

**Draft Minutes**  
**Juvenile Access Pilot Program Advisory Board**  
**October 29, 2009 Meeting**

Present: Judge Quinn, Co-chair, Sarah Eagan, Co-chair, Attorney Dan Klau (guest), Christina Ghio, Cynthia Cunningham, Judge Keller, Colin Poitras, David Marantz, , Justine Rakich-Kelly, Stacey Gerber, Chris Rapillo, Fran Carino, Carolyn Signorelli, Bryan Morris, Susan Pearlman, Anne Louise Blanchard, Claude Albert, Leonard Honeyman

**I. Opening Remarks**

Judge Quinn opened the meeting at approximately 2:10.

**II. Approval of Minutes for September 17, 2009 Meeting**

The minutes were approved as amended by a correction to Anne-Louise Blanchard's name.

**III. Presentation by Attorney Dan Klau Regarding First Amendment Issues**

Attorney Dan Klau gave a presentation on First Amendment case law and its application to the Pilot Program. He opened by stating that because the U.S. Supreme Court has only addressed how the First Amendment right of access to court proceedings applies to criminal matters, and because the overwhelming majority of lower federal and state courts have held that the First Amendment right of access does not apply to juvenile proceedings, the Advisory Board has a lot of leeway to set procedures for the pilot program.

Attorney Klau gave a brief history of caselaw regarding public access to court proceedings and distributed a list of relevant cases. He stated that the current state of the law is that mandatory closure laws are unconstitutional, because a balancing test must be performed before determining if a proceeding can be closed. The Connecticut Practice Book Rules embody this principle.

Attorney Klau then turned to the impact of caselaw on juvenile proceedings, and stated that the overwhelming body of law is that because juvenile proceedings have historically been closed, and because the purpose of closure has been to serve a rehabilitative interest (best interest of the child), juvenile proceedings are not subject to the First Amendment requirement to be open to the public.

Attorney Klau then turned to the two versions of a draft Rule that were distributed. He stated that he saw no constitutional problems with either draft, but raised three issues for the Board's consideration. First, because there is no historical right of access to juvenile proceedings, there is wide latitude for the legal standard for closing these proceedings. Second, notice to the public is not constitutionally required, but would probably be good public policy. Third,

specific findings by the judge as to why a proceeding should be closed are not constitutionally required in juvenile proceedings, but are also still wise as a policy matter. In summary, much of the procedure that is built into the proposed Rules represents good policy but is not constitutionally required.

A question and answer period ensued. The following points were made:

- Article I, section 10 of the state constitution has not been interpreted to provide the public with a right of access to state court proceedings and would not be helpful to someone seeking to open juvenile court. Rather, that provision has been interpreted to provide a right of litigation – access to court to assert claims.
- The First Amendment does not provide a presumptive right of access to chambers conferences.
- The ability of judges to place restrictions on what people who were in court can tell others about what they heard depends on the category of the person. There is an important difference between the participants in the case and members of the public or the press. There is considerable latitude to issue gag orders on the attorneys, court personnel, and other “system” participants because of the judges’ inherent authority over those individuals. It is possible, but harder, to impose restrictions on the parties themselves. However, regarding the general public and the press, the issue of prior restraint arises, which raises very serious constitutional issues. Case law strongly supports the premise that a judge cannot limit what the press says about information that they have lawfully obtained.
- Limiting access to members of the public with a “direct and legitimate interest” in the case may be questionable and go against the whole purpose of the pilot program.
- There are no Appellate rights in this area beyond the normal right to appeal -- no constitutional right to a speedy appeal of closure orders. Attorney Klau does not believe that the Rules Committee has the authority to limit appeals of closure orders since that is a substantive issue. A discussion of whether there should be a stay in the proceedings upon appeal ensued. It was suggested that one way of reconciling the need to act quickly and the stay issue would be to close the hearing, take care of the child, have an expedited appeal, and if the appeal goes in favor of openness, release the transcript
- There are no constitutional issues with the language at the end of the proposed Rule regarding limits on disclosure of the child’s name or other identifying information. The language requiring a pretrial conference where a game plan to protect identities is discussed seems very useful.
- If there is a concern about protecting children who have been sexually abused from having that information disseminated by neighbors and other people in their community who may have been present at a proceeding where the abuse was discussed, the best solution might be to consider a motion to close the proceeding, so that the competing interests can be considered.

- Atty. Klau stated that, speaking as an advocate for the only time today, he thinks it would be a mistake to put any restraint on what the press may publish. The court should rely on the press to do its job, not on a rule that limits what the press can disclose. If you need to keep medical or other sensitive information available, that should be done by keeping it out of the courtroom, or, if that is impossible, closing the proceeding.

#### **IV. Discussion of Proposed Changes to the Draft Practice Book Rule**

It was suggested that the Rule should make it clear that limited portions of the proceeding can be closed; although the current language would allow this, clarifying language was discussed.

Further discussion of the revised Rule included a discussion of the appeal issue. It was pointed out that the Rule cannot address the appeal issue; it would need to be addressed by the Appellate Rules Committee and the General Assembly. Concern that any stay of the proceedings pending an appeal would have a negative impact on children by delaying permanency was expressed.

#### **V. Discussion of Next Meeting**

The Chairs reminded members that the evaluation surveys they are drafting must be ready for review at the next Evaluation/Assessment Subcommittee meeting on 11/10/09. In response to questions, the Chairs stated that the surveys are meant for people who attend court and they will be handed, not mailed out. Due to the lack of funding, the evaluation of the program will be limited. This issue should be further discussed in the Evaluation/Assessment Subcommittee.

The next Full Advisory Board Meeting was scheduled for Tuesday, December 1, 2009 at 2:00 p.m. The next Overview/Implementation Subcommittee was scheduled for November 11, 2010.

#### **VI. Adjournment**

The meeting adjourned at approximately 4:10 p.m.