

Juvenile Policy Board  
Minutes  
(Unofficial Until Approved)  
December 12, 2014

Members Present:

Judge William Herauf, Chair  
Justice Lisa Fair McEvers  
Referee John Grinsteiner  
Cory Pederson, Juvenile Court Director, Unit 3 (Sitting in for member Scott Hopwood)  
Brad Saville, Juvenile Court Officers Association via telephone

Members Not Present:

Judge David Reich  
Judge Doug Mattson  
Judge Daniel Narum  
Scott Hopwood, Juvenile Court Director, Unit 4

Staff Present:

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

Guests:

Mike Hagburg, Staff Attorney  
Catie Palsgraaf, Court Improvement Project (CIP) Research Analyst  
Heather Traynor, CIP Quality Assurance Research Specialist

Judge Herauf called the meeting to order. **A motion was made by Justice McEvers to approve the February 28, 2014 and the September 5, 2014, minutes. The motion was seconded by Referee Grinsteiner, motion carried.**

Sheltercare Hearings & Rule of Evidence 1101

Judge Herauf outlined for the group that District Judges don't conduct sheltercare hearings very often (vice referees). However, he noted that his work in that area led him to question what the standard of the burden of proof is relating to Rule of Evidence 1101. Rule 1101 covers juvenile detention but is silent on sheltercare hearings. There was general discussion amongst committee members as to why sheltercare hearings are not exempt from the rules of evidence.

Referee Grinsteiner discussed how he treats sheltercare hearings. They are treated in a similar fashion to a detention hearing where the rules of evidence don't apply and hearsay is admissible. He conducts a hearing making a finding in probable cause first and then a finding is made whether there is a need for continued sheltercare. This is not in Rule 1101 (and it's not written anywhere) and it might be helpful to add it.

Justice McEvers agreed that sheltercare hearings should be inserted in the North Dakota Rules of

Evidence Rule 1101 under (d)(3)(G) detention hearings.

After discussion, **a motion was made by Referee Grinsteiner to add to the North Dakota Rules of Evidence Rule 1101 under (d) Exceptions (3)(G) detention hearings; or sheltercare hearings. The motion was seconded by Cory Pedersen, motion carried.**

Mr. Hagburg will also cross reference this to the Juvenile Rules of Procedure and forward the Policy Board's recommendation to the Joint Procedures Committee.

#### Joint Procedure Committee Update on Proposed Rule Changes

Mr. Hagburg updated this Committee that the Joint Procedure Committee met in September and decided on the following under the North Dakota Rules of Juvenile Procedure;

#### Rule 10 - Presence, Default

This amendment would allow the judge or referee to conduct a hearing conference, other proceeding, or take testimony by using contemporaneous transmission by reliable electronic means. The board had proposed that children be represented before an electronic means hearing could take place, but the Joint Procedure Committee proposed that the rule should allow electronic means hearings to be held at the judge's discretion, regardless of whether the child is represented.

#### Rule 17 - Lay Guardian Ad Litem

The board's proposed amended language clarifies what sort of crime the rule is relating to when it talks about the qualification for a lay guardian ad litem. The Joint Procedure Committee agreed that people with felony convictions should be excluded from eligibility to be a lay guardian ad litem and proposed that this exclusion should be extended to anyone with a juvenile or adult conviction or adjudication under N.D.C.C. ch. 12.1-20 and to anyone with a substantiated instance of child abuse (regardless of whether charged or convicted of it).

#### Rule 19 - Juvenile Records

The board combined language from Policy 402 and 403 in a proposed new Rule 19. The Joint Procedure Committee found that much of the policy language incorporated in the proposal was taken directly from N.D.C.C. § 27-20-51, the juvenile records confidentiality statute. The committee proposed that all statutory language be removed from the rule proposal and be replaced by cross-references to the statute.

The Joint Procedure Committee will review updated proposed rule changes as well as the thoughts/concerns of the Juvenile Policy Board during its January 2015 meeting. Recommendations will be made via a letter drafted for the committee chair and sent to the Supreme Court.

## Juvenile Guardianships & Lay GAL Appointment

Scott Johnson framed issues that have recently developed relating to private guardianship proceedings commenced in District Court. The North Dakota Supreme Court issued an opinion in February of 2013 entitled *Guardianship of J.S.L.F, 2013 ND 31, 826 N.W. 2d 916*.

Essentially, the opinion highlights that if the intent of a private guardianship petition is to establish guardianship with an associated goal to prove a parent (or parents) unfit then the venue is to be in Juvenile Court vice a probate filing.

One of the outcomes associated with the direction of the Supreme Court is the unanticipated use of Lay Guardian's Ad Litem (GAL) in the process associated with the commencement of proceedings in these cases. Pursuant to discussions with Brad Swenson, Lay GAL program manager for Youthworks as well as discussion with Juvenile Directors, it was noted that the substance of an assignment could be different for a GAL assigned to a private guardianship by the Court. If the role of Social Services was limited in the case then an expectation to accomplish a "home study" may be a part of the assignment. This is an area that GAL's typically do not accomplish. The Board was asked to provide guidance in this area and determined that GALs should follow their duties and role as outlined in N.D.R.Juv.P 17.

Additionally, affected Juvenile Courts and Clerk of Court offices require process guidance. Cory Pedersen, Unit 3 Juvenile Court Director, highlighted interim procedures developed in Units 2, 3 & 4. The interim procedures were developed pursuant to consensus and guidance developed through two recent meetings of the Juvenile Court Directors. The Board was asked to provide guidance on the procedures highlighted in materials submitted to the group. The Chair asked the Juvenile Directors to continue draft development of procedures and return to the group with the draft for further action.

Referee Grinsteiner outlined how he has been handling private guardianships in Unit 3. He noted that use of GALs in the cases he is assigned to has been very beneficial and will seek their continued appointment in future cases.

## Court Improvement Project Update

Ms. Palsgraaf updated the committee that the Court Improvement Project Committee new chair is Judge Laurie Fontaine. The Indian Child Welfare Act Audit final draft is moving on to the Supreme Court and then made public.

Ms. Palsgraff introduced Ms. Heather Traynor who is the Quality Assurance Research Specialist. They both updated the committee on progress of the quality assurance they are conducting. There are 3 foster care and 3 in home cases being studied. They will be holding a stakeholder meeting which will include social workers and foster parents. Topics will include in the meeting lack of services in certain areas of ND along with having no technology in certain areas as well.

Other Business

Burleigh and Morton county detention screening tool will be utilized statewide in all juvenile courts(prior to detention). More information will be discussed at the next meeting.

A Referee online training is scheduled for February 9, 2015. The primary topic for discussion will be practice associated with the use of restraints on juveniles in the courtroom.

Meeting adjourned at 11:15am.