

Juvenile Policy Board  
Minutes  
(Unofficial Until Approved)  
March 27, 2015

Members Present:

Judge William Herauf, Chair  
Justice Lisa Fair McEvers  
Judge Steven McCullough  
Judge David Reich  
Referee John Grinsteiner  
Scott Hopwood, Juvenile Court Director, Unit 4  
Brad Saville, Juvenile Court Officers Association via telephone

Members Not Present:

Judge Daniel Narum

Staff Present:

Scott Johnson, Asst. Administrator for Trial Courts  
Lana Zimmerman, scribe

Guests:

Mike Hagburg, Staff Attorney  
Karen Kringlie, Juvenile Court Director, Unit 2  
Cory Pedersen, Juvenile Court Director, Unit 3  
Catie Palsgraaf, Court Improvement Project (CIP) Research Analyst  
Heather Traynor, CIP Quality Assurance Research Specialist

Justice McEvers called the meeting to order in Judge Herauf's absence (Judge Herauf joined the meeting shortly after it began). She welcomed the Board and introduced new member Judge Steven McCullough to the Board. She asked if there are any additions or corrections to the December 12, 2014, meeting minutes. **A motion was made by Scott Hopwood to make a correction to the paragraph under "Other Business" on the last page of the minutes reading, "Burleigh/Morton County detention screening tool is utilized prior to detention in all other areas of the state. The detention screening tool is utilized after a child is placed in detention." Judge McCullough seconded the motion, motion carried. A motion was made by Scott Hopwood to approve the December 12, 2014, minutes with the correction made. The motion was seconded by Judge McCullough, motion carried.**

Joint Procedure Committee: Proposed Rule Changes

It was reported that the Joint Procedure Committee considered proposals to amend the juvenile rules at the September and January meetings. In January, all of the proposed amendments that the Committee made were recommended to the Supreme Court. The Court reviewed the proposed amendments and distributed them for comment. There was an extended comment period to give the Juvenile Policy Board time to comment on the proposed amendments.

The comment deadline was set for March 31, 2015. As of March 27th, there were no comments.

The Joint Procedure Committee did not alter the proposed amendments significantly and there are no comments from the Juvenile Policy Board on the rules (or policy changes) from the Joint Procedure Committee. Please refer to Justice Sandstrom's letter to the Chief Justice on the proposed rule changes.

#### Juvenile Guardianship Procedures

At the last Juvenile Policy Board meeting, it was urged to compile practices or procedures to conduct guardianships in juvenile court. These were procedures that were drafted for the Best Practice manual and brought before the Best Practice Committee. They were approved with the exception of a background procedure, which will be discussed further at the Best Practice Committee's next meeting.

#### Use of Juvenile Restraints

The Board was referred to the Campaign Against Indiscriminate Juvenile Shackling handout. Ms. Kringlie received a call from David Shapiro, Attorney with Swick and Shapiro, inquiring whether the 2007 case law was being followed. The American Bar Association has passed a resolution against indiscriminate juvenile shackling in the courtroom. Ms. Kringlie shared that juveniles may be placed into restraints during trials. Mr. Shapiro's concern is that there is a 2007 North Dakota Supreme Court case which states (in part) that the court should make an independent finding whether juveniles should be shackled in trials.

Mr. Grinsteiner reported he had participated in referee on-line training recommending that shackling should stop at the door and that every child who is transported would follow the shackling procedures up to the door of the courtroom. The child would then be unshackled and allowed to interact in the courtroom with their attorney. At the conclusion of the hearing, they will be re-shackled at the door. This procedure is sound practice unless there is a security concern that is brought to the attention of the court. The court would engage in a dialogue in order to make a determination if security is an issue and the child should remain shackled.

After a brief discussion of the Juvenile Policy Board, it was determined to have the Juvenile Court Directors work with Mike Hagburg to draft a court rule for shackling of juveniles in the courtroom.

#### Court Improvement Program

Ms. Palsgraaf shared an overview of new Bureau of Indian Affairs (BIA) Guidelines for State Courts and Agencies in Indian Child Custody Proceedings and noted that there have been changes made in best practices and standards and she highlighted several areas.

"Active Efforts" has been defined as more than "reasonable efforts". Additionally, the guidance highlights 15 examples of active efforts. Continued custody is physical and/or legal custody that a parent already has or had at any point and is based on *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552, 2557 (2013). Also, "domicile" is defined in the guidelines and is based on holding in *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30 (1989). The case specifically

points out in the guidelines that the existing Indian family doctrine doesn't apply. Qualified Expert Witness (QEW) has also been defined. QEW is a professional person having some substantial education and experience in the area of his/her specialty. They are focusing more on qualified expert witnesses having some connection to tribal culture.

The guidelines have listed what shouldn't be factored into a good cause determination which includes the advanced change of proceedings. Consideration on whether transfer would result in a placement change; the level of contacts the child has with the tribe; the socio-economic conditions of the tribe; or any perceived inadequacy of the tribes social services or judicial systems will not be considered in the good cause determination.

In the 1979 guidelines, the BIA's position was they only had authority to issue rules and regulations on the notice piece and only the notice that applied to contacting the BIA when a parent or custodian couldn't be found.

#### Other Business

Scott Johnson shared that Catie Palsgraaf has accepted a position as the Citizen Access Coordinator due to a recent vacancy. Additionally, Heather Traynor has accepted the CIP Research Analyst position vacated by Ms. Palsgraaf.

#### Future Meeting Dates

June 12, 2015; September 11, 2015; and December 11, 2015. All meetings are scheduled to begin at 1:00 pm in Bismarck.