

MINUTES
Family Court Advisory Committee
School of Government, UNC—Chapel Hill
March 9, 2007

The Family Court Advisory Committee (FCAC) met on March 9, 2007 at the School of Government in Chapel Hill. The Honorable A. Elizabeth Keever, chair of the FCAC, called the meeting to order at 10:10 a.m.

The following FCAC members were in attendance:

Judge Elizabeth Keever, Chair
Eric J. Zogry
Sally Scherer
Tyrone Wade
Kathy Arnette
Leslie Starsonneck
Cheryl Howell

Justice Robin E. Hudson
Judge J. Stanley Carmical
Judge Robert M. Brady
Elisa Chinn-Gary
Mona Williams
Marilyn Stevens
Butch Parker
Dennis Cotten for Kathy Dudley

The following guests and staff also attended:

Judge Joy Hamilton
Denise Shell, AOC
Nina Cohen, AOC
Trish Oglesbee, AOC

Sandy Pearce, AOC
Traci Hobson, AOC
DeShield Smith, Staff to FCAC
Alisa Huffman, Staff to FCAC

Judge Keever welcomed everyone and began the meeting by introducing the first item on the agenda, Family Court Administrator's (FCA) Recommendations. Judge Keever gave a brief history on the original goals for Family Court Pilot sites that were first developed by the FCAC in 1999. (See meeting packet handout, "*Evaluation of Family Court Pilots, March 2003*.") Judge Keever explained that historically, the primary purpose of this document was for AOC to use in its annual report to the NC Legislature on how family courts were operating, listing the good things about family court, and comparing family courts to non-family courts in the state. The ten goals in this document track the goals identified in the 1996 report of the Commission for the Future of Justice and the Courts in North Carolina, *Without Favor, Denial or Delay—A Court System for the 21st Century*.

Judge Keever noted that while the legislature no longer requires an annual report since family courts are no longer considered "pilot" courts, it remains important to evaluate and report on the progress of family courts. Therefore, the FCAs thought that it was important to revisit these goals and recommend guidelines for how to measure them. Judge Keever then introduced the two FCAs who are members of the FCAC, Elisa Chinn-Gary and Mona Williams, to explain the document in the meeting packet, "**North Carolina Family Court Goals, Objectives, Measures, and Standards**" (hereinafter, "2007 Goals").

Elisa began the discussion by explaining that in early 2006, the FCAs dedicated between 1.5 to 2 days to begin a conversation on how the ten NC family court goals fit within national court performance standards as well as how NC family courts compared to national models of family courts. The Trial Court Performance Measures from the National Center for State Courts and family court performance standards and measures from Delaware and Maryland were used as models for comparison. Elisa explained that the purpose of adopting the universal five goals for court performance was so that in the future, NC family courts would be in a position to compare ourselves with other states, not simply comparing ourselves with each other and non-family courts within NC. The second purpose was so that family courts could learn from each other and other model family courts as we expand and evolve.

Elisa invited the committee to give their impressions and ask any questions as the list of goals, objectives, and measures is a work in progress and she and Mona would take their comments and suggestions back to the FCAs for further work.

Elisa then began addressing the five goals in order, starting with **Goal #1, Access to Justice**. She explained that this goal describes the effort of courts to be accessible to the public, identifying barriers and taking measures to decrease any barriers. Objectives A & B were adopted word for word from the national standards. The outcome/process measures are reports or activities that family courts are already doing. For example, publishing an annual cumulative list of services and opportunities would include such things as identifying the pro se materials that all family courts provide as well as the growth of self-help centers associated with family courts that are staffed by family court staff, local legal services attorneys, volunteer attorneys or law school students.

Cheryl Howell remarked that she was surprised to see pro se efforts place under Goal #5, Public Trust and Confidence, rather than goal #1, Access to Justice. Traci Hobson responded that there was much overlap in the five goals and that pro se efforts can fit in multiple places. And while it had been at least a year since the FCAs worked on this project, Traci's recollection was that they put pro se efforts in multiple places. For example, see goal #3, Equity, Fairness and Integrity that has a specific outcome measure for pro se cases. Alisa Huffman pointed out that on the final page of the 2007 Goals was a chart that the FCAs developed that listed how the ten FCAC Goals from 2003 (handout) fit into the five Court Performance Goals.

Judge Keever stated that she has generally seen pro se efforts listed under Access to Justice. Cheryl questioned what the "list of services" meant under process measure A in Goal #1. Traci responded that the list of services and opportunities was meant to be a place where all of the family courts could list what services they provide to the court and community. Since each family court is unique because their communities are different, there will be diversity in the lists. Elisa added that pro se could fit under Goal #1, just as pro se and parent education could also fit under Goal #5.

Leslie Starsonneck said that she took this language to mean that family courts would list the services and resources that are located in their community, not simply those provided by family court. She thought this was a good idea as with a list of community services, one could easily tell whether there was a lack of services available in a community. She also suggested that FCAs find a way to demonstrate how courts are interacting with various community services.

Sandy Pearce pointed out that the annual report lists services that the family court is providing, or directly associated with, not a comprehensive list of all community services. AOC is interested in reporting the services and resources family court staff are actually involved in. Cheryl responded that the issue she is having with this measure is that she did not see goal #5 in the 2003 Goals, "To maximize the use, and availability, of community services," in the 2007 Goals document.

Leslie added that she thought it was important for readers to see a comprehensive list of all services that are available in the community. Elisa stated that she would also like to see more specificity, especially for services like supervised visitation centers as she sees a great need for them in her district. She said that she would take this suggestion back to the FCAs for further development.

Judge Keever stated that the idea of family court is not only what the court can do, but how the court is getting involved in what the community has and identifying what is lacking so that the court can be an advocate for needed resources. When courts are able to see what other communities are providing, they get ideas and are encouraged to take similar action in their own community.

Judge Robert Brady pointed out a typo in Goal #1, Objective A. The last word should be "inconvenience" not "convenience." He also stated that he read this document as more of a broad brush, rather than a detailed document. Judge Keever suggested that if you identify a list as a process measure, you need to be clear as to whether it is comprehensive or not. Mona suggested that with the way managed care is changing in every county, that it would be very difficult to keep an accurate list of the variety of community mental health services in each county.

Judge Keever again responded that she wants to have a report that includes community services. Traci suggested that under Goal #4, Objective B "Family Court informs the community about its programs" might be a place to report both family court services as well as community services. Cheryl again questioned where the goal of maximizing the use and availability of community resources would fit under the five goals. Mona responded that she has always had a problem with how the 2007 Goals have family courts comparing themselves with other family courts, with non-family courts, and with national family courts. Sandy responded that while it is important to compare family courts with other courts in the state, when there is no data available for comparison, there needs to be a standard to compare with such as national standards. Judge Keever suggested creating a list of resources that the community doesn't have rather than what they have. Justice Hudson asked if information can be put on a website. Traci indicated that many family courts have websites and community resources could be listed there.

Judge Keever asked whether there were any other comments under Access to Justice. Judge Stanley Carmical said that he was concerned about outcomes from a satisfaction survey as listed in standard B. He said that he could predict that litigants would be satisfied if they got the ruling they wanted, but mostly, they were not satisfied. Judge Brady remarked that it was always the disgruntled ones who responded to surveys. Elisa responded that a customer survey would be directed for all court users, not just litigants. Judge Keever pointed out that the original court survey did target others like social workers, clerks, and customers. Traci indicated that this language came directly out of the national standards, and that while there were no plans to implement a survey in the

near future, it is an available tool for courts to use. Leslie commented that in a good survey, you don't simply ask about satisfaction, but ask other questions that get at whether the customer is satisfied with their experiences with the court, such as whether they were able to locate their courtroom within a reasonable period of time.

Nina Cohen suggested that the problem might be with the word "customer" and Sandy recommended using the term "stakeholder." Other committee members agreed that stakeholder would be a better term than customer.

With no further comments on Goal #1, Judge Keever asked Elisa to introduce **Goal #2, Expedition and Timeliness**. This goal documents the statistical evidence as to how family courts are meeting the time-standards established by the FCAC. She commented that the FCAs are limited in the types of reports that they can produce from CaseWise and JWisE, but with scheduled enhancements, the FCAs are working to provide more accurate and reliable reports in the future. The 2007 Goal only listed reports that were available to FCAs in early 2006.

Judge Keever stated that her concern with this goal, as well as other goals is that it deals heavily with domestic cases, but there is little to nothing about juvenile court. She stated she recognized that JWisE has not been in place very long, but she believes there were ways to report on progress in juvenile court without JWisE. She emphasized that it was important that juvenile court be seen as an important part of family court.

Elisa responded that when the FCAs worked on this project, it was an oversight that they did not focus more on juvenile court. She reported that later today Mona would be discussing a report that JWisE can generate regarding the time-standards in juvenile AND (abuse, neglect, dependency) court that was not available at the time the FCAs worked on the proposals. She assured the committee that the FCAs would incorporate juvenile reports into the Goals so that it is clear juvenile court has parity with domestic.

Judge Keever next expressed a concern that Standard A5 and A7 are in conflict with one another. Alisa responded that standard A5 is the standard for "trial court certainty" described by the national court performance standards. This standard is currently being reported for all courts in Durham, including family court. The thinking of the FCAs was to include this standard, but only for trials for two major issues in domestic court, custody and equitable distribution. The goal of "80%" is a high, but reachable goal that these trials will be heard in 2 or less settings on a calendar.

The A7 standard is much broader as it measures the calendar productivity for all issues calendared, not just two types of trials. This goal measures the calendar productivity for all domestic calendars so that matters are "reached" in 80-95% of calendared cases. Alisa explained that the term "reached" is a term of art that FCAs have been using since the inception of family courts.

FCAs have rated all cases on calendars with either "continued," "not-reached" or "reached." A case is labeled "continued" only when someone requests a continuance and the judge allows a motion to continue. Of course all cases that are not heard are *continued* to another date because of the policy of continuous calendaring, but the case is not labeled "continued" unless there has been a motion made to continue the matter.

“Not-reached” is a label for cases on a calendar when all the necessary parties are ready and willing to proceed, but the court does not have the time or other resources necessary for the case to be heard as calendared.

“Reached” cases are those where the parties and the court are ready and able to address the case so that there is a meaningful opportunity for the case to proceed toward resolution. Reached is not limited to the exact issue that is calendared. The court may not address every issue that is calendared, or the court may address the issue in a different way from how it was calendared. For example, a child support case that is calendared for a *pretrial hearing* could be marked “reached” when the judge proceeded with a *trial for child* support because at the pretrial, the parties consented to a trial.

Elisa responded that it was the FCAs goal to make the document understandable by the public. It is clear that the FCAs need to rethink some of the wording since the goal is that all readers should be able to understand what is meant by the plain language of the document.

Judge Keever raised the issue again as to who it is that family courts want to be comparing ourselves to. For now, she stated, we are mostly comparing ourselves to non-family courts and this may be helpful because we are only in eleven districts and it might help us spread the word about how good family courts are. But at some point, we will need to come up with other measures when we have expanded statewide. This may be the best we can do for now, but the goal is to compare NC family courts with family courts in other states.

Traci indicated that the FCAs spent a lot of time discussing this same issue. Often in the 2007 Goals, family courts are compared with each other rather than with other courts in the state because that’s the only reliable data available. Trish responded that the technology is available, but that the problem is that we do not have consistent data or a means of getting consistent data from every district in the state.

Next Elisa outlined ***Goal #3, Equality, Fairness, and Integrity***. Elisa pointed out that this goal is meant to address and measure many of the 2003 Goals, for example goal #1, “to assure the assignment of one family to one judge or judge team.” This goal is meant to show the public that the courts are dedicated to equality and fairness in all that they do.

Judge Brady expressed a concern that objective C will be an issue for the domestic bar because as it is written, it appears that family court judges will be giving priority to cases where both parties are pro se. He asked whether, by stating this as an objective, we are encouraging pro se participation. He also noted that in California, 80% of the divorces are pro se, but that the other legal issues in the case are not being addressed and are therefore clogging up the system.

Cheryl questioned why the document focuses on “double pro se” and not simply when one party is pro se. Did this mean that we are intentionally leaving out cases where only one party is pro se?

Elisa responded that national research shows a very strong, negative perception by the public that the court will handle double pro se cases differently than when an attorney is involved in the litigation. The objective is meant to address the public perception that the courts are fair and acting with integrity in all cases that are brought before it, not just cases with an attorney. Elisa suggested that the language be reworded to be more accurate.

Judge Carmical questioned how anyone acting as their own attorney can expect to be treated the same as when there is an attorney present. He stated that we live in an age where folks want to do things for themselves, but they do not understand the law. He feels that he has done his job when he hears parties out and makes a ruling based upon the facts and the law—but the court/judge cannot hold a party's hand or give them legal advice. He expressed concern that people not feel they are being treated unfairly, but the reality is that things are different in court when an attorney is involved.

Cheryl responded that this topic/conversation is the reason why she believes it is better to deal with pro se under Access to Justice and not under the goal of Equity, Fairness and Integrity. She recommends that the goal for pro se be limited in scope to the issue that no one is turned away from the court because of their inability to pay. She points out that when you begin to address the fairness issue, it leads into this type of debate. Her suggestion is to avoid the entire debate.

Judge Carmical agreed and stated that the outcome measure seemed to imply that a person can get as good of an outcome without an attorney, but that is not the case. Traci responded that family courts do not want to close the door on anyone and that we are trying to put into words what is different between family courts and non-family courts. She suggested that these differences are significant and important and need to be addressed.

Judge Brady then commented that pro se litigants with domestic violence issues appear to feel entitled that everyone in the court should stop what they are doing to help them with their lawsuit. He says that this expectation is not accurate. He agreed that the issue of pro se would be a better fit for Access to Justice, Goal 1.

Leslie asked whether the measure is only measuring whether pro se litigants get to disposition within the same timeframe as others who have attorneys. Elisa said that evaluating how well either double pro se or single pro se cases progress within the timelines is a measure that we had hoped technology would assist us with in the future, but that we couldn't accurately report on it now. Leslie also noted that "assisting" seems to imply that pro se folks are getting help with the system.

Judge Keever said that it would be great if we could determine where pro se litigants are having problems in the system so that these problems might be fixed. She asked whether CaseWise can compare the number of cases with attorneys to cases with one or more pro se litigants. Denise answered yes, that CaseWise could do this, but it is a matter of someone putting in the correct data into the system. Judge Keever questioned how the FCA would determine the number of pro se cases. Mona answered that one suggestion the FCAs came up with was for every district to count the number of pending double or single pro se cases at the same point in time and to get a percentage of these cases compared with the total number of pending cases and report it in the June 30 annual narrative report.

Judge Keever again suggested that pro se issues be identified in Goal #1, Access to Justice and to clearly identify what is to be measured.

Marilyn remarked that she would like to see more data about juvenile court and questioned whether there is more information besides one-judge-one-family. Mona responded that the FCAs might need to go back to the Future Commission report to be more clear about the goals from this report.

Judge Keever questioned why standard D regarding training requirements for family court judges only identified judges and not family court staff. She also suggested that if there is a standard for judges, it should be 100%, not 90%, because it needs to be consistent with the goal of 100% set by the Supreme Court. Cheryl also questioned what is meant by *best practices* in objective D—“Provide best practices training for family court judges and staff.” Sandy referred Cheryl to the Family Court Best Practices document published in October 2006. Judge Keever stated a primary issue for the Future Commission was for specialized training for all family court staff and that specialized training needs to be more detailed in the document.

Judge Carmical commented that standard E, giving parties a list of qualified interpreters does not seem to be very helpful. Elisa responded that the word “access” might be a little strong in the objective when considering someone coming into the court without an attorney. She questioned whether giving someone a list of interpreters is the only means of gaining access to family court.

Next Elisa introduced **Goal #4, Independence and Accountability**. Elisa briefly explained this goal would be to evaluate how well family courts are providing information about itself for the public, like everyone having a web page, information in the newsletter and articles in local newspapers. Cheryl questioned how promulgating HR policies listed in outcome A was an issue of accountability and that she was completely lost on this one. Elisa responded that this goes to the issue of being secretive versus informing. Alisa responded that this objective most likely came directly out of the family court performance standards. (standard 4.3 Personnel Practices and Decisions—family court uses fair employment practices.) Judge Brady agreed that he isn’t sure this is measuring accountability, but there doesn’t seem to be anything for independence. Cheryl stated that more measures should be identified to measure accountability and AOC should publish which courts are meeting the standard and which aren’t.

Justice Hudson responded that to her, it did make sense for independence, but she did not see the accountability. Judge Keever questioned where the 2003 goal “to improve and expand the use of technology” was identified in goal #4, Independence and Accountability? Traci responded that the technology of having websites with helpful information and the electronic newsletters comes under this objective.

Judge Keever then asked Elisa to introduce **Goal #5, Public Trust and Confidence**. Elisa stated that this goal speaks for itself, and that some information in Goal #4 might more appropriately belong under goal #5. Elisa again invited the committee to make any comments or ask any questions that she will take back to the FCAs.

Justice Hudson questioned what objectives in Goal #4 seem appropriate for Goal #5. Marilyn questioned who sees the videos listed in the outcome measures, *The Choice is Yours* and *Mending Hearts*. Mona responded that district 8 shows *Mending Hearts* at their one-hour parent education class that is taught in conjunction with custody mediation orientation. She explained that everyone who files a lawsuit for custody sees this video, unless they are exempt for such issues like domestic violence, or living more than 50 miles from the courthouse. In addition, they show *The Choice is Yours* at child planning conferences, but if there isn't a child planning conference, the parties are noticed to come a few minutes before court to see the video. Judge Hamilton concurred that this is the same policy in Wake.

Judge Keever asked Elisa whether *Mending Hearts* is shown in Charlotte since they do not have the one-hour parent education class. Elisa responded that all parties to a custody case participate in a four-hour parent education class and that the class shows the *Mending Hearts* video. Judge Keever commented that *The Choice is Yours* is shown in various family courts, but not all of them.

Judge Carmical asked whether the outcome B regarding judges speaking in public is a self-report. Elisa responded that in Charlotte, Family Court keeps a tally of when judges and staff are asked to speak and she records these in her narrative report.

In closing, Elisa stated that it appears the FCAs need to go back and discuss the 2007 Goals based on input from the FCAC. She expressed appreciation for the help of the committee and asked that FCAs be afforded the opportunity to continue working on this project, as it is a work in progress.

After the first hour of discussion, Judge Keever asked Sandy to give an update from AOC and to introduce Alisa Huffman and DeShield Smith as she had forgotten that we had new people in the room.

Sandy began her update by explaining the change in AOC interpreter services based upon the recent change in legislation. She reported that interpreter services are now fully staffed by Brook Bogue, the manager, and Courtney Lyman, the specialist who is also bilingual (Spanish). These staff will have the opportunity to be out in the field more. The new registry is on line and AOC has contracts with over 200 interpreters across the state. They have a training scheduled for the end of March. Trainings will not only increase the interpreter's proficiency, it will also increase their hourly pay rate. AOC will provide an annual certification test in the fall. We hope to have statewide interpreter positions by the end of the year in the larger districts. Telephone interpreting for the magistrates to call into the 800 number will be available within a few months.

AOC has hired two temporary employees to work on training and curriculum development in the juvenile area with the assistance of Lana Dial and Court Improvement Funds, and Kirstin Frescoln with BJA Drug Treatment Court Funds. In 2008, there will be a joint training for CIP and Drug Treatment courts.

AOC is moving. The new address is 901 Corporate Drive. It is near the RBC center in Raleigh. Some AOC employees from TSD are already on site. We expect court programs and others at Anderson will be moving at the end of May. All other AOC employees in the 5-6 other buildings around Raleigh will be on site by August. We have a long-term lease of

15 years with other opportunities to extend the lease or purchase the building. All AOC phone numbers will change.

Sandy handed out the Family Court Annual Report explaining that while the legislature does not require an annual report, AOC believes it is important to document the good work of family court. Sandy stated that the report was just completed and the committee is the first one to see it.

Judge Keever asked Sandy if she will be distributing the annual report to the legislature. Sandy responds that she will check with Gregg, but that they will probably only target the leadership—not distribute it to everyone in the legislature.

DeShield mentioned that Tennelle Hann will be doing the May family court newsletter. After inquiring whether Sandy has any other report from AOC, Judge Keever asks Trish and Denise to talk about CaseWise and JWis.

Denise reports that she is excited the VCAP enhancement will be complete in June. Denise explained the problems that the VCAP enhancement will fix. Trish indicated that there is important information in VCAP that does not download automatically to CaseWise. So the enhancement will enable any information that users want from VCAP to download automatically to CaseWise. However, the user group that is evaluating this enhancement recommends that not all information be downloaded. For example, the majority of the user group thinks that attorney addresses are more accurate in CaseWise than VCAP, therefore, if the attorney addresses are automatically changed to what is in VCAP, the incorrect address will overwrite the correct address. Denise said that the enhancement is ready for production, but that she is waiting for Trish's committee's final recommendations. Trish said that she will get the final recommendations to Denise as soon as possible after her Monday user group meeting. Mona pointed out that the enhancement will also allow users to track the daily changes from VCAP.

Denise also reported that JWis is now able to record Level 3 dispositions in juvenile delinquency matters. In the fall, the FDTC and GAL modules will be accessible in JWis. She reports that in non-family court districts, GAL will put ASFA data into JWis that will track the juvenile abuse, neglect, dependency time-standards.

Judge Keever clarifies that initially JWis did not allow for the entry of level 3 dispositions so there was no way to track the number of juveniles going to Youth Development Centers. Denise concluded by saying that they continue making lots of little improvements, but these enhancements are the major ones.

Judge Keever asked Mona to comment on how things were from her perspective in the trenches. Mona and Elisa indicated that these enhancements have helped those working in the trenches. Mona asked that they be informed about any changes to the system prior to the changes taking effect because it was difficult to turn on your computer and be surprised to see changes that you didn't know anything about. Mona responded that overall, JWis is looking pretty good.

Elisa stated that she is looking forward to these enhancements. She thanked Trish and Denise for giving the FCA the opportunity to weigh in on the decisions made.

Judge Carmical remarked that he participated in the Family Financial Settlement training that Trish gave. He said it was a great training and helpful notebook. Trish explained that she took a different tactic this time by standardizing the codes for everyone in the state to use so that there is uniformity and they track the data needed for AOC reports.

Judge Keever reminded everyone that by March 2007, all districts are mandated to have something in place regarding FFS and that AOC is working with non-family courts to set up their system. Judge Keever thanked Denise and Trish for their work and the improvements to the system. She stated that while she didn't understand it, she listened to her staff and when they are happy, she is happy. Judge Keever then asked when she could expect that you could print out a form with less than 16 clicks. Denise answered that the problem was not with the AOC system, but rather with Microsoft and we are stuck with what Bill Gates gave us.

Judge Keever then invited Mona to discuss the next agenda item, Juvenile Reports. Mona directed everyone to look at the handout in their packet as she described the statistical report for AND cases that is very similar to the statistical report for domestic cases. Mona emphasized that this report only has the most basic information on adjudications, dispositions and orders for permanency as she believes it is better to start simple and work toward more complex reports. Denise reported that she did not have an estimate from the programmers as to when it could be ready, but she thinks it might be by June, but she can't make any promises.

Nina Cohen asked whether it would be helpful to have information about permanency mediation on the report. Mona responded that a report can be generated for permanency mediation as long as everyone is putting this information into JWisE, but that permanency mediation was not included in this basic report especially since every district was not doing permanency mediations. Denise added that it is better to start simple and move to the complex. She stated that the information in Mona's recommendations is information that all court districts are expected to track so the data in this report will allow comparison between family courts as well as non-family courts.

Judge Keever asked Mona whether she had an opinion about permanency mediation being included in the report. Mona responded that since there were no time-standards for permanency mediation and that this was a time standard report, it wouldn't seem appropriate for this report. Nina commented that permanency mediation could occur at any stage in the juvenile matter. Nina stated that she is optimistic that permanency mediation will be successful and spread as she has been contacted by 14 chiefs who say they want it in their district. Perhaps information on permanency mediation can be added in the future.

Mona asked whether it was the FCACs consensus that Denise work on this report as it is presented. Judge Keever responded that Denise should move forward as there was no objection. Then Marilyn questioned why the order for permanency was included rather than the hearing date. Mona responded that the hearing information could be determined from the detailed report, but that it was not included on the summary report. A discussion ensued as to the difficulty of getting all districts consistent in their agreement and input into JWisE as to the permanency hearing. The various options include the date the hearing began, the last day of any court argument, or the date the judge issues the ruling. The

committee was reminded that when clerks are left to make judgments about these types of issues, it is difficult to get consistency and reliability.

Judge Keever next asked Mona whether she developed a similar report for delinquency. Mona responded that JWis tracks delinquency time-standards, but that she did not prepare a report. She asked whether the committee wanted her to look into that. Judge Keever said that since the system is tracking the information, we should get reports on it. Denise agreed that it would be easier to do both at one time, then to get back after the fact and request similar work.

Judge Keever also asked about transfer hearings for delinquency matters and how JWis tracks them. Denise responded that she did not think they were a part of JWis, as “transfer hearing” did not sound familiar to her and so she is pretty certain no one is recording them. Judge Keever asked Mona to get with Eric, Butch, and anyone else involved with delinquency court to coordinate a time-standard report for delinquency before June. (Judge Keever invites Denise to come back to next FCAC meeting.)

Judge Keever invited Nina to update the committee on custody mediation and discuss the issues surrounding the custody mediation brochure. Nina gave an update on the expansion sites and where they were in the process. There were ten remaining districts to implement custody mediation in, five in the western part of the state and five in the eastern part of the state. Districts 22, 29A, 29B and 30 have hired mediators and District 24 is the remaining western district. In the east, visits have begun in District 7 and 16B, with Districts 1, 2, and 3B to be visited.

Nina then introduced an issue previously discussed by the Custody Mediation Advisory Committee (CMAC) regarding information in the custody mediation booklet (the blue book) that is provided to all custody mediation orientation participants. The booklet includes a section on custodial and visitation arrangements based on the developmental stages/ages of children. There is concern that some of the information contained therein may be outdated based on current research. Participants in custody mediation sessions often refer to this information when making decisions on what custodial/visitation arrangements they will agree to. The CMAC has established a subcommittee of mediators to evaluate this information based on current research. The subcommittee will talk with Dr. Helen Brantley of UNC and others who have expertise in this area. At this time, mediators will no longer include that section in the information they provide to participants. A new supply of the “Blue Book” will not be printed until this issue is resolved.

Leslie Starsonneck gave her report on the status of the AOC domestic violence grant. Leslie has prepared to survey eight groups of people for feedback on DV training. She stated that the current research is inconclusive at best that the sensitivity training court officials receive about DV issues has a positive impact on the way judges rule (outcomes) in DV cases. She discussed various models of how states are using grants for DV. For example, some states send judges to national conferences while other states direct the money to AOC who provides a standardized training for all court personnel working with DV court.

Cheryl informed Leslie that she met a woman at the National Institute from NCSU regarding DV training when she was in Austin. This woman was also evaluating training and she would get Leslie her name and number.

Judge Brady said that he had a mixed response to the DV training he attended. He stated that it was so intensive and exhausting that it was hard to remember what the learning objectives were. He called the training a form of indoctrination that he wasn't sure he agreed with. There was general discussion about DV training and the timeliness of Leslie's research. Nina reported that there is a state-wide DV training coming up in Greensboro.

Judge Keever next described agenda item 8, proposed substantive law changes (see handouts) that she has been working on with Cheryl and Janet Mason. Before addressing the proposed changes, Judge Keever pointed out the handout, "Bills of Interest to the Court System Filed During the 2007 Long Session" that was drafted by Matt Osborne of the AOC and current as of March 1, 2007. Judge Keever suggested that committee members might want to receive and review this useful document as many of the bills being tracked by AOC are of interest to the FCAC.

A brief discussion ensued about a bill introduced this week to raise the age of minors for delinquent proceedings from 16 to 18. It was explained that the bill called for an increase in the age to 18, but there would be two years to study the impact on the court and other systems. There was no consensus as to whether anyone thought the bill had a chance of passing. However, there was much consensus that if it passed, it would have a significant impact on family court including an increased need for court time for more transfer hearings to superior court since many more offenses filed in juvenile petitions will not be eligible for diversion. Judge Keever pointed out that NC is one of only three states with the age under 18. Judge Brady commented that the Sheriff's Association and the Conference of District Attorneys are opposed to the bill. His concern is that if the legislature does pass this bill, they will not provide the additional funding and resources for delinquent juveniles as there is already a significant lack of resources for the existing population.

Eric explained that the proposed bill only contained two of the five recommendations from the Sentencing Commission on the issue. He encouraged everyone to go to the Sentencing Commission's website and read the full report. Butch pointed out that it creates chaos for DJJDP when, like in the past, laws are changed but additional necessary resources are not provided. He gave an example that the plan to create smaller units of Youth Development Centers across the state would need to be reevaluated because of the impact of having 17 and 18 year olds with 13 and 14 year olds. Butch also alerted the committee that there is a push for increasing the mandatory attendance age for school from 16 to 18 and that this will also cause a ripple effect for the entire system. Judge Brady pointed out there are other safety issues that arise in the adult criminal area such as the use of weapons and pepper spray.

On the issue of proposed legislative changes, the first issue (see handout entitled N.C.G.S.A. §50C-1) concerned ambiguous language in (6) regarding stalking, and (7) that does not set an age limit for the person committing the unlawful conduct. Judge Keever expressed her concern that the court is starting to see juveniles under the age of 16 using 50C against classmates when there is a dispute at school. She wants to make the language

clear that 50C only applies to those age 16 and older. Currently, 50C's can only be enforced by contempt and there is no statutory basis for holding a person under 16 in contempt.

The second proposed bill (see handout entitled "An Act to Provide Procedures and Sanctions to Address Contempt by Juveniles") would provide a statutory scheme to hold a person under 16 in contempt. This provision is not only necessary if 50C's continue to apply to persons under 16 but also for other issues where an offense if committed by an adult would result in an order of contempt. Judges have generally believed they have the inherent right to hold a juvenile in direct contempt if they disrupt court but, particularly when that occurs outside juvenile court, there is no provision for how to punish a juvenile. A Superior Court Judge has no authority to place a juvenile in detention and the law specifically provides that a juvenile cannot be placed in an adult jail. Therefore, the second proposed bill would provide statutory authority for a juvenile to be held in either direct or indirect contempt by the judge. The language mostly tracks the adult contempt language, but with changes such as modification of the 30 days in jail with 5 days in detention and a lower, or non-existent monetary fine since juveniles do not have an income.

Many committee members agreed that the two proposals were important and timely. Judge Carmical stated that he thinks most judges assume they have the inherent authority to hold a juvenile in contempt. Eric said this legislation has been a long time coming. He questioned why a juvenile is not entitled to the appointment of counsel with direct contempt, but is with indirect contempt. Judge Hamilton pointed out that the purpose of direct contempt is to immediately restore order in the court. Eric then commented that it would not be often that a juvenile would be before the court without his/her attorney present. He said that it is important to consider these ramifications when dealing with juveniles. Butch said that he mostly sees judges dealing with contempt of a juvenile by using it as a dispositional option when it is clear they have the jurisdiction to impose a sentence.

Judge Keever asked John Saxon of the SOG, who was present at her invitation, about the appeal process for a juvenile held in contempt. She pointed out that adults have a right to appeal to superior court. John Saxon replied that his best guess is that it would be the same—appeal *de novo* to Superior Court. Judge Brady asked whether it is best that a 7-year-old held in contempt would appeal to superior court? Judge Keever said that the better practice would be for the appeal to stay in district court. John Saxon then questioned what you would do with a juvenile in superior court who was held in contempt. Would they return to district court for the appeal?

Sally Scherer pointed out that when she has observed attorneys held in direct contempt, they appeal immediately to the superior court and often it is overturned. Judge Hamilton wanted to know how the juvenile appeal issue is dealt with in other states. Judge Keever responded the Janet Mason used the Florida statute as the model for her proposed bill. Judge Keever stated that if the appeal stayed in juvenile court, it would have to be heard by a different judge, and this might cause problems for smaller districts with only one juvenile judge. Her concern with the issue being dealt with at the disposition stage is that the contempt would then be treated like a criminal issue rather than in the nature of a contempt proceeding. Judge Brady responded that he has seen judges hold juveniles indefinitely in detention when they defer disposition. Eric responded that there are significant problems with detention hearings. Elisa questioned whether the juvenile could be held and sentenced for contempt for each act. Judge Hamilton relayed a story of how

she repeatedly held a party in contempt as he continued to commit multiple acts in the courtroom before the bailiffs could remove him.

Judge Keever then asked where the contempt order should be kept. Cheryl responded that it would have to be kept in the adult criminal file. But Judge Keever pointed out that you would then be creating a criminal file for a juvenile. She said that she has seen the clerks set up a separate shuck from a contempt order in a criminal action. John Saxon said there is much inconsistency in the state as to what the law says the nature of a contempt proceeding is, and therefore, there is little consistency in its record-keeping. Judge Hamilton said that she is aware that clerks are unsure as to what to do with them. Judge Brady questioned whether it should be kept in the juvenile file because of confidentiality if the matter is already in juvenile court. Judge Keever said she agreed that contempt orders should be kept in the juvenile file if the matter was in juvenile court, but questioned what should happen if the juvenile is in adult criminal court. Judge Brady said it is the responsibility of the legislature to give clerks direction of what to do for these proceedings and that it seems it needs to be specifically addressed for adult contempt. He reports that in his criminal court, they set up an additional shuck, but in civil court, they put the order in the civil file.

Cheryl commented that the issue might be more appropriate for the AOC Rules of Record-Keeping Committee. Sally said that generally, judges view contempt as a criminal act, so they are comfortable setting up another case rather than it being another proceeding in an already existing action. Judge Keever commented that it might be best to go to the Rules of Record-Keeping Committee for resolution.

Judge Keever then asked for input on the number of hours for supervised community service on page 2 of the proposed bill. Several members agreed that 25 would be appropriate. Judge Keever then asked who would enforce this supervised community service. Eric pointed out that court counselors can order juveniles to serve up to 20 hours without the court's approval. He recommends between 20-30 community service hours if there is no link to restitution. Judge Keever next asked whether there should be a \$500 fine or no fine at all. Judge Brady pointed out that the juveniles could earn up to \$250 in Project Challenge, but Butch responded that you might then have court fines depleting the Project Challenge budget that was intended for restitution. Judge Carmical commented that he didn't see any point in having a fine since juveniles do not have money. Judge Keever stated that Judge Carmical's no fine was a better idea since kids don't have the money.

Judge Keever then said the last issue is what offense classification to assign. John Saxon pointed out that adult criminal contempt actions are not assigned a class under structured sentencing. Judge Keever then responded that perhaps it shouldn't be a class offense. The committee agreed. Cheryl asked what it is, if you don't assign it a class offense. Judge Keever answered that it is an action with its own punishment. The committee consensus is that it should not be a class offense that will enhance other punishment in the underlying action.

Judge Keever asked everyone to review these proposals, discuss them with Cheryl and Janet, and get back with her in the next 10 days with any recommendations for edits as the deadline for introduction of bills is near and she wants to take something to her local legislator. Sally said that she believes the issue of appeal should be directly addressed in the bill.

Eric mentioned pending gang bill legislation. It doesn't apply to juveniles under age 12. It adds many enhancements to criminal penalties.

The final issue on the agenda was whether there needed to be any discussion on how districts are handling pro se motions for show cause out of child support court since the clerks are not longer automatically generating these for parties. Judge Keever said that this issue was also on the Chief District Court Judges' agenda in June. Judge Brady said that they have come up with a simple check box order for the judges to use since you cannot expect pro se parties to draft the order. Judge Keever asked whether these motions to show cause are being heard in family court or IV-D child support court.

Judge Brady said that he had another issue that he wanted guidance on from the committee and John Saxon. A recent AOC training attended by his child support clerk had created some issues in the operation of child support court. District 25's process in IV-D child support court is for the child support agents to spend time talking with defendants before the judge begins court to try to work out consent agreements in the cases. If they are able to work out an agreement, they have the defendant sign the consent agreement, prepare a purge payment sheet for the defendant to take to the clerk for immediate payment and then present all the consent orders to the Judge when court begins or ends. This enables the defendants to make his/her purge payment, leave court and return to work instead of waiting for all negotiations to be completed. The purge payment sheet is generally prepared by the clerk if ordered during court.

Judge Brady expressed his concern that the clerk was instructed by AOC that only the clerk, not the child support agent, is authorized to complete the purge payment sheet and that the judge should sign the order before the purge payment is made. Then, once the order is signed, the person is technically in custody (contempt) and the bailiff should accompany the person to the clerk's office so that he/she can make their purge payment, which will release them from custody. Judge Brady said that this approach is totally impractical and unworkable even though technically it is following the law.

The second issue of concern raised by AOC is that on the pink sheets, the defendant will often agree to make a purge payment on the day of court and to make a future payment to the clerk, for example, in two weeks. AOC reportedly said that a purge payment for contempt cannot be made to the clerk at a future time. Payments made after the person is released from custody should be made to NC child support collections for payment toward arrears, not contempt.

John Saxon agreed with the second issue that there is no such thing as a future purge payment. Any payment made after a few minutes from the purge from custody is not technically a purge payment. So he suggests that future payments be made as AOC directed to NC child support collections. John stated that he believes AOC has a memo that addresses this issue that might provide direction for the clerks.

As to the first issue of the defendant coming into the court's custody once the consent order is signed, and then having to be escorted to the clerk's office for payment of the purge, he agrees that while technically this is a correct statement of the law, it is not practical.

For an additional issue on the agenda, Judge Keever introduced Elisa for a request by the FCAs regarding family court staff salaries. Elisa explained that last year Ken Williams attended a FCAC meeting to discuss salary procedures. Last year, AOC did a pay equity study that resulted in salary increases for many family court staff; however, the FCAs were not considered for increases. Ken Williams suggested that the FCAC could advocate for family court staff salaries to be reviewed regularly. Elisa asked that the committee request that HR review all FC staff salaries this year and, if possible, increase salaries so that staff and administrators are earning at least 90% of their equity rate. Judge Brady said that he had difficulty getting an employee's salary raised when she obtains an advanced educational degree. Elisa and others advised Judge Brady to put his request for evaluation in writing to Ken Williams and include any documentation of the advanced degree.

Judge Keever said that she would entertain a motion from someone that she write a letter to Ken Williams asking that family court staff be considered in any equity study/raises. She said that increasing salaries for equity pay is in AOC's best interest because of the way lapsed salary can be lost at the end of the year if it is not used. Mona Williams made the motion and Judge Brady seconded it. The motion passed unanimously. However, it was suggested that Judge Keever make her recommendation more broadly to include other judicial employees and not simply family court staff. Mona pointed out that JA's and TCC's have an automatic pay rate increase that the family court staff does not have and so family court staff do not have the opportunities to increase their salary in the same way. She also pointed out that this is a major disincentive for her staff that often have more education than a JA or TCC, but can end up making much less in salary. Judge Keever agreed to write the letter to include all judicial staff.

The next meeting of the FCAC is June 8, 2007 at the SOG. The committee adjourned at 3:15.