



COLLABORATIVE JUSTICE COURTS ADVISORY COMMITTEE

MINUTES OF OPEN MEETING

September 27, 2023

12:15 p.m. – 1:00 p.m.

Virtual – Zoom for Government

Advisory Body Members Present: Hon. Charles Smiley, III, Vice Chair; Brian Bloom; Scott D. Brown; Aaron Michael Buck; Crystal Davis; Debra Dugan; Mark Gale; Hon. Susan M. Jakubowski; Hon. Kathleen Kelly; Captain Bradford J. Kenneally; Hon. Karla Kerlin; Hon. Mary Kreber Varipapa; Ms. Veronica Lewis; Hon. Stephen V. Manley; Hon. Eileen C. Moore; Melanie Rhodes; Rachel B. Solov

Advisory Body Members Absent: Hon. Lawrence G. Brown, Chair; Hon. Sam Lavorato, Jr.; Rebecca Marcus; Katie Mayeda; Kimberly McKinney; Brandon E. Riley

Others Present: Deanna Adams; Emily Chirk; Audrey Fancy; Sarah Fleischer-Ihn; Tracy Kenny; Anna Maves; Jeremy Merrick; Randy Peshon; Sharon Reilly; Gabrielle Selden; Greg Tanaka; Cathy Wachter; Shannon Wallace; Carrie Zoller

OPEN MEETING

Call to Order and Roll Call

The vice-chair called the meeting to order at 12:15 p.m., and Cathy took roll call via Zoom for Government.

Approval of Minutes

The advisory body reviewed and approved the minutes of the August 23, 2023, Collaborative Justice Courts Advisory Committee meeting.

DISCUSSION AND ACTION ITEMS (ITEMS 1–3)

Item 1

Status of 2023-24 Substance Abuse Focus Grant

Carrie updated the committee on the Substance Abuse Focus Grant. The committee’s proposed allocation methodology was approved by the Judicial Council at their September meeting. The Request for Funding was sent to the courts shortly thereafter. Thirty-nine counties have requested funding so far, with six additional counties expressing their intent to apply by the deadline. After all funding requests have been received by staff and allocations calculated, the committee will have an opportunity to see the draft Judicial Council report containing the proposed allocations and vote on whether to submit the report to the Judicial Council. This will likely be done through an action between meetings by email.

Item 2

Updates to Criminal Remote Proceedings Extension

Legislation was enacted by Assembly Bill 99 in 2022 consistent with the emergency rules. The sunset date was January 1, 2024. There were competing bills moving in the Legislature last year. There was not agreement between all the various stakeholders. The decision was made to continue talking about the outstanding issues, and simply extend the status quo for one additional year. Now the existing authority is in place until January 1, 2025. Discussions will continue next year to seek legislation that ensures we have ongoing authority and address some of the areas where there's still significant disagreement between the parties on what the best way to continue.

One key issue that will continue to be negotiated is whether there should be witness testimony remotely in any case, type, or situation. Court reporters and the defense bar says it's too hard to create a record with remote witness testimony, and that it violates the defendant's rights. There should be an outright ban on it. The council has strongly opposed this and feels that remote witness testimony in limited circumstances is extremely beneficial to the defendant and to the court in ensuring access to justice.

The other major issue is whether remote testimony in any jury trial is appropriate. The Legislature was concerned that it's difficult to judge credibility, and there are so many more opportunities for witness testimony to be coached or coerced, or in some way provided in an invalid way, if it is provided remotely rather than in person.

Item 3

MIL-100 Discussion

This is a joint proposal with the Criminal Law Advisory Committee. Changes were made to the form that included the new Family Code Section 211.5. Commencing January 1, 2024, in proceedings under this code, a court shall provide self-identified veterans with a list of resources for veterans, including information about how to contact the local office of the Department of Veterans Affairs. It also creates new procedures in family court—clerks must take this form and transmit a copy to the Department of Veterans Affairs.

Proposed changes relate to the bottom of the form—a new section that provides additional information when using form MIL-100 in criminal law cases and family law cases.

The Criminal Law Advisory Committee is recommending two changes: 1) specifying that either the defendant or their counsel will be filing the form and when it is sent over to the county veteran service officer, that the agency is required to confirm the person's status in the military; and 2) if the person engages in pretrial diversion that there is a treatment option in lieu of incarceration.

Gabrielle showed specific additions to the form depicting these proposed changes. Working with Carrie Zoller, they revamped the form to be more readable and clearer while including the pertinent new information.

Justice Moore showed concern that language was deleted that said this form could be used in any type of case. After discussion, staff will put that language back in the document for clarification purposes.

The other concern was on the notice where it mentions that if this form is submitted in a criminal law case, the court will send a copy of the form to the county veteran services officer to confirm the person's military status and the Department of Veterans affairs, (Cal Vet). There are two departments of veterans affairs: the United States Department of Veterans Affairs and California Department of Veterans Affairs (CalVet). The committee member stated that the notice should be sent to both. And it was recommended to add "California" Department of Veterans Affairs (CalVet) for clarification.

Action: Committee approved the form with the suggested changes by Justice Moore. Next step is to present it before the Family Juvenile Advisory Committee. Then it will go out for public comment. Gabrielle will update the committee with a status of the public comments received.

ANNOUNCEMENTS AND ADJOURNMENT

Deanna announced two upcoming trainings in November: 1) Mental Health Diversion for judicial officers only (in person) and 2) Incompetent to Stand Trial training for evaluators (in person and livestreamed).

Judge Kreber announced that Orange County Family Law Courts have initiated a pilot program on the Family Code Section 211.5 for family law and veterans. Strong Families and the Courts will be collecting data on multiple topics and multiple assessments. All family law judges in Orange County are participating in the pilot, and it includes a piece that ties into the MIL-100.

There being no further business, the meeting was adjourned at 1:00 p.m.

Approved by the advisory body on December 6, 2023.