



FOURTH JUDICIAL DISTRICT

Family Violence Coordinating Council

December 10, 2015 Minutes
Hennepin County Government Center
C1291 Executive Conference Room
12:15 – 1:30 PM

Fourth Judicial District Family Violence Coordinating Council Serving Hennepin County

Present: Stephanie Avalon, Katie Brey, Shiloh Bute, Elizabeth Cutter, Ann Gaasch, Judith Hawley, Martha Holton Dimick, Michelle Jacobson, Joan Blace, Kristin Hays, Lisa McNaughton, Aaron Milgrom, Pamela Maldonado, Rachel Ratner, Brynn Rhodes, Torrie Schneider, Lori Schwartz, Christy Snow-Kaster, Jennifer Taylor, Margaret Thunder-Solorzano, Michael Weinstein, Sandra White, and Reporting Secretary, Katie Dupay.

Guests: Olivia Brunzell-Garrett, Liza Garcia, Tawnie Langenfield.

- 1. Welcome** – Judge Cutter welcomed the addition of Katie Dupay to the meeting; she will be providing administrative support for the Family Violence Coordinating Council.
- 2. Approve November 12, 2015 Minutes** – The minutes were approved as submitted.
- 3. Family Court Enhancement Project Update**

In November, the Family Court Enhancement project participated in the observation of the White Earth tribal court proceedings. While there, they focused on relationship building to help understand how the tribal court operates and discussed ways to improve how we track OFPs registered as foreign orders in MNCIS and NCIC.

On January 4, 2016, Family Court will pilot a Tuesday/Thursday child-related protection order calendar. Judge Robben, Referee Madden and Referee Moses will preside. During the pilot, judicial officers will hear all domestic abuse cases requesting child-related relief, including: temporary custody, child support and medical support for the child. The intent is to ensure the interests of the child and victim(s) of domestic violence are addressed to support the best outcomes. Work continues to be done to ensure parties receive proper referrals to resources. Review hearings will also be scheduled so the burden is not on the victim to seek court follow up.

Liza Garcia was hired through the FCEP as the new Tribal Court/District Court liaison. She will provide outreach to the Native community and be a point of contact for resources.

Tawnie partnered with Domestic Violence Steering Team members to investigate how domestic violence is viewed through different lenses (criminal, family, juvenile). She facilitated family judge ride-along opportunities with juvenile judges. Judge Cutter recommended this be expanded into other divisions to encourage exchanges in information.

The FCEP subcommittees continue to focus on activities and outcomes:

- Subcommittee #1. Working to implement the Battered Women’s Justice Project guides to ensure all provider groups are utilizing the guides and ensuring consistency in questions being asked. They are also reviewing pro se forms to identify opportunities for parties to disclose domestic violence or safety concerns without blatantly stating such on the forms.
- Subcommittee #2. Recently completed a survey of the family bar about their experiences with judicial officers at initial case conferences and how alternative dispute processes are presented to the parties.
- Subcommittee #3. Is identifying services provided by each advocacy program and determining training needs related to custody and family court matters.

The current grant is through September 2016. FCEP members are applying for an additional 3 year grant through the *Justice for Families Program* so they can continue working on their goals and initiatives.

4. Rule 201 Discussion

Judge Cutter contacted Tom Vasaly, Executive Secretary of the Minnesota Board on Judicial Standards, to obtain clarification on Judicial Code Rule 2.9(C) as it related to Rule 201 of the Rule of Evidence. In a draft advisory opinion, Secretary Vasaly indicated a judge in an OFP hearing may access MNCIS to determine the status of any outstanding orders issued in another court provided the judge gives the parties notice. Comments may be submitted to Judge Cutter or Secretary Vasaly by December 21, 2015.

5. FVCC/DVSC Survey Results

A survey was distributed in November 2015 to a total of 73 FVCC and DVSC participants:

- FVCC member participation was at 55%; with the majority attending regularly and satisfied with the current schedule of meeting the second Tuesday from 12:15PM – 1:30PM.
- Forty-seven percent (47%) of responders feel they “sometimes” bring value to the meetings; 40% feel they “often” or “all the time” do so.
- Nearly one-quarter of FVCC members are not involved in subcommittees. As it is a component of the bylaws, members are strongly encouraged to get more actively involved.
- The survey identified members find value added through the education and cross communication components found in the FVCC meetings.
- Resource Fair: The majority of respondents (70%) did not attend the FVCC Resource Fair.

6. FVCC Subcommittee Reports: All committees have been working on 2016 strategic goals and will submit reports.

- Advocate Committee (Stephanie Avalon): Highlighted the goal of setting a minimum standard of advocacy to ensure clients receive direct support from an advocate while processing their case. Advocates are also exploring ways to increase capacity in assisting with Family Court issues.
- Civil Committee (Christy Snow Kaster): Christy is working on the yearly report for her committee.
- Criminal Committee (Michele Jacobson): The December 2 stalking CLE was well received.
- Juvenile Committee (Lori Schwartz): The committee is strategizing for next year’s Resource Fair.

7. Announcements / Open Forum

- Katie Brey will be scheduling a new member meeting open to all members in January to discuss bylaws and other details relevant to members of the committee.
- Anne Gaash announced that FamilyWise is opening a new supervised visitation location in Coon Rapids. She continues to search for shared space in South Minneapolis.

8. Strategic Planning Brainstorming – Attendees broke into small groups to brainstorm goals for the 2016 strategic plan with a focus on:

- If you could change one thing about how we coordinate/provide service to victims, what would it be?
- What do you think is the biggest system gap we need to address?

Executive Committee members will review goals and present a draft strategic plan to the full Council at the January 14, 2016 meeting.

Next meeting – January 14, 2016

Agenda items:

Finalize 2016 Strategic Plan
Domestic Violence Court Review Hearing study
Legal representation – child focused OFP calendar

Future Agenda Items

Infant Court – February 11, 2016
Review draft annual report – February 11, 2016
Family Court Enhancement Project update – March 10, 2016

Use this link to find us on the web.

[http://www.mncourts.gov/Find-Courts/Hennepin/Family-Violence-Coordinating-Council-\(FVCC\).aspx](http://www.mncourts.gov/Find-Courts/Hennepin/Family-Violence-Coordinating-Council-(FVCC).aspx)

Use this link to access our Google Calendar of events.

<https://www.google.com/calendar/embed?src=fvccalendar%40gmail.com&ctz=America/Chicago>

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Honorable Elizabeth Cutter.
Hennepin County District Court

Re: Advisory Opinion Concerning Independent Review of MNCIS Records

Dear Judge Cutter:

The following is a draft advisory opinion. The Board welcomes comments from you and other Hennepin County judges. Please submit comments on or before December 21. Thereafter, the Board will issue this opinion in final form.

On the Board's behalf, I am responding to your request for an advisory opinion. Board advisory opinions are authorized, subject to certain limitations, by Rule 2(a)(2), Rules of the Board on Judicial Standards.

You ask whether a judge in an order for protection (OFF) proceeding in Hennepin County may, consistent with the rule prohibiting a judge from independent factual investigation, access Minnesota State Court Information System (MNCIS) records in another case to determine whether there is an outstanding no-contact order involving the same respondent. The answer is yes, provided that the judge gives the parties a meaningful opportunity to challenge the propriety of taking judicial notice, as discussed below.

General principles. While Judicial Code Rule 2.9(C) generally prohibits a judge from investigating facts independently, a judge may consider facts that are properly judicially noticed. Thus, unlike most provisions of the Judicial Code, Rule 2.9(C) incorporates a section of the law extrinsic to the Code; in particular, the law of evidence relating to judicial notice, which in civil cases is the subject of Rule 201 of the Rules of Evidence. In general, if a judge takes judicial notice in compliance with Evidence Rule 201, then the judge is in compliance with Judicial Code Rule 2.9(C); if a judge's independent investigation violates Rule 201, the investigation likely violates Judicial Code Rule 2.9(C). At the same time, if a judge makes a good faith attempt to comply with Rule 201, even if judicial notice is later found to be improper by an appellate court, the judge's conduct would normally not warrant discipline.

Your inquiry and our analysis apply only to taking judicial notice in civil cases. Rule 201(a), Rule of Evidence, states, "This rule governs only judicial notice of adjudicative facts in civil cases." In addition, "Criminal cases are not normally the

appropriate setting for judicial notice, particularly of disputed facts.” *State v. Pierson*, 368 N.W.2d 427, 434 (Minn. Ct. App. 1985).

Information is now easily available through electronic access to court records as well as on the Internet. This does not, however, change the traditional rules on judicial notice. A detailed discussion of when judicial notice is permitted under the law of evidence is beyond the scope of this opinion. In broad outline, however, a judge’s independent investigation of facts relevant to a case before the judge is generally prohibited unless (1) the investigation is on nonadjudicative facts or (2) the judge properly takes judicial notice.

As to the first exception, a judge is permitted to investigate nonadjudicative facts without informing the parties. This includes research on the general subject areas of cases coming before the judge. For example, if a judge is regularly assigned personal injury cases, the judge may read books on medicine to obtain general knowledge of the subject.¹ In addition, a judge may research “legislative facts” without informing the parties. Minn. R. Evid. 201, adv. comm. cmt. (1989). However, the judge may not research facts specific to a case before the judge. If there is any doubt as to whether the research involves adjudicative or nonadjudicative facts, the judge should err on the side of caution and give the parties notice and an opportunity to be heard.

As to the second exception, a judge may take judicial notice of an adjudicative fact under Evidence Rule 201 if the fact is not subject to reasonable dispute and the parties are given notice and an opportunity to be heard. Facts not subject to reasonable dispute include the existence of a document in another court file. It is well established that a court may take judicial notice of its own files. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn. Ct. App. 1997). However, “the law treats different portions of the files and records differently.” *Id.* at 175. Thus, a judge may properly take judicial notice of the existence of a no-contact order in another file, but may not take judicial notice that a party to the case committed acts which are alleged in a complaint or affidavit in another case but which have not been admitted or proved.²

Manner of notice to parties. Rule of Evidence 201 provides no detail on how or when the parties are to be given notice and an opportunity to be heard on the propriety of taking judicial notice. The better practice is for the judge to notify the parties in

¹ See California Judges Association, *Formal Ethics Opinion 68: Ethics of Internet Research of Facts by Trial Judges*, (2013) at 5, available at <http://www.caljudges.org/docs/Ethics%20Opinions/Op%2068%20Final.pdf>; C. Gray, *Independent Investigations*, 34 Judicial Conduct Reporter No. 2 (Summer 2012), <http://www.ncsc.org/~media/Files/PDF/Topics/Center%20for%20Judicial%20Ethics/JCR/JCR%20Summer%202012.ashx>.

² One court has commented that the notice requirement “is critical, because even court records may contain inaccurate or incomplete information. And accurate records can be misinterpreted or misunderstood.” *Bradley v. District of Columbia*, 107 A.3d 586, 600 (D.C. 2015).

advance rather than after the fact. For example, a 2010 Board Advisory Opinion stated that “it is proper for a judge to consult and consider an electronic judicial information system such as MNCIS for the limited purpose of setting bail and issuing misdemeanor sentences if (1) all interested parties are present, (2) the pertinent information is provided to the defendant in open court and (3) the defendant has an opportunity to dispute the information or otherwise be heard.”

Notwithstanding the 2010 Advisory Opinion, Evidence Rule 201(e) contemplates that there may be situations in which it is impractical to give the parties advance notice that the judge is taking judicial notice of a fact. An Indiana opinion has noted that “a party does not have to be notified *before* a court takes judicial notice,” although “where practicable, the best practice is for courts to notify the parties before taking notice of and issuing a ruling which utilizes this information.” *In re Paternity of P.R.*, 940 N.E.2d 346, 349-50 (Ind. Ct. App. 2010) (holding that in modification of custody proceeding, trial court did not err in taking judicial notice of court records in protective order proceeding filed by mother against former boyfriend); *cf. Pickett v. Sheridan Health Care Ctr.*, 664 F.3d 632, 648 (7th Cir. 2011) (“[I]t is especially important for parties to have the opportunity to be heard prior to the taking of judicial notice of [Internet] websites.”).

If prior notification is impractical, Evidence Rule 201(e) requires the judge to give the parties notice and an opportunity to be heard after the fact. However, the rule does not describe how the parties are to be given a meaningful opportunity to challenge the propriety of judicial notice after the judge has already taken judicial notice sua sponte. At a minimum, the parties should be given notice and opportunity to be heard before a ruling that was based on a judicially noticed fact is made final.

Ex parte matters. While much has been written about the propriety of a judge conducting independent research on the Internet, there has been little guidance on the propriety of consulting court records in the context of an ex parte application.

A judge presented with an application for immediate ex parte relief, such as an application for an OFP, may wish to check MNCIS to determine whether another judge has issued an order in a related proceeding. For example, a judge who intends to issue an ex parte OFP may wish to determine whether there is an outstanding domestic abuse no-contact order (DANCO) concerning the respondent so that the judge can ensure that particular provisions of the OFP do not conflict with those in the DANCO.³ Similarly, a judge may wish to determine whether there is an order in a dissolution proceeding that would affect the provisions of an OFP. At the same time, it would result in delay for the judge to give the parties notice and an opportunity to object before acting on the application for ex parte relief. In some situations, notifying an alleged abuser that the petitioner has applied for but not yet obtained an ex parte OFP could expose the petitioner to further abuse and undercut the purpose of ex parte relief.

³ A DANCO may be issued to a defendant in a criminal proceeding for certain domestic violence-related offenses. Minn. Stat. § 629.75, subd. 1.

A judge may consider an ex parte communication that is “expressly authorized by law.” Judicial Code Rule 2.9(A)(5). The Domestic Abuse Act expressly authorizes a judge to issue an ex parte OFP. Minn. Stat. § 518B.01, subd. 7. The purpose of the Domestic Abuse Act is “to provide speedy, effective relief to victims of domestic abuse.” *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209, 213 (Minn. 2001). It appears that the preference to give parties advance notice that a judge intends to take judicial notice should give way to the need for the efficient operation of the judicial system and the necessity of giving a petitioner immediate protection when physical safety is at risk.

If a judge issues an ex parte OFP and the petitioner has not requested a hearing, the respondent is notified that he or she may request an evidentiary hearing within five days of service of the order. Minn. Stat. § 518B.01, subd. 7(c). Thus, if the respondent is notified in the ex parte order or in a separate document that a fact was judicially noticed, the respondent has the opportunity to request a hearing and challenge the judicially noticed fact at the hearing.

Conclusion. A judge considering an application for an ex parte OFP does not violate Judicial Code Rule 2.9(C) if the judge reviews MNCIS records to determine whether there is an order in another case involving the petitioner or respondent that could impact the issuance or the terms of the OFP, provided that if the judge relies on a MNCIS record and advance notice to the parties is impractical or contrary to the purpose of ex parte relief, the judge should indicate on the ex parte order that the judge has taken judicial notice and that a party may challenge the propriety of taking judicial notice at a hearing on the OFP.

This advisory opinion is based on the Board’s understanding of the current law concerning judicial notice and OFP proceedings as determined by the Rules of Evidence, statute, and the appellate courts. If the law changes, the Board’s opinion on this subject may change.

Sincerely,

s/ Thomas C. Vasaly

Thomas C. Vasaly
Executive Secretary

FVCC and DVCSC Membership Survey Results, November 2015

Membership

Please select which best describes your membership:

	Frequency	Percent
Family Violence Coordinating Council (FVCC)	15	50.0
Domestic Violence Court Steering Committee (DVCSC)	9	30.0
Both the FVCC and the DVCSC	6	20.0
Total	30	100.0

- 30 respondents completed the survey.
- 70% of total respondents are represented on the FVCC (n=21).
- 50% of total respondents are represented on the DVCSC (n=15).

Experiences of those who serve on the FVCC (n=21):

How many monthly meetings of the FVCC do you attend each year?

	Frequency	Percent
1 to 2	1	4.8
3 to 5	3	14.3
6 to 9	6	28.6
10 to 12	11	52.4
Total	21	100.0

- Over half of FVCC members (52%) attend 10 to 12 meetings per year.
- 19 percent attend 5 or fewer meetings per year.

The FVCC currently meets the 2nd Thursday of the month from 12:15 to 1:30 pm. Does this date and time work for you?

	Frequency	Percent
Yes	16	76.2
Maybe	1	4.8
No	3	14.3
I'd prefer a different day and/or time (suggestions):	1	4.8
Total	21	100.0

- Over three-quarters of respondents (76%) express the current FVCC meeting time is acceptable.

Comment: Thursdays work for me, but I don't think we need to meet every month. I would prefer every other month or quarterly based on the amount of business we conduct each meeting. We've been ending early a lot lately.

How often do you feel your presence and participation brings value to the FVCC?

	Frequency	Percent
Rarely	3	14.3
Sometimes	12	57.1
Often	4	19.0
All of the Time	2	9.5
Total	21	100.0

- Just under 30 percent of respondents express their presence *Often* or *All of the Time* brings value to the FVCC.
- Over half of respondents (57%) indicate their participation *Sometimes* brings value to the FVCC.

How many monthly FVCC subcommittee meetings do you attend each year?

	Frequency	Percent
None	5	23.8
1 or 2	1	4.8
3 to 5	4	19.0
6 to 9	2	9.5
10 to 12	9	42.9
Total	21	100.0

- Nearly one-quarter of FVCC members (24%) report they do not attend any monthly FVCC subcommittee meetings.
- Conversely, over 40 percent of respondents attend 10 to 12 subcommittee meetings per year.

Experiences of those who serve on the DVCSC (n=15).

How many monthly meetings of DVCSC do you attend each year?

	Frequency	Percent
1 to 2	1	6.7
3 to 5	3	20.0
6 to 9	3	20.0
10 to 12	8	53.3
Total	15	100.0

- Over half of DVCSC respondents (53%) indicate they attend 10 to 12 meetings per year.
- 27 percent of respondents attend 5 or fewer meetings per year.

How often do you feel your presence and participation brings value to the DVCSC?

	Frequency	Percent
Never	1	6.7
Rarely	1	6.7
Sometimes	7	46.7
Often	2	13.3
All of the Time	4	26.7
Total	15	100.0

- Nearly half of respondents (47%) express their presence *Sometimes* brings value to the DVCSC.
- Forty percent indicate their participation *Often* or *All of the Time* brings value to the DVCSC.

How many monthly DVCSC subcommittee meetings do you attend each year?

	Frequency	Percent
None	7	46.7
3 to 5	3	20.0
6 to 9	1	6.7
10 to 12	3	20.0
Total	14	93.3
Missing	1	6.7
Total	15	100.0

- Nearly half of DVCSC members (47%) indicate they do not attend subcommittee meeting.
- 20 percent report they attend 10 to 12 DVCSC subcommittee meetings per year.

Experiences of all respondents (n=30)

Rank which of the following groups most address your professional concerns:

Meeting	1 or 2 (Most Important)	3 or 4	5 or 6 (Least Important)	Respondents
Full FVCC	xxxxxxx (7)	xxxxxxx (8)	xx (2)	17 of 30
Full DVCSC	xxxxxxx (7)	xxx (3)	xxxxxxx (7)	17 of 30
Civil Sub.	xxxxxx (6)	xxxx (4)	xxxxx (5)	15 of 30
Criminal Sub.	xxxxxx (6)	xxxxx (5)	xxx (3)	14 of 30
Juvenile Sub.	xxx (3)	xxxx (4)	xxxxxx (6)	13 of 30
Advocacy Sub.	xx (2)	xxxxx (5)	xxxx (4)	11 of 30

- Respondents ranked the FVCC and DVCSC as the most valuable meetings, followed closely by the Civil and Criminal subcommittees.
- Conversely, the DVCSC was also mostly likely to viewed as “least important.” This may demonstrate that while certain committees are very important to some members, they may be least important to other members (and vice versa).
- The Juvenile and Advocacy subcommittees were *least likely* to be viewed as highly important.
- Of note is that 50 percent or more of survey respondents did not provide any importance ranking for the subcommittees. The lack of response may be unfamiliarity with the work of the committees, or other reasons.

What have you found most useful about participation on any of these subcommittees? (n=12)

- *Helps me to keep up on what is happening in the DV field. While I may not contribute too much, I get a lot out of hearing what is going on.*
- *Having direct input into the more narrow issues that are addressed in the subcommittee meetings.*
- *Information sharing and discussion of training possibilities.*
- *I have found the trainings on domestic violence related topics the most useful.*
- *Education component.*
- *All of the committees and subcommittees topics could be rolled into one committee. Too many committees and subcommittees that overlap and/or aren't relevant to some of the attendees.*
- *Sharing of ideas.....although not enough people talk (mainly only a judge, probation and sometimes clerks). Would like to hear from advocacy groups more. They are on the front line and I'd welcome their thoughts more about what the courts are doing right, wrong, where to improve, etc.*
- *The discussion time for systems issues and systems change items, hearing other persons' experiences within the justice system and I draw encouragement from addressing the issues together.*

- *The connections I have made. Learning about upcoming legislative efforts. Presentations from professionals, such as Fatality Review committee or on Domestic Violence as a Human Rights violation.*
- *Informal connections made with other committee members.*
- *Getting information and idea sharing on what is happening in OFP court and family court.*
- *It's helpful to know the issues and controversies. I also learn a lot from Probation. They have great expertise.*

Training, all respondents (n=30)

Did you attend the FVCC Resource Fair?

		Frequency	Percent	Valid Percent
Valid	Yes	6	20.0	22.2
	No	21	70.0	77.8
	Total	27	90.0	100.0
Missing		3	10.0	
Total		30	100.0	

- The majority of all respondents (70%) did not attend the FVCC Resource Fair.

Did you attend the FVCC Resource Fair, CLE Session

		Frequency	Percent	Valid Percent
Valid	Yes	2	6.7	8.0
	No	23	76.7	92.0
	Total	25	83.3	100.0
Missing		5	16.7	
Total		30	100.0	

- Two respondents attended the CLE session.

What trainings or presentations would you like to see provided by the FVCC? (n=3)

- *Appreciate seeing the future agenda items at the bottom of the minutes. Can't think of a specific training but appreciate something different at each meeting.*
- *Anything on system response and improvements.*
- *My staff attended the resource fair on our behalf. Dating violence, stalking, mental health and domestic violence, risk assessment, parental alienation, cultural considerations.*

Prepared by Dana Hurley Swayze, 4th Judicial District Research Unit.

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