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## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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Memo No. 7

TO: MEMBERS OF THE SPECIAL COMMITTEE ON PERMANENCY FOR YOUNG CHILDREN IN THE CHILD WELFARE SYSTEM

FROM: Melissa Schmidt, Staff Attorney

RE: Minnesota's Family Group Decision Making Program and Alternative Dispute Resolution

DATE: November 7, 2012

At the September 11, 2012 meeting of the Special Committee on Permanency for Young Children in the Child Welfare System, the committee requested more information regarding the collaboration between Minnesota juvenile courts and the Minnesota Department of Human Services (DHS) in using Family Group Decision Making (FGDM) for child welfare cases. This Memo provides a brief overview of Minnesota's program and sets forth potential legislative options the committee may decide to undertake.

### **FGDM IN MINNESOTA**

Minnesota first adopted the concept of FGDM in 1996 as a way of conducting social services case planning in child welfare cases. According to Minnesota's DHS, "FGDM is an umbrella term that covers a wide variety of conferencing processes utilized throughout the world. [It] recognizes the importance of family groups in decision making about children who need protection or care, and it can be initiated by child welfare agencies whenever a critical decision about a child is required." [Minnesota Program Directory: Family Group Decision Making (Minnesota DHS, June 2008, pp. 1 and 4), available at: <http://edocs.dhs.state.mn.us/lfsrver/Legacy/DHS-5421-ENG.>]

Minnesota recognizes the following five models used to carry out family support and preservation activities under the umbrella of FGDM: Family Group Conference; Family Unity Meeting; Family Conference; Youth Transition Conference; and Family Case Planning Conference. Each county is able to determine for itself which model to use. Counties use it for various purposes, such as at the beginning of child welfare cases, to settle court cases, or for initial permanency planning. [See *Id.* at 6.]

Financial assistance to counties for FGDM is provided by federally funded grants from Title IV-B(2), which are administered by Minnesota's DHS. In 2010, the model was being used by 20 county grantees, covering 74 of Minnesota's 87 counties, as well as nine of the 11 tribes in the state receiving grants. However, according to Christeen Borsheim, Minnesota DHS, as a result of budget cuts to Title IV-B(2) in the last couple of years, this has resulted in cuts to FGDM grants. This reduced the number of county grantees to 11, covering 42 counties, and only two tribal agencies receiving grants.

### **Brief History of Minnesota Court Involvement With FGDM in Child Protection Cases**

Starting in 1997, Minnesota court judges became interested in the use of the FGDM model Family Group Conferencing in child protection cases and between 1998 and 1999, a pilot program was created by district court judges and the social services agency in Hennepin County using the FGDM model of Family Group Conferencing. [*Family Group Conferencing Pilot Project: Hennepin County, Minnesota, Final Report*, Minnesota Supreme Court (Sept. 2000), available at: [www.abanet.org/child/cipcatalog/pdf/mn\\_00\\_01.pdf](http://www.abanet.org/child/cipcatalog/pdf/mn_00_01.pdf).]

In 2000, the Chief Judge of the Minnesota Supreme Court initiated a court improvement project through the Minnesota Children's Justice Initiative (CJI) in collaboration with Minnesota's DHS to improve the processing and outcomes of child protection cases with the use of FGDM. As a result of CJI, judges worked with representatives of the court and social services system to improve the court process in child welfare cases. For example, Olmsted County created a program called Parallel Protection Process (P3) using the FGDM model of the Family Case Planning Conference. Information regarding the Olmstead County program is available in the report *Creating a Constructive Practice: Family and Professional Partnership in High-risk Child Protection Case Conferences*, available at: <http://www.co.olmsted.mn.us/cs/cspublications/Documents/CFSPublications/creatingaconstructivepractice.pdf>.<sup>1</sup>

### **Minnesota Statutory Authority for FGDM**

Since 2009, Minnesota statutes have authorized courts to use FGDM, as well as parallel protection process and mediation, as authorized forms of alternative dispute resolution in child welfare cases. Section 260C.163, subd. 12, MN Stats., states:

The court may authorize parties and participants in any child in need of protection or services, permanency, or termination of parental rights petition to participate in any appropriate form of alternative dispute resolution including family group decision making, parallel protection process, and mediation when such alternative dispute resolution is in the best interests of the child. The court may order that a child be included in the alternative dispute resolution process, as appropriate and in the best interests of the child. An alternative dispute resolution process, including family group decision making, parallel protection process, and mediation, may be used to resolve part or all of a matter before the court at any point

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<sup>1</sup> Susanne Lohrbach and Robert Sawyer, *Creating a Constructive Practice: Family and Professional Partnership in High-risk Child Protection Case Conferences*, Protecting Children Journal (Vol. 19, No. 2, 2004).

in the proceedings subject to approval by the court that the resolution is in the best interests of the child.

While Minnesota statutes authorize the use of FGDM in child welfare cases, the statutes also prohibit the state court administrator from creating guidelines for alternative dispute resolution programs in any matter involving neglect or dependency or involuntary termination of parental rights. [s. 494.03 (4), MN Stats.] Instead, Chapter 34 of the *Minnesota Juvenile Judges Protection Benchbook* includes recommendations by the American Bar Association Section of Dispute Resolution, available at: [http://www.mncourts.gov/Documents/0/Public/Childrens\\_Justice\\_Initiative/Ch.\\_34\\_-\\_Case\\_Resolution\\_Options.pdf](http://www.mncourts.gov/Documents/0/Public/Childrens_Justice_Initiative/Ch._34_-_Case_Resolution_Options.pdf). Thus, the utilization of FGDM depends largely on local practice.

### **COMMITTEE OPTIONS**

At the October 9, 2012 meeting of the Special Committee, the committee heard testimony that the La Crosse County Circuit Court has implemented a mediation program for child welfare cases, one form of alternative dispute resolution. If the committee is interested in encouraging the use of mediation or FGDM by courts, the committee could consider the following options:

- Specify in statutes that a court may authorize participation in any appropriate form of alternative dispute resolution, including FGDM and mediation in any proceeding related to a child in need of protection or services (CHIPS), or termination of parental rights (TPR) when such alternative dispute resolution is in the best interests of the child.
- Specify in statutes that a court may authorize participation in any form of alternative dispute resolution when it is in the best interests of the child, but limit the use of it to only certain stages of a child welfare case, such as at the beginning of the case or permanency planning.

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