

# *Ad Hoc Custody Workgroup Minutes*

<b>Date:</b> March 19, 2010	<b>Time:</b> 10:00 a.m. – 1:00 p.m.	<b>Location:</b> State Courts Building Conference Room 230
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**Minute Taker:** Susan Pickard

**Members Attending: Quorum attained**

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|---|--|
| <ul style="list-style-type: none"> <li>■ William Fabricius, Chair</li> <li>■ Sidney Buckman</li> <li>■ Daniel Cartagena</li> <li>■ Grace Hawkins</li> <li><input type="checkbox"/> Patricia Madsen</li> <li><input type="checkbox"/> Patti O’Berry</li> <li>■ Donnalee Sarda</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Ellen Seaborne</li> <li><input type="checkbox"/> Russell Smolden</li> <li>■ John Weaver</li> <li>■ David Weinstock</li> <li><input type="checkbox"/> Thomas Wing</li> <li>■ Steve Wolfson</li> <li><input type="checkbox"/> Brian Yee</li> </ul> |
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**Staff/Admin. Support:** Kathy Sekardi, Susan Pickard

**Guests:** Suzanne Bednarz; Kendra Leiby, AZCADV; Theresa Barrett; Joi Davenport; Michael Espinoza; Brooks Gibson, M.ED., LPC; Dene’ Brown; Honorable Colleen McNally, Thomas Alongi (proxy for Patricia Madsen)

**Matters Considered:**

1. In order for this group to attain a quorum of its members, Dr. Fabricius designated each member as either a voting member or a participating member for the purposes of this meeting. The voting members included DRC members who had either participated in previous meetings of the Ad Hoc Custody Workgroup or expressed continuing interest: William Fabricius, Sidney Buckman, Daniel Cartagena, Grace Hawkins, Donnalee Sarda, John Weaver, David Weinstock, Steve Wolfson and Brian Yee.

2. After receiving background on the development of the policy statement, which was included as a floor amendment; removing the joint custody presumption, the members discussed SB1314. To remain consistent with other statutes and the most recent draft of the Parenting Time Plan, the following changes were made:

- 25-103. Purposes of title; application of title
  - A. It is declared that the public policy of this state and the general purposes of this title are:
    - 1. To promote strong families;
    - 2. To promote strong family values.
  - B. IT ALSO IS THE DECLARED PUBLIC POLICY OF THIS STATE AND THE GENERAL PURPOSE OF THIS TITLE THAT ABSENT EVIDENCE TO THE CONTRARY, IT IS IN A CHILD’S BEST INTEREST:
    - 1. TO HAVE ~~SUBSTANTIAL AND MEANINGFUL~~ **FREQUENT AND CONTINUING** PARENTING TIME WITH BOTH PARENTS.
    - 2. TO HAVE BOTH PARENTS PARTICIPATE IN DECISION-MAKING ABOUT THE CHILD.
  - C. A COURT SHALL APPLY THE PROVISIONS OF THIS TITLE IN A MANNER THAT IS CONSISTENT WITH ~~THE REQUIREMENTS OF THIS SECTION.~~

The amended language was approved by motion and vote (7 in favor; 1 opposed; 0 abstentions). Staff will forward this information as well as the list of concerns expressed about the bill in this meeting to Senators Gray and Allen. The members then heard from members of the public who were present.

3. The group had originally planned to begin discussing the previous assignment of replacing legal custody with parental decision-making and physical custody with parenting time; however, due to the impending passage of SB1314 and the directive from Senator Gray, DRC Chair, to the DRC – Ad Hoc Custody Workgroup to review and develop proposed revisions to SB1314; domestic relations, that plan was scrapped in favor of a thorough examination and comprehensive re-write of the custody statutes. To that end, Dr. Fabricius established a Steering Committee, charged with developing a work plan for the Ad Hoc Custody Workgroup. The Steering Committee members are Tom Alongi, Sidney Buckman, William Fabricius, Brooks Gibson, Grace Hawkins (Chair), Judge Colleen McNally, and will meet telephonically on April 1 at 3:00 p.m.

4. The next meeting of the DRC – Ad Hoc Custody Workgroup is scheduled for April 16. Everyone at the table and on the phone was invited to attend.

**Votes Taken:**

- 1. Motion to recommend SB1314 as amended in paragraphs B.1 and C as noted above. Motion passed 7-1-0

**Ad Hoc Custody Workgroup  
Minutes**

<b>Date:</b> April 16, 2010	<b>Time:</b> 10:00 a.m. – 1:00 p.m.	<b>Location:</b> State Courts Building Conference Room 345B
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**Minute Taker:** Susan Pickard

**Voting Members Attending: Quorum attained**

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|--|---|
| <input checked="" type="checkbox"/> William Fabricius, Chair | <input checked="" type="checkbox"/> Brooks Gibson         |
| <input checked="" type="checkbox"/> Thomas Alongi            | <input checked="" type="checkbox"/> Judge Colleen McNally |
| <input checked="" type="checkbox"/> Sidney Buckman           | <input checked="" type="checkbox"/> John Weaver           |
| <input type="checkbox"/> Daniel Cartagena                    | <input type="checkbox"/> David Weinstock                  |
| <input type="checkbox"/> Grace Hawkins                       | <input checked="" type="checkbox"/> Steve Wolfson         |

**Participating Members Attending:**

- |   |   |
|---|---|
| <input type="checkbox"/> Bruce Cohen                | <input type="checkbox"/> Ellen Seaborne       |
| <input type="checkbox"/> Mike Espinoza              | <input type="checkbox"/> Russell Smolden      |
| <input checked="" type="checkbox"/> Patrick Lacroix | <input type="checkbox"/> Thomas Wing          |
| <input checked="" type="checkbox"/> Patricia Madsen | <input checked="" type="checkbox"/> Brian Yee |
| <input type="checkbox"/> Donnalee Sarda             |   |

**Staff/Admin. Support:** Kathy Sekardi, Susan Pickard

**Guests:** Theresa Barrett, Administrative Office of the Courts; Gina Cash, Legislative Staff

**Matters Considered:** (continue on separate sheet if necessary)

1. **Action Item:** The Minutes for the March 19 meeting of this workgroup will be amended to reflect the participation of Thomas Alongi and Patricia Madsen.
  2. Fabricius provided a Steering Committee update. The Steering Committee met by phone on April 1 and amended the list of Voting Members to 10 individuals (Alongi, Buckman, Cartagena, Fabricius, Hawkins, Gibson, McNally, Weaver Weinstock, Wolfson), and established 4 task forces to present initial drafts at the April 16 Workgroup meeting (25-401; Jurisdiction – Alongi, Buckman, McNally; 25-402; Definitions – Alongi, Buckman, Gibson; 25-403; Best Interests – Fabricius, Hawkins; “Decision Tree” – Alongi, Buckman, McNally)
  3. The Chair established rules for conducting business within the workgroup, noting the free flow of ideas while conducting oneself in a manner suited for a legislative workgroup. He would like these meetings to be respectful, highly participatory, with evidence, experiential and research-based deliberations.
    - a. To address stakeholder inclusion and quorum issues, Dr. Fabricius announced the classification of members and circumstances for reclassification as following:
      - i. Members of the Public, who are attending and providing ideas for improvements or assisting in identifying unintended consequences in draft proposals during the call to the public, may become a participating member.
      - ii. Participating Members may, by a majority vote of the Voting Members, become a voting member.
      - iii. Voting Members, who are not attending, may be designated as participating members.
    - b. To assist staff with version control and commenting the proposed amendments for submission to the Domestic Relations Committee (DRC) and legislative members, all proposed amendments should contain standard header information. This information includes:
      - i. Version Number
      - ii. Date of version
      - iii. Current section number and short title e.g. 25-401; jurisdiction
      - iv. Names of members
      - v. Purpose
- It was also agreed that proposed amendments be drafted as separate documents and sent as attachments to an email rather than being included in the body of an email message.

4. By general consensus, the members set an ambitious meeting schedule; May 7, May 27, June 25, August 6, August 27 and September 17.
5. Katy Proctor, AOC Legislative Liaison, provided an update on SB1314. She noted that while the policy statement may not solve the problems which it is trying to address, the statement will serve the purpose to set roadmap for the workgroup's further work. This bill version, which retains the attorney fee language and the workgroup's additional suggestions being added via a floor amendment, is moving forward. The section of the amended bill addressing 25-103 is as follows:
  - 25-103. Purposes of title; application of title
    - A. It is declared that the public policy of this state and the general purposes of this title are:
      1. To promote strong families;
      2. To promote strong family values.
    - B. IT ALSO IS THE DECLARED PUBLIC POLICY OF THIS STATE AND THE GENERAL PURPOSE OF THIS TITLE THAT ABSENT EVIDENCE TO THE CONTRARY, IT IS IN A CHILD'S BEST INTEREST:
      1. TO HAVE SUBSTANTIAL AND MEANINGFUL FREQUENT AND CONTINUING PARENTING TIME WITH BOTH PARENTS.
      2. TO HAVE BOTH PARENTS PARTICIPATE IN DECISION-MAKING ABOUT THE CHILD.
    - C. A COURT SHALL APPLY THE PROVISIONS OF THIS TITLE IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION."
6. 25-401; jurisdiction
  - a. To assist with ease of use, UCCJEA should be moved from Chapter 8-Uniform Child Custody Jurisdiction and Enforcement Act to before or be included in Chapter 4; Child Custody and Visitation.
  - b. **Action Item:** Staff will contact Legislative Council regarding guidelines for renumbering and moving entire sections.
  - c. The members agreed that we should avoid decimal-pointed paragraphs (i.e., 25-403.01 and 25-403.07) if at all possible.
  - d. Because this chapter includes provisions for grandparent visitation and *in loco parentis*, drafters should ensure that these issues are also included in this section.
7. 25-402; definitions
  - a. The drafters reviewed the current definitions in this section as well as those in Title 8 for adoption, juvenile court and termination of a parent-child relationship.
  - b. There was general consensus on the following definition of Parenting Time:
 

"Parenting Time", (formerly visitation), means the condition under which a parent has the right to have a child physically placed with the parent and the right and responsibility to make, during that placement, routine daily decisions regarding the child's care consistent with the major decisions made by a person having decision-making responsibilities.

However, it should be expanded to include discussion about

    - i. meaningful
    - ii. frequent (number of discrete times per month and number of transitions)
    - iii. substantial
    - iv. continuing
  - c. There was general consensus on the following definition of Decision-Making Responsibility:
 

"Decision-making Responsibility", (replaces the term "Joint Legal Custody"), means the condition under which both parents share 'legal custody' and neither parents rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order. Referencing the work by Dr. Lamb, the member consensus was to include discussion about or definitions for the issues listed below: *Legal custody decision*

    - i. Shared
    - ii. Final - Consultation requirement, if dispute final decision lies with parent A.
    - iii. Sole – For example, where significant domestic violence or abuse exists, or a parent is incarcerated.
  - d. Primary residence should be defined for instances of substantially equal parenting time. Suggested thoughts below:
 

The child's address for purposes of determining school district, when necessary for federal aid and tax purposes (head of household, child care and dependency exemptions) [where it is necessary... the court shall make it clear in the decree...] Move 25-403.07 into definitions – should the

designation of primary residence be added to the list of items that should be addressed in a parenting plan - *See Florida Statutes & Federal Statutes*

- e. Unanswered question – should terms included in the policy statement be defined.
  - f. **Action Item:** Tom Alongi will provide additional terms to be considered for inclusion by the drafters of this section.
8. 25-403; best interests of the child
- a. This section is being drafted with the understanding that it applies to decision-making responsibilities and parenting time.
  - b. The wishes of the child should be limited to the discussion of parenting time.
  - c. Paragraph A.3., as read by Bill, should be placed into the draft.
  - d. The domestic violence protective statement, previously in Paragraph C.6., should be returned to the paragraph.
  - e. Paragraph C.8. A question was raised about why a conviction is required only in this case; Tom Alongi and Patricia Madsen will consider and report on this at the next meeting.
  - f. Rework Paragraph D into a more positive statement. Suggested language that was offered by Judge McNally and Tom Alongi is below.  
The court shall adopt a parenting time plan that maximizes access with both parents consistent with the child's physical safety and emotional well being.
9. Decision Tree
- a. The members discussed, what is being termed at the moment as, the "Decision Shrub". The shrub currently contains: establishing jurisdiction, setting forth public policy, defining terms and addressing special circumstances (domestic violence, substance abuse, sexual molestation, etc.)
10. Brainstorming
- a. Research
    - i. Tom Alongi shared that he had contacted the National Conference of State Legislatures and National Council for Juvenile and Family Court Judges (NCJFCJ) seeking information about other states' experiences with the topics of domestic violence and joint custody presumptions. He will update the group upon receipt of information. He is working with Katheryn Yetter, Staff Attorney at NCJFCJ.
    - ii. Ensure that the research evidence is as non-political as possible, and is of high academic caliber
    - iii. Members are asked to send their research to Susan.
  - b. Legislative input
    - i. Judge McNally and Steve Wolfson provided ideas on how to maintain communication with the legislature. Including: Draft a letter on behalf of workgroup that invites legislative stakeholders to the meeting(s) for the purpose of engaging their input and keeping them up-to-date.
    - ii. The recipients should at minimum include Senator Linda Gray, Representative Steve Court, Senator Allen and Katy Proctor, AOC Legislative Liaison. Another legislator who was mentioned was Rep. Adam Driggs.
    - iii. In August/September the members should review the makeup of the Senate/House Judiciary, Health and Human Services and other committees, and research staff to the Minority and Majority Caucuses to which the proposed legislation could be assigned, invite beginning in August to start the dialog. Set a wide net, including those involved with SB1314.
    - iv. Dr. Fabricius asked Steve Wolfson to act as our "Legislative Liason"
  - c. Because completely rewriting the statutes may create an imbalance among fully and lesser funded lobbying factions, these folks should be invited to the table.
  - d. The goals are to address A.R.S. 25-401 et. seq. to make it clear and understandable without changing the good concepts contained therein.
11. Website
- Our materials will soon be on our website: [www.azcourts.gov](http://www.azcourts.gov) > AZcourts > Committees and Commissions > Supreme Court Committees > Domestic Relations Committee > our site coming soon!

**Votes Taken:** (continue on separate sheet if necessary)

1. No motions made or votes taken.

**Ad Hoc Custody Workgroup  
Minutes**

**Date:**  
May 7, 2010

**Time:**  
10:00 a.m. – 1:00 p.m.

**Location:**  
State Courts Building  
Conference Room 119A/B

**Minute Taker:** Kathy Sekardi

**Voting Members Attending: Quorum attained**

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|---|---|
| <input checked="" type="checkbox"/> William Fabricius, Chair              | <input checked="" type="checkbox"/> Brooks Gibson |
| <input checked="" type="checkbox"/> Thomas Alongi – Proxy Patricia Madsen | <input type="checkbox"/> Judge Colleen McNally    |
| <input checked="" type="checkbox"/> Sidney Buckman                        | <input checked="" type="checkbox"/> John Weaver   |
| <input checked="" type="checkbox"/> Daniel Cartagena                      | <input type="checkbox"/> David Weinstock          |
| <input checked="" type="checkbox"/> Grace Hawkins                         | <input type="checkbox"/> Steve Wolfson            |

**Participating Members Attending:**

- |   |   |
|---|---|
| <input type="checkbox"/> Bruce Cohen                | <input type="checkbox"/> Donnalee Sarda             |
| <input checked="" type="checkbox"/> Mike Espinoza   | <input type="checkbox"/> Ellen Seaborne             |
| <input checked="" type="checkbox"/> Patrick Lacroix | <input checked="" type="checkbox"/> Russell Smolden |
| <input checked="" type="checkbox"/> Kendra Lieby    | <input type="checkbox"/> Thomas Wing                |
| <input checked="" type="checkbox"/> Patricia Madsen | <input type="checkbox"/> Brian Yee                  |

**Staff/Admin. Support:** Kathy Sekardi, Kay Radwanski

**Guests:** Theresa Barrett, Administrative Office of the Courts; Katy Proctor, AOC Legislative Liaison; and Holly Hunnicutt and Cav Smith, Legislative Council

**Matters Considered:** Quorum in attendance.

1. Approval of Minutes from April 16, 2010

Motion to approve the April 16, 2010 draft minutes was seconded. No discussion. Minutes were approved unanimously.

2. SB1314 – Domestic Relations bill

SB1314 was signed by the Governor and will become effective on July 29, 2010. Ms. Proctor indicated that she appreciated all the work done by many individuals, and that the collaborative efforts placed the DRC in a good position at the legislature.

A question was asked concerning what the status is of a policy statement. Ms. Proctor answered that the policy statement compliments the existing standards of statutes. The statement is not intended to trump or override other statutes. Furthermore, it has no legal force and effect on other sections.

Ms. Proctor reported the AOC's legislative group usually solicits internally for bill drafts in July. Ms. Proctor offered to assist with drafting, putting proposals together and running the proposals through various internal committees. If the DRC proposals are passed through AJC she could obtain their opinion as to whether or not they would support the proposals. If AJC were to decide to support, then Ms. Proctor would be able to purport to the legislature that the AJC supports this legislation. One of the internal committees is the Committee on Superior Court (COSC) which is staffed by Kay Radwanski. The next meeting of COSC is September 10th wherein Ms. Proctor could attend to share draft input and concerns from judiciary on pieces of legislation. Meeting with COSC also provides an additional opportunity for input.

3. Legislative Council:

Arizona Legislative Council members, Cav Smith and Holly Hunnicutt, presented information regarding re-writing of bill drafts. Ms. Hunnicutt suggested it's easier to clean-up bill language rather than making complicated substantive changes. Unless there is a compelling reason, Ms. Hunnicutt cautioned against giving

new numbers to sections and sub-sections when re-organizing or rewriting as it may create ambiguity and errors. Many agencies using section and sub-section numbers have relied on the statute numbers remaining static as they are an integral part of their forms and documentation. Furthermore other bills may amend those sections that are being changed. Making these kinds of changes could create an undue burden on agencies that work with these section/sub-section numbers. She suggested an alternative method is to transfer an article and assign a new section/sub-section numbers. She also suggested using a delayed effective date when statutes can be conformed during the next session.

Cav Smith stated the use of legal jargon is unnecessary and using normal language allows the reader to gain a greater understanding. Mr. Smith suggested sending bill drafts in a Word document format rather than an Adobe PDF document. The Word document format allows them functionality of the cut and paste feature. The deadline for agencies to provide bill drafts is November 15<sup>th</sup>, however, Legislative Council will accept bill drafts sooner than this date. If drafts are provided earlier than this date, Legislative Council will draft and transfer to a final version and inform the sponsor that it is ready to be pre-filed. This allows agencies (such as the DRC) to review what Legislative Council has drafted and to make further changes before being filed. Cav Smith suggested making sure that the workgroup’s goal is as understandable as possible. Determine what the intent is when making these changes. Go back to the statement of intent to see if it clearly reflects the intent. The statute is where the intent of the bill is explained completely. Placing an intent section with an actual bill should be avoided.

Russell Smolden shared that since 2010 is an election year, a lot of new legislative members will take an interest on issues and will be busy by November, so getting the drafts done earlier is better. Russell suggested this workgroup have the drafts as close to bill-ready form for Legislative Council. Russell explained he has worked many years with the legislature and offered his experience to the workgroup when drafting language.

4. Steering committee report

Grace Hawkins reported the steering committee met telephonically on had a brief meeting to discuss current status and where the committee was going next. The next task force group assignments are:

- 25-403.01, and 25-403.06 - Bill and Grace
- 25-403.02 – Brooks and Grace
- 25-403.03, 25-403.04 and 25-403.05 - Tom, Judge McNally and Sid

Grace Hawkins asked if 403.06 may be better placed after custody 403.01. Russell reiterated that changing around the statute numbers create retraining issues and Theresa Barrett noted that Ms. Hunnicutt’s message was to reach out to the agencies that use the statute numbers prior to changing their sequence. Bill asked Russell to double-check with Legislative Council to ascertain whether or not the “.0” could safely be removed from the statute numbers. (Russell reported later during the meeting that Ms. Hunnicutt didn’t see a problem removing the “.0”, but that she hasn’t checked all her resources.) Other ramifications may center around these references in the Arizona Family Law Rules of Procedure (ARFLP) and the Model Parenting Time Guide as well as the Child Support Guidelines.

5. Open floor to brainstorming

Bill encouraged comments from the floor or public to put on the table.

From	Comment
Judge Cohen	(Refer to handout in packet) 1. Development of factors for custody that are issue specific. The statutory factors that are particular to legal custody be segregated from statutory factors that are specific to parenting time. 2. If there is to be a departure from custody titles and designations (such as sole or joint), how will our “Parenting orders” be subject to enforcement for interstate custody battles and for criminal charges (that all use legal custody designation as an important factor.) 3. Re-organize the statutes so that in loco parentis and third party custody and visitation be set forth together rather than be separate statute for grandparents, etc. 4. Further, relocation should be detailed in its own statutory section.

<p>Danny Cartagena</p>	<p>25-403(a)(2) – wishes of child as to custodian  Change custodian to something else  Wishes of child regarding parenting time?  Context – where is the child physically?  What does the child want if able to articulate  Task force: Wishes of the child as to parenting time when appropriate  Patricia/Tom: Wishes of the child if of suitable age and discretion  Taking into consideration the age of the child  Joi: Should there be an age (e.g., six-year-old child)?  Patricia – consensus is to stop referring to custodian  Mike – Will this hinder parenting time?  Grace – would be a factor to be considered; not defining factor  Mike – multiple children who want to go with each parent  Grace – judge would consider wishes of each child  Barbara – go broader than wishes. Child’s perspective broadens – child’s viewpoint  Mike – situations where child is treated differently before divorce and then when it’s filed (e.g., no TV when family intact but at time of divorce, child can now have X-Box and television in bedroom); how to articulate that – judge to have in camera interview with child  Grace – one of many factors that judge will consider; parent will present concerns in court regarding issues that judge should explore; judge takes into account what each parent says in court, aware that parents may try to influence child; professionals trained to ask questions. May not be appropriate for statute – general language. How judge ascertains – trainings, how to interview children. Specificity may encourage parents to coach/influence child in preparation of interview.  Russell – good/bad – flexibility v. inflexibility</p>
<p>Danny Cartagena</p>	<p>25-403(a)(7) - Primary care – whether one or both parents are active parents  Removes notion of “primary care” where it’s used adversely  Sid – agrees. How is the child’s care apportioned between the parents? Rather than who provided what.  Add something about parents’ capability to provide care going forward. Family unit is different and things will change. Don’t focus on just what they did but what can they do going forward.  Bill and Grace will be providing draft of this section.</p>
<p>Joi Davenport</p>	<p>Anything in statute that mandates judge to interview child? (age appropriate)  Bill – mechanism for information from child to judge  Joi – mandatory is strong  Patrick – ARFLP Rule 10 and Rule 12 – discretion to perform in camera interviews where appropriate; there are provisions that allow judges to make discretionary call  Sid – ARFLP means Arizona Rules of Family Law Procedure  Barbara – presented her empirical survey regarding child interviews found that some interview children others don’t; Family bench would resist mandate to interview children; don’t want to put child in situation. Judicial discretion is important to keep in statute.  Bill – good data always welcome  Bill - Australia law – child talks to child specialist who conveys child’s perspective to judge or into mediation with parents  Sid – Conciliation Court Services has similar practice  Patricia – rare that children talk to judges  Sid – counties w/o Conciliation Services – more child interviews with judges  Joi – is Conciliation Services different than evaluator?  Grace – explained various services, separate roles of CCS, evaluators, coordinators</p>
<p>Danny Cartagena</p>	<p>25-403(a)(10) – add false reporting of domestic violence  Patricia – conviction for false reporting of DV?  Danny – yes  Bill – will have report on that</p>
<p>John Weaver</p>	<p>Compared 2000 and 2010 (ARS) – interesting changes from political perspective  Number of statutes have doubled in 10-year period</p>

Mike Espinoza	Definition of Substantial - abundant – plentiful, maximum participation Meaningful – significant, abounding
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6. 25-401; jurisdiction

Pat Madsen reported Tom Alongi sent a draft copy of a re-organization of the custody statutes to their workgroup members. Tom drafted some language for jurisdiction and definitions. Two out of the three members were not in attendance so this group will report their progress regarding jurisdiction issues.

Danny requests he be considered to be a member on this task force.

Grace questioned whether or not moving the UCCJEA is a realistic expectation given the cautionary advice from Legislative Council. She suggests keeping this in mind when considering moving that section. Tom's version clarifies and directs to the later section with that information. This task force is requested to submit the documentation in the appropriate format for the next meeting.

7. 25-402; definitions

This task force reports they haven't met since April 16. This subject matter may continue to be a work in process because other words will need to be defined as the project progresses. Bill suggested that when the workgroup comes to an agreement on a definition, that terminology should be included in the ongoing drafts. Sid inquired as to what Florida has done with custody definitions. John Weaver stated the definitions are in separate paragraphs, and that Tennessee and Washington do the same. Grace provided staff the custody laws of Florida which were immediately provided to the entire workgroup via email. The workgroup will depend on John to research other states.

8. 25-403; best interests of the child

Grace and Bill reported that their intent in this section is (a) to incorporate the language of SB1314, (b) to revise the 11 statutory factors as needed; and (c) to provide some "decision tree" guidance regarding weighing of the factors and sequential steps for judicial consideration.

Comparison of original and revised 11 statutory factors:

Original 25-403.A	Proposed revision of 25-403.C
A.1.	eliminated because redundant; each parent now submits a parenting plan Replaced with C.1. feasibility of each parent's plan
A.2. – A.6	C.2. – C.6.
A.7.	replaced with new language in C.7. to broaden to consider relationships
A.8.	eliminated because vague
A. 9, A.10, A.11	C.8, C.9., C.10 (reordered)

The workgroup reviewed version number 2.

a. 25-403(A) Added (3). Strike "together" in (3).

In 25-403(A)(1) Why use the word "regular" versus "frequent"? Took out "frequent" and replaced with "regular" because frequent means many separate instances or frequent contact means many transitions. The intent was to spend more parenting time, not to recommend more transitions. Black font is what was presented to the workgroup last meeting; the blue font words are the newest revisions. Brooks suggests eliminating "regular" altogether.

b. 25-403(C) The workgroup agreed to keep the first sentence as is and to replace "...first consider any evidence contrary to either or both of the parents' proposals, including..." with "consider all relevant factors including..."

c. 25-403(C)(2) Barbara commented that "viewpoint" instead of "wishes" broadens the definition in order to keep discretion. Patrick thinks 25-403 will apply to both custody and parenting time issues; the judge has discretion to determine if relevant. Workgroup couldn't think of an instance where two lists would be needed; one list for custody issues and another list for parenting time issues. Everything applied to both parenting time and decision making. The workgroup decided to keep it simple with "perspective of child" then an evaluator can apply where necessary. The workgroup discussed the word "perspective" because it doesn't really mean the

child's opinion, frame of reference, or wishes of the child; rather it could be a third-party view. Discussed expanding the "child's wishes." The group agreed on the following language: "The child's own viewpoint and wishes."

d. 25-403(C. 6) Should the language be positive or negative language; "support" or "restrict"?

e. 25-403(C. 7) Added the word "the" where appropriate.

f. 25-403(C. 8) The group wanted to discuss whether a person had to be convicted of false reporting of domestic violence (8). Pat Madsen offered that the word "conviction" is in (8) because it is a legal determination of false reporting of domestic violence and it is better to err on the side of safety. The domestic violence statutes are criminal statutes.

g. 25-403(D) Eliminate the double negative in first sentence in (D) by striking "Absent evidence to the contrary that such a plan would not be in a child's best interest or would cause harm to a parent" and start with "Consistent with the child's physical safety and emotional well-being," then replace "favor a plan that allows the child the most substantial, meaningful, regular and continuing parenting time with each parent, with "the court shall adopt a plan that maximizes parenting time with both parents..." This new language will eliminate a qualifier on decision-making.

**Votes Taken:** (continue on separate sheet if necessary)

1. Motion to approve the April 16, 2010 minutes.
2. No other motions made or votes taken.

**Ad Hoc Custody Workgroup  
Minutes**

<b>Date:</b> May 27, 2010	<b>Time:</b> 10:00 a.m. – 1:00 p.m.	<b>Location:</b> State Courts Building Conference Room 230
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**Minute Taker:** Susan Pickard

**Voting Members Attending: Quorum attained**

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| <ul style="list-style-type: none"> <li>■ William Fabricius, Chair</li> <li>■ Thomas Alongi</li> <li>■ Sidney Buckman</li> <li>■ Daniel Cartagena</li> <li>■ Brooks Gibson</li> </ul> | <ul style="list-style-type: none"> <li>■ Grace Hawkins</li> <li>■ Judge Colleen McNally</li> <li>■ John Weaver</li> <li><input type="checkbox"/> David Weinstock</li> <li><input type="checkbox"/> Steve Wolfson</li> </ul> |
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**Participating Members Attending:**

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| <ul style="list-style-type: none"> <li><input type="checkbox"/> Bruce Cohen</li> <li>■ Mike Espinoza</li> <li>■ Patrick Lacroix</li> <li>■ Kendra Leiby</li> <li><input type="checkbox"/> Patricia Madsen</li> <li><input type="checkbox"/> Donnalee Sarda</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Ellen Seaborne</li> <li><input type="checkbox"/> Russell Smolden</li> <li><input type="checkbox"/> Judge Randall Warner</li> <li><input type="checkbox"/> Thomas Wing</li> <li><input type="checkbox"/> Brian Yee</li> </ul> |
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**Staff/Admin. Support:** Kathy Sekardi, Kay Radwanski

**Guests:** Joi Davenport, Ariel Serafin, Richard Franco, Gina Kash (legislative researcher, House Health and Human Services)

**Matters Considered:** Quorum in attendance.

1. Announcements

- a. Dr. Fabricius will be on sabbatical for one year beginning at the end of May. Grace Hawkins has volunteered to act as meeting moderator during this period. In this position, Grace will assist with meeting flow.
- b. Detailed minutes of each of this workgroup's meetings will be generated to document the process for possible publication. This idea was generated by Peter Salem, executive director of the Association of Family and Conciliation Courts.
- c. Process changes
  - i. Call to the Public/Brainstorming – each person will be given two minutes – during this portion of the meeting. Additional time will be available to address clarifying questions from the other members. The brainstorming session is not intended to be a substantive discussion.
  - ii. Section versions – The first version of a section will be presented to gather the initial reactions of the workgroup. The second version of a section, which may incorporate the initial reactions, will be presented to gather detailed input. The third version, when presented, should be the final or near final version of the proposed section. The final legislative version will be created upon the finalization of each section.

2. Call to the Public/Brainstorming

- John Weaver presented statistical data regarding the increase in the number of statutes enacted over the last ten years.
- Judge McNally asked that the workgroup develop a method for addressing definitions after approving changes to each section. She recommended that the definitions be looked at substantively.
- Sidney Buckman reminded the members of the importance of using broad language that does not

micromanage the court and preserves judicial discretion.

- Tom Alongi asked for direction on how the workgroup should handle ideas that are radically different from ideas presented by a taskforce.
  - Mike Espinoza reminded the members of the passage of SB1314 and the inherent guidance it received from this workgroup.
  - Dr. Fabricius set forth the process for sharing ideas with or joining a section taskforce.
    - Anyone having ideas they would like to share with a task force should send them to Susan Pickard. Susan will then share the idea with the members of that taskforce.
    - To comply with the Open Meetings Law, there should be no voting or polling outside of public meetings. No taskforce can consist of a quorum of the voting members of the main workgroup. Others can join a taskforce as long as it does not contain such a quorum.
    - Anyone having an interest in joining a taskforce should call Dr. Fabricius or Grace Hawkins.
3. 25-401: Jurisdiction (Taskforce: Tom, Sid, Colleen) No printed version was handed out to the Workgroup.  
Tom Alongi read a prepared revision to the statute. He noted that the proposed language adds a new sentence regarding jurisdiction, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) and the Parental Kidnapping Prevention Act (PKPA). It also changes “custody” to “decision-making responsibility.”
4. 25-402: Definitions (Taskforce: Tom, Sid, Brooks) Version 1, May 26, 2010.  
Mr. Alongi suggested that a list of definitions should not be built just for the sake of having a list. Judge McNally recommended that at the end of each presentation, members should decide on words from the presentation that should be defined. She suggested waiting until later in the process to approve definitions since they could change as other parts of the statute are developed.

Members were asked to decide on the term for what is now known as “legal custody.” With the choices of “decision-making responsibility,” “shared decision-making authority,” and “parental decision-making,” the consensus was to use the term “parental decision-making.” As each section is completed and approved, it will be reviewed for necessary additions to this section.

Some of the concerns raised during the discussion of this term included:

- The need for the term to make sense in context. It was suggested that others, such as judges and members of the Committee on Superior Court, be asked for feedback.
- The possibility that other jurisdictions might not understand the term. Judge McNally recommended that a sentence in the Definitions handout should be included to ensure full faith and credit. The sentence reads: “For purposes of interpreting or applying any federal law, uniform code, or other state statute, ‘decision-making responsibility’ shall have the same meaning as ‘legal custody.’”
- Whether the term should include “joint,” “final,” or “sole” should be added to the term and whether such an addition would move the term away from the model. Members’ opinions were varied, and there was a concern about the power behind the “decision-maker” term. For example, could a parent who has sole decision-making power dictate what takes place during the other parent’s parenting time? Judge McNally noted that sole custody might be the appropriate order for some families but not for others. Dr. Fabricius suggested that an explanation of the court’s authority should be included. He also noted that the workgroup’s April meeting minutes endorsed the three-part definition.
- The effect of decision-making authority and parenting time. For example, if one parent scheduled a child’s extracurricular activities during the other parent’s time with the child, would the other parent be entitled to make up the time? Would that constitute deprivation of parenting time? How is time given back to a parent when there is a geographic distance involved? Should an activity that a child enjoys be taken away from him/her? Grace Hawkins noted that part of the parenting time plan should look at how to deal with decisions long term, to get parents thinking about how they will discuss and agree, and what to do if they cannot agree. Danny Cartagena suggested that a plan should include three to four emails per week regarding schedules. If parents share more decision-making, then more collaboration occurs. He said parents need to discuss and find solutions, and if

they are more on even ground, they will be more reasonable.

- Whether a child's wishes, rather than "best interests," should carry more weight. Members discussed whether this would be appropriate in statute, if it would lead to conflict in mediation, and could cause a child to be caught in the middle between the parents.

Dr. Fabricius recommended that these concerns be considered by the taskforce.

5. 25-403; Criteria for Best Interests (Taskforce: Bill, Grace) Version 3, May 21, 2010.

Dr. Fabricius presented an overview of the revisions that have been incorporated into Version 3. Concerns about specific sections in Version 3 include:

- C(7) – "The historical nature of the relationship between the parent and the child including whether one parent performed a disproportionate amount of primary care, the current relationship between the parent and the child, and the potential future relationship of the parent and the child."
  - Mr. Cartagena had concerns about the term "primary care" and whether one parent would be pitted against the other in an attempt to be labeled the primary care provider. He said that, prior to divorce, one parent might try to control the other parent's parenting time to establish the schedule as the *status quo* arrangement. Such a situation could put the judge and evaluators in difficult positions. He suggested substituting the phrase "the level of involvement" or "the level of active involvement in the child's life."
  - Dr. Fabricius said the purpose of this language is to try to isolate cases where a parent has been absent and not involved. The intent is not to have the court measure involvement because things change after divorce but to consider the minimally involved parent. Mr. Alongi said it is not a matter of disputing a parent's involvement because of a parent's work. He saw a problem with disbanding the criteria altogether and suggested that possibly separate criteria would be suitable. He said the law cannot afford to cater to one specific type of relationship.
  - Mike Espinoza noted the absence of the term 'abandonment' in this version. Mr. Alongi said that *abandonment* is a term of art, and the juvenile code has a definition of *abandonment* that can lead to termination of parental rights. Judge McNally said she preferred the addition of the new criteria and suggested avoiding terms on edges, like *abandonment* or *primary*.
  - Mr. Alongi recommended that past involvement be kept as a separate factor. He suggested using the phrase "*disproportionate amount of care*" and removing the word *primary*.
  - Brooks Gibson noted the use of the term *historical* and the need to address the "gatekeeper" problem. Mr. Alongi said that C(6) resolves the "gatekeeper" problem. Mr. Espinoza suggested adding "complete" to *historical relationship*. Mr. Alongi questioned whether section C(3) already covers this concept.
- C(8) – "Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02."
  - John Weaver said that Arizona is the only jurisdiction that requires a conviction of false reporting, not just the making of a false report. He said this could lead to abuse of female children. It was noted that a proposal in SB 1314 that would provide for economic sanctions against a parent who made unfounded allegations of parental unfitness against the other parent had been amended out of the final bill. Mr. Weaver said the Florida statute considers evidence that either parent has knowingly provided false information. Mr. Alongi said that the Arizona statute sounded like compromise language and suggested that the group look at the legislative history behind the Arizona provision.
  - Mr. Buckman said false reporting of sexual abuse is not epidemic, but it would be worthwhile to review the legislative history. Mr. Alongi volunteered to do the legislative research. Ms. Hawkins added that parents are required to report allegations of abuse, while Dr. Fabricius speculated about bad faith or strategic reports of abuse.
  - Mr. Espinoza questioned whether attorney fees sanctions should be included in this section. Mr. Alongi said that SB 1314 amends A.R.S. § 25-324 to provide for attorney fees.
  - Mr. Espinoza said there should be a provision that allows one parent to require information

about the other parent's partner, to do a criminal background check on that person, and to have the names of other members of the household. Judge McNally said the court could grant such a motion, but she was not sure this provision belongs in the best interests section because it pertains to the type of information parents have to disclose to one another. Mr. Alongi suggested considering a section regarding "mandatory disclosures."

6. Decision Tree (Taskforce: Tom, Sid, Colleen) Version 1, May 26, 2010.

Mr. Alongi briefly presented the group's initial proposal for

(1) a new Section 104 entitled Mandatory Preliminary Inquiry: Special Circumstances. This section would precede current A.R.S 25-403, and

(2) a new Section 105 entitled Intimate Partner Violence and Child Abuse. This section would replace A.R.S. 25-403.03 and be moved to follow Section 104 and precede 25-403.

The purpose is "to provide a clear decision process that requires the court to first determine whether there are special circumstances to limit the available choices for decision-making and parenting time prior to considering best interests. To describe the factors that must be considered in determining whether a parent has committed intimate partner violence or child abuse and, if so, to preclude or limit that parent's ability to exercise decision-making responsibilities and/or parenting time." Dr. Fabricius commented that the descriptions in the new Sec. 105 of the various behaviors in such clear and concrete terms should be very helpful to courts and informative to parents. The taskforce is continuing its work on this section.

7. Web Site – The page is in development, and Ms. Pickard is drafting appropriate descriptive language for it. The page will launch from a link on the Domestic Relations Committee web page.

**Votes Taken:**

1. None

**Ad Hoc Custody Workgroup  
Minutes**

<b>Date:</b> June 22, 2010	<b>Time:</b> 10:00 a.m. – 1:00 p.m.	<b>Location:</b> State Courts Building Conference Room 230
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**Minute Taker:** Kay Radwanski, Susan Pickard

**Voting Members Attending: Quorum attained**

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| <ul style="list-style-type: none"> <li>■ William Fabricius, Chair (telephonic)</li> <li>■ Thomas Alongi</li> <li>■ Sidney Buckman</li> <li>■ Daniel Cartagena (telephonic)</li> <li><input type="checkbox"/> Grace Hawkins</li> </ul> | <ul style="list-style-type: none"> <li>■ Brooks Gibson (telephonic)</li> <li>■ Judge Colleen McNally (telephonic)</li> <li>■ John Weaver</li> <li><input type="checkbox"/> David Weinstock</li> <li><input type="checkbox"/> Steve Wolfson</li> </ul> |
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**Participating Members Attending:**

- |  |   |
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| <ul style="list-style-type: none"> <li><input type="checkbox"/> Bruce Cohen</li> <li><input type="checkbox"/> Mike Espinoza</li> <li><input type="checkbox"/> Patrick Lacroix</li> <li>■ Kendra Leiby</li> <li>■ Patricia Madsen</li> <li><input type="checkbox"/> Donnalee Sarda</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Ellen Seaborne</li> <li><input type="checkbox"/> Russell Smolden</li> <li><input type="checkbox"/> Judge Randall Warner</li> <li><input type="checkbox"/> Thomas Wing</li> <li>■ Brian Yee</li> </ul> |
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**Staff/Admin. Support:** Kathy Sekardi, Kay Radwanski, Susan Pickard

**Guests:** Theresa Barrett, Administrative Office of the Courts; Joi Davenport, parent; Ariel Serafin, CLS Intern

**Matters Considered:** The meeting was called to order without a quorum in attendance by Sidney Buckman.

I. Welcome and Announcements

William Fabricius reminded the members of the Workgroup's web page. The web site has a link on the DRC site.

II. The Call to the Public (taken out of agenda order).

Joi Davenport addressed the members. She disagrees with the suggestion that was made on 5/27 regarding make-up time for extracurricular activities that occur during the other parent's time with the child. Her belief is that both parents should cultivate the child's interests and make-up time for one parent may unreasonably punish the other. Ms. Davenport also recommended that the group keep the primary caretaker language. She is in agreement with the premise that removal of that consideration from the best interest section may have a profound effect on the child. She presented her research gathered from speaking with custody evaluators, parenting coordinators and therapeutic interventionists. Clarifying questions were asked and answered.

III. 25-401: Jurisdiction (Taskforce: Tom, Sid, Colleen) No printed version was handed out to the Workgroup.

Given the work accomplished during the May 27 meeting, Tom Alongi noted that this section does not require further amendment. This section will come before the Workgroup at the August 6 meeting for consideration for final approval.

IV. Minutes (taken out of agenda order)

With a quorum achieved the minutes for May 7 were approved. Because the minutes for May 27 were just received and could not be reviewed in total before the meeting, they will be considered for approval at the August 6 meeting. Additionally, the minutes for March 19 will also be addressed during that meeting.

V. Brainstorming (taken out of agenda order)

**Question:** How will stakeholders know about the information being posted to the web site?

- A. The Domestic Relations Committee (DRC) members should be advised of the site and alerted when items are posted for comment. They should be kept informed of the Workgroup's progress and direction. The DRC members should be encouraged to speak with colleagues and solicit comments
- B. The members were reminded that during the 5/27 meeting Steve Wolfson volunteered to liaise with the legislature.

**Question:** When we post final proposed amendments, will we be explaining the changes?

**Question:** How do we gather comment before the January legislative deadline?

- A. Agenda item for August 6.
- B. Invite Katy Proctor to August meeting for insight regarding who at the legislature should be contacted and how best to have the discussion.
- C. Some individuals should be met with rather than asking them to join a meeting to make public comment.
- D. Elections may have an impact on which legislators we speak with and when. It will be crucial to educate the legislators about custody arena before January.

Stakeholders were roughly defined as legislators, members of the State Bar Family Law Section, judicial officers, and mental health providers.

**Question:** Will we be voting to approve the statute a section at a time or compiling them into final proposed amendments to the statute then voting?

- A. Label each section as "FINAL VERSION" when no further amendment is needed.
- B. Send separate from other meeting materials clearly designated as "FINAL VERSION" and as a voting item on the agenda.
- C. Steering committee will compile the FINAL VERSION's into a comprehensive custody statute.

**Question:** Is this a bill that will be moving forward in the 2011 legislature? Is there a way to seek an extension, so that this legislation is thoroughly researched and vetted?

- A. Chair urged the group to stay on track with the current timeline to retain the energy and momentum.
- B. The consensus of the members was that continuing contact with Senator Allen regarding our progress and direction is necessary.
- C. It was acknowledged that once this product is finished, time will be needed for public comment and maybe adjustments.
- D. Public hearings at the DRC level are anticipated by the Workgroup members.

**Question:** What should be presented at the next DRC meeting?

- A. A progress report.
- B. Steering committee to make plan

VI. 25-403; Best Interests (Taskforce: Bill, Grace) Version 4, June 21, 2010 (incorporating feedback from workgroup meeting on May 27, 2010 and comments from Tom Alongi sent on 5/17)

- A. Because parenting plans may be different for children of different ages, the child's age has been added to paragraph (C)(1)
- B. Paragraph (C)(3) - ~~the child's parent or parents~~ – This language was struck because these interactions and interrelations are now addressed in paragraph (C)(7). There was discussion about whether to include references to criminal conduct of "other persons" and whether parents should tell each other who else is living with the child.
- C. Paragraph (C)(7) – Judge Cohen's comments, which were included in the meeting materials, regarding concern about blending parenting time factors with custody factors were reiterated. Judge Cohen had noted that this revision was closer but recalls struggling with making 7 work with idea of other relationships.
- D. Paragraph (C)(8) – The members discussed the use of alternate language such as, "clear, convincing

evidence of false reporting.” Do we need to expand this paragraph to consider other false accusations with levels less than “conviction?”

Tom Alongi introduced Ariel Serafin. Ms. Serafin shared her research into the use of the word “conviction” in this paragraph. She ordered and received a recording of the December 9, 2003, Family Services Committee meeting. The brief portion of the tape regarding the omnibus striker bill that addressed the use of “conviction” yielded no additional information.

Danny Cartagena proposed adding “convicted of false reporting of child abuse, neglect, or domestic violence.” Domestic violence cannot be added to this section because it is not a crime to falsely report domestic violence. Mr. Cartagena added that it may be worth putting domestic violence false allegations on par with false reports of child abuse.

Kendra Leiby noted that the crime of domestic violence false allegations would need to be added to Title 13 before any language could be added here.

It was suggested that 13-2907.01 which states:

13-2907.01. False reporting to law enforcement agencies; classification

A. It is unlawful for a person to knowingly make to a law enforcement agency of either this state or a political subdivision of this state a false, fraudulent or unfounded report or statement or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer.

B. Violation of this section is a class 1 misdemeanor.

**Comments:**

1. Whether this language prevents or encourages false reporting
2. Impact of adding domestic violence false allegations on victim reporting where mandatory reporting does not exist.
3. Collateral effect on privacy of peoples’ homes where batterers try to persuade victims not to report
4. Balancing the victim protections with protections for those who are falsely accused in the areas of child abuse or neglect, or domestic violence

It was suggested that Judge Brotherton be invited to the next meeting to hopefully shed light on the conviction standard.

**Action Item:** Tom Alongi volunteered to call Judge Brotherton for information about the origination of “conviction” language.

**Action Item:** John Weaver was asked to send his research to Susan for distribution to the members.

Overall the group agreed with the amendments to paragraphs (C) 1, 3 and 7.

The members will revisit the discussion on paragraph (C)(8) during the August 6 meeting. This will allow time for further research into whether to expand beyond “conviction” and the impact of adding language about false allegations of domestic violence.

VII. Decision Tree (Taskforce: Tom, Sid, Colleen) Version 1, May 26, 2010.

The following structure is being drafted for the amended sections of 25-401, et. seq.

- A. Jurisdiction - Does the court have jurisdiction? Should include reference to UCCJEA.
- B. Public Policies - promote safety and involve both parents
- C. Definitions - Decision-Making, access A.R.S. § 8-531 to be used for comparison purposes
- D. Special Circumstances

1. **Mandatory Preliminary Inquiry; Special Circumstances**

This section as proposed would make it clear that the court must first determine if special

circumstances exist before getting into parenting time, custody, etc. Current custody statutes address murderers and sex offenders but remain silent on other types of criminals. The best interest considerations don't include prior convictions for other crimes (armed robbery).

## 2. Intimate Partner Violence and Child Abuse

The phrase "domestic violence" has gotten a black eye like "legal custody." It implies violence had to occur in the home, when separation violence, which is equally or even more prevalent, often occurs outside the home. By using the term "intimate partner violence" we are trying to convey a broader scheme.

- a. Subparagraph A is a combination of NCJFCJ definition of domestic violence and language from research and is an introduction to the topic.
- b. Subparagraph B is identical to current statute. Language was added to indicate that an act of domestic violence is just as damaging to a child and not in his/her best interest whether the act was witnessed by the child or not. Children are affected even if domestic violence occurs outside their presence; they witness the property damage, injury to parent, atmosphere of hostility and fear.
- c. Subparagraph C addresses significant history of domestic violence.  
**Suggestion:** define "significant"
- d. Subparagraph D addresses instances where a preponderance of the evidence shows that a parent has previously committed an act of intimate partner violence or child abuse not listed in subparagraph C, the offending parent must prove that he or she can still appropriately exercise decision-making responsibility despite the history of abuse or violence. New to this is the victim has the opportunity to ask court to decide that the offending parent has not proven his/her suitability.
- e. Subparagraph E provides the offending parent in D a means of showing that he/she is a candidate for decision-making responsibility.
- f. Subparagraph F addresses coercive control. Research exists that shows that some acts of domestic violence are prompted by controlling motivation. The controlling element makes domestic violence offenders dangerous and sets a poor example for children. The court would have to examine whether one parent coercively controlled the other. Coercive control has been defined by 19 factors drawn from domestic violence screening tools used by shelters, coalitions, and attorneys. The concern is how do we recognize the red flags of coercive control? When the factors appear in clusters, that's when there's greater concern.

### Comments:

- a. There are going to be many families to whom the special circumstances section does not apply. Laying it out simply assists a person in determining whether the section applies to them or not.
- b. The educational component for someone in this situation that is detrimental to kids is good.
- c. Gives all involved transparency about behavior and consequences of conduct.

**Action Item:** Members were asked to read the materials about intimate partner violence for detailed discussion at the August 6 meeting.

### Votes Taken:

- I. Motion to accept May 7 minutes – seconded – approved 5-1-1  
Mr. Alongi abstained stating he was not present at May 7 meeting.

*Ad Hoc Custody Workgroup*  
*Minutes*

Date: August 6, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building  
Conference Room 119A/B**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending: Quorum attained**

- |   |  |
|---|--|
| ■ William Fabricius, Chair (telephonic) | ■ Brooks Gibson (telephonic)             |
| ■ Thomas Alongi                         | ■ Judge Colleen McNally                  |
| ■ Sidney Buckman                        | ■ John Weaver                            |
| ■ Daniel Cartagena (telephonic)         | <input type="checkbox"/> David Weinstock |
| ■ Grace Hawkins                         | <input type="checkbox"/> Steve Wolfson   |

**Participating Members Attending:**

- |  |  |
|--|--|
| ■ Bruce Cohen                            | <input type="checkbox"/> Donnalee Sarda  |
| ■ Mike Espinoza                          | <input type="checkbox"/> Ellen Seaborne  |
| <input type="checkbox"/> Patrick Lacroix | <input type="checkbox"/> Russell Smolden |
| ■ Kendra Leiby                           | <input type="checkbox"/> Thomas Wing     |
| <input type="checkbox"/> Patricia Madsen | ■ Brian Yee                              |

**Staff/Admin. Support:** Kay Radwanski, Lorraine Nevarez**Guests:** Kathy Sekardi, Administrative Office of the Courts; Joi Davenport, parent; Ariel Serafin, CLS intern; Amber O'Dell, Arizona State Senate; Jenny Gadow, attorney; Terry Decker, parent**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 10:08 a.m. and informed the members that Judge Randall Warner has withdrawn as a participating member of the workgroup. Ms. Hawkins asked Sidney Buckman to be the moderate the August 27 meeting because she will have to participate telephonically. Ms. Hawkins noted that Kay Radwanski has replaced Susan Pickard as staff for this workgroup. Ms. Pickard is assigned to other projects, such as E-filing, that are consuming her time.

II. Minutes

- Minutes from the March 19, 2010, workgroup meeting were amended to show that Thomas Alongi was proxy for Patricia Madsen. The minutes also were amended to reflect that Ms. Madsen was absent. Kathy Sekardi advised that the rules of the Domestic Relations Committee, which authorized this workgroup, do not permit proxies.

**MOTION:** (By Judge McNally) To approve the March 19, 2010, minutes as amended. Motion seconded. Motion passed unanimously.

- Minutes from the May 27, 2010, workgroup meeting were approved with a noted change on page 3 that was already included in the version presented to members.

**MOTION:** (By Mr. Alongi) To approve the May 27, 2010, minutes as presented. Motion seconded. Motion passed unanimously.

- Minutes from the June 22, 2010, workgroup meeting were approved with the noted change on page 4 that was already included in the version presented to members.

**MOTION:** (By Mr. Alongi) To approve the June 22, 2010, meeting minutes as presented. Motion seconded. Motion passed unanimously.

### III. Updating on Workgroup Webpage and Posting Past and Current Versions of Taskforce Sections

Dr. Bill Fabricius noted that Ms. Radwanski, Ms. Sekardi, and Ms. Pickard have been developing the [webpage](#). He specifically noted the *Documents and Reports* link that currently has the most recent version of each taskforce's sections. He thought the webpage could be used as a repository of all the versions, past and most recent, that each taskforce develops. This would allow for ease of access to all of the workgroup's ideas and would serve as a better history of its progress. He also suggested that any written substantive ideas (such as the email exchange on the issue of "primary caretaker" language) exchanged among workgroup members or received from the public also be added to the webpage, perhaps in a separate section with each identified by author's name, date, and topic. He also stressed the importance of having the workgroup's progress and development of ideas available for public review. The workgroup agreed to have the additional information available on the workgroup website.

Ms. Radwanski gave a tutorial of the workgroup webpage and credited Ms. Pickard for the webpage design.

### IV. Discussion-Legislative Process

Katy Proctor, AOC legislative liaison, presented on the legislative process regarding how to approach the Legislature with a draft bill. Ms. Proctor noted that the Legislature will convene on the second Monday in January. Some suggestions Ms. Proctor provided are as follows:

- Be comfortable with the information
- Approach the Domestic Relations Committee (DRC) and other stakeholders
- Set up meetings ahead of time with legislators
- Find a sponsor for the bill
- Draft bill should be in a form that members from the Legislature can review ahead of time
- Determine if the bill will be packaged as a whole or submitted as separate pieces of legislation
- Using a strike-everything bill as a vehicle for this legislation is not recommended

Ms. Proctor reminded the workgroup that the 'drop dead' date is January. She also noted that this bill can be taken through the Arizona Judicial Council for comment.

#### *Comments/Questions from workgroup members:*

Mike Espinoza suggested that the workgroup talk to both Senate and House members to avoid introduction of opposing bills. Mr. Buckman noted that there are other powerful stakeholders in the state, not only the legislators. Judge McNally asked whether the workgroup could get support from the legislature to format the draft bill for the legislative review. Ms. Proctor proposed that the workgroup consider asking Senator Linda Gray, chair of the DRC, to "open a folder." This would allow the Legislative Council to put the material into the legislative form and have it reviewed by Leg. Council attorneys. She noted that having Senator Gray 'open a folder' does not mean she will sponsor the bill. By opening a folder, Leg. Council can prepare a draft and add revisions. The workgroup could then request an "intro set" (the draft prepared by Leg. Council). The intro set would then be circulated among legislators to obtain sponsorship signatures.

### V. Brainstorming

Ms. Hawkins began with the Call to the Public. She reminded the public that the scope of the Ad Hoc Custody Workgroup is limited to child custody, and the workgroup has no authority regarding any other

issue. The workgroup will make a record of the comments, study the matter, or schedule the matter for further consideration and decision at a later date. Ms. Hawkins also noted that each speaker is limited to two minutes.

Two people spoke during the Call to the Public. Their comments are as follows:

- Jenny Gadow, family law practitioner, commented on issues concerning special circumstances (referencing proposed revisions to ARS § 25-403.03, 25-403.04, and 25-403.05). Ms. Gadow noted there would be logistical problems when presenting to the court, particularly under the time constraints of a one-hour temporary orders hearing, to include discussion of special circumstances at the same time. One attorney may be focusing argument on special circumstances, while the opposing attorney wants to present best interests of the child arguments. She suggested the workgroup consider a mechanism in the initial pleadings that would establish another time for presenting special circumstances if they apply to the case.
- Joi Davenport, parent, suggested to the workgroup that the same language in the intimate partners section (new Section 105) regarding the emotional, physical, and psychological aspects of abuse also be included in the child abuse section.

VI. 25-401; Jurisdiction (Taskforce: Thomas Alongi, Sidney Buckman, Judge Colleen McNally) Version 1.

Judge McNally presented a proposed new Section 102 titled Jurisdiction to replace ARS § 25-401. She noted that the new section does not contain substantial changes. Additions include references to the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) and the Parental Kidnapping Prevention Act (PKPA). The addition of the references will make it easier for readers to find these federal laws.

Mr. Alongi will change the phrase “decision-making responsibility” to “parental decision-making.” This change is a reflection of the May 27, 2010, minutes where the workgroup agreed on the new term for legal custody.

**MOTION:** (By Mr. Alongi) Motion to adopt proposed section 102 with the understanding of the term “decision-making responsibility” to be changed as noted. Motion seconded.

Judge Bruce Cohen noted that in the first paragraph discussing visitation by a non-parent, there is no reference on how to initiate action by a non-parent, such as a grandparent seeking visitation. He said that Section 102(B)(2) does not contain in its structure the triggering authority for that type of action.

Mr. Alongi withdrew his motion so the taskforce can clarify the language further, and the vote was tabled.

The distinction between “parenting time” and “visitation” also was noted. Mr. Alongi said the use of these terms is deliberate, with parents having parenting time with their children and other persons having visitation. Ms. Hawkins explained that parents are not visitors in their children’s lives, and that is the reason for the distinction.

VII. Decision Tree (Taskforce: Thomas Alongi, Sidney Buckman, Judge Colleen McNally) Version 1. [NOTE: This taskforce will henceforth be called the Jurisdiction, Definitions, and Special Circumstances Taskforce and will also include Brooks Gibson]

The workgroup discussed the following Special Circumstances sections.

Section 104-Mandatory Preliminary Inquiry: Special Circumstances

Judge McNally explained that the special circumstances sections that follow ARS § 25-403 (best interest) in the current statute would be placed before the best interest factors (proposed Section 110) in the revised

statute and would provide direction for analysis. The taskforce envisions that parties would indicate at the beginning of the case whether special circumstances do or do not exist in their case. If there are no special circumstances, the analysis would begin at Section 110. If any do exist, the analysis would begin in the relevant special circumstances section. She noted that the new special circumstances analysis will have the same effect on custody as it currently does, but these sections will help the judge and the parties narrow the options early in the case. In some cases, special circumstances will prohibit an award of parental decision-making and parenting time. The effect on court time will have to be evaluated, but some special circumstances, such as convictions, can be easily proven by court records and will not consume much time.

*Section 109-Conflicting Presumptions or Mandatory Rules*

New Section 109 moves toward presumptions. Judge McNally said the taskforce wants to provide a clear model for situations where both parties have special circumstances and neither qualifies for decision-making responsibility. The proposal currently has two options, and the taskforce is inviting additional suggestions. The task group is seeking language that is flexible and provides direction on the process.

*Section 107-Dangerous Crimes Against Children*

The taskforce is also trying to include language in new Section 107 regarding a parent's obligation to give the other parent notice of the child's potential contact with sex offenders. The Legislature added this obligation recently to ARS § 25-403.05.

*Section 110-Best Interests of the Child*

The task group is also requesting comments about a proposed introductory paragraph to Section 110. Comments can be sent to Ms. Radwanski or can be made at the next workgroup meeting.

*Section 105-Intimate Partner Violence and Child Abuse*

Mr. Alongi reported that the language in the most recent version has not changed since it was introduced at the June 22, 2010, meeting.

During this discussion, members revisited the topic of the proposed "decision tree" structure. Mr. Alongi noted that the special circumstance of domestic violence is already part of the current statutory scheme but is buried in it. He said situations exist now where each attorney comes to court with different goals, one wanting to address special circumstances and the other best interests. Attorneys have to calculate this possibility into their presentations and have to contend with time constraints. He said that time alone is not a reason to avoid re-structuring these provisions. Mr. Espinoza suggested that the policy statement in ARS § 25-103 be kept in mind. Judge McNally said all of the special circumstances provisions, except for jurisdiction, are evidence to the contrary of ARS § 25-103, and the goal is to define this more clearly. Judge Cohen asked whether the structural change is a question of formatting or substance. He acknowledged that the special circumstances issues are already in statute but get lost. He said it makes sense that these issues are kept together and clearly stated. Mr. Alongi said the taskforce was not given the responsibility of drafting additional language that would emphasize the public policy statement in A.R.S. § 25-103, which is why it does not appear in the text currently before the workgroup. However, he added that he had independently prepared a section – suitable for insertion before *Jurisdiction* – that would accomplish this goal, and would forward it to Bill and Grace in time for the next meeting.

Regarding intimate partner violence, Mr. Alongi said it is important to include language in the statute that would help people recognize the different forms of domestic violence. He noted that not all domestic violence is equal. The current statute (ARS § 25-403.03, regarding "significant" domestic violence) makes no effort to help determine the motivation for domestic violence. Does the degree of domestic violence matter? The court should be able to consider controlling behavior as domestic violence. Coercive control is an insidious form of domestic violence and is dangerous to children. Domestic violence does not always result in physical violence. Section 105 provides a list of 18 routinely appearing controlling behaviors that

constitute domestic violence. This list was pulled from various sources. The court should recognize coercive control as a cluster of behaviors, not as single factors. While 18 factors are a lot, the hearsay rule has 25 exceptions. Mr. Alongi said the stakes are high enough to spell out these factors. He noted that it is difficult to argue verbal abuse in court, and the goal is to assist the court in recognizing the difference between people who simply do not get along and those in coercive controlling situations.

Judge McNally noted that the *Wingspread Report* refers to the broad spectrum of different types of domestic violence. Inclusion of the coercive control language provides education for everyone. She noted that sometimes people do not even recognize they are in a domestic violence situation, do not tell the court, and end up hurt or killed.

Judge Cohen had concerns about section 105(J), which would prohibit parenting conferences and ADR services between the victim and the perpetrator. He said this does not give the victim any alternatives to address the perpetrator except in a courtroom, which can be intimidating. Dr. Yee noted that the provision, as written, would cause a victim to lose the right to resolution. Mr. Buckman said this does not preclude ADR, which can be conducted through caucusing. Mr. Alongi noted the victim can waive the prohibition but said he supports this language because he has had victims tell him that ADR was not helpful and they were made to feel unreasonable and foolish for not reaching an agreement with the other party. Judge Cohen acknowledged that some of these concerns might be a training issue for mediators. Mediation can be helpful, and special arrangements, such as conferencing, can be made. He suggested changing the word from “shall” to “may” in section 105(J).

Ms. Hawkins noted that the Arizona Rules of Family Law Procedure (ARFLP) already include a waiver of ADR. She said that in Pima County Superior Court, each party meets separately with the mediator before beginning a session. The mediator continues to assess the situation throughout the session. She said any attempt by a mediator to force a party to agree goes against the rules of neutral mediation. Parties in mediation are ordered to attend the mediation, but are not ordered to reach agreement. She said there are many well-trained mediators and many screening tools. She said mediators do not want people to feel victimized. She said there are methods that can be employed, such as putting the parties in separate rooms or having them attend mediation on different dates and time that can help parties resolve their differences while still maintaining the safety and comfort of the parties. She had concerns about the last sentence regarding only proceeding into mediation following inquiry in open court. Judge McNally said the task group will consider members’ comments and will come back with another version for workgroup review.

Danny Cartagena asked how Section 109 would relate to situations of mutual violence. Judge McNally said this is one of the concerns about Section 109 as there may be situations where both parents have special circumstances. The court may have to conduct a balancing test. She said the taskforce has struggled with the statutory requirements for Section 109 and welcomes members’ comments. Mr. Alongi said Section 109 affects cases with special circumstances where each party has failed to overcome a presumption. Judge Cohen had concerns about current cases with events that would disqualify a parent from having custody. He said it is important to know how the parties’ history will reflect the future so a plan can be developed. He said he supported the coercive control language because it shows a pattern, but he has concerns about the disqualification. Mr. Alongi said Section 109 still needs more work.

Mr. Espinoza asked what the effect would be if a party obtained a protective order (PO) *ex parte* and used it to claim domestic violence in a custody case. Mr. Alongi said that in his experience, he has not seen Family Court judges rely on orders of protection in custody cases. Judge Cohen noted that many defendants do not contest protective orders. Mr. Alongi said protective orders can be issued if a person alleges that domestic “has or may occur.” This would not necessarily lead to a finding of domestic violence if the allegation is that harm “may” occur, especially if the PO was not contested. The workgroup agreed that language should be included to assist the court in determining how to consider a PO in a custody situation.

Ms. Hawkins proposed that the word “agency” in section 105(H) (regarding conditions on parenting time if a parent fails to overcome a special circumstances presumption) be removed. Some people cannot afford to have an agency supervise their parenting time so they may rely on family or other people. Also, supervised parenting time is intended to be temporary and language should be included to direct people on what to do when it is no longer necessary. Mr. Alongi said “agency” was being used broadly and included anyone acting as an agent for another. Members also discussed whether the court’s authority to place conditions on parenting time should be mandatory or discretionary (phrased as “shall” or “may”) and whether the term “indefinitely” should be deleted from subsection (H)(10). Mr. Alongi said the term “indefinitely” was included so that the court’s hands are not tied when a parent’s behavior is extreme. By allowing conditions to exist indefinitely, the court puts the burden on the offender to make behavioral changes and then to request modification of the parenting plan. Judge Cohen noted similar procedures have been used in the drug context, where in the future, the offender would have to petition the court for a change and would have the burden of proof. Judge Cohen noted that the same remedies could apply to other special circumstances sections. The taskforce will continue to work on the language.

It was noted that Section 105(H) has a typo. The reference should direct the person back to subsection G. Also firearms should be included in subsection (H)(4).

Dr. Fabricius noted that in Section 105, subsections D, E, and F refer only to parental decision-making while subsection H refers to parenting time. Mr. Alongi said that Section 105(H) replaces ARS § 25-403.03(F), 105(C) replaces § 25-403.03(A), and 105(D), (E), and (F) replace § 25-403.03(D) and (E).

In concluding discussion of this section, Mr. Alongi said he had tried to contact Judge Bill Brotherton concerning the original discussions about A.R.S. § 25-403(A)(11) when Judge Brotherton was still a legislator and belonged to the committee that debated this bill. The statute refers to a conviction of an act of false reporting or child abuse or neglect and is one of the current best interests factors. Mr. Alongi indicated that he left a voice message at chambers inviting Judge Brotherton to join the workgroup at a future meeting or, alternatively, explain the function of the amendment to him so he could pass it along to the workgroup for consideration. Mr. Alongi was unsuccessful in reaching Judge Brotherton, but he will keep trying. Mr. Alongi also introduced Ariel Serafin, Community Legal Services intern, to explain research she has done on California’s custody laws regarding false reports of child abuse and neglect and sexual abuse of a child. She said the California law provides for a monetary penalty for a false report of abuse or neglect while a parent who is convicted for making a false report of sexual assault may have his or her access to the child limited. If the conviction for false reporting occurs after custody and parenting time orders have been entered, the court must re-open the case and reconsider its order.

#### VIII. 25-403; Criteria for Best Interests (Taskforce: Bill Fabricius, Grace Hawkins) Version 5

Dr. Fabricius continued discussion regarding conviction for false reporting of child abuse or neglect that would be (C)(8) under the new statute (subsection (C)(10) in the current statute).

Dr. Fabricius asked if a parent intentionally makes a false report against the other parent, would it be in the child’s best interests to lose time with that parent? He said this subsection may need to be somewhere in the statute but questioned whether subsection (C)(8) is the right place. John Weaver responded saying it should be a factor. Mr. Alongi cited Hays v. Gama, 205 Ariz. 99 (2003), in which a parent was assessed economic sanctions for disregarding a court order but a therapist’s testimony and notes were allowed because they were relevant to the best interests question. He noted that California law requires a person who falsely accuses the other parent to pay a stiff financial price as a consequence. Mr. Espinoza said children could suffer if a parent is afraid to make a report. He felt it should not be a factor. Judge Cohen said it is important to see what is going on beneath the surface. If the parent’s purpose is to estrange the child from the other parent, subsection (C)(6) should be considered. He felt the underlying motivation for making the report is

more important than the falsity of the report. He said (C)(6) – who will facilitate the child’s relationship with the other parent – is more important. He agreed that the act of false reporting is a problem, regardless of whether the parent has been convicted of it, when the allegations are not true.

Ms. Hawkins asked whether this issue could be dealt with in another section, which led to discussion of whether a section on sanctions should be created. Mr. Espinoza noted that SB 1314 contained a section on sanctions, which could be combined with other sanctions. In response to Mr. Weaver’s question, Judge Cohen said he does not know what percentage of cases have false allegations. He said in some cases, law enforcement has proved that a person made false allegations and other cases include allegations that are clearly false. The difficult cases are in the middle, where a person may have correct facts but has reached a wrong conclusion.

Judge McNally pointed out that the proposed 25-403(D) embodies the public policy concept in SB 1314. Judge Cohen agreed that 25-403(A) to (D) carry out the SB 1314 notion. The policy is clear without ignoring other concerns, he noted. Mr. Alongi suggested that the workgroup consider adding the public policy language at the beginning of the statute, before jurisdiction. Ms. Hawkins and Dr. Fabricius will review it in their taskforce.

Dr. Fabricius asked the workgroup to think about whether the second sentence of subsection (C)(6) and subsection (C)(9) are now out of place because of the new Sections 104 and 105. Judge Cohen and Mr. Alongi favored retaining the second sentence of (C)(6). There seemed to be consensus that (C)(9) should be removed because it will have already been dealt with in Section 105.

Dr. Fabricius noted that given that (D) directs the court to be consistent with the child’s “physical safety and emotional well-being,” and that the court determines that by way of considering the factors in (C), that we should label those factors as “relevant to the child’s physical safety and emotional well-being.” Judge Cohen suggested the phrase in both (C) and (D) be simplified to “physical and emotional well-being,”

Dr. Fabricius also pointed out the removal of the word “primary” from (C)(7). Judge Cohen asked whether the new language would change the practical meaning. Dr. Fabricius said the current statute wants the court to determine a primary caregiver based on past behavior, but the new statute would move away from looking at the past and look at past, present, and future. Mr. Cartagena asked about terms that quantify, such as “disproportionate amount of care.” Dr. Fabricius said the intent is to look at cases where a parent has been minimally involved in the child’s life – where the care has been disproportionate or severely lacking. Judge McNally said there may be a better word than “disproportionate,” but the goal is avoid cases where parties argue that providing 51% of the care makes that parent the primary caregiver. Mr. Alongi said the courts are good at differentiating between parents simply dividing labor and total noninvolvement. Judge Cohen said it is important to look at the historic involvement in the care and raising of the child and the impact on future care as well as whether the parents have demonstrated the ability to meet the day-to-day needs of the child. Judge Cohen said (C)(7) can be interpreted to mean attachment, day-to-day care, and historical involvement, and suggested some re-wording.

Dr. Fabricius asked the workgroup if they thought (C)(3), (4), and (5) (relating to interactions with other people and adjustment to home, school, and community) overlapped. Should they each be clarified on what they are specifically focusing on? Ms. Hawkins agreed adding some additional language would be helpful. The workgroup decided to table this issue for the next meeting due to the time.

Ms Hawkins said the steering committee should meet to discuss the feasibility of timelines. Ms. Radwanski will be sending out the meeting notice.

The meeting adjourned at 1:02 pm.

*Ad Hoc Custody Workgroup*  
*Minutes*

Date: August 27, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building  
Conference Room 119A/B**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending: Quorum attained**

- |   |                         |
|---|-------------------------|
| ■ William Fabricius, Chair (telephonic) | ■ Kendra Leiby          |
| ■ Thomas Alongi                         | □ Judge Colleen McNally |
| ■ Sidney Buckman                        | ■ John Weaver           |
| ■ Daniel Cartagena (telephonic)         | □ David Weinstock       |
| □ Grace Hawkins                         | □ Steve Wolfson         |
| ■ Brooks Gibson (telephonic)            |                         |

**Participating Members Attending:**

- |                   |                   |
|-------------------|-------------------|
| ■ Bruce Cohen     | □ Ellen Seaborne  |
| ■ Mike Espinoza   | □ Russell Smolden |
| □ Patrick Lacroix | □ Thomas Wing     |
| ■ Patricia Madsen | ■ Brian Yee       |
| □ Donnalee Sarda  |                   |

**Staff/Admin. Support:** Kay Radwanski, Lorraine Nevarez**Guests:** Kathy Sekardi, Administrative Office of the Courts; Katy Proctor, AOC; Amber O'Dell, Arizona State Senate (telephonic); Michael Springer, Public (telephonic)**Matters Considered:**I. Welcome and Announcements

Sidney Buckman called the meeting to order at 10:10 a.m. and welcomed the members to the Ad Hoc Custody workgroup. Mr. Buckman announced that the Steering Committee has designated Kendra Leiby as a voting member because of her regular attendance and consistent participation in workgroup meetings. He also noted that two additional taskforces have been established: (1) Third Party Rights, chaired by Honorable Bruce Cohen and (2) an unnamed taskforce comprised of Dr. William Fabricius, Daniel Cartagena, and John Weaver. This workgroup will develop case scenarios to assist the workgroup in analyzing potential problem areas in the proposed statute.

II. Minutes

- Minutes from the August 6, 2010, workgroup meeting were approved.
- MOTION:** (By Thomas Alongi) Motion to approve the August 6, 2010, minutes as presented. Motion seconded. Motion passed unanimously.

III. Brainstorming

Mr. Buckman reminded the workgroup member that the brainstorming session is used to offer suggestions or ideas to be considered for future agenda topics.

Judge Cohen asked whether the workgroup has looked at the 400 sections. He noted that these sections

could read more cohesively. Mr. Buckman agreed; however, the workgroup will have to address them at a later time. Dr. Yee noted that the Sub Law and Relocation workgroups are currently looking at some of those sections.

Michael Springer, a member of the public who is employed as a process analyst, introduced himself to the workgroup. He noted his interest in child custody. He discussed some of his concerns about conviction regarding false reporting. Specifically, Mr. Springer would like to see the workgroup address civil convictions for fraud or misrepresentation relating to domestic matters. He also suggested that an appropriate name for the unnamed task force might be the “Stress Test Taskforce.” This is an industry term to test for ways a system could fail.

John Weaver asked if it would be possible to receive a complete list of domestic violence crimes in Arizona. Kay Radwanski noted that Arizona’s domestic violence crimes are listed in A.R.S. § 13-3601, and she shared a list she had developed with the workgroup.

Mr. Springer suggested linking legal and ethical issues for attorneys into this statute to bring structure to the process. Mr. Alongi suggested having all the provisions regarding sanctions moved to one section. This would make it easier for people to locate the information. As a follow-up to Mr. Springer’s comment, Mr. Alongi said the court should not enter custody orders based on a lawyer’s possible misconduct.

Mr. Espinoza questioned whether including domestic violence issues in the custody statute is a duplication of effort if domestic violence is already contained in other statutes.

In response to a question about the deadline was for completing these revisions, Ms. Radwanski told the workgroup the target is November. Dr. Fabricius reminded the members that the legislative process and timeframes are in the August 6 minutes.

#### IV. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (version 3) - Focus on sections 104 and 105(A)-(F)

The workgroup discussed the following Special Circumstances sections. Mr. Alongi explained the different versions online regarding the changes.

##### Section 104-Mandatory Preliminary Inquiry; Special Circumstances

Mr. Alongi explained that this section would be placed before the best interest factors in the revised statute. The taskforce envisions the statute being organized as follows: (1) Section101 - purpose of statute; (2) Section102 – jurisdiction; (3) Section103 – definitions, and (4) Section 104 - special circumstances. Section 104 lists the various special circumstances, allowing a party to easily determine whether any special circumstances apply. If no special circumstances exist, the parties would proceed to the best interest factors.

Mr. Cartagena inquired whether this must be in statute or instead could be a procedural rule. Mr. Alongi noted that procedural rules are approved by the Supreme Court and are designed to assist the orderly process of a presentation of a case. If the goal is to instruct courts on how to evaluate custody cases, then the language needs to be in statute.

Mr. Cartagena asked if the taskforce is going to rewrite other sections (such as Title 13, the criminal code) that already address these issues and have Section 104 refer to those sections. Mr. Alongi said there is no plan to touch Title 13. The taskforce is simply reorganizing the information within the same section. If no allegations of special circumstances are made, there is no expectation that the court would explore them. If the petition does contain allegations, the court ought to explore them. Mr. Cartagena noted the importance of

the reorganization; however, he suggested adding language that would explain how to bypass sections that do not apply.

Mr. Buckman summarized the discussion that special circumstances already exist in statute. The taskforce is trying to clarify what people may need to consider when reading this section. However, if special circumstances do not apply, then they can move on. Mr. Espinoza asked whether litigants can be surveyed beforehand. Patricia Madsen said there are several points in the case, such as the initial pleading, the resolution statement, and the pretrial statement, where the parties can make allegations. With the statute's current organizational structure, the court could go through the best interest factors and then get into special circumstances that would trump the previous best interests analysis. With the proposed reorganization, the court could get any special circumstances issues out of the way first.

#### Section 105-Intimate Partner Violence and Child Abuse

Mr. Alongi explained that paragraph A includes language from the *National Council of Juvenile Family Court Judges* definition for domestic violence. A.R.S. 25- 403.03 subsections B includes additional language regarding if a child witnessed a particular act of violence. The taskforce included this language to acknowledge the growing research that children are affected by domestic violence whether they witness it, hear it, or see the aftermath of the violent acts.

While addressing subsection C, the taskforce discussed the [Hurd](#) case (Court of Appeals, Div. One, October 2009), in which the court held that a finding of “significant domestic violence” or a “history of significant domestic violence” precludes an award of joint custody. However, it is up to the judge to define the word “significant.” Mr. Alongi said this is how courts today get around subsection A. The taskforce discussed three options to address the issue of creating uniformity without taking away judicial discretion. Alternatives are to (1) leave the statute as currently written, (2) define which acts of domestic violence are significant, or (3) do away with the idea of absolutely banning an award of parental decision-making under certain circumstances. The taskforce put option two in the current version of Subsection C. The taskforce is not convinced of only option two. The taskforce was trying to think about different types of conduct that would constitute not allowing the parent to exercise decision making for a child. Subsection C(1)(2) would replace what is in 25-403.03(a). Mr. Alongi noted this is another value judgment. The taskforce would like suggestions. This was the taskforce first edit of this subsection.

Mr. Cartagena asked what the term “deferred prosecutions” means. Mr. Alongi said prosecutors may define it differently, but it generally is another term for diversion. When someone is charged with an offense, the prosecutor is not willing to dismiss it because he or she believes the defendant committed the crime; however, the prosecutor is willing to let the charges be dismissed if the person does certain things such as attend domestic violence classes or pay a fine. A stipulation is required.

Mr. Cartagena said he is concerned about a person choosing this option because it may be financially better for him or her without realizing the effects it can have on a child custody case. A person could strategically choose diversion instead of seeking exoneration to save on the costs of defending the case. Mr. Alongi said criminal defense attorneys have a duty to advise their clients about the repercussions of pleading guilty or being deferred.

Mr. Espinoza asked whether the word “shall not” should be changed to the word “may not” in Subsection C. He also asked what would happen if both parents are convicted of a felony. Mr. Alongi said the whole point of subsection C is to determine whether certain kinds of conduct will constitute not giving a parent custody. Conviction of a crime requires intervention by a county attorney or a prosecutor. Someone else has to be convinced that the defendant committed a wrong. A victim making an allegation must have convinced the

police and a prosecutor that harm was done. He said the system has to be able to rely on a criminal conviction, where the case was proved beyond a reasonable doubt. The conviction itself is proof.

Judge Cohen said he was concerned subsection C(2) might have the potential for abuse. He suggested including language referencing patterns of behavior. Mr. Alongi said the taskforce will look at C(1) and (2) again. They could think about eliminating C(2), raise the bar, and tighten the timeframe. Regarding the phrase “any level of parental decision-making,” he said the taskforce discussed the idea of having three levels of legal custody: (1) shared, (2) sole, and (3) exclusive decision-making. However, the taskforce decided against the three levels.

In comparing the current statute and the proposed language, Mr. Alongi said Subsection D is similar to A.R.S. § 25-403.03(D). Subsection D discusses domestic violence behaviors and reasons custody may not be given. Subsection D addresses what to do if domestic violence does happen in a custody case. In current law, Sections 1, 2, and 3 explain what constitutes an act of domestic violence. This section was moved in the proposed definitions section. The taskforce also added the words child abuse. He said the current statute does not address what to do with people who commit child abuse. The current statute does provide a list of what an offending parent can do to show the judge he or she is still capable of having custody. The principle is the same in the proposed language, but the difference is that the court needs to consider aggravating factors before giving custody to a proven offender.

The taskforce did not make further changes to Subsection E. Subsection F has significant changes, including a list of factors the court should consider where domestic violence has been proven. The taskforce made an effort to capture the motivation of the domestic violence in Subsection F. The goal was to list different controlling coercive behaviors that the court should consider.

Judge Cohen suggested that Subsection F should be viewed before Subsection D. Mr. Alongi noted that the current law does not discuss controlling coercive behaviors, and that needs to be fixed. One of the problems of putting Subsection F is making coercive behaviors relevant in every single case. Controlling behaviors do not necessarily come from domestic violence cases. Judge Cohen also noted at the very end of Subsection D, the word “victim” should be clarified since the word child abuse had been added.

Mr. Espinoza asked whether acts of animal abuse in A.R.S. § 13-3601 would apply in the custody statute. Kendra Leiby said the animal abuse section of the domestic violence statute only deals with intimate partner relationships.

Mr. Espinoza asked how long a person could lose child custody, noting that the proposed language says 10 years. Mr. Alongi said that the 10-year period refers to the age of the conviction that triggers the absolute bar on parental decision-making – not the period of time for which a parent is prevented from exercising that authority once the family court trial has concluded. That period is comparable to the time frame used for defining certain historical felonies for purposes of criminal sentencing. He noted, however, that the 10-year period is a value judgment and could be considered either too long or too short.

Judge Cohen said parties do come back to court to modify custody after a finding of domestic violence because their circumstances have changed. Mr. Alongi said the taskforce should also review section 411, regarding circumstances for modification.

Dr. Yee noted that coercive control does not always mean domestic violence. However, it could be a reason the court decides not to award custody to a parent.

V. Taskforce Report: Third Party Rights (version 1) - Taken out of agenda order

Judge Cohen said there were no substantive changes to A.R.S. §§ 25-409 and 25-415. He took the existing language and reformatted it to read more cohesively. He structured the two sections as follows:

- A. *In Loco Parentis* Custody
- B. Presumption
- C. Visitation by Third Party
- D. Notice
- E. Factors
- F. Limitations
- G. Filing of Action
- H. Termination
- I. Definitions

Judge Cohen said he also thought changes were needed in section 102 to avoid conflicting language. He suggested removing the language “if a child is not in the physical care of one of the child’s parents” in section 102(b). He also noted removing the word “prior” in section 102(B)(1)(b). This way there is no inconsistency between the sections.

Ms. Madsen asked if this section now requires a grandparent requesting grandparent visitation to have been found *in loco parentis*. Judge Cohen said no. Mr. Buckman said he liked the idea of combining both sections as long as they capture the concepts of both statutes. Dr. Yee explained that these sections were not combined 10 or 11 years ago because the *in loco parentis* language existed before the grandparent’s rights were established. Judge Cohen acknowledged Ms. Madsen inquiries and suggested changing the title of the section to help clarify those issues. The title could change to “*In Loco Parentis* Custody, Grandparents and Third-Party Visitation” or “Custody and Visitation by Non-Parents.”

VI. Taskforce Report: Criteria for Best Interests (version 6)

Dr. Fabricius explained the changes to this section. The taskforce removed sections C(8) and C(9) as agreed upon at the last meeting and dealt with it in sections 104 and 105. The taskforce addressed whether a parent who makes a false allegation should lose parenting time as it actually takes time away from the child. The taskforce felt there should be other sanctions than limiting parenting time or parental decision-making. The taskforce also removed the word “safety” from the phrase “physical safety and emotional well-being” in subsections C and D.

One major change the taskforce made was to subsection C(7), specifically the phrase “including whether one parent performed a disproportionate amount of care.” Discussion about this change is reflected in the August 6 minutes. Dr. Fabricius noted the taskforce took into consideration all the suggestions for rewording, but after much discussion, they decided to remove the phrase completely. Instead, they used a simple statement and placed it as number 7 in A.R.S. § 25-403.02, Parenting Time. The goal was not to have the courts try to determine which parent was the primary parent. However, the taskforce wanted the court to consider whether a parent has been involved in the child’s life.

Mr. Espinoza said the new language -- “potential future relationships between the parent and the child” -- assumes that the situations will relatively stay the same. He asked how new relationships will affect the different situations. Mr. Buckman agreed that dynamics of the relationships do change when a person remarries. However, considering how a parent can provide for the child now and in the near future is the best approach. Dr. Yee said the proposed language is an improvement from the current language, which emphasized only the historical relationship.

Dr. Fabricius addressed the next change suggested by Judge Cohen regarding separation of factors for parenting time and decision-making. The current statute already has an implicit separate set of factors that are not in any particular order, so the taskforce revamped A.R.S. § 25-403.

The taskforce addressed that if a parent does not have a parenting time plan, then paragraph B directs the parents to A.R.S. § 25-403.01, which provides a list of factors to consider for constructing parenting plans. The taskforce made some wording changes to the list of factors, and Dr. Fabricius gave an overview of them. The taskforce added a new factor regarding child exchanges, which now is number 3. Numbers 6 and 7 explain that joint parental decision-making does not mean equal parenting time.

The taskforce also made changes to A.R.S. § 25-403.03. The current statute is focused on helping the court understand joint legal custody. The taskforce focused on when is it permissible to order joint legal custody. The taskforce did not change a lot of the language but streamlined it.

Mr. Espinoza asked whether the court compares competing parenting plans or chooses one over the other. Dr. Fabricius said A.R.S. § 25-403(C) is deliberately vague and leaves the decision to the courts.

Mr. Alongi asked whether the taskforce foresees creating a version with a list of factors for the court to consider in parental decision-making. Dr. Fabricius said this concern is referenced in A.R.S. § 25-403.03(B).

Mr. Buckman asked about use of the term “private counseling” in A.R.S. § 25-403.01(4) instead of the word “mediation.” Dr. Fabricius said the taskforce used the term in the current statute. Mr. Buckman suggested changing the wording to “private mediation,” and Dr. Fabricius said the taskforce will make that change.

Regarding A.R.S. § 25-403.02(8), Mr. Alongi suggested the language “Whether a parent has completed the parent information program required by A.R.S. § 25-351” instead of referring to the chapter and article. Dr. Fabricius noted the change.

Judge Cohen offered a few suggestions for the following sections:

- A.R.S. § 25-403.01(A)(2) - insert the word a “detail” before the word “schedule”;
- Subsection 4 - insert language for the method of communication between the parents; and
- A.R.S. § 25-403.02 – re-order of the subsections to read 7, 5, 4, 3, 2, 6, 1, and 8.

Dr. Fabricius said the taskforce would make the changes.

Ms. Madsen asked whether reorganizing the subsections would necessitate double findings on all these factors. Judge Cohen said A.R.S. § 25-403.03(B) could address that issue by adding the word “relevant” before the word “factors.” Dr. Fabricius asked whether the workgroup wanted to inform the court of which ones those are. Most of these factors deal only with parenting time. However, a few deal with decision-making. Parental decision-making is about how the parents are communicating. Parenting time is about the relationship between the child and the parent. He said it might be difficult to carve out which factors are dually relevant. Mr. Alongi suggested keeping these concepts separate without multiple findings.

The workgroup suggested striking A.R.S. § 25-403.03(5), as it is duplicative of A.R.S. § 25-403.02(8), and add the word “relevant” in paragraph B (“the court shall consider the *relevant* factors prescribed ...”).

Judge Cohen also suggested clarifying numbers 2 and 3 by considering the words “willingness” with the word “abilities.” Dr. Fabricius said the taskforce will rework the language. Dr. Fabricius asked what the

court does when there is lack of agreement between the parents. Judge Cohen said the reason for number 1 in this section is to state that agreements as to custody are not binding on the court. Even if parents have an agreement, the agreement is not binding on the court. The court may adopt the parents' agreement but is not required to do so. If number 1 changes to the basis for each parent's position about parental decision-making, then number 2 can address if it is reasonable.

Mr. Espinoza suggested adding more clarification to A.R.S. § 25-403.02(2), providing more definition regarding maturity. Dr. Fabricius said that some states have laws that allow adolescents of a specific age to have more input. Dr. Yee said the issue was discussed at length by the Domestic Relations Committee, which did not propose a specific age. The court already has discretion to interview children. Judge Cohen suggested adding the word "if appropriate" in the beginning of the sentence and to consider adding language to address those factors that influences those wishes. Dr. Fabricius said the taskforce will take all these points into consideration.

Mr. Cartagena asked whether Mr. Alongi could add language to A.R.S. § 25-403 to explain coercive controlling behaviors. This discussion was tabled for the next meeting.

VII. Next Meeting

Friday, September 17, 2010

10:00 a.m. – 1:00 p.m.

Conference Room 119A/B

Arizona State Courts Building

The meeting adjourned at 1:00 p.m.

*Ad Hoc Custody Workgroup  
Minutes*

Date: September 17, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building  
Conference Room 230**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending: Quorum attained**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> William Fabricius, Chair (telephonic) | <input checked="" type="checkbox"/> Kendra Leiby                       |
| <input type="checkbox"/> Thomas Alongi                                    | <input checked="" type="checkbox"/> Judge Colleen McNally (telephonic) |
| <input checked="" type="checkbox"/> Sidney Buckman                        | <input checked="" type="checkbox"/> John Weaver                        |
| <input checked="" type="checkbox"/> Daniel Cartagena (telephonic)         | <input type="checkbox"/> David Weinstock                               |
| <input checked="" type="checkbox"/> Grace Hawkins                         | <input type="checkbox"/> Steve Wolfson                                 |
| <input checked="" type="checkbox"/> Brooks Gibson (telephonic)            |  |

**Participating Members Attending:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Bruce Cohen     | <input type="checkbox"/> Ellen Seaborne  |
| <input checked="" type="checkbox"/> Mike Espinoza   | <input type="checkbox"/> Russell Smolden |
| <input type="checkbox"/> Patrick Lacroix            | <input type="checkbox"/> Thomas Wing     |
| <input checked="" type="checkbox"/> Patricia Madsen | <input type="checkbox"/> Brian Yee       |
| <input type="checkbox"/> Donnalee Sarda             |  |

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez**Guests:** Theresa Barrett, Administrative Office of the Courts; Amber O'Dell, Arizona State Senate; Joi Davenport, Public; Michael Springer, Public (telephonic)**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 10:10 a.m. and welcomed the members to the Ad Hoc Custody workgroup. There were no announcements.

II. Minutes

- Minutes from the August 27, 2010, workgroup meeting were approved.

**MOTION:** (By Kendra Leiby) Motion to approve the August 27, 2010, minutes as presented. Motion seconded. Motion passed unanimously.

III. Brainstorming

The timeline for presenting a draft to the legislature before the January session was discussed. Ms. Hawkins noted that the proposal would have to be circulated to many stakeholders such as the State Bar of Arizona, counties, judges, and the public so everyone has time to comment. Dr. Bill Fabricius noted that the draft must be completed by November, and the timeline has been published in previous minutes. He suggested having the taskforces provide an estimate of how much time they need to complete their sections. The workgroup also must decide what other sections need to be reviewed. Ms. Hawkins suggested the Steering Committee meet to determine the timeline. Kay Radwanski will schedule a meeting for the Steering Committee.

John Weaver read a news report about a San Diego man who committed suicide outside a courthouse. He

suggested having the workgroup research information regarding male suicides after divorce. Dr. Fabricius noted that there has been a lot of research on elevated health risks from divorced fathers. He said the workgroup can take this into consideration.

Michael Springer, a public member, elaborated on suicide research. He said Harvard Medical Institute has done extensive research regarding the effects on children who do not have their fathers around. Mr. Springer said he would forward the information to Ms. Radwanski for distribution to the workgroup.

#### IV. Discussion: Efforts to Inform the Public

Dr. Fabricius reported that Judge David Gass had contacted him regarding the workgroup and its progress with the statute. This prompted a discussion about whether the workgroup is doing its part to inform others about work being done. Theresa Barrett noted that the Domestic Relations Committee, chaired by Senator Linda Gray, has responsibility to determine the different avenues for publicity because it authorized the workgroup. Amber O'Dell, legislative staff, said bill information is posted to the legislative website. She noted that Senator Sylvia Allen also is interested in this process. Dr. Fabricius proposed asking Senator Gray for ideas to create awareness of the workgroup, allowing people the opportunity to get involved or provide comments.

Judge Bruce Cohen suggested ways for making stakeholders aware of the workgroup: the AOC website has a list serve of all the family court judges, the Maricopa County Bar Family Law Section has a newsletter, and Maricopa County Superior Court has a list of mental health providers. Ms. O'Dell said she could speak with Senator Allen about some of her constituents who might be interested in this topic.

It was agreed that Dr. Fabricius, as workgroup chair, will contact Senator Gray about publicity. Ms. O'Dell suggested Karen Winfield, assistant to Senator Gray, be copied on the email.

#### V. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (Version 4)

Sid Buckman reported that Dr. Brian Yee had a concern regarding defining all coercive behavior as domestic violence. Dr. Yee wanted to make sure that it was understood that not all coercion is domestic violence.

Dr. Fabricius suggested a line-by-line review of each section, and members were able to cover sections 101, 102, and part of 103.

##### Section 101- Public Policy

Ms. Hawkins suggested deleting the letter *A* at the beginning of the first paragraph since there is not a *B* that follows. The policy statement in this section is not verbatim from the existing language in statute. Ms. Hawkins noted that the taskforce changes reflect the concerns of the workgroup regarding issues of family violence but also including shared decision-making and regular contact with both parents.

Mr. Buckman suggested adding back the phrase "strong families." Dr. Fabricius said the original statute discussed family values and then SB1314 added parenting time and parental decision-making. The Best Interests Taskforce took the language from SB1314 and placed it into the Best Interests section. Dr. Fabricius suggested that it may not need to be included in both sections. Mr. Buckman said if the workgroup is focusing on public policy in Arizona, then including language regarding strong family values is important. Ms. Hawkins noted that adding a phrase about strong family values would help set the tone of the section.

Daniel Cartagena asked the reason for revisiting this section since it was passed last year. Judge Colleen

McNally said the purpose was to try to improve upon it as it was a last-minute change to SB1314 during the legislative session. Judge Cohen said that applying the rules of statutory construction, if a change is made, then there is a legal basis to say that the change was made with intent. He noted that eliminating a term could mean it was no longer intended to be a policy. He suggested rephrasing or tweaking the language in this section if it can be improved, but do as little as necessary to it. The taskforce will take the suggestions back for revision.

### Section 102- Jurisdiction

Dr. Fabricius suggested subsection B(1)(b) should also include language about parental decision-making and parenting time. Other workgroup members agreed. Ms. Hawkins asked whether in B(2) the word “legal” should appear before the word “custody.” Judge Cohen noted that this also deals with third-party rights, and § 25-415 allows for a non-parent to ask for custody of a child without a threshold finding as required by a dependency case filed in Juvenile Court. He suggested changing the phrase to read “by filing the petition for third party rights pursuant to” and then citing the new statutory reference.

Mr. Buckman suggested changing the language to “resides or found in” at the end of section B(2). There were no other comments or suggestions for this section.

### Section 103 – Definitions

“Batterer’s intervention program” (BIP) – discussion on this term included:

- Some counties may have difficulty finding intervention programs that include all the aspects included in the definition. Some counties lack such services.
- The definition explains the difference between anger management and batterer’s intervention, which are different concepts. Some counties may have both types of programs. There should be no suggestion that anger management is appropriate in the context of this statute.
- Batterer intervention programs operate independently of the courts and the requirements listed in the definition are widely accepted in most BIPs. BIPs that do not meet the criteria are not likely to receive funding.
- Mike Espinoza said the meaning of “control” as used in the definition was unclear. Ms. Madsen said the purpose of the defining a BIP is not to identify who a batterer is but to specify what a BIP should teach.

“Child abuse” –

- The term “victim” in this definition means a child.
- Dr. Fabricius asked whether interfering with judicial proceedings (ARS § 13-2810), included in this definition, is “child abuse.” Judge Cohen noted that a person could violate an Order of Protection that includes a child as a protected person. He said many inferences would have to be made to reach the conclusion that such a violation is child abuse.

“Coercive control” –

- Should a reference to “false allegations” be contained in this section?
- Much research has been done on coercive control, and it can be used to support the definition.
- The [Wingspread Report](#) will be shared with the workgroup. At the Wingspread conference, groups with differing viewpoints about domestic violence came together, held discussions, and issued a report. The report is viewed as a progressive work because it took various viewpoints and created consensus.
- Coercive control is a pattern of behavior and often is of more concern than violence without pattern. Most times, there will be a pattern of behavior, but sometimes there can be one serious incident. Once one severe incident has occurred, the threat of it happening again becomes part of coercive control.
- Judge Cohen suggested more specific language in subsection 3: “All relevant factors should be considered, including whether the offender ...”

- The motivation behind eavesdropping (subsection 3(h)) and entering onto the victim's residential property (subsection 3(j)) should be considered in determining whether the behavior is coercive control. It was suggested that the term "into" be used instead of "onto the property."
- For subsection 3(m), Judge Cohen suggested adding "without good cause" to the language regarding forbidding or preventing the victim from making decisions.
- The workgroup discussed whether judges are adequately trained on coercive control. When there is no hard evidence of injury, the issue of coercive control should be explored to look at the parties' behavior. People who are effective at coercive control are often more difficult to identify because they are good at hiding the behavior. Coercive control may be tied to parental decision-making. One party may use the child as a means to get at the other party. If the parties have shared parental decision-making and one is engaged in coercive control of the other, the court should look at whether shared parental decision-making is appropriate. An alleged offender could be using coercive control every time a decision has to be made about the child. The court should look at behavior and determine whether there is a pattern that would make it difficult for parents to make decisions together.
- How would someone determine whether one party prevented the other from pursuing an education or a career?
- Are subsections 3(q) (especially dangerous forms of physical violence against the victim) and 3(r) (any form of physical violence against a pregnant victim) redundant?

#### VI. Taskforce Report: Criteria for Best Interests (Version 7) (taken out of order)

Dr. Fabricius noted changes that had been made in version 7 based on discussion at the September 17, 2010, meeting. Because of time constraints, he asked members to review the changes and bring any suggestions to the October 8, 2010, meeting.

#### VII. Taskforce: Third-Party Rights (Version 1)

- On motion by Dr. Fabricius and second by Mr. Weaver, voting members unanimously agreed that the title for this section should be "Third-Party Rights." Other suggested titles were "*In Loco Parentis* Custody, Grandparents and Third-Party Visitation" and "Custody and Visitation by Non-Parents."
- For consistency, the title should be carried over to the Jurisdiction section (new section 102).
- In subsection A, "child custody proceeding" should be changed to mirror language in the Jurisdiction section. However, the language in new section 102 does not specify the type of proceeding.
- Subsection A(2) was revised to read (changes underlined): "It would be significantly detrimental to the child to remain or be placed in the care of either of the child's living legal parents who wish to retain or obtain parental decision making and parenting time."
- A suggestion was made to revise Subsection F to avoid confusion. Visitation for grandparents should be carved out from the parenting time designated for the parent related to the grandparents. Grandparent visitation is not generally an issue that affects temporary orders. Certain threshold decisions, based on federal and state case law, must be met before determining grandparent visitation. The proposed change reads: "If logistically possible and appropriate, the court shall order visitation by a grandparent or great-grandparent to occur when the child is residing or spending time with the parent through whom the grandparent or great-grandparent claims a right of access to the child. ~~If a parent is unable to have the child reside or spend time with that parent, the court shall order visitation by a grandparent or great-grandparent to occur when that parent would have had that opportunity.~~"
- Regarding the reference to "separate action," in subsection G, such action could be a petition for custody or a petition for grandparent visitation. The petition for custody could apply if, for example, a child's parents were missing or deceased and a third party had filed for custody of the child.

VIII. Taskforce Report: Stress Test (taken out of order)

- The taskforce asked for clarity on a conceptual question and agreed that the question required more thought. The question is: Should the goal of “protection of the victim (parent)” be separated from “best interests of the child”?
  - Mr. Weaver said that domestic violence is interwoven in the code in a way that makes it impossible to separate it from custody. Judge Cohen noted that there are two components: parental decision-making and parenting time. Parental decision-making is about the relationship between the parents relative to their responsibilities for the child, and domestic violence issues are central to that determination. For parenting time, consideration of domestic violence issues are important but in a different context. The context is how a child could be affected by the domestic violence. Has the child witnessed DV behaviors? Will the child learn from those behaviors if they continue? If DV defined the relationship between the parents but not between the parents and the child, it may have less relevance. The distinction is that there are separate factors and different dynamics between parental decision-making and parenting time.
  - Dr. Fabricius noted that there has been a lot of research on the beneficial effects of parental decision-making. It is hard to separate out how much of the benefit is due to shared parenting time. There is good evidence that joint legal custody has beneficial effects on the child. To the extent joint legal custody is denied, there should be a concern about the negative effects on the child. He suggested on a cautionary note that even joint legal custody can create unintended consequences for a child. Ms. Hawkins said that in the day-to-day workings of cases she sees, there are cases with joint legal custody but parents continue to fight and argue and engage the child in the dispute (by asking the child to carry messages back and forth, for example). It is not in a child’s best interests to be caught in the middle between the parents. Dr. Fabricius noted that one alternative is to order split decision-making (e.g., one parent decides education and the other chooses religion). Judge Cohen said domestic violence may be a major factor in parenting time, and that is why context is important. The case must be assessed on two levels: (1) parental decision-making – the dynamic between parents, and (2) parenting time – how the child is affected.
- What if a parent lies about coercive control behaviors by the other? Can some of these behaviors occur in the absence of any physical evidence? How does a court evaluate such allegations? Bill Eddy (High Conflict Institute) does training on how to deal with high conflict personality types who are prone to lie in family court. Dr. Fabricius asked whether the workgroup should get input on the intimate partner violence sections from Mr. Eddy and other experts, such as Janet Johnston and Joan Kelly. Members agreed that it might be helpful to have experts review all of the sections. Mr. Buckman suggested that one way to get their input would be to direct them to the website, where they can review the documents, and ask them to submit comments.

IX. Next Meeting

Friday, October 8, 2010

10:00 a.m. – 1:00 p.m.

Conference Room 119A/B

Arizona State Courts Building

The meeting adjourned at 12:55 p.m.

**Notes Taken:**

✓Minutes – August 27, 2010 – unanimously approved

✓Title – “Third-Party Rights” – unanimously approved

*Ad Hoc Custody Workgroup  
Minutes*

Date: October 8, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building  
Conference Room 119A/B**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending: Quorum attained**

- |   |  |
|---|--|
| ■ William Fabricius, Chair (telephonic)   | ■ Kendra Leiby                           |
| ■ Thomas Alongi                           | ■ Judge Colleen McNally (telephonic)     |
| ■ Sidney Buckman                          | ■ John Weaver                            |
| <input type="checkbox"/> Daniel Cartagena | <input type="checkbox"/> David Weinstock |
| ■ Grace Hawkins                           | <input type="checkbox"/> Steve Wolfson   |
| ■ Brooks Gibson (telephonic)              |  |

**Participating Members Attending:**

- |  |  |
|--|--|
| <input type="checkbox"/> Bruce Cohen     | <input type="checkbox"/> Ellen Seaborne  |
| ■ Mike Espinoza                          | <input type="checkbox"/> Russell Smolden |
| <input type="checkbox"/> Patrick Lacroix | <input type="checkbox"/> Thomas Wing     |
| ■ Patricia Madsen                        | ■ Brian Yee                              |
| <input type="checkbox"/> Donnalee Sarda  |  |

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez**Guests:** Theresa Barrett, Administrative Office of the Courts; Gina Kash, Arizona State Senate; Joi Davenport, Public; Karen Duckworth, Public (telephonic); Mike McCormick, Public (telephonic)**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 10:10 a.m. and welcomed the members to the Ad Hoc Custody workgroup. There were no announcements.

II. Update - Steering Committee

Dr. Bill Fabricius gave the following update: The Steering Committee met and determined that the scheduled timeframe for completing statutory revisions by November is insufficient. The committee felt it is important to make sure all stakeholders, including the public, have time to comment. Dr. Fabricius said he will prepare an interim report for the Domestic Relations Committee (DRC) for its October 15 meeting. He will ask DRC to extend the workgroup for another year, with the goal of presenting a product in October 2011. The report will discuss the workgroup's progress, include updates on the workgroup meetings, and introduce the workgroup webpage.

Meeting dates are scheduled through the end of 2010. As to future meeting dates, there was discussion of meeting on days other than Fridays. Some members are available on Fridays while others are not. Frequency and duration of meetings also was discussed, depending on whether the DRC agrees to extend the workgroup. Consensus was that if the workgroup is extended, meetings should continue with the same frequency (every three weeks) but in a shorter time period (9:30 a.m. to noon, for example), which might enable more people to participate. Dr. Fabricius will develop a tentative schedule considering Thursday and Fridays for future meetings.

Regarding outreach, it was agreed the workgroup will report outreach efforts to Kay Radwanski for publication on the workgroup webpage. Dr. Fabricius said he will write a letter to Senator Linda Gray and Representative Steve Court, DRC co-chairs, asking for direction about publicity efforts for the workgroup.

### III. Membership - Voting Members

Dr. Fabricius reported a request from Senator Sylvia Allen that Mike McCormick, executive director of the American Coalition for Fathers and Children, Washington, D.C., be added as a participating member of the workgroup. Although Mr. McCormick is not an Arizona resident, he has expertise in child custody legislation. Dr. Fabricius discussed the importance of keeping the membership balanced, making sure the workgroup is comprised of experts, non-custodial parents, custodial parents, non-parents, judicial officers, males and females.

Concerns were raised that that members primarily are from Maricopa County, and the size of the workgroup must be considered so the workgroup can reach a quorum and conduct its business. Two voting members, Dr. David Weinstock and Steve Wolfson, have been unable to attend meetings, so Dr. Fabricius will contact them and find out their intentions regarding their participation. Dr. Weinstock and Mr. Wolfson are voting members of the DRC's Sub Law Workgroup and would have input on the proposal through that group. They also could become participating members of AHCW, allowing other people who have been contributing substantially to move into their places.

In September, the Steering Committee had agreed that Kendra Leiby, Arizona Coalition Against Domestic Violence, should be moved from participating member to voting member. The workgroup rules require that a majority of existing voting members must decide the question. The workgroup voted to move Kendra Leiby from participating member to voting member.

**MOTION:** (By Tom Alongi) Motion to approve Kendra Leiby as a voting member. Motion seconded. Motion passed unanimously.

### IV. Brainstorming (taken out of agenda order)

Two members of the public commented during the Call to the Public:

- Karen Duckworth: Ms. Duckworth said she is a stepmother and her husband is a non-custodial parent who has joint custody and equal parenting time. She said that A.R.S. § 25-403 was a huge help for their family. Ms. Duckworth noted her appreciation for the workgroup's openness to allow public comment. She is concerned about adding too much information to the custody statute that may cause confusion. Ms. Duckworth spoke specifically of Title 13, noting it could be cross-referenced in A.R.S. § 25-403. She also suggested including language that enforces truthfulness by litigants in their responses in court and on court forms. Ms. Duckworth is interested in becoming involved in this workgroup.
- Mike McCormick: Mr. McCormick applauded the workgroup for all its continued efforts on this statute and offered his assistance as a resource. He has been involved in rewrites of statutes for different states. He has seen a trend of placing the responsibility of decision-making on the parents as much as possible. He is aware that some states are considering proposals that would establish strong criteria to ensure children's ongoing involvement with both parents, regardless of the parents' marital status. He said research strongly supports maximizing the involvement of both fit parents in the lives of their children. He noted the importance of assuring that children have the consistency and the stability of relationships and that they are able to carry that forward. He said he has been

reviewing Arizona's statute and will submit comments, recommendations, and supporting documents.

Dr. Fabricius noted the best way for public members to get involved is to look at the website, become familiar with the workgroup's progress, and bring specific suggestions to the meetings for the workgroup to discuss.

V. Minutes (taken out of agenda order)

- Minutes from the September 17, 2010, workgroup meeting were approved.

**MOTION:** (By Sidney Buckman) Motion to approve the September 17, 2010, minutes as presented. Motion seconded. Motion passed with one abstention.

VI. Taskforce Report: Jurisdiction, Definitions, Special Circumstances

Tom Alongi reported that the taskforce met and discussed following areas:

“False Allegations” –

- False allegations do happen; however, the problem is what to do about that in court.
- The judicial system has to be trusted to do its job, and the courtroom is a laboratory for ferreting out false allegations.
- There is a screening process for each step (police officer, prosecutor, judge, jury, etc.) in a case.
- A sanctions section would be appropriate.
- The Stress Test Taskforce could assist by pointing out specific weakness in this section for this taskforce to review.
- The entire section is based on the assumption that a domestic violence victim has proved his or her case.

Workgroup Comments-

- Should there be language regarding some type of punishment for making false allegations? Making a false allegation can be a form of domestic abuse. Where, in the custody statute, would be an appropriate place to address this issue? In response to these questions, Mr. Alongi said it would be an unnecessary expansion of the DV definition. Domestic violence is related to acts that are physical, threatening, or controlling behavior. Sanctions, such as prosecution for perjury or a suit in civil court, are available. The court can impose monetary sanctions or can jail someone for contempt if the contemptuous act occurs in the presence of the court. The custody statute may not be the place to address this issue. The workgroup has discussed not awarding custody to a parent for making false allegations. However, the goal is to focus on what is in the child's best interests, and a child may still need time with the parent, even if the parent has made a false allegation.
- There have been cases where the court has ruled that there was insufficient evidence to support the allegations or the accuser's credibility was questionable. However, the court then used those findings for making a custody decision or made a custody change because of successive false allegations. In response, Dr. Brian Yee noted that the courts at times may use ARS § 25-403(A)(6), the “friendly parent” factor (“which parent is more likely to allow the child frequent and meaningful continuing contact with the other parent”). It is not in a child's best interests to be subjected to multiple investigations and examinations to determine whether a false allegation of abuse has been made.
- A question was raised about whether a conviction of domestic violence is required first before the best interest statute is reviewed, and it was noted that the court can always consider criminal convictions.

- Even if there is a section on sanctions for false allegations, the judge still has to determine whether false allegations have been made.
- There are four different kinds of contempt – (1) direct civil contempt; (2) direct criminal contempt; (3) indirect civil contempt, and (4) indirect criminal contempt. Each has its own sanctions and required procedures in the statute.
- Sanctions can be imposed as punishment or incentives can be removed. False reporting could have consequences on primary decision making and parenting time. Sanctions on the parent could also have a detrimental effect on a child if the child’s time with the parent is restricted. Mr. Alongi provided copies of “*Domestic Violence & Our Courts*,” an article he wrote for publication in the Arizona Attorney magazine. He said he has been asked whether a domestic violence abuser can be a good parent, and the article provides references that may help answer the question. He referenced the public policy statement in New Jersey’s domestic violence statute. The policy includes language about the effects of domestic violence on children.
- Dr. Fabricius noted that there is assumption that when a parent separates from his or her spouse and engages in another relationship, domestic violence is not happening or its degree is reduced. Mr. Alongi said that identifying controlling behaviors and including them in the statute would be beneficial; however, not every act of violence is a controlling behavior. Dr. Fabricius asked whether there should be implications for parenting time if a batterer re-partners and re-batters. He said one factor for the court to consider is that the batterer may get a new partner. If there is a new DV case with the new partner, then there is clear evidence that this person is re-battering and this is a bad environment for the child. Mr. Alongi said the assumption is that the new partner will come to court. If the new partner recently testified about the batterer’s great character in the first case, that person may not want to come back to court to admit she or he was wrong. Also, should a child have to wait for another instance of abuse if there is a clear-cut case of DV with the first partner?
- Dr. Fabricius noted the list of coercive controlling behaviors presented in this section helps to distinguish and isolate an instance of domestic violence versus an ongoing pattern. Patricia Madsen said controlling behaviors should be considered because they are indicative of a person’s personality and behavior traits that could be taken to a new relationship or continue possibly with their children. Mr. Alongi said the current law does a disservice to both alleged batterers and alleged victims. It groups people who commit random acts of violence with no evidence of coercive control and labels them as domestic violence offenders. It also lets people who continuously commit acts of violence using coercive controlling behaviors off the hook. He said the workgroup has to decide how to incorporate these coercive controlling behaviors into the statute.
- Ms. Leiby noted the City of Phoenix has adopted a card system to assist first responders in distinguishing different types of domestic violence. Officers carry risk assessment cards with open-ended questions for victims. Responses to the questions help them distinguish between cases with one incident of violence and situations of continuous abuse. This system is modeled after a system used in Maryland. Ms. Leiby will forward a copy of the card to Ms. Radwanski to share with the workgroup.
- Mr. Alongi provided a copy of the *Nihiser* tax opinion (T.C. Memo. 2008-135, 2008 WL 2120983 (U.S. Tax Ct.)) in the meeting materials. Tax courts use the “innocent spouse exception” to examine whether a spouse should be alleviated of a joint marital tax obligation because of abuse, including coercive behaviors, by the other spouse. He also cited *Cesare v. Cesare*, (154 N.J. 394, 713 A.2d 390), a 1998 New Jersey case that discusses patterns of behavior and coercive control.

“Coercive Control” –

- Added an introductory sentence to clarify “given behaviors” and to avoid having to continuously use the phrase “intentionally, without good cause...”

Workgroup Comments-

- Mr. Espinoza said he had a concern about the introduction, specifically whether people who have protective orders rely on this language to get into properties because they left something behind. Mr. Alongi said, no, it will be useful only where domestic violence has been proven to the court. The purpose is to demonstrate that the listed behaviors are indicators of domestic violence. However, the court needs to be aware that these behaviors do not always constitute domestic violence.
- Mr. Alongi noted the phrase “Promote strong families and family values” has been added to Section 101, Public Policy. He also included the changes suggested at the last meeting in Section 102, Jurisdiction. Mr. Espinoza asked whether Section 101 is intended to replace SB 1314. Mr. Alongi said the language in SB 1314 is not located in the custody statute (Title 25, Chapter 4).<sup>1</sup> Proposed subsections A, C, and D have the same message as SB 1314, while subsection B is new. Mr. Espinoza suggested including language about the child’s best interests.
- Ms Hawkins suggested using another word, such as “joint,” in place of “shared.” Sometimes people have negative connotations about the word “shared” because of the emotions attached to it. She suggested that members who have additional ideas about specific language should submit them to Ms. Radwanski to share with the rest of the workgroup.
- Ms. Leiby brought a list of all batterer intervention programs that have been approved by the Arizona Department of Health Services, Division of Behavioral Health Services, and will share it with interested members.

VII. Taskforce Report: Criteria for Best Interests (Version 7)

The taskforce’s report was tabled because of technical difficulties with the telephone system.

VIII. Taskforce Report: Stress Test

The Stress Test Taskforce has not met and had no report.

IX. Next Meeting

Friday, October 29, 2010

10:00 a.m. – 1:00 p.m.

Conference Room 119A/B

Arizona State Courts Building

- Mr. Buckman will facilitate the next meeting as Ms. Hawkins will be unable to attend. Neither Ms. Hawkins nor Mr. Buckman are able to attend the November 19 meeting, so Mr. Alongi will facilitate it.
- Dr. Fabricius said that Dr. Weinstock had responded to his email during the meeting and is willing to be reclassified a participating member.
- The workgroup voted to move Dr. Yee from participating member to voting member and David Weinstock from voting member to participating member.

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<sup>1</sup> The public policy statement in SB 1314 can be found in Title 25, Chapter 1.

**MOTION:** (By Tom Alongi) Motion to approve Dr. Yee as a voting member and Dr. Weinstock as participating member. Motion seconded. Motion passed unanimously.

Mr. Espinoza asked to have the topic of temporary orders placed on the next agenda. He said he will provide a copy of Oklahoma's policy to Ms. Radwanski for distribution to the workgroup.<sup>2</sup> Mr. Alongi suggested creating a Temporary Orders Taskforce, and Dr. Fabricius asked Mr. Espinoza to chair it. John Weaver and Mr. Gibson also volunteered for the taskforce, and Mr. Espinoza will contact Judge Bruce Cohen to find out whether he also will participate on it.

The meeting adjourned at 12:46 p.m.

**Votes Taken:**

- ✓Reclassify Kendra Leiby as a voting member – unanimously approved
- ✓Minutes – September 17, 2010 – unanimously approved
- ✓Reclassify Dr. Brian Yee as a voting member and Dr. David Weinstock as a participating member – unanimously approved

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<sup>2</sup> A copy of the Oklahoma policy was forwarded to the workgroup by Ms. Radwanski as part of an email dated September 7, 2010.

*Ad Hoc Custody Workgroup  
Minutes*

Date: October 29, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building  
Conference Room 119A/B

**Minute Takers:** Kay Radwanski, Lorraine Nevarez

**Voting Members Attending: Quorum attained**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> William Fabricius, Chair (telephonic) | <input checked="" type="checkbox"/> Kendra Leiby          |
| <input checked="" type="checkbox"/> Thomas Alongi                         | <input checked="" type="checkbox"/> Judge Colleen McNally |
| <input checked="" type="checkbox"/> Sidney Buckman                        | <input checked="" type="checkbox"/> John Weaver           |
| <input type="checkbox"/> Daniel Cartagena                                 | <input type="checkbox"/> David Weinstock                  |
| <input type="checkbox"/> Grace Hawkins                                    | <input type="checkbox"/> Steve Wolfson                    |
| <input type="checkbox"/> Brooks Gibson                                    | <input checked="" type="checkbox"/> Brian Yee             |

**Participating Members Attending:**

- |   |  |
|---|--|
| <input type="checkbox"/> Bruce Cohen                | <input type="checkbox"/> Donnalee Sarda  |
| <input checked="" type="checkbox"/> Mike Espinoza   | <input type="checkbox"/> Ellen Seaborne  |
| <input type="checkbox"/> Patrick Lacroix            | <input type="checkbox"/> Russell Smolden |
| <input checked="" type="checkbox"/> Patricia Madsen | <input type="checkbox"/> Thomas Wing     |

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez

**Guests:** Theresa Barrett, Administrative Office of the Courts; Dean Christoffel, attorney; Joi Davenport, public; Karen Duckworth, public; Jenny Gadow, attorney; Dennis Levine, attorney; David Hamu, public; Kathy Sekardi, Administrative Office of the Courts; Sheri Fetzer, Superior Court in Coconino County

**Matters Considered:**

I. Welcome and Announcements

Sidney Buckman called the meeting to order at 10:10 a.m. and welcomed the members to the Ad Hoc Custody workgroup.

II. Minutes

Minutes from the September 17, 2010, workgroup meeting were approved with an amendment to page 3 regarding Dr. Brian Yee's comment.

**MOTION:** (By Brian Yee) Motion to approve the October 8, 2010, minutes as amended. Motion seconded. Motion passed.

III. Brainstorming

Three members of the public commented during the Call to the Public:

- Karen Duckworth: Ms. Duckworth noted her concern about paternity and dissolution hearings. She said the custody and parenting time processes often become adversely affected by false allegations of domestic violence. She said there are screening mechanisms in place, but they are not used in court. She said that many times prosecutors, police officers and juries are not available. Ms. Duckworth said the "friendly parent" factor is not being exercised enough because judges are not aware of this option. She said if a parent makes a false allegation, then it demonstrates that parent's inability to make important decisions. Ms. Duckworth asked how a person can become a participating member of this workgroup.

It was noted a person becomes a participating member by becoming familiar with the workgroup's progress, and bringing specific suggestions to the meetings for the workgroup to discuss.

- Joi Davenport: Ms. Davenport provided contact information for outside DV experts to assist the Stress Test Taskforce. She noted Leona Walker, Lundy Bancroft, and Dr. Robert Gaffner. She will forward their contact information to Kay Radwanski.
- David Hamu: Mr. Hamu noted the work being done by the workgroup is important and critical for children and parents. He noted the process of dissolving a family from a legal standpoint does not necessarily need to carry with it unpleasantness. Parents need to find ways to cooperate and collaborate for the benefit of their child.

#### Announcements (taken out of order)

Dr. Fabricius gave the following update:

- The Domestic Relations Committee (DRC) extended the workgroup for another year.
- The Steering Committee will meet prior to the next regular workgroup meeting to discuss membership issues.
- The workgroup meeting times next year will be 9:30 a.m. – 12:00 p.m.
- Meeting dates for 2011 will be scheduled, and a list will be disbursed to the workgroup.
- A letter was sent to the DRC co-chairs to ask for guidance on outreach. AHCW is awaiting a response.

It was discussed that members would identify their role on the workgroup. Each voting and participating member may submit a brief biography for publication on the workgroup website. Workgroup members were also encouraged to report any outreach efforts.

#### IV. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (version 6)

Tom Alongi reported the updates made to version 6. After much discussion, the changes are as follows:

- A typographical error regarding a statutory reference in section 103(7), has been corrected.
- Removal of the phrase “Promote strong families and family values.” The taskforce decided to leave it intact at its current location in SB1314, because of its broader application. However, members of the workgroup suggested the taskforce consider not making firm changes to the policy statement.
- Removed the introductory phrase (“[C]onsistent with administrative regulations governing the licensure of counseling programs for domestic violence offenders”) from section 103(1). The introductory language explains the definition. However, putting an explanation about the definition in statute is uncommon. The workgroup agreed to remove it.
- The workgroup addressed section 103(3), regarding coercive control, specifically the phrase “inflicted by one intimate partner against another.” The workgroup discussed whether the language should be revised to read “inflicted by one *parent*...”. The term “intimate partner” is used because in post-decree litigation, if a parent is inflicting violence on a new partner who is a non-parent to the child who is the subject of the custody case, then this paragraph will apply. The workgroup agreed to clarify the language about coercive control.
- The taskforce removed the “historical aggressor” definition. This factor will be covered in the conflicting presumption rule that will be discussed at a later time.
- The taskforce will reword the “primary caregiver” and “primary residence” definition. They will review an appropriate way to define these terms for purposes of public assistance and other programs that require designation of a custodial parent or a child's primary residence.
- The taskforce removed the words “or circulation of blood” from the suffocation definition, as the

phrase was deemed unnecessary for purposes of the child custody statute. The definition had been copied from a criminal statute on suffocation.

- In section 105(D), the taskforce included language to clarify that the court, in determining a person's capacity for parental decision-making, should evaluate both aggravating and mitigating circumstances surrounding intimate partner violence. Subsection E contains aggravating factors, and subsection F contains mitigating factors.
- The workgroup discussed section 105(C), regarding the 10-year look-back period for a parent who has a felony conviction. The taskforce used this benchmark for consistency with other felony codes in statute. The taskforce will consider the suggestion to reduce the standard to something less than 10 years.
- The taskforce suggested defining the term "legal standard" for section 105(E)(3) and subparagraph F(6).
- Reworded language for section 105(H) to make more understandable for the user.
- Added language to section 105(K). The language tries to protect victims from mandated mediation while still giving the court discretion for unusual cases.
- Add language to section 105(L). The language tries to remove the punishment of a parent living in a shelter to be seen as unfit for decision-making or parenting time.

V. Taskforce Report: Criteria for Best Interest (Version 8)

In the interest of time, this discussion was tabled for the next meeting.

VI. Taskforce Report: Temporary Orders (Version 1A and 1B)

Mr. Espinoza reported on the two versions of the Temporary Orders section that were distributed to members for review. The workgroup asked whether the two versions could be combined to make it easier to review them. The taskforce will combine both versions and present at the next meeting.

VII. Taskforce Report: Stress Test

The Stress Test Taskforce had nothing to report.

VIII. Next Meeting

Friday, November 19, 2010

10:00 a.m. – 1:00 p.m.

Conference room 345A/B

Arizona State Courts Building

**Votes Taken:**

- ✓ Minutes - October 8, 2010 - unanimously adopted as amended.

*Ad Hoc Custody Workgroup  
Minutes*

Date: December 10, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building  
Conference Room 119A/B**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending: Quorum attained**

- |   |  |
|---|--|
| ■ William Fabricius, Chair (telephonic) | <input type="checkbox"/> Brooks Gibson |
| ■ Thomas Alongi                         | ■ Kendra Leiby                         |
| ■ Sidney Buckman                        | ■ Judge Colleen McNally                |
| ■ Daniel Cartagena                      | ■ John Weaver                          |
| ■ Grace Hawkins                         | ■ Brian Yee                            |

**Participating Members Attending:**

- |  |  |
|--|--|
| ■ Mike Espinoza                          | <input type="checkbox"/> Russell Smolden |
| <input type="checkbox"/> Patrick Lacroix | <input type="checkbox"/> David Weinstock |
| ■ Patricia Madsen                        | <input type="checkbox"/> Thomas Wing     |
| <input type="checkbox"/> Donnalee Sarda  | <input type="checkbox"/> Steve Wolfson   |
| <input type="checkbox"/> Ellen Seaborne  |  |

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez

**Guests:** Aaron Barnes, public; Theresa Barrett, Administrative Office of the Courts; Dean Christoffel, attorney; Joi Davenport, public; Terry Decker, public; Ashley Donovan, public; Karen Duckworth, public; Marty Lamb, public; Dennis Levine, attorney; Honorable Carey Hyatt, judge; Seth Roman, public; Kathy Sekardi, Administrative Office of the Courts; Jarrett Williams, public

**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 10:03 a.m. and welcomed the members to the Ad Hoc Custody workgroup.

Dr. Bill Fabricius gave the following update:

- The March 25, 2011, meeting date has been rescheduled to April 1, 2011.
- Public comments have been received through the workgroup webpage. As comments are received, they will be distributed to workgroup members and be put on the agenda for discussion.
- Workgroup members were reminded to report any outreach efforts to Kay Radwanski for entry on the workgroup webpage.
- Patrick Lacroix and Donnalee Sarda have indicated by email that they will no longer be participating members. Judge Bruce Cohen also has withdrawn from the workgroup.
- An email was sent to Ellen Seaborne, Russell Smolden, and Judge Thomas Wing to inquire if their schedules will allow them to continue in the workgroup. They are designated as participating members.
- The Steering Committee met and discussed procedural rules regarding membership. A question has been raised about whether voting members of the workgroup must also be members of the Domestic Relations Committee (DRC). This issue has been submitted to the DRC chair for clarification.

## II. Minutes

Minutes from the October 29, 2010, workgroup meeting were reviewed. Dennis Levine's name will be corrected. A vote was not taken on the minutes pending a response from the DRC chair regarding voting members.

## III. Discussion: Workgroup Goals and Principles

Dr. Fabricius discussed the importance of having information about the workgroup's development and purpose on the workgroup webpage. Dr. Fabricius developed a *Principles, Operating Procedures, and Goal* document that will be put on the webpage for the public. The workgroup reviewed and made some changes to the document. All agreed that providing information about the workgroup on the webpage would be helpful.

## IV. Brainstorming:

Members from the public commented during the Call to the Public:

Terry Decker -- referenced the *Principles, Operating Procedures and Goals* document. He said the introductory statement "taking into account the child's best interest" is circular logic. He noted SB1314 already states that as policy. He suggested that reference to domestic violence should be left in Title 13 but said not all Title 13 results should affect parenting time and custody. He suggested changing the word "adversarial" in paragraph 4 to "to promote less conflict."

Karen Duckworth -- said criminal investigation resources are not always involved in the court process and family courts are not designed to accommodate those types of procedures. She suggested revising language in Title 13.

Marty Lamb -- said he believes there is a huge incentive for persons to make false allegations. He suggested including language that would discourage persons from making false allegations.

## V. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (Version 7)

Tom Alongi reported on the updates to Version 7. He noted that taskforce members had not had an opportunity to review the updates. Among the modifications shown on the tracked changes version are:

- Section 102(A) -- last sentence amended
- Section 103(1) -- "Batter's intervention program" definition amended
- Section 103(3), regarding coercive control, was moved to Section 105(E)(7), and the section was renumbered.
- Sections 103(10) and (11) -- definitions regarding "primary caregiver" and "primary residence" were deleted.
- Section 105(C) and (E) -- word revisions were made for improved readability.
- Section 105(E)(7) -- coercive control section was inserted.
- Section 105(M) made a word change from "competent" to "conclusive."

Mr. Alongi responded to other members' questions about the relationship between Orders of Protection (Title 13) and child custody (Title 25).

### *Public Comment:*

- Mr. Decker suggested Section 106(E)(3) be removed. He said the words "victim" and "batterer" are sexually biased and should be removed. He said after reading the article written by Mr. Alongi, he wanted to note that men are not always the persons committing domestic violence.
- Dennis Levine -- noted his 37 years of experience as a lawyer in family law. Specifically, he has

been practicing for 11 years in domestic violence. He noted the lack of a distinction between physical violence and coercive control. He said expert psychologists use definitions of domestic abuse that show it can also be emotional abuse.

- Joi Davenport -- thanked Mr. Alongi on his efforts and contributions to the workgroup. She said the proposed language will help judges and attorneys.
- Dean Christoffel -- noted Mr. Alongi's hard work and contribution.
- Ms. Duckworth noted Section 105(C) regarding the 10-year conviction. She said it seems contradictory regarding the requirement and purpose of a parent attending a batterer's program.
- Jarrett Williams -- noted his surprise regarding the removal of the word "family" in Section 101.
- Mr. Lamb noted neglect as a form of abuse.

Mr. Alongi noted his agreement with emotional abuse as domestic violence. However, for legal proceedings, the court needs a clear definition for domestic violence. The coercive control factors have been documented in research and were taken from different sources, including the National Council for Juvenile and Family Court Judges, Peter Jaffe, and the American Bar Association.

#### VI. Taskforce Report: Criteria for Best Interests (Version 8)

The taskforce had nothing new to report.

##### *Public Comment:*

- Ms. Duckworth thanked the taskforce for its efforts. She recommended judicial training for judges.
- Mr. Decker said he liked that families are promoted.
- Mr. Levine noted Section 403.02(6) and said cooperation can be difficult when domestic violence has occurred. He said that usually a victim does not want to deal with the abuser, and he suggested that there should be a language change. He said that the phrase "logistically possible" (Section 403.03(5)) should be defined.
- Ms. Davenport asked whether the term "suitable age" (Section 25-403.02) would be defined. Ms. Hawkins responded that each child develops differently so this factor would be case specific.
- Mr. Lamb thanked the taskforce for its work.
- Kathy Sekardi -- suggested adding the new law regarding notification requirements in A.R.S. 25-403.05(B), which is referenced in A.R.S. § 25-403.02(6); parenting plans.

#### VII. Taskforce Report: Temporary Orders (Version 2)

Mike Espinoza reported on the updates to Version 2. He indicated that the other taskforce members had not seen the draft prior to the meeting. He said his focus was to make sure the child's rights are not violated. The changes are as follows:

- All definitions were listed
- The purpose of the section is included.
- Included language to promote fairness regarding parenting time.

##### *Workgroup Comments:*

- It was suggested to wait on definitions until the section is complete. This will help determine which words need to be defined.
- Need to be considerate of the child's age to ensure the best interest of the child and to determine the best way to implement parenting time.
- The substantive information should be focused on custody standards and procedures.
- Include clarifying language to communicate that the same legal standards and findings need to be applied in temporary order hearings.

*Public Comments:*

- Mr. Decker suggested defining a term to explain the time of filing until the temporary order hearing.
- Ms. Duckworth noted the importance of maintaining the parenting time that was in place before the parties separated. She suggested including language to help speed the process so parents do not lose parenting time with their child and modifying the language in the preliminary injunction provision.
- Ms. Davenport noted that language should be included to address allegations of domestic violence. She said there is inadequate time in a temporary orders hearing to present clear and convincing evidence, the standard being proposed for this section.
- Mr. Lamb thanked the taskforce for their efforts.
- Mr. Williams noted having definitions are helpful. He thanked the taskforce for their efforts.
- Honorable Carey Hyatt -- noted her involvement in a workgroup at the Superior Court in Maricopa County. The workgroup is discussing protective orders and temporary orders. They are trying to determine ways to conform Family Court processes with the Arizona Rules of Protective Order Procedure (ARPOP).

VIII. Taskforce Report: Stress Test

The Stress Test Taskforce had nothing to report.

IX. Next Meeting

Friday, January 14, 2011

9:30 a.m. – 12:00 p.m.

Conference Room 345A/B

Arizona State Courts Building

X. Adjournment

The workgroup adjourned at 1:00 PM

**Votes Taken:**

✓ None

*Ad Hoc Custody Workgroup*  
*Minutes*

Date: January 14, 2011

Time: 9:30 a.m. – 12:00 p.m.

Location: State Courts Building  
Conference Room 230**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending: Quorum attained**

- |   |                          |
|---|--------------------------|
| ■ William Fabricius, Chair (telephonic) | ■ Grace Hawkins          |
| ■ Thomas Alongi                         | □ Brooks Gibson          |
| ■ Sidney Buckman                        | ■ John Weaver            |
| ■ Daniel Cartagena (telephonic)         | ■ Brian Yee (telephonic) |

**Participating Members Attending:**

- |                   |                   |
|-------------------|-------------------|
| □ Mike Espinoza   | □ David Weinstock |
| ■ Patricia Madsen | □ Steve Wolfson   |

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez

**Guests:** Theresa Barrett, Administrative Office of the Courts; Dean Christoffel, attorney; Joi Davenport, public; Terry Decker, public; Karen Duckworth, public; Sherri Fetzer, IFC Coordinator, Coconino County; Timothy Frank, public; Jenny Gadow, attorney; David Hamu, public; Marty Lamb, public; Kathy Sekardi, Administrative Office of the Courts; Lindsay Simmons, AZ Coalition Against Domestic Violence; Jarrett Williams, public

**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 10:03 a.m. and welcomed the members to the Ad Hoc Custody Workgroup.

Dr. Bill Fabricius and Ms. Hawkins made the following announcements:

- The *Principles, Operating Procedures, and Goal* document will be put on the webpage for the public to view.
- Ellen Seaborne, Russell Smolden, Judge Thomas Wing, Judge Colleen McNally and Kendra Leiby have withdrawn from the workgroup due to schedule conflicts.
- The workgroup would like to ask Judge Carey Hyatt, presiding judge of the Family Court, Superior Court in Maricopa County, to join the Temporary Orders or Special Circumstances taskforce.
- The Criteria for Best Interest taskforce has completed its revisions. The taskforce is asking for comments to be submitted via the webpage. All versions can be found on the workgroup webpage. <http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx>. The workgroup will review this section again at a later meeting date.

II. Minutes

Minutes from the December 10, 2010, workgroup meeting were reviewed. A vote was not taken on the minutes pending a response from the DRC chair regarding status of voting members.

III. Received in November and December

Dr. Fabricius noted the importance of receiving public comments that provide specific suggestions to court procedures or wording. As comments are received, they will be compiled and posted on the website as part

of the materials for the next meeting.

#### IV. SB 1083-Proposed Revisions to Relocation Statute

Ms. Hawkins reported on the Substantive Law/Court Procedures Workgroup's revision to SB 1083 regarding the child relocation statute. The workgroup is part of the Domestic Relations Committee (DRC). She explained the workgroup's focus regarding the mileage and other aspects that affect changes in a parenting time plan. The workgroup prepared and presented its proposal to the DRC, which approved it on December 3, 2010. Senators Linda Gray and Sylvia Allen are sponsoring the bill.

#### V. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (Version 8)

Tom Alongi reported on the updates to Version 8. Among the modifications shown on the tracked changes version are:

- The numbering of the section has been renumbered for consistency.
- Section 25-427, formerly A.R.S. § 25-403.03(C), (G) & (H), has been divided into smaller paragraphs and given a title.
- Section 25-427, paragraph (B), (C) and (F), are new.
- Section 25-427, paragraph (F), discusses how a victim may enter into alternative dispute resolution (ADR).

Daniel Cartagena suggested removing "contested" from Section 25-427(C) so that the rule will apply to all protective orders, including those issued ex parte. Mr. Alongi noted comments made during discussion and will review them with the other taskforce members. They will come back with another version for the workgroup review.

#### *Public Comment Summary:*

- Sheri Fetzer said that the language in Section 25-425(A) does not specify whether an act of violence was against the other parent. She suggested that paragraph (A) be similar to (B), noting whether an act of violence has been committed against another parent.
- Terry Decker noted Section 25-425, referencing the 10-year look back, as unnecessary. He said a parent is removed from making decisions for a good portion of the child's life. He suggested lowering the timeframe to two years.
- Timothy Frank asked for an explanation of the motivation behind the detail being presented in the draft.
- Karen Duckworth noted Section 25-425(A) and said intimate partner violence should be considered separately from child abuse. She said child abuse is more severe and should have the 10-year timeframe; however, she said the intimate partner violence should be reduced to two years or no timeframe. She said that Orders of Protection should not be the driving force of future custody decisions and that ADR is important.
- Dean Christoffel noted that Pima County conducts a mandatory settlement conference before trial. Judges pro tem meet with both parties to determine whether issues can be resolved so parties do not have to go to trial. He suggested allowing party to "opt out" of ADR rather than "opt in."

The taskforce will consider public comments in its review of this section.

#### VI. Taskforce Report: Temporary Orders (Version 2)

The discussion was tabled until the next meeting.

#### *Public Comment Summary:*

- Jenny Gadow stated her concerns regarding the language used in this proposal, specifically noting a

change in the burden of proof and its effect on the judicial system. She said that proving that shared parenting time is not beneficial unless it is a danger to the child is changing the burden of proof. She suggested the whole proposal be reworked to be more consistent with what the legislature has described appropriate in the past and said the taskforce should focus on the child's best interest.

- Jarrett Williams said A.R.S. § 25-103 discusses the foundation of parenting time and what is listed in the statute is what the people of this state want.
- Mr. Decker said there is abuse with temporary orders. He said it is not unusual for a mother to abscond with the child and deny access to the other parent. The purpose should be to change the burden of proof.
- Joi Davenport agreed with Ms. Gadow's comments. She said there is no protection if there is domestic violence or child abuse. She said a trial is the place for dealing with burdens of proof, not in temporary orders.
- Timothy Frank stated he supports changing the burden of proof.
- Marty Lamb said he supports changing the burden of proof.
- Lindsay Simmons noted that there is no mention of the court finding domestic violence and how such a finding would affect "substantial" and "meaningful" parenting time.
- David Hamu noted his concern that temporary orders are not always temporary.
- Mr. Christoffel noted that Pima County temporary order hearings are longer than 30 minutes. He said it is important to make sure the proposal applies to the entire state of Arizona. He noted that the Legislature has passed certain standards regarding expert opinion testimony.
- Ms. Duckworth noted the state policy in Section 25-420 regarding strong families and meaningful parenting time. She said temporary orders should assist in maintaining shared parenting time and that domestic violence does not have to be the main focus of temporary orders.

Patricia Madsen stated her concerns about the temporary orders section being incongruous with the rest of the custody statute. She said a temporary order is a custody order and a temporary orders hearing is subject to the same requirements as the rest of the custody statute. She also noted that the temporary order proposal does not include the same requirements as a final custody order.

#### VII. Taskforce Report: Stress Test

The taskforce had no report.

#### VIII. Brainstorming

Summary of comments from the general public during the Call to the Public:

- Ms. Gadow said she is a certified specialist in family law, judge pro tem of five years, and chair of the Arizona State Bar's Family Law Rules Committee. She noted her concern about the lack of judges and certified specialists in family law on the workgroup. She has attended a number of meetings as a member of the public and feels that the two-minute timeframe for public comment is insufficient.
- Mr. Decker noted the need for changes to the current statute. He stated that judges and attorneys per the Constitution may not be a member of a legislative committee. Mr. Decker said the two-minute timeframe for public comment is not enough time.

It was noted that A.R.S. §25-323.02 specifically authorizes the Chief Justice to appoint judges to the Domestic Relations and Child Support committees.

- Ms. Davenport noted that domestic violence is broader than just physical abuse. It also includes emotional, verbal and mental abuse, and domestic violence affects children.

- Mr. Williams stated that judges' input regarding the workgroup is beneficial but it is up to the people of Arizona to determine what they want for family law.
- Mr. Frank said the family law court process is frustrating. He suggested that the state law be modified so parents who want to spend time in their child's life can do so in an expedient and efficient way.
- Mr. Lamb asked the workgroup to keep focused on the best interests of the child.

Mr. Alongi noted that all groups – domestic violence advocates and community and father's rights advocates – must work hand-in-hand to write this legislation. He said that nothing in the current draft detracts from A.R.S. § 25-103. Version 8 gives guidance on what to do if there is evidence to the contrary that the policy should apply. He said the DV and fathers' rights groups are not on opposite sides.

- Ms. Duckworth said the Pima County temporary order hearing should be used as a model. She wanted to know how to add new participating members, including herself, into the workgroup.

Dr. Fabricius noted that the workgroup is still waiting for guidance from the DRC regarding the status of voting members. The workgroup needs to consider a new structure for public comments regarding the timeframe. However, he encouraged people to provide comments to the workgroup for review. He said Mr. Alongi's comments were on point and that everyone needs to work together.

IX. Next Meeting

Friday, February 11, 2011  
9:30 a.m. – 12:00 p.m.  
Conference Room 345A/B  
Arizona State Courts Building

X. Adjournment

The workgroup adjourned at 11:53 a.m.

**Votes Taken:**

✓ None

*Ad Hoc Custody Workgroup  
Minutes*

Date: February 11, 2011

Time: 9:30 a.m. – 12:00 p.m.

Location: State Courts Building  
Conference Room 345A/B**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending:**

- |   |                          |
|---|--------------------------|
| ■ William Fabricius, Chair (telephonic) | ■ Grace Hawkins          |
| ■ Sidney Buckman                        | ■ Brian Yee (telephonic) |
| ■ Daniel Cartagena (telephonic)         |                          |

**Other Participants:**

Thomas Alongi	Hon. Carey Hyatt
Theresa Barrett, AOC	Jack James (via GoToMeeting®)
Annette Burns (telephonic)	Dennis Levine
Joi Davenport	Amy Love, AOC
Terry Decker	Patricia Madsen
Karen Duckworth	Kathy Sekardi, AOC
Mike Espinoza	Lindsay Simmons
Brooks Gibson (telephonic)	Jarrett Williams
David Hamu (telephonic)	Brian Durham (intern, Arizona State Senate)

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 9:35 a.m. and welcomed members and participants to the Ad Hoc Custody Workgroup.

II. Workgroup Membership and Meeting Procedures

Dr. Bill Fabricius and Ms. Hawkins made the following announcements:

- Pursuant to Open Meetings Law requirements, a conference room has been provided where the public can listen to the workgroup's deliberations and provide comment. Telephone lines are for workgroup members. As a courtesy, the public may use any lines that are not being utilized by workgroup members.
- The workgroup was notified by Senator Linda Gray that only Domestic Relations Committee (DRC) members are voting members in this workgroup.
- Senator Gray has asked for future Ad Hoc Custody Workgroup meetings to be formatted as a roundtable discussion but only DRC members may vote. Ground rules have been established to assist in the facilitation of the meeting.
- The meeting facilitators, Ms. Hawkins and Sid Buckman, will manage discussion and participation during the meeting.
- Comments from other participants must be directed toward the topic on the table; otherwise, the facilitator will move on to the next person.
- Free comment (not directed toward a specific topic) will be permitted during the Call to the Public with a two-minute time limit.

### III. Minutes

Minutes from the December 10 2010, workgroup meeting were approved.

**MOTION:** (By Dr. Fabricius) Motion to approve the December 10, 2010, minutes as submitted. Motion seconded. Motion passed.

Minutes from the January 14, 2011, workgroup meeting were approved as amended to include Dr. Yee's comment regarding the grammatical error.

**MOTION:** (By Dr. Fabricius) Motion to approve the January 14, 2010, minutes as amended. Motion seconded. Motion passed.

Kay Radwanski noted that pursuant to Open Meetings Law, meeting minutes must include the following:

- Time, date and meeting place
- Attendance
- Summary of items discussed, not a summary of the discussion itself.
- Any action/votes-motions

It was noted that minutes are not intended to be verbatim transcripts; however, meetings are recorded and tapes are available pursuant to the AOC's records retention schedule.

### IV. Legislative Process

Amy Love, AOC legislative analyst, made a presentation about the legislative process. She noted that this is the 50th Legislature, First Regular Session. She explained the many steps involved in the legislative process in proposing a bill and possibly turning it into a law. It was noted that throughout this process, there are many opportunities for public involvement, from the bill drafting stage, through testimony at committee hearings, to observation of debate. Proceedings at the Legislature are open to the public.

### V. Timetable and Scope of Workgroup

Mr. Buckman noted the timetable for this workgroup as follows:

- In order to allow time for the Substantive Law and Court Procedures workgroups to review the draft language and make necessary changes before presentation to the DRC in June, this workgroup will have its final meeting on March 4, 2011. The DRC will meet between June and November, with the goal of having a bill prepared for introduction in the Legislature in January 2012.
- The Substantive Law/Court Procedures Workgroup will be advised of the majority and minority consensus on the AHCW draft as it moves forward.
- The March 4 meeting will begin at 9:00 a.m. This will be the final round of discussion regarding the taskforce drafts in this workgroup.
- It was noted that public can comment throughout the process from DRC workgroups to the legislature.
- This workgroup can note in its report to the Substantive Law/Court Procedures Workgroup the importance of public comment.

There were many public comments regarding the AHCW meeting schedule. It was noted that the public can attend the Substantive Law/Court Procedures Workgroup and the DRC meetings.

### VI. Review of Public Comments Received Since Last Meeting

Six comments from the public were submitted through the AHCW web page since the January 14, 2011, meeting. Dr. Fabricius noted that the comments discussed presumption for equal parenting, levels of evidence for reducing parenting time, and differences between family court and criminal court.

A summary of the topics addressed in the comments are as follows:

- Presumption for equal parenting time.
- Domestic violence should only be discussed in criminal court, not family court.
- Length and expense of litigation in family court regarding custody disputes should be addressed.
- Evidence should be clear and convincing if there is an objection to another parent having parenting time.
- Appreciated the Integrated Family Court
- Is there a right to litigation for issues of contested custody?
- Discussed using the legal standard of “*beyond a reasonable doubt*” for reducing parenting time.

#### VII. Taskforce Report: Jurisdiction, Definitions, Special Circumstances

Tom Alongi reported on the updates to the Unified Draft (Version 1) that was presented. The modifications are as follows:

- The Best Interests and Third-Party Rights sections have been incorporated into the Unified Draft.
- Section 25-420 – the introduction now includes the term “legal parents” as this language has legal significance.
- Section 25-420(C) – added the words “parenting time plan.”
- Section 25-422 – added definitions for the terms “In loco parentis” and “Legal parent”
- Section 25-425(A) was removed, and the lettering has been adjusted to accommodate the format.
- Section 25-427(C) – the word “contested” was removed.
- Section 25-427(F) – the “opt in” procedure was replaced by an “opt out” option.
- Section 25-428(B)(2) – added “comparable testing procedure.”
- Section 25-431 added option 2 (tiebreaker provision) from version 8.
- Section 25-432 includes 25-403(A)(B)(C) and 25-403.01(B) from the Best Interests Version 9 (Final Version).
- Section 25-435(E) includes constitutionally required language based on the U.S. Supreme Court’s decision in Troxel v. Granville, a grandparent visitation rights case.
- Section 25-435(G) includes new language that references the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
- Section 25-436 includes 25-403(D) from the Best Interests Version 9 (Final Version).

#### *Summary of Comments:*

- It was suggested to include the word “frequent” instead of “regular” in Section 25-420(B).
- It was suggested to consider adding coercive control to the definitions section (§ 25-422). It currently is in the intimate partner violence section at § 25-425(D).
- It was suggested to include language to clarify Section 25-425(D) regarding coercive control. It was noted that the IPV/child abuse section applies to “proven” or “confirmed” offenders. Such offenders still have a chance (pursuant to § 25-425(B)) to show why they are suitable to have parental decision-making authority.
- It was suggested to remove the word “victim” throughout the whole document.

Dr. Fabricius suggested circulating the draft to nationally known experts to get their opinions on it.

#### VIII. Taskforce Report: Criteria for Best Interests

Dr. Fabricius reported on the update to Version 9 (Final Version). The modification is as follows:

- 25-403.01(B), which is Section 25-432(D) in the Unified Draft) added language regarding the court’s role when parents do not agree on elements in a parenting time plan.

It was noted that Mr. Alongi will include this change in the next version of the Unified Draft.

**IX. Call to the Public**

Terry Decker – said he wanted to talk about judicial discretion. He said that judges do not have the expertise to decide what is in a child’s best interests. He said the statute should state what is in a child’s best interests, leading to more predictive and consistent outcomes.

Jarrett Williams – noted his concern about defining coercive control for the first time in the custody statute. He said the issue of coercive control should be addressed by the schools.

Mr. Alongi noted that a handout that outlines the sections the workgroup has updated was included in the meeting materials. He suggested that participants keep this handout for future reference.

**X. Next Meeting**

Friday, March 4, 2011

9:00 a.m. – 12:00 p.m.

Conference Room 119A/B

Arizona State Courts Building

**Votes Taken:**

- ✓ Minutes - December 10, 2010 - unanimously passed as submitted.
- ✓ Minutes - January 14, 2011 - unanimously passed as amended.

## *Ad Hoc Custody Workgroup Minutes*

**Date:** March 4, 2011**Time:** 9:00 a.m. – 12:00 p.m.**Location:** State Courts Building  
Conference Room 119A/B**Minute Takers:** Kay Radwanski, Lorraine Nevarez**Voting Members Attending:**

- |   |                 |
|---|-----------------|
| ■ William Fabricius, Chair (telephonic) | ■ Grace Hawkins |
| ■ Sidney Buckman                        | ■ Brian Yee     |
| □ Daniel Cartagena                      |                 |

**Other Participants:**

Thomas Alongi	Jack James (via GoToMeeting®)
Theresa Barrett, AOC	Amy Love, AOC
Joi Davenport	Patricia Madsen
Terry Decker	Brent Miller
Jeff Deily	Kathy Sekardi, AOC
Karen Duckworth	Lindsay Simmons
Mike Espinoza	Brian Durham (intern, Arizona State Senate)
Hon. Carey Hyatt	John Weaver

**Staff/Admin Support:** Kay Radwanski, Lorraine Nevarez**Matters Considered:**I. Welcome and Announcements

Grace Hawkins called the meeting to order at 9:05 a.m. and welcomed members and participants to the Ad Hoc Custody Workgroup.

Dr. Bill Fabricius and Ms. Hawkins made the following announcements:

- This is the last Ad Hoc Custody Workgroup meeting.
- The proposal will be submitted to the DRC Substantive Law and Court Procedures Workgroup. They will meet on the following dates (all times and rooms are subject to change):

March 11, 2011	Noon – 2:30 p.m.	345B
March 25, 2011	Noon – 1:30 p.m.	230
April 8, 2011	Noon – 1:30 p.m.	230
April 29, 2011	Noon – 1:30 p.m.	230
May 13, 2011	Noon – 1:30 p.m.	230

\*Please check the Domestic Relations Committee website for further information.

- Staff was thanked for their support and efforts with this project.
- It was noted the workgroup has met 19 times. Everyone was thanked for their efforts and contribution.
- Minority and majority consensus regarding the proposal will be noted in the final report.

II. Minutes

Minutes from the February 11, 2011, workgroup meeting were approved.

**MOTION:** (By Dr. Fabricius) Motion to approve the February 11, 2011, minutes as submitted.  
Motion seconded. Motion passed.

### III. Review of Public Comments Received Since Last Meeting

One comment from the public was submitted through the AHCW web page since the previous meeting on February 11, 2011. Dr. Fabricius noted that the comments discussed a lack of penalties for false allegations.

A summary of the topics addressed in the comment are as follows:

- The draft contains no consequences for a person who makes false allegations of intimate partner violence or child abuse.

### IV. Solicitation of National Experts to Review Proposed Draft

Dr. Fabricius reported that Peter Salem, executive director of the Association of Family and Conciliation Courts, offered to identify and approach some national experts to review the workgroup's draft and offer commentary, which would then be passed onto the other bodies taking up the proposal. The commentaries might bring up points or suggestions that others might want to consider. He noted that an independent figure of Mr. Salem's stature, who would independently solicit expert feedback on what this workgroup has produced, would be a strong testimony to the goals of this workgroup being open, accountable and evidenced-based.

#### *Summary of Comments:*

- Mr. Salem would randomly select experts.
- It was noted that experts reviewing the proposal should have expertise in diverse areas of family law.
- The Association of Family and Conciliation Courts is an interdisciplinary and international association of professionals dedicated to the resolution of family conflict. The AFCC is made up of members of multiple disciplines in the public, private, and non-profit sectors. A focus of the AFCC is collaboration, education, and empowering families to promote a healthy future for children.
- It was suggested that experts with moderate, expansive, and restrictive views be invited to review the draft.
- It was suggested that experts outside of Mr. Salem's choice of experts be considered.

**MOTION:** (By Dr. Fabricius) Motion to have the Ad Hoc Custody Workgroup approach Peter Salem to solicit outside commentary from national experts. Motion not seconded. Motion failed.

**AMENDED MOTION:** (By Sidney Buckman) Motion to have the Ad Hoc Custody Workgroup put together a proposal recommending the DRC Substantive Law/ Court Procedure Workgroup consider a submission to Peter Salem to solicit outside commentary from international experts. Motion seconded. Motion passed.

### V. Final Review - Unified Draft (Versions 2 and 2A)

Dr. Fabricius provided a handout that discussed the work of the Ad Hoc Custody Workgroup with regard to the draft proposal. Tom Alongi reported on the updates to the final Unified draft. Clean and marked-up copies of Versions 2 and 2A were provided. Mr. Alongi discussed modifications that had been made to Version 2A. The modifications are as follows:

- The word "frequent" was added to § 25-420(B).
- Added additional language to § 25-432(B) regarding the court's authority to resolve disputes. It was noted that the court has a broad mandate to look at all relevant factors.
- The workgroup note regarding coercive control under § 25-424 was moved to workgroup notes for § 25-425.

The workgroup then conducted a review of the entire Unified Draft - Version 2A. Except for AOC staff, all persons who were present at the meeting, including voting members, non-voting members, and members of the public, were invited to participate in a straw poll on each section. The factors of prior attendance or participation in workgroup meetings were not taken into consideration in determining who could vote in the polls.

A summary of the comments for each section are as follows:

- § 25-420; Public Policy - The workgroup note was updated to reflect the current changes.
- § 25-421; Jurisdiction - no workgroup comments presented.
- By *majority opinion*, it was agreed to reorganize the structure of the sections (§§ 25-432 through 25-436 to be moved under § 25-423 and §§ 25-424 through 25-431 to follow) and include a table of contents for guidance.
- By *majority opinion*, it was agreed to leave §25-422 definitions as presented. *Minority opinion* was to include definitions for the words “false allegations,” “hostile aggressive parenting,” and “parental alienation syndrome.”
- By *majority opinion*, it was agreed to leave the word “religion” in § 25-422(9).
- § 25-423; Mandatory Preliminary Inquiry; Special Circumstances - no workgroup comments presented.
- By *majority opinion*, it was agreed to leave § 25-424 as presented. *Minority opinion* was to change the word “one” in paragraph A.
- By *majority opinion*, it was agreed to leave § 25-425 as presented. *Minority opinion* was to omit the term “intimate partner violence” and change the standard “preponderance” to “clear and convincing.”
- By *majority opinion*, it was agreed to leave the term “one parent” throughout the whole proposal. The *minority opinion* was to use the phrase “control of another person.”
- By *majority opinion*, it was agreed to leave the term “offending parent” throughout the whole proposal.
- By *majority opinion*, it was agreed to leave § 25-425(D) as presented. *Minority opinion* was to reiterate when the use of coercive control is appropriate.
- By *majority opinion*, it was agreed to leave § 25-425(C)(2) as presented. *Minority opinion* was to change the word “successive” to “continuing.”
- By *majority opinion*, it was agreed to leave § 25-425(C)(7) as presented. *Minority opinion* was to remove (C)(7).
- By *majority opinion*, it was agreed to leave § 25-426 as presented. *Minority opinion* was to add the language “false reporting of false allegation of intimate partner violence and domestic violence” in § 25-426(A).
- By *majority opinion*, it was agreed to retain the term “intimate partner violence.” *Minority opinion* was to include the term “domestic violence” after the term “intimate partner violence” throughout the document.
- By *majority opinion*, it was agreed to retain § 25-427(D). *Minority opinion* was to strike § 25-427(D).
- By *majority opinion*, it was agreed to leave § 25-427(B) as presented. *Minority opinion* was to change the word “shall” to “may” in §25-427(B).
- By *majority consensus*, it was agreed to leave §25-428(A)(1) as presented. *Minority opinion* was to change “three years” to “one year” and expand or define “any drug offense.”
- § 25-429; Dangerous Crimes Against - no workgroup comments presented.

- § 25-430; Violent & Serial Felons - no workgroup comments presented.
- § 25-431; Conflicting Presumptions or Mandatory Rules - no workgroup comments presented.
- § 25-432; Parenting Plans - no workgroup comments presented.
- § 25-433; Parental Decision - Making; Shared, Final or Sole - no workgroup comments presented.
- § 25-434; Parenting Time - no workgroup comments presented.
- § 25-435; Third-Party Rights; Decision-Making and Visitation by Grandparents, Parental Figures and Other Third Parties - no workgroup comments presented.
- By *majority opinion*, it was agreed to leave § 25-436 as presented. *Minority opinion* was to include a reference to ARFLP 82(A).

**MOTION:** (Sidney Buckman) Motion to approve submission of the proposal with note of the majority and minority opinions to the DRC Substantive Law and Court Procedures Workgroup. Motion seconded. Motion passed unanimously.

VI. Call to the Public

There were no public comments.

VII. Adjournment

Meeting adjourned at 12:01 p.m.

**Votes Taken:**

- ✓ Minutes – February 11, 2011 - unanimously passed as submitted.
- ✓ Submit recommendation to DRC-Substantive Law/Court Procedures Workgroup to consider solicitation of national experts - unanimously passed.
- ✓ Submission of proposal with majority and minority opinions to DRC-Substantive Law/Court Procedures Workgroup - unanimously passed.