

**OFFICIAL MINUTES
OF
THE NEBRASKA SUPREME COURT
COMMISSION ON CHILDREN IN THE COURTS**

December 7, 2012

The regular meeting of the Nebraska Supreme Court Commission on Children in the Courts was called to order at the Nebraska State Bar Association at 635 S. 14th Street in Lincoln, Nebraska, on Friday, December 7, 2012, at 9:00 a.m., with Co-chairmen Hon. Everett O. Inbody and Hon. Douglas F. Johnson presiding.

Roll call was taken, as follows:

MEMBERS PRESENT

Hon. Vernon Daniels; Hon. Curtis Evans; Hon. Larry Gendler; Hon. Everett O. Inbody (Co-chair); Hon. Douglas F. Johnson (Co-chair); Hon. Paul Korslund; Hon. James Orr; Hon. Anne Paine; Hon. Linda Porter; Hon. Randin Roland; Hon. Patrick Runge; Hon. Linda Senff; Hon. Elizabeth Waterman; Carole McMahon-Boies; Lynnette Boyle; Sen. Kathy Campbell; Stacey Conroy (for Sen. Ashford); Christine Costantakos; Marsha Fangmeyer; Rebecca Harling; Carla Heathershaw-Risko; Sarah Helvey; Alicia Henderson; Corrie Kielty; Vicki Maca; Kathy Moore; Kathy Olson; Amy Peters; Mary Jo Pankoke; Julie Rogers; Carolyn Rooker; Jane Schoenike; Dick Stafford; Kerry Winterer.

MEMBERS NOT PRESENT

Hon. Thomas Harmon; Hon. Michael Heavican; Hon. Kenneth Vampola; Robert Goodwin; Sen. Gwen Howard; David Pantos

OTHERS IN ATTENDANCE

Ellen Brokofsky [**State Probation**]; Debra Brownyard, [**Administrative Office of the Courts**]; Michelle Chafee [**of Sen. Campbell's Office**]; Sheryl Connelly [**Administrative Office of the Courts**]; Linda Cox; [**Interim Coordinator, Nebraska Foster Care Review Office**]; Kelli Hauptman, [**Staff attorney, Through the Eyes of the Child Initiative**]; Lori Hoetger, Ph.D. [**Law Student**]; Thomas Pristow [**Nebraska Department of Health and Human Services**]; Janice Walker [**State Court Administrator**]; Vicky Weisz, [**Nebraska Court Improvement Director**]; Amy West [**Appleaseed Center for Law and Public Advocacy**].

Minutes of the June 7, 2012, meeting were approved by the Commission with no additions or corrections.

I. PRELIMINARY MATTERS

➤ **Extending Services and Support to Young People Transitioning from Foster Care to Adulthood.**

Sarah Helvey, of Appleseed Center for Law and Public Advocacy, reported on responses to a youth survey exploring the concept of extending care and support for those juveniles exiting foster care and transitioning into adulthood, and asked for feedback from the Commission. Extended care would be designed to insure that young persons are receiving the services and social supports they need, as well as financial support to which they may be entitled. Helvey explained that extended care programs for those exiting foster care have been established in 15 States, all of which have a court process in place, except for Michigan. Participation by former State wards would be on a purely voluntary basis, and the proposal would involve 2 two case review hearings per year. Under the Nebraska proposal, one would be conducted by an administrative body such as the Foster Care Review Office, or the Administrative Office of Dispute Resolution and mediation centers; and one conducted by the juvenile court. Juvenile court oversight or review is seen as necessary in the event that the young person disagrees with the determinations made by the administrative body. Helvey stated that the fiscal analysis estimates that there could be between 400-600 young persons in Nebraska who potentially could become involved in the program. A discussion was had regarding various aspects of the concept as it might be applied in Nebraska, including not limited to appointment of counsel upon request by the young person; potential impact/burden upon juvenile court judges, as well as the possible use of judicial hearing officers for judicial review; identification of administrative agencies that potentially could become involved; and the need to clarify Nebraska law as it relates to the emancipation of minors.

Helvey indicated that because the juvenile court has limited jurisdiction only as specified by statute, Senator McGill will introduce new legislation in the 2013 Session to authorize a proposed program to provide for extended care.

➤ **Children's Commission: Strategic Plan**

Judge Porter, in her capacity as one of the representatives from the judicial branch to the Children's Commission, reported that she has attended all 6 meetings to-date of that Commission. She indicated that all meetings of the Children's Commission are open to the public and proceeded to describe some

of the individual committees within that Commission, and also identified some of the preliminary reports issued by those committees, copies of which had been disseminated, along with the draft Strategic Plan of the Children's Commission. On December 15, 2012, the Children's Commission will vote on its draft Strategic Plan. Representatives to the Children's Commission from the judicial branch include Judge Porter, Vicky Weisz, and Ellen Brokofsky.

Vicky Weisz, in her capacity as a member of the Title IV-E Demonstration Project Committee of the Children's Commission, reported on two areas: 1) application for Title IV-E waivers, and 2) assessment of sufficiency of court orders to meet IV-E funding eligibility. She explained that Title IV-E has been a funding stream traditionally related to paying only for children in foster care as well as the administrative costs associated with foster care. Although it cannot pay for services for children who are not in foster care, the federal government will allow States to request a "waiver" to IV-E funding so they can use funds for things other than paying for foster care, e.g., to assist with keeping children in their own homes, or prevent them from entering the foster care system. The legislature wanted a committee to work with the Department to insure that an application would be made, and to establish timelines for the application.

She also explained that one of the reasons Nebraska historically has not drawn down as much IV-E federal funding as hoped is that in order to qualify for IV-E funding, the child's family can have a family income no greater than the 1996 AFDC rate. As the result of its analysis of the data from the Department, the committee concluded that one of the reasons Nebraska's IV-E funding rate is so low is that Nebraska has a very low income threshold which is easily surpassed where a parent is working. Another reason is the fact of non-licensed foster homes/placements, mostly relative foster homes. The committee included recommendations to encourage foster parents to obtain licensing.

She identified 2 areas where the committee found room for improvement. First, some parts of the State had been interpreting the federal guidelines more narrowly and as a result, language in court orders that actually was acceptable was being rejected. These matters have been remedied by turning these particular cases back into IV-E cases.

A second reason was the insufficiency of some judicial orders/findings to meet IV-E requirements, most notably in delinquency cases. Weisz stated that committee had recommended the creation of a work group to examine this issue to determine what would be required so that Nebraska could draw down

more IV-E funding for children who may be eligible in delinquency cases. To this end, she reported on her efforts thus far to communicate with judges regarding orders in their cases that she has reviewed that do not appear to comply with the requirements of IV-E, insofar as they do not contain judicial findings upon the evidence relating to reasonable efforts and the child's welfare. She pointed out that one area that is problematic is the manner in which juveniles are placed into probation and if the very first order issued by the court is not right, in terms of the necessary findings based upon the evidence, there never will be IV-e eligibility for that case.

A discussion was held regarding the various aspects of this issue.

➤ **Guardian ad Litem Pilot Project**

Judge Inbody stated that one of the recommendations of the 2009 study of guardian representation authorized by the Nebraska Legislature and conducted by the NACC was to establish a State-wide system of guardian ad litem representation. He also pointed out that LR37 had emphasized the need for the judicial branch to undertake action to strengthen guardian ad litem effectiveness.

He stated that Kelli Hauptmann and Vicky Weisz have been discussing the idea of a pilot project for guardian ad litem representation to take place in both an urban as well as a rural area, that would utilize the best practices for guardians ad litem to try to make a demonstration project of how guardians ad litem can be effective. Judge Inbody indicated that they had met with Chief Justice Heavican who had advised that such a pilot project cannot come from the Supreme Court, given that the judiciary's role is not to make the law but to enforce the laws. Instead, Judge Inbody indicated that any change in this regard would need to come from the legislative branch.

Judge Inbody reported that both Kelli and Vicky made a recommendation to the Children's Commission that a pilot project to have guardians ad litem working under best practices be established in an urban area and in a rural area. This idea has been included now as a part of the draft Strategic Plan of the Children's Commission.

When asked to identify the "best practices" for guardians ad litem, **Kelli Hauptmann** responded that the pilot project would emphasize compliance with the Guidelines for Guardians ad Litem for Juveniles in Juvenile Court

Proceedings; utilize caseload limits; provide guardian ad litem training and support; offer mentorship by experienced attorneys either within or out of the program; and review what other States are doing as far as competitive salaries are concerned. Sen. Campbell was asked whether any legislation has been drafted or proposed in order to create the guardian ad litem pilot project. She stated there is no legislation being drafted or proposed at this point, but indicated that she is willing to receive input from Kelli, Vicky, and Judge Paine and the guardian ad litem subcommittee.

➤ **Federally-mandated findings: FCRO vs. Juvenile Court**

Judge Johnson raised an issue concerning the findings Congressionally mandated to be made in child welfare cases, including findings relating to reasonable efforts to prevent removal and reasonable efforts to achieve return; and whether return of the juvenile to the parental home is contrary to the welfare of the juvenile; and specific findings relating to the permanency objective and the reasonable efforts made to achieve permanency. He pointed out that under Neb. Rev. Stat. §43-1314.01, the new Nebraska Foster Care Review Office is the only State agency authorized to conduct 6-month case reviews relating to these findings. Judge Johnson expressed concern that under this statute, these findings are being made by lay persons and set forth in the FCRO reports, which reports may or may not come into the court record. He inquired as to whether the duty to make these federally-required findings should be moved from the Foster Care Review Act into the Nebraska Juvenile Code, to be made by the judges, because the findings are required to be based upon the evidence. He asked whether the Guardian ad Litem Subcommittee would be willing to assume examination of this issue.

***Motion:** “That the Guardian ad Litem Subcommittee undertake a review of §43-1314.01, and the findings and duties in that statute and determine whether the findings for the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and the Adoption and Safe Families Act of 1997 (P.L. 105-89) relating to findings of reasonable efforts, the 6-month review and permanency planning, be the sole province of the court. (Movant: Judge Johnson)*

Vote on motion suspended until after consultation with members of the Guardian ad Litem Subcommittee. Further discussion was had, and the Guardian ad Litem Subcommittee declined to accept the role described in the motion. Motion abandoned, and replaced with new motion.

***Motion:** That a subcommittee be established to review the Foster Care Review Office statute, Neb. Rev. Stat. §43-1314.01, to determine whether the federally-*

mandated duties and findings referenced in the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and the Adoption and Safe Families Act of 1997 (P.L. 105-89) should become the exclusive province of the separate juvenile courts and of the county courts sitting as juvenile courts. (Movant: Judge Evans)

Motion passed unanimously.

II. SUBCOMMITTEE REPORTS AND UPDATES

➤ Case Progression Standards (Judge Porter)

Judge Porter reported that she is working with **Linda Leatherman** regarding the “Justice” data-processing information system, to explore the possibility of generating lists of cases so that judges can see if they are meeting their required progression standards. She stated that they are trying to develop tools for judges to monitor their own progress in various areas, such as how many days have elapsed without an adjudication; proceedings for termination of parental rights where no decision has been reached; or whether a permanency hearing has been held for a child who has been in an out of home placement for 12 months who is due for a permanency hearing.

➤ Delinquency Guidelines Subcommittee (Judges Daniels and Roland)

Judge Daniels discussed the findings of the Subcommittee regarding lack of services, especially affecting the Western service area, specifically transportation of children to court-ordered services, and placement issues, including appropriate reimbursement of foster parents. Judge Daniels referred to a document entitled “Transportation Overview Division of Children and Family Services” prepared by the Nebraska Department of Health and Human Services, which had been disseminated to Commission members. He stated that the Subcommittee had requested and obtained from the Department identification of a “point person” within the Department who would be responsible for the placements. He provided the Commission with the names and contact information of HHS staff overseeing the recruitment and retention efforts for foster parents in the respective HHS service areas.

Judge Roland disseminated a handout to Commission members entitled, “*Juvenile Delinquency Subcommittee Judicial Review of Juvenile Detention.*” He reported that the Subcommittee had been examining the issue of the best timeline for judicial review of juvenile detention. He referred to a memo written by Chief Justice White in April, 1997, issued to all juvenile court judges and county court judges with juvenile court jurisdiction, requiring that children placed in detention were to have a detention review hearing within 24 hours,

with no exception for weekends, holidays, or non-judicial days. Judge Roland explained that things have changed since the issuance of the memo, given that probation now can determine juvenile detention without judicial oversight. He also referred to Supreme Court Rule 6-103(A) which requires a probable cause hearing to be held within 48 hours of detention, and to the statutory standards of §§43-248 and 43-250, requiring review within 48 hours after request by the juvenile, excluding weekends and holidays.

He stated that the Subcommittee has been addressing the issue what is the best policy for review of detentions, given that there is a discrepancy between the 1997 memo, Supreme Court Rule 6-103(A), and the statutes.

Judge Johnson pointed out that a detention which takes place over a holiday which occurs just prior to a weekend, might not get reviewed until the following Monday. Under this scenario, juveniles do not receive as good of treatment as criminal defendants. **Judge Daniels** proposed that the better practice would be to follow Supreme Court Rule 6-103 until the statute is amended.

Judge Inbody suggested that the memo of 1997 likely needs to be changed or repealed and pointed out that the Court Rule does not violate the statutes because it is more restrictive than the statutes; however, there might be a need to make the statutes and the court rule consistent. Judge Inbody proposed that the Commission vote to request the Supreme Court to review Justice White's memo since it is inconsistent with Court Rule 6-103.

Judge Evans noted that Rule 6-103(A) requires a probable cause "hearing." He suggested that "hearing" be changed to "finding" to end confusion over whether the juvenile must appear personally in court, thereby increasing the likelihood that detentions will be reviewed over weekends or holidays.

Motion: *That the Commission recommend to the Nebraska Supreme Court that Rule 6-103 be amended by striking the word "hearing" and replacing it with the word "determination."* (Movant: Judge Daniels)

Friendly Amendment to Motion: *To change "Rule 6-103," as stated by the Movant in the original Motion, to "Rule 6-103(A)." (Movant: Chris Costantakos)*
Further discussion had.

Second Friendly Amendment to Motion: *To incorporate into the main motion, a request that the Supreme Court review the memo of Chief Justice White of April, 1997, and make the procedures in that memo in conformity with Rule 6-103(A). (Movant: Judge Inbody)*

Motion and all amendments passed unanimously.

➤ **Guardian ad Litem Subcommittee (Judge Paine)**

Judge Paine summarized the work of the Subcommittee to date, pointing out that the initial charge of this Subcommittee was to review the recommendations set forth in the 2009 study of guardian ad litem representation completed by the NACC, and to determine what, if any, of those recommendations should be implemented, or additional ones proposed to improve guardian ad litem representation in Nebraska. She stated that the Subcommittee previously had made recommendations regarding caseload limits and guardian ad litem compensation both of which were approved by the Commission, but were not approved by the Nebraska Supreme Court. Judge Inbody thanked the Guardian ad Litem subcommittee for all of their work thus far.

Judge Inbody advised the Commission that on November 14, 2012, the Nebraska Supreme Court approved the voluntary use of the standardized guardian ad litem report form previously developed by the Guardian ad Litem Subcommittee. At the Commission meeting, he suggested that a pilot program be established, subject to approval by the Nebraska Supreme Court, involving 2 separate juvenile court judges as well as 2 county court judges who would agree to use the standardized report form in their respective courtrooms for a period of 1 year, and that this be done as a matter of Supreme Court Rule. He also suggested that a survey be conducted both prior to and after use to determine the effectiveness of the report form.

A discussion was had. There was consensus that the assessments should assess the level of compliance by guardians ad litem with their statutory duty to report, as well as the level of satisfaction by recipients of guardian ad litem reports, with a view toward discovering whether the use of the standardized report form tends to improve guardian ad litem performance. No need was seen to create a court rule for this pilot.

Motion: *That a pilot project be established involving 2 separate juvenile court judges, and 2 county court judges with juvenile court jurisdiction, who will require their guardians ad litem to use the standardized guardian ad litem report form previously approved by the Nebraska Supreme Court, for a period of one (1) year, with assessments to take place as follows: initial assessment prior to use of the standardized report form; after 6-months' of use of the standardized report form; and at the conclusion of one year of use, with a final written report of all assessment findings to be submitted to the Nebraska Supreme Court Commission on Children in the Courts. (Movant: Judge Evans)*

Friendly Amendment to Motion: *That the content of the surveys to be conducted in connection with the guardian ad litem pilot project be coordinated between the Guardian ad Litem Subcommittee and the Center on Children, Families and the Law. (Movant: Chris Costantakos)*

Both the Motion and Friendly Amendment passed unanimously.

Judge Johnson stated that he had discussed with Chief Justice Heavican the possibility of changing the Guardian ad Litem Guidelines for Juveniles in Juvenile Court Proceedings into Court Rules and that the Chief indicated a willingness to take another look at this issue. Judge Paine indicated that the Subcommittee agrees with having the Nebraska Supreme Court re-visit the issue of adopting the Guidelines as enforceable court rules, given that in their present form, they do not provide any enforceable means of extracting guardian ad litem compliance.

***Motion:** That the Guardian ad Litem Subcommittee revisit the issue of whether the Guidelines for Guardians ad Litem for Juveniles in Juvenile Court Proceedings in order to explore whether the Guidelines can be converted into court rules.
(Movant: Judge Inbody)*

The Motion passed unanimously.

Judge Paine also reported that the Subcommittee recently has been focusing upon education for guardians ad litem, and has concluded that guardians ad litem need more practical training at the initial level of training that will clearly identify their specific duties at each step. Judge Paine identified Bob Goodwin, Lynnette Boyle, and Chris Costantakos, as Subcommittee members who have agreed to assist Carole McMahon-Boies in the development of a new training curriculum for guardians ad litem. She reported that the Subcommittee is interested in the possibility of having a specific training for judges to help them know when and how to take action regarding substandard performance by guardians ad litem.

Carole McMahon-Boies reported that she has taken the responses of the survey of attorneys regarding guardian ad litem training along with the thoughts of the Guardian ad Litem Subcommittee in order to fashion a 6-hour initial training course that will prepare guardians ad litem to do a good job when they walk into the courtroom. Work has begun on actual course content, including the development of modules for the training of guardians ad litem that will emphasize process, statutes, and the expectations of the guardian ad litem with respect to each hearing in juvenile court, and teach attorneys how to prepare a guardian ad litem report. She is working with the National Council of Family and Juvenile Court Judges which has agreed to develop the curriculum content into an interactive, online course to be placed on the website of the Nebraska Supreme Court. Attorneys will have the option of taking the course online, or else attend a live presentation. McMahon-Boies indicated that she hopes to convey the course content to the Council by February.

➤ **Immigration Subcommittee (Judge Runge):**

Judge Runge reported that the Subcommittee plans to compile a bench-book to assist judges and practitioners. He stated that after the holidays, the

Subcommittee will reassemble to best determine the manner in which to proceed with the bench-book.

➤ **Tribal and State Court Collaboration Subcommittee (Judge Orr):**

Judge Orr reported that all information regarding tribal courts is now on the website and efforts are being made to provide ICWA information in connection orientation and training for new judges. Judge Orr indicated that they continue to work on making the representation on this Subcommittee more evened out.

III. OLD BUSINESS:

➤ **New Subcommittees:**

Judge Inbody announced that at the November 14, 2012, meeting with the Nebraska Supreme Court, the Court approved the creation of additional subcommittees within this Commission:

1. *Children's Guardianship*—(rendered moot by reason of statutory changes in the last legislative session)
2. *Rules of Discovery in Juvenile Court* (**Chair: Judge Evans**)
3. *Contact Between Jailed Parents & Their Infant/Toddler Children*
4. *Improving Education Outcomes of Children in Foster Care* (**Chair: Judge Gendler**)

Judge Inbody also acknowledged that on June 7, 2012, the Commission had voted to reconvene the *Children in District Courts* Subcommittee for the purpose of reviewing parenting plan requirements in joint custody cases, and to explore the inclusion of joint custody as a default provision in decrees. (**Chair: Judge Korslund**). Commission members were asked to sign up for any new subcommittees on which they might be interested in serving.

IV. NEW BUSINESS:

➤ **Required Training For Facilitators**

Debra Brownyard circulated a proposed statutory amendment requiring official credentialing for those who are conducting facilitated conferencing in

juvenile court proceedings and child welfare cases. She asked the Commission for feedback regarding a proposal to enact legislation to require specific training for those who conduct facilitated conferences, specifically, a minimum of 30 hours of mediation training plus 8 hours of child welfare and juvenile justice training. She explained that juvenile court facilitators would also be required abide by ethical standards promulgated by the Administrative Office of the Courts. Brownyard stated in view of the fact that Nebraska statutes impose credentialing requirements for mediators in parenting-plan cases, it makes sense to have parallel requirements for those conducting facilitated conferences in child welfare cases. She acknowledged that there could be a difference between mediating the initial pre-hearing conference at the initial removal of the child from the parental home versus the more complex, facilitated conferences at subsequent phases of the case, such as at the 12-month permanency planning stage; prior to termination of parental rights; and family group conferences. She suggested that the training requirement might not have to apply to the initial pre-hearing conference at detention/protective custody phase. A discussion was held.

***Motion:** To table the discussion regarding requirement of credential for facilitators to allow more time to obtain more information and to work out some of the issues discussed. (Movant: Judge Evans)*

Motion passed unanimously.

The meeting was adjourned at 3:05 p.m.

Respectfully Submitted,

Chris Costantakos
Recording Secretary

NEXT COMMISSION MEETINGS:

June 14, 2013
December 6, 2013