

**CHILD SUPPORT COORDINATING COUNCIL SUBCOMMITTEE**  
**AMENDED Meeting Minutes – February 27, 2001**

**Members Present:**

Todd Bright for Benidia Rice  
Hon. Kathi Foster  
Bruce Gentillon  
Kim Gillespie for Noreen Sharp  
Hon. Peter Hershberger  
Hon. Bethany Hicks  
Hon. Michael Jeanes

David Norton  
Hon. Rhonda Repp  
Benidia Rice for John Clayton  
Janet Scheiderer for David Byers  
Russell Smoldon  
Carmela Trapani

**Members Absent:**

Hon. Linda Aguirre  
Jodi Beckley  
Bryan Chambers for Jerry DeRose  
Penny Higginbottom

Hon. David Ostapuk  
Hon. David Petersen  
Bianca Varelas

**Staff:**

Megan Hunter  
Karen Kretschman

Isabel Gillett

**Guests:**

Hon. Mark Armstrong  
Jane McVay  
Daniella Yalor

Superior Court in Maricopa County  
Division of Child Support Enforcement  
Morris Institute for Justice

**Call Meeting to Order**

The meeting was called to order by Judge Hicks at 10:21 p.m.

**Announcements**

Senator Petersen was unable to attend this meeting and appointed Judge Bethany Hicks to chair the meeting in his place.

Members were provided with the Child Support Enforcement and Domestic Relations Reform Committee 2000 Annual Report submitted in January, 2001 to Governor Hull, Chief Justice Zlaket, House Speaker James Weirs and Senate President Randall Gnant.

Members also received a copy of the Performance Audit of the Department of Economic Security, Division of Child Support Enforcement Office conducted by the Office of the Auditor General. Members should review the report before the next Council meeting where the Division of Child Support Enforcement will provide a summary of the report.

House Speaker Weiers recently appointed Representative Peter Hershberger to serve as co-chair of the Council. He replaces Representative Laura Knaperek who served as co-chair through December, 2000. Representative Hershberger was introduced; he provided a brief summary of his background, which includes thirty years in the juvenile justice/mental health field. He indicated that he is looking forward to learning, participating and contributing to this group. Rep. Hershberger is a member of both the Human Services and Judiciary committees at the House of Representatives.

House Speaker Weiers also recently appointed Representative Kathi Foster to serve as the House of Representatives member. Representative Foster replaces Representative Rebecca Rios. She has served on several House committees including Human Services, Judiciary and Education in addition to membership on the Domestic Relations Reform Study Subcommittee. Representative Foster indicated that she is pleased to be a part of the Council and looks forward to participating and contributing as a member.

### **Approval of Minutes**

A motion to approve the minutes of January 12, 2001 was heard. The minutes were approved by a unanimous vote.

### **Legislative Update**

**Hon. Mark Armstrong**

Seven separate statutes were included in the Council proposals. Five statutes were grouped together in Senate Bill 1057, which passed the Senate committees and was referred to the House Human Services and Rules Committees on February 20.

Part of the Council's recommendations in Senate Bill 1057 defined "incapacitated" as the "inability to make or communicate decisions" as found in Title 14, Probate code. The definition was amended in Senate Family Services Committee as "unable to work."

Senate Bill 1487, the most controversial of the Council's proposals, provides for an intrastate transfer procedure for child support cases within Arizona. The bill was approved on February 26 by the Senate Committee of the Whole with amendments 3406 and 3584. Those amendments do not change the substance of the Council's recommendation.

Senate Bill 1436, the employer cooperation bill, passed the Senate on February 20 and was referred to the House Human Services, Commerce/Economics, and Rules Committees. Bills that are assigned to three committees usually have a difficult time passing through all assigned committees.

House Bill 2026, proposed by the Domestic Relations Study Subcommittee, replaces the term "visitation" with the term "parenting time" in all Arizona family law statutes. This bill has a good chance of passing.

House Bill 2219 proposes that current grandparent visitation laws be amended to require that before the court can grant visitation to a grandparent, it must find that a parent is unfit and places the burden of proof on the grandparent. This bill is controversial and not expected to pass.

House Bill 2261 involves divorce and child custody. Upon filing of a divorce, an immediate preliminary injunction would order that both parties would have equal access to the children. This bill is not expected to pass.

House Bill 2349 would eliminate “no fault” divorce in Arizona. This bill is not expected to pass.

House Bill 2402 would essentially re-write the custody statute by replacing the word “custody” with “parenting plan” and includes a presumption for one-third access to the parenting time parent and a presumption of equal parenting. This bill was killed today.

Senate Bill 1054 would eliminate “no fault” divorce for marriages that occurred prior to August 8, 1973. Any marriage prior to that date would be governed by the dissolution laws in effect at the time of the marriage. This bill has experienced some difficulties.

Senate Bill 1055 would give courts the authority in a divorce to order a reconciliation conference and add at least sixty days to six months to the divorce process and order the parties to participate in joint marital counseling session with a certified therapist with each party paying half the cost. An amendment was introduced taking out the joint counseling sessions if any domestic violence or an order of protection was involved. This bill is not expected to pass.

Senate Bill 1520 would require courts to award custody of a child who is at least twelve years of age to the parent the child requests as the child’s primary child caretaker. Kat Cooper commented that places too much responsibility on a child. Commissioner Repp commented that part of the court’s role is to minimize the stress of a divorce on the child. Current law allows the court to consider the child’s wishes but no age limit is provided. This is a very controversial bill and not expected to pass.

Senate Bill 1520 would allow a person that has been appointed by the court to assist in the disposition of an action would be immune from liability for acts that are intimately related and essential to the judicial decision-making process unless the person committed one of a long list of behaviors.

Senate Bill 1357 would require continuation of health insurance coverage for parties going through a divorce. This bill is not expected to pass.

### **NCSEA Policy Forum Synopsis**

Michael Jeanes and Kat Cooper attended the National Child Support Enforcement Association Policy Forum held in early February. They reported that the conference offered

many interesting sessions primarily focusing on IV-D agencies and IV-D issues. Disappointing to non-IV-D attendees was the absence of non-IV-D sessions. Comments to that effect were given to conference organizers.

Benidia Rice reported that the forum focused on methods to improve. The child support enforcement programs were designed to be collection agencies, to establish child support orders and to enforce those orders. Many tools have been designed to assist the states to make their programs more efficient and effective to get money for families. Increases in orders established and money collected means increased funding.

The collection agency persona is being re-examined in the child support program nationwide. The focus is being shifted to the low-income sector of parents whom have no income and low education, and the subsequent impact on the self-sufficiency of families. The forum addressed how the states will re-examine and re-invent themselves, and how to accomplish this under the existing funding source that is designed for a collection agency as opposed to a social service agency. One of the focuses is providing services to noncustodial parents and how to do that with existing funding and not impact collections. This is expected to be a major challenge to IV-D agencies around the country.

The Arizona IV-D agency is looking at how to accomplish the new directives. Agency staff have always been hired as legal processors or to administer legal functions, not as social workers. The agency recently hired a full-time individual to create a father supportive service program and will be partnering with other child support stakeholders. Sophisticated tracking mechanisms will be put in place to measure whether or not bringing noncustodial parents into this program: 1) increases contact between noncustodial parent and child, and 2) increases child support payments.

Commissioner Repp commented that she will be implementing a program in April called “Job Court” that will entail bringing representatives from temp agencies and agencies that offer job training and assistance finding employment to hearings once per month. Those obligors who cannot pay child support because they lack employment will be referred to the agency representatives. The program will be accomplished at no cost to the court or the IV-D agency.

### **Guidelines Workgroup**

### **Hon. Mark Armstrong**

Judge Armstrong reported that the workgroup met February 2, 2001. The group discussed the ongoing issue regarding guideline section 8.a., uncovered medical expenses included in the Schedule of Basic Support Obligations. This section does not deal with the calculation of child support, instead it allocates \$250 of non-covered medical costs per child, per year. The guideline and example adopted in 2000 for apportioning responsibility for the \$250 are confusing and subject to multiple interpretations.

The workgroup voted to make a recommendation to the Council that Section 8.a. be revised by apportioning deductible medical expenses in proportion to the parent’s incomes. In essence, this section would be applied in the same manner as the 1996 guidelines. The

workgroup also voted to request the Council to decide whether Section 8.a. should be revised as soon as practicable or in the next quadrennial review. Judge Armstrong drafted a memo to the child support community and the courts explaining the issue and will distribute to the same upon the Council's approval. The Council noted that the memorandum was written in a clear and concise manner.

If the Council decides to wait to make the revision until the next quadrennial review, the courts would remain free to exercise their discretion in accordance with their own interpretation of the guidelines and use the clarification provided in the memorandum as a reason for a deviation. If the Council decides to make the revision as soon as practicable, the Committee on Superior Court and the Arizona Judicial Council would have to approve the change before being considered by the Supreme Court.

Workgroup members commented on credibility issues and the possibility that others may think the guidelines are open to review at any time. Members commented that this issue affects every child support case.

The Council voted to revise Guideline Section 8.a. as soon as practicable and that in the interim, the memo drafted by Judge Armstrong should be sent to the child support community and the courts.

#### **Relocation Issues Workgroup**

**Russell Smoldon**

Russell Smoldon, chair, reported that the group held its first meeting on January 23, 2001. Discussion focused on issues that arise when a parent and child relocate a great distance away from the other parent, including increased transportation costs and decreased parent-child access. The members decided to draft some recommendations to bring to the Council. Because the issue is co-mingled with non-child support issues, the recommendations will be shared with the Domestic Relations Reform Study Subcommittee for their input.

Arizona law does not address travel costs. The group will look at addressing this issue either in the child support guidelines or in statute. Penny Higginbottom will conduct research and prepare a memorandum for the workgroup and Council. Workgroup members reported that they believe the issue to be worthwhile and that consensus amongst the members was reached quickly.

#### **Non-Disclosure of Information Indicator Workgroup**

**Kat Cooper**

The workgroup has worked on developing criteria for removal of the non-disclosure of information indicator (NDI) when one has been placed on a child support case on the ATLAS system. The Council previously decided to keep the NDI on the system for the life of the child support case.

The workgroup has studied the benefits and drawbacks of three removal methods:

**1) Automatic Removal – NDI removed upon Order of Protection (OP) expiration.**

ATLAS is not connected to all courts that issue Orders of Protection (OP).

NDI is set based on when OP is issued, not when served.

No process to determine if OP issued in another state has expired.

May be in violation of A.R.S. 13-3602.

Passage of time in domestic violence cases is not sufficient to warrant automatic removal.

Most states do not automatically remove the NDI. Of the few who remove the NDI based on OP expiration, most do not have automated systems in place to date. Those states maintain the NDI for an indefinite period of time.

Staffing and programming considerations to automation systems.

**2) Removal by Affidavit – NDI removed if ordered by a child support court in the state.**

Jurisdiction issues – does the court have jurisdiction to remove the NDI or should an administrative process occur through the IV-D agency first? Which courts have jurisdiction for removal? If any?

Removal by court order may be a violation of federal law.

Notification of removal to all parties, including the IV-D agency

Treatment of IV-D vs. non-IV-D cases.

Removal treatment based on two scenarios: 1) NDI placed on cases under either a court order, OP, or under A.R.S. 13-3602; or, 2) NDI placed on IV-D cases under ‘good cause’ status.

Potential violation of federal law requiring keeping NDI set even though the OP has been quashed.

**3) Removal by Court Order – NDI removed based on written affidavit providing notice that the risk of violence has ended.**

Liability/lack of immunity for courts/staff.

Who has the right to request removal?

Removal of NDI from victim and child(ren) or only the victim?

Basis of proof that risk has ended.

How to ensure the applying party is not under duress to request removal.

What constitutes due diligence on the part of court/agency staff? (no judicial immunity)

Insufficient staff available to conduct research.

OP still valid.

Should a child support caseworker approve the removal first?

Upon victim’s request, should removal occur automatically or should it instead trigger an investigation by the IV-D agency?

Warnings to the victim on the affidavit.

In addition to state removal processes, the federal legislation requires each state to provide an override process through a court. A drawback to this procedure is to a parent who is trying to locate their children and who have a legitimate court order for access. The process could potentially be lengthy thereby delaying parent-child access time.

Megan Hunter reported on her contact with other states regarding their removal processes. The states report that this issue has been difficult to deal with. Most states have made limited policy decisions and report that the process is still too new to have anything firmly established.

Ms. Cooper reported that there is not a federal requirement to remove the NDI; however, the topic is under discussion because Council members raised concerns regarding a need for a removal process.

Members from domestic violence advocacy groups will be invited to upcoming NDI Workgroup and Council meetings.

Benidia Rice reported that the agency is still conducting research on removal processes before making any formal decisions. Currently, they are leaning toward the affidavit process.

The Council commented that more information is needed on both IV-D and non-IV-D issues before a vote will be called. Additionally, the Council recommends uniformity in policy between the IV-D and non-IV-D sides.

The Council voted unanimously to hold a vote on this issue until a future meeting.

### **Legislative Update – DCSE**

**Benidia Rice**

The Division proposed only one bill this session, S.B. 1032, which would allow the Division to issue administrative income withholding orders against lump sum payments to a noncustodial parent and to allow the Division to assess a \$25 penalty for returned check fees. This bill is expected to pass.

### **New Business**

Russell Smoldon recommended that a contingency from the Council and the Domestic Relations Reform Study Subcommittee meet with members of the Legislature each year to provide an open forum for sharing of domestic relations-related legislation. Members commented that constituents have a right to contact legislators and propose legislation. The forum would not prohibit any constituent's right to propose legislation. Benidia Rice pointed out that in some instances the IV-D agency, because of their unique position, would not be able to support certain bills. Council members agreed to use the forum as an educational resource and not a lobbying agent.

David Norton proposed that the Council give a certificate of appreciation and recognition to members when they leave the Council. Megan Hunter explained that certificates are sent from the Supreme Court to members appointed by the Chief Justice. She will draft a certificate to be sent to all members.

### **Public Comment**

No public comment.

### **Next Meeting of the Council**

The next meeting will be held March 27, 10:00 a.m. - 2:00 p.m. at Arizona State Courts Building, Conference Room 345 A/B, 1501 W. Washington, Phoenix, Arizona.

### **Adjournment**

Judge Hicks adjourned the meeting at 1:00 p.m.