



# FAMILY COURT ADVISORY COMMISSION

## MEETING MINUTES

June 11, 2021

The Family Court Advisory Commission (FCAC) met at the North Carolina Judicial Center on Friday, June 11, 2021. The meeting came to order at 10:07 AM. The following FCAC members, North Carolina Administrative Office of the Courts (NCAOC) staff, and guests were present, either in-person or via Webex:

### *FCAC Members*

Judge G. Galen Braddy, Chair  
Stephanie Gibbs  
Judge John Greenlee  
Cheryl Howell  
Justice Robin Hudson  
Gerald Mack (via Webex)  
Judge Lisa Menefee  
TeAndra Miller  
Judge Donna Stroud (via Webex)  
Lori Wainright (via Webex)  
Shirley Webb-Owens  
Judge Amanda Wilson

### *NCAOC Staff*

Amy Auth, Legislative Director  
Ryan Boyce, Deputy Director (via Webex)  
Lori Cole, Court Management Specialist  
DeShield Greene, Court Management Specialist  
Joseph Kyzer, Legislative Liaison  
Tara Minter, Court Management Specialist  
Stephanie Smith, Court Management Specialist  
Faith Taylor, Business Analysis and Project Management Manager

### *Guests*

Wade Harrison, Attorney  
Tara Kozlowski, Executive Director, Dispute Resolution Commission (DRC)

### **Welcome**

Lori Cole welcomed everyone to the meeting. The FCAC members introduced themselves.

### **Approval of Minutes**

Shirley Webb-Owens made a motion to approve the March 12, 2021 meeting minutes as written. Judge Greenlee seconded the motion. The meeting minutes were unanimously approved.

### **Legislative Update**

Amy Auth and Joseph Kyzer introduced themselves as the new NCAOC Legislative Director and Legislative Liaison, respectively. Ms. Auth provided an update on the budget, stating an agreement had been reached between the Senate and House regarding the budget amount, and a budget should be forthcoming from the Senate. The top goal for the Judicial Branch for the current biennium is to fund eCourts to transition the NC court system into the 21<sup>st</sup> century which will assist the courts with



emergency preparedness and improve access to the courts. NCAOC also is working to support the various judicial groups and ensure their staffing and workload needs. Efforts are ongoing to identify how the Judicial Branch can effectively and efficiently use federal COVID-19 funds. NCAOC does not take positions on policy but rather identifies issues in legislation that could impact court operation and notes those concerns.

Joseph Kyzer provided additional legislative updates. The NCAOC agency bill, S255, has passed the General Assembly and is awaiting the Governor's signature. Several of the provisions in the bill address remote proceedings and eCourts to ensure the success and validity of eCourts. Mr. Kyzer mentioned several pending (and one enacted) bills which have made crossover that could impact family courts including:

- S113 (S.L. 2021-18) passed, which changes the direct right of appeal for termination of parental rights cases from the NC Supreme Court to the NC Court of Appeals.
- H132 includes several juvenile code revisions that changes definitions for relatives, and information related to appeals, counsel, and permanency planning.
- H183 requires juvenile court counselors to receive cultural sensitivity training.
- H473 adds additional individuals to the list of who may take temporary custody of a surrendered infant, adds duties for a person taking custody of a surrendered infant, and adds confidentiality of records provisions, and other social services duties.
- H585 enacts psychiatrist-client or patient privilege as an exemption from duty to report certain crimes against juveniles.
- H598 requires the court to order restitution for various child sexual exploitation convictions.
- H615 reforms juvenile court mental health assessment processes.
- H769 recognizes and codifies foster parents' rights.
- S207 (and companion bill H252) makes important changes to Raise the Age legislation and other commitment, housing, and custody orders. It would also raise the jurisdictional age from 6 years of age to 10 years of age.
- S693 expedites permanency planning hearings and addresses child safety.
- H714 amends the Human Trafficking Child Exploitation Prevention Act to add to the Indecent Deceptive Trade Practices.

NCAOC Legislative staff was supportive of S113 and S255 but the budget has remained the primary focus along with eCourts implementation. With the implementation of the four pilot counties looming, eCourts education efforts are increasing locally and statewide.

### **Revisit Rule 53 Discussion**

At the December meeting, the FCAC considered a proposal from the Judicial Branch COVID-19 Task Force to expand cases covered under Rule 53 to include additional domestic issues not currently covered under the rule. At that meeting, the FCAC did not support this recommendation. Family Law Specialist, Family Financial Certified Mediator, and COVID-19 Task Force Member Attorney Wade





Harrison requested that this issue be reconsidered by the FCAC and was in attendance to present the issue (see attached memorandum).

Mr. Harrison provided an overview of Rule 53 as it currently exists. He explained that modifying the rule to allow judges to refer alimony, child custody, child support, equitable distribution issues as well as attorney fees claims associated with these claims will be a helpful tool for district court judges in certain situations as determined by the presiding judge. The judge will ultimately determine if the case is referred, to whom, the referee's payment, the exact scope of the referee's work, the deadline to complete the work, and the format of the report. The judge then determines whether to accept, reject, make an independent decision, or refer the matter back to the referee. The referee is not a substitute for judicial action. The appointment of a referee does not run counter to the one judge / one family principle because the judge remains in control of the case. A rule expansion also would not interfere with existing mandatory statewide ADR programs (i.e., family financial settlement and custody mediation) because a referee would only be considered after all mediations have been attempted. A referee may not be appropriate in all situations, but a judge would determine when and if a referee would be appointed. The judge would determine if it is cost effective to refer a matter to a referee. Mr. Harrison noted that many districts do not have the resources of the family court districts, and this could be an effective tool to save judges' time. Although it would not be mandatory, referees could be used, when and if needed.

The DRC is not opposed to any form of alternative dispute resolution (ADR) but Tara Kozlowski inquired about the timing of the referee referral and when a judge would order a case to a referee. The DRC would prefer the rule allow for the appointment of a referee after the mediation process. Mr. Harrison stated it would be up to the judge when the matter is ordered. He envisions the referee would only be used after all mediation efforts failed.

Cheryl Howell noted that the ambiguity in the rule makes judges hesitant to use referees. Mr. Harrison recognized the rule is archaic. There was discussion that if the rule were expanded to include these domestic issues, Rule 53 as a whole may need to be modified to clarify the timing of the appointments and provide more structure about when and if it is appropriate, and who could serve as a referee. Stephanie Gibbs expressed concern about custody cases being referred to a referee. Mr. Harrison agreed that the appointment of a referee in a custody case would be rare, but it could be helpful in certain situations to have a referee to help organize the case information. This would help the judge make a decision, particularly in counties where a GAL attorney for the child is not available.

Professor Howell and Justice Hudson agreed to work on language to clarify the rule as discussed. Judge Braddy inquired about the qualifications of a referee and suggested there may be a need to establish a pay scale for referees in the statutes. Judge Wilson suggested a referee would be a good idea, but the rule should be clarified. She recommended Mr. Harrison contact Chief District Court Judge Bradley Allen to speak to the district court judges. Judge Menefee stated it would be an invaluable tool to have the ability to appoint a referee; it is worth supporting in principle and should be explored in more detail. The





specifics of the rule could be untangled later. The FCAC made no formal approval or rejection of the proposal to expand Rule 53 at this time.

### **ICMS Update**

Faith Taylor provided an update on the Integrated Case Management System (ICMS). Within eCourts, the available initiatives are Guide and Print, Guide and File, Brazos (eCitation replacement), eWarrants (NCAWARE replacement), Odyssey for Magistrates, and Odyssey (i.e., ICMS), the latter will be the main case management hub. Guide and Print is the first component for eCourts and was implemented August 24<sup>th</sup>. There is currently a total of 17 interviews for Guide and Print with more interviews scheduled. Brazos was implemented in April. eWarrants will go live statewide at the end of June with training currently taking place. eWarrants was built specifically for North Carolina by Tyler Technologies. Once eWarrants goes live, NCAWARE will be decommissioned. Judge Greenlee stated that the Gaston magistrates and clerks are concerned about the eWarrants start date and inquired if that would be delayed. Ms. Taylor advised staff is communicating with Tyler about the deadlines and that any delays to eWarrants will impact the go live for Odyssey.

Odyssey will go live in the four pilot counties (Wake, Johnson, Lee, and Harnett) on August 23<sup>rd</sup>. ICMS training is scheduled at the Raleigh Crabtree Marriott beginning June 28<sup>th</sup> for the pilot counties. Odyssey “lookup” training will be provided via the Learning Center for the remaining 96 counties as they will be unable to search cases in the four pilot counties using the legacy systems. There are several online modules, referred to as Tyler U, to assist users in getting accustomed to the functionality of Odyssey.

Judge Stroud shared that Rule 5 of the NC General Rules of Practice was modified in May to address filing in counties as they go live with Odyssey. Rule 5.1 applies to counties that have not implemented Odyssey. Rule 22 was reworded in several ways and allows district to have local rules, but they must be consistent with the NC General Rules of Practice. Ultimately, if a county has a local rule inconsistent with the eCourts principles, the local rule must be changed to conform.

### **UPA (Uniform Parentage Act) Subcommittee Update**

Subcommittee Chair Cheryl Howell provided a summary of the purpose of the UPA as discussed at the last meeting and an update on the first meeting of the UPA Subcommittee. The Subcommittee was created at the March FCAC meeting to consider supporting legislation to enact the UPA in North Carolina. The Subcommittee also consists of Judge Beth Dixon, Stephanie Gibbs, Judge Beth Keever, Judge Lisa Menefee, and CSC Justin Minshew. Attorney Jennifer Tharrington was added to the subcommittee because of her experience in this area.

North Carolina laws have not kept up with assistive reproductive technology (ART) as NC laws related to parentage are still largely based on biology and genetics. The reproductive technologies have pushed along the related legal issues, which are now coming before the courts. However, there is much work being done in this area, both in North Carolina and nationally. The Bar Association created a special task force to study this issue and draft legislation to adopt the UPA. The Family Law and Estate Sections comprise the task force; attorney Jennifer Tharrington is a member of that task force. Prior to the





creation of the task force, the UPA was being reviewed by both sections for 10 years. The task force supports the introduction of UPA legislation, but they are making tweaks to the UPA as they consider how the UPA would impact other areas of NC law. The Bar Association plans to introduce legislation during the 2023 legislative long session so the Bar would have to vote on its adoption by October 2022. As a result, the UPA Subcommittee recommends the FCAC delay a decision until the Bar Association proposes legislation. In the meantime, the Subcommittee will educate itself about the UPA and help the FCAC understand the impact on NC Law. The Subcommittee plans to make a presentation to the FCAC about the UPA at the end of next summer after the Bar Association has proposed legislation. At that time, a decision can be made by the FCAC regarding supporting UPA legislation.

Judge Greenlee made a motion to table the issue until such time as the Subcommittee reports back to the FCAC in summer 2022. Judge Wilson seconded the motion. The motion carried unanimously.

### **Family Court Updates**

At the March meeting, the FCAC agreed to consider changes to Appendix A and B of the Family Court Best Practices. Proposed changes were circulated to the FCAC prior to the meeting.

Appendix A: Best Practice FCAC Recommendations: All proposed changes were adopted except the recommendation related to the minimum staffing level in a family court district and the recommendation regarding assistance to self-represented litigants. The discussion for both recommendations were tabled to a later meeting. The changes to the approved recommendations included updating the training requirements of family court judges and staff, editing the mandatory cases that a family court should manage, and removing previously made recommendations that are no longer applicable. The need to further discuss the juvenile certification training and other family court trainings offered by NCAOC and the School of Government was identified and noted.

Regarding the minimum staffing level recommendation for each family court district to have one family court administrator and a case coordinator per judge who spends 75% of their time in family court, the FCAC elected to await the finalization of the judicial support staff job study that was conducted by NCAOC Human Resources Division.

There was considerable discussion related to the resources available to self-represented litigants, both in the quality and manner in which those resources are provided. Judge Menefee noted it is difficult providing self-represented litigant resources to communities with little internet access. She recommended a list of suggested community resources be developed to include Legal Aid, county departments of social services, child support, adult protective services, hospitals, and other community organizations that would be provided in ways other than the internet. The pandemic highlighted the lack of communication the courts have with self-represented litigants. Judge Greenlee echoed this sentiment and stated the local faith community and doctor's offices should be added to the list of locations where the resources could be shared. It was suggested the NCAOC develop an app-based resource designed to be





accessed by a cell phone. Lori Cole noted the challenges of self-represented litigants in the Access and Visitation Program. She is working with the Community Outreach Coordinator at NCDSS to help identify and share resources for self-represented litigants in custody matters. Posters to inform the community about the Access and Visitation posters have been created to be posted around the community. This matter will be placed on a future FCAC agenda.

Appendix B: Trauma Informed Judicial Training Component: The proposed changes were adopted by the FCAC, including an addition to include a domestic violence, co-parenting, and trauma informed training component for judges.

## **NCAOC Court Programs Updates**

### ***Access and Visitation (A&V)***

Lori Cole shared that the A&V contract was signed. The program is increasing outreach efforts and partnering with other agencies for this purpose.

### ***Custody Mediation***

Stephanie Smith reported that the expansion budget includes requests to increase all custody mediators to full time status as some counties are chronically understaffed. Many of the judges have opted to continue the online custody mediation orientation options that were developed during the pandemic. A group of mediators and Custody Mediation staff have developed a uniform parenting agreement template that is currently being reviewed by the Custody Mediation Advisory Committee. The goal is to incorporate the template into Odyssey although it could be used prior to Odyssey implementation once it is approved.

### ***Human Trafficking***

Tara Minter provided an update on current Human Trafficking projects:

- Senate Bill 35 passed the Senate and is moving to the House. It would amend the lawful age of marriage to 16 years of age or older and provide a 16 or 17-year old could not marry anyone more than 4 years older.
- The NC Human Trafficking Commission will meet June 24<sup>th</sup>.
- The NC Human Trafficking Commission will hold its annual conference in-person on September 15-16 in Raleigh; there is no registration fee.
- The Human Trafficking Institute released the 2020 Federal Human Trafficking Report. It contains a report of all federal level human trafficking cases that occurred in 2020 which will be posted on the Human Trafficking Institute website.

Judge Braddy recommended the FCAC members speak to their legislators about continued funding for Caitlyn's Courage which is a new domestic violence monitoring program.

The meeting adjourned at 1pm.

*Submitted by DeShield Greene*

