

Draft Minutes
Juvenile Access Pilot Program Advisory Board
Subcommittee on Overview of Other States Efforts and Best Practices
October 13, 2009 Meeting

Present: Judge Quinn, co-chair, Sarah Eagan, co-chair, Judge Keller, Claude Albert (Guest), Anne Louise Blanchard, Barbara Claire (for Stacey Gerber), Cynthia Cunningham, Deborah Fuller, Christina Ghio, David Marantz, Susan Pearlman, Colin Poitras, Nancy Porter, Chris Rapillo,

I. Review of Materials and Approval of the Minutes for the September 29, 2009 Meeting

Before the meeting was called to order, the members reviewed an outline of state standards for opening or closing juvenile proceedings that Judge Keller prepared and the governing New York Statute. Sarah Eagan called the meeting to order at 1:15 and made a motion for the September 29, 2009 minutes to be adopted with three minor revisions. The members approved the revised minutes.

II. Review and Discussion of Proposed Practice Book Rule

Judge Quinn explained that Justice Zarella, chair of the rules Committee, seeks input from the subcommittee and the Advisory Board as a whole on proposed new Rule 1-11D (Attached). She noted that the Rules Committee often seeks input on new and revised rules from advisory boards and committees whose members are knowledgeable of the particular subject matter that the rule addresses. J. Quinn stated that individuals may also comment on the rule. J. Quinn noted the short time frame by which the pilot must begin and that the Rules Committee is working towards having a rule in place as soon as possible.

Various members of the subcommittee commented on the proposed rule.

Sarah Eagan expressed concerns with the proposed language. First, from a procedural standpoint, she stated that consideration of the new rule is premature, since the subcommittee has not had enough time to study the approaches taken by other states. Second, she stated that the rule is narrower than the statutory directive, to open proceedings generally. Sarah highlighted the use of the term “trial proceedings” in the rule and stated that it does not include preliminary or contested OTCs – proceedings which she thinks should be open to the public. Finally, Sarah cited the Family rule which is broader and references “courtroom proceedings.”

Members then discussed various subsections of the proposed rule. Anne Louise Blanchard referenced subsection (i) and asked whether it is the Advisory Board’s intention to have certain identifiable information unavailable to the public. She also raised concerns about the prohibition in subsection (f) against public access to trial proceedings involving sexual abuse of a child. She noted that this may be inconsistent with the legislative directive. Susan Pearlman agreed that the language in sub (f) is very broad and may be overly limiting. Judge Quinn noted that sexual abuse matters are not open in criminal proceedings. J. Quinn also stated that there is a necessary balance between potential harm to a child versus a need for openness. Christina Ghio added that there may be other vulnerable kids that need specific protection – for example kids who suffer severe physical abuse may be as traumatized as sexually abused children. Instead of carving out

protected case types, Sarah suggested that the “best interests” standard in subsection (d)(1) may address Christina’s concerns and may give the court the ability to protect children in all necessary cases.

The members discussed whether the “legitimate interest” standard in subsection (c) could withstand a first amendment challenge. They agreed that an attorney who specializes in the First Amendment should advise the Advisory Board before the members provide feedback to the Rules Committee on the proposed rule.

A general discussion ensued concerning whether preliminary OTCs or contested OTCs should be among the proceedings that are open to the public. Anne stated that if OTCs are included, more guidance would be needed as to what constitutes the “best interests” standard. Judge Keller explained that parents are entitled to an OTC preliminary hearing within ten days. She further explained that this conflicts with the 14 day notice requirement that enables the public to be aware of a motion to close. She stated that these time frames would make it extremely difficult to open OTC preliminary hearings to the public. J. Keller stated that too many hurdles exist to include these proceedings in the pilot. In fact, if they were included, the juvenile rule would contradict existing civil, family and criminal notice requirements. Sarah disagreed with the exclusion of OTC preliminary hearings. She stated that there is value in the public having access to the case from the removal stage. Christina noted that it would be helpful to know what constitutes adequate notice. Judge Keller stated that no other state requires that notice be given to the press.

Claude Albert, former managing editor of the Hartford Courant, suggested a compromise that many members thought was viable. He recommended that the OTC preliminary hearing could be closed until the contested OTC hearing. If the contested OTC hearing was subsequently open, a transcript of the preliminary OTC could be available/provided to the public. David Marantz added, and others agreed, that if preliminary OTCs were always open, lawyers would be likely to file a motion to close in every instance.

III. Possible Revised Draft of the Practice Book Rule

The members discussed whether the Advisory Board should proceed with the proposed rule.

Susan Pearlman stated that a rule should be informed by experience and that the Advisory Board does not, at this time, have any experience upon which to base its rule recommendations. Susan and Anne also noted that the statutory directive does not call for a rule – it calls for an increase in public access to certain juvenile proceedings. Susan further stated that if the Advisory Board proceeds with a rule, it should be extremely broad, perhaps as broad as subsection (d) only.

Judge Keller agreed that the rule should be very broad. She also noted that all of the other divisions have formal practice book rules for pilots, so too should juvenile.

Judge Quinn noted that due to these various concerns she initially thought standing orders might be the best way to start the pilot, but now agrees that a broad rule may be the best approach.

Christina stated that it would be preferable to have a broad rule that sets forth some parameters and includes subsections (i) and (k).

Chris Rapillo noted that a very broad rule may also present risks, as attorneys may argue that the 14 day notice requirement applies if the rule does not specifically state otherwise.

Judge Keller volunteered to draft a broad rule patterned upon the rule used in Family matters that would include many of the suggestions made by the members.

IV. First Amendment Concerns

Claude Albert commended the members on their work towards providing more transparency to certain juvenile proceedings. He noted again, that the Advisory Board would benefit from the expertise of an attorney who specializes in the First Amendment. Claude did not think that even if opened, the proceedings would be inundated with press. He stated that the press is likely to cover sensational cases or cases which enable a reporter to do an investigative report on the child welfare system. Claude also noted that the press would find it very helpful to read the record. Members highlighted that the Public Act does not make juvenile records available to the public and that it reaffirms the confidentiality provided pursuant to Gen. Stat. Sec. 46b-124.

V. Advisory Board Response

Judge Quinn asked the members to consider the response they wish to provide to the Rules Committee. Several members reiterated their concern that the rule making process was moving too quickly and that they did not feel comfortable responding to the Rules Committee without the advice of a First Amendment attorney.

Sarah Eagan stated that the members have not reached a consensus regarding the draft rule on the following issues: identifying information; notice; appellate issues; the definition of proceedings, specifically, whether it should include OTCs; and the standard of judicial review. She suggested that a revised draft of the rule should track the family rule and include provisions specific to juvenile matters.

Judge Keller agreed to draft the revised rule. Judge Quinn suggested that after the next meeting of the entire Advisory Board on October 29, the members should draft a position letter to the Rules Committee.

IV. Establishment of Agenda for Next Meeting and Adjournment:

The members discussed the agenda for the next meeting of the Advisory Board which is scheduled for Thursday, October 29 at 2:00 at a location to be determined. The meeting was adjourned at approximately 2:55.