

MINUTES
Family Court Advisory Committee
School of Government, UNC—Chapel Hill
June 8, 2007

The Family Court Advisory Committee (FCAC) met on June 8, 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
Tyrone Wade
Kathy Arnette
Leslie Starsonneck
Cheryl Howell

Judge William C. Farris
Judge J. Stanley Carmical
Judge Robert M. Brady
Elisa Chinn-Gary
Mona Williams
Alma Brown for Marilyn Stevens

The following guests and staff also attended:

Judge Joy Hamilton
Bonita McClure, FCA, 10th District
Esther High, DSS
Joann Lamm, DSS
Denise Shell, AOC
Trish Oglesbee, AOC

Lana Dial, AOC
Nina Cohen, AOC
Sandy Pearce, AOC
DeShield Smith, Staff to FCAC
Alisa Huffman, Staff to FCAC

Judge Keever welcomed everyone and began the meeting by having everyone introduce themselves since guest speakers were in attendance. She also welcomed the new Family Court Administrator in Wake County, Bonita McClure.

Child and Family Services Review

Joann Lamm and Esther High, with the Department of Health and Human Services, Division of Social Services, were present to discuss the 2007 Child and Family Services Review (CFSR). The CFSR is a collaborative effort between the federal and state governments and the purpose is to promote continuous quality improvement in child welfare systems nationally. The CFSR evaluates state performance relative to the state child and family services plan in the areas of permanency, well-being and safety. The preliminary results have been released, and the final results were to be released April 30th but DSS had not received them as of this meeting. Both the strengths and areas needing improvement in state child welfare programs were identified. North Carolina will enter into a program improvement plan, as will all states.

The counties that were included in the onsite review and assessment were Mecklenburg, Nash and Catawba counties. Sixty-five cases were selected statewide for the review, twenty-five were in-home cases and forty were foster care cases. Judge Keever asked if these counties were representative of North Carolina. Joann Lamm explained Mecklenburg was automatically chosen for the review because it is the largest metropolitan area in North Carolina, but Nash and Catawba were selected by DSS because they met certain criteria. Catawba was chosen due to their strong mental health program, which is administered by DSS. Mecklenburg was commended for the strides that they have made since the 2001 review. They are now a national model.

North Carolina meets the national standards for reunification timeliness and adoption timeliness. The strengths that were identified were the multiple response system (MRS) and its system of care initiative, education, continuity of family relationships/connections and physical and mental health. The areas needing improvement are the varying levels of saturation with MRS, independent living services (LINKS) to all youth, service array and access (such as mental health, substance abuse, domestic violence, children with developmental disabilities) and court issues relating to timeliness. The identified court issues related to timeliness needing improvement were length of time to achieve reunification, achieve adoption and termination of parental rights. DSS must also address the disproportionate number of African American children in foster care.

A program improvement plan is due to the regional office ninety days from receipt of the final CFSR report. The focus of the program improvement plan (PIP) will be to address the issues identified in the final CFSR report. NCDSS has identified an internal CFSR Leadership Team to guide the PIP. The PIP team has five themes that will focus on child and family involvement, court involvement, interagency collaboration, accountability to results and cultural competence.

Report from CIP Advisory Committee and CFSR Program Improvement Plan

Lana Dial was present to discuss the program improvement plan relating to the CFSR and provide a report from the Court Improvement Project (CIP) Advisory Committee.

As part of the Program Improvement Plan, the AOC will support and help develop local juvenile rules in all districts, not just the family court districts. AOC will be encouraging districts to implement Child Planning Conferences (CPCs)/Day One Conferences (DOCs) to help Abuse, Neglect and Dependency (A/N/D) cases proceed to adjudication in a timelier manner. They also provide the benefit of assisting parties to connect with the necessary and appropriate services more efficiently. AOC advocates the use of Jwise to manage A/N/D cases since Jwise is the official juvenile court record. Lana mentioned that she has been running reports from Jwise that reflect that A/N/D cases are taking longer than one year to conclude, which is out of compliance with the state standard.

It was mentioned that one issue that leads to a delay in the disposition of A/N/D cases is that the attorneys are scheduled in both district and superior court simultaneously. Mecklenburg has a memorandum of understanding in their local rules to allow staff to retrieve attorneys from superior court when they have a case in A/N/D court that conflicts with cases that are

scheduled at the same time in superior court. However, in other districts, the district court judges may want to speak to the superior court judges about working out an agreement for situations when there is a conflict between court scheduling.

Lana advised that districts may request grants from local IV-E funds to implement CPCs but Joann Lamm reported that DSS no longer has the IV-E waiver, which means that these funds cannot be used in this manner. Other effective measures that could be used to efficiently process A/N/D cases are using CIP funds to cross train personnel, educating judges about concurrent planning, updating the rules of record keeping, using permanency mediation to expedite and facilitate the court process, and utilizing retired emergency judges to hold hearings so that the other judges would have time to focus on more pressing matters, such as conducting termination of parental rights hearings. It was also noted that there is a need for statutory time standards in the appeals process to move cases more quickly, as well as to address a more expeditious process at the Supreme Court level.

Lana distributed a handout, which delineated the past, present and future funding for the CIP grants and how the money has been expended in the past as well as future plans for spending. The districts funded for the 2007-2009 grant cycle are Districts 1, 15A, 17B, 19A, 21 and 22. Cheryl Howell asked how the two year time frame was chosen as the funding period for the grant cycle and what happens to the positions when the grant expires. Lana explained that the two year time frame was chosen by the CIP Advisory Committee. Sometimes the Governor's Crime Commission (GCC) will pick up the grant and then AOC may have funds to pick up the position when the GCC grant ends. Judge Hamilton mentioned that this was a problem in her district before Wake became a family court district because there were two juvenile positions funded with CIP grant money. They risked losing the positions when the grant expired. Cheryl asked if there was a policy for picking up these positions when the grant expires. Judge Keever explained that the issue of how these positions, programs and functions may be absorbed will be discussed at the September meeting of the Family Court Advisory Committee. She has spoken to Gregg Stahl about the possibility of "piecemealing" family courts. In districts where a CIP grant position is awarded and juvenile case management is implemented, if the legislature provides money in the budget for family courts, the courts with CIP positions would receive a family court first. However, in the interim, they would follow family court practices without having the staffing resources, such as a Family Court Administrator or Case Coordinators. The idea is that family court practices would be added piece by piece until funding is received for a family court. This strategy has been discussed with Sandy Pearce and AOC would like the opportunity to discuss this internally before a decision is made. Sandy announced that this topic will also be discussed at the CIP Advisory Committee meeting in July.

Alisa Huffman and DeShield Smith explained that there are strategies that a court may implement in preparation for becoming a family court without the extra funding, such as judicial assignment, working on reducing their domestic backlog and assisting with judicial scheduling. Ideally, the districts that are on the waiting list for family courts would be targeted for CIP funds so that at the end of the grant, the position could be absorbed into the family court budget.

The next meeting of the Court Involvement Work Group working on the Program Improvement Plan is June 28th and the next meeting of the CIP Advisory Committee is July 6th.

Judge Keever posed the question whether the chief district court judges are all receiving the monthly statistical reports prepared by Patrick Tamer and others. Previously those reports were mailed out monthly but now are posted to the internet. In the recent training for new chiefs, they indicated they were not aware of the monthly statistical reports and had received no notification about how to access them. These reports include the list of pending domestic cases which enable chiefs and their staff to monitor what cases should be open and what cases should be closed. Without this information, the court is unable to work on reducing its backlog of pending cases. Trish Oglesbee indicated that she would attempt to make the determination of how chiefs were notified of this information. Chiefs, Family Court administrators, judicial assistants and Trial Court administrators/coordinators may all need to have access to this information.

Casewise/Jwise Update

Denise Shell advised that there is a release scheduled for July that will include additional abuse, neglect and dependency reports (A/N/D). This release was supposed to be complete by June but there was a delay due to a reduction in resources. Trish Oglesbee mentioned that Faith Taylor has been hired in the Court Services Division, using CIP funds, as a support person for the Jwise system. Denise informed the Committee that only five counties are left in which Jwise has not been implemented. The goal is that Jwise will be available in all counties by July 1st although Denise noted that she and her staff do not have the authority to require clerks to use the Jwise system. Judge Brady stated that there is a problem in Jwise with data that is inputted not populating other fields as it does in Casewise. Any problems that users experience with Casewise or Jwise should be reported to Denise or Trish.

The Guardian ad litem and Family Drug Treatment Court module will be implemented in October. Guardian ad litem's system will be replaced in two phases, with 75% of the system being replaced initially and the remaining 25% over the next six months. All case information will be complete in the first phase. Kirsten Frescoln, Drug Treatment Court Manager, and Denise will be exploring grant options in order to incorporate Youth Drug Treatment Court into the module.

Alisa Huffman asked how many counties are using Jwise. Denise responded that clerks are inputting data but they are not updating the system or using it for its best functionality. Sandy Pearce stated that AOC is concerned that clerks aren't using Jwise since AOC uses information derived from Jwise on site visits and when implementing family court in new districts. It appears that clerks are not entering all juvenile data. Therefore, the reports that can be produced from Jwise will have little meaning due to the lack of uniformity in the state. She informed the Committee that Gregg Stahl, AOC Deputy Director, and Basil McVey, Court Services Administrator, have developed a policy mandating the use of Jwise as it is the official juvenile court record. The policy has not yet been distributed, however. Mona Williams stated that the proposal for the juvenile reports that was discussed at the last meeting of the FCAC has been finalized.

Division and Budget Update

Sandy Pearce informed the Committee that Court Programs, Guardian ad litem, Research and Planning and various other divisions have moved into the new AOC building on Corporate Center Drive near the RBC Center and I-40. There are currently two vacancies at the state level, one of which is an assistant for the Custody Mediation Manager, Nina Cohen. The other position is a Court Management Specialist position, for which interviews have been conducted and an offer will be made when the decision is finalized.

Sandy also provided an update on the proposed budget. The Senate is in conference about the budget. The Senate version is the best budget AOC has received with a \$40 million expansion that allows for a myriad of additional court personnel, including district court judges, assistant district attorneys, and assistant and deputy clerks of superior court. The Senate budget provides for two family courts in its budget. A number of drug treatment court positions that were losing federal funds were also picked up in the Senate budget.

Legislative Update

Judge Keever provided a legislative update concerning bills of interest to the FCAC and Family Courts in general. House Bill 42 and House Bill 46 have both been enacted. House Bill 42 adds stalking to the list of offenses which require a judge to set bond if there is a personal relationship between the parties. This bill applies to offenses occurring on or after December 1, 2007. Also, effective July 1, 2007, it requires the Attorney General to establish a method of recording all domestic violence homicides. House Bill 46 requires the North Carolina Council for Women/Domestic Violence Commission to review guidelines for receipt of state funds and to determine if guidelines should be in place to ensure safety at domestic violence shelters. A report to the legislature is due by May 1, 2008. In addition to this requirement, House Bill 46 also requires the sheriff and clerk of superior court to coordinate availability of a secure waiting area for victims of domestic violence that is segregated from the general population of the courtroom to await hearing of their case. AOC is required to report to the legislature by May 1, 2008 on the progress of providing space in each courthouse. Conversation ensued regarding how the situation should be handled when the opposing party files a cross warrant. Judge Brady asked at what point the victim should request a separate waiting area. It was noted that it will be difficult to accommodate all victims.

A number of other bills were discussed, which included bills that have either been passed in the Senate or House and have "made crossover". (See handout.) Specifically mentioned was House Bill 1482, proposed by the FCAC, that amends Chapter 50C and requires that stalking and harassment must occur on more than one occasion and the person must be at least 16 years of age or older. This bill has made crossover.

The Committee broke for lunch at 12:30 pm. The Committee is to return at approximately 1:15 pm.

Custody Mediation Advisory Committee Update

Nina Cohen reported that the Custody Mediation Advisory Committee met on May 18th at the School of Government. The Committee discussed domestic violence cases arising from 50B Court being referred to custody mediation where the party is requesting custody in the domestic violence petition. The question was posed if the custody order would expire at the same time the domestic violence order expired, and Nina responded that it would expire. In order to prevent this from occurring in the future, the Custody Mediation Advisory Committee will revise the language in the Custody Mediators Procedure Manual to clarify proper protocol. Custody Mediators should not mediate cases where there is active domestic violence.

The Custody Mediation Advisory Committee also discussed mediating pro se litigants. The Bar established a pro se task force several years ago that determined that custody and visitation are the top pro se issues and developed custody and visitation forms but never distributed those forms. The custody mediators may develop a script for a list of frequently asked questions by pro se litigants.

Other issues that were discussed at their meeting included the supervision of the custody mediators and the relationship between Family Court and the custody mediators. Nina discussed the concept of differentiated operational responsibility, which relates directly to mission performance and who should evaluate assigned personnel. It is important that the chief district court judge clarify who supervises the custody mediators. The statute states that the chief district court judges are the custody mediator's hiring authority and therefore they may complete the performance evaluation or may delegate its completion as they do with family court staff for which they also serve as the hiring authority.

The Committee also discussed relevant proposed legislation. A discussion on the parent coordination legislation that was enacted in 2005 was tabled. The Committee is in the process of finalizing the custody mediation booklet (the blue book) that is provided to all custody mediation orientation participants. As discussed at the March meeting of the Family Court Advisory Committee, the sections on custodial and visitation arrangements based on the developmental stages/ages of children of access and suggestions of visitation schedules have been deleted due to concerns that some of the information contained therein may be outdated based on current research.

Nina gave an update on the expansion of custody mediation and permanency mediation. The legislature has authorized statewide expansion of the Custody Mediation program. At the beginning of this year, ten districts had not implemented the program, five in the west and five in the eastern part of the state. Four of the five remaining districts in the west have implemented Custody Mediation. Only District 24 has not implemented the program but they are currently in the process. District 1, 2 and 3B still remain without the program in the east. Judges Farris and Carmical of District 7 and 16B, respectively, have now posted their rules and the mediator positions have been posted. Three districts have permanency mediation programs which the AOC is supporting. Eleven additional districts have expressed an interest in the program. Nina informed the Committee that, in order to apply the

program, the district must have space to mediate, an administrative assistant to disseminate notices and local rules must be drafted for the permanency mediation program.

Report on Unified Family Court Summit and Family Court Training August 2-3, 2007

DeShield Smith informed the Committee that the May Family Court newsletter is posted on the NC Courts website along with other Family Court newsletters, dating back to September 2004. AOC will begin posting the minutes from the FCAC meetings on the website as well. The minutes from the March meeting have been posted, and they are located under the link to the newsletters.

DeShield and Judge Jay Corpening, Family Court Judge from District 5, attended the Unified Family Court (UFC) Summit in Baltimore, Maryland on May 2-3, 2007. The Summit was sponsored by the ABA and consisted of plenary and breakout sessions along three tracks, one for UFCs in the planning stages, one for recently implemented UFCs and one for established UFCs. Subject matter that was addressed included services and accountability, judicial rotation, ADR and case management. DeShield provided a report on the areas of interest to the Committee.

In Florida, there are four case managers for every UFC, regardless of the number of judges. However, Maryland does not use case managers. They have one person that reviews all filings for legal sufficiency and screens for substance abuse or domestic violence issues. Maryland uses "masters" to coordinate and manage cases to encourage early settlement and handle non-adjudicatory events, such as discovery or scheduling. The masters are quasi-judicial officers that are empowered by statute. They can hear modifications but they can't establish orders, except for orders on temporary issues. They also handle a large amount of child support contempt and paternity court although they can't establish child support. Maryland also does not follow the one judge/one family approach so they do not assign judges to cases. Due to the volume in the Baltimore Court, the lack of case managers and no judicial assignment, they rely solely on the attorneys to identify cross over cases. Hawaii also does not follow the one judge/one family approach and does not identify cross over cases.

Many states were surprised to hear that North Carolina's juvenile proceedings are open to the public although Georgia has the same policy. Maryland and South Carolina's juvenile proceedings are confidential. Most states are not managing juvenile cases. In fact, in West Virginia, juvenile delinquency cases are not even within the Family Court's jurisdiction.

Funding is apparently a problematic issue everywhere. In Florida, in order to fund family courts, the legislature created the Family Court Trust Fund, which is funded by adding \$10 to marriage license fees and all proceeds go to the family court. In Idaho, a surcharge is placed on alcohol, which is used to fund family court.

Since judicial burn out is common in family court and the judges in these courts typically have a very heavy caseload, judicial rotation is common. Judicial rotation varies by state. In Maryland, in the past, every 6 months judges were rotated out of family court but it has now

increased to one year. North Carolina Best Practice's document suggests a two year rotation as do the national standards.

As for ADR programs, North Carolina is progressive. Many states don't have mandatory mediation or the variety of options that North Carolina has. However, Baltimore has a program similar to the Family Financial Settlement program, called Marital Property Mediation, where cases with financial issues are mediated and diverted from the court. It seemed that many state reps were not familiar with parent coordinators or custody evaluations. North Carolina was one of a handful of states with parent coordination legislation.

In Seattle, Washington, accountability is measured in a number of ways: 1) through stakeholder surveys 2) AOC audits 3) grievance procedures and 4) comparing their court stats with other states and other courts in Washington. They have established a general committee where all family court grievances are directed for response/investigation. Also, Maryland has created a document similar to the FCAs recommendations relating to measurable performance standards. Mona Williams and Elisa Chinn-Gary have been provided a copy for their information. Maryland's performance standards is a lengthy document that is in a narrative format although many of the measures were overlapping and therefore repeated throughout the document, which was an issue of concern raised by the FCAC regarding the FCAs recommendations.

The Annual Family Court Training will be held at SOG on Thursday and Friday, August 2-3. A copy of the registration form was provided to the Committee as information. The theme of this training will be "Custody Decision Making in Juvenile, Domestic and 50B Family Courts". It will be very interactive and there are plenary as well as smaller break out sessions. The custody mediators have been invited and will attend this training as well. In addition, the judges in the new CIP funded districts have been invited to attend. The agenda has not been finalized but part of the training will include mock custody mediation and permanency mediation sessions. The keynote speaker is Arnie Shienvold who will speak on current research in physical custody arrangements.

Judge Keever recognized Tyrone Wade, Leslie Starsoneck and Mona Williams whose term on the FCAC expires this month. Judge Keever thanked them for their service and contributions during their tenure. She also recognized Judge Joy Hamilton and Bonita McClure from Wake County Family Court. Although this is Bonita's first meeting since assuming the FCA position in Wake County, Judge Hamilton has been attending the meetings as a representative of a new family court for the past year. Wake is the most recent district to implement family court.

The next meeting of the FCAC is September 14, 2007. The location is tentatively scheduled at SOG unless the AOC building is completed in time for this meeting. A notice will be sent to all Committee members advising of the location. It was brought to the Committee's attention that, in the future, the agenda will include regular reports from the Court Improvement Project and Custody Mediation Advisory Committees and the FCAC will provide regular reports to those Committees as well. Having no further business to discuss, the Committee adjourned at 2:15.