

CHILD SUPPORT COORDINATING COUNCIL SUBCOMMITTEE  
Meeting Minutes - April 12,2001

Council Members Present:

Bryan Chambers for James W. Hazel, Jr.

David Norton

Kat Cooper for Michael Jeanes  
Foster

Benidia Rice

Honorable Rhonda Repp Honorable Kathi

Bruce Gentillon  
Gillespie for Noreen Sharp

Janet Scheiderer for Dave Byers Kim  
Russell Smolden

Honorable Peter Hershberger  
Honorable Bethany Hicks

Bianca Varelas for Barbara LaWall

Council Members Absent:

Honorable Linda Aquirre

Chuck Shipley

Honorable David Petersen Jodi R. Beckley

John Clayton  
Higginbottom

Honorable Monica Stauffer Penny  
Carnela Trapani Honorable David Ostapuk

AOC Staff Present:

Isabel Gillett

Karen Kretschman Megan Hunter

Guests Present:

Kelly Campbell  
Violence

Arizona Coalition Against Domestic

Judy Bushong  
County

Clerk of the Superior Court in Maricopa

Jane McVay  
Therese Martin  
Ventrelia

Division of Child Support Enforcement  
Office of the Attorney General Robert  
Office of the Attorney General

Call Meetiniz to Order

The meeting was called to order by Representative Peter Hershberger at 8:45 a.m. at the Arizona

State Courts Building, 1501 West Washington Street, Suite II 9, Phoenix, Arizona 85007, on April 12, 2001.

#### Announcements

Co-Chair Hershberger welcomed the Council members and guests, then introduced himself. Co-Chair Hershberger explained that a sound system is being used for the first time to enable members and the public to hear each other better.

Co-Chair Hershberger announced that Judge Monica Stauffer, Greenlee County, was recently appointed to the Council by Chief Justice Zlaket. She replaces Judge Robert Duber 11.

Co-Chair Hershberger requested that members notify Ms. Hunter prior to meetings that they will be unable to attend. Ms. Hunter contacts members prior to each meeting to inquire of their attendance plans and the meeting is then held on the basis that a quorum will be reached.

Co-Chair Hershberger thanked the members for their attendance at this meeting.

#### Approval of Minutes

The co-chair called for any corrections or additions to the minutes from the February 27, 2001 meeting and noted that an amendment had already been made to the Public Comment section on the last page.

MOTION: To approve the Minutes from the February 27, 2001 meeting of the Child Support Coordinating Council Subcommittee as amended. Motion was seconded and passed.

#### Legislative Update - Council

Judge Mark Armstrong

Judge Armstrong explained that the Council recommended three legislative proposals amending child support statutes to the Arizona State Legislature. All three bills are proceeding through the legislature without obstacle. Judge Armstrong offered testimony on two of the bills shortly after they were introduced.

Senate Bill 1436, employer cooperation, would amend A.R.S. §25-513 by making technical changes and is proceeding through the legislature without difficulty.

2

Senate Bill 1487, intrastate transfer procedures, would amend A.R.S. §25-502 by making some technical changes and outlining a procedure for intrastate transfer procedures between counties.

Senate Bill 1057 would amend several statutes including one that allows judges to suspend interest on child support cases when an individual is incapacitated or incarcerated, another dealing with self-employed parents, and another that would be repealed upon passage. A.R.S. §25-503.01 was amended recently in the legislature from requiring a person to be in arrears "90 consecutive days" to "three months." The change was seen as a positive one.

Russell Smoldon asked if any other bills had been proposed outside the Council that would negatively impact family law-related issues. Judge Armstrong explained that a bill changing the term "visitation" to "parenting time" looks like it will pass.

Kat Cooper explained that the Clerk of Superior Court (Maricopa County) has been working with Senator Mary Hartley regarding Senate Bill 1190, enforcement of spousal maintenance.

Amendments have been drafted that would permit the courts to gain access to certain enforcement tools at the state level through the Department of Revenue.

Benidia Rice further explained that the bill will also increase dissolution, separation and

post- dissolution filing fees by \$25. The fees will be deposited into a spousal support enforcement fund operated by the Department of Economic Security to be used for enforcement of spousal maintenance orders for people who do not have children. Under current federal law, the Division of Child Support Enforcement cannot enforce spousal maintenance only cases - a child support order has to be included. IV-D monies cannot be used to enforce spousal maintenance orders.

Representatives Foster and Hershberger commented that they are attempting to get legislators to run family law bills through appropriate committees such as the Council and/or the Domestic Relations Reform Study Subcommittee in an attempt to help educate them in these very specialized areas.

#### Legislative Update - DCSE

Benidia Rice

This was thought to be a non-controversial bill but has ended up with a few problems. The wage laws require employers to release money within seventy-two hours upon termination of an employee or within five days if the employee leaves employment voluntarily. Upon DCSE's amendment the bill would require the employer to hold the money for thirty days in order for DCSE's administrative process to take place if the employee wanted to dispute the lump sum attachment. The amendment includes deletion of a requirement that employers notify DCSE when an employee leaves employment and a lump sum payment was going to be withheld. Although this would have been an effective tool for DCSE, the automation requirements for employers would be too burdensome at this point. A delayed effective date of January 1, 2002 is included in the amendment. All indications point to passage of this bill.

3

#### Non Disclosure Indicator

Kat

Cooper

Kat Cooper referred members to the minutes from the February 27, 2001 meeting regarding removal of the NDI. The Council's initial recommendation was to keep the NDI on a child support case in the state case registry for the life of the case. The workgroup researched removal methods used in other states including: 1) automatic removal; 2) affidavit removal; and 3) court order removal.

After researching the issues associated with each removal process the workgroup:

- 1) Does not recommend automatic removal because the removal would be based on date of issuance of the Order of Protection instead of the date of service, which is a more accurate timetable for expiration of the order.
- 2) Recommends removal by affidavit of the victim. DCSE would review the affidavit to ensure that the conditions protect the information and would apply to both IV-D and non-IV-D cases.
- 3) Recognizes DCSE as the ultimate base of responsibility about removal. If there is a court order to remove the NDI, DCSE would review the case to decide whether to proceed with removal.

Bob Ventrella, Assistant Attorney General, reported that if a person requests removal of the NDI and they produce an affidavit requesting such, federal law requires DCSE to review the affidavit to determine if it is appropriate to remove the NDI. This constitutes a change in circumstance

which, by federal law, DCSE is required to review. DCSE retains discretion to remove or not remove the NDI and removal would be based on other case information. If an Order of Protection is in place, DCSE believes that under federal law DCSE could not remove the NDI because federal law makes the Order of Protection that is in place the minimum standard.

Regarding court ordered removal, Mr. Ventrella explained that under federal law, it is the responsibility of DCSE to review any information that comes to them. They are responsible under A.R.S. §46-422 for the state case registry, including non-IV-D cases; therefore, they have to update the information.

DCSE is not sure that the court, at least initially, would have jurisdiction to remove the NDI from the state case registry - it would probably require a statute. Only two states address court removal: 1) Florida - has a court rule and a statute that says if a court is going to remove the violence indicator, notice must be given to the alleged victim; 2) Iowa - removal is tied to the override process - if someone needs to get information in the federal case registry, they must go through an override process. If it is found that the court has jurisdiction, then the court can remove the NDI.

Mr. Ventrella further commented that if the court started taking jurisdiction, further questions would arise such as a court's jurisdiction to override another court's Order of Protection; this could potentially create forum shopping. The NDI is not intended to flag an individual - it is intended to protect the victim and there is no irreparable harm. It is up to DCSE to maintain the NDI and

4

determine if it is appropriate to remove it.

Benidia Rice explained that DCSE met with the court, reviewed federal law and has concluded that the responsibility and liability of removal of the NDI lies squarely with the agency regardless of whether it is an affidavit or court ordered removal. There is a process in place to allow a person to get information protected by the NDI.

Ms. Rice strongly encouraged the group to accept the fact that the responsibility and liability lies with the agency, that DCSE accepts the responsibility and believes DCSE is charged under federal law with maintaining the registry. They will remove the NDI upon investigation after receipt of an affidavit from the alleged victim. If the court orders removal, DCSE would still have the responsibility of investigation and ultimate decision-making authority.

If the court were petitioned to remove an NDI, it would first have to determine if it had jurisdiction, and secondly, whether the NDI should be removed. At that point, if the court decided it had jurisdiction, and directed DCSE to remove the NDI, it would be incumbent upon DCSE to litigate that in a higher court.

Judge Hicks commented that from the court's perspective, this is a jurisdictional issue which may or may not tie the courts' hands. Realistically she could not imagine it would be likely or usual for a court to order disclosure when the victim has not been served. It is more likely to come by a request by the victim. Judge Hicks receives requests daily to release an address of someone who is involved in a IV-D case and she automatically refers those to DCSE because of sensitivity to domestic violence issues.

Ms. Rice explained that the agency is in the process of developing a protocol (process of placing and removing the NDI). The goal is to remove the virtual indicator by July and have a true NDI on cases with court orders or in cases where the alleged victim has requested placement. DCSE will have in-house procedures that will address removal. Notices have been sent to all custodial

parents giving them the opportunity to provide information to retain the NDI on their case. If an Order of Protection or other court order does not exist, the NDI will be removed from those cases. Russell Smoldon asked why noncustodial parents were not notified. Ms. Rice explained that according to state law, DCSE is required to keep information confidential regarding the person who has applied for DCSE services; however, they are not required to keep other parties' information confidential, unless the source of the information requires it.

Ms. Cooper asked the Council to approve the workgroup's recommendations and approve DCSE's responsibility to maintain the N-DI.

Judge Hicks inquired about the federal override process. Kim Gillespie explained that the process is outlined in the federal mandate. A process through the court exists now. DCSE has always maintained and protected that information. The federal mandate simply places an indicator on the case. The noncustodial parent has the ability to come to court and request that information

5

to be released. If the court decides the information can be released or if the person can be served in another manner or if they need info from FPLS. Ms. Gillespie commented the override process has existed for at least seventeen years. If a parent wants visitation, he/she can go to court and request it, the practice of DCSE has been and is to file a motion for protective order or to contact the custodial parent and find out if he/she objects to identifying information being released to the other parent.

MOTION: The Council approve a recognition that DCSE has responsibility for maintaining this database under state law and that the Council recommends to DES that the NDI be able to be removed through an affidavit process after an investigation is done by the department.

The motion was seconded and passed.

#### DCSE Performance Audit

Benidia Rice

Ms. Rice explained that she will provide a full report on the Auditor General's Performance Audit of DC SE and announce who will participate on the workgroups as recommended by the Audit. Benidia noted that many people in the room had been contacted regarding membership on the workgroup and that a date will be announced at the next Council meeting.

#### Workgroup Reports Finance

Benidia Rice This group has not met since the February 27, 2001 Council meeting. Bryan Chambers

explained that Senate Bill 1615 is intended to alleviate some of the funding problems for the County Attorney's offices which manage the child support program in their particular county. The counties contribute local monies to the cost of running the child support program and the appropriation is expected to alleviate some of that burden. The counties in which DCSE operates the child support program rely on state appropriations, whereas the counties rely on local monies. The bill is expected to pass.

Guidelines

Judge Mark Armstrong

Judge Armstrong explained that the Guidelines workgroup has met three times. The workgroup's purpose is to review public comment over the four-year period between federally mandated guidelines reviews.

The group has been tied up the past three meetings with section 8.a., uncovered medical expenses. In February, the Council voted to recommend changing section 8.a. as soon as possible.

The Committee on Superior Court and the Arizona Judicial Council voted to recommend the change to the Supreme Court. On March 28, 2001, the Supreme Court adopted the change with an effective date of May 1, 2001.

The change was positive in that it simplified the use of the guidelines. Prior to the change, the court was directed to apportion between the parties \$250 of uncovered medical expenses included in the Schedule of Basic Support Obligations. The change directs the court to apportion only expenses included in I.R.S. Publication 502. The change does not change the actual child support calculation.

The next meeting is scheduled for later today; the group will review public comment, child support expenditure tracking and overtime/bonus income. Items that will be discussed are intended to clarify the guidelines, not substantially change them.

Relocation Issues

Russell Smoldon

This group has not met since the February 27, 2001, Council meeting. The next meeting will be held April 27, 2001.

Centralized Payment Processing

This group has not met since the February 27, 2001, Council meeting. The next meeting will be held April 23, 2001.

New Business

Bryan Chambers explained that the Arizona Family Support Council will hold a Spring Conference on April 20, 2001 at the Viscount Suites Hotel in Tucson and invited interested individuals to attend. He also explained that for the first time, awards are being presented to certain individuals for outstanding achievement in the child support field. He recognized three award winners that are present at this meeting: 1) Kim Gillespie - Distinguished Service Award; 2) Judy Bushong - Clerk of Superior Court Award; and 3) Clerk of Superior Court in Maricopa County - Outreach Award for their "Family Ties & Knots" video. The group acknowledged the winners with a round of applause. Kat Cooper, on behalf of the Clerk of Superior Court in Maricopa County, expressed that Ms. Gillespie is very deserving of this special honor. Benidia Rice commented that she attended Megan Hunter's Guidelines training at the recently held Commission on Minority and Women Conference. She commended Ms. Hunter's presentation and commented that she represented the Council very ably.

7

Public Comment

No public comment was heard.

Next Meeting of the Council

The next meeting of the Council will be held on May 22, 2001 in Conference Room 3 45 A/B of the Arizona Courts Building from 10:00 a.m. - 2:00 p.m.

Adjournment

MOTION: To adjourn the meeting. The motion was seconded and passed.

8