside an affidavit of parentage since there is not a limitation defined in the proposed bill. The Committee did not think a time limit should be specified. Tim Jordan asked if payment for genetic testing was addressed. Cheryl said that she referenced Chapter 8 to address that point but would check to be sure it is sufficiently covered. Others suggested that this issue might need to be specifically addressed in the proposed bill rather than referring to another chapter. Cheryl will make the suggested edits and modifications and email the new language to the FCAC.

Surrogacy

There is currently no legislation that specifically addresses surrogacy in North Carolina. In addition to the scenario where the contractual parents are the 100% gestational donors of the child carried by the surrogate, these cases can also arise from 1) third party egg and contractual father's sperm, 2) contractual mother's egg and donor sperm, or 3) third party egg and donor sperm. Judge Keever and Cheryl Howell drafted proposed legislation that might be added as a subchapter to Chapter 50 to address surrogacy issues. Cheryl stated that she adapted language from the American Bar Association's Model Surrogacy Act, and she reviewed the few states that have enacted laws regarding surrogacy.

There was much discussion concerning the purpose and the content of the proposed legislation in this area of social policy. In addition, there were recommendations that the draft legislation be vetted with various organizations like the Family Law Section of the Bar Association. Judge Keever and Cheryl will consider the issues raised concerning the surrogacy legislation and resend to the FCAC for further review.

Budget and Workload Study Update

Gregg Stahl provided updates on the Family Court Workload Study as well as the budget. The Family Court Workload Study was the first time-study that AOC conducted on its own using the National Center for State Courts methodology. One of the major goals for the workload study was to determine a reasonable amount of time family court case coordinators spend managing both juvenile and domestic cases. The study tracked case coordinator's time and activities and in the final analysis, took into account factors such as: the use of best practices that might require extra time for a case coordinator, such as CPCs; multi-county vs. single-county districts; large districts vs. small districts; outlier data; implementation of new courts; and staff vacancies during the time study. The results were presented to Judge Keever and other judges as part of budget discussions. The goal is to codify the staffing formulas for use in funding future family court case coordinator positions. Overall, AOC received great participation and input from the field and advisory groups.

The Judicial Branch is under a 3% reversion agreement with the Office of State Budget (OSB). AOC is negotiating with the OSB since part of the judicial budget is constitutional salaries. As a result of the budget cuts, in-state travel has been restricted and out of state travel has been prohibited. There is a 90 day delay in filling vacant positions. If Governor Easley signs an emergency order prior to leaving office, there may be a complete hiring freeze.

AOC met with the OSB and they believe that Governor-Elect Perdue will not put forth a new budget until March or April. The General Assembly may face a \$3 billion shortfall and we should expect severe cuts, such as a 3-5% budget cut. Eighty-eight percent (88%) of the judicial budget is personnel. There is the possibility to propose increasing court costs and cutting supply costs. AOC will ask for the positions in the expansion budget that were justified by the Family Court Workload Study but may not receive them.

AOC successfully negotiated the purchase of the Judicial Center and will close on the purchase December 18th. The purchase of the building will ultimately save the State \$13 million over the life of the lease. Gregg extended an invitation to the Committee to attend Judge Walker's retirement ceremony on December 19th.

JWise/Casewise Update

Charles Lane with AOC Technology Services Division (TSD) provided the update on the JWise and Casewise databases. Charles described completed enhancements to JWise and future enhancements for JWise and Casewise.

The current TSD team that supports both Casewise and JWise consists of a project manager, three business analysts and two developers. TSD is recruiting for two additional developer vacancies which are currently posted. The developer positions are all CIP grant funded at this time, which limits them to only working on JWise but efforts are underway to recruit additional developer staff so there will be a mix of grant and non-grant funded

positions. The JWisE/CasewisE Advisory Committee continues to meet monthly and discuss priorities and allocation of resources.

There have been a number of JWisE accomplishments recently. On November 19th, TSD implemented an enhancement to JWisE that was threefold. First, it allows additional JWisE user roles to have access to certain batch reports. Second, an Entry of Order Due Report was added that will run as a batch report and reflect cases in which an order is outstanding. Finally, a hearing date field was added on the Event Add, Event Edit and Case Detail screens. In response to production issues, the technical environment was upgraded through a series of updates to the hardware and software. Requirements and designs are being developed for the Key NC Time Standard Reports and drafts are currently being vetted with all users in Family Court and CIP districts. AOC Statistician Patrick Tamer is working with the Advisory Committee to replace a clerk's report that details the petitions and allegations filed by county. Currently, this report is manually completed by the juvenile clerks but the future report will automatically pull from the clerk's data in JWisE.

The AOC JWisE/CasewisE Advisory Committee is working closely with TSD to prioritize future JWisE enhancements in order to be most efficient. In order for Guardian *ad litem* to transfer from the GALA system to JWisE, certain enhancements are being discussed and considered. The Committee is also reviewing enhancements related to: JWisE calendars and forms for content and usability; recommendations made by the Delinquency Subcommittee; streamlining the current AOC security form; and publishing the JWisE user manual on the AOC web site. Suann Bechtel expressed concerns regarding confidentiality if many different entities are allowed access to JWisE. Sandy Pearce explained that future enhancements involving view only access to JWisE by attorneys involved in delinquency cases will include security features that limit access to specific cases and is several years away.

The VCAP import interface to CasewisE will be tested by users in Wake, Lenoir and Stanly Counties the week of December 15th. Once it is implemented, data that is entered in VCAP will be automatically imported the next day to CasewisE without the users having to request the import manually as they do now. As part of this effort, a function will be provided to allow additional information to be viewed and received from VCAP, such as order dates and codes. The goal is for the automatic import to be completed by January 1, 2009.

Judge Keever asked that, since the Entry of Order Due Report reflects all orders that are due, is there a separate feature that would allow for this information to print on an orders due calendar. Trish Oglesbee responded that a filter could be run to generate this information or a user could run a batch job by changing a date. She will follow up with Judge Keever's clerk.

Judge Keever asked about the conference calls that were held earlier in the week with Family Court and CIP staff and juvenile judges. Brad Fowler, Assistant Administrator for the GAL Program, is the Chair of the Subcommittee responsible for drafting the JWisE Key Time Standard Report. The purpose of the conference calls was for the subcommittee to explain the draft report to the court users so that the users could discuss the proposed report with their local stakeholders and provide comments, suggestions, and any edits to the proposed draft. The conference calls went well with users reflecting their satisfaction with the draft report.

DHHS/AOC/IDS MOA and Local MOAs

Sandy Pearce reported that AOC entered into a memorandum of agreement (MOA) with Indigent Defense Services (IDS) and the Department of Health and Human Services—Division of Social Services (DSS) as a result of the Child and Family Services Review (CFSR), to promote best practices and collaboration in Abuse, Neglect and Dependency Court. On December 3rd, Judge Ralph Walker sent a letter to all chief district court judges encouraging them to take a leadership role and develop local MOAs to define the role of the Court and the stakeholders. AOC has asked Judge Regan Miller, Chair of the CIP Advisory Committee, to send an additional letter to the chief district court judges in the CIP districts requesting that they develop local MOAs modeled after the state-level MOA and the model MOA sent by Judge Walker. AOC is also requesting that Judge Keever send a similar letter to the Family Court chief district court judges. Each county DSS director will receive a similar letter from DHHS and IDS will send the same information to parent attorneys across the state.

DV Report Response

Sandy Pearce presented the highlights of the Domestic Violence (DV) Report to the Governor's Crime Commission (GCC) that had been funded by the GCC. The goal was to show that AOC is committed to implementing the recommendations that were contained in the report and to recognize that this is an important topic. Judge Walker has approved a proposal from Court Programs to submit a GCC application for a DV Court

Management Specialist position that would be housed in Court Programs. The first year goal would be to develop a DV Best Practice Manual and to provide technical assistance to all districts (not just the Family Court districts) regarding DV related issues. There are also plans to develop a DV specific strategic training plan.

AOC Court Programs Update

Custody Mediation & Permanency Mediation

Billie Jo Garcia advised that Stephanie Smith has joined the Custody Mediation Program. Stephanie has 15 years of mediation experience and will provide support to new custody mediators and provide co-mediations. Security is always a concern for custody mediators due to the various high intensity domestic issues the mediators encounter in their duties. Stephanie met with AOC Risk Manager Ford Heath who works with the county commissioners to raise the level of security in the courthouses and is working to get panic buttons installed in all custody mediation rooms.

Billie Jo and Stephanie continue to perform site visits and have completed twenty thus far. The site visits reflect a positive relationship with Family Court. They will conduct the next few site visits together and then they will divide the state geographically to continue the remainder of the districts.

The fall mediator training was held at the NCJC November 17-19. The training topic of mediating high conflict cases was chosen based on survey results completed at the prior mediator training. The trainer was William Eddy, L.C.S.W.; Esq. of the High Conflict Institute. Mr. Eddy discussed personality disorders, attachment theory and cognitive functions with the mediators to help them better understand parties with extreme high conflict behavior.

Nina Cohen has completed permanency mediation site visits for all five districts with the program. She is working with support staff regarding referrals and how to increase effectiveness of the mediations. Judge Keever asked if District 3B had implemented custody mediation; Sandy responded that they had not.

Court Improvement Project (CIP)

Lana Dial reported that CIP is entering into a contract with Appalachian Family Innovations to conduct a follow-up training with the CIP Annual Conference attendees in order to develop or update memorandums of agreements (MOA) locally according to the statewide request from Judge Walker. CIP is also working on presenting a CIP Conference at NCJC in May 2009. Additional training initiatives include plans to conduct a series of regional trainings related to interstate compact placement of children. These trainings will be similar to the Reasonable Efforts trainings that were held in May and June. CIP is also working to update the master contract with the School of Government to work on a juvenile judge benchbook and then organize a related training about the benchbook.

Kiesha Crawford informed the Committee that, due to a lack of interest, CIP will no longer offer training mini-grants to individual districts. However, District 1 will be conducting a district-wide reasonable efforts training in January 2009, which can be replicated in other districts.

2009 Meeting Dates

Proposed dates were circulated via email to all members prior to this meeting. No conflicts were reported with the proposed dates. The meeting dates for 2009 are: March 6; June 12; September 4; and November 20.

Adjournment

Having no further business to discuss, the meeting adjourned at 3:00 p.m. The next meeting will be March 6th at 10am. However, the meeting may be held via conference call due to a recent memo from the AOC Director requesting that Advisory Committees alternate meeting in-person with conference calls. A decision will be made as the meeting date approaches.

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*Submitted by DeShield Smith*