



# FAMILY COURT ADVISORY COMMISSION

## MEETING MINUTES

December 10, 2021

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

### *FCAC Members*

Judge G. Galen Braddy, Chair  
Stephanie Gibbs  
Judge John Greenlee  
Cheryl Howell  
Justice Robin Hudson  
Sonynia Leonard  
Gerald Mack  
TeAndra Miller  
Judge Bill Southern  
Rose Stout  
Judge Donna Stroud  
Lori Wainright  
Shirley Webb-Owens

### *NCAOC Staff*

Ryan Boyce, Deputy Director  
Lori Cole, Court Management Specialist  
Brad Fowler, Chief Business Officer  
DeShield Greene, Court Management Specialist  
Liz Kachris-Jones, GAL Training and Development Manager  
Joseph Kyzer, Legislative Liaison  
Tara Minter, Court Management Specialist  
Asia Prince, Court Programs Officer  
Mike Silver, Training and Service Director  
Stephanie Smith, Court Management Specialist

### *Guests*

Judge Beth Dixon

### **Welcome & Introductions**

DeShield Greene welcomed everyone to the meeting on Judge Braddy's behalf and introduced FCAC member Sonynia Leonard, the Chief Court Counselor from Halifax, who is attending in-person for the first time as well as the new Court Programs Officer, Asia Prince, who joined NCAOC in October.

### **Approval of Minutes**

Shirley Webb-Owens made a motion to approve the draft minutes for the September 17 meeting and Justice Hudson seconded the motion. The minutes were unanimously approved.

### **ICMS Update**

Brad Fowler explained that NCAOC continues to work with Tyler on the new eWarrants component that will replace NCAWARE. NCAOC and Tyler are continuing to resolve open issues and will do extensive testing of eWarrants. The case manager and attorney manager modules in Odyssey already existed and configuration for North Carolina is being completed for those as well. Solution validation for the case



manager and attorney manager modules was recently completed with clerks, district attorneys, and judges who worked through scenarios with their data.

No go-live dates are being announced at this time. Approximately 3 to 4 weeks' notice will be provided before eWarrants is ready to go live. Roughly 45-60 days later, the pilot counties will go-live with Odyssey. Mecklenburg remains on track 2 and will go live 60-90 days after the track 1 pilot counties of Wake, Harnett, Johnston, and Lee.

### **UPA Subcommittee Presentation**

Judge Dixon shared that the Uniform Parentage Act (UPA) Subcommittee is exploring how the UPA would impact North Carolina. She initially presented the UPA to the FCAC to ask for endorsement of the UPA and help with bringing the act to the General Assembly. At that time, she focused on sections 7 and 8 which deal with assistive reproduction and surrogacy, the focus of her research. However, all sections are integrated and child-centered to ensure the best interest of the child. Together, they ensure that no child is treated differently due to a parent's marital status, sexual orientation, or due to the method of conception.

Current NC parentage laws need to be changed because they are no longer comprehensive. Assistive reproductive technology (ART) has expanded the ways that families can be created and so NC laws will need to expand as well. The current statutory framework is actually harmful to many of the children that are conceived through ART. It fails to recognize intended parents as legal parents. It can deny those parents the constitutional protections of their right to the care, capacity, and decision-making authority regarding the children that they have created. Children are denied having two legal parents at birth and lose financial support that flow from intended parents or other socio-economic benefits that are attached to that parent. In several cases, children have lost their relationship with their parent when parentage has been denied and the resulting child has either been allowed some form of visitation or the child has been denied any type of relationship with that non-biological intended parent.

Current NC laws are not child-centered because the individual who had been raising these children was not considered a parent and judges have no statutory authority or case law to help navigate contracts. There is nothing to help judges navigate sperm or egg donor obligations or protections, or how to resolve any competing parentage rights among these families. Without statutory guidance, there is no way to guarantee uniformity in decision-making across North Carolina. Judges will have to make decisions on these novel issues if there is no change in the current laws.

Judge Dixon stated that children should not be treated differently. All children should have the opportunity to be born with two legally recognized parents and the Uniform Parentage Act does that.

Professor Cheryl Howell shared common scenarios to illustrate the danger and damage that is occurring because NC does not have laws or precedent. In one example, a single woman used artificial insemination to become pregnant and the sperm donor was identifiable. Child support enforcement





filed an action against the sperm donor for child support. The trial judge found that NC law says that genetics control, so the result was that the genetic father was obligated to pay. The result would have been very different under the UPA which says that so long as donors are explicit that they are a donor only, the donor is not a parent and has no liability for support.

The UPA Subcommittee last reported that the NC Bar Association (NCBA) was working on the same issue. The Subcommittee planned to wait until the NCBA had developed proposed legislation and then bring the issue back before the FCAC to discuss whether the FCAC was interested or willing to endorse what the Bar Association proposed. Unfortunately, the Bar Association is not moving forward as anticipated.

Now the FCAC needs to respond to Judge Dixon. The Subcommittee is very supportive of the idea that trial judges and appellate judges need legislative guidance on these issues. They are public policy issues that should not be left to individual judges to decide. The law needs to be consistent. Judges have no precedent on which to rely. The Subcommittee is supportive of adoption of the UPA as a whole. It was created by experts so that it can operate holistically, much like the UCCJA and the UCCJEA. Usually when this kind of legislation is adopted, it applies to cases being decided on or after the date of adoption.

Judge Dixon pointed out that the custody presumptions from the UPA would help the timelines for child support, where establishing or contesting paternity can take time. It also affects other interests such as inheritance laws, particularly for unmarried or individuals without wills. Wrongful death actions are another affected area. It will hopefully also reduce the numbers of adoptions that are filed because currently same sex parents must go through the adoption process to be legal parents. DSS comes in and does a home study which is an invasive process because the parent is not recognized at birth. The Uniform Commission that drafted the UPA did a comprehensive job to make sure it is very well integrated to serve all families, and especially children.

Justice Hudson commented that she was on the NC Supreme Court when Bozeman was decided and that was very difficult. She thinks it would be very helpful for the legislature to consider the UPA.

At this time, no one from the FCAC has reached out to a legislator about the UPA as a whole. It is not known whether the NCBA has done so. The UPA addresses issues that are not limited to same sex couples but after the Supreme Court decision on same sex marriage, there will likely be more cases in our courts that are seeking decisions about these issues. Having statutory guidance for the judges will help them make consistent decisions across the state.

The FCAC is not yet ready to vote on whether to endorse the UPA and asked for additional education and information to do so. They asked the Subcommittee to contact the new dean at North Carolina Central University Law School, Browne Lewis, who is an expert on these issues as well as the family law section of the NCBA prior to the next meeting to see whether they have made progress or could collaborate. The FCAC asked the Subcommittee to give a status report on these items at the next meeting.





### **Divorce from Bed & Board / Removal from the Home**

Judge Braddy explained that Divorce from Bed & Board (DBB) issues are rare but can present challenges for judges. Spouses request that the other spouse be removed from the marital home but there is no legal basis to do so in the statute unless certain conditions are met. Cheryl noted that the only time she hears about DBB is when someone files to force the separation.

Judge Stroud added that she represented a client who was in an unhappy marriage where they had each done something that would be considered fault, which meant that neither party was entitled to kick the other out. The judge ultimately ordered one spouse to move out and pay a certain amount towards the house payment and that both parties determine distribution of alimony, etc. so that the parties one year time could begin. They needed to get out of the same house to start the clock. The decision was not based in law, but it was a wise approach to an otherwise difficult situation. It is infrequent that DBB claims are pursued in court. It can be used for legitimate reasons, but it can be also used in a manipulative way.

There was general agreement that if NC is going to keep DBB, the law needs some changes to make it effective (e.g., giving judges the ability to send one party out of the home if other criteria, such as domestic violence or fault, do not exist, giving credit on interim distribution or some other useful tool). Rose Stout asked if it would be helpful to clarify that a district court judge has a remedy of removing a party from the house to create a physical separation. Justice Hudson stated that it sounds like having a subcommittee look at this issue more closely would be helpful. Rose Stout, Cheryl Howell, and Stephanie Gibbs agreed to look into potential options for modifying or clarifying the statute.

### **Legislative Update**

Joseph Kyzer reported that overall AOC was ecstatic with the state budget that was approved. Episode 24 of the [All Things Judicial](#) podcast focuses on the historic budget commitments made by the state legislature to the Judicial Branch in the bi-partisan spending plan passed in November 2021. The recent state budget made the largest investment ever in the Judicial Branch, fully funded eCourts modernization, and allowed the Branch to retain hundreds of employees essential to fulfilling the Branch's constitutional mandate to keep courts open to administer justice. In addition to the Guardian ad Litem positions that were saved with recurring funding, it also adds 40 new GAL positions over the next two fiscal years (20 each year).

The Judicial Support Staff compensation plan that was proposed by NCAOC's Human Resources Division after they completed a compensation and equity study on the positions was approved. The plan recommended roughly \$811,000 in recurring dollars for some position reclassifications and salary increases. HR is processing those changes. Ryan Boyce added that it appears to be about 162 support staff members who will get salary adjustments.

In addition, the budget includes funding for temporary staffing, overtime pay, resources to mitigate case management issues as well as roughly 140 million dollars for local courthouse construction. The





courthouse money will go directly to the counties for renovation, repair and new courthouses that will help support the new technology for eCourts and remote hearing capability. There is also strong support for the Commissions. Additional funding that will not go directly to the courts but may impact the Judicial Branch include \$3.4 million for the NC Department of Public Safety which will be recurring each year for domestic violence monitoring; and \$2.5 million for juvenile services to support transitional living support needs due to the Raise the Age efforts. The expectation for the short session is that it will be a true adjustment session.

Senate Bill 693 contains grand reform to child safety and permanency definitions and procedures. Some are already in effect and others will go into effect on January 1, 2022. Changes will affect parental visitation and permanency planning hearings as well as change a lot of child welfare statutory definitions. Part 5 creates a cause of action hearing and allows motion for payment of behavioral health services and guidance for making decisions about whether to retain the child in a behavioral health service who are in a health care facility (e.g., who will pay for the care and does the child need to be in care). It requires judges make findings of fact.

Senate Bill 207 has changes to the Raise the Age reform. It raises the minimum age of responsibility to 10 except in circumstances of felonies or juveniles in that age who have a prior adjudication. The change to termination of parental rights appeals that was made early in the session is another big change in the last session. The Office of General Counsel is available to answer any questions that judges may have.

### **Task Force on ACEs Informed Courts Update**

DeShield Greene shared an update on behalf of NCAOC Training & Service Director Mike Silver. Since September, there have been several presentations of ACEs and ACEs practices, including at the District Court Judges conference (by Amelia Thorn from the Bolch Institute, Judge Corpening, and Dr. Kelly Graves); DA Ben David presented at the District Attorney's Conference; and Mr. Silver presented at the Southeastern Regional Conference on ACEs.

The ACEs Task Force met November 4-5 in Wilmington. The Cape Fear Collective is a nonprofit who presented their work on a geographical data map that can help identify areas in need of services to prevent adverse childhood experiences. As a result, they are now working with AOC to incorporate court data into the model. All data is scrubbed prior to being integrated. Judge Corpening presented on family courts, emphasizing how they further the mission of the ACEs Task Force. He shared the Family Court fact sheets that were developed by the FCAC with the ACEs Task Force during that meeting as well. The Education Subcommittee is working on a trauma-informed benchcard for judges and AOC is partnering with Dr. Peter Kuhns at the Department of Juvenile Justice on their new YASI (youth assessment screening instrument) to create a benchcard for judges about that also.

### **Family Court Statistics**





DeShield Greene reviewed domestic data from the first five months of the 2021-2022 fiscal year (July 1 to November 30) for the fifteen family court districts. Pending case age, pending median case age, and the percentage of cases that are more than one year old are markers that help show the effectiveness of family court. The pending median case age for family court districts was 182 days. The pending median case age in non-family court districts is 489 days. The best practice is to have less than 15% of cases pending over one year. There are six districts that are meeting that goal. However, overall family courts are at 34% (versus non-family court districts at 56.2%). Handling cases quickly is good for parents but especially good for children. To put this into perspective, District 8 has a domestic pending median case age of just 64 days, which is roughly 2 months to disposition.

### **Family Court Training**

Asia Prince shared that AOC leadership is exploring the possibility of a spring conference for judges and staff on the best practices and benefits of family court. He invited suggestions on topics. This will be an opportunity for judges and case managers in the family court district to engage in shared learning about case management principles and positive outcomes in family court cases, including a focus on ACEs and trauma informed courts.

### **Court Programs Updates**

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

Lori Cole shared that the A&V coordinators have transitioned to using Microsoft Teams for their statewide work and reporting. There is a uniform intake form that is also available in Spanish. The federal grant award letter reached NC DHHS just before Thanksgiving so it is anticipated that it will be finalized soon. Because the A&V budget is federally funded, the increases to Judicial Branch staff in this year's state budget will not apply to the compensation received by A&V coordinators. The status of these positions remaining in the grant has been an ongoing struggle for funding and expansion over the years. The program goals of connecting children and families align with family court. The A&V Coordinators serve as navigators for the custody process and also encourage parents to work towards a quicker resolution so that their children can have meaningful relationships and support from both parents. Finding a way to permanently support the A&V staff positions and spread services statewide would have a real impact.

Lori has been presenting about the A&V program to Local Reentry Councils alongside the local coordinators so they can connect with community service providers who work with parents as they return to the community. These parents often experience barriers to access with their children who may have been cared for by the other parent or another family member when they were incarcerated. Re-establishing, or in some cases, building a parent-child relationship can be difficult and the A&V coordinators can offer information about options for increasing parenting time and direct parents to helpful resources.





### ***Custody Mediation***

Stephanie Smith reported that the domestic violence screening protocol continues to be piloted in Durham. It is an opt-in rather than opt-out approach. An educational video for parties who have waived mediation has been completed.

The Permanency Mediation Program is designed to handle unresolved visitation issues in juvenile cases. It is now expanding to provide services online. A statute change made a few years ago now permits some juvenile cases to be sent to custody mediation. In October, custody mediation collaborated with the Dispute Resolution Commission to have a presenter speak on the ethics of online mediation as well as the future of technology for online everything. That event was held online on Conflict Resolution Day.

### ***Human Trafficking***

Tara Minter reported that money from the budget has been distributed into human trafficking efforts. The grant-funded WORTH court (in Fayetteville) received some non-recurring funding. Legislation has enabled human trafficking victims to have crimes expunged from their record without paying fees. The Human Trafficking Commission received permanent funding to keep current staff as well as funding to be distributed and monitored by new time-limited staff. Eight additional SBI human trafficking agent positions were also included in the budget and those will be spread across the state. A podcast about human trafficking was recently featured on *All Things Judicial*.

The meeting adjourned at 12:27 p.m.

### **2022 Meeting Dates**

- March 11
- June 17
- September 16
- December 9

*Submitted by Lori Cole*

