

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

The Family Court Advisory Committee (FCAC) met on Friday, September 5th at the NC Judicial Center in Raleigh. The Honorable A. Elizabeth Keever called the meeting to order at 10:05 a.m.

The following FCAC members were in attendance:

Kathy Arnette	Justice Robin Hudson
Judge Robert M. Brady	Judge A. Elizabeth Keever, Chair
Judge Stan Carmical	Rita Anita Linger
Elisa Chinn-Gary	John W. Narron
Rogena Deese (on behalf of Kathy Dudley)	Becky Spragins
Judge William C. Farris	Marilyn Stevens
Cheryl Howell	Eric Zogry

The following visitors and staff also attended:

Judge David A. Leech, District 3A	Gregg Stahl, AOC Senior Deputy Director
Mona Williams, FCA, District 3A	Trish Oglesbee, AOC Court Services Division
Judge Bill Neely, District 19B	Billie Jo Garcia, AOC Court Programs
Nancy Butler, FCA, District 19B	Kiesha Crawford, AOC Court Programs
Brandi Clemmons, Juvenile Defender, IDS	Lana Dial, AOC Court Programs
Whitney Fairbanks, Parent Attorney Trainer, SOG	Alisa Huffman, AOC Court Programs
Ellen Rose, FCA, District 28	Lori Cole, AOC Staff to FCAC
Wendy Sotolongo, Parent Representation, IDS	DeShield Smith, AOC Staff to FCAC

Welcome & Introductions

Judge Keever welcomed everyone to the meeting. She thanked the Chief District Court Judge and Family Court Administrator from Districts 3A and 19B, the two newest Family Courts who have been special guests for their first year of their local family court. Everyone was asked to introduce themselves as there were several visitors present.

Future Legislation

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 noted that in the past, a delegate from Cumberland County has proposed legislation on behalf of the FCAC. Both issues were discussed by the group and it was agreed that Judge Keever and Cheryl would continue working on the language for potential legislation.

Affirmations and Orders of Paternity

Judge Keever gave the history of a bill that was before the legislature last session that did not go forward because it would apply to both legitimate and illegitimate children (i.e., fathers of children who were born in the marriage, and fathers who were not married to the mother at the time of the child's birth). 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 discontinue his child support based on the fact that he is not the biological father.

Judge Keever recommended that the legislation be revised to make the bill clear that it would only apply to fathers of children who were born outside of marriage. This would allow fathers who signed

an acknowledgement of paternity a mechanism to stop paying prospective child support if a DNA test later proved that they were not the biological father. The legislation would also need to make certain that the father would not be entitled to a return of any child support that had already been paid

Surrogacy

Judge Keever reported that Judges in urban counties are getting requests to sign orders finding that a husband and wife are the legal parents of a child who is about to be born to a surrogate mother. These orders are sought so that the hospital will put the “rightful parent’s names” on the birth certificate rather than the name of the biological surrogate mother. 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.

Cheryl reported that there is currently no NC statute dealing with surrogacy and other states have conflicting policies. The Court of Appeals has ruled that the sole means to confer parental status is by statute. The most common method used by North Carolina judges to identify parentage is a declaratory judgment which might be void and without legal authority or precedent. Many of the judges who are signing these orders are signing them because the parties consent that this is their contractual agreement and that the court has jurisdiction.

Judge Keever inquired if the Committee wanted to propose legislation on this issue. Judge Brady stated that if these types of orders are becoming common, it is worth examining. Judge Neely noted that, without appropriate legislation, a later ruling from the Court of Appeals about parentage could be devastating to a child so this is an important issue that deserves consideration and legislation now. Judge Keever suggested that the FCAC should start with the 100% gestational scenario when a husband and wife are the biological parents.

A decision was made that Judge Keever and Cheryl Howell would work on language for a proposed bill for the Committee to review at the December meeting.

Other Issues

- Eric Zogry mentioned that the Juvenile Defense office at IDS is considering making recommendations for legislative changes regarding Youth Development Centers to (1) clarify the rules regarding commitment and (2) extending the right to counsel so that attorneys are available after Disposition.
- Cheryl Howell identified the issue of juvenile AND parent attorneys approaching judges with ex parte appointment of expert witnesses and asking Indigent Defense Services (IDS) to provide funding for the expert. The law permits this procedure for criminal cases, but there is no clear legal authority for juvenile cases. Wendy Sotolongo stated that she has dealt with that question on the IDS parent attorney listserv. She has advised parent attorneys that the better practice is to set a Motion before the judge asking if they may request an ex parte order so that all parties will be advised of the request.
- Wendy also noted that IDS has been working with CIP on the issue of dual jurisdiction cases to clarify court practices when children are involved in abuse, neglect and dependency (AND) and delinquency proceedings.

Judge Keever stated that the FCAC is very interested in learning more about these other legislative issues and recommendations. She asked that the FCAC be updated with further developments.

Parent Attorneys

At the last FCAC meeting, it was decided to invite Malcolm Ray “Ty” Hunter, Jr., the Executive Director of Indigent Defense Services (IDS), to discuss the issue of having a sufficient number of competent parent attorneys for AND court. Mr. Hunter was unable to attend but sent Wendy Sotolongo (the Parent Representation Coordinator from IDS) and Whitney Fairbanks (the new Civil Defender Educator at UNC School of Government) to speak on this topic.

Wendy reported on her efforts to raise the quality of practice in AND court through training opportunities, encouraging the implementation of local rules for all districts (and involving parent attorneys in that process), centralized online resources and local support for the different needs in each county. In some districts, IDS is contracting with parent attorneys so that they will be available and have time dedicated to AND cases. This strategy has been successful and will likely expand to more districts. The best approach to increase the number of skilled parent attorneys is through personal contact from judges, IDS, and other attorneys - through a formal or informal mentoring process. Providing more support, contracts, and access to training are being promoted to encourage parent attorneys to continue their difficult work and foster commitment and responsibility to this practice area.

Currently, some large counties provide their own training and have special observation and training requirements for attorneys seeking to join the court appointed list. Wendy is setting up a list of contacts for each county to help coordinate regional half day training and mentoring relationships. A parent attorney listserv is maintained for information sharing across the state and is frequently used to advertise collaborative training opportunities. It was suggested that Juvenile Clerks, Family Court Administrators and CIP Directors are in a good position to share training information with parent attorneys and to provide IDS with feedback as to the names of parent attorneys in their district.

Whitney Fairbanks was recently hired by the UNC School of Government as the Civil Defender Educator. Her primary responsibility is to coordinate training for respondent attorneys in this specialized area of law. She has most recently been developing a Needs Assessment tool which will be circulated on the listserv to help determine the most effective ways to design and deliver trainings. Whitney is the faculty coordinator for the upcoming New Parent Defender Training (March 18-20, 2009) which is planned to become a biannual event at the School of Government in Chapel Hill.

Judge Neely added that often parent attorneys are not appreciated for the work they do. Judge Keever and Judge Brady both stated that these types of cases take a great deal of time due to multiple hearings and the extended life of the case and therefore, they take a high level of commitment. Alisa Huffman noted that parent attorneys are more supported in family courts when there is effective case management that provides predictability in scheduling cases and a point of contact for parent attorneys in court. John Narron recommended contacting the NC Bar president to suggest that this issue get recognition as there is a new president and each president tends to identify the issues he/she wants to raise awareness of.

Judge Keever noted that the GAL program has been successful in recruiting larger law firms to assist with appellate cases. Marilyn Stevens clarified that this was one of the original pro bono projects for GAL, but that it was eliminated because it was difficult for firm attorneys to come into a case and master the nuances of the AND arena. However, large law firms have assisted in writing appellate briefs.

District Presentation

Family Court Administrator Ellen Rose gave a comprehensive PowerPoint presentation for District 28. Buncombe County Family Court opened on April 1, 2005. Since that date, there has been a drop in the number of pending cases even with an increase in filings. This is attributed to the case management provided by the Family Court Office, which ensures that cases move through the court in a timely manner. Three Family Court judges hear domestic and juvenile AND cases. Each judge rotates through both courts, spending a two-week term in domestic court and a one-week term in juvenile court.

In addition to the Administrator and two Case Coordinators, there is an Access & Visitation Coordinator, Judicial Assistant and Custody Mediator who are performing duties that intersect with Family Court. Buncombe also has a Family Drug Treatment Court Coordinator who monitors the

progress of respondent parents from juvenile AND cases. Permanency Mediation is utilized in juvenile AND cases. Pro Bono packets, including pro se divorces, have recently been updated and are available at a Self Help Center in the courthouse.

Buncombe Family Court has prioritized current and ongoing projects. For Domestic court, these include (1) revising local Domestic rules and forms; newsletters to local Domestic Bar; (2) develop 4-hour Parent Education program that is accessible and affordable; (3) offer Family Law CLE seminars; (4) maintain current community support information in Family Court office; and (5) decrease time in which orders are submitted. For Juvenile Court, Family Court is (1) working to add one more day to the AND court week in coordination with DSS (this additional day will also allow all delinquency matters to be heard by one judge); (2) decrease time in which orders are submitted; (3) increase data accuracy in JWis; and (4) offer Juvenile Law CLE seminars.

Future plans and the "wish list" for Buncombe Family Court includes pro se divorce and custody clinics; more fully staffed ongoing supervised visitation and exchange center; self-help packets regarding other issues for pro se litigants; court mental health services that can offer custody/psychological evaluations; and liaison with mental health services that can provide low cost court-ordered therapy for parents and children.

Family Court Site Visit Report

District 28: DeShield Smith reviewed the site visit summary for Buncombe County from November 2007 (See Handout). At the time of the site visit, the clearance rate was 100.4% and 10.7% of domestic cases were pending over one year. However, the average clearance rate for FY07-08 was 104.5% and 5.2% were pending over one year. Buncombe Family Court has strong team dynamics between the staff and judges and enforces the continuance policy. The auxiliary court services, such as a Family Drug Treatment Court, Truancy Court and an Access and Visitation Program, and the availability of pro se resources, including pro se packets and a self-help center in the courthouse are assets to the community and Family Court.

At the time of the visit, the Family Court office was not very involved in juvenile case management and recommendations were made to implement Child Planning Conferences, increase JWis training and establish a plan to monitor juvenile time standards. It was also recommended that a Local Family Court Advisory Committee be convened in accordance with the Best Practices. Cheryl asked how the first appearance in AND court that Buncombe utilizes is different from the child planning conference. Lori Cole responded that they are different in that the service providers are not present and there is no conference.

Budget and Legislative Update

Gregg Stahl reported that the current budget was slated to be certified on 7/8/08 but was not finished until late August for several reasons. Beacon and a misunderstanding about the process for approving grant funded positions contributed to the delay. The Judicial system has an operating budget of \$50 million and works hard to wisely spend operating funds and apply lapsed salary funds for non-recurring purposes. Last year, AOC only reverted \$52,000 of the \$51 million budget.

AOC has begun examining the biennial budget for continuation and expansion for submission in November. Last year, the AOC was successful in establishing the use of workload formulas for District Court Judges, assistant and deputy clerks, and magistrates to support additional positions. AOC will meet with the judges to revise the formula and try again for more positions next year in the expansion budget. AOC will press for positions and resources that are needed, which may mean that court costs will need to be raised. The Chief Justice uses input from court officials, conferences, and division staff to produce the continuation and expansion budgets. The Judicial Council will convene on September 26, 2008 to provide guidance and direction. Mr. Stahl does anticipate that more Family Courts could be added in the next budget. New site(s) would be determined based on the pre-implementation strategies in interested districts.

Judge Keever reported that gang legislation was passed but otherwise there was little substantive legislation during this past session.

JWise Update

The JWise/CaseWise Advisory Committee continues to meet monthly. AOC Technology Services Division (TSD) hopes to test the automatic VCAP import into CaseWise at the end of September but a release date has not been announced. In addition to the testing, TSD also must refresh data in CaseWise in all 100 counties when it goes live. It is expected that the feature will go statewide in the fall.

The next enhancement for JWise is the Entry of Orders Due Report that will be a batch report. This means that it will run automatically once a week and be available to all JWise users in all 100 counties. The report lists all pending orders that have not been filed with the clerk. The release is scheduled for mid to late October.

TSD has a new team working on the JWise project in addition to a newly hired programmer to replace Scott Dominick who moved to another project. Together with Charles Lane and Lucyna Schroeder from TSD and Cynthia Easterling from Court Services Division (CSD), Alisa attended the DSS Data Conference in Washington DC in July. After learning about juvenile data from many states and multiple courts within the states, they were pleased to learn that a data collection system for all 100 counties is an innovative step when compared to other states.

Finally, the JWise/CaseWise Advisory Committee is continuing its work on the JWise enhancement list. Members of the Committee have been contacting users who have issues on the list to make certain that the Committee understands the need and also to assess how the identified need fits in with other issues on the list. Because programming is not a linear task, the Committee must review all issues and get feedback from TSD first before prioritizing additional programming tasks. Currently, the priorities remain the Entry of Orders Due Report and the development of a report for tracking NC statutory time standards. The Committee will share the prioritized list with the JWise users as soon as it is available.

Currently, CIP is funding the development of JWise so most of the Committee's focus is on AND issues, but consideration is being given to the delinquency piece that will be expanded in the future.

Workload Study Update

Mike Smith reported that the survey was delayed for one week to complete testing of the software that is being used to conduct the study. The study will continue through 9/19/08. During the first week of the Workload Study, 88% of the staff (35 Case Coordinators, 8 Judicial Assistants, 4 Family Court Administrators and 3 Trial Court Coordinators) entered data. Most districts have been very responsive. Emily Garrett from Research & Planning is taking a preliminary look at the data to check for errors. In addition to the Time Study, the Staff Year Value and Caseload will need to be determined. Research & Planning staff will be meeting with Court Programs staff to review the data which will be used. Mike will provide an additional update at the December meeting.

AOC Court Programs Update

Custody Mediation & Permanency Mediation

Billie Jo Garcia announced that Stephanie Smith will be joining the Court Programs and Management Services Division to work as a Court Programs and Management Specialist in the State Child Custody Mediation and Visitation Program. Stephanie has worked as a custody mediator in Wake County since 1994. Prior to 1994, she worked as staff developer/trainer/group facilitator for the Resolving Conflicts Creatively Program, and was director of the Central Employee Assistance Program in New York City. Stephanie will begin work with AOC on September 15, 2008.

Billie Jo has completed 23 site visits since April 2008. Billie Jo will be working as a consultant to the mediators and a liaison to the judges to help increase overall satisfaction. She is developing best practices and interested in providing more opportunity for training and professional development of the mediators. Billie Jo reported that there appears to be a lot of collaboration and a good understanding between the Family Court and Custody Mediation programs.

Court Improvement Project (CIP)

Lana Dial reported that the 8 CIP districts and the 3 districts that participated in the Child & Family Services Review (CFSR) recently attended the CIP Conference with all of the court stakeholders from their district to talk about what they are doing well and areas for improvement. They were encouraged to develop a plan to use information to identify resources to help continue their work. Lana stated that it is important for these stakeholders to come together regularly and to take the time to work on solutions.

Kiesha Crawford will be working with Sue Button on further team building efforts for CIP districts and will be available to work with specific communities within their individual districts. CIP has been focusing on training opportunities. Their recent Reasonable Efforts training will be repeated in Mecklenburg this November. There is plenty of room for all to attend.

Lana is focusing on practical collaboration and collective problem solving. She has grant funds available to build library materials in districts and will be sending copies of periodicals from the National Council to the districts. She is discussing the possibility of providing a bench book for AND court such as the recently released Juvenile Defender manual from the School of Government.

Judge Regan Miller from Mecklenburg was recently appointed the new chair of the CIP Advisory Committee after Judge Paul McCoy retired on 8/1/08.

Annual Family Court Conference

Lori Cole reported that the 2008 Family Court Conference took place in Winston-Salem on August 14th & 15th. Seventy-three percent (73%) of Family Court staff and judges - 96 out of 131 people who were invited - were in attendance for all or part of the program. That number includes 86% of staff and 61% of judges.

Attorney Margaret Burt, one of New York state's most widely recognized child advocates, spoke to Family Court and CIP at the first plenary about *Diffusing Permanency Time Bombs with Best Practices*. Ms. Burt reviewed a variety of system reforms and approaches that have been implemented by courts and their collaborative partners to ensure compliance with changes in the state and federal laws and policies.

Justice Patricia Timmons-Goodson offered the second plenary address entitled, *Leadership – The Family Way*, which reinforced the importance of the Family Court mission, identified strategies that promote teamwork and recognized intentional leadership tactics in daily practice.

In addition to the plenary sessions on Thursday, attendees had the choice to attend three of ten workshops. Topics included: Cultural Competency; Human Resources; Domestic Violence; Meeting Facilitation; Ethics & Professionalism; Influencing Without Authority; Shaping the Public Perception; and Recognizing & Communicating with People With Intellectual Disabilities.

On Friday there were two workshops and attendees were divided by role. Professor Jim Drennan from the School of Government guided the judges in a discussion about judicial leadership while Dan Comer and Lindley Myers from Appalachian Family Innovations worked with the staff to focus on the six principles of collaboration.

The conference topics were selected based on feedback from prior Family Court conferences and are in keeping with the Family Court strategic training plan for all Family Court staff and judges. The workshop evaluation forms had high ratings and were completed by a majority of attendees immediately following the workshops, with

94% agreeing that the topic was important to them professionally and good to include on the program;

92% agreed that the presentation was skillfully done;

86% agreed that the materials were a valuable addition to the session; and

88% agreed that the information will be very useful in their work.

Of the 96 people who attended, 44% turned in an overall evaluation form which asked for comment about the registration process, topics, organization and usefulness of the conference. Of that group, 82% agreed that the topics were relevant, the training was useful and that it met their expectations.

Planning has already begun for next year's annual conference. The date and location should be finalized soon. All Family Court judges and staff will be notified and encouraged to "save the date" for the 2009 Family Court Conference which will be a celebration of the 10th year of Family Courts in North Carolina.

2009 Meeting Dates

Proposed dates will be circulated via email to all members prior to the next meeting so that everyone can check their schedules and give feedback.

Adjournment

Having no further business to discuss, the meeting adjourned at 1:30 p.m. The next meeting will begin at 10:00 AM on Friday, December 5, 2008 at the NC Judicial Center.

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*Submitted by Lori Cole*