CHILD SUPPORT COMMITTEE
DRAFT MEETING MINUTES

Arizona Courts Building
1501 W. Washington, Room 230
Phoenix, Arizona
December 1, 2006

PRESENT:

Co-Chairs
- □ Honorable Peter Hershberger
- □ Honorable Thayer Verschoor

Members:
- □ Honorable Manuel Alvarez
- ■ Robert Barrasso
- ■ Theresa Barrett
- □ Honorable Bill Brotherton
- ■ Honorable Kimberly Corsaro
- ■ Honorable Norm Davis
- ■ Kim Gillespie
- ■ Leona Hodges
- ■ Honorable Michael Jeanes
- □ Michelle Krstyen
- ■ Ezra Loring
- □ Chuck Shipley
- ■ Russell Smoldon
- □ Honorable Monica Stauffer
- ■ Bianca Varelas-Miller

STAFF:

Kathy Sekardi	Administrative Office of the Courts
Kim Ruiz	Administrative Office of the Courts
Barbara Guenther	Arizona State Senate

CALL MEETING TO ORDER

Judge Norm Davis, acting Chair, called the meeting to order at 10:25 a.m. without a quorum present.

ANNOUNCEMENTS

Judge Davis introduced Kathy Sekardi, the new Child Support/Family Law Specialist. The members in attendance discussed how to proceed with the Statute Review Workgroup proposals in light of there not being enough members for a quorum. It was agreed to move forward with the presentation and discussion and have the minutes reflect the consensus of the group.

APPROVAL OF MINUTES

Without a quorum present, the September 15, 2006 minutes were not approved and will presented at the next meeting.

STATUTE REVIEW WORKGROUP PROPOSALS

Title 25 Amendments

Kim Gillespie and Janet Sell of the Attorney General's Office presented the following proposed identity protection based changes made to A.R.S. Title 25:

- It was found that some statutes still contain social security number (SSN) requirements on documents that are public record. A new subsection A.R.S. § 25-501(G) was drafted to move the requirement for SSN's from the petition or complaint to the "record of the proceeding" which satisfies federal rule and Arizona statutes through the use of the *Sensitive Data Sheet* created in the Arizona Rules of Family Law Procedure.
- A.R.S. § 25-314 requires SSN's in a petition for dissolution of marriage. The proposed change removes the language from (A)1 and 3 requiring the SSN in the petition and references the newly drafted A.R.S. § 25-501(G) which moves it to the *Sensitive Data Sheet*.
- A.R.S. § 25-502 requires SSN's in a petition to establish support. The proposed change removes the language from (I) and (J) requiring the SS# in the petition and references the newly drafted A.R.S. § 25-501(G) which moves it to the *Sensitive Data Sheet*.

Committee Comments:

- It was suggested changing the "may" leniency of the proposed A.R.S. § 25-501(G) to "shall" to match the language of the statutes referencing it. If *pro se* litigants are reading the statute "shall" would be a better way of informing them they need to record their SSN in the *Sensitive Data Sheet* and not on the petition.
- It was drafted with "may" to allow for flexibility if the rules requiring it change.
- If it is changed to a "shall" there could be an unintended consequence of someone violating the statutory requirement if they do include it. This could be a liability issue if published, creates a standard of care. Would the Clerk of Court have a separate duty to keep it out?
- Right now the burden is on the filing party to keep the SSN out of the pleading, because the clerk's office does not have the resources to read every pleading to ensure SSN's are redacted.
- The problem with leaving the burden on the filing party is there is no "gatekeeper" to manage and monitor the requirement. A possible next step for the future is to research a proposal for additional resources for the clerk's office, so they can be the gatekeepers of SSN's being redacted from public documents.
- There may be technology in the future that will scan documents for nine digit, social security type numbers. This will allow the clerk's office to review each document, but until that technology is in the clerk's office the lack of resources means the burden needs to stay with the filing party.
- The last sentence also includes the requirement for the document to be "maintained" which could be interpreted to mean the clerk's office will keep the document.
- It was agreed to change the last two sentences of A.R.S. § 25-501(G) to read:

  This requirement **shall** be satisfied by filing a separate pleading containing the social security numbers and any other sensitive data as defined by court rule.

This separate document **shall** be segregated from other pleadings in the case and maintained (**remove: as a**) confidentially (**remove: document**) as permitted by court rule.

Janet continued:

- A.R.S. § 25-504 is the judicial order of assignment statute. An Order of Assignment needs to contain the SSN so language was added to (C), but the request for an Order of Assignment does not need to require it so the requirement was removed from (B)4

Committee Comments:

- It was suggested adding language that makes it clear the Order of Assignment is enforceable and must be processed even without the SSN. The following additional language was suggested:

  The absence of a social security number does not invalidate the Order of Assignment.
- One foreseen challenge to the proposed language is that federal employers require a valid social security number on the Order of Assignment and if it isn't included they reject the order.
- There is also a requirement in the statute that they be provided in Spanish, which will potentially be affected by Prop 300.

Janet continued:

- A.R.S. § 25-505.01 requires the SSN in the order that goes to the employer for administrative income withholding. Since it doesn't require the SSN on a document for public record there is no need to change this statute.
- A.R.S. § 25-806 describes what should be in a petition for paternity. The proposed change removes the language from (A) and (B) requiring the SSN in the petition and references the newly drafted A.R.S. § 25-501(G) which moves it to the *Sensitive Data Sheet*.
- A.R.S. § 25-812 the voluntary acknowledgement of paternity requires the SSN with an affidavit filed with the court. The proposed change added language to (A)1 to allow the redaction of the SSN and separately filed as referenced in the newly drafted A.R.S. § 25-501(G) which moves it to the *Sensitive Data Sheet*.

Committee Comments:

- It was asked who would be responsible for the redaction and Janet responded that the rule says the filing party is responsible. It was suggested adding language to make it clear the filing party needs to redact the SSN's.
- It was also suggested to broaden the language for whose SSN is to be redacted, so people know children's SSN's should also be redacted even though they are not parties.
- The second line of A.R.S. § 25-812(A)1 now reads:

  If the voluntary acknowledgement is filed with the court, **the filing party shall redact** any social security numbers and file them separately as provided by § 25-501(G).
- It was recommended adding the following sentence to § 25-501(G):

  Any social security number filed shall comply with Arizona Rules of Family Law Procedure Rule 43(G).
- Rule 43 also has an exception for Uniform Interstate Family Support Act (UIFSA) documents. The required federal forms still require social security numbers and they

must be included when they are sent to another state. The exception was drafted in Rule 43 solely for the purpose of these forms.

- If it complies with rule 43, then it is still maintaining the status quo. Keeping the last sentence of § 25-501(G) "…as permitted by court rule," accomplishes the proposed sentence about Rule 43, while not conflicting with the exception for UIFSA documents.
- Rule 43 is not necessarily read as mandatory. It simply provides another way to record the SSN that the statute requires.
- It was proposed and agreed to change § 25-501(G) to the following:

  In any case filed under this title, including an action filed under chapters 3, 5, 6 or 9, if a duty of support for another person exists or may exist, the social security numbers of the parties and any affected children shall be filed in the record of the proceeding and included in the state case registry. **This requirement shall be satisfied as directed in the Arizona Rules of Family Law Procedure relative to sensitive data**. [**remove last two sentences**]

Janet continued:

- A.R.S. § 25-1251 is part of the UIFSA requirements and requires the SSN in the petition. The added language in (A) uses "may" to be in compliance with the federal requirements.
- A.R.S. § 25-1302 is similar to § 25-1251 with similar language added to (A)4a.

Committee Comments:

- The "if necessary" can be interpreted in unintended ways, so it was recommended and agreed to remove it from both statutes.
- The broadened language from § 25-812(A)1 needs to be added here also to include children's SSN's.
- The newly proposed language for A.R.S. § 25-1251(A) reads:

  Any social security numbers may be redacted and filed separately as provided by section § 25-501(G)
- § 25-1302 just needs to have "if necessary" removed.

RECAP of changes to proposals:

A.R.S. § 25-501(G)

In any case filed under this title, including an action filed under chapters 3, 5, 6 or 9, if a duty of support for another person exists or may exist, the social security numbers of the parties and any affected children shall be filed in the "record of the proceeding" and included in the state case registry. This requirement shall be satisfied as directed in the Arizona Rules of Family Law Procedure relative to sensitive data.

A.R.S. § 25-812(A)1

If the voluntary acknowledgement is filed with the court, the filing party shall redact any social security numbers and file them separately as provided by § 25-501(G).

A.R.S. § 25-1251(A)

Any social security numbers may be redacted and filed separately as provided by § 25-501(G)

A.R.S. § 25-1302(A)4.a.

Obligor's social security number may be redacted and filed separately as provided by § 25-501(G).

Judge Davis asked the committee members if there was any opposition to the presented amendments and proposed changes to the amendments. There was no opposition.

Temporary Parenting Time and Custody Orders

Bob Barrasso presented the proposed new legislation for temporary parenting time and custody orders with a presumption of paternity. Bob gave a brief background of how the amendments made to § 25-806(D) had unintended consequences on fathers without established paternity. The proposed legislation helps to close the loophole of presumptive fathers not being granted parenting time while paternity is established. The legislation uses the language and requirements of A.R.S. § 25-817. Temporary support orders; presumption of paternity, and applies it to temporary custody orders. Initially, the workgroup amended § 25-817 to include custody orders, but when it was presented to the Committee on the Impact of Domestic Violence and the Courts for comment, the incorporation of their suggestions made it necessary to create a separate statute. The proposed new statute contains the following:

- The same four standards of § 25-817.
- The same language from § 25-817(B) and (C), but applied toward temporary custody orders.
- The requirement of a hearing and compliance with § 25-403.
- The additional standard requirement of an existing relationship between the child(ren) and the presumptive father.

Committee Comments:

- It was suggested that the two statutes should be kept together in concept either as corresponding statutes (it is believed § 25-819 is open) or as a second part of § 25-817.
- It was agreed the legislative council would determine the manner in which the statutes will be related.

Judge Davis asked the committee members if there was any opposition to the presented legislation. There was no opposition.

Judicial discretion when settling arrears

Bob Barrasso reported that the Workgroup determined judicial discretion with arrears was going to be too controversial for legislation, especially with custodial parents. There was also concern that judicial discretion to settle an arrears balance would violate the federal statute that orders cannot be retroactively modified, and the court cannot settle a debt that belongs to a third party (custodial parent) without their consent.

Stop interest accrual when the youngest child reaches 19

Bob Barraso briefly presented the discussion the Workgroup had and the various ideas presented. Some workgroup proposals were:

- Stop the accrual of interest on arrears when the child reaches 19.
- Lower the rate at which interest accrues when the child reaches 19.
- Judicial discretion to stop interest accrual when the child reaches 19 (not automatic).

Bob asked the Committee to further discussion and brainstorming the issue to see if a viable option could be reached.

Committee Comments:

- Some members didn't support changing the interest accrual. It is the noncustodial parent's responsibility to pay their child support and the court should not be able to change that obligation, including the interest.
- There is no discretion with regard to arrears because the federal law and Arizona case law, but there is discretion with how interest is applied. It varies greatly from state to state, and Arizona is one of the few states that collect interest.
- The legislature would probably be most responsive to the proposal of the interest changing at 19.
- Judge Davis stated that the interest is only part of the problem in the "hopeless" cases. The three year arrearage judgments coupled with the interest make it so there is no chance of collecting. The three year judgment has to be addressed also. Possibly consider a time period after a child is born that child support needs to be sought. A time period more reasonable than three years, like thirty days. As the world becomes more global and transient people are harder to locate especially when there is a gap of time. The gap needs to be closed.
- Bob Barrasso added that it is also the obligors in the hopeless cases that turn to underground cash employment. The committee should consider legislation regarding due diligence on the mother's part.
- The State can administratively forgive arrears that are due the state, but the State cannot forgive arrears due the custodial parent.
- Leona recommended lowering the overall interest rate, rather than creating automation challenges by changing the interest rate at a certain date.
- Bob Barrasso proposed giving judicial discretion to turn interest off when the child reaches 19 as long as the payments are being made, with the option of turning it back on if the payments are not being made.
- There has to be a good public policy reason to stop interest and the judicial discretion needs to be clearly defined.
- In ATLAS a debt accrual can be suspended and scheduled to be turned back on, but the interest cannot be scheduled. That would require a manual tracking of turning it off/on.
- The manual tracking would coincide with a hearing to monitor the payments.
- Janet proposed that the interest not accrue until the obligor has been made aware of the judgment, then once they are aware if they fall behind on current payments the interest will start accruing on those arrears. There would be no interest on the past support judgments, but it could accrue on current arrears. This proposal addresses the growing interest issue on the front end rather than the back end after it had accrued.
- The committee agreed this proposal was worth working on further.
- It was also proposed lowering the interest rate along with Janet's proposal. Although, the lowered interest rate has not fared well in the legislature in the past.

  Judge Davis asked the committee members if there was any opposition to the following propositions:
  - **Due diligence on how much of the three years to establish in the beginning.**
  - **No interest on past support judgments.**
  - **Defined judicial discretion on prospective interest waivers for good public policy reason.**

  There was no opposition.

ACTION: Bob Barrasso will take the above proposals to the Statute Review Workgroup for drafting legislation.

DCSE UPDATE

Leona reported on the grant awarded for $2.5 million to DES and Children/Family Resources, Inc. in collaboration with various agencies to start the Arizona Center for Responsible Fatherhood in partnership with HeadStart.
It looks like it will be a great program with focus areas in life skills, parenting, outreach and training. They will be looking to the courts and other agencies for referrals. In the past, getting young fathers involved and participating was the greatest challenge. Once they were involved it was very successful, but getting them there was the challenge.

Judge Davis agreed that the courts would be interested in working with DES on the program. They are talking about starting an establishment court for paternity cases to establish parenting time and custody orders as early as possible. It will work well with the Center for Responsible Fatherhood.

CALL TO THE PUBLIC

No public present.

NEXT MEETING

January 12, 2007
10:00 a.m. – 2:00 p.m.
State Courts Building, Room 345 A/B

ADJOURNED

Judge Davis, acting Chair, adjourned the meeting at 12:28 p.m.