

**STANDING COMMITTEE ON CHILDREN AND FAMILY LAW  
MEETING MINUTES**

**Friday, November 1, 2002  
Conference Room A  
Matheson Courthouse**

**Honorable Charles Behrens, Presiding**

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**Members Present:**

Hon. Judith Atherton  
Hon. Charles Behrens  
Hon. Larry Jones  
Kristin Brewer  
Rep. Lamont Tyler  
Comm. Scott Hadley  
Dr. Monica Christy  
Sen. Lyle Hillyard  
Robin Arnold-Williams  
Lori Nelson  
Katie Gregory  
Mary T. Noonan  
Dr. Ann Austin

**Excused Members**

Hon. Guy Burningham  
Hon. Jeril B. Wilson  
William W. Downes, Jr.

**Staff:**

Alicia Davis  
Dan Becker  
Rick Schwermer  
Amber Holyoak

**Guests:**

Judy Nord  
Rep. Trisha Beck  
Jane Callister  
Richard Anderson  
Rep. Throckmorton  
Sen. Dan Eastman  
Hon. Mark Andrus  
Stewart Ralphs  
Adam Trupp  
Cheryl Atkinson  
Patricia Worthington  
Janetha Hancock  
Vanessa Thompson  
Carol Cisco  
Jacob Santini  
Jim Holland  
Karma Dixon  
Bonnie Macri

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**Handouts:**

- ▶ Committee Minutes from September Meeting
  - ▶ State of Minnesota Order and Amended Rules Mandating Public Access to Juvenile Protection Cases
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**1. Welcome, Introductions and Approval of Minutes: Judge Behrens**

Judge Behrens called the meeting to order and welcomed all in attendance. He then introduced himself and asked everyone attending the meeting to make introductions.

After introductions Judge Behrens asked for an approval of meeting minutes from Friday,

September 6, 2002.

**Motion: Ms. Robin Arnold Williams moved to approve the minutes from the September 6, 2002 meeting. Judge Judy Atherton seconded the motion. The motion carried unanimously.**

**2. Public Access to Juvenile Court: (Ms. Robin Arnold-Williams, Judy Nord)**

Robin Arnold-Williams reported on the progress of the Public Access subcommittee. They conducted one meeting on October 16<sup>th</sup> with a good turn out and discussion from the interested groups. They also met the morning of November 1<sup>st</sup> to hear the Minnesota presentation and had further discussion. They have tried to frame the questions and discussion points for this topic. Today they wish to hear from Minnesota and have further discussion from the Standing Committee on this issue. The next subcommittee meeting will be on November 19<sup>th</sup> and at that time the subcommittee will pull all information together and develop some recommendations for the Standing Committee. There will be no recommendations on the public access issue today from the subcommittee because the Standing Committee is joined by the Child Welfare Legislative Oversight Panel. They are still in the information gathering stages.

Minnesota Presentation:

I. Process Leading to Open Hearings and Court Files:

- Supreme Court Foster Care Task Force recommended pilot project for open hearings to public.
- It was a three year pilot project that lasted from June 1998 to December 2001 in 12 of 87 counties. One county was chosen from each district and then two more were added by request.
- Study was evaluated by the National Center for State Courts.
- Purpose of study was to find out if open hearings and files would cause harm to children, and usefulness of opening hearings, although harm to children not extensively studied.
- No evidence of harm was found.
- Based on this study Minnesota opened hearings and files by mandate in July 2002, and implemented training to staff prior to effective date.

II. Pros and Cons:

Pros:

- Unlike secrecy of closed system, open system allows internal abuses to be identified and corrected and lack of resources to be made known.
- Open system allows decisions to be based upon a set of statewide community standards. This provides continuity in decision making between counties.

- Closed proceedings do not necessarily protect children because most information is already available through other sources such as criminal proceedings.
- Increase accountability of all stakeholders (e.g. judges, child protection workers, GAL, etc.)
- Increase public awareness of frequency and egregious nature of child protection cases.
- More eyes on the child leading to less repeat abuse and neglect, better collective decision-making and maybe even preventing abuse and neglect.

#### Cons:

- Purpose of juvenile court is to rehabilitate and reunite families. If child is returned home to same community, child might be stigmatized.
- If children and other potential reporters of abuse know that information is accessible to public, it may have a chilling effect on reporting of abuse.
- May cause in-court admissions to decrease which could cause increase in trials and lack of accountability in terms of treatment.
- “No-Contest” admissions may jeopardize therapy and treatment of parents.
- Judges may inappropriately use “exceptional circumstance” standard to close public hearings.
- May cause social workers and GALs to exclude from report information critical for the judge to make sound decision.

#### III. Open Hearings

- Hearings presumed accessible to the public.
- Judge has discretion to close upon finding of “exceptional circumstance.” Term not defined by Minnesota rules defined by Judge on a case by case basis. They have the option to close entire hearing, just one hearing or a portion of the hearing.
- The judge or party can request closure of the hearing. Can be done either by written motion or by oral request on the record.
- If the judge closes the hearing they must issue an order that includes finding regarding the nature of exceptional circumstances. Decision is appealable.
- Court administration not required to identify audience but judge should ask if there are audience members related to case present and their relationship.
- Minnesota’s observations with open hearings is that they didn’t really change that much when becoming public. When first implemented larger audiences did result but now just on a “case by case” basis. Much greater change came with opening court files.

#### IV. Open Court Files:

- All access unless restricted by rule.

- Social service and GAL files are not open and this rule does not invite breaches in confidentiality.
- Minnesota designated a date for accessibility.
- Records can go from inaccessible to accessible if received as an exhibit during hearing or trial (e.g. psychological evaluations not accessible but can become accessible if offered as exhibit).
- Open records can be protected by the judge by issuance of protective order.
- Administration responsible for redacting court records.
- GALs, County Attorneys, and social workers can assist in redaction effort by always placing confidential information in same place in report. It's easier for them than administrators because they are more familiar with cases.
- Some items are not accessible (See Minnesota rule 44.04 for list).
- Media trusted to not name names in their reports but not prohibited by law.

#### V. Media Coverage: Newspaper/Television:

- Usually very responsible, helped members of the public to understand child welfare system.
- Some rare exceptions where basic media court rules were not followed.

#### VI. Findings of Evaluation

- Concern of masses in court, lack of courtroom control:  
**Result:** slight but noticeable increase which has tapered off, lack of control didn't happen, extended family members continuing to attend hearings.
- That judges close hearings for any reason  
**Result:** reason adopting exceptional circumstance finding not reasonable cause, higher standard has made it harder to close hearings. Only 6 cases closed during study.
- No decrease in filing of petitions.
- Downside: responsibility for redacting both financially burdensome and time consuming. Minnesota courts have had to bring on additional staff to fulfill demand. Courts have been encouraged to develop a redaction plan. Those plan proposed are either redacting upon request or redacting as you go. An "as you go" system is suggested for media active communities.
- 1,109 requests for court files were made during the three year study. Most were from "inside groups" (e.g. caseworkers, attorneys, and social workers), 148 from outside parties (e.g. community action groups, media, general public etc.)
- Question of whether meeting attendance would be a short term phenomenon where interest peaks and then wanes...answer is no, members of media and public are coming to hearings and are asking for access to court files.

#### VII. Questions

1. Q: How many requests for closed procedures? A: Unknown

2. Q: What additional cost for redacting? A: No long term budgetary cost, there was an isolated case of bringing in staff to meet requests, however, redaction can now take place upon filing without the necessity of expending funds for additional staff.

3. Q: How many of the cons were verified?

A:

- Stigmatizing children: Study did not interview parents or children on their position from opening proceedings. Hard for parents to be able to make an informed comparison between open and closed proceedings because most don't have repeat experiences in the courts. Stigmata unknown.
- Chilling impact on reporting abuse and neglect: unfounded by Minnesota study. Number of petitions and reports have actually increased although cause for increase is unknown.
- Chilling impact on parent's admissions: Minnesota found same frequency of admissions
- No contest admissions jeopardizing therapy and treatment: Did not happen because no contest admissions not allowed.
- Judges overuse exceptional circumstance standard: Did not happen only 6 hearings closed.
- Social workers keeping information out of reports: Didn't happen because those agencies were advised otherwise.

4. Q: What affect has naming children in media had? A: Effect unknown, could be a problem. In Minnesota law prohibits limiting the press from naming names in order to protect freedom of press.

5. Q: Concern expressed for naming names in the press when allegations are made and media not following up with rest of the story. A: One resolution is for parents to use media to follow up their story.

6. Q: Has access improved the goals in opening courts? A: Unknown, only time will tell.

7. Q: Who are the critics after the switch? A: Many converts to opening juvenile proceedings after many of the cons never materialized. However there are still some judges, GALs, and other stakeholders that remain skeptical based on philosophical arguments.

8. Q: Any statistics on whether open meetings have contributed to children being returned to their parents? A: Minnesota has no way of distinguishing whether open meetings or other factors have contributed.

9. Q: What other positive results have occurred from open meetings? A: Legislature now more aware of child welfare resource needs.

10. Q: Has a community standard been established that gives a uniform definition of abuse? A: Structured decision making has established a standard state-wide assessment tool that has given a better community standard.

11. Q: What happens to the child abuse database and Senate Bill 17?

3. **Protective Order Legislation: (Chief Justice Durham)**

Justice Durham, on behalf of the Judicial Council, informed the Standing Committee the status of the legislative proposals concerning protective orders which were submitted to the council. Her report included the following updates:

1. Sen. Hillyard will be opening a bill file.
2. The final version of the legislative proposal differs from the proposals submitted by the Standing Committee in the following particulars:
  - CPO is the only remedy available from the court under this legislation.
  - Adjudication of CPO can't be regarded as adjudication of child abuse
  - Appointment of GAL discretionary not mandatory
  - Juvenile Court permission to vacation without victim's consent after 3 year period. (Prior: after 3 years only with consent)
3. What remains constant are:
  - All petitions will be in the Juvenile Court
  - Cohabitant abuse petitions will be paralleled in the juvenile and the adult system.
  - They will function the same as an adult protective order.
  - Entered in the statewide network
  - Mandatory arrest for violation
  - Violation will be a class A misdemeanor

Questions:

Q: Was mandatory certification cut? A: Justice Durham recalls that it was not included with the version council passed. She will follow up with Tim prior to legislative session. Email will be sent to clarify.

#### **4. Special Masters in High Conflict Divorces: (Sen. Lyle Hillyard)**

Function:

- Takes high conflict divorce parties and gets them communicating again.
- Works as a parent coordinator to facilitate visitation with some authority to work out day to day visitation problems without intervention by a judge.

Sen. Hillyard pointed out that his experience shows that mediation appears to work with disagreements on money but not with child visitation.

Karma Dixon noted that she has seen a Special Master as an accountant of decision making not a mediator. Kristin Brewer of the GAL's office added that this role has served different purposes in different cases.

Sen. Hillyard informed the Standing Committee that he will be talking to Alicia Davis and organizing a meeting with other subcommittee members. This meeting will be held on January 17, 2003, from 9 a.m. to 11 a.m. in Conference Room B. The Standing Committee suggested that the subcommittee should:

- Invite other people who have served as Special Masters
- Look at what the title of "Special Master" should mean and what duties should be included

- Get information from other states.
- Consider guidelines in form of rule or statute.

The subcommittee on Special Masters will put this issue on the Standing Committee's agenda for discussion and action when appropriate.

**4. Divorce Education for Children: Commissioner Evans**

The Public Outreach Committee (POC) has suggested creating a divorce education class for children. Comm. Evans wishes to extend an invitation to the Standing Committee to share in this responsibility, and work with the POC to formulate the proposal and funding. POC will get the ball rolling and the Standing Committee will handle the legislative end. Volunteers were requested from the Standing Committee to work in cooperation with the POC in developing this idea. Those volunteers are: Ann Austin, Katie Gregory, Lori Nelson, and Craig Bunnell. The POC will bring this issue back to the Standing Committee when it is ready for policy.

**5. Agenda for Next Meeting: Judge Atherton**

The following items of business will be discussed at the next Standing Committee meeting, which will be held on Friday, January 17, 2003 at the Matheson Courthouse, First Floor, Conference Room B:

Juvenile court access  
Mandatory certification v. discretionary  
Custody evaluation report  
Legislative pre-file bills  
Brainstorm: Mary Noonan

If you have additional items you would like to discuss at this meeting, please contact Alicia Davis at (801) 578-3929 or via email at your earliest convenience.

**6. Adjournment:**

There being no further business to discuss, a motion was made to adjourn the meeting.

**Motion: Sen. Lyle Hillyard moved to adjourn the meeting. The motion was seconded by Dr. Monica Christy and passed unanimously. The meeting adjourned at 4:00 p.m..**