

**Gender and Justice Commission
May 13, 2011
Meeting Minutes**

In Attendance: Chief Justice Barbara Madsen, Ms. Barbara Carr, Judge Vicki Churchill, Ms. Laura Contreras, Judge Joan DuBuque, Ms. Ruth Gordon, Judge Cynthia Jordan, Ms. Jennie Laird, Judge Craig Matheson, Ms. Emily McClory, Judge Alicia Nakata, Ms. Leslie Owen, Mr. Bernie Ryan, Judge Ann Schindler, Justice Jane Smith, Mr. David Ward, Judge Chris Wickham, Ms. Myra Downing and Ms. Pam Dittman

Guests: Ms. Mary Gough via phone, Mr. David Martin, Ms. Heather Morford

Absent: Judge Sara Derr, Dr. Margaret Hobart, Ms. Judith Lonquist, Professor Natasha Martin, Ms. Yvonne Pettus

COMMISSION BUSINESS

Staff Report – Ms. Myra Downing

Pam Dittman was hired as the new Program Assistant.

Evaluations

The Commission co-sponsored two educational programs for the Superior Court Judges' Association Spring Conference: "Civil Hard Times" on Monday, May 2, 2011 and "Immigration" on Tuesday, May 3, 2011. Each session received very positive feedback and ranked the highest with participation levels of over 100 people in each session.

Annual Conference

The Commission is either sponsoring or co-sponsoring five sessions for the Fall Conference

1. **Diversity** on Sunday, October 2, 2011: Co-sponsors are the DMCJA Diversity Committee, the Minority and Justice Commission and the SCJA Equality and Fairness Committee
2. **Elder Abuse** on Monday, October 3, 2011. Co-sponsored with the Professional Guardian Board,
3. **Sexual Orientation**, on Monday, October 3, 2011 Co-sponsored with the DMCJA Diversity Committee.
4. **Risk Assessment**, sponsored by our Commission, on Monday, October 3, 2011
5. **Girls in Trouble**, sponsored by our Commission, on Tuesday, October 4,

Bench Guides

The Commission will be updating the DV Bench Guide and intending to create a Sexual Assault Bench Guide. Judge Churchill agreed to take the lead on the Sexual Assault Bench Guide.

NCHIP¹ Grant and Imaging Project – Proof of Concept – View Protection Orders

The Commission submitted a grant application to the Washington State Department of Information Services who in turn included it in their grant to the Federal Government to develop a “proof of concept” that would allow judicial officers to view protection orders through an imaging process. Judge Wickham came up with this idea. The memorandums of understanding and contract with the vendor are being prepared.

Washington State Judicial and Court Personnel Training Project Grant Application

A grant was submitted to fund eight DV trainings that includes “In Her Shoes.”

Chair Report – Chief Justice Barbara Madsen

Budget

Budget Update: House and Senate budget proposals differ greatly. It is unsure how the Administrative Office of the Courts (AOC) will be affected at this point. The Supreme Court budget is the same in both the House and Senate and faces some significant cuts. One dire cut is the Law Library, which if the Senate version of the budget is approved, would be cut by 72 percent. This effectively closes the Law Library and removes a valuable and needed resource from our community and from the public. JIS funding is also in jeopardy and makes it increasingly difficult to have projects or even updates to the JIS system kept current.

The Supreme Court will be addressing the boards and commissions budget item in July. Chief Justice Madsen is looking at the current boards and commissions to determine if the best possible system is set up to ensure collaboration between the various entities.

ACTION: A Nomination Committee will be formed to identify potential people for Vice Chair of the Commission.

Scholarship

A scholarship made available by the National Association of Women Judges (NAWJ) was presented to University of Washington Law School Student Priyanka Prakash. The scholarship was presented at the second annual judicial conference cosponsored by the NAWJ, the Gender and Justice Commission, Women’s Law Caucus’s for the University of Washington, and Seattle University Schools of Laws.

Annual Report

The Commission needs to continue to show the Legislators and others that we are an active and dedicated Commission that has accomplished much through the past few years. The Annual Report is an integral piece. The report needs to be short and highlight the major works and accomplishments of the Commission.

ACTION: Myra will prepare a draft report for review by Commission members.

¹ NCHIP – National Criminal History Improvement Program

COMMITTEE REPORTS AND PROJECTS

SJI Immigration Grant Report – Judge Ann Schindler

The faculty for the SCJA educational session, held on May 3 were Judge John Erlick, Federal Judge Tammy Fitting, and Judge Steven Gonzalez; Ms. Grace Huang from WSCADV, Chief Counsel Dorothy Stefan, ICE²; Ms. Pramila Jayapal from One America, and Mr. Matt Adams and Mr. Jorge Baron from Northwest Immigration Project. One of the more effective components of the program was Judge Erlick discussing ethical situations that arise in immigration matters, what can and cannot be done ethically. One of the more significant outcomes for judicial officers was the realization that most people are not represented at the ICE hearings.

Legislative Update – Mr. David Ward

Effective date on all below-mentioned legislation is July 22, 2011

HB 1182: Tampering with Witness

Clarifies that each instance of an attempt to intimidate or tamper with a witness constitutes a separate violation for purposes of determining the unit of prosecution under tampering with or intimidating a witness statutes.

HB 1188: Suffocation and DV offenses

Specifies that assault in the second degree includes assaulting another by suffocation. "Suffocation" means to block or impair the intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the ability to breath. Provides that a prior conviction for a repetitive domestic violence offense is not included in the offender score if the person has spent ten consecutive years in the community without being convicted of a crime.

HB 1267: Uniform Parentage Act

Makes significant changes to Washington's Uniform Parentage Act (UPA), including:

- Clarifies the law's equal application to state-registered domestic partners, including an explicit provision that state-registered domestic partners who have children together are presumed to be the child's parents.
- Restores a "holding out" provision to provide that a person is presumed to be a child's parent if, for the first two years of the child's life, the person resided in the same home with the child and openly held out the child was his or her own.
- Specifies a person who provides gametes for or consents to assisted reproduction with another person, with the intent to be the parent of the child, is the parent of the resulting child. Parentage of a child conceived through assisted reproduction may be disproved by admissible evidence showing the intent of the parents.
- Generally uses gender-neutral terms throughout the UPA.
- Extends the time period under which a person can challenge parentage from two years to four years. If action to challenge parentage is commenced more than two years after child's birth, child must be made a party to the action.

Provisions in the original bill authorizing compensated surrogacy agreements were stripped from the bill by the Senate.

² ICE – Immigration and Custom Enforcement

HB 1565: Terminating or modifying DV Protection Orders

Sets guidelines and procedures for terminating or modifying domestic violence protection orders that are permanent or issued for more than two years. The Legislature finds that some factors identified by the Supreme Court's decision from *In re: Marriage of Freeman* for terminating an order place an improper burden on petitioners and are not demonstrative of a respondent's likelihood to resume acts of domestic violence.

Provisions include:

- Motion and Affidavit – A respondent's motion for modification or termination must include an affidavit stating the facts in support of modification or termination. The petitioner may file opposing affidavits. Upon reviewing the affidavits, the court must dismiss the motion unless there is adequate cause for a hearing.
- Standard of Proof – If the respondent's motion is for termination, the respondent bears the burden of proving by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent is not likely to resume acts of violence.
- Factors to Consider – In determining whether there has been a "substantial change in circumstances," the court may consider the following factors:
 - Whether the respondent has committed or threatened domestic violence, sexual assault, stalking, or other violent acts since the protection order was entered;
 - Whether the respondent has violated the terms of the protection order, and the time that has passed since the entry of the order;
 - Whether the respondent has been convicted of criminal activity since the protection order was entered;
 - Whether the respondent has either acknowledged responsibility for the acts of domestic violence that resulted in entry of the protection order or successfully completed domestic violence perpetrator treatment or counseling;
 - Whether the respondent has a continuing involvement with drug or alcoholic abuse, if such abuse was a factor in the protection order;
 - Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly;
 - Whether the respondent or petitioner has relocated to an area more distant from the other party, giving due consideration to the fact that acts of domestic violence may be committed from any distance; and
 - Other factors relating to a substantial change in circumstances.
- Court may not grant a respondent's motion solely based on the fact that time has passed without violations or the fact that the respondent or petitioner has relocated to an area more distant from the other party. Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence that brought about the order were of such severity that the order should not be terminated.

Modification of orders – If the respondent's motion is for modification rather than termination, the respondent bears the burden of proving by a preponderance of the evidence that modification is warranted and would not diminish the protections provided to the petitioner. If modifying the protection order would reduce the duration of the order

or would eliminate provisions that restrain the respondent from harassing, stalking, threatening, or committing other acts of domestic violence, the court must consider the factors relating to whether there has been a substantial change in circumstances.

The petitioner bears no burden of proving that he or she has a current reasonable fear of imminent harm by the respondent in either a motion for modification or termination by the respondent.

Petitioner may also move for termination or modification of an order. Petitioner does not have to show adequate cause for motion.

Court may require a respondent to pay court costs and service fees in addition to the petitioner's costs and attorneys' fees incurred in responding to the motion.

Service – When a respondent files a motion for modification or termination, a licensed process server, sheriff, or other local law enforcement must personally serve the petitioner. If the petitioner files the motion, he or she can achieve server through another private party.

HB 1649: Reciprocity and Statutory Construction with Regard to Domestic Partnerships
Provides that validly formed same-sex marriages from other jurisdictions will be recognized as state-registered domestic partnerships in Washington.

Amends the statutory construction provision of the domestic partnership law to explicitly state that it applies to any future legislation, unless the legislation expressly states otherwise. (Statutory construction provision provides that for the purposes of interpreting the RCW, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family must be interpreted as applying equally to domestic partnerships, to the extent the interpretation does not conflict with the federal law.)

SB 5395: DV Fatality Review Panels

Authorizes Domestic Violence Fatality Review (DVFR) to convene statewide issue-specific review panels, in addition to its existing authority to convene regional domestic violence fatality review panels.

The DVFR is no longer required to issue biennial reports, but may issue periodic reports containing its recommendations on policy changes that would improve program performance and issues identified through the work of the regional fatality review panels. The DVFR is required to report to the appropriate legislative committees, rather than specific committees identified in statute.

SB 5579: Anti-harassment Orders. (*See separate handout from Judge Prochnau for complete wording and information.*)

In summary:

The only types of anti-harassment petitions that should be heard on the anti-harassment calendar in superior court are:

- Action pending or previously adjudicated between parties in superior court.
- Action involves title or possession of real property and respondent has no cognizable claim to property i.e., no claim of title, tenancy interest, etc. Boundary disputes, actions between landlords and tenants or housemates

- should not be on the anti-harassment calendar but should be filed using a Summons and Complaint i.e., an Unlawful Detainer or Action to Quiet title.
- Actions transferred from district court to superior court based on Findings and Conclusions of Law and which are not required to be filed as a DVPO, SAPO, under a Title 26 action or as a separate civil action.
- One or more respondent are under 18 years of age.

DV Regional Meetings – Judge Chris Wickham

Tentative Schedule:

- Thursday, June 16 – Spokane County
 - ◆ DV Committee Representative(s): Judge Jordan, Judge Matheson
- Monday, June 20 – Stevens/Ferry/Pend Oreille Counties
 - ◆ DV Committee Representative(s): Judge DuBuque, Judge Jordan
- Friday, June 24 – Benton/Franklin Counties
 - ◆ DV Committee Representative(s): Judge Matheson
- Tuesday, July 12 – King County
 - ◆ DV Committee Representative(s): Judge Churchill, Judge Nakata
- Tuesday, July 19 – Clark County
 - ◆ DV Committee Representative(s): Ms. Grace Huang, Judge Wickham
- Thursday, July 28 – Skagit County
 - ◆ DV Committee Representative(s): Ms. Ruth Gordon, Judge Churchill
- Tuesday, August 23 – Chelan/Douglas Counties
 - ◆ DV Committee Representative(s): Judge Nakata
- To be Determined – Pacific/Wahkiakum
 - ◆ DV Committee Representative(s): Ms. Ruth Gordon, Judge Wickham

Funding

Judge Wickham has been working on a project relating to risk assessments. The risk assessment would be built into the system and then pre-trial staff would enter information from the assessment questionnaire into the system. From there, the judicial staff could see the assessment and utilize it in making decisions when issuing no-contact/protection orders etc. If this works, would be able to implement it statewide. Additional funding may be necessary and will be considered at a later date by the Commission.

Workplace Violence Policies

A presentation will be made at the July meeting on a new resource made available by Futures without Violence (formally the Family Violence Prevention Fund).

Guardian Ad Litem – Ms. Leslie Owen

This project will be delayed until budgets are finalized.

GUEST PRESENTER – Mr. David Martin, King County Prosecutor, Domestic Violence Unit

The Domestic Violence Initiative is a regional response (King County) to domestic violence that is focusing on protection orders, risk assessments, and U-Visas. (*PowerPoint handouts, sample checklists, etc., included as a separate handout*).

Protection Order Project

- The goal of the protection order piece was to identify and resolve issues relating to protection orders in King County that provided high impact and ease of implementation of standards and guidelines.
- Created checklists (Police, Court & Data Center, Patrol Service & Civil Standby, and Judge & Petitioner), information packet, and a reference guide.
- Created a “Filing for Domestic Violence Protection Order” Information packet.
- Next steps were identified such as promoting the checklists locally, identifying Web sites on which to post, and discussing for statewide use.

Risk Assessment Project

- Should Seattle Police Department and its partner agencies utilize a risk assessment tool for domestic violence cases? The tool would be an instrument that patrol can implement with no change in procedure that provides the best available risk assessment information to downstream users.
- At this time, the workgroup is determining the cost of a pilot project/study, locating funding for said project/study, and then building and implementing a pilot program
- Also working with Thurston County Courts.

U-Visas

- Discussing regarding how to engage evidence-based tools to improve decision-making and move away from institutional bias.
- Discussion regarding the term “helpful” and exactly what does that mean and how is that implied. The inconsistency of the application of this word leads to inconsistent U-Visa results.

GUEST – Ms. Merrie Gough, Pattern Forms (via phone)

Merrie called concerning standardizing forms to include the wording on pattern forms regarding term “replacement order” versus the term “modifies another order.” This standardized wording is partially in response to ESHB 2777 and the thought behind the wording may assist in recognizing and avoiding conflicting/duplicative orders.

There was discussion regarding the use of the phrase “replacement order” as this is a term that is not identified in statute.

The Commission members thanked Mary for contacting them and want to continue this conversation, but at this time, asked that this language not be incorporated into the standardized forms until more conversation can be had.