

JOINT PERFORMANCE REVIEW COMMITTEE
APRIL 14, 2016
MINUTES

The Joint Performance Review Committee met at 10:30 a.m. on Thursday, April 14, 2016 in Room 151, State Capitol, Little Rock, Arkansas.

Committee members present: Senators Alan Clark, Co-Chair, Jane English, Linda Collins-Smith, Terry Rice, and Gary Stubblefield. Representatives Kim Hammer, Co-Chair, Lance Eads, Kenneth Ferguson, Charlene Fite, Mickey Gates, Milton Nicks, Jr., Dwight Tosh, Dan Sullivan, John Walker, and Dave Wallace.

Other legislators present: Senators Scott Flippo and Eddie Joe Williams. Representatives David Fielding and George McGill.

Call to Order

Senator Clark called the meeting to order.

Approval of Minutes – March 30, 2016 [Exhibit C]

A motion to approve the minutes of the March 30, 2016 JPR Committee meeting was made by Representative Hammer and seconded by Senator Rice. The motion carried.

Discussion of Non-DHS Focused Testimony on Issues That Have Contributed to the Child Welfare Crisis as Seen by Attorneys Who Handle a Majority of the Child Welfare Appeals Statewide, and Offer Solutions to Fix Systemic Problems With the System [Exhibit D]

Glen Hoggard, Parent Counsel attorney, and Leah Lanford, Managing Attorney, Dependency-Neglect Division, Arkansas Public Defender Commission, were sworn in under oath by Senator Clark. Mr. Hoggard told legislators that as a Parent Counsel attorney he is appointed to represent parents in dependency-neglect cases whose child/children have been removed from their home and cannot afford to hire an attorney. Mr. Hoggard's practice covers four counties and two judicial districts. His practice is conducted through a personal services contract with the Administrative Office of the Courts (AOC). He said there are 64 Parent Counsel attorneys throughout state, all of whom have personal services contracts with the AOC. Mr. Hoggard told committee members he believes that housing the Parent Counsel Program with the AOC presents a conflict. This issue was taken up by the Arkansas Supreme Court when it created a committee to consider removing the Parent Counsel Program from within the AOC. Committee members included a former director of the Parent Counsel Program, Parent Counsel attorneys, Attorney Ad Litem, representatives from the Arkansas Department of Human Services (DHS), AOC personnel, and representatives from the Arkansas Public Defender Commission. The Committee considered three options, which were submitted to the Court:

- Keep the Parent Counsel Program within the AOC

- Have the Parent Counsel Program become a stand-alone agency with a minimal budget
- Have the Parent Counsel Program become a stand-alone agency with a substantial budget

Mr. Hoggard said he voted against all three of the recommendations made by this committee. He said one reason the Parent Counsel Program should not remain housed within the AOC is because several of the stakeholders involved in dependency-neglect cases are part of AOC. In every dependency-neglect case there are up to four parties involved and part of the AOC: they are a Parent Counsel attorney, an Ad Litem attorney, a Judge, and a Court Appointed Special Advocate (CASA) volunteer, if needed. The only participant in these cases that is not housed within the AOC is the Arkansas Department of Human Services (DHS). Mr. Hoggard said because four of the five parties are affiliated with the AOC, it gives the appearance of a conflict. Another illustration of a conflict concerns the funding mechanism used by the AOC for the Parent Counsel program. He said the Dependency-Neglect Division of the AOC has an annual appropriation of \$9.6 million. AOC distributes the funds to each program it administers. An appropriation of \$2.5 million is spent to pay the personal services contracts between the AOC and the 64 Parent Counsel attorneys. The appropriation for the Attorney Ad Litem program is \$5.5 million. Mr. Hoggard feels the appropriation amounts are not equitable. The Parent Counsel Program funding has remained stagnant, but the number of cases requiring representation continues to grow. He then discussed a legislative packet the Parent Counsel Program is developing to be presented during the 2017 legislative Session. Proposed legislation in the packet will provide solutions to remedy situations that hinder the Parent Counsel attorneys in their representation of parents and families. He summarized the proposed legislation:

- Keep parental rights intact as a first priority
- Provide limited open adoption options
- Require DHS to inform parents of their rights regarding entry into their homes by investigators
- Change the preferential order – remove adoption as the first choice for placement

Senator Clark told committee members that Leah Lanford's testimony is the result of a subpoena issued by the Committee compelling her to appear. Ms. Lanford described her background and said she has practiced law for seventeen years. Twelve years of her practice was exclusive to child welfare. She served as an Attorney Ad Litem for five years before accepting a position with the Arkansas Public Defenders Commission in 2009. She told legislators her testimony would concern the conflicts that exist within the AOC. Ethical standards which govern the proceedings in the child welfare system are set by the American Bar Association (ABA) and the ABA Model Rules of Professional Conduct. The ABA standards of practice for attorneys, Section G1, states that attorneys representing children in child welfare proceedings should be independent from the court, court services, and other parties in a state.

The ABA Model Rules of Professional Conduct prescribes judicial canons and a mandatory set of standards for judges and attorneys to adhere to. Violations of the canons and/or

rules can adversely impact judges and attorneys before the Arkansas Supreme Court and the ABA Standing Committee on Ethics and Professional Responsibility. Attorneys found to be chronic violators of the canons and/or rules may be disbarred from the practice of law. Judges found to be chronic violators may be removed from the bench. Ms. Lanford referenced specific language found in the judicial canons and the ABA Model Rules of Professional Conduct:

- o Canon One states that a judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, shall avoid an impropriety and the appearance of an impropriety
- o Rule 1.7 in the ABA Model Rules of Professional Conduct states that attorneys must not engage in representation in a conflict of interest
- o Comment 37 in the ABA Model Rules of Professional Conduct states that an integral part of an attorney's duty is to prevent conflicts of interest and avoid appearances of impropriety

Ms. Lanford referenced a consultant's report, "A Review of the Arkansas Division of Children and Family Services – July 6, 2015" known as the Paul Vincent Report on child welfare and policy. This was an independent investigation of the child welfare system commissioned by the Governor. This report produced eleven recommendations, all of which the Governor adopted. A subset of one of the recommendations was to move the Parent Counsel Program from the AOC to an independent setting. The Paul Vincent Report concluded that the current structure of the AOC does not lend itself to programs being independent from one another. The Paul Vincent Report specifically found that "having Parent Counsel attorneys under the judicial system raised questions about the independence of this crucial attorney/client relationship, in form, if not in substance", and recommends the program be moved.

Ms. Lanford discussed statutory problems that exist in the Juvenile Code. Language in the code impedes reunification of children with their families, contributes to the breakdown of the family, and the child welfare crisis in general. She cited the following statutory provisions:

- Arkansas Juvenile Code § 9-27-335 states that a relative placement of a juvenile placed in the custody of the Arkansas Department of Human Services shall be given preferential consideration for placement, if the relative caregiver meets all relevant child protection standards

Ms. Lanford believes the Courts have misinterpreted this statute with regard to preferential consideration for relative placement. She gave specific examples of court cases. In 2010, Davis vs. DHS, and in 2012, Henderson vs. DHS, the Public Defender Commission argued for relative placement. Ms. Lanford believes the Court of Appeals misinterpreted the statute in its ruling in these cases. The Court ruled the statute for preferential consideration in relative placement is only relevant in the initial phase of the case and at no other time. Ms. Lanford said the statute does not state this. She told the legislators she is aware of the position of an Arkansas Supreme Court judge who has stated publicly that there is no problem with this statute, and the issue of the interpretation by the judiciary can be addressed through training. Ms. Lanford then discussed the Juvenile Code and said no

mechanism in the Code allows for a challenge to a Court's ruling in placement. She then addressed legislation passed during the 2015 legislative Session, which allows Attorney Ad Litem to file an emergency petition for the removal of a child/children in dependency-neglect cases. She feels this was an egregious error because the Attorney Ad Litem program has no investigative authority nor training comparable to DHS case workers. Ms. Lanford believes the legislation infringes on parent's rights. She also said this legislation is being used by the Fayetteville School District regarding educational neglect cases. She told legislators she has seen a letter written by the school district to its staff directing them to contact an Attorney Ad Litem to file a petition with the court and open an emergency neglect case in the event that DHS has not done so. Ms. Lanford said the direction the school district is taking will cause federally protected information of students to be divulged to the Attorney Ad Litem. Should an Attorney Ad Litem use this information to file an emergency petition on behalf of the school district it would appear to violate the law. She ended her testimony by saying that the current AOC structure does not give parents a standing in cases. She thinks the solutions to many of the child welfare system problems should be to strengthen parental rights through legislation.

Mr. Hoggard and Ms. Lanford were asked to provide copies of their recommendations to the JPR Committee.

There being no further business, the meeting adjourned at 11:50 a.m.