

CHILD SUPPORT COMMITTEE

Meeting Minutes – September 23, 2003

PRESENT:

Hon. Peter Hershberger, Co-Chair
Hon. Manuel Alvarez
Hon. Mark Armstrong
Hon. Bill Brotherton
Kim Gillespie
Leona Hodges
Karen Kretschman for David Byers
Hon. Michael Jeanes

Ezra Loring
Suzanne Miles
David Norton
Chuck Shipley
Russell Smoldon
Hon. Monica Stauffer
Bianca Varelas-Miller

NOT PRESENT:

Hon. James Waring, Co-Chair
Robert Barrasso
Charles DiGeronimo

Kym Hull
Michelle Krstyen
Hon. Rhonda Repp

GUESTS:

Judy Bushong
Anna Bronnenkant
Jane McVay
Sean Laux
Valarie Merritt
Glenn Davis
Javan Mesnard
Kat Cooper

Maricopa County Clerk of Court
Custodial Parent
Div. of Child Support Enforcement
Senate
ACS State & Local Solutions
Senate
Senate
Maricopa County Clerk of Court

STAFF:

Barbara Guenther
Megan Hunter
Isabel Gillett
Sean Laux

Senate
Administrative Office of the Courts
Administrative Office of the Courts
Senate

CALL MEETING TO ORDER

REP. HERSHBERGER

The meeting was called to order at 10:12 a.m. by Rep. Peter Hershberger with a quorum present.

APPROVAL OF MINUTES

REP. HERSHBERGER

MOTION: Dave Norton made a motion to approve the minutes of the June 24, 2003 meeting with the following amendment: add “Kat Cooper for” Hon. Michael Jeanes to the list of members present. Second by Chuck Shipley. Approved unanimously.

ANNOUNCEMENTS

REP. HERSHBERGER

Benidia Rice has served as a member of this Committee for three years in her capacity as IV-D Director. Benidia left the agency on September 16 to begin a new position as IV-D Director in Washington D.C. Rep. Hershberger commended her involvement and interaction with this Committee and the child support effort in Arizona.

Leona Hodges was named IV-D Director and started in that capacity last week. Leona served as interim IV-D Director for approximately one year before Benidia. Rep. Hershberger welcomed Leona on behalf of the Committee.

Senator Brotherton was introduced as the new Senate appointment to the Committee. Staff members from the House, Senate and Administrative Office of the Courts were recognized. Barbara Guenther served as Senate staff to this Committee for many years and is now being moved to another Committee. Her replacement will be Sean Laux.

Meeting dates for the remainder of 2003 are October 28 and November 18.

REPORT – OFFICE OF CHILD SUPPORT ENFORCEMENT

REP. HERSHBERGER AND MEGAN HUNTER

The Committee congratulated Rep. Hershberger for being chosen as the federal Office of Child Support Enforcement’s (OCSE) “Legislator of the Year” award winner. He was in Washington D.C. last week to accept the award from OCSE’s Commissioner Sherri Heller.

Rep. Hershberger remarked on the experience and discussed another child support conference where he was invited to speak in Colorado with other lawmakers, IV-D Directors and child support professionals from across the country.

GUIDELINES WORKGROUP
JUDGE MARK ARMSTRONG
PROFESSOR IRA ELLMAN

Judge Armstrong discussed the handouts provided, one of which discussed recent constitutional challenges to the guidelines in several states. He commented that Constitutional challenges have little likelihood of success.

The Guidelines Workgroup has met monthly for one year and expects to conclude in the next two to three months. Judge Armstrong provided and presented a list of tentative recommendations made by the Guidelines Workgroup for informational purposes only at this point. Final recommendations will be made to the Committee after the Guidelines Workgroup finalizes them. At that point, the Committee will be asked for a vote.

Rep. Hershberger asked if interest is an issue in child support cases to which Judge Armstrong agreed it can be a problem because it is difficult for judges to calculate it. Currently, interest is 10% on child support arrearages. The members of the Guidelines Workgroup have agreed to refer the matter to the Statute Cleanup Workgroup due to the fact that there was a problem in the language regarding arrearages and interest.

Judge Armstrong introduced Ira Ellman, Professor of Law, Arizona State University and Guidelines Workgroup member. Ira discussed “Child Support Guidelines: Examining the Methodology” which entailed a discussion surrounding the policy choices for the methodology used to develop the guidelines. He suggested the formation of an interim workgroup to study the methodological choices that must be made by Arizona in advance of the next review of the child support guidelines in 2008. He explained guidelines “equivalence tables”, guidelines construction, measurement of standard of living, flaws in the data and marginal expenditures. The American Law Institute (ALI) recommends a test to determine if parents have equal incomes, then their living standard should be the same after the child support transfer, and if parents have disparate incomes, with the custodial parent earning less, then the living standard of the custodial household should not be “grossly disproportionate” to the noncustodial household.

Judge Armstrong explained that the proposal to create an interim workgroup is separate from the recommendations being made for the 2004 guidelines review by the Guidelines Workgroup and suggested a vote in October on the specific proposal. The Committee agreed to place the matter on the October 28, 2003 meeting for a vote.

POST-SECONDARY SUPPORT
JUDGE MONICA STAUFFER

Judge Stauffer served as chairperson of the Post-Secondary Support Workgroup. She explained the workgroup’s deliberations and proposals. The workgroup deliberations were controversial and consensus was not reached; however, two proposals were drafted and are being brought before the Committee for a vote. The first proposal would add recommended language to the Petition and Response for Dissolution of Marriage with

Minor Children and Decree of Dissolution of Marriage (Divorce) with Children that would alert parties that they could voluntarily agree to college support (current law allows this but they may be unaware of it). The second proposal would amend the Child Support Guidelines by giving the court discretion, within the child support calculation, to consider the college expenses of the parent paying. This would occur only in cases where minor children remain in the home.

Members made observations regarding the philosophy of providing child support beyond emancipation. Some agreed that it is dangerous to mandate the action, and instead the parents should be allowed to come to agreement. Other members asserted that the concept is a wise policy choice because children who attend college are advantaged. Other members explained that attorneys should be advising their clients that this option is available under current law; however, many litigants are unrepresented so are unaware of the option. The first change reflects current law, while the second is a philosophical change for the state.

Members explained that this issue is on the national stage, but no particular trend can be tracked. Eighteen states have a provision for college support on the books while one state passed a law that disallows the court from ordering college support. Some states have upheld a constitutional argument (equality) and others have not. Intact families are not required to provide a college education for their children, while non-intact families must do so under these laws.

Rep. Hershberger, on the approval of the Committee, allowed Anna Bronnenkant, custodial parent and initiator of the proposals, to speak to the Committee. She urged the Committee to look at reality in terms of one parent having fewer funds to spend on the children remaining in the home because of supporting older children in college. She said that this proposal allows the court discretion regarding the factors of finances, whether the parents themselves went to college and what plans the parents had for the children before the divorce. It is also an attempt to lessen the impact of divorce on children. Ms. Bronnenkant reiterated that this proposal would only take effect if there are minor children in the home.

Megan Hunter explained that the Committee, if they approved the first proposal, would be making a recommendation to the Administrative Office of the Courts and individual courts of general jurisdiction to revise their self-service center forms to include the college support language. The second proposal would direct the Guidelines Workgroup to include the proposal in their final recommendations to the Child Support Committee, but the Arizona Supreme Court, who adopts the guidelines, would have final determination.

MOTION: Suzanne Miles made a motion to add language from Document 1 as drafted for the Post-Secondary Support Workgroup to the Petition and Response for Dissolution of Marriage with Children, and Decree of Dissolution of Marriage (Divorce) with Children. Second by Kim Gillespie. The motion passed on a vote of 8 ayes, 6 nays, and 1 abstaining.

MOTION: Suzanne Miles made a motion to revise the Arizona Child Support Guidelines to allow a judge to consider including a calculation for college expenses paid by a parent (both custodial and noncustodial) in determining child support for any remaining minor children in the home. Second by Leona Hodges. The motion failed on a vote of 4 ayes, 9 nays, and two abstaining.

BREAK/LUNCH

After a short break, the meeting was called back to order at 12:28 p.m.

STRATEGIC PLANNING WORKGROUP

CHUCK SHIPLEY

The group met in August and September. The group is in the exploratory phase and has begun developing a list of recommendations for the Committee. Chuck and Megan met with Sen. Waring and Rep. Hershberger to get their input regarding the direction they would like to take the Committee; they also plan to meet with Sen. Brotherton and Rep. Alvarez to get their input.

Michael Jeanes suggested to the workgroup that they look at issues through the eyes of self-represented litigants in an attempt to make the process as easy as possible for them to navigate. Chuck stated that Stan O'Dell made that particular recommendation at the first workgroup meeting.

STATUTE CLEANUP WORKGROUP

KIM GILLESPIE

The group met in August. They discussed amendments to the Uniform Interstate Family Support Act as proposed by the Uniform Law Committee. The group finalized all but one issue, which dealt with whether telephonic appearances should be allowed or not. Practitioners believe litigants should always have the ability to appear telephonically in interstate cases. The group will make a decision in October. Kim and Megan will meet with Legislative Council this week to begin the bill drafting process.

The group will meet on October 1 and discuss lengthening the statute of limitations and judgments on arrearages.

CALL TO THE PUBLIC

No members from the public were present.

NEXT MEETING

The next meeting will be held on October 28, 2003, at the Arizona State Courts Building, 1501 W. Washington, Room 119, Phoenix.

ADJOURNMENT

Rep. Hershberger adjourned the meeting at 1:00 p.m.