

**DOMESTIC RELATIONS COMMITTEE
AMENDED MEETING MINUTES -SEPTEMBER 18, 2002**

PRESENT:

Sen. Mary Hartley
Rep. Karen Johnson
Sen. David Petersen
Frank Costanzo
Hon. Karen Adam
Kelly Spence
Jennifer Jordan
Steve Phinney
Brian Yee
Ella Maley
Ellen Seaborne

Nancy Gray
Kat Cooper
Sidney Buckman
Karen Kretschman (for Janet Scheiderer)
Terrill Haugan
Debbora Woods-Schmitt
Daniella Yaloz
Jeff Zimmerman
Steve Wolfson
Rene Bartos

NOT PRESENT:

Rep. Kathi Foster
Gordon Gunnell
Hon. Dale Nielson

David Norton
Ray Rivas
Beth Rosenberg

GUESTS:

Leah Pallin-Hill
Scott Leska
Kristie Leshinstie
Theresa Barrett
Mayar M. Daiza
Therese Martin
Bill Fabricious

Jay Mount
Sydney Gleba
Krsiten Hogan
Georgeanne Pastel
Susan Pickard
Phil Knox

STAFF:

Isabel Gillett
Megan Hunter

CALL MEETING TO ORDER

The meeting was called to order at 10:09 a.m. by Senator Hartley.

ANNOUNCEMENTS

Members introduced themselves, giving names and positions on the Committee. All positions are filled.

APPROVAL OF MINUTES

There were no minutes to approve because this is the first meeting of the new committee. The minutes from the July 19, 2002 meeting were provided for review purposes only, with no changes or corrections found.

STRUCTURE AND PURPOSE OF COMMITTEE

Senator Hartley reviewed the charge of the new committee pursuant to Senate Bill 1088 that was signed into law with an August 22, 2002 effective date. The previous overarching Child Support Enforcement and Domestic Relations Reform Study Subcommittee (DRRSS) was eliminated, and the newly created Domestic Relations Committee and Child Support Committee are now statutorily separate committees with no requirement to report to or meet with each other.

The charge of the new committee remained much the same as the old DRRSS charge except the task related to grandparents' rights, which was completed in 1992, was eliminated and the Integrated Family Court was added. The committee must submit an annual written report reflecting their recommendations to the President of the Senate, Speaker of the House of Representatives, the Governor and the Chief Justice of the Supreme Court.

New positions were added and each member is to be appointed by either the Governor, President of the Senate, Speaker of the House or the Chief Justice of the Supreme Court. The new positions are: 1) one active or retired domestic relations judge or commissioner (rural), 2) a member of a law enforcement agency, 3) a member of an agency that advocates for children, and 4) a member of the Family Law section of the State Bar of Arizona. Two positions were eliminated, one senator and one representative.

INTEGRATED FAMILY COURT (IFC)

Ellen Seaborne, IFC chairperson, explained the charge of the IFC workgroup and provided an overview of the draft IFC report. The IFC model plan would recognize the

family as a unit and each would have a “family file.” A key element is that overlapping cases (juvenile and family) are not rare. Each county would have its own IFC with an appointed IFC Presiding Judge; an overarching statewide committee would provide guidance to the counties. Automation would be a key element in coordinating cases and files. General discussion followed with key points being:

- less adversarial system is better for the family
- use of alternative dispute methods is cost effective and time effective
- costs of mediator vs. a judge is a significant cost savings
- one judge-one team-one family approach best serves the family

Phil Knox noted that Maryland (similar in population to Arizona) has a unified family court with costs of approximately \$9.6 million, including automation. Funding came from a general appropriation.

Senator Hartley suggested a self-funded approach would be prudent when this bill eventually goes to the Legislature due to the state budget crisis. She explained that self-funded proposals: 1) do not have to go to the Appropriations Committee, and 2) a two-thirds majority of both legislative bodies must occur to raise any fee or tax.

Members were polled regarding the IFC proposal. Their comments were as follows:

- user fees - in addition to the fee currently charged on an original petition/motion, additional fees could be collected on subsequent filings
- smaller counties will collect very little to support the IFC
- will have to attach a fiscal note to this bill
- time frame issue – fees are not going to generate over night, so may need to add at least six months to implementation
- increase fee for marriage licenses
- need more time to fund and implement
- multiple source funding
 - raise taxes (possibly a sin tax)
 - grants should be relied upon
- charge for mediation

Members of the Substantive Law workgroup, the Education/Prevention workgroup and the Court Procedures workgroup met during the working lunch hour to discuss the draft IFC report. Senator Hartley asked each workgroup to discuss the proposal and indicate whether or not they support the proposal and asked for input or suggestions for changes.

The workgroups met during the working lunch hour and came back to the general meeting with the following reports:

Substantive Law Workgroup:

Jeff Zimmerman reported the following:

- Substantive Law workgroup supports the proposal with the following comments regarding funding:
 - user fees should be the main source of funding
 - Maricopa County's IFC costs should be reviewed in detail
 - a no-cost start up might not be feasible
 - consider federal grant monies
 - split costs out and present them that way instead of throwing out a one-time hard number

Court Procedures:

Dr. Brian Yee reported the following:

- Court Procedures workgroup supports the proposal with the following comments regarding funding:
 - they share the same concern voiced by the Substantive Law workgroup regarding throwing out a one-time hard number
 - more research should happen before naming a price tag
 - look into other funding, e.g. IV-D monies
 - while user fees might not result in a significant increase in revenue, it makes absolute sense for those who use, and particularly those who repeatedly use the system, assume some of the financial responsibility

Education/Prevention:

Terrill Haugen reported the following:

- Education/Prevention workgroup supports the proposal with the following comments regarding funding:
 - look into the funding mechanisms utilized in Maryland
 - expand public relations efforts to the business community
 - pull a committee together to address public relations

The full Committee determined that more work needed to be done regarding IFC funding. Members agreed to vote on the draft IFC report this month and vote on IFC funding at the October meeting.

Senator Hartley asked if any interested individuals from the public would like to comment on the IFC proposal. No one took the opportunity.

MOTION: Adopt the IFC draft as proposed document (allowing staff to make grammatical and punctuation cleanup) and forward to Legislative Council as soon as possible.

FRIENDLY AMENDMENT TO THE MOTION:

Three changes on page 20 to reflect discussion – extends timeframe by six months.

MEMBERS APPROVED THE AMENDED MOTION UNANIMOUSLY.

Members were polled about specific funding issues, as follows:

- concerned with raising dissolution fees due to potential to raise barriers for people wanting to leave abusive marriages
- user fees make sense
- high rate of recidivism
- user fees – utilizing sliding scale and waiver and deferral mechanisms for those who cannot afford fees
- place tax on attorney's services
- increase filing fees and charge fees on subsequent filings
- place tax on birth certificates
- charge attorney's a fee to practice
- user fee is not a good funding source
- solicit business or private funding
- Clean Elections fund

Senator Hartley asked Susan Pickard, Ellen Seaborne, Phil Knox and Megan Hunter to hold a meeting to run scenarios with user fees due to the fact that the majority of Committee members leaned toward user fees to fund the IFC.

NEW BUSINESS

None was presented.

CALL TO THE PUBLIC

Scott Leska, American Coalition for Fathers & Children commented on other issues such as constitutional law and 50/50 parenting time. Sidney Gleba discussed family court issues and possible solutions and offered to bring legislative proposals to the next DRC meeting.

FUTURE MEETINGS

The next meeting will be held on October 18, 2002, in House Hearing Room 1, Arizona House of Representatives, 1700 W. Washington, Phoenix. IFC issues will take up only a small amount of time at the October meeting.

The November meeting will be held on November 6, 2002, Conference Room 119A/B, Arizona State Courts Building, 1501 W. Washington, Phoenix. Representatives from the Hawaii judiciary will present their children's programs to the Committee.

The December meeting will be set in October.

ADJOURNMENT

The meeting was adjourned at 2:21 p.m. by Senator Hartley.

DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES – OCTOBER 18, 2002

PRESENT:

Hon. Karen Adam	Beth Rosenberg
Rene Bartos	Janet Scheiderer
Kat Cooper	Ellen Seaborne
Nancy Gray	Kelly Spence
Hon. Karen Johnson	Steve Wolfson
Jennifer Jordan	Daniella Yaloz
Ella Maley	Brian Yee
Melita Mulligan-Ferry for Sidney Buckman	Jeffrey Zimmerman
Hon. Dale Nielson	

NOT PRESENT:

Frank Costanzo	David Norton
Hon. Kathi Foster	Hon. David Petersen
Gordon Gunnell	Steve Phinney
Hon. Mary Hartley	Ray Rivas for Alma Jennings Haught
Terrill Haugen	Debbora Woods-Schmitt

GUESTS:

Elizabeth Baskett	Kristie Leshinskie
Glenn Davis	Therese Martin
Paul Geisheker	Susan Pickard
Barbara Guenther	Bill Fabricius
Marianne Hardy	

STAFF:

Isabel Gillett
Megan Hunter

CALL MEETING TO ORDER

The meeting was called to order at 10:28 a.m. by Representative Johnson with a quorum present. New member, Beth Rosenberg, was introduced. Ms. Rosenberg was appointed by Senate President Randall Gnant to serve as the representative of a children's advocacy agency.

APPROVAL OF MINUTES

The September 18, 2002 minutes were approved with an amendment to page 4, Court Procedures Workgroup report.

INTEGRATED FAMILY COURT (IFC)

Nancy Gray gave a PowerPoint presentation regarding the IFC proposal. She and other members who have given the same presentation to various court committees provided feedback from those committees, as follows:

- **Committee on Impact of Domestic Violence in the Courts**
A negative comment (opinion) from one member was received regarding the Maricopa Integrated Family Court pilot project.
Phil Knox from Superior Court in Maricopa County will meet with this group to provide information from Maricopa's experience.
- **Committee on Superior Court**
Both positive and negative reactions were received; however, approximately two-thirds of the committee reacted in a positive manner to the proposal
- **Presiding Judges' Meeting**
Most members reacted positively to the proposal

Ellen Seaborne explained that questions and concerns have been expressed regarding whether this is too big of a burden to place on a presiding judge and the 50% rule for counties with only one or just a few judges. The committee may amend the proposal to accommodate these concerns.

Commissioner Adam commented that a copy of the proposal was provided to members of the National Council of Juvenile and Family Court Judges who were completely supportive of our plan.

IFC Funding Issues

Ellen Seaborne explained that Committee leadership previously recommended development of a self-funding mechanism as opposed to requesting a general appropriation. The IFC workgroup worked along this vein, recognizing the need for a funding source that is real and stable; the funding recommendation focuses solely on

increased and new court filing fees. The cases on which new fees would be placed and increased fees would be added affect family court cases, not juvenile cases, as follows:

- New Fees
 - Paternity – Conciliation \$176
 - Subsequent filings - \$25
 - Custody Evaluations - \$500 split between the parties
 - Mediation - \$150 split between the parties
 - Mediation No Show - \$300
- Fee Increases
 - Marriage license fee – from \$50 to \$100
 - Post-adjudication DR cases – from \$61 to \$150
 - Child Support Payment Handling Fee – from \$2.25/month to \$3.00/month

As with other fees, parties who do not have sufficient means to pay the filing fees may request a fee deferral or waiver from the court.

The child support payment handling fee increase may conflict with federal law. Ellen will request information from the Child Support Committee of the state legislature at its October 22 meeting where the IFC proposal will be presented.

The combination of new and increased filing fees is expected to generate an estimated \$12 million per year.

Members were polled regarding the funding proposal and provided the following comments, questions and suggestions:

- Investigate placing fees on a sliding scale
- Some mediation no-shows are victims of domestic violence who do not attend the mediation out of fear of the abuser – these victims will be penalized with a \$300 fee – victims should not be charged for not attending mediation
- Child support handling fee should be split between both parties – currently it is assessed against the payor only
- Subsequent filing fees will be assessed on parties who must defend themselves when the opposing party files subsequent pleadings – does not seem fair
- Fees should be assessed at the end of a case
- Will the fees go to conciliation services or to the Integrated Family Court in each county – by statute, monies cannot be taken from Conciliation Court and used in other court areas
- Set parameters on the allocation of IFC monies among the counties
- Concern that courts may order custody evaluations in more cases simply to generate more funds for the court
- Implementing a charge for custody evaluations and mediations will require significant statutory change – the court can order parties to go through a

custody evaluation but the court cannot order them to pay for it under existing law

- Existing law does not allow the court to charge for ADR services – domestic relations judges are frustrated because they do not have money for services such as counseling or mediation – juvenile court has resources and would be resistant to sharing them with domestic relations within the IFC scope
- Fees generated for the IFC should be dedicated funds

Melita Mulligan-Ferry commented that domestic violence screening is taken seriously and highly used in Maricopa County before cases are referred to mediation. She also pointed out that the mediation no-show rate is approximately 10-12% in Maricopa County.

Ellen commented that the IFC proposal leaves existing juvenile funding intact.

Representative Johnson commented that she was impressed with the effort to find funding for the Integrated Family Court and does not anticipate this type of proposal to be a terribly hard sell to the Legislature.

MOTION: Adopt the Integrated Family Court self-funding proposal using the concept of dedicated funds raised from new fees and fee increases, allowing the IFC workgroup to further refine the proposal. The final proposal will be presented to the Domestic Relations Committee on November 6, 2002.

MEMBERS APPROVED THE AMENDED MOTION UNANIMOUSLY.

WORKGROUPS

The workgroups met during the working lunch hour to discuss the IFC funding proposal and reconvened at 1:39 to provide report to the full Committee.

Substantive Law Workgroup:

Jeff Zimmerman reported that the workgroup discussed IFC funding and did not come up with consensus on any but pulled together the following list of ideas:

- Increase marriage license fee in a smaller amount, then increase the initial DR petition and response fees to make up the difference
- IFC workgroup should research when all of these fees were last increased which would help support the increase
- Funds should be dedicated for Integrated Family Court use only; counties should be prevented from tapping into those funds
- Dedicated funds can be swept by the Legislature

- Because it takes a super-majority of the Legislature to pass a funding proposal, the proposal should ask for as much as possible up front
- Initial start-up costs will probably not decrease in future years; funding should be expected to continue annually at or above the initial start-up costs
- Consider grant funding availability to help fund start up costs
- Delete some of the subsequent filing fees (frivolous filings)
- In addition to attorneys' fees and court costs, the court could assess penalty fees that would go into the IFC fund
- Provide new services for which there could be a charge, e.g. children's classes
- Sliding scale idea is worth exploring

Court Procedures:

Dr. Brian Yee reported the following:

- There are statutory limitations to ADR services for which parties are required to pay
- While it is possible to change statutes, the due process issue is insurmountable in terms of having family court send people to services they have to pay for
- Continuation of the practice of judicial rotation is an impediment to the imposition of penalty fees; because it takes so long to see a case through to the end, the judge may rotate off after ruling on a final evidentiary hearing, then the new judge is unaware of repeat filings in the case
- Recognize the good work that some domestic violence judges do

Education/Prevention:

Rene Bartos reported in place of Terrill Haugen. This workgroup met with the other workgroups and their comments were presented by the workgroup chairs.

A final comment from Steve Wolfson focused on informing the citizens of Arizona of the IFC proposal to solicit feedback. The IFC workgroup will discuss and take action on the matter.

CALL TO THE PUBLIC

Paul Geisheker, from the public, commented that the IFC proposal will be extremely costly and informed the committee that he has developed a way to triage family law cases at their inception thereby decreasing litigation.

NEXT MEETING

The November meeting will be held on November 6, 2002, Conference Room 119A/B, Arizona State Courts Building, 1501 W. Washington, Phoenix. Final IFC funding

refinements will be presented and representatives from the Hawaii judiciary will present their children's programs to the Committee.

The December meeting will be held on December 13, 2002, 10:00 a.m. – 2:00 p.m., Judicial Education Center (Silver & Turquoise Rooms), 541 E. Van Buren, Suite B-4, Phoenix.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 2:12 p.m.

**DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES – NOVEMBER 6, 2002**

PRESENT:

Hon. Karen Adam
Rene Bartos
Sid Buckman
Kat Cooper
Frank Costanzo
Hon. Kathi Foster
Gordon Gunnell
Jennifer Jordan

David Norton
Steve Phinney
Beth Rosenberg
Janet Scheiderer
Ellen Seaborne
Steve Wolfson
Daniella Yaloz
Jeffrey Zimmerman

NOT PRESENT:

Hon. Karen Johnson
(Haught)
Ella Maley
Hon. Dale Nielson
Hon. David Petersen

Ray Rivas (for Hon. Alma Jennings)

Kelly Spence
Debbora Woods-Schmitt
Brian Yee

GUESTS:

Paul Geisheker
Marianne Hardy
Georgly Rosenfeld

Parent
House of Representatives
PIP presenter

STAFF:

Megan Hunter
Deborah Orr

CALL MEETING TO ORDER

The meeting was called to order at 10:12 a.m. by Senator Hartley with a quorum present.

APPROVAL OF MINUTES

The October 18, 2002 minutes were approved on a unanimous vote.

KIDSFIRST – HAWAII DIVORCE EDUCATION

The Education/Prevention workgroup of this committee has studied various children's divorce programs throughout the country. The program that held particular interest to the workgroup was Hawaii's "KidsFirst" program. The program coordinator and a presenter were invited to share their program with the full committee at this meeting.

Program Coordinator

Charlene Anaya, J.D., KidsFirst Program Coordinator, shared the goals, focus and parameters of the program. Children between the ages of 6-18 and parents are required to attend the 2-hour program. A \$60 fee is charged of which \$35 subsidizes the class and \$25 is allocated to the indigent fund. The primary goals are attitudinal change, decreasing conflict and helping parents understand what their children may be experiencing during the separation/divorce process.

Classes are held in the courtroom. Initially, a family court judge provides an overview of the program and the effects of divorce on children and the family. Children are then separated into age-specific groups while the parents remain with the judge who provides a stern lecture. Young children are provided with age-appropriate activities designed to help them express their feelings and understand more about what is happening to the family. Older children participate in a mock trial designed to help them understand how the system works and the difficult decisions that must be made by the court in family law cases.

The judge also lectures parents against domestic violence; then a qualified parent education presenter teaches the remainder of time in a similar manner to the program used in Arizona.

The operational challenges revolve mostly around funding; the program has been running about \$8000 in the red for some time. They are not able to provide childcare for children under age six. Occasionally, parties arrive intoxicated, some have language barriers or are hearing impaired.

Exit surveys are used as an evaluation tool but a better evaluation method is currently under development.

Program Presenter

Dr. Marvin Acklin presented the KidsFirst material through an actual class demonstration. He explained the effects of divorce on children and families, the four types of divorce, legal, social, economic, and emotional. He then delved into the effects of conflict on children and spoke to parents on how to observe and evaluate their own children during and after the divorce process.

INTEGRATED FAMILY COURT (IFC)

MOTION: Table the vote on the funding portion of the IFC proposal until the December 13, 2002 meeting of this committee to allow time for the IFC workgroup to complete the funding portion.

MEMBERS APPROVED THE MOTION UNANIMOUSLY.

Frank Costanzo suggested that the IFC workgroup may want to supply information regarding the IFC proposal to the Attorney General-elect and his transition team.

CALL TO THE PUBLIC

Paul Geisheker, from the public, presented his thoughts on open meeting laws.

NEXT MEETING

The next meeting will be held on December 13, 2002, Judicial Education Center, 541 E. Van Buren, Suite B-4, Phoenix. Final IFC funding refinements will be presented for a vote.

ADJOURNMENT

Sen. Hartley adjourned the meeting at 2:12 p.m.

DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES – DECEMBER 13, 2002

PRESENT:

Hon. Karen Adam
Rene Bartos
Sid Buckman
Kat Cooper
Frank Costanzo
Nancy Gray
Sen. Mary Hartley
Rep. Karen Johnson
Jennifer Jordan

Ella Maley
Hon. Dale Nielson
David Norton
Janet Scheiderer
Ellen Seaborne
Steve Wolfson
Daniella Yaloz
Brian Yee
Jeffrey Zimmerman

NOT PRESENT:

Rep. Kathi Foster
Gordon Gunnell
Terrill Haugen
Sen. David Petersen
Steve Phinney

Ray Rivas (for Hon. Alma Jennings Haught)
Beth Rosenberg
Kelly Spence
Debbora Woods-Schmitt

GUESTS:

Daniel Cartagena
Jennifer Eisenhour
Bill Fabricius
Marianne Hardy
Scott Leska
Therese Martin

Parent
Legislative Services
ASU
House of Representatives
Parent
Office of the Attorney General

STAFF:

Elizabeth Baskett
Megan Hunter
Isabel Gillett

CALL MEETING TO ORDER

The meeting was called to order at 10:24 a.m. by Rep. Karen Johnson with a quorum present.

APPROVAL OF MINUTES

The November 6, 2002 minutes were approved on a unanimous vote.

ANNOUNCEMENTS

Karen Kretschman, Court Programs Unit Manager, Administrative Office of the Courts, explained that budget reductions are impacting the funds available to hold these meetings. Funds are used for staff time, supplies, mileage reimbursement and meals. Recent layoffs leave fewer personnel to staff the meetings and cuts in other budgets have reduced the amount of monies available for other expenditures. Depending on the next round of budget cuts in the Legislature, meeting frequency may be affected.

Commissioner Adam commented that a Tucson newspaper published an article about the state budget's effect on the courts. In the article, Chief Justice Jones indicated that services to families are a priority for the courts and further budget reductions would result in cuts in those services. This committee has support from the highest level of the court.

Members took turns thanking Senator Hartley, co-chair, and Senator Petersen, member, for their years of service, commitment and dedication to the former Domestic Relations Reform Study Subcommittee and more recently to this committee. Both legislators have reached the end of their terms and will leave office in January 2003. This is the last meeting for both.

MARICOPA COUNTY INTEGRATED FAMILY COURT

Phil Knox, Family Court Administrator, Superior Court in Maricopa County, provided an overview of Maricopa County's Integrated Family Court (IFC) Pilot Project. The pilot began in March 2001 and ended in June 2002. The goal was to review and explore improved methods of addressing the needs of children and families as they seek legal and social service assistance from the Court. The pilot hoped to demonstrate the worthiness of joint assignment of cases with direct legal connection. A one-family one-judge concept was initiated with four pilot court judges in Mesa who were authorized to act on any overlapping family, juvenile or probate matter. Cases were screened by staff and submitted to a judge for acceptance or rejection as an IFC case. Ultimately, 68 cases were brought into the pilot.

An outside company evaluated the project and found that:

- the judges strongly support the concept and generally consider the pilot successful;
- there are enough overlapping cases involving members of the same family to warrant an IFC;
- the bar supports the concept and members liked appearing before very experienced judges, but object to required participation in cases for which they have not been retained;
- the county attorney and public defender are opposed to inclusion of delinquency cases in the IFC on the basis of arguments that resources are drained and juvenile court proceedings are disrupted.

The company recommended:

- the IFC has demonstrated the worth of joint assignment of cases with direct legal connection;
- files contain examples of numerous complex cases brought completely and successfully to a close, including one in which the court saved a marriage;
- IFC has not tested the worth of jointly assigning cases with contextual factual connection; such a test is needed as it is part of the core IFC concept;
- It does not make sense to maintain the IFC in its current, limited form; it needs to grow or die.

The overall preliminary recommendations include:

- It should grow - the issue is how it should grow;
- Three alternative strategies:
 - Apply one judge-one family concept across the board
 - Create a few virtually full time IFC specialist judges in each court location
 - Experiment with a staff-based coordination model – family law facilitator
- What case types to include.

INTEGRATED FAMILY COURT (IFC)

Ellen Seaborne, IFC workgroup chairperson, explained that Jerry Landau, the Maricopa County Attorney's lobbyist, is opposed to the IFC plan because of the juvenile delinquency portion of the plan. He believes that the plan would not treat the juveniles with a criminal type adjudication and that they would be treated too leniently. Ellen further explained that the IFC proposal would not change the juvenile delinquency statutes. Mr. Landau also has concerns about the lack of provision for funding for delinquency cases and that the proposal conflicts with other titles. Ellen commented that both allegations are untrue and that the proposal does not change the way we deal with juvenile delinquency cases. Delinquencies are a small part of the picture.

Ellen provided an overview of the actions of various committees as follows:

- The Committee on the Impact of Domestic Violence and the Courts unanimously voted to support the IFC concept;
- The Child Support Committee supported the proposal with concerns about funding;
- The Juvenile Court Judges voted against support of the proposal;
- The Juvenile Court Administrators voted to remain neutral.

MOTION: Adopt the recommendation of the IFC workgroup for IFC plan for Arizona.

Discussion ensued as represented below:

Jeff Zimmerman requested that citizen participation be a part of the lists of people to be included on committees. He also suggested that listing safety as the primary goal of the IFC should be changed to one of the primary goals.

Commissioner Adam objected to putting any specific statutes in the plan.

Dave Norton asked for clarification of whether we are voting on the IFC concept or the actual document. Rep. Johnson replied that the vote is on the concept in general and that she has opened a folder for legislation that will be jointly run from the Senate. Sen. Hartley suggested that a friendly amendment should be made to the motion saying that we are voting on the document itself with the exception of the underlined portions which have yet to be finalized – that we are voting on an actual document that will be forwarded to legislative council. Frank Costanzo asked if the report is the document that is statutorily required. Rep. Johnson replied that we're voting on the legislative intent. Megan explained that the final report voted on today would be submitted, as statutorily required by December 31st, and that any legislative action is up to the legislators.

Ellen Seaborne withdrew her motion.

MOTION: To accept the recommendations made by the Office of the Attorney General and Division of Child Support Enforcement through the Child Support Committee to this document which includes page 2, number 6; page 6, number 3; page 13, paragraph 1; and page 21, number 1. Motion was seconded and passed.

Ellen explained that page 8 & 9 contain the same proposal regarding a list of committee members and that including a list may not be prudent because a legislative body should not be telling the Supreme Court who they should have on their committee. She would like a motion to address these two modifications requested.

MOTION: Do not include the recommendations for the Family and Juvenile Court Committee (specific positions) membership as listed on pages 8 and 9 in the report. Motion was seconded and passed. (Jeff)

Ellen continued with a suggested change on page 12 regarding confidentiality requirements and stated that protections are already provided in the system.

MOTION: Delete #2 on page 12 because it is already addressed in statute.

Discussion: Sen. Hartley argued that we leave it in so that it is clear that confidentiality applies in the IFC. Commissioner Adam commented that there are 300 statutes in which confidentiality is mentioned and Rule 123 covers the same issue. Further, if a statement is necessary, a general one is best. Jeff Zimmerman suggested mentioning confidentiality issues in a broad sense.

Friendly Amendment to MOTION: The friendly amendment to the motion was accepted to modify number 2 by placing a period after the word “information” which would strike the following from the sentence: “for victims of crime and safety of victims.” Motion was seconded and passed.

Discussion regarding the recommendation number one under the “Minimum Standards” section page 14. Some members were troubled by listing “safety of the child and victims of crime” as the primary goal of the IFC. Instead, the primary goal for family and juvenile should be the best interests of child. Several members commented that the safety of the child and victims should be one of the goals, but not the primary goals and that the Supreme Court Committee should list the goals, the plan should not.

MOTION: Delete the underlined sentence on page 14, recommendation 5.1.

Discussion: Rene Bartos recommended removal of the last portion of the sentence while leaving the standards in and pointed out that this section was important to the Committee on Domestic Violence and the Courts and they wanted reference to the model code included in the proposal. Kat Cooper recommended changing the language from “should” to “may”. Daniella Yaloz recommended keeping the sentence as is.

Motion was seconded and passed on a vote of 10-6.

MOTION: Delete the underlined paragraph on page referring to a specific statute. Motion was seconded and passed. (Comm. Adam)

Jeff Zimmerman pointed out that the votes today regarding domestic violence are not an attempt to downplay domestic violence; they simply are not in the right place. Ellen asked Daniella to convey Jeff's comments to Diane Post.

MOTION: Approve the recommendations of the IFC workgroup as amended.

Discussion: Since this is the motion that would move the proposal forward for legislation, Janet Scheiderer asked the discussion that occurred in yesterday's Arizona Judicial Council (AJC) meeting be discussed prior to the vote. Ellen replied by commenting that the statute requires us to give a report to the three branches of government by December 31, 2002 and once we have finalized the report, the committee could then discuss implementation. Ellen requested that the motion be entertained at this time. Commissioner Adam stated that she preferred to know the results of the AJC discussion and vote before she votes today.

Ellen withdrew her motion and discussed the AJC vote.

She explained that there were a few negative comments regarding the IFC plan at the AJC meeting on December 12, 2002, including: as demonstrated by the Maricopa County IFC Pilot Project, there were very few crossover cases, robbing juvenile resources to take care of family law, this would be a Prop 108 bill. Rep. Johnson indicated that the legislators would need help from this committee's members to talk with other legislators. If the legislators see this as a self-funding bill, they may be amenable to the idea. She also commented that these funds should be prevented from being raided for other programs or services. Ellen further explained that she thought the issues raised by AJC members were not legitimate because they did not fully understand the proposal. The AJC entertained two votes and both passed. The first was that the proposal is premature and they would prefer to study this as a court system, and second, two pilot projects could be implemented in Coconino and Maricopa Counties.

Ellen pointed out to AJC members at their meeting that a court committee cannot tell the Legislature what to do and that there would be several legislators that want to proceed with this. She fears that if a pilot project is implemented, it will only delay the reality of statewide implementation for a longer period of time. She commented that the Supreme Court may not back us 100% or the justices may step out of the AJC role and speak as a body themselves (which may be supportive). Ellen suggested that we try to meet those three branches of government within the next several days and discuss this situation and get some direction from Chief Justice Jones as to whether he wants us to wait 2 ½ - 3 years, if the Administrative Office of the Courts will fund any pilot projects, and determine what guarantee we have that if we allow the Supreme Court to go ahead, that the program will actually move forward.

Janet Scheiderer explained that the AJC voted to not support this legislation and thought it was premature and that a few counties offered to run pilot projects. Rene Bartos commented that she felt the Supreme Court did not want to be legislated. Frank Costanzo opposed discussing the AJC vote prior to this vote. Janet replied that she wanted to make the committee aware of another option, namely the pilot concept. Using an administrative process instead of legislative would be an easier process to go through. Jeff Zimmerman commented that he does not want to wait for a pilot project, that it is time for this to happen and the courts are given a lot of discretion on how to make it happen.

MOTION: Accept this report as amended for submission to those officials that we have been mandated to give this report to.

The motion was withdrawn so funding options could be discussed first.

Members broke for lunch.

MOTION: Approve the IFC plan for Arizona as amended. *Motion was seconded and passed with one (Janet Scheiderer) abstaining from the vote.*

MOTION: Adopt Funding Scenario 1 as one of our recommendations as to how this program be funded.

AMENDED MOTION: Adopt both funding options along with the report. *Motion was seconded and passed.*

Jeff Zimmerman asked if that vote was to forward legislation or was it simply adoption of the report. Ellen commented that she will meet with leaders from the judiciary, executive and legislative branches to see if a compromise can be reached that will promote the family court bill or an administrative order that is in line with the family court plan.

SUBSTANTIVE LAW

Several members left the meeting, which eliminated a quorum so the Substantive Law workgroup legislative proposals will be postponed until the January 10, 2003 meeting.

DOMESTIC VIOLENCE/CHILDREN

Rene Bartos gave a presentation on the effects of domestic violence on children. She utilized an approach not seen previously by this committee which was the perspective from a pediatrician/public health practitioner's point of view. She proposed that the committee find ways to make things better for children while maintaining access for both parents. She would like to see various laws changed in Arizona such as issues

surrounding supervised access and other custody laws. She explained the effects that witnessing domestic violence has on a child's brain, then linked that to both short-term and long-term behaviors.

Rene introduced Beth Smith, a public health nurse from Tucson to discuss a Pima County initiative called "Breaking the Cycle" to help families involved in domestic violence. Ms. Smith is a public health nurse who works with a coalition of law enforcement and victim witness people to provide immediate and long-term assistance if the family chooses to accept the offer. The purpose is to decrease the amount of violence witnessed by children 6 and younger. The victim witness reaches out to the family first, then the public nurse works with the family on more of a long-term basis. They provide basic public health services such as help finding resources for health care, immunizations, food, and other needs and try to develop a relationship with the family. The agency has received 250 referrals or 2100 contacts which means either a phone call or home visit. Some of the problems they see stem from limited income and women who do not perceive themselves as victims. Public health nurses play a neutral role which allows the family to feel more confident to take advantage of the services offered.

Ellen Seaborne commented that she appreciates Rene's unique approach and requested that the matter be placed on an agenda in early 2003. Jeff Zimmerman suggested that this committee look at each facet of domestic violence separately and in a comprehensive manner, but also consider the organic problem. Daniella Yaloz reminded members that only about 20% of domestic violence victims actually access domestic violence services.

CALL TO THE PUBLIC

Daniel Cartagena, a single father with one child, handed out some information he compiled and discussed the lack of support and laws for fathers. After paternity is established, fathers receive no assistance in terms of access or custody. Fathers have nowhere to turn and no protection under the law. He will come to future meetings to further discuss these issues and domestic violence against fathers.

NEXT MEETING

The next meeting will be held on January 10, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 3:36 p.m.

DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES – JANUARY 10, 2003

PRESENT:

Hon. Karen Adam
Rene Bartos
Sid Buckman
Kat Cooper
Nancy Gray
Gordon Gunnell
Terrill Haugen
Rep. Karen Johnson
Jennifer Jordan

Ella Maley
David Norton
Karen Kretschman for Janet Scheiderer
Ellen Seaborne
Steve Wolfson
Brandi Brown for Daniella Yaloz
Debbora Woods-Schmitt
Jeffrey Zimmerman

NOT PRESENT:

Frank Costanzo
Hon. Dale Nielson
Steve Phinney

Beth Rosenberg
Kelly Spence
Brian Yee

GUESTS:

Alan Ecker
Marianne Hardy
Tracey Landers
Steve Matcha
Kathie Pearson

County Supervisor's Association
House of Representatives
Senate
Senate
Office of the Attorney General

STAFF:

Megan Hunter
Isabel Gillett

CALL MEETING TO ORDER

The meeting was called to order at 10:20 a.m. by Rep. Karen Johnson with a quorum present.

APPROVAL OF MINUTES

The minutes of the December 13, 2002 meeting were approved on a unanimous vote.

ANNOUNCEMENTS

Rep. Johnson announced that it is likely that Senator Mark Anderson will be the co-chair from the Senate. She also announced that she will introduce a bill to add two more legislators to this committee. Two new staff members from the Senate introduced themselves: Tracey Landers, Assistant Research Analyst, and Steve Matcha, Senate Family Services Intern.

INTEGRATED FAMILY COURT (IFC)

Ellen Seaborne explained events that have taken place since the December 13, 2002 meeting of this committee regarding the IFC proposal. At that meeting, the committee adopted the IFC proposal to fulfill the reporting requirements of A.R.S. §25-323.02. Also at that meeting, Representative Johnson indicated that she would introduce the proposal as legislation. Since that time, Ellen was informed that the proposal is subject to Prop. 108 which means two-thirds of the Legislature has to vote in support of any fee increases. This is contrary to information provided to the IFC workgroup during their deliberations. Rep. Johnson then explained that she discussed the proposal with other legislators who balked at any legislation with funding attached in light of the current state budget deficit. She further explained that she met with Chief Justice Charles Jones who offered to initiate and implement two IFC pilot programs in Maricopa and Coconino Counties and plans to draft an administrative order that would direct those counties to participate in the projects. If the counties determine that funding is required for the pilot projects, they can bypass the Legislature and go directly to their local Board of Supervisors to explore funding options.

Members expressed concern regarding funding for the projects. Karen Kretschman explained that staff from the Administrative Office of the Courts have met with the presiding judges from both counties and have received agreement from both counties to conduct the pilots. Chief Justice Jones plans to announce the pilot projects in his State of the Judiciary speech and is proceeding with a goal of recognizing the work of this group in creating the proposal and going forward with the pilots. The Chief Justice was and is supportive of the IFC mission and goals.

Ellen commented that the pilot projects are a good thing and that they should proceed along the same time line as proposed in the report. Rep. Johnson indicated that she would like to invite Attorney General Terry Goddard and Governor Napolitano to come to a meeting of this committee sometime this summer to hear about the IFC projects. She

wants the courts to know that this committee will proceed with legislation, but will first give the courts the opportunity to prove themselves. This will be a key piece of legislation for her before she terms out of office.

SUBSTANTIVE LAW WORKGROUP

Jeff Zimmerman, workgroup chair, offered three legislative proposals for consideration by the 2003 Legislature, as follows:

1. A.R.S. § 25-401

The proposed revision seeks to clean up and clarify the current child custody statutes. The current statute allows for child custody proceedings to commence in the superior court by a parent filing a petition for a dissolution or legal separation. The revision would add the filing of a maternity or paternity proceeding to that list.

MOTION: Approve the recommended legislative proposal on A.R.S. § 25-401. *Motion was seconded and passed.*

2. A.R.S. § 25-409

The proposed revision seeks to say that the petition for grandparent visitation will be filed in the underlying action for dissolution, maternity or paternity rather than in a separate action.

MOTION: Approve the recommended legislative proposal on A.R.S. § 25-409. *Motion was seconded and passed.*

3. A.R.S. §§ 25-403, 25-408 and 25-411

The proposal would accomplish two goals: 1) allow simplified reinstatement of the original parenting plan if the plan was modified because one parent and/or the child made a long distance relocation but they have subsequently relocated to within the same general distance as under the original plan; and 2) clarify that if a parent who wants to relocate the child files a petition with the court to approve it, they do not need to give an additional separate notice to the other parent – giving the other parent notice of the court action would be sufficient.

Discussion: Members thought that the sixty day requirements is a useful tool to help families reach settlement or get used to the idea of one party moving away. The intent was not to allow a parent/child to leave the state before sixty days. Other members said that the revised statute would be a vehicle for a parent to say that nothing has changed and they would like to reinstate the original parenting plan. The plan could be reinstated absent good cause. Some members were opposed to an automatic change because the best interest of the child must be kept as the primary focus. Steve Wolfson offered to take the issue to the Executive Committee of the Family Law Section of the State

Bar. Rep. Johnson indicated that this issue can be resolved at the February meeting after which she could amend the proposal and add it onto another bill if the committee adopts the proposal.

Members broke for lunch and reconvened at 12:28.

WORKGROUP REPORTS

Substantive Law

Jeff Zimmerman, workgroup chair, reported that the group discussed relocation issues and prioritized issues for the coming year. The report was brief in light of the legislative proposal discussion earlier in this meeting.

Court Procedures

Nancy Gray reported in place of Brian Yee, workgroup chair. The workgroup discussed and recommended that the IFC workgroup remain in place and meet as a group to monitor the IFC pilot projects. They also discussed and would like to propose legislation regarding the availability and problems associated with domestic relations case information on the Internet. They plan to discuss various attempts at resolution currently used in the counties. The issue will be added to the February DR Committee agenda.

Education/Prevention

Terrill Haugen, workgroup chair, reported that the group continued discussing the possibility of adding children's education to the statewide mandated divorce education program. They plan to continue discussions and development of a program similar to the Hawaii program. The issue will be added to the February or March DR Committee agenda.

CALL TO THE PUBLIC

There was no reply to the call to the public.

NEXT MEETING

The next meeting will be held on February 21, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 1:30 p.m.

DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES – MARCH 21, 2003

PRESENT:

Hon. Karen Adam
Rene Bartos
Sid Buckman
Kat Cooper
Frank Costanzo
Beverly Frame
Nancy Gray
Terrill Haugen
Rep. Karen Johnson
Jennifer Jordan

Hon. Dale Nielson
David Norton
Steve Phinney
Beth Rosenberg
Janet Scheiderer
Ellen Seaborne
Steve Wolfson
Jeffrey Zimmerman
Brian Yee

NOT PRESENT:

Gordon Gunnell
Ella Maley

Kelly Spence
Debbora Woods-Schmitt

GUESTS:

Brandi Brown
Scott Leska
Jennifer Greenfield
Bill Hart
Donna Irwin
Evelyn Buckner
Therese Martin
Debbie Harsh
Diane Brown
Annalisa Alvrus

AZ Coalition Against Domestic Violence
Parent
Dept. of Economic Security
AZ Coalition Against Domestic Violence
Governor's Office – Div. for Women
Governor's Office – Div. for Women
Office of the Attorney General
Concerned Citizen
Concerned Citizen
Concerned Citizen

STAFF:

Megan Hunter
Isabel Gillett
Javan Mesnard

Marianne Hardy
Jeremy Arp
Barbara Guenther

CALL MEETING TO ORDER

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

APPROVAL OF MINUTES

MOTION: Dave Norton – Approve the minutes of the January 10, 2003 meeting as submitted. Second by Ellen Seaborne. Approved unanimously.

ANNOUNCEMENTS

Rep. Johnson introduced and welcomed Beverly Frame, new Clerk of Superior Court member who replaces Alma Jennings-Haught. Ms. Frame has been the Clerk of Superior Court in Yuma County since 1990 and has worked in that office for thirty-three years.

Rep. Johnson announced that the Senate President and House Speaker have not announced legislative appointments nor has the position for the representative of a statewide domestic violence coalition been announced.

Sid Buckman described a child abuse situation in northern Arizona in which Child Protective Services failed to protect the child. Sid suggested that the group may want to look at this issue in the future.

LEGISLATIVE UPDATE

Jeff Zimmerman discussed the two bills that were produced through this committee: HB 2257, grandparent visitation, and HB 2258, child custody proceeding. Both bills passed the House and have made it through most Senate committees. The Substantive Law workgroup also discussed a revision to the long distance relocation statute, but did not proceed with it as consensus was not reached.

Rep. Johnson invited Rep. Yarbrough, sponsor of HB 2304, to discuss the bill with this committee today, but he was unavailable. Marianne Hardy discussed HB 2259 and 2304. The idea is to define in statute the percentage that the court would apply to the future costs of sale discount normally applied to real property in dissolution cases. Currently, the court has complete discretion on the actual percentage applied. Steve Wolfson expressed concern that HB 2304 did not come before this committee and that the bill sponsors proceeded with the bill although the State Bar formally opposed it. The bill is not a good idea and will not promote settlement, but will actually encourage more litigation. The bill would take away the court's discretion and does not distinguish between various types of property. Flat rules do not allow for a fair and equitable division of property. The bill failed in Senate Judiciary Committee but may resurface in that committee next week.

Ellen Seaborne commented that Coconino County used to have a policy to utilize a 10% flat discount percentage, but it did not work and she agrees with the state bar committee's opposition. Steve said Maricopa has had a discretionary policy since 1997.

If the bill does resurface, it would be inappropriate not to bring the bill before this committee. Rep. Johnson commented that Rep. Yarbrough is a freshman legislator so although there is no rule, he may not have realized it would have been a good idea to bring the bill to this committee initially.

Frank Costanzo discussed HB 2259 which would add additional legislators to the Domestic Relations Committee roster. He commented that legislators have a difficult time attending committee meetings which may affect the ability of this group to reach a quorum. Rep. Johnson mentioned that the committee needs more involvement from legislators so she is considering asking the Senate President and House Speaker to require legislative members to attend meetings at least 50% of the time.

Hon. Karen Adam discussed a grandparent visitation bill that was not offered by its sponsor for review by this committee. Rep. Johnson will try to get the message through to legislators to bring domestic relations legislation through this committee.

DOMESTIC VIOLENCE – EFFECTS ON CHILDREN

Dr. William Fabricius, Arizona State University, shared his research regarding domestic violence and child custody. The study was conducted on college students from divorced families regarding their perceptions about domestic violence in the home between the parents and violence directed toward them. This is the first data-driven, empirical study on the subject. The sample was comprised of the following: 75% Caucasian, 11% Hispanic, 8% African American, and 4% Asian.

The American Psychology Association task force on violence and the family cites that fathers who batter mothers are twice as likely to seek sole physical custody, and 60% of men who abuse women also abuse children. The study undertaken by Dr. Fabricius found that when violent fathers asked for sole custody, the students were receiving physical violence equally from both the mother and father, which makes it more understandable why the students wanted equal living arrangements (shared residential custody). He also found that overall, only 20% of fathers were violent, but whether they were violent or not, the child was likely to want shared residential custody.

DOMESTIC VIOLENCE/CUSTODY

Dr. Rene Bartos expanded on her previous presentation regarding the effects of domestic violence on children. She distributed a list of legislative proposals.

Dave Norton suggested that Rene's proposal to establish a supervised visitation project should be named "SAFE – Supervised Arizona Family Exchange." He also suggested changing the use of domestic violence terminology to domestic violence that causes physical harm to another person.

Members discussed Rene's proposals and commented that judicial officers are currently required to have many hours of training on domestic violence. Others commented that this group should get away from more domestic violence legislation because the effort

would be duplicative to that of other groups. Another member suggested that the group work on a model of bringing the family back together and promoting the family unit.

Donna Irwin, Governor's Office for Women, commented that the Governor's Office submitted a federal grant application for exchange centers in Pinal and Maricopa Counties. They should receive notification this summer.

The committee broke for lunch.

GOALS/2003

Rep. Johnson requested suggestions for issues to study in 2003. The discussion produced several ideas, as follows:

- Judge Pro Tem Legislation
- Children's Divorce Education
- Process of decision-making – Rules of Procedure
- Orders of Protection
- Domestic violence legislative proposals submitted by Rene (some were opposed)
- Substantive Law and Court Procedures workgroups should be combined and a separate workgroup could study custody
- Child Protective Services presentations
- Unbalanced, one-sided litigation when one party is represented and other is not
- List of proposed new legislative proposals to legislators

Current workgroup chairpersons will continue chairing their respective workgroups.

INTEGRATED FAMILY COURT (IFC)

Janet Scheiderer reported on the progress of the Integrated Family Court. Chief Justice Jones signed an administrative order establishing three Integrated Family Court Pilot Programs in the Superior Court in Coconino, Maricopa and Pinal Counties. The programs will be based upon those components of the report, *An Integrated Family Court Plan for Arizona*, as devised by the Domestic Relations Committee, that are determined financially and administratively feasible. Each county's administrative presiding judge of the Integrated Family Court Pilot Program is directed to submit a report on their pilot program to the Arizona Judicial Council one year after full implementation and upon the program's conclusion in December 2005. The Administrative Office of the Courts will conduct an independent evaluation of the programs.

Maricopa County intends to expand their current pilot project into the Durango facility and identify more of the overlapping cases. The presiding judge in Pinal County has gone to the local county board of supervisors to get a fee established to bring additional revenues to support the project, but the proposal was rejected. Coconino County intends to expand and improve their self-service center, add new services and comply with the one judge-one family concept. Janet advised that the projects are moving forward, but with hesitation due to the impact of the state budget crisis on the courts.

Ellen Seaborne reported that the Integrated Family Court workgroup has not met but they are aware of the administrative order and plan to meet in early summer. She reported that the administrative order contained changes such as the timeline for implementation of a statewide integrated family court, but also commented that the administrative order maintains the integrity of the intent of the Integrated Family Court.

CALL TO THE PUBLIC

Scott Leska, parent, suggested that this committee take a stance of legislation to conduct a study of Child Protective Services and to revamp the ATLAS system.

Diane Brown, parent, discussed her child custody case. She commented that the custody evaluator did not document the occurrence of domestic violence in her case and the court subsequently ordered joint custody. Her son has come home from his father's house beaten and bruised, after which Ms. Brown asked the court for an order of protection. The court ordered supervised visitation and appointed a guardian ad litem and family court advisor to the case. Both recommended visitation with the father. Ms. Brown has spent approximately \$136,000 on legal fees and the court continues to allow visitation.

Annalisa Alvrus, parent, commented that she did not like Dr. Fabricius' study, that domestic violence language in Title 25 should be tweaked, significant domestic violence should be defined and make judges enforce the laws already on the books.

Debbie Harsh, parent, discussed her experience in the court system. She was married for 16 years and endured various forms of abuse. She encouraged the committee to continue working in the best interest of children and families.

NEXT MEETING

The next meeting will be held on April 25, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 2:13 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – April 25, 2003

PRESENT:

Hon. Karen Adam
Hon. Mark Anderson, Co-Chair
Sidney Buckman
Kat Cooper
Nancy Gray
William Hart
Terrill Haugen
Hon. Karen Johnson, Co-Chair

Jennifer Jordan
Karen Kretschman for Janet Scheiderer
Ella Maley
Hon. Dale Nielson
Steve Wolfson
Brian Yee
Jeff Zimmerman

NOT PRESENT:

Rene Bartos
Frank Costanzo
Beverly Frame
Gordon Gunnell
David Norton

Steve Phinney
Beth Rosenberg
Ellen Seaborne
Kelly Spence
Debbora Woods-Schmitt

GUESTS:

Clarence Cramer
Therese Martin
Jennifer Greenfield
Wanda Weber

Pinal County Conciliation Court
Office of the Attorney General
Dept. of Economic Security
Maricopa County Conciliation Court

STAFF:

Megan Hunter
Isabel Gillett

Marianne Hardy

CALL MEETING TO ORDER

The meeting was opened at 10:18 a.m. by Rep. Karen Johnson without a quorum present. She thanked the members for their dedication to the committee by arriving on time and attending most or all of the meetings. The minutes were tabled for approval when a quorum is reached.

Senator Mark Anderson was appointed as the Senate co-chair replacing Senator Mary Hartley. Senator Anderson represents Mesa and has been a member of the Domestic Relations Committee since 1995. Senator Bill Brotherton was appointed as the Senate member replacing Senator David Petersen. William (Bill) Hart was appointed as the representative of a statewide domestic violence coalition replacing Daniella Yaloz.

Representative Johnson reviewed the Domestic Relations Committee charge to help keep the group on track. A.R.S. § 25-323.02 requires the Committee to prepare a plan for an Integrated Family Court, and to recommend changes to domestic relations statutes, rules and procedures, and other issues designed to lead to a reform of the domestic relations statutes. She encouraged members to come to these meetings with suggestions for meeting the charge, looking at such issues from a committee perspective rather than a personal viewpoint.

LEGISLATIVE UPDATE

MARIANNE HARDY

Legislation produced from the Domestic Relations Committee:

HB 2257 – Visitation Rights; Grandparents

Passed the House and Senate and has been signed by the Governor and chaptered.

HB 2258 – Child Custody; Jurisdiction

Currently on the consent calendar where it is scheduled to be third read in Senate, then will go directly to the Governor for signature.

Legislation sponsored by Representative Johnson:

HB 2259

This bill would add two legislators to the DRC membership list. The bill was struck in Senate Family Services Committee. Representative Johnson refused to accept amendments made in the Senate so the original bill went to conference committee with an amendment. The amendment adds a noncustodial parent appointed by the Senate President, a custodial parent appointed by the Chief Justice, and transferred one of the Governor’s appointments to the House Speaker. The amendment also eliminates two of the parental positions. 2002 legislation changed the composition of the committee and gave the Governor five appointments. Governor Hull replaced several existing members of which of her appointees have never attended. The Committee is primarily of a legislative/judicial nature; according to Rep. Johnson, giving appointing authority back to those two entities will bring the Committee back in line.

Other Domestic Relations Legislation:

HB 2304 – Dissolution of Marriage; Real Property

Died in the Senate. Representative Yarbrough may be willing to bring this before this Committee prior to introduction next year.

APPROVAL OF MINUTES

A quorum was reached.

MOTION: Sid Buckman – Approve the minutes of the March 21, 2003 meeting as submitted. Second by Commissioner Adam. Approved unanimously.

PARENT EDUCATION PROGRAM

Dr. Wanda Weber, Parent Information Program Director, Maricopa County. Maricopa County Superior Court oversees the mandated program called “Parent Information Program” and a separate program for high conflict litigants called “Parental Conflict Resolution.”

Parent Information Program:

2002 statistics

- 27,192 parties ordered to attend
- 16,993 actually attended
- \$65,500 approximate program cost
- \$4 per participant is reverted back to the court for administrative costs
- more female parties attend than male
- 27% of female and 30% of male participants report domestic violence
- 74% of participants are divorcing; 26% have never been married
- classes out-sourced to 12 independent providers in 40 locations
- classes offered in Spanish; also offered for the hearing impaired

Parental Conflict Resolution (High Conflict) Class:

- for families in high conflict, i.e., usually a history of repeated litigation
- no fee for participation; federal access and visitation funds utilized instead
- parties court-ordered to attend
- classes conducted in-house

Clarence Cramer, M.A., Conciliation Court Director in Pinal County Superior Court, oversees the Parent Education Class in Pinal County.

Parent Education Class:

2002 statistics

- 901 parties completed the class
- 2-hour videotape provided for out-of-county or out-of-state participants
- video attendees are required to pass exam with 70% score
- more females attend than males
- parties report that they initially objected to attending the class, but ended up enjoying and learning useful skills

- 98% report the class as useful to somewhat useful
- 45% of all attendees report domestic violence
- class offered in Spanish
- 4-hour classes conducted in-house by court (currently in Coolidge only, but seeking to expand to other locations)
- system in place to prevent parties to the same case from attending the same class
- class applicable to both married and never-married participants

Problems encountered:

- security; classes are provided in a county building with security so daytime classes are not a problem - to accommodate parties' work schedules, evening and/or weekend classes need to be provided, but security is not available without significant cost
- 10-15% no-show/cancellation rate

Discussion:

Judge Nielsen has observed that as ugly as a divorce is at the beginning, parties tend to calm down and become more conciliatory after they have attended the class. The court also benefits because parties seem more likely to settle after the class. Others commented that the class promotes and prepares parties for mediation; in theory, parents are required to attend the class prior to mediation. Senator Anderson asked if pre-marital counseling would be helpful. Both Mr. Cramer and Dr. Weber agreed that it would be helpful.

HB 2017 was recently passed by the Legislature and raises the parent education class fee from \$30 to a ceiling of \$50; the bill is on the Governor's desk. The increase was sought because class providers were not breaking even.

Non-attendance of parent education classes is seen statewide. Those who do not attend can still get a divorce, but cannot get joint or sole custody and cannot have any affirmative relief concerning custody or parenting time until the class is completed. A party can also be held in contempt. Members raised concerns about non-attendance rates. Mr. Cramer and Dr. Weber explained that some who do not attend have reached agreement to not attend and others could be by default. Members encouraged the Education/Prevention workgroup to look into remedies for making stiffer penalties for non-attendance.

Terrill Haugen and Steve Phinney, along with the Education/Prevention workgroup, have been discussing and researching the possibility of creating a children's divorce education program in Arizona. They plan to seek creative funding sources in an attempt to relieve the courts and Legislature from further financial burden. They invite input from the Committee and will report to the group at each meeting with a goal of introducing legislation in 2004. Members urged the workgroup to carefully consider the resource issue.

INTEGRATED FAMILY COURT (IFC)

Karen Kretschman reported on the status of the IFC pilot projects. Three counties initially volunteered to initiate pilot projects: Maricopa, Pinal and Coconino. Maricopa County will continue their existing program and expand to the Durango site to take on more cases. They have made alterations to enhance their automated system. Pinal County is experiencing difficulty finding a judge to serve as the IFC presiding judge and they have not found the funds necessary to accomplish the project. Coconino County will hold the first meeting of their IFC local committee on April 29. Judge Newton has concerns about maintaining existing services, let alone expanding on them. The Supreme Court does not have funding sources for the projects this year or next. Each court is expected to submit a report to the AOC in June and Karen will report to the Committee in July.

BREAK/LUNCH

The meeting was called back to order at 12:49 p.m.

WORKGROUP REPORTS

Substantive Law – Jeff Zimmerman

The group will start reviewing child custody reform issues for introduction in 2004.

Court Procedures – Brian Yee

The group will study parent education issues; particularly the dilemma of non-attendance.

The group will also work on board reform, i.e. allegedly, regulatory boards are being used by advocacy groups to compromise the family court system and there is a potential for decreasing choice and increasing expense. Reports are coming in that the regulatory board is being used to harass custody evaluators, family court advisors and therapeutic interventionists. The group will study the question of whether there should be a mechanism for litigants to have some redress rather than going to the board, and also a mechanism for quality assurance that doesn't result in harassment.

The group will also pursue the notion of a dedicated family bench either statutorily or by reviewing the comments concerning a dedicated family bench made by then Chief Justice Zlaket and then Vice Chief Justice Jones to this group in October 2001. Chief Justice Jones will be invited to upcoming Committee meetings for collaboration purposes. The group will study allowing family law judges to stay where they are and attempt to affect the trial court membership and procedures to encourage and foster the appointment of family practitioners to the bench. Karen Kretschman pointed out that we need to remember that the Committee's statutory charge is not intended just to study civil rules of procedure, but all domestic relations statutes, rules and procedures that affect family law.

Jennifer Jordan requested a presentation on the Model Parenting Time Plan because it has made major changes from the methods and materials used by counties in the past. The Committee may want to take action and adopt a model parenting time plan. Leah Pallin-Hill will be invited to provide the presentation and a copy of the Plan will be sent electronically to members.

Education/Prevention – Terrill Haugen

Members will attend a parent education class and a high conflict class.

CALL TO THE PUBLIC

No members from the public were present.

NEXT MEETING

The next meeting will be held on May 30, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 1:12 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – May 30, 2003

PRESENT:

Hon. Nanette Warner for Karen Adam
Hon. Mark Anderson, Co-Chair
Kat Cooper
Frank Costanzo
William Hart
Terrill Haugen
Hon. Karen Johnson, Co-Chair
Jennifer Jordan

Karen Kretschman for Janet Scheiderer
Hon. Dale Nielson
David Norton
Steve Phinney
Judy Walruff for Beth Rosenberg
Debbora Woods-Schmitt
Brian Yee
Jeff Zimmerman

NOT PRESENT:

Rene Bartos
Sidney Buckman
Beverly Frame
Nancy Gray

Ella Maley
Ellen Seaborne
Kelly Spence
Steve Wolfson

GUESTS:

Annalisa Alvrus
Tyne Naven
Sara Lunde
Rene Rebillot
Diane Brown
Daniel Cartagena
Raymond Last name unknown
Stephanie Reed

AZ Protective Parents Network
AZ Coalition Against Domestic Violence
AZ Coalition Against Domestic Violence
AZ Office of the Attorney General
AZ Protective Parents Network
Parent
Parent
AZ Protective Parents Network

STAFF:

Isabel Gillett
Megan Hunter

Marianne Hardy

CALL MEETING TO ORDER

Sen. Mark Anderson opened the meeting at 10:10 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: Approve the minutes of the April 25, 2003 meeting as submitted.
The motion was seconded. Approved unanimously.

ANNOUNCEMENTS

Sen. Anderson discussed the CPS Commission Report and indicated that he will contact Noreen Sharp from Governor Napolitano’s office to provide an overview of that report at the July 11th meeting.

Judy Walruff, Ph.D., was introduced as Beth Rosenberg’s designee. Dr. Walruff also works with the Children’s Action Alliance.

LEGISLATIVE UPDATE

MARIANNE HARDY

Legislation produced from the Domestic Relations Committee:

- HB 2257 – Visitation Rights; Grandparents
Signed and chaptered.
- HB 2258 – Child Custody; Jurisdiction
Signed and chaptered.

Other Domestic Relations-related Legislation:

- HB 2017 – Parent Education Fee Increase
Signed and chaptered. The fee for the parent education class was increased from \$30 to a maximum of \$50.

KIDS FIRST

TERRILL HAUGEN & STEVE PHINNEY

Terrill Haugen and Steve Phinney, along with the Education/Prevention workgroup, are developing a proposal for a divorce education program in Arizona or more specifically a class focused on each member of the family including the children. Legislation would be needed for mandatory classes. Funding is available in the faith-based arena for this type of endeavor.

Rep. Johnson asked if this type of class could be made mandatory for high school seniors; perhaps by locating preventative classes in high schools. Another potential location are boys’ and girls’ clubs during the summer months.

The group will meet on June 27th from 10:00 a.m. – 12:00 p.m. for a working session and invited members to join at their pleasure. The group has also discussed classes for parents considering a divorce.

INTEGRATED FAMILY COURT (IFC)

Karen Kretschman reported on the progress of the IFC pilots projects. The Pinal County pilot project is underway, but utilizing a slightly different approach. Instead of overlapping juvenile and family cases and routing them to the family court, they will be routed to the juvenile court. Judge Figueroa has been named presiding judge of the IFC in Pinal County. Their Board of Supervisors are not interested in funding the IFC project.

The Coconino pilot has some strong interest from the Board of Supervisors. Coconino County is following the IFC plan as proposed by DRC as much as possible.

The AOC has submitted a funding proposal for some funds for the IFC pilot projects for FY 05. By that time, results from existing pilots will be known.

Maricopa is continuing and expanding their pilot and utilizing as many features from the IFC plan as proposed by this Committee as possible.

CALL TO THE PUBLIC

Raymond Cartagena, parent and firefighter, discussed his present situation in which he is being denied access to his child. He has been told by several agencies that nothing can be done to enforce access until he has a court order. His case was set out four months and he was denied an emergency hearing because his son was not in life threatening danger. Jeff Zimmerman explained that this is a paternity case with custody issues and the issue is the extraordinary length of time it takes to have a case heard in Maricopa County. Some members expressed concern about changing state law to address a Maricopa problem. Judge Warner recommended referring this to the Rules of Court for Domestic Relations Cases Committee. Rep. Johnson asked the Substantive Law Workgroup to address the issue.

BREAK/LUNCH

The meeting was called back to order at 1:14 p.m.

WORKGROUP REPORTS

Substantive Law – Jeff Zimmerman

The group began reviewing and discussing child custody reform issues for introduction in 2004. They discussed whether a parenting plan should be required in every case; eliminating the term “custody” to the extent possible; presumptions about parenting time; and domestic violence concerns.

Court Procedures – Brian Yee

The group began reviewing and discussing the issue of a dedicated family bench. The group also discussed statutorily reforming the current merit system, specifically, the way candidates are chosen. Currently, there is a penalty for having family law experience when applying for a judgeship. Frank Costanza mentioned that education is a key to the process. They will continue working on finding a solution.

Education/Prevention – Terrill Haugen

Members continued working on the Kids First proposal and announced they will meet as discussed previously on June 27th from 10:00 a.m. – 12:00 p.m.

CALL TO THE PUBLIC

Annalisa Alvrus, spoke as a task force member of the Arizona Board of Psychologists Examiners. The Board's mission is to regulate the psychology profession to protect Arizona's citizens, and license psychologists and make sure they provide quality services – not to protect psychologists. She explained that the only redress available to litigants is to complain to the Better Business Bureau or go to the Arizona Board of Psychological Examiners and ask that a psychologist be peer reviewed. If civil immunity and Board complaints are gone, then the public has no protection. From 1989-2001, 570 complaints were filed with the Board of which 115 arose from court custody matters. She believes that there is not a harassment issue.

Stephanie Reed, Arizona Protective Parents Network member, has been working with Rick Romley's office on the CPS report. She is concerned that Arizona's children are not being protected at the same level as those in other states. She is also concerned about domestic violence rates in domestic relations cases and frustrated by Jeff Zimmerman's comment during a workgroup meeting. She expressed support of using family court advisors in joint custody cases, especially in high conflict cases. Jennifer Jordan explained that Ms. Reed's portrayal of Jeff Zimmerman's comments during a workgroup meeting regarding domestic violence were misrepresented and that he and other Committee members are highly aware of domestic violence issues and would not downplay the importance of domestic violence.

NEXT MEETING

The next meeting will be held on July 11, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 345, Phoenix.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 2:00 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – July 11, 2003

PRESENT:

Hon. Karen Nygaard for Karen Adam
Hon. Mark Anderson, Co-Chair
Sidney Buckman
Kat Cooper
Frank Costanzo
Nancy Gray
William Hart

Hon. Karen Johnson, Co-Chair
Theresa Barrett for Janet Scheiderer
David Norton
Ellen Seaborne
Judy Walruff for Beth Rosenberg
Debbora Woods-Schmitt
Brian Yee

NOT PRESENT:

Rene Bartos
Beverly Frame
Terrill Haugen
Jennifer Jordan
Hon. Dale Nielson

Ella Maley
Kelly Spence
Steve Wolfson
Steve Phinney
Jeff Zimmerman

GUESTS:

Annalisa Alvrus
Tracey Landers
Therese Martin
Michael Durham
Liz Archuleta
Brandi Brown
Gary Krcmarik

AZ Protective Parents Network
Senate
Office of the Attorney General
2nd Spoken Voice
Coconino County Board of Supervisors
AZ Coalition Against Domestic Violence
Superior Court in Coconino County

STAFF:

Isabel Gillett
Marianne Hardy
Megan Hunter

Administrative Office of the Courts
House of Representatives
Administrative Office of the Courts

Sen. Anderson opened the meeting at 10:07 a.m. without a quorum present.

ANNOUNCEMENTS

Theresa Barrett, Administrative Office of the Courts, was introduced as Janet Scheiderer's designee; Hon. Karen Nygaard, Superior Court in Pima County, was introduced as Commissioner Karen Adam's designee.

CALL MEETING TO ORDER

Sen. Anderson called the meeting to order at 10:18 a.m. when a quorum was reached.

APPROVAL OF MINUTES

MOTION: Approve the minutes of the May 30, 2003 meeting as submitted. The motion was seconded. Approved unanimously.

"IN HARM'S WAY" REPORT

MARK FAULL

Mark Faull, Special Assistant County Attorney, Maricopa County Attorney's Office, provided an overview of the Arizona Voice For Crime Victims report entitled "In Harm's Way". Mr. Faull introduced Shawn Cox, the principal researcher on the project.

The report provides a policy overview of the legal and social systems that are established to protect children from criminal abuse and neglect. The report is based on the views of 163 professionals from the field. The report looked at two conflicting philosophies that have emerged from federal law: 1) protect the safety of children; and 2) preserve families through reunification.

Key recommendations made in the report include:

- Child safety – the Legislature should change the primary goal of CPS to child protection;
- Hold parents accountable and, when appropriate, be prosecuted for abuse or neglect;
- Establish a protocol as required standard so all cases would be handled competently;
- Separate CPS from DES and make them a direct report to the Governor.

"IMPROVING ARIZONA'S CHILD PROTECTION SYSTEM"

TRACY WAREING

Tracy Wareing, Policy Advisor for Children's Services, Office of the Governor, provided an overview of the Governor's Advisory Commission on Child Protective Services and Seven Subcommittees report entitled "Improving Arizona's Child Protection System – Report and Recommendations."

An Advisory Commission and seven subcommittees were formed by Governor Napolitano to review the entire child protection system. Each subcommittee had a

particular focus on one part of the system. The Commission met four times between January and June, 2003 and developed a list of final recommendations. The Governor plans to review the recommendations and determine which she believes are best for Arizona. She plans to hold public hearings to solicit public input.

Key recommendations made in the report include:

- Prevention of child abuse and neglect, as the first strategy toward effective protection.
- The role and mission of CPS, including statutory definitions related to child safety and child protection.
- The role of the community and diversity in child welfare and child protection, including elimination of cultural barriers.
- A structure for accountability for collaboration among government agencies serving children and families.
- Records and information, including appropriate sharing of records, public access to appropriate information, consideration of an expanded pilot to open CPS dependency hearings.
- CPS reports and investigations, including risk based investigations, multidisciplinary team approaches, joint investigations as appropriate with law enforcement, collaboration with mandatory professional reporters, and substantiation of allegations of child abuse/neglect.
- CPS response system, including development of a differential response system, and alternatives to current dependency processes.
- Health services delivery, including medical, behavioral, substance abuse and domestic violence services.
- Juvenile Justice and education reforms, including keeping a child in the same school and representation of a child in CPS with special education needs.
- CPS staff support, including better academic preparation, training, workloads, and salaries.
- Funding changes, including child support collections from parents with children in the juvenile justice or dependency systems, and better use of federal monies for children who need protection.
- Implementation of changes, based on outcomes, timelines, and accountability, with community participation.

INTEGRATED FAMILY COURT (IFC)

Ellen Seaborne introduced Gary Krcmarik, Court Administrator of Superior Court in Coconino County and Liz Archuleta, Board of Supervisors in Coconino County. Gary and Liz explained that the pilot project is proceeding while they search for grant funding. They may have to focus on funding the court through fees. A bill introduced this session (HB 2533) would make it more difficult for local counties to raise revenue through fees because a larger portion would have to be shared with the state. A trailer bill (HB 2541) was introduced in an attempt to 'fix' HB 2533, but it did not pass. The Coconino pilot has

strong interest from the Board of Supervisors. Coconino County is following the IFC plan as proposed by DRC as much as possible.

Maricopa County is continuing and expanding their pilot and utilizing as many features from the IFC plan as proposed by this Committee as possible. The project is housed at the Southeast facility with two judges having been cross-trained in juvenile, family and probate. They hope to expand to the new juvenile court building, possibly in March 2004. Phase II of the pilot will begin after the juvenile complex is finished. At that facility (Durango), judges will have mixed calendars and overlapping cases. They will stay on that assignment for three years. Durango will have six judges.

Pinal County's pilot project is also progressing. They have chosen Judge Figueroa as Presiding Judge of the Integrated Family Court. No funds to assist the project have been approved by the county to date. Their IFC plan does not look exactly like the DRC plan, but follows it to the extent possible.

The AOC has submitted a funding proposal for some funds for the IFC pilot projects for FY 05. By that time, results from existing pilots will be known.

CALL TO THE PUBLIC

Michael Durham, lobbyist from 2nd Spoken Voice, said he had been a caseworker and supervisor in the child protection system in the past. He provided a list of recommendations: 1) the need for a body of law in CPS cases; 2) CPS caseworkers and the courts should be co-located; 3) abandonment of certain legal terminology and associated expectations. He would like to see a law created that discusses custody of children, and definitions for 'services' and 'fixing families'.

BREAK/LUNCH

The meeting was called back to order at 1:38 p.m.

WORKGROUP REPORTS

Substantive Law – Ellen Seaborne for Jeff Zimmerman

The group discussed change to A.R.S. § 25-403(A). The central idea is that the court would be required to allocate parenting time and responsibilities between the parents or consider shared responsibility. They expect to have preliminary language ready by September or October.

Court Procedures – Brian Yee

The group continued their discussions regarding a dedicated family bench. Deborra Woods-Schmitt had five judicial officers in her court case. The group also discussed causes for dysfunction in the system such as a lack of standards, under funding and not enough resources. Judges Leonardo and Campbell,

Presiding Judges in Pima and Maricopa Counties respectively, will speak to the Domestic Relations Committee on this topic and perhaps on the topic of a free-standing family court in September. In the interim, members will draft a letter to be sent to the judicial selection committees to encourage selection of family law candidates in the judicial selection process.

Education/Prevention – Terrill Haugen

No report as the chairperson was absent. A report will be given next month.

CALL TO THE PUBLIC

Brandi Brown, Arizona Coalition Against Domestic Violence, addressed a privacy issue regarding accessibility to physical location information on parties in domestic relations cases in Maricopa County. On the Superior Court website, only case information is available; addresses are not listed. On the Clerk of Superior Court website, minute entries are available in PDF format, which means the actual document may be viewed. Minute entries contain the parties' names and for those who are self-represented, their addresses. Brandi mentioned that even sealed cases are available on this website.

Committee co-chairs assigned this issue to the Substantive Law and Court Procedures workgroups.

NEXT MEETING

The next meeting will be held on August 22, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 345, Phoenix.

The topic will be false allegations in orders of protection. Steve Wolfson, Rep. Russell Pearce and a judicial officer will discuss this topic. Bill Hart will give a brief overview of the Arizona Coalition Against Domestic Violence's report on battered mothers.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 2:00 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – August 22, 2003

PRESENT:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair
Hon. Karen Adam
Hon. Bill Brotherton
Sidney Buckman
Kat Cooper
Frank Costanzo
William Fabricius
Nancy Gray

Bill Hart
Jennifer Jordan
Hon. Dale Nielson
Lori Connelly for David Norton
Karen Kretschman for Janet Scheiderer
Ellen Seaborne
Judy Walruff for Beth Rosenberg
Steve Wolfson
Jeffrey Zimmerman

NOT PRESENT:

Beverly Frame
Terrill Haugen
Ella Maley
Steve Phinney

GUESTS:

Martin Susnjara
Michael E. Durham
William Sturgiss
Konnie Young
Coreen Young
Tarra Phares
Cindi Stoneman
Theresa Barrett
Steve Muratore
Anne Taylor
Annalisa Alvrus
Diane Brown
Katia Brown
Allie Bones
Evelyn Buckner
Danny Cartagena
Richard Alun Davis
Tina Hanseren
Dianne Post

Unknown
2nd Spoken Voice
Representing Self
Administrative Office of the Courts
Representing Self
Representing Self
Representing Self
Administrative Office of the Courts
Representing Self
Christian Science Committee
AZ Coalition Against Domestic Violence
AZ Protective Parents Network
Men's Anti-Violence Network
Governor's Office, Division for Women
Governor's Office, Division for Women
Self, Daughter and Extended Family
Concerned Citizen
Citizen
AZ Coalition Against Domestic Violence

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter

Administrative Office of the Courts
Senate
Administrative Office of the Courts

Rep. Johnson called the meeting to order at 10:10 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: A motion to approve the minutes of the July, 2003 meeting as submitted was made by Frank Costanzo and seconded by Jeff Zimmerman. Approved unanimously.

ANNOUNCEMENTS

Senator Bill Brotherton, Arizona State Senate, was introduced as the new Senate appointee to the Committee. Governor Napolitano appointed Dr. Bill Fabricius, to serve as a parent member. Dr. Fabricius is an associate professor of Psychology at Arizona State University and has conducted research and published his findings on children and divorce, most notably. Lori Connelly, Phoenix Police Department, was introduced as David Norton's designee for this meeting.

INTEGRATED FAMILY COURT REPORT

Maricopa County

Maricopa County continues progressing in its pilot project using many of the aspects found in the legislative plan, plus recommendations from their evaluation findings from 2002. They are expanding their Family Court and centralizing integrated cases into two divisions at the southeast facility in Mesa to better isolate cases which have overlapping domestic relations and juvenile issues. Two judges will hear crossover cases. All IFC judges are receiving training in family law, dependency and different database system. They have a one case/one team approach, consisting of a judge, commissioner, case coordinator and other court employees. Their local IFC committee continues to meet on a quarterly basis.

Coconino County developed a detailed set of recommendations. Judge Newton, Presiding Judge of the Superior Court in Coconino County, recently sent a letter to Dave Byers, Director, Administrative Office of the Courts, to describe the obstacles presented in trying to implement their pilot project. Inadequate funding will limit positions to oversee the project and services to be offered as part of the pilot. They have devised two proposed budgetary numbers for possible programs.

Judge Gilberto Figueroa, Presiding Judge of the Integrated Family Court in the Superior Court in Pinal County, joined the group by telephone. He also serves on the juvenile bench. Serving in both positions has afforded him the opportunity to observe overlapping cases. Unfortunately, although there are many overlapping cases, a practical way of hearing those cases in an integrated setting remains elusive in light of funding issues. Pinal County's Board of Directors are reluctant to impose additional fees on litigants who are financially strapped and already pay large filing fees.

Ellen Seaborne mentioned that Coconino County is considering placing fees on services currently provided by the court on which no fees are assessed, e.g. child custody evaluation and subsequent filings.

Judge Figueroa indicated that they plan to continue searching for options to make the pilot project work and invited innovative ideas from Committee members.

HB 2533

Theresa Barrett, Administrative Office of the Courts (AOC), provided a brief synopsis of HB 2533 signed into law this year. The bill directs the counties to transfer 75% of fee and fine collections to the state. Ms. Barrett explained that the Legal Division of the AOC recently released a statement regarding their interpretation of the impact of HB 2533 on the courts. In essence, only fines and fees that were in place prior to the passage of this bill are subject to the 75% fee transfer. Any fines or fees put in place after the new law takes effect after September 18, 2003, will not be subject to the fee transfer, which means courts who implement new fees to help support the Integrated Family Court pilot projects would not be subject to HB2533.

FALSE ALLEGATIONS IN ORDERS OF PROTECTION

Representative Russell Pearce

Representative Pearce discussed an issue he has observed over a span of 30 years as a law enforcement officer, a justice of the peace, and most recently as a legislator. The presented problem: A party who allegedly makes false accusations of domestic violence in court against their spouse in an attempt to the gain legal advantage in a divorce. The hearing is conducted in an ex parte manner. After the order of protection is issued and served, the Defendant is prevented by law from entering the marital property and from seeing the children. Rep. Pearce would like to work through this Committee to resolve this issue. He indicated that he believes that true abusers should be put away, but laws should be put in place to discourage or prevent false accusations. Where possible, there should be a hearing before an order is issued. He would like to see a system that protects everyone's rights and one in which it is easier to get an order of protection in proper cases.

He commented further that Orders of Protection are issued without probable cause and limited jurisdiction courts exercise power that they do not have. Further, the justice system is meant to be fair, but this issue does not lend itself to fairness and the system is greatly abused. The order of protection is used to get a husband out of the home and deny him access to the children. An order of protection is automatically harmful to the accused party in a custody case. Orders of protection are well-intended if the system of justice is allowed to work as intended.

His recommendations include:

- (1) Separate violent and non-violent domestic violence offenses.
Currently, the same weight is given to both violent and non-violent offences, but they should not be lumped together. Violent offenses should be treated with serious weight, while those of a non-violent nature should be treated to a lesser degree.
- (2) Evidence requirement in hearings (i.e. police reports; documented evidence of violence; medical reports)
Unless evidence of violence is presented, an order of protection should not be issued.
- (3) Consequences for false allegations
Generally, there are no consequences when a party levels false accusations in an order of protection hearing; laws should be enacted to allow the courts to assess consequences.
- (4) Cross orders of protection (also called mutual orders of protection)
After an order of protection is issued, the person on whom it is against could file an order of protection on the other party.

Steve Wolfson

Steve provided the perspective on the issue of false allegations in orders of protection as an attorney, judge pro tem and former chairman of the Family Law Section of the Arizona State Bar. He does not come from a particular belief, and serves in the role of answering the Committee's questions as to the legal process in these cases.

He indicated that approximately 20-30% of order of protection hearings result in quashed orders. Attorneys have to walk a tight rope in these cases and should be troubled by balancing of interests. Attorneys must consider the following in these cases:

- Is there current, relevant information?
- Is there evidence?
- Were the rules of evidence followed?
- Are children included in the order?
- Are property interests at stake?

Hon. Dale Nielsen

Judge Nielsen offered the perspective of a judicial officer in a small, rural county. He commented that all judges are required to take domestic violence training which includes issues surrounding orders of protection. They are trained that if any doubt exists as to the validity of the allegations, they should always go in favor of the order of protection for safety reasons. He indicated that he has been

duped in the past in order of protection hearings and realizes that when false allegations are leveled, it is to gain advantage in domestic relations cases. Attorneys sometimes tell their clients to get an order of protection to gain legal advantage. Parties are put under oath under penalty of perjury; in his court, in every ex parte hearing, he always uses a court reporter to record the hearing and looks for evidence such as police reports. He indicated that he shares some of Rep. Pearce's concerns about abuses of the system and takes the matter very seriously. Many times, people get back together after the issuance of an order of protection.

When a limited jurisdiction issues an order of protection that includes children, they have, in effect, entered a custody order.

Sen. Anderson asked if there are any consequences for making false allegations. Judge Nielsen responded that an investigation could be done and the order vacated. He does not see a lot of violations.

Sen. Brotherton commented that he agrees with Rep. Pearce in terms of providing safe houses for victims of domestic violence and encouraged him, as chair of the Appropriations Committee, to vote for funding for safe houses in the next legislative session. He also commented that he supports giving judges great discretion and is concerned about making large scale changes to the justice system without a thorough study. He believes there are false allegations in some cases, but there are also times when an order of protection should have been put in place, but was not.

Jennifer Jordan supports Sen. Brotherton's statements. She commented that there are not enough resources to help victims and we should not make it more difficult for them.

Nancy Gray asked if any documentation exists to support the numbers of false allegations. Rep. Pearce indicated that adequate records are not kept, but support exists in the form of anecdotal information. She indicated, by way of anecdotal information, that Yuma County judges do not issue enough orders of protection. She encouraged development of an empirical, evidence-based study before any laws are changed. Sen. Anderson suggested that we develop a survey for judges statewide to weigh in on the issue.

Frank Costanza's primary concern is the diminishing of psychological abuse in Rep. Pearce's presentation. The issue is an indictment of the Bar, not an indictment of the system and encouraged working with the state Bar to develop the survey.

Bill Hart commented that he does not understand the problem and provided statistics as to the number of domestic violence related police calls and the corresponding low numbers that resulted in orders of protection. He agreed that

sometimes people lie to get the order and that judges receive domestic violence training. He questioned the assertion about the ethics of the Bar and also encouraged development of a study.

Kat Cooper indicated that we can do more to improve the system and that in her experience working as a teacher, therapist and in the courts, she has seen attorneys who encourage clients to level false allegations to gain legal advantage. She has interviewed children who have been encouraged by one parent to lie. She supports looking at this issue and examining it fairly.

Jeff Zimmerman also indicated support of the development of a study.

Commissioner Adam believes a survey is a mistake and that overhauling the system should be done very carefully. A very small number of custody cases go to trial. She suggested the assistance of professional researchers if a study is undertaken.

Bill Fabricius volunteered to work with the Committee to look at the law and suggested using a two-pronged approach using data and the law and loopholes that are there.

The Committee may re-examine this issue at a later date for further discussion.

CALL TO THE PUBLIC

Michael Durham. Mr. Durham representing 2nd Spoken Voice, suggested that: 1) data gathering be reassigned to the Criminal Justice Commission, 2) DPS should add statistics on domestic violence, and 3) more funding for data collection in domestic violence should be attained.

William Sturgiss. Mr. Sturgiss, representing himself, stated that he has no objection to the court issuing orders of protection when warranted. His ex-wife obtained an order of protection through the justice court on encouragement of her attorney. He stated this is contrary to Arizona law. He eventually got sole custody of their child. He encouraged legislators not to view people with orders of protection against them in divorce cases as criminals. He also mentioned that a sign is posted in the Superior Court in Maricopa County Southeast facility that says orders of protection are not be used to gain temporary custody.

Coreen Young. Ms. Young, representing herself, is frightened by the way the system does not work. The judicial system did not work in an timely manner in her case as it took from September to July to reach resolution. She encouraged good research so changes will be based on facts.

Danny Cartagena. Mr. Cartagena, representing himself, said that false allegations were used to obtain an order of protection in his case and resulted in giving the other party a legal advantage. False allegations are very difficult to refute; it is almost impossible to

prove that you did not do something. Men are left without options; the Arizona Coalition Against Domestic Violence mission statement states that they help only women and children, not men.

Bruce Ledgerwood. Mr. Ledgerwood, representing himself, discussed his case and welcomed advice from anyone on the Committee. An order of protection was put in place against him because his daughter had bruising. The order was quashed and the mother was investigated and found to have committed the abuse. He was given sole custody of his daughter, but the mother still has the daughter. He has been turned away everywhere he has gone for help in order to protect his child and does not know where to turn next.

Richard Alun Davis. Mr. Davis, representing himself, indicated that Coconino County judges are hesitant to not issue orders of protection and the majority of abusers are men, not women.

Steve Muratore. Mr. Muratore, representing himself, thanked the Committee for their thoughtful consideration of these issues. He did not have access to legal resources when his ex-wife made false allegations. He now has sole custody of his daughter and she has to be in regular therapy. He indicated that there is a grave need for competent, reliable data.

Geraldine Anderson. Ms. Anderson, representing Arizonans for Gun Safety, stated that a reduction in deaths occurs when orders of protection are put in place. She suggested that guns should be banned from the home where domestic violence has occurred. She also suggested that orders of protection are a very useful tool, and even with abuses such as false allegations, women and children have to be protected.

Allie Bones. Ms. Bones, representing the Governor's Office, Division for Women, wanted the Committee to know that if Arizona adopts a policy allowing cross orders of protection, the state stands to lose \$10 million from the Federal Violence Against Women Act because it is in violation of its standards. Those funds go toward helping victim services, law enforcement, prosecutors and judges in the domestic violence arena.

Diane Brown. Ms. Brown, representing Arizona Protective Parents Network, stated that if she had been required to show evidence of abuse, she would be dead. She had three orders of protection against her batterer who was also a police officer. Even though the kids came home from their father with bruises, the court still granted joint custody.

Dorralee Sarda. Ms. Sarda, representing Justice for Children, suggested that agencies and shelters who help abused women and children would be a reliable data source if studies are to be conducted. She mentioned that cases have been submitted by both parents where the system has failed.

BREAK/LUNCH

The meeting was called back to order at 1:38 p.m.

WORKGROUP REPORTS

Substantive Law – Jeff Zimmerman

The group drafted changes to A.R.S. § 25-403 for a proposal for joint custody and expanded parenting time. Essentially, the statute is left intact with only two or three sentences added at the beginning to indicate that parents who act in their child's best interests will share in the rights and responsibilities of shared parenting, both in temporary and final orders. If a parent requests sole custody, that parent must prove that shared parenting is not in the best interest of the child. The statute's current language, which discusses drug offenses, domestic violence, etc., would be left intact. The group also proposes that a parenting plan be required in every case. Rep. Johnson indicated she will contact other legislators who are interested in this legislation to invite them to join us. Sen. Brotherton suggested that the Governor's office should also be brought on board. The group will continue working on draft language to present at the September meeting.

Court Procedures – Nancy Gray for Brian Yee

The group continued their discussions regarding a dedicated family bench. They have begun drafting a letter to be sent to the judicial selection committee, but will wait until after the September meeting to finalize the letter. Rep. Johnson suggested that the family bench should be comprised of judges who want to be there.

Education/Prevention – Terrill Haugen

No report as the chairperson was absent. A report will be given next month.

BATTERED MOTHERS' TESTIMONY PROJECT

BILL HART

The Battered Mothers' Testimony Project was implemented by the Arizona Coalition Against Domestic Violence to explore the experiences of battered women in Arizona family court matters when child custody is at issue. They patterned the study after a Wellesley study. A sample of women who had participated in a contested custody hearing where domestic violence or child abuse were present were surveyed.

The report contains several recommendations for changes to Arizona courts, including increased domestic violence training for judges and court personnel, and a requirement for the court to make written conclusions of law when custody is contested. Bill recommended the formation of a workgroup of this Committee to study this issue. Rep. Johnson asked members to review the report before the next meeting; a workgroup can be formed if the Committee reaches consensus to do so.

CALL TO THE PUBLIC

Analisa Alvrus. Ms. Alvrus is the new Systems Advocate for Court Watch with the Arizona Coalition Against Domestic Violence. She supports statistical research and encouraged members to remember that anecdotal reports lead to empirical studies.

Debbie Harsh. Ms. Harsh stated that orders of protection are beneficial because a large number of perpetrators have respect for the order. Many would suffer consequences such as job loss if they violate an order of protection. The stress levels of the victim are passed to the children, so an order of protection provides some relief from that stress. She also mentioned that there is no easy remedy for false allegations made in order to obtain an order of protection, but victims of domestic violence should still be protected.

NEXT MEETING

The next meeting will be held on September 12, 2003, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119, Phoenix.

The topic will be the concept of a dedicated family bench. Presiding Judges Colin Campbell, Superior Court in Maricopa County and John Leonardo, Superior Court in Pima County will be the presenters.

ADJOURNMENT

Rep. Johnson adjourned the meeting at 2:05 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – September 12, 2003

PRESENT:

Hon. Karen Adam
Hon. Mark Anderson, Co-Chair
Hon. Bill Brotherton
Sidney Buckman
Kat Cooper
William Fabricius
Nancy Gray
William Hart
Terrill J. Haugen
Hon. Karen Johnson, Co-Chair

Jennifer Jordan
Karen Kretschman for Janet Scheiderer
Ella Maley
Hon. Dale Nielson
Kelly Spence
Steve Wolfson
Debbora Woods-Schmitt
Brian Yee
Jeff Zimmerman

NOT PRESENT:

Frank Costanza
Beverly Frame
David Norton

Steve Phinney
Ellen Seaborne
Judy Walruff for Beth Rosenberg

GUESTS:

Annalisa Alvrus
Hon. Mark Armstrong
Kathleen N. Carey
Mike Durham
Bridget Humphry
Jason Kalish
Patricia A. Medsen
Patricia Osmon
Judy Shaw
Alice Susnjara
Martin Susnjara

AZCADV
Maricopa Superior Court
Maricopa Public Defender
2nd Spoken Voice
Community Legal Services
MCAO
Community Legal Services
AZ Senate
Community Legal Services
Public Member
Public Member

STAFF:

Isabel Gillett
Marianne Hardy
Megan Hunter

Administrative Office of the Courts
House of Representatives
Administrative Office of the Courts

Sen. Anderson opened the meeting at 10:11 without a quorum present.

MODEL PARENTING TIME PLANS

LEAH PALLIN-HILL

Leah Pallin-Hill, former Superior Court Commissioner in Maricopa County, currently practicing in the mediation area, presented a summary of the Supreme Court's *Model Parenting Times Plans*. The concept to develop parenting time guidelines originally began in Maricopa County, then became a statewide, collaborative committee effort through the Administrative Office of the Courts. The Plans provide guidance to litigants and the courts in cases in which parenting time is at issue. Current research indicates that children can make attachments to many people instead of just the mother. This research was utilized to develop a tiered system in the Plans. The Plans provide a snapshot on how to raise healthy children in non-intact families. Included is a Benefits and Harms section, and other information regarding special circumstances (abuse, neglect, intense conflict, domestic violence, drug abuse), holidays, and long distance parenting.

CALL MEETING TO ORDER

Sen. Anderson called the meeting to order at 10:23 a.m. when a quorum was reached.

APPROVAL OF MINUTES

MOTION: Judge Nielsen moved to approve the minutes of the August 22, 2003 meeting as submitted. The motion was seconded by Terrill Haugen. Approved unanimously.

FAULT DIVORCE

HON. DALE NIELSON

Judge Dale Nielson, Presiding Judge, Superior Court in Navajo County, briefly discussed the issue of fault divorce vs. no fault divorce. A discussion followed about whether a workgroup should be formed to address this issue. The co-chairs will report back in October as to the formation of a workgroup.

DEDICATED FAMILY BENCH

HON. JOHN LEONARDO

HON. COLIN CAMPBELL

HON. MARK ARMSTRONG

The Committee previously invited the presiding judges of Maricopa and Pima Counties to discuss the concept of a dedicated family bench, which has been a primary topic in the Court Procedures Workgroup. The issue has been before the Committee for several years based on constituents' complaints that too many judges have been assigned to their case and that it is obvious to them that their judges do not want to be there. Rep. Johnson previously expressed her goals as follows: a family court staffed by judges who want to be there with presumptive terms of at least five years.

Maricopa County's family court is the largest part of their court system, comprising 31% of total filings. If juvenile and probate are added to that, it's almost 50% of total filings.

The Family Court in Maricopa County is understaffed with each judge currently assigned to more than 1,000 pre-decree cases. More than 44,000 family law cases were filed in Maricopa County last year. Maricopa County, to the detriment of other areas in the court, shifted judicial officers into family court to address the substantial need in that area.

Judge Leonardo, Superior Court in Pima County, asserted that few family law attorneys apply for judicial vacancies because attorneys with trial experience are generally chosen for the bench. He also suggested that a 5-year assignment may be counter-productive, and that it may be more productive to assign judges to the bench of their choice.

Judges Campbell (Maricopa), Leonardo (Pima), and Armstrong (Presiding Family Court Judge – Maricopa) discussed six options for the Committee’s consideration as follows:

- a. Encourage a change of culture so that more family and juvenile law attorneys are appointed to the commissions, apply for judgeships, are interviewed and referred by the commissioners, and appointed as judges.
- b. Presiding Judges could adopt a policy requiring judges assigned to the family court to serve a presumptive term.
- c. When a judicial vacancy exists, the Presiding Judges could publicly announce the proposed first assignment of the new judge, as well as the guidelines length of this first assignment, sufficiently in advance so that all are aware of the proposed assignment before applications are due.
- d. The Supreme Court could issue an administrative order prescribing presumptive terms on the family court or providing that future family court judicial vacancies shall be announced by the Presiding Judge as stated in option (c.).
- e. The Legislature could, by statute, create a dedicated family court within the Superior Court, provided that it uses the trial court appointment commission process currently prescribed the Arizona Constitution.
- f. The Arizona Constitution could be amended by vote of the people to provide for a dedicated family bench and a dedicated civil/criminal bench with separate commissions on trial court appointments for each of the two benches.

Rep. Johnson asked Judge Leonardo if family law practitioners are applying to the bench and being overlooked simply because of their discipline. Judge Leonardo commented that it might be possible that family practitioners are discouraged from applying.

Chief Justice Jones joined the meeting and provided his thoughts to the Committee. He shares Rep. Johnson’s concerns and explained that it is important to have judges on the bench who have experience in a particular field, but that is not to suggest that other judges in other fields of law are not fully adaptable and comfortable on the family law bench. Some end up liking it a great deal and staying for longer time periods. Isolating candidates by way of specialty has it’s own set of problems. It may be beneficial to go for the best possible candidates. He is convinced that the majority of judges currently on

the bench are well-suited, oriented and very teachable in the area of family and juvenile law. He asserted that perhaps we should not reach out too far to find specialists in the family field, because we have good people right now. The problem is real – the family is experiencing disintegration and has to be dealt with in all branches of government. The court alone cannot solve these problems; they are prevented from doing so because of resource issues and lack of jurisdiction to solve all family problems before them.

Chief Justice Jones provided some suggestions. He stated that the Superior Court in Maricopa County is the 5th largest court in the United States with 91 separate divisions. In the last 2 ½ years there have been 36 changes in judges. As far as he can tell, virtually all complaints to the Supreme Court have come from family court bench in Maricopa County. An option for the Committee is to visit judicial nominating commission meetings. The Commission is made up of 15 citizens (10 public and 5 lawyers – appointed by state bar with approval of the Governor and confirmation of the Senate). Ten lay persons are appointed by the Governor from both political parties from all over the state. Quality people come before the commission. It would be simple to advise people of their views of rotation of judges and sitting on family court or any other division of the superior court, recognizing that when they apply for these positions they must be openly and overtly open to accept the assignments made by the presiding judge. He mentioned that the Supreme Court can do this without a rule change by simply incorporating it into court procedure. Justice Ruth McGregor presides over the Maricopa County nominating commission. Justice Michael Ryan presides over the Pima County nominating commission. Chief Justice Jones presides over the appellate nominating commission.

Senator Anderson commented that the main problem is the size of the caseload and submitted that if society did a better job of preparing for marriage and gave them better tools for making their marriage successful, the caseload would be reduced thereby making the bench a little more attractive.

CALL TO THE PUBLIC

Michael Durham, 2nd Voice, discussed criminal referrals in family court. There are problems in stabilizing the child protection system and the court system. It does not engender confidence in the system. He recommended further research to help state organizations help families.

The Committee broke for lunch.

The meeting was called to order at 12:35 p.m.

INTEGRATED FAMILY COURT (IFC)

Karen Kretschman reported on the Integrated Family Court. Maricopa and Pinal Counties have nothing new to report. Coconino County – their finance workgroup met and they explored adding a \$25 subsequent filing fee that would raise approximately \$69,000 to hire a family court coordinator. Establishing a volunteer guardian *ad litem* in divorce cases where custody is heavily contested. The idea of subsequent filing fee

didn't go over well, so they're talking about a \$50 response fee – but would only raise \$18k000 which isn't enough to hire a coordinator. BOS added a \$50 to post-adjudication cases, but goes toward automation, not IFC. They're considering approaching private foundations for funding. No established method for finding cases with cross-over IFC cases.

Judge Armstrong commented that the Maricopa pilot project is averaging three-to-four cases a week now. Since June 23, they have processed over 30 cases in IFC pilot project. The IFC cases come solely by way of referrals from judges, lawyers and litigants – most have come from judges so far.

Bill Fabricius developed a survey as discussed at the August meeting. The survey will be sent to judges and asks questions regarding the awarding of joint custody in contested custody cases where domestic violence is or is alleged to be present, and the use of orders of protection as a divorce tactic. Megan Hunter will send a copy of the survey to all of the members.

The meeting reconvened at 1:38 p.m.

WORKGROUP REPORTS

Substantive Law Workgroup – Jeff Zimmerman

The group continued discussion regarding the concept of a dedicated family bench. The proposal, as presently drafted, would require the court to look at joint custody as a first option if both parents have acted in the child's best interests. If one has not, then the judge would review the normal factors for sole custody. Discussion will continue next month.

Court Procedures – Brian Yee

The group continued discussion regarding a dedicated family bench. Specifically, the idea of getting judges who want to be on the family bench and who want to stay. The matter will be placed for continued discussion on the October agenda. Members will contact the bar to find out how the process works and if it would be possible to recommend that a member of the judicial selection commission have a family law background.

Education and Prevention – Terrill Haugen

They continue to focus on adding children as a component to the divorce education class. They discussed requiring the class for people who apply for state-provided or funded services such as TANF, child care, Section 8 housing. They also discussed requiring it for people getting a driver's license, marriage certificate or those in the immigration process.

CALL TO THE PUBLIC

No requests were received for the call to the public.

NEXT MEETING

The next meeting will be held on October 17, 2003, 10:00 am – 2:00 pm at the Judicial Education Center, 541 E. Van Buren, Suite 4-B, Silver and Turquoise Conference Rooms.

ADJOURNMENT

Senator Anderson adjourned the meeting at 1:46 p.m.

DOMESTIC RELATIONS COMMITTEE

Amended Meeting Minutes – October 17, 2003

PRESENT:

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-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. Bill Brotherton
- Sidney Buckman (Designee Pam Frye)
- Kat Cooper
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart (Designee Analisa Alvrus)
- Terrill J. Haugen
- Jennifer Jordan
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Beth Rosenberg (Designee Judy Walruff)
- Janet Scheiderer (Designee Theresa Barrett)
- Ellen Seaborne
- Kelly Spence
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Mike Dunbar	2 nd Spoken Voice
Martin Susnjara	Self
Kathy	Dept. of Economic Security
Jack Levine	Self
Daniel Cartagena	Parent
Ruth Hoan	Self

STAFF:

Isabel Gillett	Administrative Office of the Courts
Marianne Hardy	House of Representatives
Megan Hunter	Administrative Office of the Courts

Rep. Johnson opened the meeting at 10:21 a.m. without a quorum present.

JOINT CUSTODY PRESENTATION & DISCUSSION

Stephanie Walton, Policy Specialist, National Conference of State Legislatures (NCSL), Denver, Colorado was invited to provide information regarding joint custody laws and experiences in other states. NCSL provides resources to state legislators and staff nationwide. They provide on-site technical assistance in the form of education presentations to testimony before a legislative committee to roundtable discussions with experts they bring in to assist in understanding a particular issue. Assistance is provided at no charge to any state.

Ms. Walton compiled a sampling of other states' statutes and provided an overview of those laws and the lessons learned in those states. Presumptive Joint Custody can be divided into two main categories: states that have a general presumption for joint custody and states that have a presumption only if the parties agree. Eleven states and the District of Columbia have a general presumption; six states have eliminated their general presumption, although joint custody is still an option. Two states that eliminated their general presumption moved to a presumption if the parents agree. Twelve states have a presumption if the parents agree. Two states, Vermont (presumption for joint) and Oregon (no presumption), in addition to these twelve, require the parents to agree before joint custody can be ordered.

These laws contain several common elements: most refer to joint legal custody rather than joint physical custody. Joint legal custody refers to joint decision making; parents must consult each other and agree on major issues such as education, child care, religious training and other decisions. Joint physical custody refers to cases where children spend a substantial amount of time with each parent. Most laws contain a domestic violence exception. In some states, joint custody is not awarded when parents live too far apart or they have an inability to cooperate with each other. Six of the states that have a general presumption for joint custody also have legislation requiring parenting plans: District of Columbia, Kansas, Minnesota, Missouri, New Mexico and Wisconsin.

Ms. Walton commented that societal conceptions regarding custody have changed substantially in the past decade. Studies show that more fathers are gaining custody of their children. In addition, there have been steady increases in the past years in shared custody arrangements. The number of fathers who report no contact with their children has steadily decreased, and more fathers report being regularly involved in their children's lives.

Advocates for fathers have argued, successfully in many states, that the traditional concept of custody and parenting time unfairly denigrates noncustodial parents and implies that they are somehow unfit. In response, a number of states have changed language in their statutes, and now refer to shared parenting or parenting time rather than custody and visitation. States have enacted more substantive changes also, such as emphasizing a closer to equal time split between parents, whether or not it's called "joint custody."

Ms. Walton discussed current research on the effects of divorce on children. Most research clearly shows the negative impacts; however, a closer look at this research reveals a more complicated picture. Not all children suffer the same adverse consequences, and in some instances, children of conflicted parents start showing negative effects before actual divorce or separation. High conflict between parents appears to be the most significant factor creating problems for children. Economic realities and relocation significantly impact children as well.

A number of studies examine what arrangements work best for children and parents after the parents are no longer together. Some studies suggest that children are better off if they have substantial continuing involvement with both parents. However, children who are exposed to high levels of parental conflict are negatively affected, so they may be better off in sole custody arrangements if the parents cannot get along.

Increased parental involvement improves children's well-being in a more direct way. There are several studies that show that parents who are more involved are more likely to pay child support, which increases the financial resources available. One study found that in joint custody situations, both parents expressed dissatisfaction with the amount of time they had their children, vs. sole custody where the primary custodian was satisfied with the time split, but the parent without custody was not. In the joint custody situations where high conflict was not present, parents did acknowledge that the children were doing well.

Research also has identified a number of common factors contributing to the success of joint custody arrangements. The most important factor appears to be parental willingness to cooperate for the sake of the kids. Generally, joint legal custody is not successful unless the child is also spending substantial amounts of time with both parents. Geographical proximity is important for practical reasons and works better in middle to high income families. Research shows that joint custody arrangements raised the overall cost of raising children, because of necessary cost duplication.

Ms. Walton provided anecdotal, unscientific evidence gleaned from states which have joint custody laws, as follows:

Idaho - general presumption for joint legal custody. Most parents have a standard visitation schedule. Officials report that this can cause problems because parents generally assume that joint custody refers to joint physical custody. A few judges commented that the presumption actually leads to more conflict in custody cases, because parents do not understand the distinction between joint legal and joint physical custody.

Texas - general presumption for joint custody which they label "Joint Managing Conservatorship." The statute refers to legal decision making, not physical time. Parents are given two options for physical custody: a standard schedule or extended standard schedule. The majority of parents choose the extended standard schedule which gives the non-primary parent about 44% of time with the child over a two-year period. The presumption is removed if there is a history or pattern of domestic violence.

California - presumption for joint custody if both parents agree. Judges do not give the presumption much weight; instead, they focus very heavily on the best interest of the child, as outlined in statute. Judges will not override parents' wishes if they have an agreement, unless there are very compelling reasons, such as a clear chance of harm to the child. A 1991 study found that less than one family in six in Los Angeles County has joint physical custody, with only one in ten having a 50/50 time split. However, the majority of cases did have joint legal custody. This data is only based on one county and is ten years old, so it is not representative of what is going on in California today.

Washington -presumption for joint custody if the parents agree. The state also passed comprehensive parenting plan legislation in 1988, and commissioned an in-depth study of their parenting plan legislation in 1998. Focus groups were conducted with parents and family law professionals including judges, guardian ad litem's, domestic violence advocates and others. Parents report that most cases have standard visitation. Of the sample cases, 45% had a primary residential parent and a standard visitation schedule of every other weekend, plus a mid-week evening meeting with the other parent. Fewer than 7% had 50/50 visitation schedules. 27% had less than the standard visitation schedule. 19% didn't specify the visitation schedule but left it to the parents to determine. Joint decision making is more common in parenting plans. Over 75% of the sample cases specified joint decision making. Parents in the focus groups report that joint decision making is impractical and that in most cases the primary parent makes most of the decisions concerning the children. Parents who were victims of domestic violence reported that their former partners frequently used the civil justice system to further threaten and harass them, and the professionals interviewed for the study agreed.

Parents also reported that they had little guidance in the divorce and custody process, which may be part of the reason that so many ended up with standard visitation schedules. More and more divorce cases are *pro se*, and parents are not getting adequate information to help them through the process. Even when parents have legal representation, attorneys often advise clients to stick with the standard schedule because they believe it is better for the kids. There was a consensus within the professional group that the children spending more substantial time with the noncustodial parent was disruptive for children and not as good for them as having the basic standard visitation where most time is spent with one parent.

Members commented that the majority of cases in Arizona's family court are filed by self-represented litigants. Approximately, 40-50% of those cases are resolved by default. A presumption would give joint custody to a party who is not even interested in responding to a petition. Plus, parenting plans are required by statute in joint custody cases, which means every custody case, under the presumption, would be required to have a parenting plan. This could create a nightmare for the courts.

A quorum was reached at 10:46 a.m.

APPROVE MINUTES

MOTION: A motion was made by Debbora Woods-Schmitt and seconded by Brian Yee to approve the minutes with one spelling change on page 4. Unanimous approval.

DEDICATED FAMILY BENCH

Megan provided a brief report on a meeting held between Chief Justice Jones, Vice Chief Justice McGregor, AOC representatives, Judge Campbell and Judge Armstrong from the Superior Court in Maricopa County and Judge Warner from the Superior Court in Pima County. Judge Leonardo was not at the meeting but had shared his thoughts previously.

Megan reported that the courts in Pima and Maricopa counties had improved tremendously over the past 3 years, including a reduction in waiting periods. The key issues and concerns regarding discussed in this Committee and by the courts are: 1) getting judges who want to be on the family bench rotation, and 2) keeping them on the family law bench. Options discussed by the courts are:

- Issue 1: Getting judges who want to be there.
Options: Announcing vacancies will be on family court, talk to trial court commission about the issue, craft questions for the interviewees about their awareness of the possibility and reality of being rotated in several areas of the law, including family law.
- Issue 2: Keeping judges on the family bench.
Options: incentives such as increased vacation time, more conferences, sabbatical (to prevent burnout).

The next steps to take are as follows:

1. Judges talk to the trial court commission in November,
2. Continue meeting to come up with best solutions,
3. Will report to this Committee at each meeting.

Rep. Johnson would like to see this proposal accomplished through court policy, but believes it is a great problem and may need legislation. She suggested forming a separate judicial commission whose sole purpose would be to appoint family court judges.

Mr. Wolfson commented that a separate appointment commission may be too unwieldy. He expressed disappointment with the solutions offered by the court and is not convinced that some of the softer approaches will work and suggested looking at and addressing the core issues to find a solution in an effort to instill confidence in the judiciary from the perspective of the public. Rep. Johnson commented that few family law attorneys apply for a bench appointment because they are discouraged from applying. She is also concerned that little consideration is given to appointments to the family bench in light of the family and juvenile caseloads comprising at least 50% of the entire court caseload.

Mr. Wolfson said the perception is that the message from the bench is negative. A question or two during the appointment process is not going to affect the turn-around in having individuals who not only have the experience and knowledge of what the family law practice is about, but also have an interest in serving on at least a longer term basis. There is not a simple fix. The majority of people currently serving on the bench have employment experience either with the public defender's office or the county attorney's office.

Sen. Brotherton asked Mr. Wolfson whether attorneys have indicated why they do not apply to the bench. There are a few people recently who have gone through the process who have family law background, but those applicants are minimal because of the perception that it is too difficult to get through that process, and that their skills will not necessarily be utilized in that area.

Sen. Brotherton commented that, in general, law is a well-paying job for many people. Many lawyers who apply for a bench appointment are from the public defender's office or county attorney's office and apply because it is a step up for them. Private attorneys would likely experience a significant cut in pay.

Rep. Johnson spoke about lengthening time served on family court bench. She asked if it would be helpful for a judge to remain for five years on the family rotation. Mr. Wolfson said at the very least. He noted that Judge Armstrong said that people only want to be on the bench for two years, and that most senior judges have refused to return to the family bench. The court is going to have to take a firmer position with the bench to assign at least a presumptive four-year term.

Commissioner Adam commented, upon request, that she likes being a family law judicial officer and commented on her experience in Pima County. Commissioners in that county stay on the family bench for an extended time period or rotate between juvenile and family court. They are very well trained. Judges rotate out of family court on a two-year basis, and some of them absolutely do not want to be there. Some judges, though, are very interested in serving on the family bench. Most of the commissioners had family law practices. She said she loves her job, but had no previous family law experience. The people on the trial court commission are trying hard to put the best people on the bench that they can, but the selection process is incredibly political. To get on the trial court commission, members of the Board of Supervisors each have two appointments, and they have to be from two different parties. They appoint commissions to appoint commission members and that process is also highly political. She suggested that the bar, when making an attorney appointment to the commission, make a decision to appoint a family law or juvenile law practitioner. Asking questions at the interview probably is not the panacea. Instead, it is asking the right people the right questions, asking for references. Knowing what the right questions are requires someone on the commission knowing what is involved in that particular area of law so that the kinds of questions are asked. There are big differences between being able to operate effectively as a family law judge or a civil or criminal judge.

Sen. Brotherton said that commissioners serve at the pleasure of the presiding judge. He commented that the presiding judges should not be deferential to judges who do not want to be on the family court bench. The presiding judge should require judges to serve on that bench anyway. A judge should be willing to serve on the family bench or any bench out of their duty to do their job

David Norton commented that the Committee has backed itself into a corner by trying to manage the court's personnel system. He questioned whether it is this Committee's business to be in that position and commented that nothing in this discussion opens an opportunity to solve the problem through legislation. He suggested that the Committee would be best served to collaborate with the courts to find resolution.

Rep. Johnson said that the Committee is in agreement that there is a problem and there has been a problem for a long time. This problem has been brought to the attention of the court in the past, but nothing has been done. She does not want to seek legislation as a first solution, but she wants to see the problem resolved now.

Sen. Brotherton commented on a separation of powers issue. Sometimes the legislature dictates to the court and vice versa. This is the way the system works, and he does not see it changing in the foreseeable future. He believes the best way to look at it is to work in conjunction with the court to collaborate on some resolution.

Mr. Zimmerman said that this issue has become Judge Armstrong's number one issue for Maricopa County's Family Court. Rotation as it is now has to stop, but it has to be accomplished in a way that satisfies the family court judges as well. Mr. Zimmerman suggested that Judge Armstrong be invited to meet with the committee to and give the committee his thoughts on where that process needs to go. Megan will invite Judge Armstrong to speak at the November meeting. She will contact: 1) the National Council on Juvenile and Family Court Judges for current information, and 2) Judge Howard Lipsey, Rhode Island, who has spoken nationally on the creation of a dedicated bench.

Rep. Johnson said that the committee cannot dictate to the court what to do, but perhaps the Committee can impress on the court the need to follow up and make these changes. If the Committee keeps after them, perhaps it will get done. The members of this Committee come from various backgrounds and have a great deal of expertise in this area; if the court hears from all of the members on a consensus basis, perhaps that will have an impact. The Committee reached consensus to invite Chief Justice Jones, Vice Chief Justice McGregor, and the presiding judges and presiding family court judges from Pima and Maricopa County to attend many more meetings with the Committee.

Dr. Yee mentioned that there are several jurisdictions that have an established dedicated family bench. He suggested that Judge Armstrong be asked to comment on a survey of states with dedicated family benches. One factor that has not been mentioned is the possibility of a critical mass issue. At the formation of this Committee, a number of national experts came in to speak about certain peculiarities happening to a system when it reaches a certain size. Maricopa County is at that point. He said there are issues that

Maricopa County faces that Pima County does not. Currently, it takes four-to-six weeks to get on a family court calendar for an order to show cause hearing in Maricopa County, and four-to-six months should be expected for a trial date. Maricopa County now has 32 divisions, but it still is not solving the problem. The workload is at issue. Extending the term to five years does not deal with the real problem. The workload is exceedingly different from all the other assignments. They get to do all of the work: decision maker and fact finder and they are required to manage a case load filled with *pro se* litigants.

Ms. Gray mentioned that Ms. Frame, Clerk of the Court in Yuma County, indicated that the real issue is the overload of cases. She wanted to remind the committee that there are 3,000,000 people in Maricopa County, and there are almost that many in the rest of the state. There are 13 counties that elect judges with as many people as there are in Maricopa. She did not want the committee to forget the other 2 ½ million people in the remainder of the state. The family court in Yuma County is setting trials in February at the present time. The problem is not just Maricopa County.

CALL TO THE PUBLIC

Jack Levine

Mr. Levine, a long-time Phoenix attorney, is in the process of writing an article regarding the Domestic Relations Committee and has written articles in the past regarding the concept of a dedicated bench. He encouraged the Committee to get the Chief Justice behind this effort and try getting a written commitment. He discussed the high burnout in any area when you do not know what you are doing. Judges face this when appointed and assigned to an area that they know nothing about. He listed the most important points the Committee should consider:

- The Commission should affirmatively seek domestic relations attorneys
- The Committee should make Governor aware of the problem
- Domestic relations judicial officers should receive incentives that others judicial officers do not – similar to combat pay in the military
- The merit selection spoils judicial officers

Danny Cartagena

Mr. Cartagena discussed his thoughts on the joint custody proposal. His case was high conflict in nature, but joint custody was eventually granted. He supports a presumption for joint custody because parity would be established from the beginning of the case. Mr. Cartagena also made a specific request concerning the position on the Committee for a domestic violence advocacy group. The seat is filled by a member of the Arizona Coalition Against Domestic Violence currently. That group advocates only for women and children, not men. Mr. Cartagena believes that to be truly representative of all victims of domestic violence, either another membership position should be added to the Committee to represent male victims of domestic violence, or the present position should be filled by an entity that advocates for all victims of domestic violence. Kat Cooper encouraged members to read the materials provided by Mr. Cartagena.

Michael Durham

Mr. Durham discussed the dedicated family bench issue and commented that the behavior of families is very wearing on the bench. The courts are bereft of procedures or tools to calm over-emotional litigants.

CALL TO ORDER

The meeting was reconvened at 1:32 p.m. with Megan Hunter filling in for Rep. Johnson and Sen. Anderson.

FAULT DIVORCE DISCUSSION

Due to a lack of time, this item will be placed on the November agenda.

INTEGRATED FAMILY COURT UPDATE

Due to a lack of time, this item will be placed on the November agenda.

WORKGROUP REPORTS

Substantive Law Workgroup – Jeff Zimmerman

Jeff met with members of the Conciliation Court Round Table in Tucson yesterday. They helped clean up the proposed language from this group, which is intended to assist judges. Instead of going forward with a joint legal and physical custody presumption proposal, a compromise of a joint legal custody proposal may be reached. This is designed to eliminate obstacles to joint custody and places sole custody and joint custody on a similar plane.

Court Procedures – Brian Yee

The group discussed the next steps in terms of taking the dedicated family bench concept through the Committee. They noted that much of the Committee's discussion on the topic of a dedicated family bench has been philosophical, but the practicalities must be addressed as well. The Committee appears to be on board philosophically; now the Committee must recognize the need for resources, training, research, and day-to-day realities of life on the family bench. Megan Hunter will work with Steve Wolfson to get information on the trial court commission appointing process.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

NEXT MEETING

The next meeting will be held on November 14, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting was adjourned at 1:58 p.m.

DOMESTIC RELATIONS COMMITTEE

DRAFT Meeting Minutes – November 14, 2003

PRESENT:

-
-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. Bill Brotherton
- Sidney Buckman
- Kat Cooper
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart (Designee Julianna Koob)
- Terrill J. Haugen
- Jennifer Jordan
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Janet Scheiderer (Designee Karen Kretschman)
- Ellen Seaborne
- Kelly Spence
- Beth Rosenberg (Designee Judy Walruff)
- Steve Wolfson
- Debora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Tina Booth
Martin Susnjara

Maricopa Lawyer
Unknown

STAFF:

Isabel Gillett
Marianne Hardy
Megan Hunter
Sean Laux

Administrative Office of the Courts
House of Representatives
Administrative Office of the Courts
Senate

Sen. Anderson called the meeting to order at 10:16 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: David Norton made a motion to approve the minutes with an amendment regarding Sen. Brotherton's comments on page 7. Debbora Woods-Schmitt seconded the motion. Approved unanimously.

ANNOUNCEMENTS

Sen. Anderson asked members to review the survey prepared by Bill Fabricius regarding domestic violence, orders of protection and custody. Beverly Frame noted that some of the requested information could possibly be extracted from the court's automated systems. Comments should be directed to Megan within one week – the revised survey will be distributed at the next meeting, then sent to the judges.

The 2004 meeting schedule was reviewed. Meetings will be held monthly during January through May and October through December. The June and July meeting will be combined as will the August and September meetings. Megan will distribute the meeting schedule at the next meeting.

Julianna Koob discussed the new mission statement from the Arizona Coalition Against Domestic Violence. In the past, violence against women and children was recognized in the statement, but men were not mentioned. They have now added men to that statement. Ms. Koob explained that 95-97% of domestic violence homicide victims in Arizona are women. The change came as a result of a concern brought to this Committee during the call to the public by Danny Cartagena.

INTEGRATED FAMILY COURT

Pilot Projects. Karen Kretschman reported the following:

Pinal County – They are doing what they can with coordination between judges and attorneys to address overlapping classes. Funding is still a problem.

Maricopa – The IFC is still located in the Juvenile Court at the Southeast facility in Mesa. Two judges handle overlapping issues – one is a family court judge while the other is a juvenile court judge. They have eliminated two case processing staff who were tasked with identifying overlapping cases. Referrals now come in from judges or attorneys with overlapping issues. They do expect to expand into Durango facility next year.

Coconino – They are exploring the idea of a subsequent filing fee and have support for the idea from their Board of Supervisors. A \$25 subsequent filing fee would be assessed on any post-decree domestic relations motion or petition. This fee would raise approximately \$69,000 per year. An increase in the Response fee to \$226 from \$176 would raise an additional \$5700 per year.

Workgroup

The IFC workgroup has not been meeting; however, Ellen Seaborne commented that part of the IFC proposal was to have a person to which the information from pilot programs would gather information and communicate best practice issues, share information statewide, to look at funding, etc. Ellen recommended that the pilot programs should be supported and evaluated by an overseeing entity responsible for implementation. She noted that there is nothing that can be measured at this point and that a method for pre- and post- evaluation is needed. Because the Committee spent a great deal of time on standards, the pilot programs need to understand what is in IFC proposal and what is expected of them. The IFC report says the Supreme Court should set goals, objectives and standards, and that a Family and Juvenile Court Committee would be established. To date, this has not happened. The Arizona Judicial Council (AJC) is doing some overview, but not as comprehensive as outlined in the recommendations. Ellen asked the Committee to review the document and at the next meeting decide whether this can be put in the form of a recommendation to the Administrative Office of the Courts (AOC). Ellen mainly wants the pilots to know the original goal of helping families in our state and to ensure it does not get lost.

Karen Kretschman responded by clarifying the AOC's position. After the IFC proposal was completed, Rep. Johnson did not introduce an IFC bill because of the state funding crisis. Instead, she and Chief Justice Jones discussed the matter and it was presented to the AJC which authorized that three pilot projects be set up to initiate the IFC concept in order to collect data. There was no adoption by the Supreme Court of the plan that came out of this Committee. The Administrative Order recommended that each of the three counties implement the plan as much as possible on a local basis. There is no mandate from the Plan for the Supreme Court or to the pilots to do the entire plan. They are struggling mightily with resource issues, as is the Supreme Court. The AOC is doing as much as it can to monitor the pilots and have done and will continue to continually update the Committee. At this point, the AOC does not have available financial resources for implementing Ellen's suggestions. Comments and suggestions are welcome.

Nancy Gray recommended that the IFC workgroup should be meeting and suggested getting dialogue going between the IFC workgroup and pilot project personnel. She suggested that the IFC workgroup could help monitor and evaluate the projects.

Megan will set up a meeting between the IFC workgroup and IFC Presiding Judges to coincide with the Arizona Judicial Council meeting.

JOINT CUSTODY PRESENTATION & DISCUSSION

Jeff Zimmerman discussed the history of the joint custody proposal which originated from a desire that parents have joint custody. Instead of re-writing the statutes, a simple change was made. The proposal has been controversial in the workgroup and other

forums. Jeff drafted language that incorporates the objections and concerns he has heard to date. The last draft has not been discussed by the Substantive Law Workgroup yet, but Jeff wanted the Committee to have a draft to discuss today. Rep. Johnson wants this to be ready for the 2004 legislative session.

One of the biggest objections to the proposal is that every family cannot be crammed into an equal custody arrangement. Under the proposal, the child would have as substantially equal time with both parents as logistically feasible and consistent with child's best interests.

Jeff discussed the provisions of the proposal:

1. Parents will have shared custody after a divorce unless: 1) the court finds after a hearing that it is not in the child's best interest, or 2) the parties agree to some other arrangement, or 3) it is a default situation.
2. Specific language about the burden of proof and findings of the court with respect to shared custody have been removed compared to previous versions discussed by the Substantive Law workgroup.
3. The definitions of joint custody, joint legal custody and joint physical custody are changed to use the words "shared" and "parenting" instead of "joint" and "custody". These terms are then used consistently throughout.
4. "Joint custody" used to mean joint legal, joint physical or both. Now "shared custody" means both shared legal and shared physical parenting. The language flows better where those terms are used. The court can still order one or both, and an agreement can be called a shared custody agreement even if it only has shared legal or shared physical custody but not both, since the name of the arrangement can be important to the parents.
5. Shared physical custody is no longer defined as "substantially equal" time with both parents. Now it is as equal an amount of time with both parents as is consistent with logistics and the child's best interest. Logistics are also a factor in the laundry list of factors for the court to consider.
6. Parenting plans are required in most cases; however, unnecessary hearings and parenting plans are eliminated. No hearing is necessary if the parties settle or there is a default. No parenting plan is necessary in a default case (if the defaulted party someday comes back to court to change the order, then they will have to do a parenting plan at that time). If a petitioner in a default case submits a parenting plan, it can be approved on default.
7. The parents can submit a separate parenting plan. They do not have to meet or discuss them if there are safety concerns.
8. The court can modify the parenting plan if the resolution of disputes under the existing plan is not working.
9. The best interest of the child standard stays like it always has been and takes precedence over the parents' wishes.

Sen. Anderson likes the “shared parenting” terminology. Some other states use this terminology.

Circumstances change with divorce in some families and some fathers become more involved. Members inquired about what would happen when a parent who has not been involved in a child’s life, but asserts that he/she will make changes and be involved – would the judges have a timeline to monitor whether or not this occurs. Jeff explained that the judge would first determine whether shared parenting would actually work for these particular people. Kat Cooper said that separation, divorce and the threat of loss of children causes some parents to reconnect to their kids. Circumstances change on both sides and each situation should be looked at individually so that kids’ best interests are taken into account. She would not want to see children affected negatively because the parent was not previously that involved commented that she supports the proposal because it is in the best interests of the children.

Ella Maley asked question regarding 25-403(B) – is there a specific age at which the child can have input? Jeff explained that the judge would take into account whether the child should have input – this provision has not changed from current language.

Debbora Woods-Schmitt commented that she had to go back into the workforce after her divorce. When the father remarried, the new wife stayed home and they filed for custody. This proposal does not consider life changes due to divorce, nor manipulation by a noncustodial parent when the custodial parent’s work status has changed. Jeff commented that he did not know if there was anything that could be done about this without micromanaging. Debbora also said that this assumes that everyone is going to get along in mediation, and that is not always the case.

Jennifer Jordan commented that the term “share parenting” projects a continuum of parenting concept. The remaining language clearly makes a presumption for joint custody and that we are looking at where the child should go instead of looking into the best interest of the child. The Washington state Parenting Act study showed that the best interest of the child should be the primary factor for the courts to consider.

Bill Fabricius agreed with Jennifer regarding the Washington State study, and said that children are served by the continuing involvement of both parents. Most of the research on conflict and divorce is ambiguous when you get into the measures that are used. The measures - quality of time is more important than quantity of time - is based on flawed data. Research on conflict says that severe conflict is what is especially harmful to children. Research also shows that conflict goes down over time for most parents. It might be reasonable to expect that something like this kind of language in the law would probably reduce conflict around the time of the divorce if it is communicated to parents that the courts are going to be looking at joint custody.

MOTION: A motion was made by Debbora Woods-Schmitt and seconded by Jeff Zimmerman to table the vote to the next meeting. Approved unanimously.

DEDICATED FAMILY BENCH

Rep. Johnson reported that she was invited to meet with Chief Justice Jones on this issue but two scheduled meetings were canceled due to special session. She intends to meet with him after special session is over to persuade him more toward the concept of a dedicated family bench.

Rep. Johnson introduced Judge Armstrong who was here at our September meeting to discuss options surrounding the issue including: changing the culture at the commissions and Governor's office so that more family law attorneys are appointed or people who want to be there (slow process) to changing the constitution itself to make two commissions – jury commission and non-jury commission. One would appoint to criminal and civil (jury) and the other would appoint to family (non-jury). In the past, people with jury trial experience are favored for appointments. Judge Armstrong made a presentation to the trial court commission about the IFC and dedicated bench. They were surprised to learn that 50% of cases at least in Maricopa and probably statewide are family law which includes domestic relations, juvenile and probate cases. Over 44,000 out of 140,000 filings in Maricopa Co. are in family law. They currently have 32 judicial officers in family court, which includes 25 judges and 7 commissioners. Because of the size of this bench and the system of two-year rotations, there is a constant rotation; they are replaced by new judges who are usually enthusiastic or by more experienced judges who do not want to be there. Increasing the size of the bench was intentional in order to process cases more rapidly.

They have looked at it in connection with the IFC which brings together family, juvenile and probate. The dedicated bench issues speaks to getting judges who want to be there and who want to stay for longer periods of time. The goal is to have a dedicated family bench but the real issue is how to achieve that goal. The presiding judge in each county could simply declare the term on each bench but that only looks at one part of the issue, length of term, but fails to look at the other issue of getting judges who want to be there. The result of only lengthening the term is getting judges who do not want to be there being required to stay for longer periods.

Frank Costanza commented that he would support an independent family court and suggested that perhaps commissioners could be retained in those positions for a longer period of time. Judge Armstrong commented that in Maricopa County, commissioners hear uncontested matters. In Pima County, the family law bench is dominated by commissioners because they cannot get any judges to do it; therefore, they do have dedicated commissioners on the bench, but because of a bad reason. Those commissioners are not accountable to the public, are not selected by the Governor, nor do they face retention elections, but serve solely at the pleasure of the presiding judge.

Judge Armstrong commented that the Pima & Maricopa presiding judges listed an option in which the Chief Justice would issue an administrative order prescribing presumptive terms, prospectively, which for people who apply in the future, they know they are going to be serving three to five years, or whatever term is decided. Vacancies would be announced as being in family court and would be a measure that could be done within the

courts and would not implicate the constitution; it is a long-term plan because it is prospective, but probably a good beginning.

Nancy Gray, on behalf of Brian Yee, stated that the Court Procedures workgroup has been working on this issue for a long time and suggested that perhaps the workgroup should be eliminated and the topic moved to the full Committee. Nancy reminded members that Arizona's remaining thirteen counties must be looked at as well and suggested focusing first on Maricopa and Pima Counties, then move to the others.

Members discussed sending a letter to the Commissions that would state our viewpoint as to the importance of getting qualified members of the legal community to be appointed to the bench as commissioners or judges. Media outlets are also present at hearings which would also be helpful. Megan will notify members every time a judicial vacancy exists.

MOTION: Jennifer Jordan made a motion to ask the Court Procedures Workgroup to prepare a letter directed to all three appointment commissions which would be submitted to the Committee at the December meeting. Debbora Woods-Schmitt seconded the motion. Approved unanimously.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

BREAK/LUNCH

The meeting was reconvened at 1:00 with continuation of the joint custody proposal discussion.

Kat Cooper - we need to recognize the importance of a dad's role in the child's life. Families are structured differently these days. In the past, law was in sync with what was happening in the home, but things have changed now so the law should follow.

Ellen Seaborne - the law should keep up with the times. For years this Committee has talked about making custody laws consistent with real life. The majority of people who use our courts are self-represented and already submit joint parenting plans. She firmly believes that the majority of her cases that are contested still end up with some type of shared parenting plan. The hotly contested cases are usually sole custody – majority of high conflict cases. High conflict cases usually end up with a sole custody determination and are a small percentage of cases. This proposal recognizes there is a mom and a dad and that they should share parenting responsibilities - the law currently supports shared parenting. A page and a half of the statute is there to protect domestic violence victims – nothing has been changed in that part. There is no language in the proposal that says parents must share parenting – it just assumes that they do share parenting and takes a look at the best interest of the child.

Jeff commented that the proposal provides a range on a continuum from a 50/50 time split down to 0/100 by taking into account the child's best interest. Under this proposal,

if parents do not agree to shared parenting, the case would become a contested case. Jeff asserted that this proposal will reduce litigation because parents will look at it as the State's policy.

Members discussed whether or not a presumption for sole custody is built into the present statute and determined that it depends on the perspective of the practitioner. Lawyers may interpret it as a sole custody presumption while an evaluator may not.

Bill Fabricius commented that we do not have good data on divorces that have joint legal custody. Ten years ago, 50% opted for a shared parenting plan. Anecdotally, it's between half and two-thirds of all cases. Already we have the great majority of parents subscribing to joint legal custody. The majority of cases then would tell us that joint custody is viable. Data from other states shows that divorce rates are lower in states with shared parenting laws.

Jennifer wanted to make sure that everyone understands that there are two issues: 1) changing the language of 25-402 referring to shared parenting, 2) whether or not to change the statute 25-403 to create a presumption of joint custody.

Members thanked Jeff for his dedication to this proposal.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

NEXT MEETING

The next meeting will be held on December 4, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting was adjourned at 1:58 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – December 5, 2003

PRESENT:

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-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. Bill Brotherton
- Sidney Buckman
- Kat Cooper
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Jennifer Jordan
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney (Designee Dr. Tom Ryan)
- Janet Scheiderer (Designee Theresa Barrett)
- Ellen Seaborne
- Kelly Spence
- Beth Rosenberg (Designee Judy Walruff)
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Diane Brown
Martin Susnjara
Gabriella Santos
Rose Comes
Menyor Scott
Danny Cartagena

AZ Protective Parents Network
Unknown
AZ Coalition Against Domestic Violence
AZ Coalition Against Domestic Violence
AZ Coalition Against Domestic Violence
Parent

STAFF:

Isabel Gillett
Megan Hunter

Administrative Office of the Courts
Administrative Office of the Courts

Rep. Johnson called the meeting to order at 10:22 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: Sid Buckman made a motion to approve the minutes with an amendment suggested by Bill Hart regarding the mission statement of the Arizona Coalition Against Domestic Violence which has been changed to clarify that they have always served men, women and children and are gender-neutral. Ella Maley seconded the motion. Approved unanimously.

ANNOUNCEMENTS

Rep. Johnson and Megan Hunter discussed the Child Protective Services bill that would affect the custody statute in Title 25. The proposal would require the court, when determining custody, to consider whether either parent has committed an act of false reporting of child abuse or neglect.

Rep. Johnson introduced Dr. Tom Ryan, serving as Dr. Steve Phinney's designee for the purposes of today's meeting.

SUBSTANTIVE LAW WORKGROUP

JEFF ZIMMERMAN

Jeff Zimmerman, Chair, summarized the changes made to the proposal resulting from suggestions made at the November meeting.

Section 25-402

Page 1, Line 21: a change in terminology from "custody" to "parenting", and "shared parenting," "shared legal parenting" and "shared physical parenting." Joint physical custody under existing law means equal time with the child for both parents. Under the new definition, equal time is defined as the best interests of the child and logistically feasible, which does not equate to a 50-50 presumption.

Page 2, Line 18: contested cases would proceed as they do under existing law. There is no presumption, but instead a statement is expressed that the starting ground should be equality for both parents.

Page 2, Line 23: The proposal states that "shared physical parenting is not in the child's best interest." A suggestion was made that this should be revised to reflect a positive statement."

Page 3, Line 11: A suggestion was made to change the language to: "consider the support of each parent for the child's continuing contact with the other parent." This would eliminate a contest of which parent is better.

Page 4, Line 16: Language has been changed to reflect that a parenting plan is not necessary in a default case.

Page 4, Line 27 through page 5: Parents can submit an agreed upon parenting plan, but they can also submit their own parenting plans with no requirement to mediate or discuss the plans with each other. If there is mediation involved and the issues remain unresolved, the court can make the decision. In a default case, neither a parenting plan nor a hearing are required.

Discussion:

Some members asserted that the new language continues to create a presumption for joint custody. Instead, the courts should look at the child's best interests, not equality of time for parents.

A letter from the Honorable Nanette Warner, Presiding Family Court Judge in Pima County, expressed concern regarding the elimination of the term "custody". Members suggested that the term is legally significant and a change would make the court process more difficult for *pro se* litigants. Jeff clarified that the term "custody" has been left in the draft in some places.

Bill Hart registered opposition to the proposal, stating that custody should be made on a case by case basis and that the arrangement the family had before the separation should be honored. Bill asked the chair to take call to the public before the vote. Jeff replied that domestic violence protections have not been removed.

Steve Wolfson stated that the UCCJEA incorporates all of these definitions. The impact of or consideration of other states' determinations affecting Arizona cases is tremendous; almost a quarter of cases in his office have a connection to some other state. He expressed a concern from the Family Law Section of the State Bar, regarding a change in terminology which may result in increased hostilities. There is significant hesitation on the part of the State Bar to limit the court's discretion.

Members debated whether there is a problem or not. Some research indicates a bias against men who seek custody. Terrill Haugen pointed out that this Committee frequently hears complaints regarding this issue during the call to public which indicates the system is broken. He further stated that people just want to be good parents, but they have to jump through hoops and have no influence in the decision-making process.

Bill Fabricius provided statistics regarding the harm of divorce on children. Specifically, 35% of children of divorce will suffer harmed relationships with fathers as a result of divorce which indicates a breakdown in the divorce system.

Kat Cooper stated that she is concerned about all issues from all stakeholders and urged members to show respect for the involvement of both parents in children's lives.

Commissioner Adam suggested that in order to make an informed decision, the Committee needs more information. She will contact Professor Barbara Atwood, University of Arizona to speak to the Committee about her custody research

Bill Hart called for the question. As there were others who wished to comment, this was delayed.

Members discussed the issue of presumptive physical custody in default cases. The issue of whether to require a parenting plan in every case is a policy matter for the Committee to decide. Judge Nielsen stated that he agrees strongly that fathers play a critical role in the lives of their children and suggested that approximately 95% of all judges try to do what is in the best interest of the children. He can support this bill with some concerns.

Steve Wolfson expressed concerns about an attempt to sugar coat the presumption. Under the draft language, the court has to begin at the “shall”, then a burden is placed on litigants to tell the judge why that should not be the case instead of having a level playing field. Parents who decide to divorce, enter the system at that point and the system has the unenviable task of figuring out how these parents will relate to each other and their minor children. The Family Bar Executive council is not suggesting that fathers do not have as much of a role in their children’s lives as do mothers. Time alone doesn’t answer the question about what is in the best interests and how we help the court determine what is in the best interest of the minor children. Steve stated that the result of this discussion seems to be some level of hypocrisy – we don’t find ourselves on a regular basis legislating how we are going to equalize the economic circumstances during a case or in the aftermath of a dissolution, but we are now apparently attempting to legislate what is in the best interest of a minor child and putting a framework in place where we are saying we know best what is the best interest of kids now and in the future. He cannot do that on the basis of statements about time alone. Time alone does not determine the quality of that relationship and if that relationship will be in the best interest of the children. Steve told the Committee that we should focus on how to help the process in the future, but he cannot support it as drafted.

Bill Hart repeated his call for the question, but a motion had not yet been made. Rep. Johnson allowed for testimony from the public.

CALL TO THE PUBLIC

Diane Brown – Ms. Brown expressed her concern regarding the proposals terminology. She feels it further dilutes the child’s best interest. In her case, joint custody was granted even though there was a finding of domestic violence. As a result, the children endured five years of physical and emotional abuse. There is a huge difference between a high conflict case and a case that has an abusive situation. She agrees with Judge Warner and thinks the entire draft is talking about presumptive joint custody. She said that on one hand she is hearing the supporters say that this is just a change in language, but on the other hand she is hearing that dads will always have as much time with their kids as they want or as the mother does. She does not understand how this bill is going to fix that and believes it considers parental rights over the best interest of the child.

Gabriella Santos – Ms. Santos is a legal advocate with the Arizona Coalition Against Domestic Violence. She struggles on a daily basis regarding how families deal with abusive situations. Proposed language in A.R.S. § 25-403(A) would create a barrier in

trying to reach safety. Shared parenting implies that she (the mother) has a responsibility to continue that communication with the father. When domestic violence or child abuse comes into play, part of the safety is severing ties at least until a safety plan has been put in place, but because of limited resources, her main concern is getting to a domestic violence shelter. Confidentiality within a shelter system may mean severing ties, limited funding, and have limited space. In the meantime, they try the safety plan until they can get the resources. The turnover time for a temporary custody hearing can be days, and if it is contested, she is at risk and is contributing to maybe losing joint custody. Custody and safety for the children is in the mother's uppermost mind. Not only is the family affected by it, but employment and society at large.

Danny Cartagena – Mr. Cartagena commended the Arizona Coalition Against Domestic Violence for changing their mission statement. The notion is that it increases probability for conflict, but in his case the current statute actually increased chance for conflict. He believes this bill would have decreased the conflict in his case. When neither party has the advantage, things get resolved. The parent who goes to work to provide for the child is considered less of a parent. He believes that what is primarily broken is the way we start the process. There is nothing in the statutes now in regard to the time period before a court order. There is ambiguity that needs to be removed.

The Committee dismissed for lunch. The meeting reconvened at 1:02 p.m.

Rep. Johnson announced that the January meeting will be moved from January 23rd to the 16th.

Jeff asked for comments regarding the custody proposal to be submitted to him via e-mail.

Rep. Johnson announced that an article about the Domestic Relations Committee, written by Mr. Jack Levine, appeared in the current issue of the *Maricopa Lawyer*. Copies were provided to members. Mr. Levine attended several meetings and met with Rep. Johnson to gather information about the Committee and the dedicated family bench issue.

Commissioner Adam relayed that Pima County judges had their first all-judicial retreat and planning session in October where Judge Leonardo, Superior Court Presiding Judge in Pima County, discussed the dedicated family bench issue. Five judges expressed support for a separate family court. Forty judges were in favor of the family law bench.

Bill Fabricius discussed a survey he drafted in response to Rep. Pearce's presentation to the Committee on Orders of Protection and custody. Sid Buckman stated that he took the survey to one of the judges in Flagstaff, who commented that it would be very difficult to recall how many Orders of Protection were issued and under what circumstances. Sid checked with the Clerk of the Court and then went to other jurisdictions. They were able to give him some numbers, but did not know under what circumstances they were issued. As detailed as the form can be, Sid does not believe that enough information is available to complete the survey. Bill suggested that perhaps a judge could be asked to keep

records for a few weeks. Megan and Bill will work on gathering statistical information through court databases and other means.

INTEGRATED FAMILY COURT

Ellen Seaborne discussed Coconino County's pilot program report which addresses the IFC recommendations. Financial resources are limited but they would like to participate to the extent possible and are working on creative funding ideas.

When the reports from all three pilot counties have been received by the AOC, they will be shared with the Committee.

She reiterated that we don't have anything in place to measure standards and that should have been set up by Arizona Judicial Council. Ellen commented that she and Karen Kretschman will further discuss the pilot projects and perhaps work with the workgroup on standards and evaluation.

WORKGROUP REPORTS

Substantive Law – Jeff Zimmerman

The report was addressed earlier in the meeting.

Education/Prevention – Terrill Haugen

No report.

Court Procedures- Brian Yee

Nancy Gray Eade spoke on behalf of Brian Yee for the Court Procedures Workgroup. She read aloud the first draft of a letter that will eventually be sent to the trial court commissions concerning the dedicated bench issue. The workgroup will finalize the letter and submit it at the January meeting.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

NEXT MEETING

The next meeting will be held on January 16, 2004, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 345.

ADJOURNMENT

The meeting was adjourned at 1:34 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – January 16, 2004

PRESENT:

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CO-CHAIRS:

Hon. Mark Anderson, Co-Chair

Hon. Karen Johnson, Co-Chair

MEMBERS:

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Hon. Karen Adam

Hon. David Bradley

Hon. Bill Brotherton

Sidney Buckman

Kat Cooper

Frank Costanzo

William Fabricius

Hon. Beverly Frame

Nancy Gray

Bill Hart

Terrill J. Haugen

Jennifer Jordan

Ella Maley

Hon. Dale Nielson

David Norton

Steve Phinney

Karen Kretschman

Ellen Seaborne

Kelly Spence

Judy Walruff

Steve Wolfson

Debbora Woods-Schmitt

Brian Yee

Jeff Zimmerman

GUESTS:

Michael Durham

Martin Susnjara

Sharon Dautrich

Julianna Koob

2nd Spoken Voice

Self

House of Representatives

AZ Coalition Against Domestic Violence

STAFF:

Megan Hunter

Elizabeth Portillo

Administrative Office of the Courts

Administrative Office of the Courts

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

APPROVAL OF MINUTES

MOTION: Karen Adam made a motion to approve the minutes as submitted. Ellen Seaborne seconded the motion. Approved unanimously.

ANNOUNCEMENTS

Rep. David Bradley was introduced as the House of Representatives member appointed by House Speaker Jake Flake. Karen Kretschman was introduced as the Administrative Office of the Courts member, replacing Janet Scheiderer who resigned due to increased work responsibilities.

LEGISLATION

Bill Hart discussed several bills, including one regarding spousal rape.

Marianne Hardy and Sean Laux discussed domestic relations-related bills that have been introduced in the House of Representatives and Senate, respectively. Updates will be given in the ensuing months.

PERSPECTIVES AND RESEARCH ON CHILD CUSTODY

Three presentations were delivered telephonically by Dr. Warren Farrell of California, Dr. Barbara Atwood, of Arizona, and Dr. John Guidabaldi, of Ohio.

Dr. Farrell has written books on child custody dealing with measurable and non-measurable data. He asserted that children do best in intact families, then in shared parenting situations, then in situations where the father has primary custody, and last in situations where the mother has primary custody. The best post-divorce arrangement is to make that family as similar to an intact family as possible.

He went on to explain that parental involvement is highly needed after divorce. The most important finding of the father /child reunion: children raised by single dads are more likely to be assertive without being aggressive and more likely to be empathetic.

Sen. Brotherton stated that the ideal situation after divorce is to attempt to do what is in the best interest of each child with regard to the particular child. Dr. Farrell agreed but stated that a 50/50 starting point should exist.

Dr. Atwood discussed trends of custody laws around the country. Most states have similar laws to Arizona, which is to permit 50/50 if it is in best interest of the child. Nine states have joint legal without joint physical. Florida and Louisiana's presumptions are the strongest. Shared parental responsibility in Florida is in the best interests of the child. In seven other states, more modest preferences for joint legal custody (decision making). Six states have a presumption for joint custody (parental agreements) if the parents agree. A few states have a provision that joint physical custody cannot be awarded if both parents do not agree.

Many states give weight to the relationship of the parent and child and past parenting functions. The ALI asserts that all states should submit a flat requirement for parenting plan for all situations. This is being recognized in our bill and she thinks this is good.

Dr. Atwood explained that providing clarity in the law is important because of the high rate of self-represented litigants. The term “parenting” may have unintended consequences. Other states use terminology such as “joint decision-making authority”, “shared and sole parental responsibility”, and “decision-making responsibility”.

She further explained that she reads the bill as a presumption for joint legal and physical custody and believes we need to be clearer on the intent. She asserted that each child is unique, its relationship with each parent is unique and custody deserves some individual assessment. One-size fits all approach is inappropriate for families and children. We do not know the impact of mandated joint physical custody, but it could possibly encourage continued instability among parents who are the bad-mouthing parents. Family court judges are competent to make assessments about the welfare of children without predisposition about a presumption.

Dr. Guidabaldi discussed his research and findings regarding child custody with the group.

CALL TO THE PUBLIC

There were no requests to speak during the call to the public.

BREAK/LUNCH

The Committee dismissed for lunch at 11:50. The meeting reconvened at 12:17 p.m.

SUBSTANTIVE LAW WORKGROUP

JEFF ZIMMERMAN

Jeff reviewed change made to the proposal since the December meeting as suggested by Committee members. A workgroup meeting was held on December 15th to solidify the proposal

MOTION: Jeff Zimmerman made a motion that the Domestic Relations Committee recommend this proposal for legislation this year (2004). The motion was seconded by David Norton. The proposal failed to pass on a vote of 9 voting in favor and 10 voting in opposition.

Jeff expressed disappointment over the failure of the proposal, but would like to see the Committee continue to work on it.

Judy Walruff explained that this was not an issue of evidence. Her problem rested with the language and the approach here in Arizona.

Rep. Johnson expressed her desire to see this proposal continue being worked on.

Steve Wolfson suggested that there are other approaches that we might look at which would focus on the core issue of how to help the children of Arizona thrive in divorce situations, perhaps through education and other vehicles to move toward our common goals.

Members thanked Jeff and the Substantive Law Workgroup members for their dedication to this proposal.

DEDICATED FAMILY BENCH

Rep. Johnson explained that she and Chief Justice Jones had a meeting scheduled to discuss the dedicated family bench issue, but the meeting was canceled. It will be rescheduled as soon as possible. She indicated that Judge Gottsfeld, Superior Court in Maricopa County, wanted her to know how much he was in favor of a dedicated family bench.

Brian Yee reviewed a draft of the Court Procedures Workgroup letter that is to be sent to the Trial Court Commissions which will encourage them to consider family law attorneys for the bench. Currently, there is an opening on the Maricopa Superior Court bench

Rep. Johnson wants us to have Annette Corallo, AOC staff to the Trial Courts Commission, invited to a future meeting to discuss those commissions. We will also invite Judge Armstrong to present at a future meeting to discuss the presentation and discussion he had with the trial court commissions in November.

WORKGROUP REPORTS

The workgroups did not have an opportunity to meet; no reports were necessary.

SURVEY

Pima County is now starting to collect data for the survey, which will have actual data rather than estimates from judges. Megan will contact them.

INTEGRATED FAMILY COURT

Megan Hunter provided a brief reported on the pilot projects. The projects have not changed from the previous month.

Ellen Seaborne reported that Coconino County is moving forward with their project. She indicated that this Committee gave this over to the courts to implement a pilot program and it is stuck there. Maricopa County is progressing but Pinal is not..

At this point, there is nothing for the workgroup to do. She reported that she is hearing that in the Courts and Legislature there is money for other things – she would like to follow through with this and keep it on the front burner. We may want to approach the Governor's office.

Rep. Johnson explained that she serves as a member of the House of Representatives Appropriations Committee. She said we started last year with a large deficit, but the

economy has picked up and the state is still looking at \$350 million deficit so spending programs will be hard to initiate. The budget is driven by initiatives and leaves a much smaller piece of the pie for the Legislature to deal with.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

NEXT MEETING

The next meeting will be held on February 20, 2004, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting was adjourned at 1:30 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – February 20, 2004

PRESENT:

-
-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. David Bradley
- Hon. Bill Brotherton
- Sidney Buckman
- Kat Cooper
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Jennifer Jordan
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Karen Kretschman
- Ellen Seaborne
- Kelly Spence
- Judy Walruff
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Michael Durham	2 nd Spoken Voice
Sharon Searles	AZPPN
Joel Glassman	Self
Robert Roll	AOC
Karl Heckart	AOC
John Blackburn Jr.	ACJC
Julianna Koob	AZCADV
Martin Susnjara	Self
David Weinstock	Self
Therese Martin	Office of the Attorney General
Danny Cartagena	Parent

STAFF:

Megan Hunter
Elizabeth Portillo

Administrative Office of the Courts
Administrative Office of the Courts

The meeting was called to order at 10:20 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: David Norton made a motion to approve the minutes with a correction to the spelling of Senator Brotherton's name. Jennifer Jordan seconded the motion. Approved unanimously.

ANNOUNCEMENTS

Representative Johnson and Senator Anderson had scheduling conflicts. Representative Bradley and Senator Brotherton served as co-chairs for the meeting.

LEGISLATION

Julie Koob, Arizona Coalition Against Domestic Violence discussed Senate Bill 1308 dealing with custody evaluators. The proposal would require training in domestic violence to those conducting custody evaluations or assessments; require assessment and contracting entities to meet separately with parties when there has been a history of domestic violence or order of protection; and set a standard for payment of evaluations and assessments. The Committee will discuss this bill next month.

Marianne Hardy, House staff, presented an overview of domestic-related bills introduced in the House. HB2001 would allow parties to agree to the appointment of a judge pro tem to hear the action and would require the parties to pay for the pro tem's time. HB 2348 would allow the court to consider marital misconduct in the disposition of property. HB 2704 was the presumptive joint custody proposal vetted through this Committee, but that eventually failed. Representative Boone introduced the bill.

Barbara Guenther, Senate staff, presented an overview of domestic-relations bills introduced in the Senate. Of particular importance, SB 1156 would allow the court to order child support retroactively to the date of separation in a dissolution, legal separation or annulment case.

Dr. Joel Glassman, custody evaluator, discussed a bill concerning complaints against psychologists to the Board of Psychologists. The bill would require the chairman of the board to appoint a complaint screening committee to review all complaints and take action such as dismissing the complaint if it is without merit, or refer the complaint to the full board for further review and action.

Mike Durham, 2nd Spoke Voice, discussed a bill that would require the Arizona Supreme Court to modify its automation systems concerning orders of protection. Mr. Durham seeks to require the Court to expand their domestic violence statistics and make them Arizona specific. He asserted that statistics used in Arizona in the domestic violence area are from national databases, not Arizona. David Benton and Karl Heckart, Administrative Office of the Courts, provided additional information on the same bill, including the types of information currently available in

the court's automation system and the fiscal prohibitions from implementing the provisions of this bill.

CALL TO THE PUBLIC

Danny Cartagena, parent, discussed his concerns regarding solutions in the absence of presumed joint custody. He specifically wanted to ask questions of committee members regarding interpretation of statute. Mr. Cartagena was notified that pursuant to Open Meeting Laws, the members of this Committee are not required to answer questions during call to the public and that this time is reserved for members of the public to address the Committee.

Sharon Searles Farmer, Arizona Protective Parents Network, discussed her concerns regarding domestic violence and parenting time and custody.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00. The meeting reconvened at 12:15 p.m.

DOMESTIC RELATIONS EDUCATION FOR CHILDREN

The Education/Prevention Workgroup has been developing a children's divorce education program over the past several months. Dr. Irwin Sandler, Director of the ASU Prevention Research Center spoke to the group about his research on these types of programs in other states and highlighted those with empirical evidence of success. He emphasized the importance of building an evaluative component into the project, if such a project is commenced. He discussed research on children's adjustment after divorce and provided an overview of the phases of program development. Because the legislative agenda item took a great deal of time, Dr. Sandler's presentation will be continued in March.

DEDICATED FAMILY BENCH

Dr. Yee reviewed the final draft of the letters that will be sent to the Pima and Maricopa County Trial Court Commissions. Members made several suggestions for language changes. Megan will prepare the final draft and send it to the Commissions prior to the next meeting.

INTEGRATED FAMILY COURT

No updates were provided as no changes have occurred.

WORKGROUP REPORTS

The workgroups did not have an opportunity to meet; no reports were necessary.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

NEXT MEETING

The next meeting will be held on March 19, 2004, 10:00 am – 2:00 pm at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting was adjourned at 1:40 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – March 19, 2004

PRESENT:

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair

Hon. Karen Johnson, Co-Chair

MEMBERS:

Hon. Karen Adam

Hon. David Bradley

Hon. Bill Brotherton

Sidney Buckman

Kat Cooper

Frank Costanzo

William Fabricius

Hon. Beverly Frame

Nancy Gray

Bill Hart

Terrill J. Haugen

Ella Maley

Hon. Dale Nielson

David Norton

Steve Phinney

Karen Kretschman

Ellen Seaborne

Kelly Spence

Judy Walruff

Steve Wolfson

Debbora Woods-Schmitt (designee Jeri Auther)

Brian Yee (designee Dr. John Moran)

Jeff Zimmerman

GUESTS:

Annalisa Alvrus

Clarence Cramer

AZ Protective Parents Network

Pinal County Conciliation Court

STAFF:

Sharon Dautrich

Isabel Gillett

Barbara Guenther

Marianne Hardy

Megan Hunter

Elizabeth Portillo

House of Representatives

Administrative Office of the Courts

Senate

House of Representatives

Administrative Office of the Courts

Administrative Office of the Courts

Representative Johnson called the meeting to order at 10:17 a.m. without a quorum present.

APPROVAL OF MINUTES

Because a quorum was not reached, the minutes were not considered for approval.

ANNOUNCEMENTS

Representative Johnson introduced Dr. John Moran, psychologist, who is serving as Dr. Yee's designee. She also introduced, Jeri Auther, custodial parent, who is serving as Debbora Woods-Schmitt's replacement.

DEDICATED FAMILY BENCH UPDATE

Annette Corrallo, Administrative Office of the Courts and staff to the Trial Courts Commissions, discussed the makeup of the Maricopa and Pima Trial Court Commissions and the process utilized to nominate candidates to the Governor for appointment to the bench.

The Commissions contain ten public members and five attorney members who are recommended by the State Bar of Arizona. The Chief Justice chairs all commissions, but can designate other justices to chair them in his place.

After vacancies are announced, the Commission accepts and reviews applications along with public comment about the candidates. It is a very public process. The Constitution directs the Commission to consider merit as the primary focus, but they also must take diversity and trial experience into consideration. Ultimately, the Commissions are dealing with a trial court so trial skills are emphasized above all others. The Commission selects and interviews the most qualified candidates and checks their references. Communication skills are a primary consideration because of the significant size of the self-represented population. A vote is taken and all information regarding the candidates is sent to the Governor. The Governor makes the selection and the Senate confirms. New judges stand for retention after two years on the bench, then every four years after that.

The Pima Commission has a letter on file from Presiding Judge Leonardo indicating that the first appointment will be five years on the juvenile bench. In the first ten years, they must serve in juvenile, probate or family, then they may request specific assignments.

David Norton asked how the Committee can get the commissions to look at someone other than a candidate with criminal trial experience. Annette responded saying that we could make a proposal to add materials to their handbook about family law appointments and speak to the commissions at the annual meetings. Megan will contact Dr. Yee about utilizing the Court Procedures workgroup to draft proposed additions for the handbook. She will contact Ms. Corrallo in September to request placement on the November annual meeting agenda.

Christine Thompson, Government Relations Director, State Bar, provided an overview of the Bar's Commission appointment process. There are 16 members on the Commissions. The State Bar undertakes a very complicated and thorough appointment process beginning with advertising vacancies in magazines, newsletters and the Internet, etc. Names are sent to Board of Governor's Appointments Committee where the applications are vetted. Once names are vetted,

they are sent to the Board of Governor's (29-member Board) where selections are made and sent to the Governor's office.

Carrie Sherman, staff to the State Bar Appointment Committee, further discussed the extensive advertising process to attract nominees. On the Trial Court Commissions, they are advertising for a specific seat dependent upon the supervisorial district of which there are five. No more than three attorney members of the five can be from one political party.

Most of the attorneys who serve come from diverse backgrounds such as large firms and solo practitioners. There is not a dedicated seat for any particular practice area. At the moment, there are no family law section members.

Nancy Gray asked if there is a way that the DR Committee can have some kind of input in light of the fact that half of all cases are domestic-relations related and out of those ten attorney members, none are family practitioners. Christine replied saying that they could encourage members of the family law section to apply for these positions. Members discussed and agreed to write letters to the State Bar to encourage the selection family law experts to serve on the Trial Court Commission. Rep. Johnson would like the Bar to put that request to the Board of Governors. Ms. Thompson agreed to speak with the editor of the Bar magazine to determine if more focus can be placed on this issue through that medium.

Bill Hart inquired as to the level of interest from attorneys for these seats. Ms. Sherman indicated that about a dozen applications are received per seat and the candidates must live in the supervisorial district for which they are applying; not their place of business.

LEGISLATIVE UPDATE

House Bills – Marianne Hardy

HB 2001- Judges Pro Tem; Domestic Relations

Passed the House; assigned to Senate committees but not heard yet.

HB 2090 – Marriage Dissolution; Community Property

Passed the House; assigned to Senate committees but not heard yet.

HB 2346 – Spousal Maintenance; Taxpayer Information

Passed the House and Senate committees; waiting to be caucused in the Senate.

HB 2348 – Dissolution of Marriage; Misconduct

Passed the House; transmitted to the Senate where it awaits committee assignment.

This bill would remove the prohibition against allowing the court to consider marital misconduct when ruling on disposition of property, spousal maintenance and child support. A strike everything amendment was offered which removes that language and instead would permit the court to impress a lien on the property of either spouse to secure payment of damages from criminal conviction by either spouse in which the other spouse was the victim, require the court to consider damages from criminal conviction when calculating spousal maintenance, stipulate that the Supreme Court shall consider damages from criminal conviction for acts committed

against the child in determination of guidelines for establishing a child support order. Rep. Johnson explained that this bill derived from some recent court cases were particularly egregious. In one case, a man was incarcerated for nearly killing his wife. While in prison, the couple divorced and the court was not allowed to look at the husband's prior misconduct so he was granted half of his wife's assets.

HB 2704 – Parenting and Parenting Time

Assigned to committees in the House but never received a hearing.

Senate Bills – Barbara Guenther

SB 1052 – Domestic Relations Social Security Numbers

The bill was assigned to Senate committees but did not receive a hearing.

SB 1053 – Child Support Committee

Passed the Senate; transmitted to the House and assigned to committees but has not been heard.

SB 1149 – Marriage Classes; Healthy Families Program

Passed the Senate. Transmitted to House where it awaits committee assignment.

SB 1156 – Child Support; Retroactive

Passed the Senate; transmitted to House where it awaits committee assignment.

SB 1196 – Domestic Violence; Protection Orders

Failed in Senate Judiciary.

SB 1237 – Psychologists; Judicially Ordered Examinations

Passed the Senate; passed House Health Committee and awaits Rules Committee assignment.

SB 1266 – Emancipation of Minors

Passed the Senate committees; will be scheduled for third read in the Senate next week

SB 1267 – Support Payments; Electronic

Passed the Senate; transmitted to House where it awaits committee assignment.

SB 1332 – Family Support Act; Uniform Interstate

Passed the Senate; transmitted to House and assigned to House committees.

SB 1334 – Child Support Overpayment

Passed the Senate; passed House committees and awaiting Rules Committee agenda.

Julie Koob (Arizona Coalition Against Domestic Violence) Senate Bill 1308

Passed Senate Judiciary & Family Services Committees; Assigned to House committees but not heard yet.

Ms. Koob explained that several amendments have been made to the original bill. In current form it would require six initial hours of training in domestic violence, six hours in substance abuse and six hours in child abuse. Evaluators would be required to certify that they have had training on these issues. Ms. Koob further explained that these matters are not necessarily handled in a like manner statewide; the bill is an attempt to have an overreaching policy statewide. Some evaluators are not regulated by a licensing board, such as social workers and in-house court employees; the only way to reach all of them is through a statutory change. She stated that it is worthy of government intrusion.

Dr. Moran explained that psychologists are required to have 60 hours of continuing education and those they are broken into categories. If this bill passes, 33% of their education requirements will be commanded by the Legislature and Psychologists Board of Examiners. He feels the amount of domestic violence training is disproportionate and that it is a dangerous and unnecessary precedent to have legislative control over psychologists.

Sid Buckman asked what the Coalition's concerns focused on. Ms. Koob responded that domestic violence is often ignored or minimized by custody evaluators. Mr. Buckman pointed out that the bill requires the training to occur through Ms. Koob's organization. Ms. Koob explained that they are trying to negotiate a compromise that allows for outside training.

Jeri Auther commented that her family underwent a court-ordered evaluation. The evaluator did not address two domestic violence convictions, and never addressed substance abuse and child abuse. She is the custodial parent – her biggest complaint was the lack of consistency. The proposal would establish some modicum of consistency.

Dr. Moran commented that the bill is not data-driven to which Ms. Koob responded with national statistics.

CALL TO THE PUBLIC

Annalisa Alvrus – Arizona Coalition Against Domestic Violence. Ms. Alvrus discussed custody evaluators ignorance of domestic violence. She quoted from a battered women's book. She discussed her year and a half custody evaluation. Her ex-husband had been convicted of domestic violence toward her and had a conviction of assault on the mother of his son. She said there should be a review process when bad incidents are reported. She wants us to focus on the children, even if it is only one child who gets put back with an abuser.

Clarence Cramer – Director of Conciliation Court in Pinal County. Mr. Cramer has conducted custody evaluations for 26 years and has always taken domestic violence very seriously. They have safeguards for all involved. He discussed a potential problem with SB 1308, section R which directs the courts to hold mediations separately. This will impact the courts and parties by increasing waiting times. The Pinal County Conciliation Court conducts several screenings prior to providing mediations, custody evaluations, etc. Ninety-eight percent of the parties who utilize Conciliation Services in Pinal County who have reported domestic violence in the screening agree to meet together. He added that parties should not meet together if an Order of Protection exists. He disagreed with the training provision in the bill; specifically, limiting training to one agency.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00. The meeting reconvened at 12:30 p.m.

DOMESTIC RELATIONS EDUCATION FOR CHILDREN

Dr. Irwin Sandler, Director Center for Prevention Research, Arizona State University, continued his presentation from the previous month regarding divorce education for children. He provided an overview of current research on resilience in children of divorce and programs across the country aimed at improving resilience and child outcomes. Some longer-term (11-16 weeks) school-based programs have shown promising effects. Evaluation of some programs has shown a decrease in externalizing and internalizing problems and a reduction in mental health problems. The major goal of programs should be focused on increasing children's coping efficacy.

Dr. Sandler explained that he does not advocate a particular position on whether Arizona should implement a children's program or not. Members asked his opinion about the ideal number of sessions to be effective for children. His hunch is that 14 to 16 sessions is ideal; the minimum would be 8 to 10 sessions. Steve Phinney asked Megan to forward the materials from Hawaii's "Kids First" program to Dr. Sandler. That program is an "exposure" class as it is a one-time session. Hawaii's program may not be appropriate because it may have an affect-arousing component without affect. In other words, there is no follow-up.

Dr. Sandler reiterated the importance of building an evaluation component into any program that is developed.

Representative Johnson asked the Education/Prevention workgroup to meet with Dr. Sandler before the next meeting to further discuss the proposal and make a recommendation to the full Committee. Megan will schedule the meeting.

INTEGRATED FAMILY COURT

No updates were provided as no changes have occurred.

WORKGROUP REPORTS

The workgroups did not have an opportunity to meet; no reports were necessary.

CALL TO THE PUBLIC

No requests to speak were received for the call to the public.

NEXT MEETING

The next meeting will be held on April 16, 2004, 10:00 am – 2:00 pm at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting was adjourned at 2:00 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – April 16, 2004

PRESENT:

-
-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. David Bradley
- Hon. Bill Brotherton
- Sidney Buckman by Diana Hegyi
- Kat Cooper (designee Judy Bushong)
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Karen Kretschman
- Ellen Seaborne
- Kelly Spence
- Judy Walruff
- Steve Wolfson
- Debhora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

STAFF:

Sharon Dautrich
Isabel Gillett
Barbara Guenther
Marianne Hardy
Megan Hunter

House of Representatives
Administrative Office of the Courts
Senate
House of Representatives
Administrative Office of the Courts

Representative Johnson called the meeting to order at 10:12 a.m. without a quorum present.

APPROVAL OF MINUTES

Due to the lack of a quorum, approval of the minutes was postponed until a quorum could be reached.

ANNOUNCEMENTS

Members introduced themselves.

Legislative Update

Sharon Dautrich, House Intern, reviewed domestic relations-related bills.

HB2348

Representative Johnson explained that the original bill (HB2348) would allow a judge to consider prior criminal conviction of one spouse against another spouse or their child when considering property division and spousal maintenance. SB1308, the custody evaluator training bill, died in House Human Services but was amended onto HB2348 in Senate Family Services. The bill places domestic violence and child abuse training requirements on custody evaluators.

Brian Yee commented that domestic violence is shameful, awful and wrong. The bill exempts physicians from the training; they have a minute percentage of training compared to mental health professionals (psychologists). Psychologists are the most aggressively regulated profession. The Psychology Board was renewed for 10 years – this is because they are the most vocal and conscientious board in terms of consumer protectionism, not only for improprieties, but the appearance of improprieties. He commented that the energy of the advocacy group behind this bill is recognized but misplaced.

He would like the Legislature to understand the implications of legislating this profession, especially based on pushes from advocacy groups. Courts need help for custody evaluations. The legislators should understand whether they want the evaluators to be trained by biased groups. To make this issue moot, the psychology board has approved 4 hours of domestic violence and child abuse training as a condition of a psychologist's licensure. The sentiment is well-taken; however, this is a solution that does nothing constructive to the overall problem.

Jeff Zimmerman commented that it would be highly inappropriate to have advocacy groups to do any kind of training. The judges should have the choice to determine who trains them.

Bill Hart commented that the Coalition Against Domestic Violence does not want to impugn the professionals (psychologists) in any way. However, they have found out some problems related to custody evaluators. They believe that problems are in the family court – that domestic violence offenders are being granted custody. In rural areas, evaluators are not psychologists and training is not necessarily grounded in best practices.

Judy Walruff commented that training is important, but she is concerned that no definition is listed in legislation. She advocates for an organization that advocates for children. Her bottom line problem with this bill is definitional problems with this section. She agrees that there are

certifying groups that set regulation and provide training across the professions to make sure that those people who are doing evaluations meet the kind of criteria and that's where some attention needs to be paid. Any kind of advocacy group can step in and do the training. She shares concerns about the physician exemption.

On Senator Anderson's request, Brian Yee explained that only two or three psychiatrists do custody evaluations.

Senator Anderson commented that this discussion has been very helpful and valuable. Representative Johnson explained that the bill is done in the Senate and will now come back to the House. She, as sponsor, must concur or refuse to concur with the Senate amendments. Because so many problems surrounding the bill, she will refuse to concur, then it will go to conference committee. She invited Committee members to contact their legislators.

Diana Hegyi explained that her staff at Conciliation Services in Maricopa County attend approximately 14 hours of training on domestic violence each year. She has scheduled two trainings through the Coalition Against Domestic Violence, but the training was not advanced enough for the evaluators. She encouraged the Coalition to develop advanced training.

Nancy Gray commented that all of us are on the same page in terms of protecting children and domestic violence victims. She wants the Committee to know that custody evaluations are the exception, not the norm.

Karen Adam expressed her concerns as a judicial officer. She has to consider about 30 factors in a custody decision. The proposed language in new section C is in direct conflict with existing language in statute. New section C requires only an allegation of domestic violence, not proof that domestic violence has been committed as statute requires. This proposal would require judges to determine between two competing statutes thereby making it impossible for judges to determine.

Bill Hart commented that the discussion has been very valuable and the Coalition's training department would be more than happy to revise their curriculum. The Coalition is not seeking to disparage the majority of custody evaluators who do a good job, they are just trying to address those who are not. Parents in this situation do not have legal recourse.

Members discussed the role of this Committee as it relates to the Legislature. Specifically, are there any problems with the way we are connecting or not connecting with them. Members agreed to look into the following:

1. Send an information letter to legislators.
2. Have Megan notify legislators on a monthly basis of this Committee's activities and ask them for input.
3. Members should become more involved at the Legislature during session.
4. Senate Family Services and House Human Services Committee members should be apprised of the activities of this Committee. When new chairs are appointed to those committees, they should be invited to speak at a DRC meeting

5. Megan should compile a list of bills at the beginning of session, contact bill sponsors and ask them to address the proposal at a DRC meeting. This Committee would then come up with a recommendation to vote it up or down.
6. Megan should develop a presentation for legislators at their pre-session training.

A quorum was reached at 10:56 a.m.

MOTION: David Norton made a motion to approve the February minutes with one amendment to correct a spelling error. Nancy Gray seconded the motion. Approved unanimously.

MOTION: David Norton made a motion to approve the March minutes as submitted. Nancy Gray seconded the motion. Approved unanimously.

CALL TO THE PUBLIC

Julianna Koob – Arizona Coalition Against Domestic Violence. Ms. Koob acknowledged that the Coalition is on the same page and that is our common interest to protect victims of domestic violence. She wanted to clarify that from perspective of domestic violence, this is a child safety and consumer protection issue. People cannot pursue litigation or challenge litigation (those who are unrepresented). The Coalition would like to have this Committee develop a curriculum committee to develop the custody evaluator training curriculum. The Coalition is trying to get empirical research and what they are trying to get at is getting the best data used across the country. They are excited about taking this committee's expertise and knowledge to the Legislature.

Dave Norton asked Julie how many cases generated the custody evaluator issue? Julie responded that a majority of litigants are unrepresented and that at least 50 families are interested in this legislation, but she does not know how many total cases.

Brian Yee commented that the 50 families are people who found their way to the Coalition, but there is no way to validate their complaints. We cannot assume that the court erred in those cases unless each case is reviewed.

Karen Adam referred the Committee to the Family Builders statues which are incredibly detailed and provide useful definitions.

Dianne Fitzgerald-Verbonitz – Director of Arizona Psychological Association. Dianne explained that the exemption language covers anyone who holds a medical license including psychiatrists. She assumes the reason they were exempted is that they were able to convince the Coalition. She would be very interested in knowing how the psychiatrists satisfied the training requirements and would like to compare it to the psychologists training. The Board of Psychology requires four hours of domestic violence training for APA credentialing. The Board takes training very seriously.

Julia Purington – Parent. Julia explained that there is no one to protect married persons. Her ex-husband had a credit card which he had before meeting her – she had no knowledge of the

account until the divorce was in process. After the divorce and she found out about the debt, the bank would not talk to her. She had no right to information, yet she could still be sued for the debt because of the community property status of Arizona. The judge allowed the husband to file bankruptcy and urged her to do the same. It devastated her credit and will limit her financial options for years to come. She's concluded that she pointed out the injustice to the wrong people. She suggested that each partner should be given the right to access and control all accounts under community property or change the definition of community property so it does not become community liability.

Representative Johnson indicated she would like the Committee to look at this area. Judge Nielson commented that he understands the situation. People are actually entitled to that information but they do not know they could get at it. He understands and has seen this happen before. Not sure if a statute is in order, but a judge should require that information to be made available.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00. The meeting reconvened at 12:30 p.m.

WORKGROUP REPORTS

Education/Prevention

The group met with Dr. Sandler and discussed Hawaii's children's education programs and other programs from around the country. They reached consensus that the Hawaii program probably would not work in Arizona. Instead of mandating a program for every child, a referral program to a pilot project is being discussed. ASU will develop the pilot project proposal and with the participation of this Committee, they will seek private grant funding instead of seeking funding from the Legislature or courts. The group would like to get the Committee's blessing to let the group develop and implement a pilot project with a built-in evaluation program. If it results in the success they anticipate, they would hope to implement the program statewide.

Court Procedures

The workgroup has agreed to address three areas:

1. Family Bench. Commissioner Adam report on Pima County's recent assignment changes. Judge Leonardo advised the trial court that the juvenile rotation would be a 5-year assignment. He spoke with a commission member about important questions regarding family law for candidates. In the past, the candidates are always asked if they are willing to serve on the family bench and everyone always says yes. New questions may be asked concerning therapeutic jurisprudence. The newest appointed judge is a former juvenile court judge.

Judge Campoy from Pima County convinced one of the commission members to tour the juvenile court and also wrote an article about juvenile court and therapeutic jurisprudence.

The workgroup will discuss applying the same model in Maricopa County and hopefully have some impact on the composition of the bench.

2. DR Rules Committee. Judge Nielson and Brian Yee are members of a committee that is reviewing all rules that apply to domestic relations cases. One of the functions is to update this Committee as to what is being proposed there and revisions that are upcoming.
3. Domestic Violence. The group will work on proposing to the AOC the possibility of developing guidelines for dealing with domestic violence cases in anticipation of taking the burden off the Legislature in this problematic, multi-faceted problem. They will look at statistics to look at concerns that have been put forth. Diana Hegyi, Superior Court in Maricopa County, has analyzed some of these complaints and will be invited to speak to the full Committee at the next meeting. It is extremely important to have reliable statistics. The workgroup will be brainstorming to come up with a procedure for the AOC to review and consider. There is a lot of fog in presentations and statistics presented to this Committee. The Legislature and the Committee need valid statistics to determine if problems exist and if so, fix them.

SUBSTANTIVE LAW

Jeff Zimmerman reported that the workgroup will work on the following topics:

1. Child Custody Reform. The group will continue working on child custody reform that is designed to promote continuing the parent/child relationship. This year they will look into using a presumption of joint custody in the preliminary injunction which would continue until the court makes another order.
2. Paternity. The group will discuss the presumption of custody that currently exists in paternity cases which seems to enable the parent who has physical custody (not legally established) to manipulate and control the issues.
3. Credit issue. The group will discuss credit issues associated with dissolution.
4. IFC Funding. The group will continue to discuss IFC funding issues.

INTEGRATED FAMILY COURT

Karen Kretschman reported on the IFC Pilot Projects, as follows:

1. Pinal County - Nothing new to report.
2. Coconino County – A volunteer guardian ad litem program has been implemented within the IFC to help court users. They started with 33 volunteer lawyers of which 23 showed up for initial training. So far, they have been able to do it with no money.
3. Maricopa County – Nothing new to report.

Karen reported that she continues to look for funding within the AOC, but she cannot promise anything.

Ellen Seaborne reported that she worked with Celia Barotz, Coconino County ADR Director, on language to go take to the Board of Supervisors to increase filing fees in an attempt to raise money for the IFC. They will raise the response fee to match the filing fee and implement a subsequent filing fee which will hopefully bring in an additional \$60,000-\$80,000 per year.

OTHER

Ellen Seaborne recommended that the Committee develop a timeline for developing proposals to ensure they will be complete in time for legislative session. Megan will include these in our packets next month.

CALL TO THE PUBLIC

Danny Cartagena – Parent. Danny reviewed his paternity proposal regarding paternity.

Judge Nielson indicated that the DR Rules Committee has discussed this difficult substantive issue. They are talking about setting time limits and making sure the courts see these people in a timely way (within 60 days). At least there would be a rule to address getting into the courts earlier.

NEXT MEETING

The next meeting will be held on May 21, 2004, 10:00 am – 2:00 pm at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting was adjourned at 2:00 p.m.

DOMESTIC RELATIONS COMMITTEE

Amended Meeting Minutes – June 18, 2004

PRESENT:

-
-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- Frank Costanzo (designee David Weinstock)
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Karen Kretschman
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Ellen Seaborne (designee Annette Burns)
- Kelly Spence
- Judy Walruff
- Steve Wolfson
- Debbora Woods-Schmitt (designee Jeri Auther)
- Brian Yee (designee Joel Glassman)
- Jeff Zimmerman

GUESTS:

Julianna Koob
Allie Bones
Sarah Pequignot
Paul Anderson

AZ Coalition Against Domestic Violence
Governor's Office
Attorney General's Office
Parent

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter
Marianne Yamnik

Administrative Office of the Courts
Senate
Administrative Office of the Courts
House of Representatives

Senator Anderson called the meeting to order at 10:10 a.m. without a quorum present.

APPROVAL OF MINUTES

Due to the lack of a quorum, approval of the minutes was postponed until a quorum could be reached.

ANNOUNCEMENTS

Members took turns introducing themselves. Jeri Auther, parent, served as Debhora Woods-Schmitt's designee. David Weinstock, therapist, served as Frank Costanzo's designee. Joel Glassman, custody evaluator, served as Brian Yee's designee. Annette Burns, family law attorney, served as Ellen Seaborne's designee. Representative Johnson is absent due to illness.

Steve Phinney and Frank Costanzo have both resigned from the Committee due to other commitments. Both served the Committee faithfully and were thanked for their contributions.

The custodial parent position appointed by the House Speaker is still vacant.

Senate President Bennett appointed Jodi Brown of Prescott to serve as the Domestic Relations Mediator. She replaces Jennifer Jordan.

Megan Hunter mentioned that copies of the newly adopted Child Support Guidelines, effective January 1, 2005, are available upon request. Also available is a copy of the old Domestic Relations Reform Study Subcommittee (DRRSS) timeline. Megan also searched for the letter sent by Senator Hartley and Representative Johnson to all legislators a few years ago that urged them to pass all domestic relations-related legislation through the DRRSS. Senator Brotherton mentioned that his secretary formerly worked for Senator Hartley and may have retained a copy of the letter.

LEGISLATIVE UPDATE

Barbara Guenther reviewed the domestic relations-related bills that passed this year and were signed by the Governor. The effective date for these bills is August 25, 2004.

HB 2090 – Stipulates that if a marital relations petition does not result in a decree of dissolution of marriage, legal separation or annulment, a loan secured by mortgage or deed of trust executed by one party to the marital relations action after service of the petition continues to be secured by the real property.

HB 2346 – Expands notification requirements regarding taxpayers with delinquent spousal maintenance obligations and authorizes the release of confidential taxpayer information to the clerks of court.

HB 2348 – Discussed below.

SB 1156 – Permits child support to be ordered retroactively to the date of separation, up to three years prior to filing for dissolution of marriage if the parties lived apart during this time.

SB 1332 – The existing Uniform Interstate Family Support Act is repealed and replaced with amendments recommended by the National Conference of Commissioners on Uniform State Laws.

SB 1334 - Permits an obligor of child support to apply to the Clerk of the Superior Court for reimbursement of overpayment of child support within 24 months of termination of a child support order. Allows the court to enter a civil judgment against the obligee who has received the overpayment if both the child support order has been terminated and all arrearages and interest have been paid.

HB 2348 – Requires the DR Committee to develop minimum training standards by December 30, 2004 which would go into effect on July 1, 2006. The bill's provisions include:

- Allows the court, when determining disposition of property in a proceeding for dissolution of marriage, legal separation or annulment, to consider actual damages and judgments resulting from a criminal conviction of a spouse in which the other spouse or the child was the victim.
- Allows the court to impress a lien on the separate property of either party or the marital property awarded to either party to secure the payment of actual damages and judgments resulting from criminal conviction of a spouse when the other spouse or the child was the victim.
- Allows the court to grant a spousal maintenance order for actual damages and judgments resulting from the criminal conviction of a spouse in which the other spouse or the child was the victim.
- Prohibits the court from granting physical or legal custody of a child to a registered sex offender or a person convicted of murdering the other parent of the child, unless the court finds, in writing, that there is no significant risk to the child.
- Allows the court to consider evidence that the convicted parent suffered trauma due to domestic violence by the murdered parent when determining risk to the child.
- Allows the court to order parents to pay for investigations, reports or family court advisors allocated between parents based on their financial circumstances.
- Requires anyone who conducts an investigation or prepares a report concerning custodial matters to receive 12 initial hours and 4 subsequent hours every two years of training on domestic violence and child abuse.
- Requires the DR Committee to prescribe minimum training requirements for custody evaluators on domestic violence and child abuse by December 31, 2004 and allows annual modifications approved by the Committee.

- Requires the Committee to establish a working group of persons interested in making recommendations to the Committee by November 30, 2004.
- Requires implementation of training standards by July 1, 2006.
- Adds two senators and two representatives to the DR Committee, no more than two from each body from the same political party.
- Eliminates the requirement for custody evaluators to receive training from specific groups.

A quorum was reached at 10:28 p.m.

MINUTES

MOTION: Dave Norton made a motion to approve the minutes of the April 16, 2004 meeting. Dave accepted an amendment to add Karen Kretschman to the attendance list. Second by Karen Adam. Approved unanimously.

HB 2348 Continued from previous section

Bill Hart suggested that DRC members could get together and decide amongst themselves what kind of disciplines need to be present to develop a fair and balanced committee, and then invite people from those disciplines to join the workgroup. He also suggested that the committee should have regularly monthly meetings separately from the DRC lunchtime meetings.

Sid Buckman would like the group to consider input from the whole state, including Hispanics and Native Americans to provide a fair and balanced group.

Senator Anderson would like the meetings to be held separately from DRC meetings and bring in outside experts with an objective chairman who can provide balance and fairness.

Barbara said that for this particular session, session law allows this workgroup to appoint anyone it wants to membership.

Members inquired whether the minimum training standards could be placed on physicians who conduct evaluations. Barbara clarified that even though the DR Committee will prescribe minimum standards, they cannot override the law that exempts physicians. Members suggested that it would be irresponsible not to include physicians who do custody evaluations.

Sen. Anderson called for volunteers. The following DRC members volunteered to serve on the workgroup:

Sid Buckman
Nancy Gray
David Bradley
Jeri Auther
David Weinstock

Karen Kretschman
Bill Hart
Bill Fabricius
Joel Glassman

Megan will ask absent members if they wish to volunteer also. Members should read the materials prior to the first meeting.

Kat suggested that Nancy serve as co-chair of the workgroup. Sen. Anderson appointed Nancy as co-chair.

Due to time constraints, the group will discuss only the domestic violence and child abuse issues. Other training areas could be considered in the future.

CUSTODY EVALUATOR TRAINING

Superior Court Cases

In past Domestic Relations Committee meetings, members discussed the need for valid statistics and more information about the data being used to support the need for a particular bill for purposes of shaping sound policy. Diana Hegyi from the Conciliation Court, Superior Court in Maricopa County was invited to this meeting to give a presentation regarding cases in which the courts allegedly granted custody to parents where there were concerns about domestic violence as reported by the Arizona Coalition Against Domestic Violence (Coalition). Ms. Hegyi outlined the cases as stated in the Coalition's report. She then outlined the facts from the court files. The presentation showed many various discrepancies between the two.

Domestic Violence Statistics

The legislative session brought to the forefront the need for better statistics on domestic violence in Arizona. Karen Kretschman discussed domestic violence statistics available through the Administrative Office of the Courts (AOC) which includes numbers of filings for Orders of Protection, number of review hearings requested, and number of requests for emergency Orders of Protection. The AOC Research & Statistics Unit collects and reports these numbers in a data book annually. The AOC maintains a Court Order Protective Repository which is a module within the court's statewide computer system. The courts report additional information in that system which is then transmitted to the Department of Public Safety and to the national NCIC system. The system is two years old and was developed with VAWA grant funds.

WORKGROUP REORGANIZATION

A new workgroup was formed to re-write A.R.S. § 25-403 in an attempt to make it more user-friendly. The statute has become unwieldy and needs to be recognized. This workgroup will not be making substantive changes to the statute.

Sen. Anderson appointed Steve Wolfson to chair the group. Those volunteering to serve on the workgroup are:

Karen Adam
David Weinstock

An idea discussed at the prompting of "Call to the Public" testimony at a previous meeting focused on creditor issues in divorce cases. Sen. Brotherton commented that if the banking industry is not on board, the bill would likely be killed. It is likely to be a tough issue.

Sen. Anderson suggested that members should contact Megan if they wish to work on this issue. Megan will contact Ellen Seaborne to see if she wants to pursue the issue and serve as chairman if a workgroup is formed.

CALL TO THE PUBLIC

Paul Anderson, Parent. Mr. Anderson is a custodial parent with 50% shared custody. He presented his observations about the shortcomings in the domestic relations litigation process and suggested that the courts should create separate Rules of Procedure for domestic relations cases. He hopes this would promote a gentler, easier experience for parties in domestic relations cases. As it now stands, domestic relations litigation is usually contested and decimates finances and damages families emotionally. He suggested that legislation provide for routine discovery. It is often abused in DR cases. He also suggested early referral to a family court advisor. Often, dangerous situations exist and the case is referred to the family court advisor near the end of the case.

Annette Burns explained that the Arizona Supreme Court does have a committee addressing his very concerns. Steve Wolfson explained that the Family Court in Maricopa County Superior is undergoing a review and perhaps his comments could be submitted for that review. Megan will provide him with contact information for both.

Julianna Koob, Arizona Coalition Against Domestic Violence. Ms. Koob wants to provide a point of clarification regarding Diana Hegyi's presentation. It was from the Battered Mother's Testimony Project. Julie started two months after the person who created that project left and Julie says she has never referred to that project. The 25-50 families that she has been referring to and that have brought this information forward are not from the Battered Mother's Testimony Project. Julie stated that she has asked for the data herself within the Coalition Against Domestic Violence on that project and it is sealed and confidential and even she cannot get it as an employee. She wanted to make sure that the Committee knows that the Coalition Against Domestic Violence was not using the Battered Mother's Testimony Project to bring this legislation forward. She mentioned that Diana's presentation should not be made part of the public record due to privacy concerns. She offered a binder of research and information if Committee members would like to see it. She has resigned from the Coalition Against Domestic Violence and will be moving to New Mexico soon.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00. The meeting reconvened at 1:16 p.m.

WORKGROUP REPORTS

Education/Prevention

Terrill Haugen reported that the workgroup is headed in the direction of doing a pilot project with Dr. Irwin Sandler, ASU. This would be an option for the children of parties involved in high conflict cases, probably here in Maricopa County, to be involved in a program to help them through that tough situation. The proposal is set up to get funding from local and national organizations instead of asking the courts or legislature for funding. A joint planning committee

of representatives of the family court, DR Committee, ASU and other key stakeholders is being formed and they would like to have the program going within the next six months.

Comm. Adam mentioned that she had run this idea past her Family Court Presiding Judge with the intent of possibly hosting the program in Pima County. The Family Court bench there is excited about the prospect and would like to be considered as a host site. Terrill will discuss this with Dr. Sandler and report back at the next meeting.

Terry asked for a recommendation from the Committee.

MOTION: Terrill Haugen made a motion for the DR Committee to collaborate with Dr. Sandler and the Superior Court in Maricopa County to develop and implement a pilot project for children's divorce education.

Discussion: Dave Norton asked if this proposal is a collaboration with Dr. Sandler. Terrill responded that it is a collaboration. Bill Hart would like the Maricopa language to be taken out. Sid Buckman asked what the DR Committee's role would be. Terrill responded that this is still open. Comm. Adam suggested leaving it open to all counties. Nancy suggested that the DR Committee should be involved in this project on a detailed level. Dave Norton suggested the possibility of two pilot sites.

AMENDED MOTION: Terrill Haugen amended his motion to the following: The DR Committee will collaborate with Dr. Sandler and one or more pilot project counties to develop and implement a pilot project for children's divorce education. Dave Norton seconded. Approved unanimously.

Court Procedures

Nancy Gray reported the following:

1. This Committee has not received a response to the letter sent to the Maricopa and Pima Trial Court Commissions.
2. The workgroup has identified three areas they will study:
 - a. Going back to the commission to do a presentation in the fall where Dave Norton will give a presentation about the family bench situation.
 - b. Beverly Frame is going to speak with the Governor's office about the same.
 - c. Steve Wolfson will set up a meeting to speak with the State Bar Board of Governors. Megan will provide him with copies of the letters previously sent to the Pima & Maricopa Commissions.

Substantive Law

Bill Fabricius reported that due to low attendance, the Substantive Law workgroup did not meet and had nothing to report.

INTEGRATED FAMILY COURT

Karen Kretschman reported on the IFC Pilot Projects:

1. Pinal County - Nothing new to report.
2. Coconino County – The Board of Supervisors member who formerly supported the IFC project is now waffling on that support.
3. Maricopa County – Nothing new to report.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on July 16, 2004, 10:00 am – 2:00 pm at the Judicial Education Center, 541 E. Van Buren, Phoenix.

ADJOURNMENT

The meeting was adjourned at 1:43 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – July 16, 2004

PRESENT:

-
-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Karen Kretschman
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Ellen Seaborne
- Kelly Spence
- Judy Walruff
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Donna Lee Sarda, LPC

Justice for Children - AZ

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter
Javan Mesnard
Patsy Osmon
Helena Whitney

Administrative Office of the Courts
Senate
Administrative Office of the Courts
Senate
Senate
House of Representatives

Representative Johnson called the meeting to order at 10:28 a.m. without a quorum present.

APPROVAL OF MINUTES

Due to the lack of a quorum, approval of the minutes was postponed until a quorum could be reached.

ANNOUNCEMENTS

Jodi Brown of Prescott was introduced as the new appointment to the Domestic Relations Mediator position replacing Jennifer Jordan. Ms. Brown is a domestic relations mediator for the Yavapai County Superior Court and is a founding board member and mediator with the Mediation Center of Yavapai County.

Three positions remain vacant: 1) custodial parent, 2) faith-based representative, and 3) marriage and family therapist.

WORKGROUPS

Creditor Issues – Ellen Seaborne, Chair

Ellen described the types of creditor situations that arise in dissolutions cases. Two examples: 1) during the marriage, one spouse acquires separate credit without notifying the other spouse (typically credit card debt). Usually the judge assigns the debt to the spouse who acquired the debt, but the problem comes in when that spouse fails to make payments and the creditors come after the other spouse for payment; and 2) credit that is obtained before a marriage becomes a community debt after the marriage. Many times one spouse does not know about the debt nor benefit from the debt. Because it is part of community property, the court orders both to repay the debt.

Rep. Johnson asked Megan to invite representatives from the banking industry to speak at the August meeting.

Judy Walruff recommended initiating a conversation with creditor institutions to ascertain what they may have to offer in lieu of having some other solutions imposed upon them. Dave Norton suggested the possibility of utilizing a remedy that is used in bankruptcy. Creditors are identified and notified of the bankruptcy, then given an opportunity to submit a claim. Perhaps something similar could be done in dissolution cases.

Rep. John called for volunteers for the now formed Creditor Issues Workgroup and appointed Ellen Seaborne to serve as chair. Volunteers are: Karen Kretschman, Judy Walruff, Dave Norton, and Rep. Johnson. Megan will notify absent members of the new workgroup and will call for volunteers.

Custody Re-Write – Steve Wolfson, Chair

Megan reported on behalf of Steve that the first meeting will be held on August 6.

Custody Evaluator Minimum Standards – Rep. Bradley & Nancy Gray, Co-Chairs

The first meeting will be held on July 29th, 10:00 – 2:00 at the Arizona State Courts Building. They want to get to the meat of the issue and basically try to comply with the law as quickly as they can, hopefully in the space of one meeting. David Bern of DES will be speaking to the group about the co-occurrence of domestic violence and child abuse. Nancy encouraged members of DRC to submit any thoughts or ideas to the co-chairs. Nancy suggested looking at the Supreme Court’s Minimum Standards for Parent Education as a starting point for construction of the standards.

Substantive Law – Jeff Zimmerman, Chair

Bill Hart & Sid Buckman indicated that the group has not met for two or three months. Jeff Zimmerman, chair, is absent today.

Court Procedures – Brian Yee, Chair

Nancy Gray reported on behalf of Brian. She reported that workgroup members took on several assignments at the last DRC meeting. Dave Norton will be speaking to the Trial Court Commission at their annual fall meeting (yet to be scheduled – Megan will notify Dave when the date is announced). Steve Wolfson will be speaking to the Board of Governors of the Arizona State Bar.

Education/Prevention – Terrill Haugen, Chair

Megan reported on behalf of Terrill that the Children’s Education team was notified of the discussion from the June meeting in which Commissioner Adam indicated Pima County’s desire to be considered for a pilot project. Team members are amenable to including Pima County. Nancy commented that a rural county should be included as well and offered Yuma County as a host. Ellen Seaborne would like Coconino County to be considered and Jodi Brown would like Yavapai County to be considered. Cost is a factor, but the project could be expanded to these counties if funding can be obtained.

Senator Anderson noted that the Marriage & Communication Skills Commission is completing their mission due to depletion of funding. However, Dr. Peck of Arizona State University has been commissioned to study the effects of the marriage programs. Sen. Anderson noted that the study will be out this month and suggested we have Dr. Peck provide a report at a future meeting.

ARIZONA COALITION AGAINST DOMESTIC VIOLENCE

Bill Hart briefly stated that the Coalition had two concerns about Diana Hegyi’s presentation at the June meeting: 1) the agenda as presented to the Committee did not accurately reflect the presentation’s comments, and 2) they were disappointed that actual case numbers were part of a PowerPoint presentation and put up on a screen in a very public meeting. The Coalition’s main focus is to proceed toward the July 29th Custody Evaluator Minimum Standards meeting.

Bill explained that Diana’s presentation resulted from letter written in 2002. The Coalition does not want to get into re-hashing the past. They do not want to make a big deal about this and just want to move on.

Sid Buckman expressed concerns about the accuracy of information presented by any entity or individual to this Committee. Bill responded that he shares Sid's concerns and feelings about that but the Coalition decided to just put it behind them and move on. They are not disputing what Diana Hegyi said in her report.

Karen Kretschman commented that whenever anyone wants a bill passed in the Legislature, the first question should be identifying the problem and what is the background information such as statistics. As a Committee, we should be asking about statistics and the quality of those statistics. That is why she gave a presentation last month regarding what stats are available through the courts. For operating in the future, she suggested that this whole episode of presentations goes to the issue of backing up what you are talking about.

Nancy Gray explained that she supports Karen's viewpoints. The good thing that has come out of this is that we are more aware of keeping better stats on domestic violence. She cautioned that we need to be careful about the stats provided to this Committee.

Rep. Johnson noted that we all agree on the problems associated with domestic violence and we all need to work harder on the right way to address these stats. She explained that this is not an indictment of Bill or anything he has done.

Brian Yee remarked that this Committee can take note of the number of filings for Orders of Protection, Injunctions Against Harassment, etc., but it really does not go the problem of domestic violence. Knowing the number of filings does not give us a clear picture of what is going on in domestic violence. The problem is getting good statistics before the Legislature. Sometimes stats can be misrepresented to the Legislature. The motive of having Diana's study here was for the purpose of understanding the statistics of what is being quoted. To remind the Committee, there were three condemning letters written by the Coalition – one to judges, one to the conciliation court and one to custody evaluators. Upon investigation, every statistic, outcomes and interpretation was wrong according to court evidence. The purpose is not to indict the Coalition today; the purpose is to help everyone understand the reality behind the statistics.

Sen. Anderson explained that legislators receive a lot of information from many sources so they try to remain aware of the ability of people to make statistics say what they want.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

The co-chairs asked Committee staff and Committee members to introduce themselves to new member Jodi Brown.

Megan Hunter – Administrative Office of the Courts staff

Isabel Gillett – support staff from the Administrative Office of the Courts

Helena Whitney – Democratic Staff in the House and works with Rep. Bradley

Javan Mesnard – Republican Senate Staff and works with Sen. Anderson and Sen. Bee

Patsy Osmon – Senate Democratic staff and works with Sen. Brotherton

Barbara Guenther – Senate research non-partisan staff

Marianne Yamnik (absent) – House staff

BREAK/LUNCH

The Committee dismissed for lunch at 11:45 a.m. The meeting reconvened at 12:20 p.m.

INTEGRATED FAMILY COURT

Karen Kretschman reported that the pilot projects still do not have funding. She has made a request through the Administrative Office of the Courts (AOC) process for fiscal year 2006 asking for start-up funding for the pilots. She has no assurance that the AOC proposal will be considered and encouraged the Committee to look at the best way to get funding to the projects. Her request includes \$400,000 for Coconino, \$250,000 for Pinal and \$100,000 for Maricopa.

Ellen suggested that we go with original plan and ask for funding from the Legislature. Members thought this had been impossible in the past because of a referendum issue. Barbara Guenther explained that because fees would have to be raised for this, the House and Senate would each have to have a two-thirds vote to get this passed. Ellen commented that the state was in a drastic downsizing in the state budget at the time. She suggested a second option which would request funding for the pilot projects only, instead of the statewide project.

Rep. Johnson noted that we will need some persuasive evidence if we are going to ask the Legislature for funding. Ellen responded that no data has been gleaned from this state so far. Rep. Johnson suggested that in the scheme of funding in the Legislature, there could be a way to convince them to invest this amount of money for a very accountable pilot program as long as a data program was built in. Judy Walruff suggested that we could also let legislators know how far we have come with the IFC proposal and that mechanisms are in place or could be put into place. Karen Kretschman envisions adding the funding amounts to the AOC Domestic Relations budget, then the projects would be funded from that budget. The Supreme Court authorized the projects through an administrative order.

Rep. Johnson has wanted to see this for many years and is committed to work hard on the proposal. She encouraged Committee members to contact their legislators. We may not need to run a bill; instead it could be put in the general budget bill.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on August 20, 2004, 10:00 am – 2:00 pm at the Arizona State Courts Building, 1501 W. Washington, Phoenix.

ADJOURNMENT

The meeting was adjourned at 12:35 p.m.

DOMESTIC RELATIONS COMMITTEE

AMENDED Meeting Minutes – August 20, 2004

PRESENT:

-
-

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam (designee Annette Burns)
- Lucille Antone-Morago
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Karen Kretschman
- Ella Maley
- Jay Mount
- Hon. Dale Nielson
- David Norton
- Ellen Seaborne
- Judy Walruff
- David Weinstock
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Helen Davis
Sharon Farmer
Therese L. Martin
Anella Nahom
Joanne Zazzi

The Cavanaugh Law Firm
AZPPN
AZ Attorney General's Office
Parent
Conciliation Court Volunteer

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter
Javan Mesnard
Patsy Osmon

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

Senator Anderson called the meeting to order at 10:10 a.m. with a quorum present.

ANNOUNCEMENTS

Lucy Antone-Morago was introduced as the new parent member appointed by Governor Napolitano. Ms. Antone-Morago replaces Kelly Spence. Ms. Antone-Morago has extensive experience as a Tribal Court Advocate and Deputy Prosecutor with the Gila River & Salt River Indian communities. She has also served as the Children's Court Judge for the Gila River Indian Community and at present serves as the Family Preservation/Family Support Coordinator of Against Abuse, Inc. There she works with the State and Child Fatality Review Teams and Multidisciplinary Teams for Pinal and Gila Counties. She has a B.S. Degree in Business Management and a Master's Degree in Organizational Management.

Jay Mount was introduced as the new custodial parent member appointed by House Speaker Flake. Mr. Mount replaces Dr. Rene Bartos. Mr. Mount is returning to serve on the Domestic Relations Committee. He comes to the Committee as a lay person who has gone through the divorce and custody process.

David Weinstock, J.D., Ph.D., was introduced as the new Marriage and Family Therapist member appointed by House Speaker Flake. Dr. Weinstock replaces Frank Costanzo. Dr. Weinstock is a practicing psychologist and works in the fields of therapy, custody and forensics. He is also an attorney.

Linda Leatherman (absent) from Tucson was recently appointed by Governor Napolitano to serve as the faith-based representative member position. She will be attending the September meeting.

APPROVAL OF MINUTES

MOTION: Ellen Seaborne made a motion to approve the minutes of the June 18, 2004 and July 16, 2004 meetings. David Norton seconded. Approved unanimously.

INTERVIEWING CHILDREN – HELEN DAVIS (PRIVATE FAMILY LAW ATTORNEY)

Ms. Davis presented an overview of the current practice in the Maricopa County Superior Court regarding interviewing children in custody cases. In the past, this was a frequent occurrence, then it subsided for awhile but is now on the rise again. The practice is haphazard at best. The judge either has to allow hearsay from a parent or the judge has to interview children in chambers. Often, parents' motivation for allowing children to testify is for the parents' best interests. Lawyers use this to their client's advantage at times.

Ms. Davis believes that the approach should begin with the child's best interest. Children have an interest in their own custody. A.R.S. § 25-403 allows the court to interview children as well as seek the advice of a professional. Interviewing children is controversial. It is intended to alleviate stress for the child, and some believe there may be some merit to that. However, others believe that bringing a child into the courtroom to meet with a stranger is not always best. There is usually no preparation for the interview. If a record is made, the judges seal it and do not share it with the litigants. There is also the question as to whether a child can be cross-examined or not. The parents' rights to their children and their custody are potentially impacted by evidence that is not shared with them. The Maricopa County Juvenile Dependency Action stated

that the court may interview a child with only a court reporter present but the transcript must be made available to the parties and counsel, and recess must be taken in order for the parties to make decisions. However, the Supreme Court vacated this ruling.

Ms. Davis mentioned that there are alternatives such as custody evaluations or videos. Evaluators know how to elicit appropriate information from a child. She also stated that the Court has to think about who is requesting the interview and the motives. Dr. Yee noted that he has found most judges for whom he provides custody evaluations have no desire to interview children. Annette Burns commented that it is mainly new judges to the bench who practice this. David Norton said that the age of a child should be taken into consideration. It is much different interviewing a five-year-old than a sixteen-year-old.

Senator Brotherton mentioned that there are times when a child needs to be heard. Ms. Davis said children are not allowed to contract or have that much control over their lives in other areas, why should they influence the outcome of a custody decision? Dr. Yee noted that it is not just a matter of empowerment, it is also a burden. When children are interviewed, they feel they bear the responsibility of amputating a parent. Ms. Davis said that interviewing children should not be the standard, but should be the far, far exception.

Ellen Seaborne brought up another concern – when children are in therapy, the therapist will not testify as to the child’s best interests due to a conflict of interests. She suggested having trained interviewers appointed to interview the child be added to the Integrated Family Court (IFC). In this way, the interviewer would speak for the child. Sid Buckman suggested that custody evaluation is the appropriate venue where children may be interviewed. There is a major danger in adding to the child’s conflict by doing a judicial interview and that very few children want to be in that place. Ms. Davis volunteered to assist if a workgroup is formed to study this issue, and Senator Anderson stated that the Committee will use Ms. Davis as a resource.

**CUSTODY EVALUATOR MINIMUM STANDARDS WORKGROUP –
REPRESENTATIVE DAVID BRADLEY AND NANCY GRAY**

Representative Bradley and Nancy Gray reported to the Committee that the workgroup had spent 3 ½ hours in discussion and hearing testimony, and thirty minutes developing minimum standards. Ten members of the workgroup were also DRC members. The workgroup used some of California’s standards as a base. The mission of the workgroup was to address three areas:

1. Instruction for initial domestic violence training;
2. Instruction for initial child abuse training; and,
3. Instruction for subsequent training.

Legislation was not intended to duplicate training requirements beyond the licensing standards of various professions that provide the service. The legislators did not want to add to what is already required of these professionals.

The workgroup’s goal was to have balance between being general enough to cover a broad range but also be specific enough to comply with the law.

MOTION: David Norton moved to adopt the draft minimum standards for child abuse and domestic violence training as submitted by the Custody Evaluator Minimum Standards Workgroup.

Senator Brotherton stated that he believed the training should be done through current continuing education. Dr. Yee said there was no discussion by the workgroup as to who will monitor the training. Nancy said that the workgroup agreed that the training should be up to the Administrative Office of the Courts (AOC) and the individual counties.

Ellen stated that in Area One, #3 should be part of #1. She said that new judges should have some idea of this at the beginning of their tenure. Senator Anderson said there was a report required that the trainings have been completed. Megan clarified that people who prepare reports for the courts are required to indicate on the report that they have received the required training.

Annette mentioned that there was no reference to cultural or ethnic dynamics. Nancy said that in Area One, #1(d), the workgroup listed "Intergenerational transmission of familial violence" and thought that this covered Annette's concerns. Representative Bradley also stated that in Area One, #2 speaks to "social and family dynamics." Dr. Yee stated that he believes that domestic violence is domestic violence, no matter what the cultural or ethnic background, but would have no objection to adding something regarding culture and ethnicity.

Amended Motion: Ellen amended the motion to accept with the addition of the word "cultural" in Area One, #2 to read: "The social, CULTURAL and family dynamics," and also to add "cultural" to Area Two, #3 to read: "The social, CULTURAL, and family dynamics," and add a #6 in Area One: "SUGGESTED PARENTING PLANS FOR FAMILIES AFFECTED BY DOMESTIC VIOLENCE."

Members discussed the meaning of "suggested parenting plans". Senator Anderson suggested an amendment to Ellen's motion: "SUGGESTED PARENTING PLANS FOR FAMILIES AFFECTED BY DOMESTIC VIOLENCE AND THE RELEVANT SECTIONS OF LOCAL, STATE, AND FEDERAL LAW OR RULES." Ellen accepted the amendment. The motion was approved unanimously.

Senator Anderson and Kat Cooper thanked the workgroup for their work on these standards, and Nancy Gray thanked Ellen Seaborne and Annette Burns for their suggestions.

CALL TO THE PUBLIC

Ariella Nahom, parent, asked who would be providing the training for the custody evaluators. **Dr. Yee explained that the professionals are governed by a regulatory board and instructors are usually respected, recognized and published professionals.** Ms. Nahom wanted the Committee to know that in her experience, domestic violence goes beyond physical abuse. There is also emotional and financial abuse, and their effects on society are very similar. She recommended that decision-makers should focus on behaviors, things done and said instead of diagnoses which may or may not be accurate. They should assess behaviors and hold abusers accountable. Ms. Nahom said that children are affected by those behaviors, and the cycle

continues. She also stated that it is generally the parent with money who has power to influence the decision-makers, and because of this, the other parent and/or victim is at a disadvantage.

BREAK/LUNCH

The Committee dismissed for lunch at 11:50. The meeting reconvened at 12:30.

2005 LEGISLATIVE PROPOSALS

The Committee will be discussing 2005 domestic relations-related legislative proposals at each Committee meeting through January.

Bill Hart noted that the Arizona Coalition Against Domestic Violence is gathering information from its constituency. They will meet on September 13, 2004 to make the first attempt at establishing legislative priorities, and will determine several priorities on that day.

Senator Brotherton asked if the spousal rape law is on the books for the Coalition. Bill Hart responded that the spousal rape law is criminal, and does not meet within this Committee's parameters. Senator Brotherton said it does affect this Committee and should be discussed in this Committee if it does come forward.

Ellen said she felt the concern about interviewing children has a lot of merit, and would like the Committee to follow up on that after discussing the creditor issue. She thinks it would be a worthwhile piece of legislation. Representative Johnson asked if it is a needed legislative proposal, because she does not like to propose legislation that is not necessary. Sid said that he does not think it should be done legislatively. Nancy echoed Sid's concerns. She recommended doing a survey to find out if it is a statewide problem. Dave Norton said that it should be statewide and should include very structured age definitions. Ellen said that A.R.S. § 25-405 is ambiguous. She suggested that the Committee review the statute and make changes to make it more usable to protect children and due process. She said she does not want to tell judges how to run their courtrooms, but that the state needs some ground rules.

Dr. Yee stated that he is concerned about making sweeping legislation changes based on four judges' practices in one county. He said the Committee also needs to consider rural counties because they do not have access to forensic psychologists.

Representative Johnson asked Dr. Yee if the Court Procedures Workgroup would take on this issue, and Dr. Yee agreed to do that. He will provide an overview of A.R.S. § 25-405 at the September meeting.

Dr. Weinstock was of the opinion that age limits should not be set, because there are legal and psychological issues. He thought that perhaps it could be geared toward legal issues of interviewing children. Senator Brotherton suggested that the Committee might want to look at other options such as repealing the statute, if need be.

Annette Burns mentioned that Commissioner Adam has spoken on this subject nationally. She said that Judge Adam is quite versed in this area and urged the Committee to include her in future discussions. Representative Johnson agreed to invite Judge Adam and Judge Davis to speak on this subject at the September meeting.

David Norton mentioned that he will make a presentation to this Committee at the September meeting on proposed changes in Order of Protection statutes.

Jay Mount proposed to the Committee that litigation could be reduced if there was a class for the divorcing parties regarding the process of divorce. David said that Judge Joseph Heilman at Northwest Superior Court teaches a class on Divorce 101. He has suggested to Judge Heilman that he produce a web-based program. Judge Heilman will also be present next month for David's presentation. Megan said that she will contact Judge Heilman about this issue.

CREDITOR ISSUE – ELLEN SEABORNE

Ellen met with Tanya Wheelless, president of the Arizona Banker's Association, who declined to attend and provide a presentation at this meeting.

Ellen explained that the Committee has three options:

1. Drop the issue completely;
2. Work on it from a national perspective because it affects other states; or,
3. The Committee can study this issue by breaking it down into smaller pieces.

David Norton stated that this is a two-pronged approach: it is a Federal issue and the Committee can do whatever we can on a state level by breaking it down into smaller pieces. Karen Kretschman said she was reluctant to let it die at our Committee level. She suggested the Committee look at what other community property states do to address this issue.

Representative Johnson asked Ellen to have her workgroup study this issue. She said that Ellen Poole would be willing to give input to the workgroup. Ellen agreed, and several members volunteered to be a part of this workgroup: Judy Walruff, David Norton, Representative Johnson, and several attorneys from the Arizona State Bar.

WORKGROUPS

Court Procedures – Dr. Brian Yee, Chair

Dr. Yee had no report.

Custody Re-Write – Steve Wolfson, Chair

Megan reported on behalf of Steve that the workgroup has met once and begun developing language.

Substantive Law – Jeff Zimmerman, Chair

Jeff had no report.

Education/Prevention – Terrill Haugen, Chair

Terrill was not present.

INTEGRATED FAMILY COURT

Pilot Project Update – Karen Kretschman

Karen noted that the final report on the three pilot projects is due in December. Pinal County has been unable to start their pilot project. Coconino County is struggling but

Judge Newton is meeting with the Board of Supervisors next week. A request to include half a million dollars in the AOC legislative budget proposal has been forwarded to the AOC Director. The money would go toward helping the three pilot projects; however, there will be no statewide funding until the data from the pilots has been received and studied. Representative Johnson thought there might be a possibility of the legislators assisting in the funding as this is not an astronomical amount.

Representative Johnson mentioned that she is most interested in getting a dedicated family bench. Karen Kretschman said the recommendation from John Greacen and Associates is that Maricopa County Superior Court should work toward taking care of the rotation problem. Representative Johnson asked Karen to keep the Committee up to date on this issue.

Workgroup Update – Ellen Seaborne

Ellen also said that the Coconino County Superior Court is going to the Board of Supervisors regarding raising filing fees for the Integrated Family Court. Ellen will give an overview of the Integrated Family Court at the September meeting.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on September 17, 2004, 10:00 am – 2:00 pm at the Judicial Education Center, 541 E. Van Buren Street, Suite B-4, Phoenix, Silver and Turquoise Conference rooms.

ADJOURNMENT

The meeting adjourned at 2:00 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – September 17, 2004

PRESENT:

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CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray (Designee Annette Burns)
- Bill Hart
- Terrill J. Haugen
- Karen Kretschman
- Ella Maley
- Jay Mount
- Hon. Dale Nielson
- David Norton
- Ellen Seaborne
- Judy Walruff
- David Weinstock
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Allie Bones
Danny Cartagena
Gina Grappone
Therese L. Martin
Konnie Neal
Mary Thomson
Joanne Zazzi

Governor's Office
Self
Governor's Office
AZ Attorney General's Office
Administrative Office of the Courts
Governor's Office
Conciliation Court Volunteer

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter
Javan Mesnard
Patsy Osmon

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

Senator Anderson called the meeting to order at 10:16 a.m. without a quorum present.

GOVERNOR’S PLAN ON DOMESTIC & SEXUAL VIOLENCE – ALLIE BONES, GOVERNOR’S OFFICE

Allie Bones and Mary Thomson provided an overview of the Governor’s Plan on Domestic & Sexual Violence, which is intended to decrease domestic and sexual violence and increase awareness and understanding in Arizona. The General Principals for this plan include:

- Prevention/Early Intervention
- Victim Services
- Criminal Justice
- Offender Treatment/Accountability
- Sexual Assault
- Data Collection
- Children Who Witness Domestic Violence

The Governor’s Office has created several implementation design groups that will focus on training, automation, legislation, and children’s issues. Plans will be tailored to individual counties to reflect of county size, resources, needs, etc.

Ms. Bones suggested that the Domestic Relations Committee should focus on the “Children Who Witness Domestic Violence” section of this plan. The Governor’s office wants professionals who work with domestic relations cases to implicitly understand the effects that witnessing domestic violence has on children. They encourage cross training on domestic violence and domestic relations issues.

Terrill Haugen inquired about the percentage of men who are victims of domestic violence. Ms. Bones replied that the rate is approximately 15%.

Senator Anderson suggested expanding this information into the Marriage and Communications Skills classes to ensure that the facilitators are getting proper domestic violence training. Dave Norton suggested that the Domestic Relations Committee support and work together with the Governor’s Office to implement the State plan.

APPROVAL OF MINUTES

A quorum was reached at 10:29 am.

MOTION: David Norton made a motion to approve the minutes of the August 20, 2004 meeting as submitted. Brian Yee seconded with one modification: Page 4, last paragraph on the Call to the Public section, second sentence should read: “Dr. Yee explained that the professionals are governed by a regulatory board and instructors are usually respected, recognized and published professionals.” Minutes approved as amended unanimously.

PARENT EDUCATION ON FAMILY COURT PROCESSES – MEGAN HUNTER

Ms. Hunter advised that Judge Heilman will discuss his divorce education class for *pro se* litigants at the October DRC meeting. She also mentioned that the Administrative Office of the Courts is considering building an automated tutorial-type training to place on the web that would provide similar information for *pro se* litigants. Commissioner Adam said that the Pima County

Bar Association holds meetings where information is given on this subject and suggested that Alyce Pennington be contacted. Megan agreed to contact her.

MARICOPA FAMILY COURT REVIEW/REPORT – KAREN KRETSCHMAN

Ms. Kretschman explained that the Arizona Supreme Court commissioned a study of the Family Court bench and ancillary services in the Superior Court in Maricopa County. The final report by independent consultant, John Greacen Associates, LLC, has been completed, of which a copy was provided to all DRC members. The report makes a series of recommendations. Presiding Family Court Judge Davis and Presiding Judge Colin Campbell have begun putting these recommendations into practice. Some of the recommendations include:

- Give *pro se* litigants more direction on what forms they need, and how to fill them out. Many of the *pro se* cases are dismissed because of the litigants' lack of knowledge. There is a need to sort out the difference between clerks giving legal information v legal advice.
- Time standards need to be revisited.
- The rotation issues of the Family Court bench need to be addressed.

Ms. Kretschman explained that the Superior Court in Maricopa County has been directed by the Supreme Court to submit a comprehensive plan for improvements by October 7, 2004.

Bill Hart asked Karen her opinion as to how this report and plan for improvement will assist in getting a dedicated family bench. Karen answered that this is a main issue for the Chief Justice and Vice Chief Justice.

INTEGRATED FAMILY COURT (IFC) – KAREN KRETSCHMAN

Ms. Kretschman explained that there is no new information from Pinal County's Integrated Family Court. Coconino Superior Court made a presentation to their County Board of Directors in July and the Board was very receptive to the IFC concept, but wanted more information on the cost of each level of implementation.

2005 LEGISLATIVE PROPOSALS – DAVID NORTON, ORDER OF PROTECTION PROPOSAL; BILL HART, COALITION PROPOSAL(S); AND OTHER MISCELLANEOUS PROPOSALS FROM DRC MEMBERS, LEGISLATORS, AND CITIZENS

Mr. Norton provided a presentation about the Order of Protection statutes and asked the members to provide direction on four issues: history of domestic violence; process; problems; and suggested changes. Definitions were a problem. For example, Rule 36.1(a) uses the word "household" but the word "household" has never been defined in statute. Therefore, judicial officers use dictionaries to define words not defined by statutes, which is a practice that can bring different interpretations. He asked if any of the DRC workgroups would be the correct venue to discuss these issues, or would they be legislative issues. Senator Brotherton commented that he has no problem bringing these issues to the Legislature and agreed that the current definition of the word "household" was too vague. Senator Anderson suggested that the Court Procedures or Substantive Law Workgroups could discuss these issues during the lunch break if they chose.

Mr. Hart explained that there are employment and housing issues for domestic violence victims within the Arizona Coalition Against Domestic Violence. The Coalition has not decided whether

to approach the Legislature regarding these issues or address them in some other manner. They prefer to address issues without utilizing the legislative process, if possible.

The Coalition's number one priority this year comes from a mandate to increase funding for domestic violence services and prevention. The general fund contribution has increased by \$250,000 since the year 2000. He said the Coalition will work every angle to find the best way to increase funding for shelters around the state.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00 pm. The meeting reconvened at 12:45 pm.

2005 LEGISLATIVE PROPOSALS, CONTINUED

Ms. Hunter provided an overview of legislative proposals being developed by the Legislature's Child Support Committee. They are working on a proposal to tighten the existing law that allows the court to extend child support beyond the age of majority in the case of a mentally or physically handicapped child. The proposal would provide guidance by defining the severity of the handicap and by placing time limitations on filing. Another proposal makes several technical changes to the paternity statutes.

Ms. Antone-Morago explained that she has a special needs child and believes that even in the event of a divorce, children in these circumstances are the financial responsibility of both parents.

INTERVIEWING CHILDREN – HON. KAREN ADAM

Commissioner Adam provided an overview of her research on the practice of judicial officers interviewing children. The issue only comes up in contested custody cases which account for only about 4% of family court cases, and there are even fewer of these cases where the judicial officer actually interviews a child. She found that this is an uncommon practice around the country. Judges would rather get information some other way than by interviewing children themselves. She recently polled the Pima County Family Court bench on the subject and reported that no more than two interviews per year per judge are conducted and all are by agreement of the parties. A court reporter is present and the interview is on the record. It can be sealed if requested by the parties.

Commissioner Adam mentioned that she has only conducted 8 interviews with children in chambers since 1987. She will interview a child that child wants to talk to the court and a therapist states that the child is of a suitable age and maturity. She will not do it when a party just shows up at the hearing and wants a child to testify. She would never ask a child with which parent they would want to live. She suggested that more education/training on interviewing children is needed for judges, which would go a long way to changing the perception that these cases are being mishandled. The Committee on Rules of Procedure in Domestic Relations Cases is working on a way to codify this. Senator Brotherton stated and members agreed that legislation is not necessary because the court committee is working on it.

WORKGROUPS

COURT PROCEDURES – DR. BRIAN YEE, CHAIR

Dr. Yee suggested that the Substantive Law Workgroup would be a better venue to discuss David Norton's Order of Protection proposals.

CUSTODY RE-WRITE – STEVE WOLFSON, CHAIR

Mr. Wolfson stated that this group is working on a draft of A.R.S. § 25.403 to make it more user-friendly. He assured members that the changes are not substantive and hopes to have the draft to the Committee by the October meeting and a vote at the November meeting.

SUBSTANTIVE LAW – JEFF ZIMMERMAN, CHAIR

Sid Buckman and Bill Hart reported on behalf of Jeff Zimmerman. The group discussed and agreed that there should be an effort to codify the service issue of David Norton's Order of Protection proposal. Mr. Hart explained that some judges and mediators allow exemptions for mediation when an Order of Protection is present and when it is in the best interest of the family. He believes there are rare times when it is best for mediation.

EDUCATION/PREVENTION – TERRILL HAUGEN, CHAIR

Mr. Haugen reported that they are waiting for Dr. Sandler to complete another project before they launch into the children's education pilot project, probably sometime in October.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on October 15, 2004, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 119.

ADJOURNMENT

The meeting adjourned at 2:00 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – October 17, 2004

PRESENT:

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CO-CHAIRS:

Hon. Mark Anderson, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Linda Leatherman
- Karen Kretschman
- Ella Maley
- Jay Mount
- Hon. Dale Nielson
- David Norton
- Ellen Seaborne
- Judy Walruff
- David Weinstock
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Honorable Joseph Heilman
Marianne Yamnik
Courtney Riddle
Ursula Hursch
Javan Mesnard
David Benton

Superior Court in Maricopa County
House of Representatives
House of Representatives
Parent
Senate
Administrative Office of the Courts

STAFF:

Isabel Gillett
Megan Hunter

Administrative Office of the Courts
Administrative Office of the Courts

Senator Anderson called the meeting to order at 10:10 a.m. with a quorum present.

ANNOUNCEMENTS – SENATOR MARK ANDERSON

Senator Anderson announced that Marianne Yamnik has received a different assignment in the House and will no longer serve this Committee. He thanked her for her dedication and service to this Committee. Courtney Riddle was introduced as Marianne’s replacement.

APPROVAL OF MINUTES – SENATOR MARK ANDERSON

A motion to approve the minutes as submitted as made by Commissioner Adam. Approved unanimously.

CUSTODY RE-WRITE – DR. BRIAN YEE

The workgroup has met monthly to develop a proposal that reorganizes A.R.S. § 25-403. The proposal does not change any wording; it merely rearranges the sections in an attempt to make them flow properly. Commissioner Adam pointed out one change that was agreed upon by the workgroup but not reflected in the draft. Specifically, the drug offenses section should be moved directly below the domestic violence section.

Committee members were urged to review the drafts prior to the November meeting where a vote to advance it as a legislative proposal will be taken.

CREDITOR ISSUES – ELLEN SEABORNE

Ellen Seaborne will review copies of statutes from other community property states with the Creditor Issues workgroup during the lunch break.

ORDER OF PROTECTION – JEFF ZIMMERMAN

Jeff Zimmerman reported in David Norton’s absence. He provided an overview of the proposals and asked the Committee to examine them, comment and vote for any that should be forwarded for legislation.

Item 1 - Definitions

Two definitions have been under discussion: “parties’ residence” and “household.” At present, “parties’ residence” means any residence jointly owned or leased by the parties. The proposal would replace “residence” with “dwelling” and would define “household” as any residence in which the parties now reside or formerly resided together.

The Committee decided that this proposal needs to be studied more carefully.

Item 2 – Service

At present time, some peace officers do not want to serve an Order of Protection if filed in another jurisdiction. The proposed language would require any police agency to serve the order, as follows: “Orders of Protection issued by a magistrate, justice of the peace or superior court judge or commissioner shall be served by any police agency for any jurisdiction in which the defendant can be found.”

A majority of the Committee approved the proposal. Senator Anderson mentioned that the Committee should bring in law enforcement representative to get their input. Megan will send

the proposal to law enforcement associations, advising them that this proposal is something the Committee is considering for legislation for next session and request their input.

Item 3 – Exemption

The following proposals regarding counseling and mediation in domestic relations cases include:

A. Would allow parties with a current Order of Protection to meet for counseling or mediation if the following conditions exist:

- The session is either conducted or sanctioned by the court;
- The parties mutually agree to meet with written consent prior to the session; and
- The ultimate decision on whether the parties should meet under these circumstances will be left up to the provider of the service.

The Committee rejected this proposal.

B. The parties to a current valid Order of Protection can meet to exchange their child(ren) in compliance with their Child Custody and Parenting Time Order, without such meeting being considered a violation of the Order of Protection, provided that neither party engages in criminal behavior or acts of domestic violence during the exchange. These meetings are already taking place under the exemptions currently in the law.

The Committee rejected this proposal.

Item 4 – Cover Sheets

The Order of Protection Form should be revised to include two cover sheets, one for plaintiff and one for the defendant, which explains what the parties can and cannot do.

The Committee supports this proposal. Megan will send a copy of the proposal to the Committee on the Impact of Domestic Violence and the Courts for comment.

The Committee will vote on proposals 2 and 4 at the November meeting.

2005 LEGISLATIVE PROPOSALS – SENATOR MARK ANDERSON

Megan Hunter provided copies and an overview of the Child Support Committee 2005 legislative proposals. One proposal would change the paternity section to make it consistent with language in the rest of Title 25, e.g. change Plaintiff/Defendant to Petitioner/Respondent and eliminate oral answers in paternity cases. The second proposal provides additional detail for litigants who request that child support be extended beyond the age of eighteen for disabled people.

INTEGRATED FAMILY COURT – KAREN KRETSCHMAN AND ELLEN SEABORNE

Pinal County's program is still not doing much of anything due to lack of funding. Coconino County is also continuing to grapple with funding issues. Maricopa County's program is having difficulties in light of the Maricopa Family Court Review and plan. Ellen Seaborne would like the workgroup to meet soon to address the progress and problems.

CALL TO THE PUBLIC – SENATOR MARK ANDERSON

Ursula Hursh, parent, discussed a problem she had during a family court proceeding in which her child’s father, without notification, requested that the child’s name be changed from the mother’s last name to his (the father’s) last name. Ms. Hursh discussed the laws that govern this area and believes that the law was not followed in her case.

The Substantive Law Workgroup will review the laws and report back to the full Committee with a recommendation on whether the law should be changed. Ellen Seaborne suggested that the workgroup should look at paternity and divorce statutes.

BREAK/LUNCH

The Committee dismissed for lunch at 12:00 pm. The meeting reconvened at 12:45 pm.

EDUCATION PROGRAM FOR SELF-REPRESENTED LITIGANTS – HON. JOSEPH HEILMAN

Judge Heilman made a presentation regarding the education program that he teaches at the Northwest Superior Court in Maricopa County for self-represented litigants. This education program explains the family court system in great detail, including clerk responsibilities, court programs and processes.

WORKGROUP REPORTS/UPDATES

COURT PROCEDURES – DR. BRIAN YEE, CHAIR

Brian Yee reported that the Governor has agreed to meet with members of this workgroup to discuss the dedicated family bench issues.

SUBSTANTIVE LAW – JEFF ZIMMERMAN, CHAIR

The workgroup is working on the Order of Protection proposal that emanated from Dave Norton’s presentation in September. They will meet prior to the next meeting of this Committee and report at that time. They will also discuss the name change issue brought to the Committee’s attention during the call to the public in today’s meeting.

EDUCATION/PREVENTION – TERRILL HAUGEN, CHAIR

The Children’s Education project will commence once Professor Sandler completes another national project. He may have found alternate funding for this project.

OTHER WORKGROUP ISSUES

Ellen Seaborne requested that a workgroup look into the possibility of modifying the law in dependency cases to require the court to also consider maternal or paternal relatives for placement when the case is getting close to the termination/adoption stage. Commissioner Adam mentioned that this may not be a Domestic Relations Committee issue. Megan Hunter will check if another court committee would be a more appropriate venue for this issue.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on November 12, 2004, 10:00 a.m. – 2:00 p.m. at the Arizona State Courts Building, 1501 W. Washington, Conference Room 119, Phoenix.

ADJOURNMENT

The meeting was adjourned by Senator Brotherton at 2:10 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – November 12, 2004

PRESENT:

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CO-CHAIRS:

Hon. Mark Anderson, Co-Chair

Hon. Karen Johnson, Co-Chair

MEMBERS:

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Hon. Karen Adam

Lucille Antone-Morago

Hon. Tim Bee

Hon. Andy Biggs

Hon. David Bradley

Hon. Bill Brotherton

Jodi Brown

Sidney Buckman

Kat Cooper

William Fabricius

Hon. Beverly Frame

Nancy Gray

Bill Hart

Terrill J. Haugen

Linda Leatherman

Karen Kretschman (designee Theresa Barrett)

Ella Maley

Hon. Debbie McCune Davis

Jay Mount

Hon. Dale Nielson

David Norton

Ellen Seaborne

Judy Walruff

David Weinstock

Steve Wolfson

Debbora Woods-Schmitt

Brian Yee

Jeff Zimmerman

GUESTS:

Honorable Norman Davis

David Benton

Sandy Navarrete

Superior Court in Maricopa County

Administrative Office of the Courts

AZ Coalition for Domestic Violence

STAFF:

Isabel Gillett

Barbara Guenther

Megan Hunter

Javan Mesnard

Administrative Office of the Courts

Senate

Administrative Office of the Courts

Senate

Patsy Osmon
Courtney Riddle

Senate
House of Representatives

Representative Johnson called the meeting to order at 10:18 a.m. with a quorum present.

ANNOUNCEMENTS – REPRESENTATIVE KAREN JOHNSON

Members introduced themselves to new member, Representative Debbie McCune-Davis, who was recently appointed to the committee by House Speaker Flake. Rep. McCune-Davis serves in the Legislature as a Representative for District 14. She was welcomed to the committee by members.

Megan Hunter advised members of David Norton’s forced removal from the Committee at the request of his employer. They prefer to have someone from their Family Investigations Division as a representative on the Committee if the House Speaker wishes to draw from the Phoenix Police Department personnel. Members were unanimously opposed to Dave’s removal and expressed a desire to have him remain on the committee. Representative Johnson and Senator Anderson will be following up with a letter to Chief Harris in support of Dave’s membership on the Committee.

Megan announced that Isabel Gillett who has served the Committee for six years will be retiring at the end of the month. The members and staff thanked Isabel for her years of dedicated service.

APPROVAL OF MINUTES – REPRESENTATIVE KAREN JOHNSON

MOTION: A motion to approve the minutes as submitted was made by Bill Hart and seconded by Commissioner Adam. The motion was unanimously approved.

ORDER OF PROTECTION – JEFF ZIMMERMAN

Jeff stated that he was bringing the updated Order of Protection proposal to the Committee in David Norton’s absence.

The Committee discussed Section R, #2. Jeff explained that this proposal emanated from a combination of ideas, including the issue of some law enforcement officers not enforcing or serving an Order of Protection if it is not from their jurisdiction.

Megan stated that there is a regional effort to establish domestic violence forms, and the committee meets in February. Jeff suggested that the Domestic Relations Committee should recommend representatives from the Committee to attend this meeting. The decision of the members was to have the Court Procedures Workgroup work on a cover sheet and recommend this to the regional domestic violence forms group.

MOTION: Bill Hart made a motion to accept the proposal as submitted and forward it to Legislative Council before bringing it back to the full Committee for approval. Jeff Zimmerman seconded the motion. The motion was unanimously approved.

CUSTODY RE-WRITE – STEVE WOLFSON

Steve explained that the workgroup reorganized A.R.S. § 25-403 to make it more understandable, and that the workgroup members have not made any other changes to the statute. The modification sections of A.R.S. §§ 25-403 and 25-408 were moved into A.R.S. § 25-411.

MOTION: Nancy Gray made a motion to accept the proposal as submitted and forward it to Legislative Council, then bring back to the full Committee for approval. Ellen Seaborne seconded the motion. The motion was unanimously approved.

MARICOPA COUNTY FAMILY COURT REVIEW – JUDGE NORMAN DAVIS

Judge Davis provided an update on the progress of the Maricopa County Family Court regarding the suggestions made in the Greacen report. They have begun implementing many projects resulting from that report and have already seen positive results from them. One of the most important aspects to the changes is the importance placed on early intervention in family law cases because families are distressed when they come into the system and requiring them to wait on the system increases the distress and conflict. Some of the new procedures and projects include:

- The parties will meet with an attorney case manager to settle as much as possible prior to hearing.
- In uncontested default cases, parties may choose their own court date instead of waiting on the court.
- An automated system called eCourt for pro se litigants is being developed and should be implemented by December 1. The system asks a series of questions and produces the appropriate forms. This is a 21st century update of the Self Service Center.
- Various measures are being taken to increase job satisfaction for the judges. This is a stressful part of the court system. Several judges have opted to remain on the family bench longer than their assigned terms.

Representative Johnson asked Judge Davis to provide an update to the Committee in January.

INTEGRATED FAMILY COURT (IFC) – ELLEN SEABORNE

Ellen provided a recap of the IFC project developed in this Committee, and an update on the Coconino County pilot project that came out of the AZ Supreme Court. She approached the Coconino County Board of Supervisors with a proposal to increase filing fees to help cover the cost of the project. Coconino County is looking at a timeline of December 31, 2006 for the implementation of the Integrated Family Court pilot project.

CALL TO THE PUBLIC – REPRESENTATIVE KAREN JOHNSON

No requests were received for Call to the Public

BREAK/LUNCH

The Committee dismissed for lunch at 12:00 pm. and reconvened at 1:05 pm.

INTEGRATED FAMILY COURT – KAREN KRETSCHMAN

No report.

WORKGROUP REPORTS/UPDATES

COURT PROCEDURES – DR. BRIAN YEE, CHAIR

The group is still working toward a meeting with Governor Napolitano to discuss the family bench issue. The group will also work on suggestions for the domestic violence cover sheet. Dr. Yee will coordinate with Bill Hart and the court's domestic violence forms workgroup.

SUBSTANTIVE LAW – JEFF ZIMMERMAN, CHAIR

No report.

EDUCATION/PREVENTION – TERRILL HAUGEN, CHAIR

No report.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on December 10, 2004 from 10:00 a.m. – 2:00 p.m. at the Arizona State Courts Building, 1501 W. Washington, Conference Room 345, Phoenix.

ADJOURNMENT

The meeting was adjourned by Representative Johnson at 1:15 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – December 10, 2004

PRESENT:

CO-CHAIRS:

Hon. Mark Anderson, Co-Chair

Hon. Karen Johnson, Co-Chair

MEMBERS:

Hon. Karen Adam

Lucille Antone-Morago

Hon. Tim Bee

Hon. Andy Biggs

Hon. David Bradley

Hon. Bill Brotherton

Jodi Brown

Sidney Buckman

Kat Cooper

William Fabricius

Hon. Beverly Frame

Hon. Gabrielle Giffords

Nancy Gray

Bill Hart (designee Dale R. Wiebusch)

Terrill J. Haugen

Linda Leatherman

Karen Kretschman

Ella Maley

Hon. Debbie McCune Davis

Jay Mount

Hon. Dale Nielson

David Norton

Ellen Seaborne

Judy Walruff

David Weinstock

Steve Wolfson

Debbora Woods-Schmitt

Brian Yee

Jeff Zimmerman

GUESTS:

Herschella Horton

Therese Martin

Maria Lawrence

DES

Attorney General's Office

Center for Arizona Policy

STAFF:

Barbara Guenther

Megan Hunter

Javan Mesnard

Senate

Administrative Office of the Courts

Senate

Patsy Osmon
Elizabeth Portillo
Courtney Riddle

Senate
Administrative Office of the Courts
House of Representatives

Representative Johnson called the meeting to order at 10:15 a.m. with a quorum present.

ANNOUNCEMENTS

Members introduced themselves and welcomed new member, Representative Andy Biggs.

Jeff Zimmerman announced his resignation after many years with the Committee. He has been a member since the Committee's inception and was part of bringing the Committee to fruition. He was thanked for his extraordinary dedication and service.

Senator Anderson will no longer be with this Committee as he has been appointed as chair of the House Education Committee.

MOTION: Judy Walruff made a motion to approve the minutes as submitted. Karen Adam seconded the motion and they were approved unanimously.

2005 LEGISLATION

Jeff Zimmerman discussed the Order of Protection proposal, which reflects one change since the last meeting. The change (page 3) adds language that would prohibit the plaintiff listed on an Order of Protection from contacting the named Defendant. Commissioner Adam explained that cross orders of protection were found to be unconstitutional. Currently, Arizona law prohibits cross orders of protection but does not prohibit either party from filing separate orders of protection. Members suggested that the language would hurt the bill and the proposal belongs in a separate piece of legislation so it can be dealt with separately.

Jeff also discussed the possibility of adding the language from the Committee's original bill regarding service of Orders of Protection to the Injunction Against Harassment statute. Members suggested that this matter be looked at in the future because more study is needed and there is not enough time before the 2005 session.

MOTION: Ellen Seaborne made a motion to strike the proposed language regarding plaintiff and defendant contact and forward the proposal to Legislative Council. Bill Fabricius seconded the motion. Approved unanimously.

Senator Brotherton suggested that all Committee legislative members should review the bills and sign as co-sponsors.

CUSTODY RE-WRITE WORKGROUP-STEVE WOLFSON

Steve Wolfson provided an overview of the Legislative Council draft of the custody bill and explained that no wording has been changed; the proposal simply reorganizes the section to make it flow and easier to read and understand. Members pointed out that one section seems to be missing. Steve and Megan agreed to review the draft word-by-word to ensure accuracy.

MOTION: Senator Brotherton made a motion that we adopt the Legislative Council draft and that Steve Wolfson review the draft to ensure it is identical to the Committee

draft before it is forwarded to the Legislature. Ellen Seaborne seconded the motion. Approved unanimously.

MARITAL MISCONDUCT - MARIA LAWRENCE

Maria Lawrence, private attorney, discussed a potential 2005 legislative proposal, wherein the court would have the option to consider marital misconduct when dividing property in a dissolution case. She provided the example of a man whose wife divorced him after 46 years of marriage for another relationship. The husband was ordered to give her half of his retirement and was required to pay spousal maintenance. In order to avoid losing spousal maintenance, the wife cohabitated with the new boyfriend instead of marrying him.

Maria explained that this does not bring fault back into divorce; instead, it gives the court the option of looking at the situation to determine fairness and equity. Hopefully, it would send a message to the parties to finish a marriage before starting a new relationship.

Members commented that the ramifications from this type of legislation are great because it is a system change and the courts will be burdened with trials on the marital misconduct issue. It would not serve as a deterrent and has been proven that the divorce rates have not gone down in states with fault divorce laws. This type of law may be more harmful to children, as research shows that not all children are harmed by divorce.

MARRIAGE ISSUES-BOB TURES FOR SEN. ANDERSON

Mr. Tures, marriage class provider in Flagstaff, reported on the follow-up study conducted on the marriage classes provided through the Department of Economic Security. The classes have been beneficial to many married couples in the state.

Members discussed whether it is the appropriate role of government to be involved in helping marriages. Mr. Tures commented that the classes impact the chance for successful marriages, but it is most beneficial if couples take classes prior to marriage. The report recommended that Arizona follow Oklahoma's lead in educating high school and college age young people.

Steve Wolfson mentioned that the American Bar Association has standardized curriculum for the high school level. Representative Johnson suggested that we ask Terrill Haugen's Education Prevention workgroup to look into that curriculum.

INTEGRATED FAMILY COURT -ELLEN SEABORNE

The three pilot courts have submitted their reports to the Administrative Office of the Courts (AOC). Ellen asked that the Integrated Family Court workgroup be reconvened to review the three reports to ensure they are aligned with the original Integrated Family Court recommendations produced from this Committee.

The AOC has requested funding from the Legislature for the pilot projects. Members suggested that if the Legislature provides the appropriation, it needs to be designated as a line item.

WORKGROUP REPORTS

Creditor Issues Workgroup – Ellen Seaborne

The first meeting was held this morning prior to the main Committee meeting. They are looking at a fairly large list of credit and bankruptcy issues. Members include chair Ellen Seaborne, Representatives Karen Johnson and Debbie McCune-Davis, attorneys Todd Franks and Gloria Cales, DRC members Linda Leatherman, Judy Walruff and Karen Kretschman. The group will meet again on January 21, 2005.

Court Procedures Workgroup – Brian Yee
Nothing to report.

Substantive Law Workgroup – Jeff Zimmerman
Nothing to report.

Education/Prevention Workgroup
Nothing to report.

NEXT MEETING & 2005 SCHEDULE

The next meeting will be held on January 21, 2005. The June 24th meeting conflicts with the annual statewide judicial education conference and the September meeting is on the Friday of Labor Day Weekend. Megan will revise the schedule and notify members.

ADJOURNMENT

The meeting was adjourned by Representative Johnson at 11:47 a.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – February 18, 2005

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Hon. Tim Bee
- Hon. Andy Biggs
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- William Fabricius
- Hon. Beverly Frame
- Hon. Gabrielle Giffords
- Nancy Gray
- Terrill J. Haugen
- Karen Kretschman
- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- Jay Mount
- Hon. Dale Nielson
- Ellen Seaborne
- Judy Walruff
- David Weinstock
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee

STAFF:

Megan Hunter
Barbara Guenther
Annette Mariani
Courtney Riddle

Administrative Office of the Courts
Senate
Administrative Office of the Courts
House of Representatives

GUESTS:

Konnie Neal

Administrative Office of the Courts

CALL TO ORDER

Senator Johnson called the meeting to order at 10:16 a.m. with a quorum present.

MOTION: Approve the minutes from December 10, 2004 with an amendment to indicate that Jodi Brown was present. The motion was seconded and approved unanimously.

ANNOUNCEMENTS

Senator Johnson announced that Representative Peter Hershberger, Chairman of House Human Services Committee, was recently appointed as the new co-chair for the Domestic Relations Committee.

Karen Kretschman, Administrative Office of the Courts representative, will be retiring in March. The Committee expressed their best wishes and appreciation to Karen for her dedication and contribution during her time with the Committee. Karen thanked the Committee for all their good work and friendship. Due to conflict scheduling with the many various committees on which he serves, Judge Dale Nielson will be resigning from the Committee. Bill Hart has moved on to other areas in his career and has also submitted his resignation.

Senator Johnson gave a brief update regarding Creditor Issues Workgroup. This group has been working on issues of finances in regard to the disposition of property at the time of divorce. There had not been enough concrete information to put together a bill for this session; however, another legislator introduced a creditor/divorce bill, but was too broad and is not expected to pass. The workgroup will continue to meet and build on some very productive ideas.

LEGISLATIVE UPDATE

Barbara Guenther, Research Analyst, Senate, presented information on Senate Bill 1045 and Senate Bill 1046 and other domestic relations-related bills.

Senate Bill 1045 – Child Custody; recodification

- Passed unanimously through the Family Services Committee
- No amendments
- Placed on 3rd read by consent
- Passed through Senate
- Assigned to House Human Services and Judiciary Committee

Senate Bill 1046 - Order of Protection; service

- Assigned to Judiciary and Family Services Committee
- Concerns by law enforcement and prosecutors; coalition against domestic violence working with these groups.
- Has not been scheduled for a hearing either in Judiciary or Family Services; too late to be heard

Senate Bill 1040 – Sexual Assault of a Spouse

- Assigned to Judiciary Committee on 1/31/05
- Passed Judiciary Committee; went to Committee of the whole, 2/10/05
- Passed out of 3rd read; vote 29-1-0.

- This bill changes the classification of sexual assault to a spouse to Class II Felony, same as sexual assault of any other person

Senate Bill 1058 – Community Property; innocent spouse; protection

- Has been held twice; the DRC Creditor Issues Workgroup has agreed to work on it during the interim

Senate Bill 1071 – Domestic violence fatality review teams

- This bill allows a city, town or county to establish a fatality review team to look at incidents of domestic violence that have involved a fatality for purposes of looking into specific factors that may have been involved
- Provision in bill to allow review team to look at incidents after all criminal prosecution has occurred
- Required team members include: representatives from law enforcement, the courts system, prosecutors office, domestic violence prevention program, victim of domestic violence, public health representative, and county medical examiner.
- Review teams are required to report data collected and any recommendations to the attorney general’s office, information will then be forwarded to the Legislature, the Governor and the Chief Justice of the Supreme Court

Concerns expressed regarding the bill are: minimum requirement for participation especially in the rural areas and no report to the attorney general (separate issue as to what government does and what the coalition does). A proposed amendment to the bill that changing all references from the coalition to the attorney general’s office was adopted. It is anticipated that in rural areas the collaboration will be among two or areas in order to accomplish a review. Discussion ensued.

Senate Bill 1381 – Spousal Maintenance, tax refund, set-off

- Sponsored by Senator Brotherton
- Not scheduled for hearing
- Would allow the clerk of the court to intercept state income tax refund on behalf of a spouse who had been awarded spousal maintenance, but was not receiving it

It was stated that the state child support agency now has the ability to collect child support and spousal maintenance through tax intercept. It allows a tax intercept for child support and spousal maintenance if the spousal maintenance was ordered at the same time as the child support.

Senate Bill 1145 – Marriage dissolution; misconduct

- Sponsored by Senator Johnson
- In statute today, when going through dissolution, a judge may not consider any prior misconduct on the part of either spouse. With this bill, a judge may now consider prior misconduct.
- Bill is out of Committee, and has been heard in caucus

Members discussed concerns about the bill: an increase of conflict between parties in dissolution, thereby increasing litigation, rolling back no-fault divorce. Some mentioned that this would help the judge to make an “equitable determination.”

2005 LEGISLATIVE PROPOSALS

Courtney Riddle – House Analyst, presented information on other domestic relations-related bills
House Bill – 2243 – Maternity; paternity; proceedings

- Recommendation that came out of Child Support Committee
- It rewords the child support options for disabled children for continued support past the age of majority.
- Has passed out of the Human Services Committee, going to the Judiciary Committee in the House.
- Not on an agenda

Megan Hunter stated that this came out of the Child Support Committee. Parties have been asking the court to extend child support beyond the age of majority on claims of disability due to ADD/ADHD. The Child Support Committee approved language that states that the person has to be severely mentally and physically disabled and qualifies this by “unable to live independently and be self-supporting.”

House Bill 2282 – Domestic Violence fatality review teams

- Bill going through the House, identical to Senate

House Bill 2527 – Child Support; children with disabilities

- Identical language of the child support for children who are disabled past the age of majority
- Passed through the Human Services Committee
- Slated to go through Judiciary, but not on an agenda

House Bill 2548 – Appropriation; web-based calculator

- Passed through the Human Services Committee
- In the Appropriation B Committee
- Provides a blank appropriation to create a web-based program to calculate child support arrearages
- Came out of Child Support Committee

Discussion ensued on how child support arrearages are currently calculated. Calculating arrearage is very time consuming and a comparison similar to calculating mortgage payments and making payments online was looked at by the workgroup. The cost projection of \$400,000 is anticipated to save \$2 to \$2.5 million a year. Duties would shift into the enforcement of child support cases, meaning there would be little to no impact on jobs.

House Bill – 2303 – Conciliation Court; lifting of stay

- Sponsored by Representative Nelson
- Stipulates that if one of the spouses does not participate in the Conciliation Services, the other one can petition for the court to lift the stay and allow either an annulment, a dissolution of marriage or legal separation to proceed
- Not assigned to an agenda

Dr Yee asked if the Committee had heard from any health care professionals on House Bill 2527 in regard to wording. The wording may not effectively address the issue.

The workgroup worked with parents of children with these disabilities and the Governor's Office of Disability. The wording was an agreement with these two groups with the understanding that further refining of the definition will need to be explored. An amendment was proposed to put in the ADA definition of disability. Dr Yee stated that there are many moderately handicapped individuals who are not independent, so a concern is that there is a loophole that states "severely" handicapped.

INTEGRATED FAMILY COURT –KAREN KRETSCHMAN

Karen stated that this committee and the IFC workgroup performed a great deal of work over a long period of time to comply with the statute to create a state plan for an integrated family court in Arizona. The legislative session that immediately followed the completion of this plan was dealing with severe budget problems that impacted the proposal. As a way to keep the idea going, the Supreme Court issued Administrative Order 2003-23, which called for a creation of three integrated family court pilot projects (Maricopa, Coconino and Pinal County). Pinal County and Coconino County have struggled due to budgetary problems.

Coconino County - Karen has not heard that the board of supervisors has approved any money for the IFC. Ellen Seaborne stated that there are still talks pending and a survey was done on how much money would be brought in through the subsequent filing fee, which came out less than projected. The board of supervisors seems to be behind this thus far.

Pinal County - Submitted a report in December, 2004. Judge O'Neil announced verbally in the AJC meeting that their pilot will continue to operate even though they have not heard from their board of supervisors. They are struggling to isolate cases that have overlapping family issues. They have an appointed presiding judge and continue to struggle without any money. The Supreme Court has submitted a request for a legislative appropriation to help fund the pilot projects.

Maricopa County - This pilot is continuing with some local money. Judge Norman Davis has new plans to streamline their IFC plan. In essence, he is proposing that the custody issue be determined by the juvenile judge and the remaining family court issues be determined by the IFC judge. The results, thus far have lead to the surprise that more cases have not been generated. The final reports of these three pilots are due to the AJC next December, 2005, assuming that all have fully implemented ongoing plans.

WORKGROUP REPORTS

Integrated Family Court – Ellen Seaborne

The workgroup has not met. There will be a short meeting today, after the general meeting to look at all the programs and see what they have been able to do with the basic framework that was given to each of them. Even though there will not be funds this year, a framework is available to look at and get an overall evaluation. Jobs will be assigned and another meeting will be scheduled.

Creditor Issues Workgroup – Ellen Seaborne

This workgroup has met a few times. Judge Mark Armstrong will be joining this group. Ellen reported that Gloria Cales, a domestic relations attorney in Maricopa County, with a very strong creditor background and has offered to take a look at codifying the current case law into our statutory provisions. An idea came about regarding a mini pre-nuptial agreement that goes out at the same time a couple would apply for a marriage license. It could be a one page form that would make couples aware of what could happen to their property when it is co-mingled and have an opt out if they do not wish to be bound by their spouse (i.e. securing credit during marriage). Another idea that was discussed was a post-nuptial form.

Court Procedures Workgroup – Brian Yee

No update at this point.

Education/Prevention Workgroup- Terrill Haugen

Dr. Irwin Sandler will give a presentation in Pima County at the invitation of Commissioner Adam. Terrill will get that information and report back to the Committee. Senator Johnson mentioned that during the Creditor Issue meeting this morning, members discussed the possibility of the State Bar presenting to high school seniors. This could be re-visited.

Substantive Law Workgroup – Vacant

Jeff Zimmerman's resignation from the Committee leaves this workgroup without a chair. Senator Johnson appointed Steve Wolfson to serve as the new chair.

SPECIAL PRESENTATION – KONNIE NEAL, COMMITTEE ON RULES OF PROCEDURE IN DOMESTIC RELATIONS CASES.

Konnie Neal reported that the DR Rules Committee is approaching the final stages of their work of the approval process. Judge Armstrong is the chair and both he and Konnie will be presenting next week to the Committee on Superior Court. This started out to be a one year project but has been extended to 18 months. The Committee consists of 16 members that have been chosen very strategically to represent as many counties as possible. This Committee also had 13 workgroups to cover all sections. Konnie Neal covered the Mission of the Committee, the Goals of this Committee, and the various Unique Rules of AARLP. The Committee met on February 10, 2005 and voted to approve the rules as they are set presently. The timeline for Approval Process was also reviewed. The rules are posted on the Supreme Court website.

Karen urged that the Committee pay particular attention to Rules 72, 73 and 74. These rules are to serve a particular purpose and that is to make sure that a *pro se* litigant or someone not familiar with the courts can read the rules and understand how this particular role is to be used. Comments and input on these rules are greatly encouraged and appreciated.

Konnie explained that the goal for Section 14, which is the Family Law Forms (comprised of 13 forms), will be electronic versions of Family Law Forms. These forms will be available on the Supreme Court website and in Self-Service Centers.

The Committee thanked Konnie and the Committee on a job well done and for putting forth a good product.

CALL TO THE PUBLIC

Danny Cartagena raised the question: “Why or how can reimbursement for cash assistance from the state for child support be sought against the defendant without custody being established or appointed to either party?”

Megan Hunter stated that this discussion is presently going on between the Courts and the State Child Support Agency through the Child Support Committee. The workgroup will be meeting in June and will invite Mr. Cartagena to attend.

Joshua Chavez gave a brief perspective of Mr. Cartagena’s case thus far. A few questions were raised which Mr. Chavez asked the Committee to comment on.

- Why would DES not consolidate their case with the child custody case which is still inactive?
- Why DES is not looking at what the court has already done so far as the custody which has already been granted?
- How can there be allocated child support when parenting time has not been established?
- What are some of the things that this Committee is doing in terms of these questions?
- Discussion ensued.

NEXT MEETING

The next meeting will be held on Friday, March 18, 2005.

ADJOURNMENT

The meeting was adjourned by Representative Johnson at 12:25 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – April 8, 2005

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

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- Hon. Karen Adam
Lucille Antone-Morago
Hon. Tim Bee
Hon. Andy Biggs
Hon. David Bradley
Hon. Bill Brotherton
Jodi Brown
Sidney Buckman
Kat Cooper
William Fabricius
Hon. Beverly Frame
Hon. Gabrielle Giffords
Terrill J. Haugen
Linda Leatherman
Ella Maley
Hon. Debbie McCune-Davis
Jay Mount
Ellen Seaborne
Judy Walruff
David Weinstock
Steve Wolfson
Debbora Woods-Schmitt
Brian Yee

STAFF:

Megan Hunter
Barbara Guenther
A. Teanee Duran

Administrative Office of the Courts
Senate
Administrative Office of the Courts

GUESTS:

Mary Bucci
Honorable Norm Davis
Therese Martin
Annmarie Mena

Superior Court in Maricopa County
Maricopa County Family Court Presiding Judge
Arizona Attorney General's Office
Division of Child Support Enforcement - DES

CALL TO ORDER

Senator Johnson called the meeting to order at 10:17 a.m. without a quorum present.

ANNOUNCEMENTS

Senator Johnson announced that long-standing member, Nancy Gray-Eade, has resigned from her position on the Committee. She served on the Committee for several years and made significant contributions both as a member and as part of several workgroups, including chairmanship of one.

LEGISLATIVE UPDATE

Barbara Guenther, Research Analyst, Senate, presented information on Senate Bill 1045 and Senate Bill 1046 and other domestic relations-related bills. Annmarie Mena, Department of Economic Security, Division of Child Support Enforcement, reported on child support-related bills.

Senate Bill 1045 – Child Custody; recodification

- Passed Senate and House
- Transmitted to the Governor
- Awaiting signature

Senate Bill 1046 - Order of Protection; service

- Held in the Senate
- Dead

Senate Bill 1313 – Electronic payments; child support

- Passed Senate and House
- Transmitted to the Governor
- Awaiting signature

Senate Bill 1040 – Sexual assault; marital status repeal

- Passed out of Committee of the Whole and the House
- Awaiting Third read

Senate Bill 1306 – Child abuse restitution

- Became a strike everything in Appropriations
- Changed to bill on immigration enforcement

Senate Bill 2428 – Emancipation of minors

- Passed Senate and House
- Transmitted to Governor
- Awaiting signature

Senate Bill 1145 – Marriage Dissolution misconduct

- Cleared Rules
- Cleared Caucus
- Awaiting debate in Committee of the Whole

House Bill 2249 – Child support, disability, paternity

- Held in House Judiciary
- Offered as a strike everything in the Services
- Third read
- Passed Senate
- Awaiting Third Read in the House

House Bill 2548 – Appropriation; web-based calculator

- Heard in Human Services
- Not scheduled for hearing although exceptions can be made for appropriation related bills

GUARDIANSHIPS; GRANDPARENTS

Megan Hunter informed the Committee that a request had been made that the Committee discuss the possibility of an expedited process for guardianships in light of the high numbers of grandparents raising grandchildren. Since the time of the request, Pima County offered information on their expedited process and that information was forwarded to the requester, thereby resolving the issue and eliminating the agenda item.

INTEGRATED FAMILY COURT; MARICOPA COUNTY – JUDGE NORMAN DAVIS & MARY BUCCI

Mary Bucci, Family Court Administrator in Maricopa County, explained the proposed changes to Maricopa County's Integrated Family Court (IFC) program. Cases were being moved from judges who had substantial history with families to judges who did not know anything about the case.

Judge Davis, Presiding Family Court Judge in Maricopa County, explained that the original idea for the IFC of "one judge, one family" is not realistic. The juvenile court has more resources available to it including, court appointed attorneys, Foster Care Review Board reports, therapists, counselors, parenting aids, etc. The only nexus between family and juvenile court for families is the custody decision. The IFC Committee in Maricopa County concluded that because of the various resources available in juvenile court, a juvenile judge is in a better position to make more informed decisions regarding custody and parenting time. In addition, the environment in a juvenile court setting is one of cooperation and cohesiveness, which generally leads to a stipulated custody and parenting time schedule. As a result, The IFC Committee proposed that the family will receive better services and the family unit will be better preserved under this process than that experienced in the pilot project.

David Weinstock expressed concern regarding what happens when allegations of abuse have been made after family court is involved. Does the case get transferred to a juvenile court at that time? Judge Davis explained that juvenile does not get involved unless a dependency petition has been filed.

David Weinstock also expressed concern about the involvement of Child Protective Services (CPS). How does one deal with allegations that are made, more as a tactic, rather than actual abuse? He pointed out that, as a custody evaluator, he finds that proceeding with an evaluation once an allegation of abuse has been made is very difficult and suggested that CPS be more involved with family court, this measure could possibly alleviate problems that presently exist.

Ellen Seaborne stated that she has had several cases where allegations of abuse have been made and CPS was involved. Unfortunately, many of the allegations that are made in these particular situations end up being unsubstantiated or false allegations. Ellen stated that these cases can go on for at least a year, if not longer, and the parent who the allegation was made against is kept from seeing the children, which leads to the need for a reunification process. Now, in addition to a dissolution proceeding taking place, a reunification process is necessary, creating a tremendous burden for the parents and children.

Ellen Seaborne asked Judge Davis another question regarding the fact that during a dependency proceeding, the Judge may be referring to A.R.S. § 25-403 but the dependency attorney will be looking at juvenile code. This creates a problem as to how the two laws are going to “mesh” and how procedures will need to be refined to make these types of proceedings more clear in relation to which laws are applicable.

COURT PROCEDURES WORKGROUP

Brian Yee explained that he, Beverly Frame and Steve Wolfson met with Tim Nelson from the Governor’s office, to encourage the Governor’s office to give due weight to judicial candidates who have experience in family law. They expressed the concern of the Domestic Relations Committee that one-third of a judge’s tenure is spent on a family law calendar and candidates should have, at least, some working knowledge of family law. Dr. Yee informed the committee that Tim Nelson understood the committees’ position on the issue and the office would take the suggestion into consideration.

Dr. Yee mentioned that a highly respected and qualified family law attorney from Phoenix, Bruce Cohen, recently applied to serve on the Maricopa Superior Court bench and suggested that the Committee send a letter of support for his application and/or other respected family law practitioners. The Committee agreed to forward the task of drafting a letter of recommendation to the workgroup, which will meet after the formal meeting.

A quorum was reached at 10:47 a.m.

**MOTION: Approve the February 18, 2005 minutes as submitted.
Seconded.**

VOTE: Minutes approved unanimously.

WORKGROUP REPORTS

Creditor Issues Workgroup – Ellen Seaborne

This workgroup drafted a proposal that would allow for a simplified prenuptial agreement limiting the ability of spouses to contract joint, common or community debt. This would inform individuals who marry of their rights regarding creditor issues. This workgroup has discussed the possibility of a 15-20 minute class, possibly via video, that would provide information on their rights and responsibilities prior to the marriage. Individuals would have the opportunity to “opt out” of the community property area after learning their rights and responsibilities. The idea of this proposal is to educate and inform “from the beginning”, because creditor issues are very difficult to fix after the fact.

Dr. Yee commented that the Family Law Rules of Procedure Committee has been working to put legal jargon into “simple language” for those who are not familiar with law vocabulary to comprehend. Ellen Seaborne will take this comment back to the workgroup and possibly consider simplifying the language without compromising the intent.

Court Procedures Workgroup – Brian Yee

Dr. Yee explained that in August, family law attorney, Helen Davis, spoke to the Committee on the topic of judges who routinely interview children in domestic relations cases. The workgroup discussed the issue, which led to two concerns: (1) this process could lead to due process problems, and (2) there are problems associated with training and competency to conduct such interviews.

As a result of these concerns, Dr. Yee gave a presentation on December 2, 2005, to the Maricopa Superior Court judges on judicial interviewing. A majority of the family court bench attended and the presentation is available on DVD for review by those who could not attend, as well as for judges to use for future reference.

Megan Hunter informed the committee that a separate training on interviewing children was provided at the Domestic Relations Judicial Conference in February, 2005. Approximately 50 judges from across the state attended the training. This training is also available on video.

David Weinstock suggested that the recordings of judge’s interviews be used to train judges in the future.

Education/Prevention Workgroup- Terrill Haugen

This group is going to try to work with the Creditor Issues workgroup on the education aspects of creditor issues.

CALL TO THE PUBLIC

There were no comments from the public.

NEXT MEETING

The next meeting will be held on Friday, June 17, 2005.

ADJOURNMENT

The meeting was adjourned at 12:45 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – August 26, 2005

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Theresa Barrett for Janet Scheiderer
- Hon. Tim Bee
- Hon. Andy Biggs
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Daniel Cartegena
- William Fabricius
- Hon. Beverly Frame
- Hon. Gabrielle Giffords
- Terrill J. Haugen
- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- Jay Mount
- Ellen Seaborne
- Russell Smolden
- Judy Walruff
- Wanda Weber
- David Weinstock
- Dale Wiebusch
- Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Megan Hunter
Annette Mariani

Administrative Office of the Courts
Administrative Office of the Courts

GUESTS:

Manuel Cota
Ivo Ortiz
Megan Scott for Herschella Horton

Luv Social Services, Inc.
Father's Luv/Barrio Centro
DES, Legislative Services

CALL TO ORDER

The meeting was called to order at 10:23 a.m. by Representative Hershberger without a quorum present.

ANNOUNCEMENTS

New member, Dale Wiebusch from the Arizona Coalition Against Domestic Violence, was introduced. He was appointed by Senate President Bennett to serve in the position of representative of a statewide coalition against domestic violence. Mr. Wiebusch replaces former member, Bill Hart.

The minutes will not be considered until a quorum is reached. If a quorum is not reached, the July minutes will be placed on the next meeting agenda.

Members broke from the regular meeting at 10:30 a.m. and gathered in workgroups to discuss their respective issues.

WORKGROUP REPORTS/UPDATES/DISCUSSION

SUBSTANTIVE LAW – COMMISSIONER KAREN ADAM

Commissioner Adam reported for the Substantive Law Workgroup. The group discussed and will continue working on the following in future meetings:

- Parent Education in Child Support Cases. Conform statute to make parent education “discretionary” in child support cases. In IV-D child support cases, most parents do not attend classes and many courts do not apply statutory consequences when they do not attend. The proposed amendment would track current practice.
- Parenting Coordinator Terminology. Add definition of parenting coordinator in statute to match the proposed Rules of Procedures in Domestic Relations cases that may be adopted as early as January 2006.
- Paternity Establishment. Begin discussing a way to clean up the processes between vital records and the courts. Statute is not being followed in many cases.

EDUCATION & PREVENTION – WANDA WEBER

Wanda Weber reported that the group discussed the education program for children that is being piloted in Maricopa County in collaboration with ASU’s Prevention Research Center and Dr. Irwin Sandler. The group also discussed marriage education and now has plans to contact the Marriage and Relationship Skills Commission to gather information and/or collaborate. They also discussed funding issues and will report at the next meeting.

CREDIT ISSUES WORKGROUP – MEGAN HUNTER

Megan Hunter reported in Ellen Seaborne’s absence. The workgroup met earlier today and discussed the priorities outlined by the full DR Committee in July. They are amending the marriage education proposal as directed by DRC. The proposal tracks the parent education statutory scheme by authorizing the Administrative Office of the Courts to administer the

program, set minimum standards and develop a video and/or web-based program. The proposal will include a request for an appropriation.

The proposal will include a requirement that pre-nuptial agreements be recorded with the Secretary of State and also require that entity to set up and maintain a statewide registry and set any fees accordingly.

INTEGRATE FAMILY COURT – MEGAN HUNTER

Megan Hunter reported in Ellen Seaborne's absence. The IFC workgroup will meet immediately following this meeting today.

NEXT MEETING

The next meeting will be held on Friday, September 22, 2005. from 10:00 – 2:00 pm, Arizona Courts Building, 1501 W. Washington, Phoenix – Conference Room 345A/B.

ADJOURNMENT

The meeting was adjourned at 1:38 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – November 18, 2005

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Theresa Barrett
- Honorable Tim Bee
- Honorable Andy Biggs
- Honorable David Bradley
- Honorable Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Daniel Cartegena
- William Fabricius
- Honorable Beverly Frame
- Honorable Gabrielle Giffords
- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- Jay Mount
- George Salaz
- Ellen Seaborne
- Russell Smoldon
- Judy Walruff
- Wanda Weber
- David Weinstock
- Dale Wiebusch
- Hon. Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Megan Hunter
Annette Mariani
Kim Martineau
Courtney Riddle

Administrative Office of the Courts
Administrative Office of the Courts
Senate
House of Representatives

CALL TO ORDER

The meeting was called to order by Representative Hershberger at 10:14 am without a quorum present.

ANNOUNCEMENTS

New member, George Salaz, who was appointed by the Senate President Bennett as a non-custodial parent representative to the Domestic Relations Committee was introduced. Committee members introduced themselves to Mr. Salaz.

INTEGRATED FAMILY COURT – ELLEN SEABORNE

In the September meeting, the Integrated Family Court Workgroup was asked to come up with an estimate for two Integrated Family Court Pilot Programs. Ellen Seaborne provided an update on the progress since the September meeting.

Discussion from September Meeting:

- Judge Newton from Coconino County previously estimated a one-year \$300,000 cost for a pilot program.
- Paul O’Connell from Pinal County estimated a one-year cost of \$250,000 for a pilot program in Pinal County.
- The pilot program should run two years to obtain good data.
- A bill would need to be drafted that follows the ten recommendations to the extent possible.

The workgroup did not have opportunity to meet but will meet after today’s meeting to discuss and begin drafting a legislative proposal that requests an appropriation for a two-year pilot program for two counties that follows the original IFC recommendations to the extent possible and giving the Domestic Relations Committee oversight over the programs. The workgroup will submit a legislative proposal to the Domestic Relations Committee at the December meeting for a vote.

CREDIT ISSUES WORKGROUP – ELLEN SEABORNE

The workgroup has continued developing legislative proposals based on this Committee’s feedback.

Education Component:

Beverly Frame joined the workgroup to provide input from the Clerk of Superior Court viewpoint. The Clerks support the marriage education proposal; however, some if not most counties would not have staff or facilities available to facilitate viewing of the educational video and answer resulting questions. The clerks would also encounter costs once the program is implemented, including filing the certificate, attaching it to the marriage license, scanning it in and archiving. An increase for a marriage license fee to cover a surcharge to administer the program could possibly help with the clerks being reimbursed a certain amount.

The workgroup discussion included:

- \$5.00 for administrative fee.
- What is the easiest way to disseminate this to the public that would not involve a bureaucracy of each county having a place to do this and an administrator to oversee it. The video could be made available on the Supreme Court’s website. After the video is viewed, the couple could print out a certificate that would be submitted to the Clerk’s office upon application for a marriage license.
- Creating a central registry with the Secretary of State’s Office for pre- and post-nuptial agreements and associated fees.
- Tax or surcharge on marriage license fee.

Members mentioned that the Government Information Technology Agency (GITA) should be contacted regarding the central registry. The workgroup will continue analyzing where the best place would be to locate the statute and the legal effects of the proposed legislation.

Credit Component

Ellen explained the draft proposal that will be submitted for the Committee to review regarding a provision that credit companies must have signatures from both spouses if they want to enforce against both, and a provision that the division of debts can still be determined by the court or by the parties' signature agreement.

Members discussed the impact of such legislation including the impact on an individual trying to get credit. Members suggested that the workgroup add additional language to clarify that this requirement (referring to creditors) should not affect A.R.S. §25-213 or any other place where this would exist that would permit the courts to make the equitable allocation. Concerns were raised that there needs to be more clarity before going forward to legislation.

CALL TO THE PUBLIC

There were no public members in attendance.

WORKGROUP REPORTS

SUBSTANTIVE LAW – DANIEL CARTEGENA

Discussion centered on A.R.S. § 25-803(D) to possibly reduce bad behavior that this statute may encourage. Currently, the law does not provide encouragement for both parents to work together in allowing shared time with a child before a divorce or legal separation have been filed. The group discussed the possibility of having a temporary post-separation parenting time consensus agreement that would be submitted to the court for review and approval. This would put a mechanism in place to encourage parents to begin thinking of the children early on in the process of separation. This could be accomplished through a quick hearing with a judge or expedited mediation service and a submission of a three-month temporary parenting plan with flexibility. The idea is to set up a workable and reasonable schedule of time with both parents before an actual petition of divorce or legal separation is filed. The group will look at the conciliation statutes as a possible place to locate such language.

COURT PROCEDURES - BRIAN YEE

The workgroup focused on the issue of the loss of resources to the community with emphasis on custody evaluators and court appointed experts due to the high likelihood of professional board complaints. David Weinstock has gathered background data including a study of nationwide complaints out of custody evaluations. A study in California over a nine-year period (1990-1999) reflected 1,660 board complaints in custody evaluations with one finding against a psychologist.

Arizona has the fourth highest rate of board complaints. It is believed that the statistics gathered were not accurately tracking the board complaints related to custody evaluations. Many of the complaints came under “unprofessional contact” and not under “erroneous decisions” in custody evaluations. Due to this issue the roster of individuals who are willing to conduct this type of work has decreased causing an increase in cost, which ultimately affects the community.

The group discussed the consideration of a “judicial gatekeeper” bill. When a litigant has concerns on the appropriateness of the work of an evaluator, a complaint would be addressed by the judge who has oversight of the case instead of the board. If the judge has determined that there has been impropriety or incompetence, the judge can then rule that it crosses the threshold for a professional board complaint. The two legal precedences for this are: 1) the law that shields physicians who conduct court-appointed evaluations from professional board complaints as a result of that work, and 2) the law that authorizes a “judicial gatekeeper” system for forensic psychologists who evaluate sex offenders. A psychologist’s opinion is not subject to be used as a board complaint in these cases.

The proposed bill would provide an additional filter and some protection for professionals doing this work which could reduce the number of frivolous or inappropriate complaints. A pattern has shown that these complaints are usually entered just prior to the time that the appointed expert is due to testify.

Additionally, when a board complaint is filed, a new evaluation must be conducted, causing more costs and delaying the case another six to eight months making an impact on the children involved. This issue will be discussed further in the December meeting.

NEXT MEETING

The next meeting will be held on Friday, December 16, 2005 at the Arizona State Courts Building, 1501 W. Washington, Phoenix.

ADJOURNMENT

The meeting was adjourned at 12:54 pm.

DOMESTIC RELATIONS COMMITTEE

****REVISED** Meeting Minutes –December 16, 2005**

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Karen Adam
- Lucille Antone-Morago
- Theresa Barrett
- Honorable Tim Bee
- Honorable Andy Biggs
- Honorable David Bradley
- Honorable Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Daniel Cartagena
- William Fabricius
- Honorable Beverly Frame
- Honorable Gabrielle Giffords
- Linda Leatherman - Telephonically
- Ella Maley
- Hon. Debbie McCune-Davis
- George Salaz
- Ellen Seaborne
- Russell Smoldon
- Judy Walruff
- Wanda Weber
- David Weinstock
- Dale Wiebusch
- Hon. Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Susan Marrero
Megan Gnagy
Courtney Riddle
Barbara Guenther

Administrative Office of the Courts
House of Representatives
House of Representatives
Senate

CALL TO ORDER

The meeting was called to order by Senator Johnson at 10:20 am with a quorum present.

ANNOUNCEMENTS

Senator Johnson thanked the Committee for their commitment and participation in this very important work. Commissioner Adam thanked the Committee for their show of support during her interview process for judicial appointment to the Pima Superior Court.

APPROVAL OF MINUTES

MOTION: Russell Smoldon moved that the minutes from July 22, 2005, August 26, 2005, September 22, 2005 and November 12, 2005 be approved. Seconded by Honorable Karen Adam.

VOTE: Minutes approved unanimously.

COMMENT: On the November 18, 2005 minutes, Judge Wing stated that the statement on page four of the second paragraph should read: **not** the judge with oversight of the case. Tape will be reviewed to ensure accuracy.

INTEGRATED FAMILY COURT – ELLEN SEABORNE

Ellen Seaborne explained a proposed bill on the integrated family court pilot programs. Ellen thanked the legislative analysts for their work on the bill. Highlights:

- Recommendations of Committee were taken stating that there will be two pilot programs in two separate counties.
- Counties cannot be named on the bill; instead, population will be listed as the criterion.
- Monies
 - Monies will go to the Administrative Office of the Courts (AOC) to administer the programs (to supplement staff time)
 - The remaining amount will go to the two counties.
- Reports
 - AOC would be required to make a quarterly report to the Legislature as to spending and allocation of the funds
 - Counties will report to the AOC
 - AOC will forward the report to the Domestic Relations Committee
- The counties would be responsible for the evaluation process. The vision is that each county have a pre-test and a post-test.

As discussed in previous meetings, the cost estimates for the two counties under consideration, are:

- Pinal County - \$350,000/year
- Coconino County - \$500,000/year

The group agreed that in order for the programs to be successfully evaluated and to provide meaningful data and conclusions, they will need adequate funding for the full two years. Also, there needed to be funding for the program to be administered and evaluated through the Administrative Office of the Courts. The group agreed that \$25,000 per year would be

appropriate. The group agreed that at least \$875,000/year is necessary to accomplish that goal. The total allocation of \$1,750,000 for the two-year period will be needed for the pilot programs.

MOTION: Russell Smoldon made a motion to accept the Integrated Family Pilot Program legislation. Commissioner Adam seconded.

VOTE: Approved unanimously.

CREDIT ISSUES WORKGROUP – ELLEN SEABORNE

Ellen Seaborne explained that proposals #1 and #2 will not go forward this year but #3 is still on the table:

1. Credit Card Proposal
 - 25-214 – Management and Control
 - 25-215 – Liability of community property and separate property for community and separate debts

2. Marital Education

Dr. John Horan, Arizona State University, Education & Psychology Department, recently demonstrated a software package to staff and a member that could be used for purposes of the marital education proposal. The Committee suggested that Dr. Horan demonstrate the software for the full Committee. The Committee will examine and discuss the following before forwarding a proposal for marital education legislation:

 - Mandatory vs. volunteer
 - May need to have a piece on wills – blended families
 - How does this impact rural area?
 - Is this done in other places?
 - How will individuals know that they are required to take this class?
 - How will opt-out affect the judiciary?
 - Video length
 - Education is definitely in the best interest of everyone and needs to be on the front end.
 - Courts are dealing with emotions of people who may not consider the law.
 - It was suggested that there could be information mailed out and put on a website to see how many hits are made on this site.
 - Choose one county as a pilot program and work on what needs to be re-shaped.
 - For those individuals that would like to obtain more information, the website could be set-up with tabs that will provide links to additional resources.
 - Should it be required?
 - What happens if there is no computer access?
 - Should video be 20 minutes or do the subject areas need to be limited?
 - Is there a way to do an option and is there a way to do a pilot program?

Representative Anderson was invited to speak to the Committee. He offered support of this idea. The understanding is that individuals will have access when

they walk in to apply for marriage license. This type of information is available for divorce when the parents have children.

The Marriage Skills Commission allocated \$1 million/year toward a marriage education program and they are currently sending it out for bid. It was suggested that the amount, \$30,000, that is needed to produce the video for purposes of the marital education proposal could be brought to the commission as part of this budget. A proposal from the Department of Corrections was sent to the Commission to partner with them. Those individuals coming out of prisons have families that may need help in this area of education. Representative Anderson disseminated an article “The Decline in Marriage: What To Do” from Princeton Bookings, a bi-partisan article on where marriage is today and what can be accomplished through marriage education classes. The Committee will continue working on this proposal with a recommendation to consider Representative Anderson’s suggestion to include \$30,000 from the marriage education fund.

3. Pre-Nuptial and Post-Nuptial Agreements Registry

The proposal would require the Secretary of State’s office to create a registry for pre-nuptial and post-nuptial agreements with the intent of informing creditors. This will protect both the creditor and the spouse. Megan Hunter met with the Secretary of State to discuss the proposal. They are agreeable but have questions:

- How many would be filed annually?
- What are the start-up costs?
- Filing fee to handle ongoing costs?

MOTION: To accept the Committee’s recommendation to hold off on legislation for the credit card proposal and marital education proposal. **Seconded.**

VOTE: Approved unanimously.

MOTION: To move forward with pre- and post-nuptial registry legislation. **Seconded.** Clarification: The duties of the clerk are to see that applicants for marriage license meet the laws of the State of Arizona. They will be the accepting agency for the certificates; they will not have something in the clerk’s office to facilitate this.

VOTE: Approved unanimously.

COMPLAINTS PROCEDURE FOR CUSTODY EVALUATORS – REPRESENTATIVE LUJAN

In addition to his work at the Legislature, Representative Lujan works as an attorney with an organization – Justice for Children. He explained what happens in some cases when there is a mental health professional that is treating a child and there are issues of abuse. The abuser files a complaint against the mental health professional that forces the mental health professional off the case. His proposal would require that the complaint has to be filed by both parents in order for it to be a valid complaint or the complaint goes to the judge overseeing the case and the judge has the opportunity to review complaint and make a determination as to merit. The purpose of the proposal is to weed out frivolous complaints and preventing the mental health professional from advocating in behalf of the child. Members discussed the issues that have been raised by custody evaluators. Their concerns focus on the threat of board complaints. The proposed bill would

provide an additional filter and some protection for professionals doing this type of work which could ultimately reduce the number of frivolous or inappropriate complaints.

Dr. Tapia addressed the committee to discuss the goal of Representative Lujan's bill. It is focused on children's welfare and their rights to services. Judges need the input from those working with the children. If a parent decides that he/she is not satisfied with the documentation that is provided by the mental health professional, that person can file a complaint with the board causing the mental health professional to be removed from the case, thereby leaving the children with no voice. If subpoenaed by one parent, the input provided is viewed as biased. Senator Johnson stated that this is an area that will be pursued and the Committee will wait to see how the bill has develops. Representative Hershberger and Representative Lujan will meet and bring back information for the January meeting.

POST-SEPARATION PARENTING TIME PROPOSAL – WILLIAM FABRICIUS

Bill Fabricius discussed the post-separation parenting time proposal. The Committee suggested that the wording OF A.R.S. 25-803(D) may result in unintended consequences. This will be further discussed in the Substantive Law Workgroup.

WORKGROUP REPORTS

SUBSTANTIVE LAW – WILLIAM FABRICIUS FOR STEVE WOLFSON

This group will meet online next month and bring some suggestive language to the committee in reference to 25-803, paragraph D.

EDUCATION AND PREVENTION – WANDA WEBER

The workgroup will research:

- other states' pre-marriage education programs
- web-based marriage education opportunities
- a pilot program.

COURT PROCEDURES - BRIAN YEE

There was discussion on materials presented. The workgroup will continue working on the proposal from Representative Lujan.

CALL TO THE PUBLIC

There were no public members in attendance.

NEXT MEETING

The next meeting is scheduled for January 20, 2006. As part of the Creditor Workgroup's meeting on January 20, 2006, Larry Hirsch will give an overview on bankruptcy and how that affects spousal issues. All are invited to attend. Megan Hunter will send out more information. As a note, the Domestic Relations Committee meeting scheduled for October 20, 2006 may need to be changed. The DR Training falls in that timeframe.

ADJOURNMENT

The meeting adjourned at 1:30 pm.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes –January 20, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

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Hon. Karen Adam
Lucille Antone-Morago
Theresa Barrett
Honorable Tim Bee
Honorable Andy Biggs
Honorable David Bradley
Honorable Bill Brotherton
Jodi Brown
Sidney Buckman
Daniel Cartagena
William Fabricius
Honorable Beverly Frame
Honorable Paula Aboud
Linda Leatherman
Ella Maley
Hon. Debbie McCune-Davis
George Salaz
Ellen Seaborne
Russell Smoldon
Judy Walruff
Wanda Weber
David Weinstock
Dale Wiebusch
Hon. Thomas Wing
Steve Wolfson
Brian Yee

STAFF:

Megan Hunter
Kim Martineau
Courtney Riddle

Administrative Office of the Courts
Senate
House of Representatives

GUESTS:

Janet Sell
Konnie Neal

Office of the Attorney General
Administrative Office of the Courts

CALL TO ORDER

The meeting was called to order by Senator Johnson at 10:13 a.m. with a quorum present.

ANNOUNCEMENTS

No announcements were made.

APPROVAL OF MINUTES

MOTION: Commissioner Adam made a motion to approve the December 16, 2005 minutes with amendments to the Integrated Family Court section and changing the attendee section to reflect that Jodi Brown was in attendance.

SECOND: George Salaz seconded the motion.

VOTE: Unanimous with amendments.

AMENDMENTS: The December 2005 minutes, Integrated Family Court section is amended to:

As discussed in previous meetings, the cost estimates for the two counties under consideration, are:

- Pinal County - \$350,000/year
- Coconino County - \$500,000/year

The group agreed that in order for the programs to be successfully evaluated and to provide meaningful data and conclusions, they will need adequate funding for the full two years. Also, there needed to be funding for the program to be administered and evaluated through the Administrative Office of the Courts. The group agreed that \$25,000 per year would be appropriate. The group agreed that at least \$875,000/year is necessary to accomplish that goal. The total allocation of \$1,750,000 for the two-year period will be needed for the pilot programs.

2006 LEGISLATIVE UPDATE

Megan will keep members updated on a weekly basis throughout session. Those who are unable to attend a hearing in person have the ability to submit comments via the Internet that can be read into the record.

Domestic Relations

SB 1267

Integrated Family Court (DRC)

- Requires the Supreme Court to implement a two-year Integrated Family Court pilot program in two counties each with a population of less than 500,000.
- Requires the Supreme Court to submit quarterly reports to the Domestic Relations Committee and include information from those reports in the Committee Annual Report.
- Add three years to the life of this Committee.
- Contains an emergency measure that would make it effective upon the Governor's signature.
- Requires two-thirds vote because of the appropriation provision.

Discussion: Sen. Johnson encouraged members to come to Family Services Committee. It meets at 1:30 every Monday for about the next four weeks.

Child Evaluations; Domestic Relations; Complaints (DRC)

This bill has not yet been filed but Representative Hershberger and Representative Lujan are close to finalizing language and getting the bill introduced. The bill would require litigants to bring their complaints and court-appointed evaluators to the judicial officer instead of directly to the board of psychologist examiners. Bringing these complaints before the board ultimately harms the families and children because evaluators are afraid of putting the necessary information in their reports to the court for fear of a complaint being filed by one of the parties. This is a problem across the country

but other states go to great lengths to provide fairness to the families and those who work with them.

Senator Johnson will explain to her colleagues that this is not an immunity bill, it is a gatekeeper bill. Ellen explained that it is difficult to get custody evaluators because they are pulling back on their language – the court ends up with a milk-toast evaluation because evaluators are afraid to say what has to be said because if they say that a parent is alienating against the other parent, they are wide open for a complaint. Evaluators cannot say what needs to be said. It does not help the families and especially the kids.

Members explained that the focus of this bill should not be on custody evaluators. The biggest reason to pass this is because there are children not getting treatment because of the threat of board complaints.

Sen. Johnson encouraged members to let their legislators know that this bill is important and they need to know the distinction

MOTION: Sidney Buckman to move this proposal as presented in the draft be forwarded for legislation.

SECOND: Commissioner Adam seconded the motion.

VOTE: Unanimous.

SB1087

Spousal Maintenance; Tax Refund; Setoff

- Authorizes the clerk of the court to intercept state income tax refunds for the collection of spousal maintenance.
- Allows state income tax refunds to be used to satisfy overdue support referred to the clerk of the court for collection.

Sen. Johnson explained that this mirrors what has been done with child support except that it is connected with state taxes only. Jodi Brown asked about sensitive data sheet in Rules and if this would be problematic. Members explained that this should not be a problem because the clerk's automated system will interface with the DOR automated system. In child support tax intercepts there is an administrative review process available to the parties. There is nothing in this bill that allows for an appeal for an injured spouse or other reasons. Sen. Brotherton may want to offer an amendment to include appeal process.

HB2026

Homestead Exemption; Family Support Liens

- Adds judgments and liens for child support arrearages, spousal maintenance arrearages or costs or attorney fees awarded in an action for those arrearages to the list of homestead exemptions from process and sale pursuant to A.R.S. § 33-1101(A).

Ellen mentioned that the Credit workgroup looked at this bill earlier today. The concern with the bill is that the sale of someone's home could be forced in order to get a small amount of child support arrearage. There should be a limit. The bill makes sense but it could force someone to sell their home for only a small amount of child support arrearages. Rep. McCune-Davis said that the bill does begin to address some of the inequities they are seeing, but the concept for the threshold for smaller amounts came up this morning. She will take it to the sponsor and offered to let Sen. Johnson know the outcome before it goes to Family Services.

HB2561

Homestead Exemptions; Persons Entitled to Hold Homesteads

- Increases the homestead exemption for divorced couples from \$150,000 to \$225,000.

Ellen explained that a married couple is limited to \$225,000 exemption if the bill passes while two unmarried people living in a home together would have a \$450,000 exemption. That provides inequity between married and unmarried people. Rep. McCune-Davis explained that there are an increasing number of inequities that are occurring because of the increase in this exemption. Representative Anderson's intent was to reflect the increased cost of housing.

HB 2559

Juvenile Hearings; Jury Trials

- Allows for a request for change of judge in a hearing to terminate parental rights if the person did not request a jury trial and that judge was the same judge who heard the dependency case.
- Applies only in counties with populations of 500,000 or more.
- Requires the court to order mediation at the initial parental rights termination hearing.
- Requires the court to issue a decision within 30 days after a parental rights termination hearing.
- Requires the Administrative Office of the Courts to establish a permanency mediation program in the juvenile court to provide non-adversarial dispute resolution alternatives and promote permanency for dependent children. Allows the court to employ or contract these mediation services.

Staff explained that this bill is not likely to advance very far because it has been assigned to multiple committees and time to hear it is limited. Rep. McCune-Davis explained that it may get to first committee and get thinned out because of appropriation request, but the jury provision may continue. We need to watch it.

Commissioner Adam explained that the change of judge issue is very controversial. One family/one judge is the fundamental basis of the juvenile/dependency matters. The same judge monitors the case which provides for better management of the case and better services to the family and children. Additionally, it may be contrary to Court Rules about changing judges.

Ellen explained that the judges say people are not requesting jury trials. Sen. Johnson mentioned that constituents have complained about the process – having bad experiences with CPS. People in these circumstances have no place to express their frustrations. The Legislature held hearings for several months in 2005 to give parents an opportunity to be heard. A pattern was observed during those meetings that some CPS caseworkers work with a bias and their decisions are subjective. Sen. Johnson would like to see the jury trial provision retained for those who truly need it.

Commissioner Adam explained that one family/one judge helps the judge keep in tune with what is going on with the family and the judge can also monitor what CPS is doing as well – making sure they are keeping on track. If we start switching judges, continuity and accountability will fade away.

David Weinstock asked if the judge the problem or is it the CPS caseworker. Sen. Johnson explained that the bad apple CPS caseworkers are not being removed in the current environment. Sen. Johnson prefers that people have a jury of their peers to decide these cases rather than a judge.

Domestic Violence

SB1097

Domestic Violence; Orders of Protection

- Strikes reference to section 13-2810
- Requires the court to hold a hearing before issuing an Order of Protection, except for emergency Orders of Protection.
- Adds police reports that verify the factors listed in A.R.S. §13-3602 that suffice as reasonable cause to issue an Order of Protection to the reasons the court may issue such an order.
- Makes the Order of Protection applicable to the Plaintiff listed in the Order of Protection and authorizes the arrest and prosecution of the Plaintiff if that person knowingly violates any terms or conditions listed in the order.

Sen. Johnson explained that since the bill was filed, she has met with Dale Wiebush who highlighted some problems with it. Senator Johnson explained that this bill is unlikely to be heard in committee.

Dale explained the particular problems and issues with this bill, including:

- Section 13-2810. If person has three DV offenses within a set time, they get bumped up to a felony. Three violations on the part of the Defendant would not have that issue.
- The plaintiff arrest and prosecution provision is in conflict with federal regulations. This could jeopardize VAWA funds which provide almost all domestic violence funds in this state. A fiscal note has been called for and could be the demise of this bill.
- Ex parte hearing elimination. Taking this ability away is a real risk of people asking for orders of protection. Defendants do have the ability to get into court and have their case heard. This would be damaging for victims.
- Intent of the bill. Appears to be an injustice with orders of protection wherein defendants are not given many rights or educational tools. The order of protection states that they cannot have contact with the other person but it does not say anything about the plaintiff ability to contact the defendant without any complaint or retribution. How can the defendants be told that this is against them, that it does not go two ways and that they can get their own order of protection against the plaintiff.

The chair and members indicated that they are in favor of the idea of educating the defendant. Dan Cartagena explained that he agrees with parts of the bill; however, causing the defendant to fault on the order of protection to pick up the kids is problematic. He would like the committee to work on something that would enable order of protection to be easier to give out with the stipulation that they are not a levier of guilt. He further explained that current language needs to be tempered and keep with the original intent of protecting all parties. David Weinstock explained that you cannot violate the order of protection if you are the plaintiff. There is no power behind the words.

Senator Johnson indicated that she will take this back to Representative Pearce and re-assess the bill. If they cannot get it in good shape, they will not proceed with it in hearing.

Commissioner Adam explained that former Committee member, Bill Hart, previously discussed developing a sheet that would advise the defendant about their rights and a sheet that would advise the plaintiff about the issue of contact and temptation. There are some remedies available now. North Carolina has a provision where hearings are set automatically on all cases. In Arizona it is not automatic.

Konnie Neal, AOC staff for CIDVC explained that a new DV Rules Committee has been formed in the AOC with a first meeting to be held February 8th where Dale could bring these issues to light. They can and are working on issues such as this. They are looking at a guide sheet that explains how to use them. They are working on the details. They will bring this discussion back to that committee.

Rep. McCune-Davis explained that although people are aware of what they should or should not do, people are not consistent with the “parenting time” situation with the children. She asked that that be paid attention to also. Brian Yee explained that they are addressing that issue in the DV Rules Committee to ensure that the judicial officer who issues ex parte order of protection also considers the family court order.

SB 1147

Telephone Usage; Interference During Emergencies

- Adds prevention or interference with the use of a telephone by another person in an emergency situation to the list of unlawful acts listed in A.R.S. § 13-2915.
- Defines emergency situation as:
 - Property of human health, life or safety is in jeopardy and the prompt summoning of aid is essential.
 - Reasonable to believe that a crime is being, has been or is about to be committed.

Dale explained that this applies to any type of telephone, not just party lines. Kim further explained that the intent of the new language provides for the inclusion of all telephones.

CHILD SUPPORT

SB1194

Support Clearinghouse; Fees

- Amends the Support Payment Clearinghouse Fee from the current monthly fee of \$2.25 to:
 - \$2.25 per month from payors who make at least one support payment each month
 - \$2.25 per payment from payors who make payment in advance covering more than one month.
 - Fiscal impact is unknown at this time.
 - Would require programming changes in ATLAS and the eCalc program. Sen. Johnson may talk to Sen. Allen about and ask her to not proceed with this bill.

HB2279

Child Support Clearinghouse; Misdirected Payments

- Requires obliges in child support cases to notify the Support Payment Clearinghouse of legal custody changes.
- Clarifies that the obligor is not responsible for misdirected payments, e.g. payment sent to mom even though grandma now has custody.
- Applies retroactive to January 1, 2005.

Discussion: Will this be incorporated into some kind of form to notify the obligee? Courtney explained that the bill does not require notification. Commissioner Adam explained that the bill has many problems; specifically, child support cannot be retroactively modified. Megan will report the discussion to Representative Hershberger.

HB2292

Child Support; Court Orders

- This bill came out of the Child Support Committee to help with the child support arrearage calculator currently under construction.
- Stipulates that if a court order does not specify the date when child support begins, the support obligation begins to accrue on the first day of the month following the entry of the order.
- Codifies that an annual rate of ten percent interest to accrue to child support arrearages, beginning at the end of the month following the month in which the support payment is due, or if the past support is reduced to a final written money judgment, the interest will accrue beginning on entry of the judgment by the court. *This is current practice under civil judgment statutes.*
- Stipulates that any direct payments or other credits allowed by law and the court shall be applied to support arrearages as directed in the court order.
- Requires the court to make specific findings in support of any payments or credits allowed.
- Stipulates that if the court does not specify when to apply the payments or credits, they shall be applied on the date of the entry of the order.
- Prohibits the court from reducing any sum owed to the state in a Title IV-D case, unless the state was represented at the hearing, had notice of the hearing, or provided written approval.
- States that any written agreement for credit against support arrearages that is not by order of the court shall require an affidavit of direct payment signed by both the person making the payment and the person receiving it.
- Requires that the affidavit of direct payment be turned over to the clearinghouse.
- Stipulates that if no date is stipulated in the affidavit, the credit against arrearages shall be implemented on a date agreed to by the parties, or the date of the affidavit.
- Stipulates that any sum owed to the state in a Title IV-D case may not be reduced by the aforementioned agreement or affidavit without written approval of the state.
- Allows a government agency to create an arrearage calculator in order to use automated data from the clearinghouse and child support registry.
- This will add equity between IV-D cases and the courts.
- This bill does not change the interest rate. It merely reflects the interest rate in the civil judgment statute.

Discussion: It may be advisable to reference the civil judgment statute.

HB2342

Child Support; Self-employed Parent

- Requires the court to determine which parent will pay for the cost of the federally authorized tax practitioner or each parent's share of the cost in cases where the court orders parents to meet with a federally authorized tax practitioner because at least one of the parents is self-employed.

Discussion: Members spoke in favor of the bill.

HB2488

Child Support Enforcement; Performance Audit

- Requires the Auditor General to conduct a special audit of the Division of Child Support Enforcement in relation to:
 - Degree to which they are performing their duties
 - Number of errors (misdirected payments, erroneous demand letters/information)
 - Accuracy of automation system
 - Adequacy of equipment used to communicate between agencies

- How methodologies used to collect payments are determined
- Ease with which information is accessible to the public.

HB2566**Technical Correction; Child Support**

This is a vehicle bill and contains no substantive changes.

CALL TO THE PUBLIC

No requests were made for the Call to the Public.

BREAK /LUNCH / WORKGROUPS MEET

After breaking for lunch, the workgroups met.

WORKGROUP REPORTS

The workgroups will report in the February meeting.

NEXT MEETING

The next meeting will be held on February 17, 2006, Arizona Courts Building, Conference Room 119A/B.

ADJOURNMENT

The meeting was adjourned at 1:23 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – February 17, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

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- Hon. Paula Aboud
- Hon. Karen Adam
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- Lucille Antone-Morago
- Theresa Barrett
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- Honorable Tim Bee
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- Honorable Andy Biggs
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- Honorable David Bradley
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- Honorable Bill Brotherton (Telephonically)
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- Jodi Brown
- Sidney Buckman
- Daniel Cartagena
- William Fabricius
- Honorable Beverly Frame
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- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- George Salaz (Telephonically)
-
-
- Ellen Seaborne
-
-
- Russell Smoldon
- Judy Walruff
- Wanda Weber
- David Weinstock
- Dale Wiebusch
- Hon. Thomas Wing
- Steve Wolfson (by designee Annette Burns)
- Brian Yee

STAFF:

Megan Hunter
Kim Martineau
Dan Brown
Annette Mariani

Administrative Office of the Courts
Senate Family Services Committee Analyst
House of Representatives
Administrative Office of the Courts

GUESTS:

Ivo Ortiz
Manuel Cota

Father's Love
Luz Social Services, Inc.

CALL TO ORDER

The meeting was called to order by Representative McCune-Davis at 10:16 a.m. with a quorum present. Rep. McCune-Davis was appointed by the co-chairs to chair this meeting in their absence.

ANNOUNCEMENTS

Senator Paula Aboud has been appointed to serve on this committee, replacing Senator Gabrielle Giffords who recently resigned from the Senate. Senator Aboud represents District 28.

APPROVAL OF MINUTES

MOTION: Sid Buckman made a motion to approve the January 20, 2006 minutes.
SECOND: Wanda Weber seconded the motion.
VOTE: Unanimous.

NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES – HONORABLE KAREN ADAM

Commissioner Adam was recently elected to serve on the Board of Director for the National Council of Juvenile & Family Court Judges and is the co-chair of the Juvenile and Family Law Department which arranges for training and manages projects in delinquency and family law. This organization is working on strategic planning, goals and objectives to come up with a written mission statement. They are heavily funded by federal grants with a main emphasis on delinquency. Due to a good majority of judges from around the country who are involved with juvenile and also work with family law; the organization is looking to boost family law programs and a new advisory committee has been formed to help accomplish that task. The committee's goals include developing a "best practices" for family law manual and developing training modules that can be rolled out and delivered to states at a reduced cost.

Commissioner Adam further explained that she and Megan Hunter serve on the National Judicial Child Support Task Force, a group that was created by the Federal Office of Child Support Enforcement to develop a strategic plan for child support state agencies to collaborate with the judiciary to foster child support system improvements. The National Council of Juvenile and Family Law Judges applied and have maintained a one million and a half grant to provide judicial training in the area of child support enforcement. This committee is looking at developing "best practices" for child support establishment and enforcement with the goal to develop bench books and bench cards with federal requirements listed and suggestions on how to process the cases efficiently. With the committee being comprised of IV-D Directors, lawyers representing child support agencies and judges from around the country, it helps to look at various jurisdictions and towards a national model.

Commissioner Adam will be presenting at a Domestic Violence Conference in New York and commended the Domestic Relations Committee on their hard work with the statute on relocation and the statutory provision regarding domestic violence in the custody statute. Her fellow colleagues and presenters are impressed with what Arizona has done and are looking to adopting a similar statute in New York.

2006 LEGISLATIVE UPDATE

SB1087 – Stuck in Rules. Sen. Brotherton urged committee members to ask Sen. Blendu to release the bill.

SB1267 – Integrated Family Court (DRC proposal). Family Services adopted an amendment that requests \$1,750,000 from the state general fund for the two pilot projects. The original bill left the amount blank. Scheduled for Senate Appropriations next week.

HB2026 – This bill is probably dead.

HB2559 – An amendment was adopted in House Human Services that strikes the provision requiring the court to order mediation and set a date for the mediation at the initial hearing. Assigned to House Judiciary but not scheduled for hearing. The bill is probably dead.

HB2561 – Held in House Ways & Means and is essentially dead.

HB2716 – Heard in House Human Services on 2/16/ but no vote was taken due to a request for more time to reach compromise. Rep. Hershberger is calling a meeting of all

stakeholders to develop a compromise and he mentioned in the hearing that the bill will likely appear later in the session.

HB2794 – Assigned to House Judiciary and Rules but not scheduled for hearing. Bill is probably dead. Rep. McCune-Davis explained that this bill may be revised on the Senate side.

HB2279 – Assigned to House Human Services and Rules but not scheduled for hearing. Bill is probably dead.

HB2292 – (CSC proposal) Amendment adopted in House Human Services clarifying that affidavits of direct payment shall be filed directly with the clerk of superior court, not the clearinghouse. Passed the House and has been transmitted to the Senate where it assigned to Senate Family Services and Rules. Scheduled for Senate Family Services on 2/20.

HB2342 – Passed House Human Services and Judiciary. Assigned to Rules.

HB2488 – Passed House Government Reform & Finance Accountability. Assigned to Rules.

HB2739 – Assigned to Senate Appropriations B & Appropriations P but not scheduled for hearing yet. Bill is probably dead.

SB1194 – Passed Senate Family Services. Assigned to Rules.

SB1294 – Passed Senate Government Accountability & Reform with an amendment that would create a process that if a presumed father finds out that he is not the biological father, he can petition the court and ask for genetic testing. If the court finds that he is not the father the court would vacate the determination of paternity and terminate the support obligation. Terminating the support obligation is prospective unless otherwise ordered by the court. The biological father would be required to pay restitution to the petitioner or presumed father.

Members discussed concerns that focus on the necessity of a statute of limitations so that we do not have the first establishment of child support orders when the person is 22, 30. Attorneys would like the statute to be maintained.

This proposal also conflicts with case law and is contrary to the best interests of children. Kim Martineau explained that the bill cannot be amended in the Senate but still has to go through House where an amendment is possible.

SB1517 – Assigned to Senate Appropriations and Rules but not scheduled for hearing. The bill is probably dead.

SB1097 – Striker offered in Senate Family Services that eliminates all of the original provisions and simply inserts a provision to require that Orders of Protection contain information to inform the Defendant of his or her right to request a hearing or a cross Order of Protection and requires language in Orders of Protection to state that nothing the plaintiff does can stop, change or undo the order without the court's written approval and that the defendant may be prosecuted for violating the order even if the plaintiff initiates contact. Passed Senate Family Services and is assigned to Rules. The bill does not require a guide sheet for plaintiff's but the Arizona Supreme Court's Committee on the Impact of Domestic Violence and the Courts is working on guide sheets for both plaintiffs and defendants.

SB1147 – Passed Senate Judiciary, Rules and COW with an amendment that clarifies that a person is not required to allow another person to enter his/her home or place of residence for the purposes of using a phone in an emergency situation. Passed Senate and has been transmitted to House.

SB1342 – Assigned to Senate Government but was removed from the agenda. The bill is probably dead.

SB1493 – Assigned to Senate Government and Rules but not scheduled for hearing. The bill is probably dead.

MARRIAGE EDUCATION – DR. JOHN HORAN

Dr. John Horan, Arizona State University Counseling and Psychology Program, demonstrated three software programs that are currently being utilized for online learning at ASU. The software allows the user to view a video stream of the class with a corresponding PowerPoint

outline on the same screen. Also on that screen are links to the syllabus and other necessary materials along with links to relevant websites. Initial test results indicate a 5-6% increase in test scores.

The program is designed so that any information, i.e. video and accompanying written materials, can be easily integrated and subsequently modified. The system can be programmed to ensure that the intended audience is the actual user of the system.

Members discussed that the programs have significant implications on the family court system in educational areas such as the parent information programs, the marital education proposal developed in this committee and other areas of family law. The educational opportunities are limitless.

The issue will be placed on the March agenda for further discussion.

2006 STRATEGIC PLANNING

Megan Hunter reviewed the mission statement for the Domestic Relations Committee and the objectives. At last month's meeting, it was agreed to conduct strategic planning to determine the goals and objectives for workgroups to study during 2006. The committee identified categories and related issues:

Parent Education

- Issues related to minor parents
- Intentional estrangement
- Review/recommend integration of cognitive development research to parents
- Issues of technology
- Court processes for high conflict cases

Parenting Time

- IV-D Child Support Orders
- Data Collection
- Periodic publication of what this committee's work
- Revisit and expand the existing Model Parenting Time Plan
- Annual training
- Speakers for discussion on various topics
- Father absence

Financial

- Identifying and accessing resources

Dissolution

- Simple documentation for pro se litigants
- Information for litigants regarding processes/resources – Dissolution "101"

Custody

- Temporary Orders
- Use of hospital paternity forms
- Greater emphasis on ADR – concerted effort on mediation
- Addressing procedural problems in the way cases are processed

Domestic Violence

- Parental estrangement as a form of child abuse
- Orders of Protection

Members discussed the possibility of bringing in a strategic planning expert for long-term strategic planning. The co-chairs will be apprized of the discussion.

CALL TO THE PUBLIC

Ivo Ortiz, Father's Love Organization. Mr. Ortiz expressed concern over SB1294. In the triangle of some situations, the mother is quite aware of who the father might be but does not disclose this information until she is prepared to or until the child is emotionally invested with someone else. The biological father is then asked to pay restitution, with no consequences or repercussions to the parent that willing did not come forth with information early on in the process. When "visitation" is finally established it is not seen as "parenting time." Mr. Ortiz discussed other issues that he has experienced in the family court system for several years.

WORKGROUP REPORTS

The workgroups did not meet.

NEXT MEETING

The next meeting will be held on March 17, 2006, Arizona Courts Building, Conference Room 119A/B.

ADJOURNMENT

The meeting was adjourned at 1:23 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – March 17, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

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Hon. Paula Aboud

Hon. Karen Adam

Lucille Antone-Morago

Theresa Barrett

Honorable Tim Bee

Honorable Andy Biggs

Honorable David Bradley

Honorable Bill Brotherton (telephonically)

Jodi Brown

Sidney Buckman

Daniel Cartagena (telephonically)

William Fabricius

Honorable Beverly Frame

Linda Leatherman

Ella Maley

Hon. Debbie McCune-Davis

George Salaz

Ellen Seaborne

Russell Smoldon

Judy Walruff

Wanda Weber

David Weinstock

Dale Wiebusch

Hon. Thomas Wing

Steve Wolfson

Brian Yee

STAFF:

Megan Hunter
Kim Martineau
Annette Mariani

Administrative Office of the Courts
Senate Family Services Committee Analyst
Administrative Office of the Courts

GUESTS:

Janet Sell
Megan Scott

Attorney General's Office
DES, Legislative Services

CALL TO ORDER

The meeting was called to order by Representative McCune-Davis at 10:16 a.m. Rep. McCune-Davis was appointed by the co-chairs to chair this meeting in their absence. Due to members departures and arrivals, a quorum was never present.

ANNOUNCEMENTS

Judy Walruff announced that this would be her last meeting with the Committee. Judy has taken a position with the Governor's Full Readiness Board beginning on May 10, 2006. She thanked everyone for the privilege of serving.

Commissioner Karen Adam has been selected to be interviewed by Governor Napolitano for the opening on the Superior Court in Pima County bench.

APPROVAL OF MINUTES

Without a quorum present, the Committee will wait until the next scheduled meeting to approve the minutes.

LEGISLATIVE UPDATE – KIM MARTINEAU, SENATE FAMILY SERVICES COMMITTEE ANALYST

Kim Martineau provided members with an overview of family law-related legislation. Member's comments are indicated in relevant sections under "Comment(s)".

BILL	DOMESTIC RELATIONS
SB1087	Passed out of House Human Services Committee. Next step: House Rules
SB1267	Emergency measure. Passed out of Senate but has not been assigned to any House Committees. Comment(s): This needs to be assured that it is flagged for committee. A conversation needs to take place with the Majority Leader to make this happen. Members will speak with committee co-chairs regarding assignment to the appropriate committee(s).
HB2026	Assigned to House Judiciary but did not receive a hearing. This may be amended onto another bill.
HB2559	Passed the House and has not been assigned to committees in the Senate.
HB2561	Received a hearing in House Ways and Means but was held. The deadline to hear bills has passed so the bill is dead.
HB2716	Bill and bill number are now dead. They did not make it through House committees. The concept of the bill is being put on as a strike everything amendment to HB 2413 in Senate Family Services. Comment(s): If the striker is adopted and passes Family Services it would then go through Rules, Committee of the Whole and third read by the Senate. After it is passed from the Senate, it would go back to sponsor (Rep. Hershberger) and he would either concur with changes or refuse and a conference committee would meet. Final vote would be in the House.
HB2794	Assigned to House Judiciary Committee but did not receive a hearing. Comment(s): This was discussed at the Creditor Issues' Workgroup meeting. Prior to introducing this next year, a meeting with the Secretary of State is necessary.
BILL	CHILD SUPPORT - STATUS
HB2279	Assigned to House Human Services and Rules but not heard. Bill is dead.
HB2292	Passed the Senate Committee of the Whole. Next step: third read by Senate,

	then will go to sponsor (Rep. Hershberger) to concur or refuse. Comment(s): With the amendment that was adopted how does the clearinghouse keep track of payments? The affidavit would need to be forwarded on to the clearinghouse.
HB2342	Passed out of the House Human Services Committee and will go to Rules next.
HB2488	Heard in Senate Family Services but was a vote was not taken. On agenda for next week.
HB2466	Passed through the House and is now assigned to Senate Rules.
HB2739	Assigned to Senate Appropriations B & Appropriations P but not heard. Bill is dead.
SB1194	Skipped Committee of the Whole and has not been scheduled for Third Read. The bill is probably dead.
SB1294	Passed House Human Services. Next: to House Judiciary Committee after compromise language is reached. Comment(s): Steve Wolfson commented that he attended the hearing on this bill and spoke with representatives of the Attorney General's office and others. There are still concerns regarding the elimination of statute of limitations – this may create more problems that what it would solve. To his knowledge there has been no specific vote or Board of Governor's action through the State Bar. A big issue is the time period beyond the 3 years of majority.

Members chose to take a straw poll of those in attendance to determine whether this bill should go forward or not. The straw poll indicated that those presents were unanimously opposed to the bill's passage.

BILL	DOMESTIC VIOLENCE - STATUS
SB1097	Assigned to House Judiciary Committee. A strike everything amendment was adopted in Senate Family Services.
SB1147	Passed Senate Judiciary and assigned to House Judiciary Committee.
SB1342	Bill is dead.
SB1493	Bill is dead. Comment(s) Could this be considered by this group next year? CIDVIC has been following this bill closely and continue working with law enforcement.
SB1430	Kim reported that the bills involves a few changes: <ul style="list-style-type: none"> • The bill raises the burden of proof for both dependency and termination of parental rights. Dependency at the present time is a preponderance of the evidence, and raises that burden to clear and convincing evidence. Termination of parental rights is currently clear and convincing evidence and raises the burden to beyond a reasonable doubt. • Requires CPS to make a reasonable effort to inform the family of all their rights as they relate to the process before they remove the child. • Establishes a family advocacy counsel that is made up of legislatures,

	<p>CASA, a family law judge, parents. Role of counsel is to advocate for families involved in CPS.</p> <ul style="list-style-type: none"> • Sets up an office that provides staff support to the counsel. <p>This bill passed out of the Senate on third read and will now go to the House and be assigned to a committee.</p> <p>Comment(s): Discussion ensued on the close monitoring of this bill and its importance. Areas impacted: foster care, schooling, data collection</p>
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2006 STRATEGIC PLANNING

Megan Hunter reviewed the directives of the Committee, some background information, and strategic planning issues/concerns that were identified at the February 17, 2006 meeting. Members discussed the possibility of bringing in a strategic planning expert for long-term strategic planning. The co-chairs were apprized of the discussion and asked that Megan lead the discussion at this time.

Arizona law requires this committee to:

- Prepare a statewide plan for Integrated Family Court; (this has been done; ongoing with legislation working on pilot programs)
- Recommend changes to DR statues, rules and procedures and other related issues designed to lead a reform of the State's DR Statutes; (ongoing); and
- Development among training standards on domestic violence and child abuse for persons conducting an investigation or preparing a report concerning child custodial arrangements (this was done 2 years ago and goes into effect July 1, 2006).

Members prioritized the Committee's 2006 activities as follows:

Parent Education

- Issues related to minor parents
- Intentional estrangement
- Review/recommend integration of cognitive development research to parents
- Issues of technology
- Court processes for high conflict cases

Parenting Time

- IV-D Child Support Orders
- Data Collection
- Periodic publication of what this committee's work
- Revisit and expand the existing Model Parenting Time Plan
- Annual training
- Speakers for discussion on various topics
- Father absence

Financial

- Identifying and accessing resources

Dissolution

- Simple documentation for pro se litigants
- Information for litigants regarding processes/resources – Dissolution “101”

Custody

- Temporary Orders
- Use of hospital paternity forms
- Greater emphasis on ADR – concerted effort on mediation
- Addressing procedural problems in the way cases are processed

Domestic Violence

- Parental estrangement as a form of child abuse
- Orders of Protection

CPS Related Issues

- Quality Assurance – lack of assessments
- Data Collection – create a guide
- Invite David Burns to speak to the Committee
- Invite representative from Justice for Children speak to the Committee– Representative Lujan
- Monitor CPS legislation

Education

- Marriage Education Proposal (in relation to financial credit)
- Children whose parents are separating (kid directed)

Grandparents

- Visitation rights
- If parent’s rights have been terminated for good cause, should grandparent’s rights also be terminated?

Parenting Time

- Greater emphasis on ADR, concerted effort on mediation

CALL TO THE PUBLIC

Janet Sell, Assistant Attorney General, Child Support Section, Attorney General’s Office
Janet commented that the straw poll on SB 1294 taken today without a quorum should not have occurred. She does not feel that this group gave it a fair hearing. She suggested that there are a number of good public policy arguments on this bill. Janet spoke on the Statute of Limitations of this bill. Janet reported that there are 6000 cases a year that need a judgment before the statute of limitations runs (only for IV-D population). When considering the bill, one of the questions raised was on the issue of how the resources should be spent, i.e. should they be spent on obtaining a judgment for someone who may already have a court order that was not obeyed, or on obtaining

new orders for additional children and additional families. Janet stated that there are issues surrounding final judgment on arrears with direct payments or payments that were made that were not accounted for by the clearinghouse. There has been a public policy in the State of Arizona for twenty years that requires paying parents to pay through the clearinghouse. The burden falls on the custodial parent when the non-custodial parent does not pay through the clearinghouse causing the custodial parent to have to obtain a judgment and prove to the court that they did not get paid.

WORKGROUP REPORTS

The workgroups did not meet.

NEXT MEETING

The next meeting will be held on May 19, 2006, Arizona Courts Building, Conference Room 119A/B.

ADJOURNMENT

The meeting was adjourned at 1:05 pm

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – July 21, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Paula Aboud
- Hon. Karen Adam
- Lucille Antone-Morago
- Theresa Barrett
- Honorable Tim Bee
- Honorable Andy Biggs
- Honorable David Bradley
- Honorable Bill Brotherton (also designee for Hon. Peter Hershberger and Hon. Karen Johnson)
- Jodi Brown
- Sidney Buckman
- Daniel Cartagena (telephonically)
- William Fabricius
- Honorable Beverly Frame
- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- George Salaz
- Ellen Seaborne
- Russell Smoldon
- David Weinstock
- Hon. Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Megan Hunter
Kim Martineau
Kim Ruiz

Administrative Office of the Courts
Senate Family Services Committee Analyst
Administrative Office of the Courts

CALL TO ORDER

The meeting was called to order by Senator Brotherton, acting Chair, at 10:14 a.m. with a quorum present. Sen. Brotherton was appointed by the co-chairs to chair this meeting in their absence.

ANNOUNCEMENTS

Commissioner Karen Adam won an award from the National Council of Juvenile and Family Court Judges (NCJFCJ) for registering the most new members this year. Judge Adams indicated this was due in part to support from the AOC who capitalized on the availability of year end funds to register all the Arizona family court judges and administrators. It is the hope of the AOC that courts will see the benefit of this national membership and add this operating cost to their annual budgets in future years.

It was noted that there are a number of vacancies on the Committee. The following vacancies need to be filled:

- A member of the coalition (Dale Wiebusch is no longer with the coalition and the coalition has been contact to fill the vacancy)
- Representative from a Law Enforcement Agency
- Domestic Relations Educator (Wanda Weber resigned this week and went into another field of work)
- Representative from a Children's Advocacy Agency (Judy Walruff resigned earlier this year and there have been a few applications submitted for that position)
- Two parent vacancies (Note: Staff still seeking clarification whether they are custodial, non-custodial or joint custodial)

All members are encouraged to provide both custodial and non-custodial recommendations to help fill vacancies on both the Domestic Relations Committee and Child Support Committee. Please forward all recommendations to Theresa Barrett or Kim Ruiz. Theresa Barrett and Kim Ruiz will be the AOC contacts until Megan's position is filled.

Save the Date Announcement from Ellen Seaborne

"Assessing False and True Allegations of Child Sexual Abuse and Domestic Violence"

Presenter: Bill Eddy

Flagstaff, AZ

September 29, 2006

9:00 a.m. – 4:15 p.m.

\$40 (includes a book and lunch)

It qualifies for the required 6 hours of domestic violence training.

They are inviting members of law enforcement, CASA, court staff, public and mental health professionals and students.

APPROVAL OF MINUTES

The minutes from the March 17, 2006 meeting state that there were not enough members for a quorum, although 15 of the 28 members were marked as present. The minutes were amended to reflect that due to members arriving and departing, there was not a quorum present.

MOTION: Judge Wing made a motion to approve the March 17, 2006 minutes as amended.
SECOND: Commissioner Adam seconded the motion.
VOTE: Unanimous.

The February 17, 2006 meeting minutes need to be approved, so it will be added to the August 18 agenda.

LEGISLATIVE UPDATE – KIM MARTINEAU, SENATE FAMILY SERVICES COMMITTEE ANALYST
 Kim Martineau provided members with an overview of family law-related legislation. Member’s comments are indicated in relevant sections under “Comment(s)”. The general effective date this year is September 21, which is an unusually late date due to the late sine die. The general affective date is always 90 days after the legislature adjournment sine die.

BILL	DOMESTIC RELATIONS
SB1087	Signed by the Governor on May 2 and will become effective on the general effective date. (Note: This bill was Senator Brotherton’s final piece of legislation to pass into law.)
SB1267	Emergency measure. Signed by the Governor on June 21 and went into effect immediately due to the emergency clause.
HB2026	Assigned to House Judiciary but did not receive a hearing. It did not pass into law this session.
HB2559	Vetoed by the Governor on June 28, 2006. Comment(s): Part of the reason for the veto had to do with the procedure for reopening a termination for parental rights action. The jury trial option will sunset on January 1, 2007.
HB2561	Held in the House Ways and Means Committee and did not pass into law this session.
HB2716	Original version of the bill was held in the House Human Services and Rules Committee and the latter version was held in the Senate Family Services Committee. Comment(s): Some form of this legislation will be brought back next year. The Senate committee had the following concerns about the bill: that it was an “immunity” bill, complaints could be dismissed too early and the board would not have a chance to hear them, and the domestic violence community were concerned that victims would be less likely to file complaints with the provision that they would have to pay the legal fees incurred if the complaint was dismissed. Unfortunately, the domestic violence community was not fully informed on the legislation, which resulted in victims groups not supporting the healthcare professionals who are attempting to protect victims.
HB2794	Assigned to the House Judiciary Committee, but did not receive a hearing, so it did not pass into law this session. Comment(s): The Creditor Issues’ Workgroup will meet with the Secretary of State prior to introducing this next year.
BILL	CHILD SUPPORT - STATUS
HB2279	Assigned to the House Human Services and Rules Committee, but did not receive a hearing, so it did not pass into law this session.
HB2292	Signed by the Governor on April 21, 2006 and will become effective on the

	general effective date.
HB2342	Signed by the Governor on April 12, 2006 and will become effective on the general effective date.
HB2488	Signed by the Governor on April 25, 2006 and will become effective on the general effective date. Comment(s): Sections of this bill address the Hayden case and the elimination of the three year limit.
SB1194	Never received a Third Read in the Senate, so it did not pass into law this session.

BILL	DOMESTIC VIOLENCE - STATUS
SB1097	A strike everything amendment was adopted in the Senate Family Services. Another strike everything amendment passed the House and was vetoed by the Governor.
SB1147	Signed by the Governor on May 2, 2006 and will become effective on the general effective date.
SB1342	Held in the Senate Government Committee, so it did not pass into law this session.
SB1493	Held in the Senate Government Committee, so it did not pass into law this session. Comment(s): The Chief of Police was opposed to this bill.

INTEGRATED FAMILY COURT PILOT PROGRAM

Ellen Seaborne gave a brief history of the work behind SB1267, to establish the Integrated Family Court (IFC) Pilot Program. It was a bipartisan effort that Senator Johnson led, getting funding for the program for two years for one county. The goal of the IFC Pilot Program is to eventually expand statewide with permanent funding. The focus now should be on preparation for funding, utilizing a funding expert.

Theresa Barrett informed the Committee that Pinal County graciously deferred to Coconino County for implementation. The AOC queried the presiding judges of the remaining counties under 500,000, and received support for the AOC's intent to recommend implementation of Coconino County. Coconino County's administration is drafting their plans for the IFC, while the AOC is working on drafting the funding agreement and other administrative paperwork.

CREDIT ISSUES REPORT

The Credit Issues Workgroup was formed to address the issue of unfairness in the community property arena. Ellen Seaborne presented the following legislation proposals for the next session.

Management and Control A.R.S. § 25-214

Issue: A non-participating spouse can be held responsible by a creditor for the lending debt of their spouse, even if the non-participating spouse was unaware of the debt.

Solution: Propose a model similar to Wisconsin, a community property state that requires creditors to have the signatures of both spouses to bind the community and make both parties responsible for the debt. The lending and creditor community is strongly opposed to this.

Comment(s): This seems to be a significant deviation from the current community property ruling that will complicate people getting credit. If the committee wants to

move forward with this, the workgroup will most likely look for one of the DRC members to sponsor the bill. The bill will not be retroactive—the workgroup will draft language to clarify this point.

Note: Changes to A.R.S § 25-215 were made in coordination with A.R.S § 25-214; this will ensure the related statute is not inconsistent with A.R.S § 25-214. The non-retroactive aspect will also be added to this bill.

Marital education: Plan; Administration A.R.S § 25-130

Issue(s): The marital education plan was too comprehensive, with too much information to cover in a short period of time, which would hinder the freedom of parties to quickly enter a marriage. Committee comments included:

- Dr. John Horan, Arizona State University Counseling and Psychology Program, demonstrated more effective and efficient ways to present the material for marital education and possibly other areas of family education.
- The mandatory nature of the bill is concerning. It is one thing to make the information available to people, but the mandatory nature goes against our freedom to enter into a marriage quickly. The materials should be made available, but discretionary in nature.
- A possible amendment would be to require that the information be handed out with all marriage licenses, similar to California.
- The workgroup should research other states efforts to determine how this is being handled elsewhere and to find out if their format is successful. It was suggested, the National Center for State Courts (NCSC) and National Conference of State Legislatures (NCSL) would probably have data gathered on this topic and applicable statutes. When looking at other states' statutes members need to consider their Education statutes along with the Domestic Relations statutes.
- California has an area on their marriage license where people have to acknowledge they received information about having children.
- Trends show that more of the population is moving away from the institution of marriage and are choosing to live together and have children out of wedlock. This legislation, as mandatory, makes it even more difficult for those that want to get married, possibly encouraging them to choose co-habitation instead.
- Delete section (B) of the proposed A.R.S § 25-130, since the "opt-out" clause will no longer be necessary if it is not mandatory.

CONSENSUS: Overall consensus was to remove the mandatory aspect of the statute.

Subjects to include in the education material (staying within areas of statute):

- Fundamental aspects of community property law, including acquisition of property
- Impact of title and responsibility for debts
- Options for types of marriage, including covenant marriage
- Options for prenuptial and post-nuptial agreements
- Spouse's respective rights to make decisions
- Legal responsibilities toward children
- Rights and consequences attendant to divorce, legal separation or annulment

The issue was transferred to the Education Workgroup to establish the material. They will work with Dr. Horan to create the education materials and partner with the State Bar Family Law Section to distribute.

Filing of Pre-Nuptial/Post-Nuptial Agreements and Amendments A.R.S § 25-206

The proposed bill addressing this issue failed this year, believed largely in part due to lack of support from the Secretary of State, because the impact on her office was unclear. The Creditor's Workgroup will meet with the Secretary of State to explain the purpose of a central registry and get her backing for the legislation this session.

CONSENSUS: Members present supported moving forward with this proposal.

Note: Changes to A.R.S § 33-413 were made in coordination with A.R.S § 25-206; this will ensure the related statute is not inconsistent with A.R.S § 25-206.

Management and Control A.R.S § 25-214

Addresses the "community" of a business in a divorce. The intent of the proposed change is to acknowledge the community interest, unless there is a written waiver of the right to manage the partnership. When one member of the marriage enters into a business partnership with people outside the marriage, a statement that the uninvolved member of the marriage waives their right the business removes the business from community property. Discussion included:

- This will probably be strongly opposed by the domestic violence community, when considering the issue of coercion.
- The draft language is still confusing. The workgroup needs to rework this proposed amendment.

Separate Property A.R.S § 25-213

This protects the separateness of a property when people enter into a marriage. Problems arise when people refinance a property and in the refinance the personal property becomes a community property in the change of title, even though the purpose of the refinance may have been for a small improvement. Most people do not realize they have gifted their personal amount of the property to the community. It raises it to the "clear and convincing" level of evidence.

- Section (E) needs to be amended to make a complete sentence.
It now reads:
E. A spouse's use of separate property to pay a community debt incurred to purchase community property shall create a sole and separate lien against that property, unless there is clear and convincing evidence of a gift.
- The body of case law we are currently operating under needs to be researched more, because the expansive language of this change will undo it. There is no requirement of documentary proof of private property in the current language. It is potentially a very significant change in the law.
- As it currently stands, it will fuel more litigation.

The workgroup will continue to work on the language.

Property acquired during marriage as community property A.R.S § 25-211

The proposed change is to clarify the statute for unrepresented litigants. It states: if it was community before the service of petition of dissolution of marriage, it remains

community property; if it was separate property prior to service, it remains separate property.

Homestead-Judgment Lien A.R.S § 33-964

The change preserves a lien until the support debt is satisfied or lifted; removing the current five year limit. The five year limit language could not be struck, because it would remove the limit for all liens not just liens for support.

The language drafted for section (B) is to give judges discretion to look at the resources and make a decision on forcing the sale of a home based on information for each party.

CALL TO THE PUBLIC

There was no public present.

2006 STRATEGIC PLANNING

The Workgroups met to review the topic heading of the Strategic Planning List drafted at March 17, 2006 meeting.

Strategic Planning will be tabled for the next meeting when the chairs are present.

WORKGROUP REPORTS

Substantive Law: Will work on failed HB2716 to bring it back for the next legislation.

Education and Prevention: Will work on providing information to people applying for marriage licenses about various aspects of marriage. It was suggested they also consider the content of the Parent Education Program with an eye toward modifying a version toward parents that may never have been married or lived together.

The current minimum standards for the content of the Parent Education Program is available online at:

<http://www.supreme.state.az.us/dr/pdf/ped.pdf>

No other Workgroups reported.

NEXT MEETING

The next meeting will be held on August 18, 2006, Arizona Courts Building, Conference Room 119A/B.

William Fabricius, Ph.D., will give his presentation that he prepared for the *International Conference on Divorce and Children*, on new research of physical health outcomes for children of divorce. (September meeting)

CALL TO THE PUBLIC

There was no public present.

ADJOURNMENT

The meeting was adjourned at 2:02 pm

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – September 8, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

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Hon. Paula Aboud
Hon. Karen Adam
Lucille Antone-Morago
Theresa Barrett
Honorable Tim Bee
Honorable Andy Biggs
Honorable David Bradley
Honorable Bill Brotherton
Jodi Brown
Sidney Buckman
Daniel Cartagena
William Fabricius
Barbara Fennell
Honorable Beverly Frame
Linda Leatherman (telephonically)
Ella Maley
Hon. Debbie McCune-Davis
George Salaz
Ellen Seaborne
Russell Smoldon
David Weinstock
Hon. Thomas Wing
Steve Wolfson
Brian Yee

STAFF:

Kim Ruiz
Kim Martineau

Administrative Office of the Courts
Senate Family Services Committee Analyst

CALL TO ORDER

The meeting was called to order by Senator Johnson, Co-Chair, at 10:25 a.m. with a quorum present.

ANNOUNCEMENTS

Senator Johnson introduced the Committee's newly appointed member, Barbara Fennell. Barbara is the Director of Family Services for the Superior Court in Maricopa County and was appointed by Governor Napolitano to fill the Domestic Relations Educator vacancy.

APPROVAL OF MINUTES

The minutes from the February 17, 2006 and the July 21, 2006 meetings were presented for approval.

MOTION: Hon. Bill Brotherton made a motion to approve the February 17, 2006 and July 21, 2006 minutes as presented.

SECOND: Seconded.

VOTE: Unanimous.

DIVORCE RESEARCH – WILLIAM FABRICIUS, PH.D.

William shared the research findings he recently presented at the *International Conference on Children and Divorce*, in Norwich. The study focused on the role of parent conflict and time spent with the father on the health outcomes of young adults from divorced families. The research stemmed from a 1994 study by P.R. Amato and S.J. Rezac on "Contact with Nonresident Parents, Interparental Conflict and Children's Behavior"; which the findings still remain tentative. While Amato's looked at cause and effect, William Fabricius and Karina Horowitz's study looked at parent conflict and living arrangements along with the additional mediating factor of time spent with the father in an attempt to replicate Amato's findings. From their study, they concluded that time spent with father benefits children even in high conflict families, except when fathers' custody is more than equal. In these situations they noted a slight drop in beneficial outcomes.

The Committee thanked William for presenting and agreed that efforts need to be put towards reducing the increasing number of absent fathers.

POSSESSION OF PORNOGRAPHY FOR COURT PROCEEDINGS – DAVID WEINSTOCK, J.D., PH.D.

David presented to the Committee an issue raised with one of his cases involving child pornography that identified the need for a possible statutory revision. Currently in Arizona, the professionals involved with a criminal case which involves child pornography as evidence within the case, such as police officers, attorneys, court experts, judges, etc., are not exempt from felony charges if they are found in possession of the pornography. It was noted there is a general judicial and prosecutorial immunity statute, but it was not known whether it has been interpreted to apply to other professionals involved with the case.

A California penal code addresses this issue and applies exceptions to the California statute. David proposed an amendment to A.R.S. § 13-3553, to create an exception for anyone involved a court procedure with pornography evidence by adding the following language:

D. This statute does not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses or to the legitimate legal, medical, scientific or educational activities.

ACTION: It was recommended that Cindy Nannetti, of the County Attorney's Sex Crimes Division, be invited to speak to the Committee or informally review the proposal for feedback. It will be added to next month's agenda for follow-up.

STRATEGIC PLANNING

Hon. Karen Johnson addressed the importance of legislative attendance at the committee meetings, which was supported by members. The involvement of legislative appointees is essential to the prescreening function of the committee which ensures proposed legislation is vetted by system stakeholders prior to going to the floor of the House and Senate.

Committee members expressed their desire to have family law related bills generated outside the Domestic Relations Committee be also vetted through the Committee for a policy statement. It will be an ongoing task for the Committee Staffers to bring family law related bills to the Committee and return their position statements to the Legislature. It was recommended the Committee also review existing legislation for repeal opportunities.

In light of obtaining an appropriation for an Integrated Family Court (IFC) pilot, Ellen Seaborne explained that the IFC workgroup's objectives would shift to focus on securing dedicated funding for the pilot and to expand the IFC concept statewide if merited.

Senator Johnson recommended creating a small group of committee members to present IFC updates to the Family Services Committee, Human Services Committee and the Appropriations Committee early in the session to keep them apprized of pilot accomplishments.

Ellen Seaborne indicated her interest in working on grandparents' visitation rights included on the Strategic Planning topic list. This was an issue she brought forward after identifying an unintended consequence resulting from the current law which was drafted by the Committee. Specifically, Ellen noted currently if a parent's rights are terminated for cause and there is an adoption, the parents of the terminated party can request visitation rights.

Steve Wolfson recommended Ellen work with the Substantive Law Workgroup on drafting the proposed change. It was noted this proposal also ties to CPS issues that need to be addressed.

It was suggested that Tracy Wareing, Director of Child Protective Services, be invited to speak to the Committee at a future meeting to further explore possible areas to recommend change.

ACTION: Senator Johnson requested the recent Auditor General's Report on Child Protective Services timeliness and thoroughness of investigation which exposed gaps in the system, be shared with the members.

Link to the report:

http://www.auditor.gen.state.az.us/Reports/State_Agencies/Agencies/Economic%20Security,%20Department%20of/Performance/CPS-0502/paCPS-0502.htm

WORKGROUP REPORTS

Credit Issues: The Workgroup is currently working on legislation that will be presented to the Committee in November for fine-tuning and final approval to move forward.

IFC: Coconino County was chosen as the site for the IFC pilot. The Administrative Order selecting Coconino County was issued and Coconino County is currently finalizing the specifics of their plan for final approval. It is anticipated the IFC pilot will be implemented in January.

Barbara Fennell inquired about how the plan addressed the problems California faced in the discrete areas of:

- Probate for guardianship
- Juvenile dependency
- Family Law

Ellen explained that Coconino County currently has the “one judge, one family” approach. All of their judges involved in the IFC will go through extensive training in all areas. Additionally, Coconino County has a dedicated bench that will not have the rotation issues Maricopa County faces. Finally, Coconino County’s IFC will involve all family law cases, not just crossover cases.

Education: The workgroup will be looking at expanding the Parent Education program to include information for non-married parents and for children. Hawaii’s Kids First program will be looked at along with other states as possible models for Arizona.

NEXT MEETING

The next meeting will be held on October 6, 2006, State Courts Building, Conference Room 345A/B.

CALL TO THE PUBLIC

There was no public present.

ADJOURNMENT

The meeting was adjourned at 1:30 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – November 17, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair

Hon. Karen Johnson, Co-Chair

MEMBERS:

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- Hon. Paula Aboud
- Hon. Karen Adam
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- Lucille Antone-Morago
- Theresa Barrett
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- Honorable Tim Bee
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- Honorable Andy Biggs
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- Honorable David Bradley
- Honorable Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Daniel Cartagena
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- William Fabricius
- Barbara Fennell
- Honorable Beverly Frame
- Linda Leatherman (telephonically)
- Ella Maley
- Hon. Debbie McCune-Davis
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- George Salaz
- Donnalee Sarda
- Ellen Seaborne, Todd Franks designee
-
- Russell Smoldon
- David Weinstock
-
- Hon. Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Kathy Sekardi

Kim Ruiz

Barbara Guenther

Administrative Office of the Courts

Administrative Office of the Courts

Senate Democratic Staff Policy Advisor

CALL TO ORDER

The meeting was called to order by Senator Brotherton, Acting Chair, at 10:25 a.m. with a quorum present.

ANNOUNCEMENTS

The new Child Support/Family Law Specialist, Kathy Sekardi, was introduced to the members, as well as new appointee, Donnalee Sarda, Regional Director of Justice for Children.

Theresa Barrett thanked the Committee members who were involved in the Family Law Judicial Conference for their hard work and efforts which helped make the event a huge success. Theresa read comments from the participant's evaluations.

APPROVAL OF MINUTES

- MOTION:** Bill Brotherton made a motion to approve the September 8, 2006 minutes as presented.
- SECOND:** Sidney Buckman seconded the motion.
- VOTE:** Unanimous.

CREDIT ISSUES WORKGROUP LEGISLATIVE PROPOSALS – TODD FRANKS

FOLDER 103

COMMUNITY TERMINATION A.R.S. § 25-211

Todd Franks stated this proposal is intended to clarify existing community property law and to define the common understanding of what the current law reflects. Todd stated this proposal does not try to change existing law and does not take away separate property rights. There was no discussion.

- MOTION:** Bill Brotherton made a motion to support the proposed changes to A.R.S. § 25-211 for introduction as legislation this session.
- SECOND:** Rep. McCune-Davis seconded the motion.
- VOTE:** Unanimous.

SEPARATE PROPERTY A.R.S. § 25-213

Todd Franks explained to members the changes to A.R.S. § 25-213 essentially mirror the changes made to § 25-211. Todd stated the changes also address a split that has occurred in Arizona law, namely, that re-financing a marital home is treated differently than a joint account at a banking institution. Currently, re-financing sole and separate property results in the property becoming community property, which was not the intent of the owner, because the lender requires both spouses' signatures. Todd suggested this proposal attempts to meet the general public's expectation of what is their sole and

separate property, by trying to take court decisions that have created conflicting answers and make them consistent.

Discussion ensued regarding co-mingling law. Commissioner Karen Adam, having polled members of the bench, made a strenuous objection to subsection "F". Specifically, she argued that proof of separate funds would become a tracing problem for the courts, especially where there is a marriage of long duration.

Steve Wolfson agreed there is inconsistency regarding how different properties are treated in Arizona. From a credit standpoint, there is a disconnect from the law and the lending community. Arizona is a state where the title companies control the process, not the attorneys. Steve noted this poses a public policy change. He informed the Committee that the State Bar's Family Law Executive Council (FLEC) will be discussing this potential policy change and whether putting the burden in a different place than it has been is something they support.

Senator Brotherton questioned whether there is another way of revising the statute without the public policy change. He suggested perhaps requiring a notification from the title company indicating that the partys' actions may change sole and separate property to community property, because the prevailing assumption is that if one co-mingles their property it becomes community property. Todd clarified that it depends on the type of property whether it becomes community property.

Todd agreed with Commissioner Adam's objection to section "F" and suggested severing section "F" from the proposed language. He clarified that the "clear and convincing" standard is existing law regarding transmutation and is used in many other areas of family law, as well as the language from case law. Todd suggested looking at section "F" at some time in the future and possibly think about using language that doesn't deal with de minimis amounts.

David Weinstock stated concern that this is really anti-family law legislation. He pointed out that currently the burden is put on the person that intended to stay in the marriage, rather than on the person with the property that gave the gift. The burden of clear and convincing should be placed on the person saying they did not intend the gift, rather than the spouse that received the gift.

Barbara Fennell objected to section "E" because it doesn't differentiate between large transfers or investments and regular every day things done for your spouse. Barbara added that when she was practicing law she usually found this issue relevant in situations where people would say they had money before going into a second or third marriage.

Brian Yee suggested adding a caveat to the consumer prior to signing contracts in the area of real estate to ensure the parties are making informed decisions, such as knowing that when they commit sole and separate property to the community, it transmutes to community property.

Jodi Brown indicated this issue is also raised as an estate planning issue during mediation. Steve Wolfson indicated the FLEC will also be discussing this issue next week.

ACTION: Consensus of the Committee was to table this proposal for further discussion at the next meeting.

FOLDER 104

PREMARITAL AND POSTMARITAL AGREEMENTS REGISTRY A.R.S. § 25-216

INVALIDITY OF UNRECORDED PREMARITAL AND POSTMARITAL AGREEMENTS § 33-413

Todd explained that under the current premarital act parties can make all kinds of agreements. Under the existing A.R.S. § 33-413 creditors are not bound by that agreement unless they are notified of it. Current legislation states if you don't want to be held accountable for your spouses' debt, then you need to make creditors aware of the pre-marital agreements and record them. There is already a requirement to record the agreements, but there is not a specified repository for them. To avoid the problem of multiple recordings in multiple locations, the proposed legislation specifies that premarital and postmarital agreements should be recorded with the Secretary of State. The Secretary of State is the logical choice because creditors are already accessing the records available to them for other items, such as UCC filings.

Commissioner Adam stated her concern for identity theft and suggested adding a line that informs the parties of what is and is not to be filed, i.e. Social Security Numbers. This would assist the self-represented litigants at the onset, rather than having to deal with this issue later in the court.

Todd Franks shared that he does not include the premarital information such as the financial disclosure documents when he records the premarital agreements. Rather, he just files the statements that the spouse is not to be considered for debt incurred by the other spouse as stated in the premarital agreement.

George Salaz pointed out a typographical error in section "I", third line, need to change "sing" to "sign".

It was clarified that lack of registration does not nullify the agreement.

ACTION: The Credit Issues Workgroup will add language to specify what information from the agreement should and what information should not be recorded with the Secretary of State.

- MOTION:** Rep. McCune-Davis made a motion to prepare A.R.S. § 25-216 and A.R.S. § 33-413 for proposed legislation to be forwarded to the legislature.
- SECOND:** Motion seconded.
- VOTE:** Unanimous.

FOLDER 106

MANAGEMENT AND CONTROL A.R.S. § 25-214

Todd explained that changes to section “A” were to correct grammar.

Todd Franks reported the proposed legislation has substantive changes to section “B”. The proposed changes state spouses have management and control rights. If one of the spouses’ enters into a partnership and those partners don’t want to deal with the other spouse, then the other spouse needs to sign off on giving up their right to joint management and control. The existing statutory exceptions to the waiver, such as law firms, medical firms, etc, are still observed.

Regarding “C (3.)” There is existing law that a spouse isn’t responsible for the other spouses guaranteed debt (co-sign on a loan for another) (C.2). Addresses the situation where a spouse enters into a partnership with an outside party to co-sign a loan which in turn makes the spouse liable. The added language specifies it would be treated the same as co-signing a loan, rather than a partnership, making it so the spouse is not liable.

Todd Franks stated he expects the lending community to oppose this legislation because it places a limitation to lending. “Other entity” language was used because it is unknown what the legislature is going to create in the future.

A typographical error was noted in “C (3)”. The second “by” in line four needs to be removed.

- MOTION:** Rep. McCune-Davis made a motion to prepare A.R.S. § 25-214 for proposed legislation to be forwarded to the legislature.
- SECOND:** Motion seconded.
- VOTE:** Unanimous.

POST-DIVORCE COLLECTION OF DEBTS A.R.S. § 25-215

Todd Franks stated the change in section “E” reverses the court decision that post-divorce earnings of the spouse who did not incur the debt can be sought after by creditors. The proposed legislation states creditors cannot seek post-divorce income for a debt incurred by the other spouse in the marriage. Instead, the creditor will have to obtain both signatures to sign on for the debt if they want to hold both parties responsible after divorce with respect to post divorce earnings. The proposal protects the spouse that doesn’t know what debts their spouse is accruing, such as gambling debts as there is no knowledge requirement. This proposal brings consistency to the privity of contract between lenders and parties. The credit card company is more sophisticated and credit savvy than their consumers. They have the choice to say ‘if you are married then we want you both to sign so we can hold you both accountable’, or ‘we will just hold you accountable since we only have your signature.’ This proposed legislation speaks to those instances where credit extensions aren’t contributing to the

community, where the creditor obtained only one party's signature, but holds both parties accountable post-divorce for their future earnings outside the marriage.

Steve Wolfson stated this deals with the most egregious of situations.

Discussion regarding major medical bills incurred by one spouse ensued.

- MOTION:** Rep. McCune-Davis made a motion to prepare A.R.S. § 25-215 for proposed legislation to be forwarded to the legislature.
- SECOND:** Motion seconded.
- VOTE:** 12 approve, 1 opposed, 1 member out of room during vote

FOLDER 107

ATTORNEYS' FEES A.R.S. § 25-324

Todd Franks stated this proposed legislation directs the judge to ascertain how much of the attorneys' fees award was for financial resources consideration, and how much of the award was for reasonableness of position, and to reflect this determination in the minute entry.

- MOTION:** Rep. McCune-Davis made a motion to prepare A.R.S. § 25-215 for proposed legislation to be forwarded to the legislature.
- SECOND:** Motion seconded.
- VOTE:** Unanimous

FOLDER 109

DIVISION OF PROPERTY A.R.S. § 25-318

Todd Franks stated this proposed legislation directs judges to clarify their rulings, i.e., if the judge intended support then reflect it as such.

Section "A" is much more controversial. Case law (Biddolf and Goldstein) says judges are not supposed to take into consideration future tax consequences when separating property. \$1000 cash is treated the same as \$1000 worth of stock, even though taxes will come out of the stock and not the cash. This proposal would require the judicial officer to make the necessary calculations to determine tax consequences. The judges can only make decisions based on the evidence presented. Discussion ensued regarding the speculative nature of sale of property.

Commissioner Adam reminded the group that we are dealing with many self-represented litigants and questioned what the burden of proof would be, in addition to the speculation of tax consequences (when will the property be sold, how long will it be held, what will be the ultimate tax structure? Will tax evaluations be done by accountants?)

Todd Franks stated the calculations would not be speculative, because it would be based on a date specific sale value.

ACTION: Todd will redraft the statement to clarify the estimated tax consequence will be determined based on the sell value of the property on a set date in the proceedings.

Steve Wolfson stated that treating property consistently is important. If a date certain of liquidation is set (date of trial, date of separation, etc.) then we are comparing apples to apples.

Todd identified the additional problem of determining the final value of the property in terms of total cost of sale minus commissions, closing costs, and other expenses.

ACTION: Send A.R.S. § 25-318 back to the workgroup to redraft and re-submit to the Committee for the December 8, 2006 meeting.

HOMESTEAD – CONTEMPT A.R.S. §33-1103

This proposal extends that a homestead should be considered as a resource from which an obligor can pay child support, or any court ordered support, in a contempt proceeding.

Senator Brotherton stated that attorney fees can be found against the defendant if it is based on need. Barbara Fennell stated she thinks the public will be willing to prioritize child support and spousal maintenance, but not attorneys' fees. Todd Franks noted that any monies collected for attorneys' fees will go to the spouse that had to pay the attorney, usually without the ability to do so.

- MOTION:** Rep. McCune-Davis made a motion to prepare A.R.S. § 33-1103 for proposed legislation to be forwarded to the legislature.
- SECOND:** Motion seconded.
- VOTE:** Unanimous

MARITAL EDUCATION A.R.S. § 25-130

This proposal provides a minimally invasive way to say before you get married we have a duty to let people know aspects of the legal relationship they are about to enter. To implement the proposal it was suggested the court could develop tapes people can watch on the internet at home or watch at Clerk of Court office when they go to get the license.

Beverly Frame stated that the Clerks are not opposed to this legislation as long as the Clerks will not be held accountable for providing the education. The people just need to bring in their certificate showing they completed it.

Senator Brotherton stated he was concerned that people without internet access would have to go out of their way and burden their daily life to go view this tape, while those with means can just run it at home. He suggested letting it be known it is available to view.

Todd Franks suggested that all parties should come to the courthouse to view it; the court makes people go to parenting education when the partnership dissolves, which means they have to watch a video in conciliation court.

Discussion ensued regarding the mandatory versus the voluntary (“shall” versus “may” language) aspect and ways to provide the education.

Rep. Debbie McCune-Davis stated these issues are very complex and hard to untangle on the back end. This proposed legislation is a way to address the issue and educate people before it gets tangled. Front-loading has practical implications.

Ella Maley stated people have a right to make stupid decisions, but we are moving away from pro-domestic relations and toward anti-domestic relations if we move away from this legislation. Education is always pro-domestic relations. It makes us more consumer friendly if we educate them on some of the pitfalls and legal liabilities in a divorce.

David Weinstock suggested this proposal be tabled due to the controversy it raises. David also suggested making the statutory language voluntary (“may”), put the education component in place then conduct a longitudinal study to see if it has an effect. If there is a good outcome, change it to a mandatory education.

Senator Brotherton suggested tabling the proposal until more information is gathered about:

- What other states are doing
- What information they are including in their information
- Whether it is mandatory or voluntary
- How it is funded and if funding is available

WORKGROUP REPORTS

Court Procedures: Brian Yee

Brian reported that the Domestic Violence Rules Committee is doing a re-write of Rule 4 which has conflicting language.

Protective Orders: A contradiction can occur between a protective order and a standing family court order. When different orders conflict, it creates an issue for law enforcement agencies.

David Weinstock reported that he had to get an emergency order to be able to meet with both parents together in counseling session, because there was a protective order in effect with distance restrictions.

Integrated Family Court (IFC)

Theresa Barrett reported on the status of IFC. She indicated the program experienced an unexpected hit in the evaluation component, as the estimated pilot program initial amount proposed did not allot an adequate amount for an evaluation and it may need to be addressed with another appropriation.

Coconino County’s IFC program is hoping to be in place by January 2007. Judge Elaine Fridlund-Horne will come on-board as the IFC judge starting December 1, 2006.

Finally Theresa noted, the current appropriation (two year pilot program) is through June 2007; to ensure a full two-year pilot the timeline will need to be extended through June 2008, to allow monies to be expended past the end of FY08.

Pinal County is applying for State Justice Institute (SJI) grant monies to begin an IFC pilot program. Theresa stated it would be beneficial to have two successful pilot programs running at the same time. She promised to keep members apprized of Pinal County's efforts too.

NEXT MEETING

Friday, December 8, 2006
Arizona Courts Building
Conference Room 119A/B
10:00 a.m. – 2:00 p.m.
(602) 542-9007

CALL TO THE PUBLIC

There was no public present.

ADJOURNMENT

The meeting was adjourned at 1:30 p.m.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – January 26, 2007

PRESENT:

-
-

CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Linda Gray, Co-Chair

MEMBERS:

-
- Hon. Paula Aboud
- Hon. Karen Adam
- Theresa Barrett
-
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-
-
-
-
- Jodi Brown
- Sidney Buckman
- Daniel Cartagena
- William Fabricius
-
- Barbara Fennell
- Honorable Beverly Frame
- Linda Leatherman (telephonically)
- Ella Maley
-
- George Salaz
- Donnalee Sarda
- Ellen Seaborne
-
- Russell Smoldon
- David Weinstock
- Hon. Thomas Wing
-
- Steve Wolfson
- Brian Yee

STAFF:

Kathy Sekardi
Kim Ruiz
Barbara Guenther

Administrative Office of the Courts
Administrative Office of the Courts
Senate Democratic Staff Policy Advisor

CALL TO ORDER

The meeting was called to order by Ellen Seaborne, Acting Chair, at 10:15 a.m. without a quorum present.

ANNOUNCEMENTS

Ellen Seaborne reviewed the following changes in the legislative membership:

- Rep. Peter Hershberger, remain co-chair
- Sen. Linda Gray, replaced Sen Johnson as co-chair
- Sen. Rebecca Rios replaced Sen. Bill Brotherton
- Sen. Paula Aboud, Sen. Tim Bee, Rep. David Bradley and Rep. Andy Biggs remain
- There is still not a replacement for Rep. Debbie McCune-Davis

The following additional announcements were made:

- There are still five vacancies on the Committee and recommendations are welcome from all members.
- Ellen expressed her appreciation for all the past and present members that have served the Committee and worked hard on domestic issues.
- David Weinstock read a statement from Megan Hunter expressing her appreciation for the work she did with the Committee and where she is now.
- The 2006 Domestic Relations Committee Annual Report is complete and on the website.
- Kathy Sekardi congratulated Rep. Hershberger as he was honored with the Arizona Hospital and Healthcare Associations 2006 Legislative Appreciation Award.
- Ellen informed the members of the 4th Annual “Stop Violence Against Woman Day”, being sponsored by the Arizona Coalition Against Domestic Violence on February 14 with guest speaker Denise Brown, Nicole Brown’s sister.
- Sid Buckman invited all the members to a Post St. Patties Day party being sponsors by he and Ellen. Further information will be sent out after the meeting.

APPROVAL OF MINUTES

Ellen presented the November 17, 2006 minutes for discussion. The following corrections were made to the minutes:

- Page 4, Folder 104-Premarital and postmarital agreements: language needs to be added stating that it is currently a requirement to register the agreements, but there is no centralized repository.
- Page 5, Folder 106-Post-divorce collection of debts: language was changed and added to clarify it is regarding post-divorce earnings of the spouse who did not incur the debt.

The changes were made and they will be presented for approval at the next meeting since there is not a quorum present.

2007 LEGISLATIVE UPDATE

Kathy Sekardi, Leila Gholum and Jackie Kuder presented the following legislative items:

HB 2584 Integrated Family Court;	Extends the unexpended funds appropriated to the
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appropriation; extension	IFC to FY 2008-2009, to ensure the pilot program runs a full two years.
SB1356 Marriage; dissolution; community property	DRC legislation
SB 1357 Dissolution of marriage; attorney fees	DRC legislation
SB 1358 Marriage; property; debts	DRC legislation; language was changed in Legislative Council. Will need to amend the language once it is assigned to a committee.
SB 1247 Homestead exemptions; judgments; child support	Not the homestead contempt remedy legislation DRC proposed. This was put forward by Arizona Land and Title Association (ALTA).
SB 1190 Integrated Family Court; court orders	Adds clarifying language to allow family court judges in the IFC to order someone to have additional services they are eligible for.
HB 2211 Children; temporary court orders	CSC legislation. Allows the courts to issue temporary custody and parenting time orders pending judicial establishment of paternity.
HB 2214 Domestic relations; social security numbers	CSC legislation. Redacts social security numbers from pleadings petitions and other documents relations to child support and paternity. Social security numbers will be filed in the "record of the proceeding" which will be the Sensitive Data Sheet.
HB 2248 Title IV-D services; fees	DES legislation. Conforming to federal law by introducing a \$25 annual fee to each recipient of title IV-D services whose payment exceeds \$500 each year. This is a prop 108 bill so it requires a 2/3 majority vote.
HB 2249 Child support enforcement	DES legislation. Transfers the responsibility of establishing child support orders in uncontested cases, establish paternity by presumption and allow modification of court orders from the courts to the DCSE, IV-D agency through an administrative process. The court is in opposition of this bill. They presented this bill about 10 years ago and it didn't pass then.
HB 2250 Domestic relations; child support; committees	AOC legislation. Extends the time of the Domestic Relations and Child Support committees to 2017.
HB 2251 Child Support Committee; membership	AOC legislation. Changes a requirement in one of the membership categories to allow for a designee.

Committee members commented on the following:

- HB 2214, it was asked if the redacting of social security numbers was the responsibility of the clerk or the parties. The responsibility lies with the parties, not the clerk.
- HB 2249, It poses great concern to judges and commissioners that work in this area that these cases would not have judicial review. Many stated that it is not only the courts that slow the process of these cases, it is also the agency. All sides agree that the goal is to streamline case processing. DES has agreed to

hold the bill and the courts have agreed to do a trial run of handling appropriate IV-D cases in the expedited manner of non IV-D cases.

- HB 2249, if this authority is placed with DES without court review, it could be questioned if they are an impartial decider. While expedited, will it be fair? There are also considerations DES doesn't address, that the courts do. The courts have a holistic view, rather than just handling one piece.
- HB 2249, Commissioner Adam reported that as a member of a National Judicial Child Support Task Force she has noted that the national trend is moving from it being an administrative function to a function of the court and involving systemic changes along with other family law related areas.

CREDITOR ISSUES WORKGROUP REPORT

Ellen announced that Sen. Debbie McCune-Davis will remain on the workgroup as a member. Sen. McCune-Davis, Rep. Hershberger and Sen. Johnson are sponsoring the bills put forth by DRC. Ellen reported on the following legislation that was presented at the November Committee meeting:

- The following language was added in a new subsection "O" to § 25-216:
"The documents recorded shall not include confidential data as defined by Arizona statutes, notwithstanding the foregoing. The recorded document may identify a party by the last four digits of the party's social security number."
- § 33-1103 was approved by the Committee in November, but there is confusion with similar legislation dropped by Arizona Land and Title Association (ALTA), which has become SB 1247. The language is far more draconian than the version the Committee proposed.
- The approved legislation for § 25-214 and § 25-215 was changed when it went through Legislative Council and dropped as SB 1358. It will need to be amended when it gets assigned to committee.
- It was agreed that § 25-318 will continue to be table until there is a quorum present to discuss it.

The following Committee comments were made:

- David Weinstock inquired about controversial domestic violence legislation that he has heard about. He voiced concern that there were no legislators present at a legislative committee to provide updates and insight on current legislation.
- Ellen reminded the Committee of the two year legislative cycle and that the first meeting after elections and a change of members always has a low turnout, but it is not reflective of the effectiveness of the Committee. The Committee has put forth many good pieces of legislation over the years, including this session.
- More needs to be done to ensure there is a quorum present at every meeting rather than the trend of no quorum. A quorum is necessary to get work done and if a quorum isn't possible, then the meeting should be held over until the next meeting. Any informational items can be sent out through email if it can't wait for the next meeting.
- It was recommended that the meeting dates for 2007 be cleared through the legislative members' calendars first

Donnalee reported on the domestic violence legislation David had mentioned. The current law requires that domestic violence be taken into consideration when establishing custody. There is an additional provision that when determining parenting

time judges also consider the parents' willingness to promote a good parenting relationship with the other parent (a "friendly parent" provision). The proposed legislation makes the consideration of domestic violence the first priority in custody cases and also exempts parents where domestic violence is an issue from the friendly parent provision. David Lujan is involved in the sponsorship of this bill.

David Weinstock met with David Lujan regarding the language of the legislation because while it has good intentions it also has potentially dangerous, unintended consequences the way it was written. Mr. Lujan agreed to reconsider and change the language to get at the intent but not be as potentially detrimental. Since then, the people that were originally putting the legislation forward did not agree with the changes and dropped the original language with another legislator. It is unknown if the bill has dropped yet and if it has what the bill number is.

Brian Yee also commented on the consequences of the legislation. The existing statutes already address this issue and the judiciary already handles custody and parenting time in this way. The original legislation removes the word "significant" from in front of "domestic violence" which Brian anticipates will increase the cost of litigation, protract the process, clog the system and interfere with protection of victims. The presented legislation lacks understanding of how the current judicial system works, is unnecessary and the unintended consequences are potentially harmful.

Judge Wing voiced concern that this legislation wasn't brought forth by the AOC and that there were no legislative members present to provide further information.

Kathy explained that it is currently not an active bill and she is still investigating who is behind the legislation. She will keep the members informed. The meetings are also a place where the members can bring forth information that Kathy can look into.

Members requested that Kathy send email notifications regarding bills that pertain to domestic relations issues and when they are being heard in committee, so members are informed.

The February meeting should be devoted to legislation review and workgroups.

IFC Report

Ellen gave the following update on the pilot Integrated Family Court:

- The funding was appropriated to have the coordinator designated.
- Ellen was on the IFC judge selection committee that chose Elaine Fridlund-Horne. She will be a dedicated family bench and her position will be funded by the pilot and the county.
- Judge Fridlund-Horne will handle cases with dependency crossovers.
- Judge McCullough will handle cases with delinquency crossovers.
- The evaluation process by an independent evaluator has become a greater process and more expensive than anticipated. An RFP was sent out and a firm out of the San Francisco area was chosen.
- The evaluator will come out for a week to evaluate and offer suggestions.
- Now there is an RFP out for services.

Theresa Barrett informed the Committee that Pinal County is working on a grant to fund another pilot Integrated Family Court that will run under another model with more of a juvenile focus. This will allow for a good comparison of the models after two years.

POSSESSION OF PORNOGRAPHY FOR COURT PROCEEDINGS

Cindi Nannetti with the Juvenile Crimes Division of the Maricopa County Attorney's Office had David Weinstock summarize his concerns about the possession of pornography for legal purposes. David briefly summarized a case he was involved with that child pornography was an issue. He was in possession of the pornography and a police officer involved in the case informed him that he was in violation of the law. David suggested an amendment to A.R.S. § 13-3553 to allow for a professional exemption.

Cindi explained that the Maricopa County Attorney's Office implemented a policy in 2004 that child pornography is not to be copied or reproduce in any form. It is considered to be contraband just like illegal drugs. In order to adhere to the rules of evidence, they allow the defense or appropriate interested parties to review it under one of two circumstances. They can ask the court to make it available to them and either go to the police station to inspect it with the assigned officer or they can schedule to have the assigned officer bring it to their office and stay there while they inspect it. This option would be available to members of the mental and behavioral health profession involved in custody evaluations.

Cindi further explained that an exemption currently exists for the professional possession of pornography in A.R.S. § 13-3551, which states that it must be actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer. This puts the burden on the prosecutor to prove it was for the purpose of sexual gratification. That is why mental health professionals and law enforcement are protected.

Cindi's concern with David's amendment was that it provides another defense for an offender to use. They can say they had it for educational purposes for a study, etc.

Committee comments:

- What do you do with it when a parent or an attorney brings it to you?
You tell the attorney "I don't want to see that here. I will contact the detective on the case and arrange to inspect it at the station." If a parent brings it, it would be best to contact the police, because you don't really know which parent has been downloading it and for what purpose. The police can then go in and pull the computer and investigate who really downloaded it.
- Members of the legal, behavioral health and law enforcement fields are not educated on this subject. It would be helpful to provide education in this area, because we think we are acting in the best interest of the child, when it may be perpetuating the offense.
- It should be recommended to the state bar to conduct a training on the issue.
- Regarding the storage of the evidence after the case is complete:
 - Cindi explained the problem for the prosecutor's office is that it must be kept because Arizona allows prior subsequent acts of offender in subsequent cases to be used in trial if they re-offend. Every police

department is lacking in storage space, but the prosecutor's office cannot allow for it to be destroyed until the offender has been sentenced longer than the length of natural life or has died.

- o Beverly Frame said that with the new court retention schedules for evidence destruction, the court destroys the evidence after the time for appeal and PCR and with a court order and notice to everyone, the court destroys the evidence. The timeliness is subject to the resources available.

CALL TO PUBLIC

No public was present.

WORKGROUP REPORTS

Substantive Law

Judge Wing reported that the members of the workgroup reviewed and discussed the language of the domestic violence legislation presented earlier. The discussion reaffirmed the concern that this wasn't put on the radar for the workgroup to investigate. The legislation references a "single act of domestic violence" and doesn't differentiate between a single incident and a pattern relationship. It also proposes deviating from the fundamental focus of the "best interest of the child" and focus' more on proving something bad is going to happen.

Education & Prevention

Bill Fabricius reported that the workgroup is looking at the following two issues:

1. Training for parent coordinators
2. Child education component to parent education

Today they addressed the first issue and started to outline the dimensions of the training. The workgroup has been gathering information from other states on the child education component to the parent education.

Members stressed the importance of allowing for more time for the workgroups to meet.

Brian Yee commented on the modification of 403 and that as presented seems to make the judges' and the courts' job more difficult. This is the basic child custody statute and it will affect all the stakeholders in the Committee. A lot of work went into the drafting of 403 and it shouldn't be changed for the sake of change. Brian asked that the sponsors of the bill be invited to the next meeting to present what their intentions are. Then we can discuss if improvements are needed in the child custody statute and if so, what they are.

CALL TO THE PUBLIC

Diana Baker, a custodial parent, read a letter she wrote to the Governor's Office regarding her experiences in family court and her proposed solutions.

She has been going through the family court system for the past 10 years and is the single parent of an eleven year old child.

She recommended a plan very similar to what is currently underway in the integrated family court. Some recommendations were:

- Dedicated family bench

- Dedicated case loads for judges
- More support to the judicial staff
- Standardize pathways for families to follow. Develop the appropriate pathway plan for each family that has points of intervention built in to develop accountability and reward for the families.

ADJOURNMENT

The meeting was adjourned at 1:30 p.m.

NEXT MEETING

Friday, February 16, 2007
Arizona Courts Building
Conference Room 119A/B
10:00 a.m. – 2:00 p.m.
(602) 452-3193
Pass code: 1116

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – February 16, 2007

MEMBERS PRESENT:

Theresa Barrett
Sidney Buckman
Daniel Cartagena
William Fabricius
Honorable Beverly Frame
Linda Leatherman

Donnalee Sarda
Ellen Seaborne, Acting Chair
David Weinstock
Honorable Thomas Wing
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Peter Hershberger, Co-Chair
Honorable Linda Gray, Co-Chair
Honorable Paula Aboud
Honorable Karen Adam
Honorable Tim Bee
Honorable Andy Biggs
Honorable David Bradley

Jodi Brown
Barbara Fennell
Ella Maley
Honorable Rebecca Rios
George Salaz
Russell Smoldon

PRESENTERS/GUESTS:

Todd Franks
Perleta Ramos, Arizona Coalition Against Domestic Violence
Janet Sell, Attorney General's Office
Miranda McDonald, State House of Representatives
Candace Stewart, State Senate
Honorable David Lujan, State House of Representatives

STAFF:

Kathy Sekardi
Kim Ruiz
Eden Rolland
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives
State Senate

CALL TO ORDER

Ellen Seaborne, Acting Chair, called the meeting to order at 10:17 a.m. without a quorum present.

ANNOUNCEMENTS

Ellen introduced guests that are prospective Committee members:

- Perleta Ramos, Director of Systems Advocacy for the AZ Coalition
- Todd Franks, an attorney that has been an active member of the Creditors Issues Workgroup and is having his name submitted for membership to the full Committee

Kathy Sekardi gave the following update:

- Since the discussion on the possession of child pornography during the January 26 committee meeting, the State Bar has been contacted. Lisa Dean, Director of the CLE program, voiced interest in developing a seminar regarding this topic. Members of this committee are requested and encouraged to be active members in the process or recommend people that should be involved. Cindi Nanetti and David Weinstock will be presenters and they are looking for more.
- Kim Ruiz, support staff to the Committee has been promoted to another division of the AOC and this is her last meeting. Her replacement should be present at the March meeting.

Ellen asked the Committee members to introduce themselves and briefly give a summary of their professional background and their involvement with the Committee.

After the introductions, Ellen explained to the guests that it is not unusual for their not to be a quorum at the beginning of the year when the legislative session starts. Involvement tends to strengthen as the year goes on. While the lack of attendance affects the Committee's ability to vote on issues, the real work of the Committee comes out of the workgroups and they continue to be productive.

APPROVAL OF MINUTES

Ellen presented the November 17, 2006 and January 26, 2007 minutes for discussion.

No changes were proposed. They will be presented for approval at the March meeting since there is not a quorum present.

2007 LEGISLATIVE UPDATE

Eden Roland, Analyst for Human Services Committee at the House of Representatives and Miranda McDonald, Human Services Intern for the House of Representatives gave updates on the following House bills (last day for bills to be heard in the House is today):

HB 2584 Integrated Family Court; appropriation; extension	Extends the unexpended funds appropriated to the IFC to FY 2008-2009, to ensure the pilot program runs a full two years. <ul style="list-style-type: none">▪ Awaiting a hearing in the Judiciary committee, but it is not likely to be heard. Most likely dead.
HB 2211 Children; temporary court orders	CSC legislation. Allows the courts to issue temporary custody and parenting time orders pending judicial establishment of paternity. <ul style="list-style-type: none">▪ Passed through Human Services and Judiciary Committees. It was put on the consent calendar and is awaiting third read

	on the floor.
HB 2214 Domestic relations; social security numbers	<p>CSC legislation. Redacts social security numbers from pleadings petitions and other documents relations to child support and paternity. Social security numbers will be filed in the “record of the proceeding” which will be the Sensitive Data Sheet.</p> <ul style="list-style-type: none"> Amended in Human Services to clarify that the filing parties are responsible for placing the information on the sensitive data sheet and the court is responsible for maintaining the information in the state case registry. Passed in CAL and is awaiting third read.
HB 2248 Title IV-D services; fees	<p>DES legislation. Conforming to federal law by introducing a \$25 annual fee to each recipient of title IV-D services who have never received public assistance and whose payment exceeds \$500 each year. This is a prop 108 bill and requires a 2/3 majority vote since it involves imposing a new fee.</p> <ul style="list-style-type: none"> It passed Human Services and is awaiting a hearing in Rules.
HB 2249 Child support enforcement	<p>DES legislation. Transfers the responsibility of establishing child support orders in uncontested cases, establish paternity by presumption and allow modification of court orders from the courts to the DCSE, IV-D agency through an administrative process. The court is in opposition of this bill as presented.</p> <ul style="list-style-type: none"> Originally was an omnibus then it was split to three pieces. The only part that made it out of committee was: (1) allowing DES the authority to suspend a person’s professional license as a form of child support enforcement. When it was heard on the floor the following was added back in: (2) contract service employers reporting requirements to New Hire state reporting and (3) DES authority to administratively release a lien in title IV-D cases if the obligee can’t be found or is unwilling to sign the release. Passed the floor and is awaiting third read.
HB 2250 Domestic relations; child support; committees	<p>AOC legislation. Extends the time of the Domestic Relations and Child Support committees to 2017.</p> <ul style="list-style-type: none"> Passed through committee, caucus and the floor. It now passes to the Senate.
HB 2251 Child Support Committee; membership	<p>AOC legislation. Changes a requirement in one of the membership categories to allow for a designee.</p> <ul style="list-style-type: none"> Passed through committee, third read on

	floor and passed to the Senate
HB 2594 Domestic relations; support judgments; interest	CSC legislation. Eliminates interest on past child support judgments (not retroactive). <ul style="list-style-type: none"> Passed Committee but with a lot of controversial discussion. Had more dissention than other bills.
HB 2635 Deployed military; custodial rights	Custody orders based on a military deployment of a custodial parent are temporary and revert back to the original decree at the end of deployment. <ul style="list-style-type: none"> Passed through committee and is awaiting Rules. It will then will go on the consent calendar and bypass caucus and to third read.
HB 2263 CPS; interviews; right to refuse	CPS workers must verbally inform a family under investigation that the family is not obligated to allow CPS workers to enter the home and they are not obligated to allow them to interview the child. <ul style="list-style-type: none"> Heard in committee yesterday as a strike everything amendment. Replaced with the same bill but in a new format. Now in a list format with the addition that CPS must inform families in writing and verbally. It passed out of committee.
HB 2662 Judicially appointed health professionals; complaints	No update, because not assigned to the Human Services Committee.
SB1356 Marriage; dissolution; community property	DRC legislation <ul style="list-style-type: none"> Passed public safety and Human Services Committee. Ellen mentioned proposed changes from the Creditor Issues workgroup. Explained further under the Creditor Issues Workgroup report.
SB 1357 Dissolution of marriage; attorney fees	DRC legislation <ul style="list-style-type: none"> Passed Public Safety and Human Services.
SB 1358 Marriage; property; debts	DRC legislation; language was changed in Legislative Council. Will need to amend the language once it is assigned to a committee. <ul style="list-style-type: none"> Did not pass out of committee.
SB 1247 Homestead exemptions; judgments; child support	Disallows a person from claiming a homestead exemption to protect against child support or spousal maintenance, arrearages, or related costs and attorney fees. Not the homestead contempt remedy legislation DRC proposed. This was put forward by Arizona Land and Title Association (ALTA). <ul style="list-style-type: none"> Heard and amended in the Committee of the Whole. The amendment limits the court to consider the homestead as a resource for support only in certain circumstances.

SB 1190 Integrated Family Court; court orders	Adds clarifying language to allow family court judges in the IFC to order someone to have additional services they are eligible for. <ul style="list-style-type: none"> ▪ Still waiting to be heard in caucus.
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Committee comments:

- **HB2584:** Ellen explained the importance of the bill and inquired as to how it can be kept alive. It was suggested that it be attached to another bill, with likelihood of passing, on the floor as an amendment.
- **HB2214:** Janet Sell summarized the background for this legislation and keeping with federal requirements for TANF funds.
- **HB2248:** Members inquired about the difference between title IV-D services and public assistance. Janet Sell explained that title IV-D services are not a form of public assistance. They are state services available to anyone that applies.
- **HB2594:** Members inquired why this legislation was not routed through this Committee for feedback. Concern was voiced that this is a blanket policy change to address only some of the cases. There needs to be a qualifier for extreme cases.
- Janet Sell summarized the reason it was considered in the Child Support Committee and all the issues that were involved. This was the best possible solution out of all the options considered.
- **HB2635:** It was noticed that part of the proposed amendments was changing “defined” to “prescribed”. Discussion ensued and it was agreed that they really mean defined and prescribed is not an appropriate legal term in this case.
- **ACTION:** The bill will be passing to the Senate Public Safety and Human Services Committee. Sen. Linda Gray is the chair of that Committee, as well as this one, so we will forward the recommendation to her.
- **SB1356:** Steve Wolfson reported that the Family Law section of the Executive Council of the State Bar has concerns about how the new language will impact the application or continued effectiveness of preliminary injunctions, because it doesn’t refer to it.
- The proposed new language seems to cause a conflict within the statute between A and B.
- The following language was added to SB1356:
C. THE PROVISIONS OF THE FOREGOING SUBSECTION B SHALL NOT ALTER ANY RIGHTS OR OBLIGATIONS SET FORTH IN A.R.S. 25-315.
- **SB1357:** Steve Wolfson reported that the Family Law section of the Executive Council of the State Bar has concerns about how the new language will impact awards all together.
- Rule 82, *ARFLP*, requires the court to make findings of fact and conclusions of law if a party requests them and submits them ahead of time.
- The following language was added to SB1357 (A) after “...under this chapter or chapter 4, article 1 of this title.”:
IF REQUESTED BY A PARTY OR ANOTHER COURT OF COMPETENT JURISDICTION, WHETHER BEFORE OR AFTER ISSUANCE OF A FEE AWARD,
- **SB1247:** It was questioned how the amendment affects child support liens issued pursuant to A.R.S. 25-516. The title company ought to be able to recognize those as well.

- It was agreed to add the following to A.R.S. 33-1103(A)3 from the Creditor Issues Workgroup:
UNLESS A LIEN EXISTS PURSUANT TO A.R.S. § 25-516
- **SB1190:** This is not a bill out of Coconino County. Coconino County is not opposed to it, but it was not generated from Coconino.
- There were a few domestic relations related bills not on the agenda. The Committee staff and members need to bring forward all the bills for discussion and information. We also need to develop a relationship with legislators that if proposed legislation impacts domestic relations it should be sent through our Committee for discussion.
- Legislators that sponsor domestic relations related bills should be invited to the Committee meetings to present and discuss the legislation.
- It was recommended that a joint committee meeting of Domestic Relations Committee and Child Support Committee be scheduled in October or November to discuss possible legislation from each for the following session.

CREDITOR ISSUES WORKGROUP REPORT

Ellen tabled the discussion of A.R.S. § 25-318 amendments to the March meeting since there is not a quorum for a vote and it will be legislation for the next legislative session.

Todd Franks reported on the changes made in the workgroup meeting prior to the Committee meeting today. The Workgroup met with Sen. McCune-Davis, Lee Miller, representing ALTA and Larry Phelps with Capital Title Agency. The following proposed amendments came out of that meeting:

SB1356: Changes made in Legislative Council removed a key phrase and lost the intent of the amendment. The following addition to A.R.S. 25-211(B) will be amended on the floor:

2. Change the status of community property used to acquire new property or the status of that new property, *IF ACQUIRED WITH COMMUNITY ASSETS*, as community property.

SB1247: The McCune-Davis amendment that went through yesterday was a blending of two separate amendments that did not belong together. The Workgroup separated them and redrafted them as intended. The following was added to (3) for ALTA's intent (includes the above added language regarding A.R.S. § 25-516):

3. A lien for child support arrearages, spousal maintenance arrearages or costs or attorney fees awarded in relation thereto. *NOTWITHSTANDING THE FOREGOING, AN AWARD OF COURT ORDERED SUPPORT OR ATTORNEYS' FEES SHALL NOT CONSTITUTE A LIEN FOR THE PURPOSE, UNLESS AN ARREARAGE HAS BEEN REDUCED TO JUDGMENT, UNLESS A LIEN EXISTS PURSUANT TO A.R.S. § 25-516, OR UNLESS THE COURT ORDERS A SPECIFIC SECURITY INTEREST OF THE PROPERTY FOR SUPPORT.*

The original DRC approved language was added back to A.R.S. 33-1103 as follows:
C. THE COURT MAY CONSIDER THE PORTION OF PROPERTY CLAIMED AS EXEMPT BY THE HOMESTEAD PURSUANT TO ARS 33-1101(A) AS A RESOURCE FROM WHICH AN OBLIGOR HAS ABILITY TO PAY IN A

CONTEMPT PROCEEDING BROUGHT TO ENFORCE PAYMENT OF ANY FORM OF CHILD SUPPORT, SPOUSAL MAINTENANCE, ATTORNEYS' FEES AWARDED PURSUANT TO ARS 25-324, TO THE EXTENT BASED ON THE DIFFERENCE IN THE RELATIVE RESOURCES OF THE PARTIES, OR AN AWARD OF ATTORNEYS' FEES OR EXPENSES RELATED TO ENFORCEMENT OF ANY SUCH AWARDS.

CALL TO PUBLIC

No public was present.

WORKGROUP REPORTS

Substantive Law

Brian Yee reported on the changes to HB2215 and HB2216 Steve Wolfson, Judge Wing, Todd Franks and he drafted.

Judge Wing reported on the discussion they had about an issue with Title 25-509. The discussion was regarding the judge making at least a preliminary determination of existing parenting time for each parent before writing a child support order. The formula under Title 25-320 requires the judge to compute parenting time for the obligor before child support. The language in 25-509 should be amended to require at least in the record what the amount of parenting time has been or is currently in order to write a new child support order.

Daniel Cartagena reported on their discussion regarding the enforcement of protective orders, the consistency of an Order of Protection and a superior court order and the education of defendants. The DV Rules Committee is currently addressing the issues in the following ways:

- Developed a Defendant Guidesheet to inform defendants that when they are the subject of an Order of Protection they have to honor that regardless of the actions of the plaintiff.
- New procedure where limited jurisdiction courts, upon issuing an Order of Protection, will refer the case to superior court if there is a pending DR matter or a parenting plan in effect.
- A one hour orientation for superior court judges will be developed to instruct them how to rectify inconsistency between orders from limited jurisdiction courts.

They also discussed possibly addressing issues of paternity fraud and holding mothers responsible to list all possible fathers when establishing paternity.

Education & Prevention

William Fabricius reported that the Workgroup gathered information from Texas and Massachusetts regarding the child component of their parenting education classes. When he reviewed them he found they didn't involve the children, the way Hawaii's *Kids First* program does. William also reported that the Workgroup sent out a survey to the Parenting Class Educators in all fifteen counties to find out if any of them currently include a component with the child's point of view in their classes. There are still a few counties that need to respond. The child component they envision would involve the whole family with children meeting in one room while the parents meet in another then bringing them together.

COURT PROCEDURES

Brian Yee reported that the Court Procedures Workgroup is looking for a new mission. The initial issues that created the Workgroup have been addressed, so it is time to return to the strategic planning topics developed in early 2006. Brian suggested the following for the March meeting:

- Review, prioritize and assign the Strategic Planning Topics from 2006.
- Brainstorm ways to improve intelligence gathering and improving access to legislation
- Reserve finalizing the 2007 meeting schedule until the work plans of the Workgroups and the goals of the Committee are determined in March. The work of the Committee should drive the schedule, not the other way around.

Committee comment:

- There was a time when the work of the Committee was impacted by public comment and the number of guests that came to the meetings and presented.
- The lack of public has been affected by the lack of legislators present. The Committee usually had strong public turnout because they were the legislators' constituents. Without the legislators the constituents do not attend.

INTEGRATED FAMILY COURT

Ellen updated the Committee on the progress of the IFC and presented the most recent quarterly report.

- Ellen invited the Coconino IFC group to give a presentation to the Committee in April or May.
- The independent evaluators, Mark Morris and Associates, start next week. They reviewed past DRC minutes for the core goals envisioned for the IFC. A family law judge with the consultants will be monitoring the evaluation. They have seen many other programs, so they have ideas for us and are open to our ideas.

CALL TO THE PUBLIC

Representative David Lujan reported on the following legislation he sponsored:

- **HB2662** *Judicially appointed health professionals; complaints* was never heard so it is probably dead. Rep. Lujan is planning on meeting with various stakeholder groups to try and work through it before the next legislative session. The purpose behind it is to ensure mental health professionals are not silenced through frivolous complaints in order to have them removed from a case.
- **A.R.S. 25-403** Rep. Lujan sponsors the proposed legislation amending the statute to:
 - Priority list domestic violence when determining parenting time
 - Remove the word "significant" from the first sentence of 25-403.03.
 - Remove the "meaningful contact" clause when there is domestic violence.

The legislation had too much opposition to be introduced, so Rep. Lujan will develop an informal group in late March to discuss the issues and try and address the issues before the next legislative session.

Rep. Lujan explained that bills are never fully dead until the session is over. Strike everything amendments can happen to any bill. If the sponsor of a "dead" bill is the Chairman of a Committee they have the ability to bring it back through the strike all amendment.

Ellen suggested the Substantive Law Workgroup work with Rep. Lujan and maintain contact regarding the above two pieces of legislation for 2008.

ADJOURNMENT

The meeting was adjourned at 2:14 p.m.

NEXT MEETING

Friday, March 23, 2007
Arizona Courts Building
Conference Room 345 A/B
10:00 a.m. – 2:00 p.m.
(602) 452-3193
Pass code: 1116

DOMESTIC RELATIONS COMMITTEE

Minutes
July 20, 2007

MEMBERS PRESENT:

Honorable Linda Gray, Co-Chair
Theresa Barrett
Sidney Buckman
Daniel Cartagena
Honorable Beverly Frame
Linda Leatherman (conference-partial)
Donnalee Sarda
Ellen Seaborne
Honorable David Bradley (conference-partial)

David Weinstock (conference)
Brian Yee
Patti O'Berry
Honorable Rebecca Rios
George Salaz
Russell Smoldon

MEMBERS ABSENT:

Honorable Peter Hershberger, Co-Chair
Honorable Paula Aboud
Honorable Tim Bee
Honorable Andy Biggs
William Fabricius
Jodi Brown

Barbara Fennell
Ella Maley
Honorable Thomas Wing
Steve Wolfson

PRESENTERS/GUESTS:

Melissa Knight, Pinal County Family Court
Paul O'Connell, Pinal County Family Court
Julia Smock, Office of the Attorney General, Glendale
Jana Bertucci, Department of Economic Security
Honorable David Lujan, State House of Representatives
Kay Radwanski, AOC
Jennifer Greene, AOC
Diana Baker, Member of Community

STAFF:

Kathy Sekardi
Tama Reily
Eden Rolland
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives
State Senate

CALL TO ORDER

Honorable Linda Gray, Co-Chair, called the meeting to order at 10:15 a.m. without a quorum present.

ANNOUNCEMENTS

The following announcements were made:

- Commissioner Karen Adam resigned her DRC membership effective April, 2007.
- New member Patti O’Berry, of the Domestic Violence Coalition, was introduced.
- New AOC Domestic Violence Court Specialist, Kay Radwanski, and AOC Administrative Assistant, Tama Reily were introduced.

Senator Gray asked the Committee members to introduce themselves.

Kathy Sekardi announced the Arizona State Bar’s “Parting Shots” seminar will take place on September 27, 2007. The segment “Pornography and How It Affects the Family” was developed from the pornography possession issue that presented to the DRC earlier this year. Kathy will send more information as it becomes available.

Ellen Seaborne reports that Todd Franks has oral argument before the Supreme Court on September 27, 2007, regarding non-modifiable spousal maintenance issues. As this is the same date that the “Parting Shots” seminar is to take place, Kathy will look into what the time each event is to take place and forward the information via email to the members.

Paul O’Connell and Melissa Knight reported on the status of the Pinal County Integrated Family Court (IFC) program. A “living document” of the IFC procedures was provided in today’s meeting, along with the Chronological Task Timeline as laid out by the IFC Steering Committee.

Arizona House Representative, David Lujan was appointed as a new DRC member in today’s meeting.

APPROVAL OF MINUTES

The minutes for the November 17, 2006, January 26, 2007, and February 16, 2007 could not be approved since there is not a quorum present.

OPEN MEETING LAWS PRESENTATION

Assistant Attorney General, Julia Smock, presented the Open Meeting Laws (OML). Some of the key points discussed included:

- A public notice and agenda must be posted no less than 24 hours prior to regularly scheduled meeting.
- Agenda should state “subject to revision up to 24 hours in advance,” no revisions may be made after this period.
- Agendas should accomplish two things:
 - ~ define what the meeting will cover
 - ~ limit what the meeting will cover
- Public has the right to listen – it does not have the right to speak; although committee members may invite a member of the public to speak.
- Issues raised by the public cannot be addressed at that meeting unless an agenda item.

- Action items should be handled when there is a quorum.
- All emails committee members send regarding committee issues are “on the record” and must be retained according to an established retention policy.
- Additional OML information can be found online at www.azag.gov

REVIEW OF STRATEGIC PLANNING TOPICS OF 2006 AND REVIEW OF 2007 MEETING SCHEDULE

Kathy announced the new schedule for potential meeting dates, and informed the members that the November 9 meeting will likely be a joint meeting with the Child Support Committee.

Members were asked to review the Strategic Planning Topics from 2006 and discuss some of the items they would like added to next year’s topics. The 100 mile rule and education for children of divorcing parents were among the issues requested.

CALL TO THE PUBLIC

Diana Baker, a custodial parent who previously addressed the Committee (January 26, 2007), returns to offer additional considerations for her proposed “Pathway” program. These involved the use of a “red line item” system to track accountability in three areas:

- Following long-term court orders
- Following through with specific “red-line” (incomplete) items
- Ensure the “minimum requirements” of court orders are maintained by the parties

She also suggests that program procedures be made available to the public.

WORKGROUP REPORTS

Substantive Law

Dan Cartagena reported that the workgroup discussed a few of the items added to the Strategic Planning document. This included whether the issue of the 100-mile rule should be addressed, in terms of making a change to the relocation statute. No definitive plans were made. In addition, the workgroup considered some terminology and statute clean-ups such as:

- The definition and meaning of “primary care.”
- The definition of “joint physical custody,” and whether or not this should be updated to “equal parenting time,” since the notion of “physical custody” relates more to parenting time.
- A.R.S.§ 25-803(D), which has to do with establishment of legal custody based solely on whether the child has been with one parent for the greater part of six months. There is concern that this language might encourage misbehavior in a parent, such as keeping a child from the other parent, or using the rule as a legal tactic.
- Paternity fraud.
- DES currently does not address parenting time when establishing custody, due to competing issues. Workgroup may explore this issue.

Education & Prevention

George Salaz reported that the majority of the workgroup was not present, but there were a couple of items that warrant consideration. One is a model of cooperative system of family law out of South Bend, Indiana, that he plans to research before the next meeting. Another program to consider is the collaboration with ASU and Maricopa County that is coordinated by Erwin Sandler and Sandy Braver.

Court Procedures

Brian Yee reported that the workgroup is looking at data collection as a significant issue to work on. The data that is collected is not collated in a way that is useful for evaluating the number of joint custody versus sole custody filings, the time from start of the filing of the petition to when the litigation is finally resolved, and the number of post-dissolution filings. For example, in many jurisdictions we have just as many post-dissolution filings as initial filings, and it would be useful to have data available to allow for factor analyses, which could identify possible characteristics that are present with post-dissolution filing. This could lead to methods of intervention, and ultimately, a decreased case load in the courts.

Another issue is the 100-mile rule, which they could look at collaboratively with the Substantive Law workgroup. One key area of the statute they suggest looking at is the question of where the mile-marker begins and how the rule is impacted by various factors, such as when one parent leapfrogs from area to area, but each move is within the 100-mile limit.

Creditor Issues

Ellen Seaborne reported on the bills that went through the last legislative session:

SB1357 - Amends Section 25.324 allows for more specificity in the findings of relative economic position of the parties, and the position each party has taken through the proceedings.

SB1247 – Amends Sections 33.964 and 33.1103, the homestead exemption can not be claimed if there is a judgment for child support, spousal maintenance, and court-ordered attorney fees.

Bills that did not pass are:

SB1356 – Would amend Section 25-211 in order to specify the community property status does not change at the time of service of petition for dissolution of marriage

SB1358 – Would amend Sections 25-214 and 25-215, which would clarify the right to manage community property.

SB1621 – Would set up a central registry for maintaining premarital and postmarital agreements.

Integrated Family Court

Ellen reported on a couple of issues the workgroup will be working on. Paul O'Connell will be looking at how their two pilot programs stack up against the ten recommendations that were adopted by the AOC and by the legislature, to learn if they are actually pursuing the areas intended. Additionally, they will be looking into the question of funding for the pilot programs, going forward. The workgroup will meet for approximately one hour following the DRC meetings. Ellen requests that members interested in serving on their committee notify her. Materials provided in today's meeting include the Third quarter and Annual progress reports, as well as articles from local papers highlighting the IFC program.

2007 LEGISLATIVE UPDATE

The update for the DRC legislation was covered in Ellen Seaborne's earlier. Kathy Sekardi asked for any questions or clarifications there might be, and reminded members that they will continue to receive weekly legislative summaries from her during the legislative session.

Amber O'Dell addressed the committee on SB1190, which would have allowed family court judges to order a family to participate in services offered by any state program in which the family is eligible to participate. Senator Landrum Taylor is considering sponsoring this legislation again next year and would like the committee to be aware of this. It was decided to place the issue on the agenda for the next meeting, and invite Senator Landrum Taylor to present on the bill.

CALL TO PUBLIC

No public was present.

ADJOURNMENT

The meeting was adjourned at 2:03 p.m.

Next meeting:

Friday, August 17, 2007

10:00 a.m. to 2:00 p.m.

Room HHR-1

Arizona State Legislature

1700 W. Washington

Phoenix AZ 85007

Teleconference number: 602-452-3912 Access Code: 1114

DOMESTIC RELATIONS COMMITTEE

Minutes

August 17, 2007

Members Present:

Honorable Linda Gray, Co-Chair
Honorable Peter Hershberger, Co-Chair
Honorable Paula Aboud
Theresa Barrett
Daniel Cartagena
William Fabricius
Honorable Beverly Frame
Ella Maley
Honorable Rebecca Rios

Donnalee Sarda
George Salaz
Ellen Seaborne
Honorable Thomas Wing
Brian Yee
Barbara Fennell
Honorable David Lujan

MEMBERS ABSENT:

Honorable Andy Biggs
Honorable David T. Bradley
Sidney Buckman

Jodi Brown
Patti O'Berry
Linda Leatherman

PRESENTERS/GUESTS:

Melissa Knight, IFC Pinal County
AdiShakti Khalsa, IFC, Coconino County

STAFF:

Kathy Sekardi
Tama Reily
Eden Rolland
Barbara Guenther
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives
Arizona State Senate
Arizona State Senate

CALL TO ORDER

With a quorum present, Honorable Peter Hershberger, Co-Chair, called the meeting to order at 10:10 a.m.

ANNOUNCEMENTS

The appointment of Honorable Sarah Simmons as the rural domestic relations Superior Court judge member was announced, as was new appointee Patti O'Berry, representative

of a statewide domestic violence coalition. New member, Representative David Lujan, Phoenix, was introduced.

APPROVAL OF MINUTES

The minutes for the November 17, 2006, January 26, 2007, February 16, 2007, and July 20, 2007 meetings were presented for approval.

MOTION: Senator Linda Gray made a motion to approve the November 17, 2006, January 26, 2007, February 16, 2007, and July 20, 2007 minutes as presented.

SECOND: Representative Hershberger seconded the motion.

VOTE: Unanimous.

DISCUSSION ESTABLISHING COMMITTEE RULES

Policy regarding quorum – legislative members

Kathy Sekardi explained to the committee a member's suggestion for a proposal for a new policy regarding quorums. The policy would help the committee to attain a quorum more easily by continuing to allow legislative members voting rights, but it would not count them toward the quorum. The quorum requirement would be reduced to 12 if the 8 legislative members were excluded from the quorum.

MOTION: Representative Hershberger made a motion to change the rules in order to allow legislative members to retain voting rights but not to count toward attaining a quorum.

SECOND: Motion seconded.

VOTE: Unanimous.

Policy regarding retention of emails

Kathy Sekardi addressed the committee on the need to establish a policy regarding retention of e-mails. According to Julia Smock of the Attorney General's office, Open Meeting Laws mandate that the committee have a policy to guide retention of DRC related emails.

Discussion ensued regarding which specific emails the policy would pertain to, whether they should be kept in hard copy form, or electronic, and the time frame that should be established. Several members suggested keeping legislative emails for a period of one year, to mirror the legislative session, and administrative emails, such as meeting notices, for 60 days. However, Representative Hershberger expressed concern as to whether the legislative emails would be kept for a set period, such as November 1, through October 31, or a running year, beginning on the date the email is received.

In addition to these details, the question of who has the responsibility for keeping the emails was raised. Should it be an administrative duty that the specialist could manage, or should each committee member monitor his/her emails?

It was decided that before establishing a policy, Representative Hershberger and Senator Gray will consult with their respective House Rules Attorneys on what the Open Meeting Laws dictate, and discussion on the matter will resume once this information has been obtained.

Open Meeting Law (HB2208) and workgroup minutes

Kathy Sekardi addressed the members on new legislation (HB2208), which will require legislative committee workgroups to provide public notice and record minutes of their meetings, beginning on September 19, 2007. Kathy offered to provide a template formatted for minutes, which the workgroups can use in the event she is absent from a meeting. If there are any questions on this matter, members can contact Kathy.

DISCUSSION REGARDING HB2662

Judicially appointed health professionals; complaints

Representative David Lujan reported on the history of HB2662, which amends A.R.S. § 13-3620. It relates to mental healthcare providers, who, during the course of working with a child, learn that abuse is taking place. The goal of this legislation is to put a process into place to prevent frivolous complaints from being filed against the provider. These complaints occur when a parent/guardian wishes to keep the provider from testifying on behalf of the child. It's an issue that has been before the legislature a few times in the past, but it continues to face challenges. Currently, Representative Lujan is working with many system stakeholders on revising the bill. They are discussing the idea of a screening committee, comprised of individuals from the Board of Behavioral Health Examiners, and other licensing boards, which would examine a complaint when it is filed, to determine its legitimacy. If it is not legitimate, then it would be thrown out, and allow the mental health provider to continue advocating for the child. Representative Lujan hopes the group will complete their work on the bill in the next month, and will bring it to the next DRC committee meeting.

Judge Wing raised a question about the time lag that could occur when a complaint is processed by a screening committee, and the possibility that the abuser would be allowed to continue his/her abuse during this lag. Representative Lujan pointed out that this time lag is present in the current process as well, when a complaint is filed. The hope is to come up with a more expedited process with the new legislation.

Steve Wolfson commented that a pleading before the court, similar to a Notice for Change of Judge, might be more effective than a screening committee in these cases, because the court has to give priority to the Notice hearing. He suggested that the workgroup consider this. Representative Lujan stated that this was an option previously considered; however, there was opposition by the licensing boards, who were of the opinion that Judges don't have the expertise needed to screen mental health providers. The boards also wanted to maintain the role of screening.

Ellen Seaborne asked about the term *licensee*, which is found in the bill. In view of the fact that many attorneys are now being licensed as Parenting Coordinators, Family

Masters, and best interest attorneys, does this language include attorneys as well as the mental health providers? Representative Lujan clarified that the parts of the statute being amended refer to licensed counselors, psychiatrists and psychologists under title 32 and this legislation will retain that.

Representative Lujan stated that the group will be meeting again on September 10, and he extended an invitation to any committee member who is interested in attending. The meeting will take place at the House of Representatives building.

INTEGRATED FAMILY COURTS REPORTING

Coconino county

AdiShakti Khalsa presented a report on the progress of the IFC in Coconino County. She provided members with a written report outlining the program's processes, and financial and caseload statistics.

Pinal County

Melissa Knight updated the committee on the activities for the last quarter in Pinal County. A written quarterly progress report was provided.

CALL TO THE PUBLIC

No public comments offered.

WORKGROUP REPORTS

Substantive Law

Dan Cartagena reported that the workgroup discussed the 100-mile rule, looking at language that needs to be clarified because it could be easily misinterpreted. This is a line item they will approach at their next meeting. Another item that will be addressed is to clean up some language in A.R.S. § 25-403 and 25-402, where the key words *joint physical custody* and *joint custody* need to be more specific as to the legal status of the custody. Also, paternity fraud was considered, but they will need to take a more thorough look at the issue, as there does not seem to be a lot of statutes in Arizona that pertain to this. It might not be a real significant item for them to work on at this point in time. Finally, they talked about the order of dependents, and the interaction between IV-D cases and existing custody or paternity cases. This relates to the fact that anyone can seek the assistance of the Attorney General on child support matters, but this could disrupt an ongoing custody, paternity, or divorce case.

Education & Prevention

William Fabricius reported that the workgroup talked about two main issues. The first concerned training for parent coordinators. He noted that there are some groups in the state who want to organize this type of training, and are looking for ideas on how to do that. The workgroup learned from Ellen Seaborne that her court in Flagstaff is preparing to run some parent coordinator training this coming fall, and they were able to gain some information about the court's approach to the structure and content of the training. The

second item they worked on regarded adding a child component to the parent-education programs that the courts run. Flagstaff court is already planning a pilot program to institute a child component. They discussed meeting with the people in Flagstaff and having a workshop-planning meeting to work out a type of curriculum for the child-component of the program. There are some other states that have this type of program, so these will be looked to for ideas, as well. That will be going on later this fall, so hopefully in the new year there will be a child-education pilot program up and running.

Dr. Yee added that there are some upcoming training modules on parent-coordinator training at the Maricopa County Annual Training in December, and in February, the AFCC has at least one module. A complete definition of *parenting-coordinator* is found under Rule 74 of the Arizona Rules of Family Law Procedure.

Court Procedures

Dr. Yee reported that the workgroup talked about developing a list of recommendations for data collection, as Yuma County is going to be starting up the new data collection model. One issue they are focused on is post-dissolution filings, because the cases have increased to the point where they almost exceed initial filings. Data analysis could help to identify what contributes to post-dissolution filings. Some of the data that could be useful in this process include the frequency of joint versus sole custody cases that go to post-dissolution, and/or the occurrences of domestic violence allegations and orders of protection during the initial pre-dissolution filings.

Creditor Issues

Ellen Seaborne reported on the workgroup's meeting, which was attended by the Co-Chairs of this committee today. She reminded the committee that they are always welcome to attend the meetings. The topics the workgroup discussed today were proposed bills that didn't pass in the last session. They specifically looked at SB1358, which applied to management and control of marriage property and debts, and SB1621, which pertained to premarital and postmarital agreements and a central marriage registry.

Integrated Family Court

Ellen reported on the workgroups plans for their first meeting, which was scheduled to take place immediately following this committee meeting. Due to the fact that many of the workgroup's members have had to leave today, the meeting will likely be cancelled. She will table the DVD presentation they were prepared to give, as time will not allow for the length of the presentation. It will be presented at the next DRC meeting. Ellen extended an invitation to any committee member who would like to participate in the workgroup.

CALL TO THE PUBLIC

There was no public present.

ADJOURNMENT

The meeting was adjourned at 2:00 pm.

Next meeting

Friday, September 21, 2007
10:00 am to 2:00 pm
State Courts Building
Room 345 A/B
Phoenix, AZ 85007

DOMESTIC RELATIONS COMMITTEE

Minutes

September 21, 2007

MEMBERS PRESENT:

Honorable Linda Gray, Co-Chair
Theresa Barrett
Jodi Brown
Sidney Buckman
Daniel Cartagena
William Fabricius
Barbara Fennell
Honorable David Lujan
Honorable Beverly Frame
Patti O'Berry

Honorable Rebecca Rios
George Salaz
Ellen Seaborne
Honorable Sarah Simmons
Honorable Thomas Wing
Steve Wolfson
Brian Yee
Linda Leatherman (Call-in)
Russell Smolden
David Weinstock (Call-in)

MEMBERS ABSENT:

Honorable Peter Hershberger, Co-Chair
Honorable Paula Aboud
Honorable Tim Bee
Honorable Andy Biggs

Ella Maley
Donnalee Sarda
Honorable David T. Bradley
Jeff Hynes

PRESENTERS/GUESTS:

Melissa Knight, IFC Pinal County
Donna Williams, Maricopa County Court
Kay Radwanski, AOC

STAFF

Kathy Sekardi
Tama Reily
Eden Rolland
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives
Arizona State Senate

CALL TO ORDER

Without a quorum present, Honorable Linda Gray, Co-Chair, called the meeting to order at 10:15 a.m.

ANNOUNCEMENTS

Senator Gray announced the appointment of Commander Jeff Hynes, of the Phoenix Police Department.

Members were informed that a sign-up sheet for the DRC workgroups was being passed around for members' signatures, in order to record who is on each workgroup.

Senator Gray asked the committee members and guests to introduce themselves, and give a brief statement of their involvement or interest in the DRC.

APPROVAL OF AUGUST 17, 2007 MINUTES

The minutes from the August 17th meeting were not presented for approval at this time, as there was not a quorum present.

UPDATE OF MENTAL HEALTH PROVIDER BILL

Representative Lujan gave an update on the progress of the legislation aimed at preventing frivolous claims against mental health professionals. He summarized the basis for the legislation, and the circumstances wherein a child discloses abuse to a mental health professional, and the parents alleged to have committed the abuse use the judicial system to prevent the mental health professional from giving court testimony on behalf of the child. This legislation seeks to address the situation in a manner that prevents the frivolous complaints from going forward, while ensuring that legitimate complaints against mental health professionals are identified and handled accordingly.

Some of the issues that have arisen with the proposed legislation include the issue of whether attorney's fees should be awarded when a case does not have merit. The Board was opposed to this measure, however. Additionally, a provision that was discussed at the last meeting of the stakeholders' group was to require all complaints to be filed with a sworn affidavit. This is still under consideration by the group.

The stakeholder group will meet again in mid-October. If members are interested in participating with the group, they can let Representative Lujan know, and he will add them to the mailing list so they may receive invitations to the meetings.

Brian Yee added that beyond the issue of attorney's fees, practitioners in the field are most concerned with preventing individuals from filing unjust board complaints in order to disrupt the court process. The primary need is for a complaint process that ensures accountability for practitioners. He stressed that the legislation in no way attempts to prevent individuals from filing justifiable board complaints.

Ellen Seaborne commented that if the legislation for attorney's fees is not passed and you have that type of frivolous complaint, there is still the other avenue of A.R.S. § 25-324, in which a judge has the discretion of awarding attorney's fees to a party whose position has not been reasonable.

APPROVAL OF MINUTES

At this point in the meeting, with the arrival of additional members, a quorum had been achieved. Senator Gray presented the minutes for the August 17, 2007 meeting for approval.

MOTION: Motion to approve the August 17, 2007 minutes as presented.
SECOND: Motion seconded.
VOTE: Unanimous.

REPORT ON NEW PUBLIC OPINION STUDY

William Fabricius reported on a recent study which asked four public opinion questions regarding 1) Living arrangements for children; 2) Custody awards based on presumptions; 3) Joint custody and equal access to both parents; and 4) Opinion as to whether Father's disengagement after divorce is "almost normal." Handouts on the study were provided to members.

Patti O'Berry questioned whether the study considered the quality of parenting in their questions to study participants. William explained that the project is in its infancy, and there is much data still to be considered.

Judge Simmons asked about the sampling process, as the report appeared to show that there were half the number of female attorneys interviewed as there were male attorneys. Would they be certain they were getting a fair cross-section in future sampling groups? As well, she asked if there would be a follow-up to this study that would compare this study's findings to studies that followed up with children to see how various living arrangements affected them. Dr. Fabricius explained that there are many studies that indicate the consequences of the various living arrangements.

Dan Cartagena added that he has seen some studies of that nature, where college students who had been children of divorced families were participants in follow-up studies. He felt this to be a good example of how college students can be a great demographic from which to select a sampling.

Judge Rios asked whether the survey asked questions of the children regarding their perception of interest level and/or engagement shown on the part of the non-custodial parent, or perception that the custodial parent was seeking to keep them from the other parent. Dr. Fabricius stated there was no data on this specific question.

PRESENTATION OF JOBS ONE PILOT PROGRAM IN MARICOPA COUNTY

Donna Williams, Maricopa County Family Court Assistant Administrator reported on a pilot jobs program that took place at the Maricopa County Superior Court, in collaboration with the Department of Child Support Enforcement. Although the pilot program lasted only about 8 weeks, it is considered to be a potential resource that Integrated Family Courts (IFC's) may want to implement. The program is not a "job placement" tool, rather;

it places an individual in the courthouse to assist the obligor with job searching, since many of Arizona's child support obligors are either unemployed or underemployed.

ORDERS OF PROTECTION

Kay Radwanski gave a presentation on the Orders of Protection process and the new forms, which must be used on or before January 1, 2008 for all courts. In addition, she addressed the *Project Passport* program, which is the initiative to develop standardized forms in other states. It has now been instituted in most states across the country, so that the first page of an order of protection can be easily recognized by law enforcement representatives from any jurisdiction.

CALL TO THE PUBLIC

Roger Thompson wanted to thank the committee for their work on fathers' issues, and particularly their attention to A.R.S. § 25-408. He also commented that he was pleased to see the Public Opinion Study presentation by William Fabricius today.

Chris Groninger from the Arizona Foundation for Legal Services, who is a custodial parent, explained her concerns about moving to presumptive joint custody, as this could be dangerous in domestic violence situations. As well, she questioned the wisdom of using law to influence social norms. She also voiced concerns about the demographics and methodology used in the Public Opinion study.

Patricia Madsen, of Community Legal Services, spoke to the committee stating that she was not speaking on behalf of Community Legal Services, but expressing her personal response to the Public Opinion Study. She wondered what questions were asked in the study to determine whether a family was intact or non-intact, and if remarriage was a consideration. Additionally, she felt that college students did not provide a representative sample group for a public opinion study, as too many limiting factors would be present.

Melissa Knight, of the Integrated Family Court in Pinal County, also commented that she didn't feel college students were representative of the norm, but wanted to thank William for his plans to continue this research looking to a wider demographic group.

WORKGROUP REPORTS

SUBSTANTIVE LAW

Steve Wolfson reported that the group focused on two of the current statutes with potential areas for modification. The first was a possible modification to A.R.S. § 25-408, the 100 mile rule. They are looking at it in terms of the usefulness of the 100 mile stipulation, in that it may not be workable or practical today. They felt that many times even relocations of less than 100 miles can be of significant consequence. Since any modification of the statute will have statewide application, the group plans to seek feedback from judicial officers around the state. Another statute discussed was A.R.S. §

25-803 (D), which gives custody of a minor child to the parent with whom the child has resided for the greater part of the past 6 months. The workgroup plans to speak with the Attorney General's office on this to find out why this was originally put into the statute.

EDUCATION & PREVENTION

William Fabricius related the two main issues the group addressed. The first was Rule 74 under the Arizona Rules of Family Law Procedures, which concerns training for parent coordinators. There are some upcoming opportunities for this type of training; the Family Law Judicial Conference in Phoenix, which will take place October 2nd through 4th; also, the IFC group is planning 2 or 3 trainings around the state, the first one will take place January 11, 2008; finally, the AFCC conference will take place in February, and will have sessions on training for parent coordinators. William added that the workgroup will be considering some revised language for Rule 74, regarding training, and this will be addressed at the next meeting.

The other issue they discussed was pilot programs that would add a childcare component to parent education. On this issue, they will be contacting the individual in charge of the Maui, Hawaii program, which seems to have some useful information for the group.

COURT PROCEDURES

Brian Yee reported that their group met along with the Substantive Law group as their agendas overlap somewhat. The 100 mile rule is an issue they have on their calendar as well. Brian stated that since Steve Wolfson had already given an excellent overview on the topic, he had nothing to add at this time. Brian explained that there were two key players from the workgroup missing today, and as they were in the process of generating a list of the data items that they would like the courts to be tracking. An update on this will be provided at the next meeting.

CREDIT ISSUES

Ellen Seaborne reported that the workgroup looked at some of the failed legislation from last year and will probably present to this committee the revision of A.R.S. § 25-211. This statute maintains that when a divorce is filed and has been served, the status of the community property in place at that time does not change. Property, debts, and earnings acquired after the date the Petition is served are the property of the individual that earns them. Another statute discussed was ARS § 25-214, which is the equal management and control statute which concerns the right of spouses to manage separately or together their community assets. The workgroup will be addressing these statutes as well as others, and will have more to report at a later date.

INTEGRATED FAMILY COURT

Ellen introduced Joanne Keene, who is representing the Coconino Board of Supervisors. Joanne shared with the committee that the Board has committed to obtaining additional funding for the IFC program, and she will be responsible for managing that effort.

Melissa Knight gave an update on IFC in Pinal County. They have completed their procedure manual, which includes a 2-tiered screening process for cases. It includes minute entry formats and a bench guide for the judge to be able to combine matters related to a family and hear them sequentially, on the same day. They have begun to pilot their screening form process, and to date they have 22 of the first tiered screening forms completed. Of those, 6 were identified as being potential integrated family court cases, or 30% of the cases that were filed in their court within a 2 to 3 week period.

Ellen also provided a DVD presentation which featured some of the key individuals involved in the IFC, who spoke about the genesis, principles, services, and long term goals of the IFC.

CALL TO THE PUBLIC

No public comments were offered.

ADJOURNMENT

The meeting was adjourned at 1:35 pm.

Next Meeting

Domestic Relations/Child Support Committees Joint Meeting

Friday, November 9, 2007

10:00 am to 2:00 pm

Judicial Education Center

Silver & Turquoise Rooms

451 E. Van Buren

Phoenix, AZ 85004

**CHILD SUPPORT COMMITTEE
&
DOMESTIC RELATIONS COMMITTEE
JOINT MEETING
MEETING MINUTES
Arizona Courts Building
Judicial Education Building
Phoenix, Arizona
November 9, 2007**

CHILD SUPPORT MEMBERS PRESENT:

Co-Chairs

- Honorable Peter Hershberger
- Honorable Thayer Verschoor

Members:

- Honorable Manuel Alvarez
- Robert Barrasso
- Theresa Barrett
- Honorable Kimberly Corsaro
- Honorable Rebecca Rios
- Kim Gillespie
- Honorable Michael Jeanes
- Michelle Krstyen
- Ezra Loring
- Brandon Maxwell
- Bianca Varelas-Miller
- Russell Smoldon
- Honorable Colleen McNally
- Veronica Hart Ragland
- Honorable Gilberto Figueroa

GUESTS:

Don Vert, COC, Maricopa County
Amber O'Dell, State Senate
Kendra Leiby, AZCADV
Richard Slatin,
Kyle Routen, AZ Foundation for Legal Services/Education
Stan O'Dell, AZ Foundation for Legal Services/Education
Janet Sell, AZ Attorney General Office

DOMESTIC RELATIONS MEMBERS PRESENT:

Co-Chairs

- Honorable Peter Hershberger (telephonically)
- Honorable Linda Gray

Members:

- Theresa Barrett
- Honorable Tim Bee
- Honorable Andy Biggs
- Honorable David T. Bradley
- Jodi Brown (telephonically)
- Sid Buckman
- Daniel Cartagena
- William Fabricius, Ph.D.
- Barbara Fennell (telephonically)
- Honorable Beverly Frame
- Jeff Hynes
- Linda Leatherman
- David Lujan
- Ella Maley, Ph. D.
- Patti O'Berry
- Honorable Rebecca Rios
- George Salaz
- Ellen Seaborne, J.D.
- Honorable Sarah Simmons
- Russel Smoldon, J.D.
- Honorable Leah Landrum Taylor (telephonically)
- Honorable Thomas L. Wing
- David Weinstock, Ph.D.
- Steve Wolfson, J.D.
- Brain W. Yee, Ph.D.

STAFF:

Kathy Sekardi Administrative Office of the Courts
Lorraine Nevarez Administrative Office of the Courts
Tama Reily Administrative Office of the Courts
Eden Rolland Arizona State Senate

CALL MEETING TO ORDER

Senator Gray, Co-Chair of the Domestic Relations Committee, called the meeting to order at 10:10 a.m.

APPROVAL OF MINUTES- CHILD SUPPORT

The October 12, 2007 minutes were presented for approval.

Motion: A motion was made to approve the October 12, 2007 minutes as presented. Seconded.

Vote: Minutes approved unanimously.

APPROVAL OF MINUTES-DOMESTIC RELATIONS

The September 21, 2007 minutes were presented for approval.

Motion: A motion was made to approve the September 21, 2007 minutes as presented. Seconded.

Vote: Minutes approved unanimously.

LEGISLATIVE DEADLINES

November 15th – 5:00 PM Agency Bill Report
November 15th – Prefiling begins
January 14th – Session begins
January 17th – 5:00PM Seven Bill introduction Limitation Begins in House
January 28th – Last day for House Members to submit bill requests to Legislative Counsel
February 4th – Legislative Council completes house intro Sets
February 11 – Last day for House Bills to be introduced.

DISCUSSION OF SB1190

SB1190 was sponsored by Landrum-Taylor, Rios, and Bradley; however, it did not pass last session. Senator Landrum-Taylor gave a brief explanation of the intent of the SB1190. SB1190 was created to give judges in family court the ability to refer families to different services. The bill was stopped in committee last session. The language in SB1190 has addressed the concerns the legislative body had last session and will be presented at the next DRC meeting.

IFC UPDATE –COCONINO COUNTY

Gary Krcmarik gave an update on the Integrated Family Court (IFC) for Coconino County. An interim report was done by Mark Morris and Associates and Joanne M. Brown Consulting to evaluate the implementation of the Integrated Family Court. The IFC program is doing great. People are able to utilize more services such as supervised visitation, supervised exchanges, drug testing, and drug and

alcohol assessments. The program is saving money, people are not coming back as often and it seems to be efficient and effective.

Committee Comments

How is the funding working for implementing the program?

Response: The program is funded by the legislature through this coming June 2008. The funding is being extended to at least October 31, 2008. The Court has benefited with all the programs and service it can now offer families. Also, there has been more high conflict cases resolved sooner, the number of custody evaluations have significantly decreased, and the referrals going out for custody evaluations are now more issue focused. The cases are going to the integrated family court are resolved about three months earlier.

Do you believe the bulk of the success is related to the fact that Coconino has an Integrated Family Court or that there is more judicial resources that take the time to handle the cases right up front versus rushing them through?

Response: Both methods benefit the court. It helps that all domestic relation cases involving children are sent to one division that has the services available and are able to refer the parties to the appropriate services.

Does the Integrated Court have a property mediator or is that a judicial officer?

Response: There is a list of attorney's that we refer families to (for this service).

How does the governance structure work?

Response: The Administrative Office of the Courts is whom we report to; there is a Board and an Integrated Advisory Committee.

IFC UPDATE-PINAL COUNTY

Paul O'Connell gave a brief update on the progress of the Integrated Family Court pilot program. Currently, Pinal County has been planning on implementing the IFC for the past year. During that time policy and procedures have been completed. Pinal County is planning to commence the IFC calendar sometime in mid December.

Committee Comments

How many judges will be assigned to the IFC?

Response: One judge will be assigned.

Will the assignment of one judge be assigned to only family law cases or will it include juvenile and dependency (matters)?

Response: It will include domestic relations, dependency, and delinquency (matters).

Will the cases that will be assigned to the judge, are they cross-over or will there be a select number of cases?

Response: There will be commonality between all the cases.

What is the structure of governance?

Response: There is the same set of governance as Coconino County.

CHILD SUPPORT COMMITTEE-DISCUSSION OF PROPOSED LEGISLATION

Robert Barrasso, Kim Gillespie and Michael Jeanes discussed and explained the proposed legislation for the upcoming legislative session.

A. A.R.S. § 25-510 and HB2594: Last year, the committee proposed and the legislature passed HB2594. This bill relates to receiving and disbursing support and maintenance monies and judgments for past support. Currently, the bill is in conflict with the language in A.R.S. § 25-510. The Child Support’s Statute Review workgroup is in the process of cleaning up the language to conform with ARS § 25-510.

Committee Comments:

What standard is being used to establish the current 10% interest rate on the arrears?

Response: The 10% interest rate is the rate that is provided for every single civil judgment.

B. A.R.S. § 25-681: The Superior Court in Maricopa County developed a process by which criminal and civil arrest warrants can be electronically issued. They are transmitted electronically to the sheriff’s office that is electronically signed by the judicial office. However, in A.R.S. § 25-681 (D) there is a provision that a facsimile signature of a judicial officer is required. The workgroup would like to delete that language to not only allow for facsimile signatures but to also allow for electronic signatures.

Committee Comments:

If paragraph D is being stricken, where is the replacement language that authorizes the electronic signatures?

Response: By eliminating the current language it is mirroring the language in statute for civil and criminal arrest warrants.

C. A.R.S. § 25-320: The committee has been looking at how to draft language to establish paternity to receive custody orders. A change in paragraph L now reads “at least the applicable state or federal adult minimum wage whichever is higher.” There was discussion and the workgroup will look at revising the language to include imputing minimum wage to custodial parents, when appropriate.

D. A.R.S. § 25-817: Last legislative session, the workgroup revised 25-817 to allow the court, under certain circumstances, to enter temporary child support and temporary parenting time orders. The workgroup is also looking into revising the paternity testing statute to use broader language to update the statute with more modern methods of testing paternity.

Motion: A motion was made to accept the amendment which provides for notice and an opportunity to be heard before any temporary custody or support is ordered, in ARS § 25-817. Seconded.

Vote: Approved unanimously.

DOMESTIC RELATIONS COMMITTEE-DISCUSSION OF PROPOSED LEGISLATION

The workgroup members will discuss and explain the proposed legislation for the upcoming legislative session.

A. A.R.S. § 25-211: The workgroup did some cleanup with the language. The change to 25-211 attempts to clarify that filing of a divorce petition does not alter the status of preexisting community property. It also clarifies that property purchased with community property continues to be community property, and if there was community property in existence at the time the divorce petition was served, then whatever duties, with respect to the property, continues to exist.

B. A.R.S. § 25-214: The committee is proposing a few changes. One of the changes clarifies equal management for both spouses to participate equally in partnerships and entities, unless prohibited by law, or unless one party waives their rights by signing a notarized written waiver of that spouse's right to manage community property. Another proposed change requires signature of both spouses if a creditor wishes to collect judgment against community assets, when a transaction of a partnership, corporation, or limited liability company, or other entities, are involved.

C. A. R.S. § 25-213: Clarifies what is separate property and status of separate property at time of service of a petition for dissolution, separation or annulment. The change in section B mirrors the change in A.R.S. § 25-211. The workgroup also made changes regarding transfers of sole and separate property.

D. A.R.S. § 25-215: Attempting to deal with creditors and collection of debt.

E. A.R.S. § 25-318: The proposed language directs the judge to clarify their rulings if any aspect of the division of parties' joint, common, or community property is the nature of support.

Committee Comments:

The both committee had a suggestion to change the word "shall" to "may" in section A.

F. A.R.S. § 25-216: Committee did not discuss at the meeting.

G. A.R.S. § 33-413: Committee did not discuss at the meeting.

DISCUSS DRC SCHEDULED MEETING ON NOVEMBER 16, 2007

The Domestic Relations Committee decided to cancel the November 16, 2007 meeting.

Motion: A motion was made to cancel the November 16, 2007 meeting. Seconded.

Vote: Approved unanimously.

CALL TO THE PUBLIC

Kara Tiffany, Pediatrician in North Phoenix, came to speak on behalf of children who are involved in custody cases. Sometimes children are forced to visit parents that are abusive or using drugs. The courts need to consider the affects of decisions made that reflect on our children.

NEXT MEETING Child

Support Committee

December 7, 2007

10:00 AM – 2:00 PM

State Courts Building, Conference Room 345A/B

Domestic Relations Committee

December 14, 2007

10:00AM – 2:00PM

State Courts Building, Conference Room 345A/B

ADJOURNED

Senator Gray, Co-Chair, adjourned the meeting at 1:30 PM

DOMESTIC RELATIONS COMMITTEE

Minutes

January 11, 2008

MEMBERS PRESENT:

Honorable Linda Gray, Co-Chair
Theresa Barrett
Jodi Brown
Sidney Buckman
Daniel Cartagena
Honorable Beverly Frame
Todd H. Franks
Jeff Hynes (telephonically)
Honorable David Lujan
Patti O'Berry

Honorable Rebecca Rios
Grace Hawkins (telephonically)
Ella Maley
Donnalee Sarda
Honorable Thomas Wing
Brian Yee
Russell Smolden
Honorable Leah Landrum Taylor

MEMBERS ABSENT:

Honorable Peter Hershberger, Co-Chair
Honorable Andy Biggs
Honorable Tim Bee
Honorable David T. Bradley
David Weinstock

George Salaz
Honorable Sarah Simmons
Steve Wolfson

PRESENTERS/GUESTS:

Paul O'Connell, IFC Pinal County

STAFF

Kathy Sekardi
Tama Reily
Eden Rolland
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives
State Senate

CALL TO ORDER

Without a quorum present, Honorable Linda Gray, Co-Chair, called the meeting to order at 10:10 a.m.

ANNOUNCEMENTS

Senator Gray announced the appointment of the following new members:

Richard Slater, a joint custodial parent and educator for a mediator education program at the University of Phoenix.

Todd Franks, a Family Law attorney and member of a blended family.

Grace Hawkins, Director of the Conciliation Court in Pima County.

Reappointed members were Ellen Seaborne and William Fabricius.

Donnalee Sarda, children's advocacy representative, informed the committee that the Justice for Children Arizona agency has dissolved as of December 31, 2007, and a new organization has been developed, called Defenders of Children. It has a similar, but wider scope than Justice for Children, which concerns child abuse and child abuse prevention. The new organization will have the same staff members as those who were with Justice for Children.

DOMESTIC RELATIONS COMMITTEE – COMPLETION OF PROPOSED LEGISLATION

Credit Issues Workgroup proposed legislation:

- A.R.S. § 25-211 – Community property. Adds subsection B to the statute with the intent of clarifying that filing and service of a petition for divorce, legal separation or annulment does not change the status of pre-existing community property.

Committee comments:

It seems that subsection B (3), is in direct conflict with the present statute 25-315 A (1) (a), because there is a difference in the parties' rights to deal with property once the petition for dissolution of marriage is filed. They cannot do various things such as transfer, encumber, conceal, sell, or otherwise dispose of community property unless it is in the usual course of business, and for the necessities of life, including the right to pay attorney fees.

Response: Mr. Franks suggested this conflict be resolved by inserting the clause “*except as set forth in A.R.S. § 25-315 A (1) (a)*” at the end of subparagraph B.

As a quorum had been reached at this time, Senator Gray requested a motion on the proposal.

MOTION: Motion to accept the proposal of A.R.S. § 25-211.

SECOND: Motion seconded.

VOTE: Motion approved unanimously.

MOTION: Motion to amend A.R.S. § 25-211 B (3) to read “Alter the rights of either spouse with respect to the management of community property except

as set forth in A.R.S. § 25-315 A (1) (a).”

SECOND: Motion seconded.

VOTE: Motion approved unanimously.

MOTION: Motion to accept the proposal of A.R.S. § 25-211 as amended.

SECOND: Motion seconded.

VOTE: Motion approved unanimously

- A.R.S. § 25-213 Separate property. Grammatical clean-up to subsection C; does not change the intention of the statute. Addition of subsection D. is intended to avoid hardships and resolve inconsistencies that are present under existing case law determinations concerning the impact of a party investing his or her sole and separate property in joint, common or community name.

Committee Comments:

Judge Wing expressed concern that subsection D. would drastically change existing law by *requiring* the court to do what the current law allows *if* there is clear and convincing evidence. He also noted there would likely be serious misunderstandings over what was community property and separate property when/if dissolution came about, as most people won't be aware of this change in law. He recommended the proposal not be passed.

Senator Landrum Taylor agreed with Judge Wing and further suggested the proposal adds an element of confusion the way it is worded so that it is unclear how it is to be interpreted.

Patti O'Berry described a scenario where the sole and separate property owner might be in a situation of financial distress, and could use the spouse's good credit rating to refinance the personal property in order to alleviate the situation. In such a circumstance, the result of the joint ownership status becomes detrimental to the other spouse. It seems like there should be some loopholes built in to the statute to protect against such possibilities.

MOTION: Motion to accept the proposal of A.R.S. § 25-213

VOTE: Motion failed 11:5

- A.R.S. § 25-214 Management and Control. The proposed change to subsection A. is purely grammatical clean-up and does not alter the substance of the statute. The proposed addition to subsection B and C(3) are intended to clarify two aspects of the statute, first that either party has the same right to manage and control community property, irrespective of the named owner, and, second, the

right to manage and control community property remains subject to pre-existing legislative limits. Mr. Franks clarified that if a spouse takes community money to establish an LLC, that spouse cannot then take whatever gains come from that entity as his/her sole property.

Judge Wing asked if section C(3) would mean that the spouse who sells Avon or Mary Kay products would be solely liable for the debt that exists in that arrangement at the time of the filing of the dissolution.

Response: Mr. Franks explained that it would depend on the form of entity. People can incur debts as individuals, as has been the case, and those are community obligations. What section C(3) is saying is that when there is an entity set up as an LLC, and a partnership is formed with an outside individual, and that partnership goes out and borrows money, or guarantees the debt of a third party, there needs to be a waiver signed by both spouses. The way the current law has evolved, the other spouse becomes liable as well in such a situation because there is a partnership. This was not the original intent of the law, and the proposal seeks to correct this.

MOTION: Motion to strike “other entity” from A.R.S. § 25-214 C(3).

SECOND: Motion seconded.

VOTE: Motion approved unanimously.

MOTION: Motion to change the word “each” to “that” in A.R.S. § 25-214 A.

MOTION: Motion seconded.

VOTE: Motion approved unanimously.

MOTION: Motion to accept the proposal of A.R.S. § 25-214 as amended.

MOTION: Motion seconded.

VOTE: Motion approved unanimously.

- A.R.S. § 25-215 Post-Divorce collection of debts. Committee will table discussion/vote on this statute until a later date.

- A.R.S. § 25-216 Pre-marital Agreements Registry.

The purpose of A.R.S. § 25-216 is to create a uniform location and procedure for parties to register prenuptial or postnuptial agreements (or appropriate notice of such agreements) and for creditors (or potential creditors) to search for and obtain notice of such agreements. Instead of individual counties’ websites (some don’t have a website), there would be one location for all prenuptial agreements. The Secretary of State is being asked to maintain the responsibility for this website. There would be a registration fee for individuals, and these monies would pay for the work incurred in the process of starting and maintaining the website.

Senator Landrum Taylor asked if there would be a start-up fee incurred for such a process. Senator Gray stated there would be only the cost for programming of the website.

MOTION: Motion to accept the proposal of A.R.S. § 25-216.

SECOND: Motion seconded.

VOTE: Motion passed unanimously.

- A.R.S. § 25-318 Disposition of property; retroactivity; notice to creditors; assignment of debts.

Changes to this proposal include adding provision R. to say if any part of the divorce or separation court order could be construed as either being property division or in the nature of support, the court needs to make a determination whether property is intended to be in the nature of support or for property division. This is because the word *property* includes payment of debts and there are various forms of payment of debts that can be in the nature of support. This creates a problem in bankruptcy court because support orders are non-dischargeable and the courts then have to determine what the intent of the parties was for the property. The proposed language asks the judges to issue findings about this. Other changes are in B., which proposes that in dividing property, judges take into consideration all debts or obligations that are related to the property, including taxes that have not yet been paid. In addition we are clarifying that judges may consider the tax exempt status of particular property.

MOTION: Motion to accept the proposal of A.R.S. § 25-318.

SECOND: Motion seconded.

VOTE: Motion passed unanimously.

- A.R.S. § 33-413 Invalidity of unrecorded marriage contracts. This proposed statute goes hand-in-hand with the proposed registry created by proposed A.R.S. § 25-216 and provides that prenuptial or post-nuptial agreements are not valid, as against creditors or purchasers or property, unless the creditor or purchaser has notice of the agreement, either through actual notice or constructive notice occurring because the parties registered the agreement with the Secretary of State.

Senator Gray commented that this presents a problem for those individuals who have already registered their agreements with the County Recorders, in terms of getting the information transferred to the Secretary of State. Mr. Franks suggested adding a statement at the end of the provision to say it would apply “only to agreements entered into after the effective date of this statute.”

MOTION: Motion to accept the proposal of A.R.S. § 33-413.

SECOND: Motion seconded.

VOTE: Motion approved unanimously.

MOTION: Motion to accept the proposal of A.R.S. § 33-413 as amended above.
SECOND: Motion seconded.
VOTE: Motion approved unanimously.

- A.R.S. § 13-3102 Misconduct with weapons; Domestic violence.

A.R.S. § 13-3102 would allow persons who are under a protective order to carry a concealed weapon without acquiring a permit. It has been suggested that this allowance be part of the protective order itself when it is issued. The proposal recommends waiving the expense of the concealed weapon permit and the required course; however, there remains a question as to whether the waiver should be for a period of 6 months, or for the duration that the protective order is in effect.

Danny Cartagena questioned whether the individual requesting the order of protection could be carrying a concealed weapon before a full hearing has established grounds for the protective order.

Beverly Frame had concerns about what system would be in place to keep weapon registries current for law enforcement, the courts, and the public, and to make clear which individuals should or should not be carrying a concealed weapon.

Representative Lujan agreed with these points, noting the relative ease with which a person can get a protective order prior to a full hearing where both parties are heard by the court. He suggested it might be good to have the legislation drafted so that the ability to carry the concealed weapon wouldn't apply until the full hearing before the judge.

Senator Gray agreed that these points should be considered as the proposal goes forward.

- A.R.S. § 25-803 Persons who may originate proceedings; custody; parenting time; conciliation court.

Danny Cartagena updated the committee on the work of the Substantive Law workgroup on A.R.S. § 25-803. They have focused much of their efforts on section D, which assigns custody to the parent with whom the child has resided for the greater part of 6 months. They continue to work toward improved measures for determining custody.

APPROVAL OF NOVEMBER 9, 2007 MINUTES

The minutes from the November 9, 2007 Domestic Relations Committee meeting were presented for approval at this time.

MOTION: Motion to approve the minutes of the November 9, 2007 Domestic Relations Committee meeting as presented.
SECOND: Motion seconded.
VOTE: Motion approved unanimously.

SB1190

Senator Landrum Taylor presented SB1190 which amends A.R.S. § 25-323.02 concerning domestic relations committee; membership; duties; pilot programs; report. It allows a judge in the family court the ability to refer a family to different services that may be helpful in keeping them together.

MOTION: Motion to accept A.R.S. § 25-323.02 as presented today.
SECOND: Motion seconded.
VOTE: Motion approved unanimously.

DES/DCSE Proposed Legislation

Veronica Hart Ragland, Assistant Director, Division of Child Support Enforcement addressed the committee regarding three areas where DES wants to propose legislation:

- To obtain the administrative authority to establish paternity after genetic testing results of at least 95% confirmed paternity.
- To establish support orders through an administrative process when the matter is uncontested. It would permit the establishment of a temporary order if either party fails to attend a mandatory conference. The temporary order may be appealed to Superior Court within 60 days. All contested cases would still go before the Superior Court.
- To seek judicial authority to order cash medical support when neither party has insurance that is accessible and available at a reasonable cost. The Deficit Reduction Act defines reasonable cost as no more than 5% of the obligated parent's gross income or such higher amount as prescribed by the child support guidelines.

Mental Health Provider Complaint Bill

Representative Lujan updated the committee on the status of **HB2662**, concerning judicially appointed health professionals. It was decided that legislation will not be pursued on the issue this year, and will instead be addressed through court orders and custody evaluators.

CALL TO THE PUBLIC

Mr. Robert Reuss, a paternal grandfather, addressed the committee about his concerns that Arizona courts are failing to look adequately at the best interest of the child where custody cases exist, and erring to frequently on the side of the mother.

ADJOURNMENT

The meeting was adjourned at 1:35 pm.

Next Meeting

Domestic Relations Committee
July 11, 2008
10:00 am to 2:00 pm
State Courts Building
Conference Room 119 A/B

DOMESTIC RELATIONS COMMITTEE

Final Minutes

July 11, 2008

MEMBERS PRESENT:

Honorable Linda Gray, Co-Chair
Theresa Barrett
Jodi Brown (telephonically)
Sidney Buckman
Daniel Cartagena
Todd H. Franks
Grace Hawkins
Danette Hendry
Jeff Hynes (telephonically)
Ella Maley
Patti O'Berry

Honorable Rebecca Rios (telephonically)
George Salaz
Donnalee Sarda
Ellen Seaborne
Honorable Sarah Simmons
Russell Smolden
David Weinstock
Honorable Thomas Wing (telephonically)
Steve Wolfson
Brian Yee
William Fabricius (telephonically)

MEMBERS ABSENT:

Honorable Peter Hershberger, Co-Chair
Honorable Tim Bee
Honorable Andy Biggs
Honorable David T. Bradley

Honorable Beverly Frame
Honorable Leah Landrum Taylor
Honorable David Lujan

PRESENTERS/GUESTS:

Melissa Knight, IFC Pinal County
Laura Sabin Cabanillas, New Life
Counseling

Kay Radwanski, Administrative Office of the
Courts

STAFF

Kathy Sekardi
Tama Reily
Eden Rolland
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives
State Senate

CALL TO ORDER

Without a quorum present, Honorable Linda Gray, Co-Chair, called the July 11, 2008 meeting of the Domestic Relations Committee (DRC) to order at 10:00 a.m.

ANNOUNCEMENTS

The following announcements were made:

- Senator Gray welcomed new member, Danette Hendry, a custodial parent.
- There is a vacancy on the Committee for the faith based organization position.
- Senator Leah Landrum-Taylor gave birth to a little girl on June 21, 2008.
- Donnalee Sarda announced the opening of a new branch of the Defender's of Children in Colorado City.

Members and staff were asked to introduce themselves.

APPROVAL OF THE JANUARY 11, 2008 MINUTES

As a quorum was now present, the minutes for the January 11, 2008 meeting of the Domestic Relations Committee were presented for approval. It was noted that a correction was needed to indicate that Richard Slatin was not yet appointed to the Committee.

MOTION: Motion to approve the minutes of the January 11, 2008 meeting of the Domestic Relations Committee.

SECOND: Motion seconded

VOTE: Approved unanimously

MOTION: Motion to approve the minutes of the January 11, 2008 meeting of the DRC with amendment as discussed herein.

SECOND: Motion seconded

VOTE: Approved unanimously

LEGISLATIVE UPDATE

Kathy Sekardi presented an update on legislation passed during the 2008 legislative session. Effective date for most of the bills will be September 26, 2008.

Domestic Relations Bills

SB 1112 – Divorce; disposition of property; marriage; dissolution; community property
This bill includes the language of **SB1151**. Amends A.R.S. § 25-318 and A.R.S. § 25-211. Clarifies the process for dissolution of marriage, separation, or annulment. Does not change the status of community property, nor does it change the status if the property has been used to acquire new property

Domestic Violence Bills

Kay Radwanski, AOC Domestic Violence Specialist, presented the following Domestic Violence bills:

HB 2248 – Electronic communications; harassment

Amends A.R.S. § 12-1809, the statute that addresses injunctions against harassment and A.R.S. § 13-3602 which is the order of protection statute. This requires the judicial officer, in addition to reviewing the petition pleading and any other evidence presented by an applicant for a protective order, to also consider any evidence of harassment by electronic contact or communication.

SB 1100 – Domestic violence and child abuse.

Amends A.R.S. § 25-403.03. Changes prohibitive language in the existing statute to permissive language, allowing the court to contact or order services from DES if the court believes the child may be a victim of abuse or neglect.

Kathy mentioned another bill of interest, HB 2505, which passed under Child Support related bills. It addresses child support and medical insurance and would put the responsibility for the medical insurance on the shoulders of the parents. The recently established Guidelines Review Committee will be working on this in the coming months.

Stalled Bills

SB 1107 – Marriage; property; debts

Would have required a joinder of both spouses in order for a creditor to collect a judgment against community assets,

SB 1183 – Pre and post-marital agreements

Required the secretary of state to establish and maintain a registry for filing all of the post and pre-marital agreements.

HB 2009 - Child bigamy; child custody

Would prevent the superior court from granting physical or legal custody or unsupervised parenting time with an individual who has practiced child bigamy and is expected to continue such activities in the future.

Senator Gray added that SB 1183, the pre and post-marital agreements registry with the Secretary of State, was never heard due to the lack of appropriation funding the registry.

INTEGRATED FAMILY COURT UPDATES

Coconino County

Ellen Seaborne presented the Quarterly Program Progress and Final Evaluation Reports for the Coconino County pilot program. She briefly went over some of the information covered in the reports. The independent evaluators, Mark Morris and Associates, will be in attendance at the next Domestic Relations Committee meeting to

review and answer Committee members' questions about the reports. Copies of the reports were provided in today's meeting materials.

Pinal County

Melissa Knight updated the committee on the progress of the Pinal County IFC. They are currently moving into evaluation phase and have submitted a scope of work to the County procurement agency, as well as several other outside agencies. She discussed the ways they continue to work toward providing some of the specialized services that exist in the Coconino County program. She also stressed the need for funding if the program is to continue giving quality services to families.

“THE BATTLE OVER CUSTODY LAWS”

Laura Sabin Cabanillas, a counselor in Yuma, addressed the committee about her concerns on current Arizona statutes regarding custody and best interest of a child. She stated that the current language of A.R.S. § 25.403 lacks a provision for teenagers who are of sufficient age and maturity level to have a voice to speak for themselves and express their wishes. Laura believes the following language should be added to the statute:

“If the child is of age 13 or older, the court is required to conduct an interview with the child, while taking into serious consideration the child's desires.”

Committee Comments/Concerns:

- The language should specify whether this refers to contested cases.
- What about suggesting that the judge appoint someone to interview the child?
It is my recommendation that the judge speak directly to the child so there is no miscommunication.
- Some interviews are done with a counselor from the family conciliation court present. Is that acceptable?
Yes, as long as the judge is present.
- This bill could create harm the way it is written. While children should definitely be heard, it is often the case that they don't want the responsibility of making this kind of decision. They love both parents, and this could impose guilt upon the child. In addition, most judges don't have the training to talk with children about these things. There is also the question of the child's ability to know what is best for him/herself. In this age group, a child might prefer one parent over the other because of a permissive environment.
- What about creating language that suggests listening to the child and giving his/her desires more weight, but not using the term “required?”
- Maybe it is not the law that needs to be changed, but the fact that judges aren't necessarily paying attention to the statute as is currently in place. It might be that a series of educational seminars for judges, along with forensic interview training would correct the problem.
- How can we find out if judges aren't adhering to the current statute, which says the judge shall consider the wishes of the child, so that sanctions can be imposed upon them?

- It is possible that it's the attorneys who are not requesting the interview or involvement of conciliation services.
- In any contested case, judges already have to go through all of these factors and make specific findings, as to the wishes of the child if they can.

Steve Wolfson will present this issue for discussion at the State Bar Family Law Section's annual retreat in August, and will have the Substantive Law Workgroup discuss in their meetings.

WORKGROUP REPORTS

Substantive Law

Steve Wolfson reported on the workgroup's clean-up of Arizona Revised Statutes in Title 25, where references to Civil Procedures should be replaced by references to the Arizona Family Law Rules.

MOTION: "To approve the suggestions of the Substantive Law Workgroup on the Arizona Revised Statutes as presented." (A.R.S. §§ 25-315; 25-325; 25-408; 25-415; 25-502; 25-503; 25-504; and 25-812.)

SECOND: Motion seconded.

VOTE: Approved unanimously.

The workgroup expects to present an action item at the next Domestic Relations Committee meeting regarding modification to 25-403. The proposed language will require parents to provide notification to each other of any sexual offenders that could potentially have access to, or contact with, the minor child/children in the household. The workgroup continues to look at A.R.S. § 25-408, (relocation statute), and A.R.S. § 25-803, (presumption regarding legal custody). Steve reported the workgroup will continue meeting monthly, and asked that he be contacted if anyone has issues they would like the workgroup to examine.

Credit Issues

Todd Franks updated the committee on the activities of the workgroup. They have met recently to work on developing an agenda of statutes/issues they will look at this year, and to consider whether they need to resubmit any bills that were not passed this last legislative session. The workgroup is currently working on a revision to A.R.S. § 25-318(a)(b) to address how to deal with omitted property, property that may not have been handled in the original divorce, and may possibly have been willfully concealed. They will also look at the case law that deals with omitted debts, and the issue of joint management and control, which is one of the bills that got "bottled up." They hope to meet with Rep. Farnsworth to discuss why the bill was not heard in committee hearings, and whether or not it may require amending.

CALL TO THE PUBLIC

No comments offered.

ADJOURNMENT:

The meeting was adjourned at 11:50

NEXT MEETING

Friday, September 5, 2008
Judicial Education Center
542 E. Van Buren
Copper and Gold Rooms
Phoenix, AZ 85004

DOMESTIC RELATIONS COMMITTEE

Judicial Education Center

541 E. Van Buren

Phoenix, AZ

Final Minutes (Revised)

September 5, 2008

MEMBERS PRESENT:

Honorable Linda Gray
Jodi Brown
Sidney Buckman
Daniel Cartagena
William Fabricius
Todd Franks
Grace Hawkins
Danette Hendry
Jeffery Hynes - telephonic
Honorable David Lujan

Patti O'Berry
Honorable Rebecca Rios
Donnalee Sarda
Ellen Seaborne
Russell Smolden
David Weinstock
Tom Wing
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Theresa Barrett
Honorable Timothy Bee
Honorable Andy Biggs
Honorable David T. Bradley
Honorable Beverly Frame

Honorable Leah Landrum Taylor
Ella Maley
George Salaz
Honorable Sally Simmons

PRESENTERS/GUESTS:

Honorable Elaine Fridlund-Horne
Honorable Joanne M. Brown
Kelli Most
Melissa Knight
Teresa Homosillo-Horne
Megan Hunter

Coconino County IFC Judge
Mark Morris Associates
Coconino County IFC - Coordinator
Pinal County IFC
Pinal County IFC
High Conflict Institute

STAFF:

Kathy Sekardi
Tama Reily
Amber O'Dell
Eden Rolland

Administrative Office of the Courts
Administrative Office of the Courts
State Senate
State House of Representatives

CALL TO ORDER

Without a quorum present, the September 5, 2008 meeting of the Domestic Relations Committee was called to order by Honorable Linda Gray, Co-Chair, at 10:00 am.

ANNOUNCEMENTS

Members and guests were introduced.

APPROVAL OF THE JULY 11, 2008 MEETING MINUTES

As a quorum was now present, the minutes for the July 11, 2008 Domestic Relations Committee were presented for approval.

- MOTION:** To approve the minutes of the July 11, 2008 Domestic Relations Committee meeting.
- SECOND:** Motion seconded
- VOTE:** Approved unanimously

SUBSTANTIVE LAW WORKGROUP REPORT

Steve Wolfson introduced Kendra Diegan, a parent who has worked with the workgroup on possible legislation to be introduced in January 2009, which would amend A.R.S. 25-403.05, A.R.S. 25-403.02, and A.R.S. 25-351. Ms. Diegan addressed the committee about the underlying goal of the legislation, which deals with sex offenders and those convicted of a dangerous crime against a child, who may have access to the child. Essentially it would require that parents notify each other immediately when they become aware that an individual who fits this description may have access to the child. This might include family members, friends, and/or acquaintances that could be present at certain family functions and gatherings.

Committee Questions/Comments:

- So you're trying to get at a family member who you would know?
 - Anytime the child is at the other parent's home and may be exposed to persons falling into the category. That may include guests, such as extended family or friends of a spouse.
- Should the parent be responsible to check such information published on the web?
 - It is not necessary for a parent to go out and seek the information. If the parents or guardians are notified or otherwise become aware, they are required to share that information.
- What is the consequence if a parent does not comply?
 - It would be handled just as any other matter where a parent did not comply with the parenting plan agreement.
- The bill requires that the notification to other parent be sent via certified mail, to ensure receipt of the notice.
- There is a concern that agencies will read this as imposing a duty. The policy is good, but Arizona does not have systems in place.

- It is easy to find registered sex offenders online. This puts the responsibility on the parents.

Senator Gray thanked Ms. Diegan and the workgroup, and asked that they make the changes to the draft, as discussed today, and bring it back to the next DRC meeting.

CREDIT ISSUES WORKGROUP REPORT

Todd Franks reported on the workgroup's current status. The workgroup have had extended meetings, and invited additional members to participate. They have included creditors' bankruptcy attorneys, debtors' bankruptcy attorneys, divorce attorneys, and judges, in an effort to broaden the group's approach to credit issues. The priority for this year will focus on changes to the statutes, the issue of omitted property, and the concealing of assets and debts.

AD-HOC "CUSTODY STATUTE" WORKGROUP DISCUSSION

Bill Fabricius addressed the committee on the possibility of creating a short-term (2-3 months) ad-hoc workgroup for the sole purpose of addressing changes to the custody statute (ARS 25-403 custody; best interest of the child). He explained that such a workgroup would be an opportunity for members who are currently on various other workgroups to participate as a group on this particular topic.

There was some discussion about how to manage incorporating this topic into already existing workgroups, such as the Substantive Law Workgroup, perhaps using every other meeting to deal with this topic alone, while continuing with its current work on alternating meeting dates. Several members indicated their interest in pursuing the issues raised by Mr. Fabricius. A sign-up sheet was passed around for members to sign if they are interested in participating in this workgroup. Possible establishment of an ad-hoc workgroup will be discussed and voted on at the next DRC meeting.

The Court Procedures workgroup has been subsumed into the Substantive Law workgroup.

CHILD CUSTODY EVALUATIONS

Brian Yee and David Weinstock gave a brief overview of the workgroup's main concerns on A.R.S. 25-403. There was extensive discussion regarding the lack of frequency with which custody evaluations actually occur in cases. Most cases are pro-per, or at times, one side is represented by an attorney, and only occasionally do they include evaluations. The court has charged the evaluators with making recommendations based on the child's best interests; however, personalities, emotions, and things of that nature highly influence recommendations. There is no fixed list of issues examined because situations vary so much from case to case. Issues addressed include whether there are emotional and/or behavioral disorders in parents, and/or various conditions/circumstances present, which prevent appropriate decision making. And in most cases, people cannot afford to pay for the type of evaluation that is warranted.

IFC PINAL COUNTY

Melissa Knight, Honorable Gilberto Figuerora, Amadore Rodriguez, and Teresa Homosillo-Horne spoke to the committee about the progress of the IFC Pinal County program, some of its successes, and reviewed some of the key ingredients that make the program so effective. These included combining multiple court cases to lessen court dates; having one-judge/one-family; coordination between agencies, such as probation, consolidation of attorneys on cases; case management; and improved ability to schedule cases more timely.

COCONINO COUNTY FINAL EVALUATION REPORT

Honorable Joanne Brown of Mark Morris Associates, Kelli Most, IFC Coordinator, and Judge Elaine Fridlund-Horne presented a review of the Coconino County IFC Final Evaluation Report. Some of the more statistically significant findings in the report were highlighted, as well as some of the successful developments, such as the children's and parents' education programs. A copy of the final report was provided in today's meeting materials.

Member Comments/Questions:

- When is state funding for the pilot program expected to end?
 - December 31, 2008
- Are there any other potential funding sources in sight?
 - Coconino County Board of Supervisors has agreed to fund (all services) until the end of the fiscal year (June 2009). Beyond that time, there are no other known sources at this time.
- Do you have any avenues to share your information with other counties statewide, so that interest might be sparked among them to develop an IFC program?
 - It is something we have thought of doing, possibly putting together a "best practices" outline; however, budget issues enter into this as well.

Ellen Seaborne mentioned that the IFC Workgroup is currently looking at finding a future "permanent" funding source so that it is not dependent upon budget. The workgroup expects to address the committee at the next meeting in regards to this issue, the possibility of developing a nonprofit "Friends of IFC" type of organization. Discussion ensued regarding locating possible funding sources for the program's sustainability.

"IT'S ALL YOUR FAULT" PRESENTATION

Megan Hunter, Vice President of High Conflict Institute, addressed the committee on the topic of high conflict people in family court cases, providing some of the typical features, patterns, and underlying problems of high conflict people. Brochures were provided to the committee with additional information on the Institute.

ADJOURN/CALL TO THE PUBLIC

No comments offered.

Meeting adjourned at 1:50

NEXT MEETING

October 3, 2008
State Courts Building
Conference Room 119 A/B
Phoenix, AZ 85007

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington Avenue
Conference Room 119 A/B
Phoenix, AZ
Minutes
October 3, 2008

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett - telephonic
Jodi Brown
Sidney Buckman - telephonic
Daniel Cartagena
William Fabricius
Todd Franks
Grace Hawkins
Jeffery Hynes - telephonic
Honorable David Lujan
Ella Maley

Honorable Rebecca Rios- telephonic
Donnalee Sarda
Ellen Seaborne
Honorable Sally Simmons
David Weinstock
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Timothy Bee
Honorable Andy Biggs
Honorable David T. Bradley
Honorable Beverly Frame
Danette Hendry
Honorable Pete Hershberger

Honorable Leah Landrum Taylor
Patti O'Berry
George Salaz
Russell Smolden
Tom Wing

PRESENTERS/GUESTS:

Honorable Karen Adam
Honorable Paul O'Connell
Jana Bertucci
Teresa Homosillo-Horne

Juvenile Court Center, Pinal County
Superior Court, Pinal County
Staff Assistant - DES
Pinal County IFC

STAFF:

Kathy Sekardi
Tama Reily
Amber O'Dell
Eden Rolland

Administrative Office of the Courts
Administrative Office of the Courts
State Senate
State House of Representatives

CALL TO ORDER

Without a quorum present, the October 3, 2008 meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray.

ANNOUNCEMENTS

Members were welcomed and introduced.

APPROVAL OF THE SEPTEMBER 5, 2008 Meeting Minutes

With a quorum now having been reached, the minutes of the September 5, 2008 DRC meetings were presented for approval. The following amendments were requested:

1. Page 3, under „Child Custody Evaluations“, line 7, strike the sentence that begins “there is no real examination...” and add “there is no fixed list of issues examined because situations vary so much from case to case. Issues addressed include whether there are emotional and/or behavioral disorders in parents, and/or various conditions/circumstances present, which prevent appropriate decision making.”
2. In the same paragraph, line 5, where it states “The court has charged them...” change *them* to *the evaluators*. Where it states “making decisions...” change *decisions* to *recommendations*, and again, where it states “...influence decisions,” change *decisions* to *recommendations*.
3. Page 4, under „IFC Reports“, the sub-heading for paragraph 1 should read “IFC Pinal County,” and the sub-heading for paragraph 2 should read “Coconino County Final Evaluation Report.”

MOTION: To amend the minutes of the September 5, 2008 DRC meeting as discussed herein.

SECOND: Motion seconded.

VOTE: Approved unanimously

MOTION: To approve the minutes of the September 5, 2008 DRC meeting as amended.

SECOND: Motion seconded

VOTE: Approved unanimously

WINGSPREAD PROJECT REPORT

Honorable Karen Adam reported on the Wingspread Conference on Domestic Violence and Family Courts, which took place in February of 2007. The National Council of Juvenile and Family Court Judges and the Association of Family and Conciliation Courts brought together a working group of 37 experienced practitioners and researchers to identify and explore conceptual and practical tensions that have hampered effective work with families in which domestic violence has been identified or alleged. Judge Adam expounded on the productive nature of the conference, the gains made toward improving current processes, and plans for continued efforts through

workgroups, ongoing dialogue, and research. The report from the Wingspread Conference was provided to members in today's meeting materials.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP

Steve Wolfson provided the Substantive Law/Court Procedures Workgroups update. Proposed revisions to A.R.S. §§ 25-403.05, 25-403.02, and 25-351 were presented for approval. The revisions incorporate language to address parental/custodial notification to the other parent/guardian that a person convicted of sex crimes and/or other dangerous crimes against a child may have access to the child while in the parent/guardian's custody. The workgroup requests approval of the version of section A.R.S. § 25-403.05 that includes the suggestions of Legislative Council. In addition, proposed changes to A.R.S. § 25-403.02 and 25-351 relating to parenting plans and parental education programs, will be revised to include information about this notification requirement. The committee suggested adding a clause regarding means of notification acceptable to the court.

MOTION: To add the clause "or other means of notification acceptable to the court" to the proposed version of A.R.S. § 25-403.05.

SECOND: Motion seconded

VOTE: Approved unanimously

MOTION: To approve the proposed version of A.R.S. § 25-403.05 as amended.

SECOND: Motion seconded

VOTE: Approved unanimously

CREDIT ISSUES WORKGROUP

Todd Franks briefed the committee on projects the Credit Issues Workgroup is currently focused on. They continue to work on revisions to the omitted property statute. The workgroup plans to propose some revisions to either the property division statute or one of the related filing statutes that would impose a specific type of form disclosure on people regarding property and debts. They will bring their proposal to the committee at the next meeting.

AD-HOC CUSTODY STATUTE TASK GROUP

William Fabricius discussed what would be the main goals of the new ad-hoc Custody Statute Task Group. The group would report first to the Substantive Law Workgroup and will seek changes to the custody statute A.R.S. § 25-403, aimed at reducing the "deadbeat phenomenon" and to facilitate "shared parenting phenomenon."

MOTION: To approve formation of an ad-hoc Custody Statute Task Group for the purposes discussed in today's meeting.

SECOND: Motion seconded

VOTE: Approved unanimously

FUNDING FOR INTEGRATED FAMILY COURT PROGRAM

Ellen Seaborne spoke to members about generating funding ideas and/or identifying possible resources to sustain current IFC programs, and to possibly expand the programs to other counties. She requested volunteers to work as a group to explore ideas.

MOTION: To continue as a committee to meet specifically to explore and identify potential funding sources to sustain and possibly expand IFC programs.

SECOND: Motion seconded

VOTE: Approved unanimously

ADJOURN/CALL TO THE PUBLIC

No public comments offered.

Meeting adjourned at 11:31am.

NEXT MEETING

Friday, December 5, 2008 - teleconference
Arizona State Courts Building
Conference Room 119 A/B
10:00am – 11:30 am

DOMESTIC RELATIONS COMMITTEE

State Courts Building

Phoenix, AZ

Minutes

December 5, 2008

MEMBERS PRESENT:

Theresa Barrett

William Fabricius

Todd Franks

Grace Hawkins

Honorable David Lujan

Donnalee Sarda

Steve Wolfson

TELEPHONIC:

Honorable Linda Gray

Honorable Peter Hershberger

Sidney Buckman

Daniel Cartagena

Danette Hendry

Ella Maley

Honorable Sally Simmons

Tom Wing

MEMBERS ABSENT:

Honorable Timothy Bee

Honorable Andy Biggs

Honorable David T. Bradley

Jodi Brown

Honorable Beverly Frame

Jeffery Hynes

Honorable Leah Landrum Taylor

Patti O'Berry

Honorable Rebecca Rios

George Salaz

Ellen Seaborne

Russell Smolden

David Weinstock

Brian Yee

STAFF:

Kathy Sekardi

Tama Reily

Amber O'Dell

Eden Rolland

Administrative Office of the Courts

Administrative Office of the Courts

State Senate

State House of Representatives

CALL TO ORDER

Without a quorum present, the December 5, 2008 meeting of the Domestic Relations Committee (DRC) was called to order by Honorable Linda Gray, Co-Chair, at 10:05 am.

APPROVAL OF THE OCTOBER 3, 2008 MEETING MINUTES

The minutes from the DRC October 3, 2008 meeting were not presented for approval at this time, as a quorum was not present.

PROPOSED LEGISLATION A.R.S. §§ 8-106 AND 8-109

This item was tabled as a quorum was not available.

SUBSTANTIVE LAW WORKGROUP REPORT

Steve Wolfson presented the workgroup's revised proposed legislation to modify A.R.S. §§§ 25-403.05, 25-403.02, and 25-351. The proposal, which was previously approved by the DRC at the October 2008 meeting, requires that parents notify each other of the possibility that a convicted or known sexual offender may have access to their child or children, and that parenting plans include a statement regarding the notification requirement. There have since been some language modifications to § 25-403.05 which are intended to mirror the language that exists in the current statutes.

Committee Comments/Concerns:

- The most important words in this revision are *„may have access’*. Legally, for a person to be found to have violated this proposed revised section, they have to have had reasonable notice as to the meaning of *„may have access’* – that is, a written definition of the precise meaning of that statement. Without this, the statute is too vague and will not benefit the court.
- Also, it would be helpful to include some of the comments heard during discussion on this issue at the DRC's September 5, 2008 meeting about the method by which people can access information on child sexual offenders. This could be beneficial for people who are unaware of such information, and help to effectuate the purpose of the provision.
- Several members echoed the need to clarify what qualifies as „access” – does this mean a one or two mile radius of the parent's home?

Mr. Wolfson stated the workgroup could review this aspect of the proposal, although he added that the court has discretion to determine what access does or does not mean. This issue was not mentioned during the October 3, 2008 meeting.

Ms. Diegan addressed the committee to discuss the potential difficulties in defining „access”, stating it could impose limitations in that not all scenarios can be accounted for in advance of potential situations. She felt it would make sense to leave some discretionary input for the court, and stressed that the primary purpose with this legislation is to ensure there is *notification* in the interest of protecting children.

Donnalee Sarda requested the record reflect proposed language to A.R.S. §25-403.02 which would ultimately require parents write their own parenting plan and it would read as follows:

“Before an award is made, granting joint custody the parent shall submit a proposed parenting plan that includes at least the following:

...6) A statement that the parents understand that they are required to immediately notify the other parent or custodian if the parent or custodian knows that convicted or registered sex offender or person convicted of a dangerous crime against children, may have access to the child.”

Judge Wing stated he would like to see enough clarity in the statute so it can be appropriately enforced.

Mr. Wolfson stated the intent of the legislation was „direct access“ with a sex offender or person convicted of crimes against children as opposed to being within a certain geographic area. He suggested that if the concern could be remedied by saying something along those lines simply and concisely, they would try to achieve that. However, he added that legislation and a statutory framework is not necessarily going to come to a definitive definition, whereas having more specific language exist within the rules of family law procedure might better provide the desired clarification. The workgroup will plan to look at this again at the Substantive Law workgroup meeting in order to meet the legislative deadlines.

Representative Lujan is sponsoring the legislation and amendments will go through him.

Without a quorum present, a vote was not taken.

CREDIT ISSUES WORKGROUP REPORT

Todd Franks presented the workgroup’s proposal for legislation to amend A.R.S. § 25-318, concerning disposition of property. He explained that the major change addresses the issues of undisclosed debts and obligations. The current statute states that an undisclosed asset or debt will automatically be equally divided between the parties. However, because Arizona is an „equitable division“ state rather than an „equal division“ state, there are certain circumstances in which a court might choose to engage in an unequal distribution of an asset or debt. Nondisclosure can prevent the court from considering such circumstances, and essentially force an equal division by the court. Thus, as it stands, the statute provides some incentive for nondisclosure.

The proposed legislation addresses these issues by creating standards to deal with the willful concealment of assets or debts, and includes options for penalties that might include forfeiture. Furthermore, because it can be difficult to distinguish between willful concealment and innocent nondisclosure, the statute will require divorcing parties to file a schedule that is modeled upon bankruptcy schedules. The schedules will prompt people for the information they are required to disclose, such as IRA’s, 401(k)’s, and pensions, and should serve to eliminate the confusion over what is or is not a debt or asset.

Committee Comments/Concerns

- It seems there is some inconsistency in section (C), which permits the court to provide both parties an interest in an asset that was innocently concealed, yet states in (C)(3) that the presumption is that property not disclosed in the decree were willfully concealed.
 - *This is addressed in the next sentence which states the concealing party has the burden of proof to show by a preponderance of the evidence that the concealment was more likely innocent than willful. The judge is given*

the discretion to overcome that presumption and to do it by the most minimal standard.

Without a quorum present, a vote was not taken.

CUSTODY STATUTE WORKGROUP

Bill Fabricius gave an update on the workgroup's progress. They have received several comments/ideas for possible changes to the custody statute. They will remain open for comment at this time, as several people have indicated they plan to send in their ideas. Comments & ideas should be sent to Kathy Sekardi at ksekardi@courts.az.gov. A meeting of the workgroup will be scheduled once all comments have been received. He also reported that members of the Child Support Committee have shown some interest in contributing to this workgroup.

ADJOURN/CALL TO THE PUBLIC

No comments offered.

Senator Gray advised the committee that it is likely the legislature will spend the full month of January focused on the budget, thus no DRC bills will be heard until February.

Kathy announced that due to the lack of a quorum in today's meeting, and in order that the committee can vote on items not voted on today, a brief teleconference should take place in January, after the Substantive Law and Court Procedures workgroups have met to look at the sex offender notification proposed bill. Members agreed this was necessary.

Meeting adjourned at 11:02am.

NEXT MEETING: TBD

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington Avenue
Telephonic Meeting
Conference Room 119 A/B
Phoenix, AZ
Minutes
January 7, 2009

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Jodi Brown
Sidney Buckman
Daniel Cartagena
Honorable Beverly Frame
Todd Franks
Grace Hawkins

Jeffeory Hynes
Honorable David Lujan
Ella Maley
Patti O'Berry
Donnalee Sarda
Ellen Seaborne
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Andy Biggs
Honorable David T. Bradley
Laura Sabin Cabinillas
William Fabricius
Honorable Leah Landrum Taylor
Honorable Rebecca Rios

George Salaz
Honorable Sally Simmons
Russell Smolden
David Weinstock
Tom Wing

GUESTS:

Kathy Ber
Janet Sell

Department of Economic Security
Attorney General's Office

STAFF:

Kathy Sekardi
Tama Reily
Sarah Dodge
Ingrid Garvy
Eden Rolland

Administrative Office of the Courts
Administrative Office of the Courts
State Senate
State House of Representatives
State House of Representatives

CALL TO ORDER

With a quorum present, the January 7, 2009 meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray at 11:30 a.m.

APPROVAL OF THE OCTOBER 3, 2008 MEETING MINUTES

The minutes of the October 3, 2008 meeting of the DRC were presented for approval.

MOTION: To approve the minutes of the DRC October 3, 2008 meeting as presented.
SECOND: Motion seconded.
VOTE: Approved unanimously.

A.R.S. §8-106 and §8-109 CONSENT TO ADOPTION; WAIVER

Senator Gray and Representative Lujan presented the proposed legislation on A.R.S. §§ 8-106 and 8-109 *Consent to adoption; waiver*. This legislation would allow more judicial discretion than the current statute provides. The language of the proposed statute is derived from stakeholder's meetings that included representatives from Department of Economic Security, Child Protective Services, a juvenile judge, and the Attorney General's office.

Committee Comments/Concerns:

- Since the statute specifies who must give consent, it seems it would be more effective to leave it as written, other than the addition of a comma, so it reads: "The Division, *if* given consent..." This maintains the structure of the statute, while accomplishing the goal of the legislation.

MOTION: To approve A.R.S. § 8-106 and § 8-109 *Consent to adoption; waiver* as presented with the minor technical change as discussed above.
SECOND: Motion seconded
VOTE: Approved unanimously

CREDIT ISSUES REPORT

Todd Franks presented proposed amendments to A.R.S. § 25-318 that would create a presumption that property for which no provision is made in the decree and is in the possession or control of one party that was not disclosed to the other party, was willfully concealed. The concealing party has the burden of proving by a preponderance of the evidence that the property was not willfully concealed. This proposed legislation provides a remedy for parties who were unaware of undisclosed property or debt or obligation and allows the court to order an unequal division of the property or debt or obligation.

Committee Comments/Concerns:

- The confidential nature of the schedule poses a problem for Clerks of Court. Could we incorporate the language in Rule 7(C) of the AZ Rules of Probate Procedure regarding confidentiality, which says:

“A party who files a confidential document under this rule shall, when filing the paper document with the Clerk’s Office, place the original document in an envelope that bears the case name and number, the name of the document being filed, the name of the party filing the document, and the phrase „Confidential Document”.”

- *The statute does state that the documents are confidential on page 6, section (S), line 31. It might be better to leave it as is, and work in the Rule 7 language when the workgroup develops the form.*
- It would be helpful to have a delayed effective date of this legislation to allow time for form development and to work out any electronic issues that may arise.

Steve Wolfson reported that the State Bar of Arizona, Executive Council of the Family Law Section (Council) has expressed concerns about the language of several provisions on page 2. They include subsection 3, line 26, which regards the presumption of willful disclosure and section D, line 10, which provides that a party, as opposed to the court, make a selection of remedies. The Council also felt there should be other options available to the court. Before submitting to the legislature, the Council would like to continue working on the language. The workgroup will attend the next meeting of the Council, which takes place in January, to review and discuss the Council’s recommendations.

In view of the fact that the legislature will be focused on the budget for the next several weeks, the Chair suggested going forward with the legislation at this time. In the interim, there will be time for the workgroup and the Council to meet before the legislature hears the DRC’s bills.

MOTION: To move forward with A.R.S. § 25-318 *Disposition of property* as presented, while the Credit Issues Workgroup and Council meet to address proposed amendments. The legislation will have a delayed effective date of January 2010.

SECOND: Motion seconded

VOTE: Passed 16-1-0.

ADJOURN/CALL TO THE PUBLIC

No public comments offered.

Meeting adjourned at 12:05 p.m.

NEXT MEETING:

TBD

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington
Conference Room 345 A/B
Phoenix, AZ
Minutes
September 18, 2009

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Laura Cabanillas
Daniel Cartagena
Honorable Sharon Douglas
Todd Franks - *telephonic*
Grace Hawkins
Dannette Hendry
David Horowitz
Jeffery Hynes - *telephonic*

Honorable David Lujan
Ella Maley
Patti O'Berry
George Salaz
Donnalee Sarda
Ellen Seaborne
Russell Smolden
David Weinstock
Honorable Tom Wing
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Andy Biggs
Sidney Buckman
William Fabricius

Honorable Leah Landrum Taylor
Honorable Rebecca Rios
Honorable Edward Ableser

GUESTS:

Amy Love
Kendra Diegan

Legislative Analyst, AOC
Public

STAFF:

Kathy Sekardi
Tama Reily
Amber O'Dell
Stacy Weltsch

Administrative Office of the Courts
Administrative Office of the Courts
State Senate
State House of Representatives

CALL TO ORDER

With a quorum present, the September 18, 2009, meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray, Co-Chair, at 10:03 a.m.

ANNOUNCEMENTS

Senator Gray announced the appointment of new members, Laura Sabin Cabanillas, who will serve in the role of a faith-based organization representative, David Horowitz, as the domestic relations mediator, and Representative Edward Ableser.

APPROVAL OF MINUTES

The minutes of the January 7, 2009, and December 5, 2008 meetings of the DRC were presented for approval.

MOTION: To approve the minutes of the DRC January 7, 2009 meeting as presented.

SECOND: Motion seconded.

VOTE: Approved unanimously.

MOTION: To approve the minutes of the DRC December 5, 2008 meeting as presented.

SECOND: Motion seconded.

VOTE: Approved unanimously.

2009 Legislative Session

Amy Love, Legislative Analyst for the AOC, reported on legislation passed during the 2009 legislative session. The effective date for implementation is September 30, 2009.

SB1010 *Family law rules; conforming statutes*

Replaces all references to *Arizona Rules of Civil Procedure*, with references to *Arizona Rules of Family Law Procedure*.

SB1106 *Domestic violence; child custody*

Authorizes a court to forego consideration of which parent is more likely to allow the child continuing contact with the other parent, if the court determines that one parent is acting in good faith to protect that child from an act of domestic violence or child abuse. In addition, domestic violence was added to the list of relevant factors that the court must consider when making a custody determination, which essentially requires the court to make specific findings as to the allegations of domestic violence.

SB1016 *Adoption; consent*

Requires the Department of Economic Security to consent to an adoption if given the consent of the child's parent or guardian, or if otherwise given authority to place the child for adoption by other legal proceedings. The court may waive the requirement for consent after determining that waiving the requirement is clearly in the child's best interest. A hearing on the waiver must be held and notice must be given to all interested parties.

SB1088 *Domestic violence; dating relationships*

Expanded the definition of domestic violence to include current or previous romantic or sexual relationships between the victim and the defendant, and lists criteria that may be considered by the court to determine if a relationship is or was serious. The factors include the type and length of the relationship, the frequency of interaction, and the length of time since termination of the relationship.

HB2207 *Behavior analysts*

HB2206 *Psychologist examiners*

Made changes to various laws governing the Board of Psychologists Examiners, related to psychologists and behavior analysts. It prohibits the Board from considering complaints of unethical conduct against a psychologist or behavior analyst arising out of a court ordered evaluation or treatment unless the judge has found a substantial basis to refer the complaint to the board.

Dr. Brian Yee explained to the committee members the role of behavior analysts.

SUBSTANTIVE LAW/COURT PROCEDURE WORKGROUP REPORT

Steve Wolfson reported on the following issues the workgroup has been working on:

HB2485 *Access to child; notification*

This bill did not pass in the last legislative session and the workgroup is recommending that it be included, in its current form, in the legislative package for the 2010 session. The workgroup is also considering seeking additional sponsors for the bill and would like assistance from the DRC in this endeavor.

MOTION: To approve and support HB2485 as presented.
SECOND: Motion seconded.
VOTE: 20-1-0.

A.R.S. § 25-408 *Rights of noncustodial parent; parenting time; relocation of child; exception*

The workgroup continues to discuss the issues of the mileage provision in A.R.S. § 25-408, however, no specific language has been established in terms of distance. In the meantime, the workgroup proposes to strike the language in subsection b, line 8 “and both parents reside in the state” so that the statute remains applicable if one of the parents relocates. Also, to ensure this change will not conflict with the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), they are also proposing to add a subsection L, which reads, “This section shall apply for so long as the court retains exclusive, continuing child custody jurisdiction pursuant to § 25-1032.”

Committee Comments/Concerns:

- Are there exemptions for military or for instances where a parent has to relocate for a job?
 - Yes. *Subsection F(1) addresses circumstances such as employment, health, or safety. Elsewhere in Title 25, military situations are addressed.*

- What are the consequences in Arizona if a parent moves?
 - *It would depend on whether there was an agreement in place, but they are not permitted during a case to unilaterally move. Most parenting time plans have language that refers to reinforcing that obligation to seek permission of the court.*
- It seems like mileage restrictions would be onerous for parents in rural areas of the state, due to factors such as less available work, relocation could become a necessity.
 - *For reasons such as this, the workgroup has been discussing whether there should be a measure other than mileage.*

As one of the co-authors of the 100-mile rule, Ellen Seaborne shared some history on the origination of the rule. It was essentially a necessity at the time due to frequent occurrences of a parent taking a child out of state to “visit” the grandparents and never returning the children to Arizona. The new state would then gain jurisdiction. However, Ms. Seaborne suggested it may be time to consider other language that would be more flexible than a mileage determination. Ms. Seaborne suggested language that focused on how the court would look at the impact on the parenting time plan in relocation cases.

Judge Wing commented that language stating the parenting plan could be impacted is troublesome to him as a judge, because he sees litigants on a regular basis who insist they can work around such things. He added that if a method other than the mileage is going to be used, it must be definitive enough for the court to say when someone is in violation of the court order, and the benefit should go to the party who is injured by the fact that there was no notice provided to them.

David Horowitz stated that the statute is essentially a „notice provision” and serves to shift the burden of proof between the parties as to who has to show whether or not it is in the child’s best interest and what the level of burden is, should the matter be litigated. If notice of relocation is not given, that will be considered by the court. If notice is provided, and the non-moving parent fails to respond to the notice, the burden on the moving parent is reduced. Ideally, the moving parent should give as much and as complete and as timely notice as possible because that always helps the situation in terms of whether the move will be allowed or not.

David Horowitz suggested that the characteristics of individual areas where people live should be considered, because traveling 100 miles in rural Arizona is very different from traveling 50 miles in the Phoenix metropolitan area. Mr. Horowitz stated the language may have to be more complicated to take into consideration the practical applications for the children involved.

Ms. Seaborne noted language in the statute that has caused problems and requested the committee members to look at page 2, line 19, stating that the move must improve the “general quality of life *for the custodial parent or the child.*” Ms. Seaborne stated this

language changes the standard and takes it out of the purview of what is in the best interest for the child.

- MOTION:** To strike from A.R.S. § 25-408(b),line 8, the language “and both parents reside in the state” and add new subsection (L) as presented.
- SECOND:** Motion seconded.
- VOTE:** 20-1-0.

HB2206 Psychologist examiners board; omnibus

David Weinstock informed the committee that efforts are being made to repeal the new language passed in HB2206. Mr. Weinstock requested the DRC may want to formally support the new legislation as it is written and oppose any efforts to repeal it.

Donnalee Sarda suggested the DRC discuss with the governor’s office the reasons the committee supports the bill. Senator Gray offered to speak to a representative from the governor’s office to discuss what their concerns are with HB2206.

CREDIT ISSUES WORKGROUP REPORT

Todd Franks updated the committee on the workgroup’s progress with SB1052, which addresses the issue of undisclosed debts, assets and/or obligations. The bill failed to progress in the last legislative session. Mr. Franks stated the workgroup has been working with DRC member Steve Wolfson, as a representative of the Family Law Section of the State Bar, and also participated in a stakeholder’s meeting with Rep. Adam Driggs. The workgroup would like to recommend submission of the bill at the next legislative session.

Judge Wing observed that the language in section D, subsection 1(a)(b)(c) addressing penalties, appears to be in conflict with the language in section T. Mr. Franks suggested amending the language in subsection T, to be in line with the language in section D, subsection 1(a)(b)(c)

- MOTION:** To strike the word “including” in A.R.S. § 25-318, section T, and add “which may include.”
- SECOND:** Motion seconded
- VOTE:** Unanimous

- MOTION:** To recommend submission and passage of SB1052 as amended today.
- SECOND:** Motion seconded. Motion withdrawn.

Steve Wolfson informed the committee that he provided the State Bar Family Law Executive Council with the current version of SB1052 following the workgroup’s last

meeting, and he will attend a meeting of the Council on September 26, 2009. SB1052 is on the agenda to address at that meeting. For this reason, Mr. Wolfson suggested this item be tabled until after the Council's meeting so that any additional recommended language changes can be addressed. In light of this information Mr. Franks requested permission to withdraw his motion to submit SB1052 to the legislature at this time.

CUSTODY STATUTE WORKGROUP

Presenter was not in attendance.

SCHEDULE NEXT DRC MEETING

October 23, 2009 was chosen for the next DRC meeting.

NEXT MEETING AGENDA ITEMS

The following items are to be on the next meeting agenda:

- No Fault Divorce
- Teen Dating – Senator Gray will give a presentation on a program tailored for teen dating
- IFC Review
- Report on A.R.S. § 25-408
- Discussion with Governor's office regarding HB2206

ADJOURN/CALL TO THE PUBLIC

No public comments offered.

Meeting adjourned at 11:14 a.m.

NEXT MEETING:

Friday, October 23, 2009
Arizona State Courts Building
Conference Room 119 A/B
10:00 a.m. – 12:00 p.m.

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
Minutes
October 23, 2009

MEMBERS PRESENT:

Honorable Linda Gray	Honorable David Lujan
Theresa Barrett	Ella Maley
Holly Hulen – <i>proxy for Sid Buckman</i>	Patti O’Berry - <i>telephonic</i>
Laura Cabanillas	Honorable Rebecca Rios – <i>telephonic</i>
Daniel Cartagena	George Salaz
Honorable Sharon Douglas	Donnalee Sarda - <i>telephonic</i>
William Fabricius	Ellen Seaborne
Todd Franks - <i>telephonic</i>	David Weinstock - <i>telephonic</i>
Jack Gibson	

MEMBERS ABSENT:

Honorable Edward Ableser	Honorable Leah Landrum Taylor
Honorable Andy Biggs	Russell Smolden
Grace Hawkins	Honorable Tom Wing
Dannette Hendry	Steve Wolfson
David Horowitz	Brian Yee
Jeffery Hynes	

GUESTS:

Kendra Leiby	Arizona Coalition Against Domestic Violence
Kay Radwanski	Administrative Office of the Courts

STAFF:

Kathy Sekardi	Administrative Office of the Courts
Tama Reily	Administrative Office of the Courts
Amber O’Dell	State Senate

CALL TO ORDER

Without a quorum present, the October 23, 2009, meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray, Co-Chair, at 10:05 a.m.

ANNOUNCEMENTS

Senator Gray announced the appointment of new members, Representative Steve Court, who will act as Co-Chair, and Mr. Jack Gibson, who will serve in the role of

noncustodial parent. In addition, Senator Gray announced that member Judge Wing was recently appointed as the Associate Presiding Judge of the Superior Court in Navajo County.

Senator Gray noted that agenda item 3 would be taken out of order to allow time for a quorum to be reached before addressing items for vote.

SUBSTANTIVE LAW REPORT (taken out of order)

Mr. Danny Cartagena reported that the workgroup met on October 22, 2009 and continues to work on A.R.S. § 25-408; *Rights of noncustodial parent; parenting time; relocation of child; exception; enforcement; access to records*, and A.R.S. § 25-403; *Custody; best interests of child*. The workgroup has no recommendations for the committee on these issues as of yet. Mr. Cartagena added that the workgroup is looking at A.R.S. § 13-1302, *Custodial interference; child born out of wedlock; defenses; classification* and hope to have representatives from law enforcement and the Department of Economic Security at the next workgroup meeting in order to gather input from those groups.

CUSTODY STATUTE WORKGROUP REPORT

Dr. Bill Fabricius gave a brief report on the workgroup, which held its first meeting this morning. He explained the purpose of the workgroup is to look at possible updates or changes to the custody statute. In addition, Dr. Fabricius informed the committee that the workgroup will hold some of its meetings at a new facility at Arizona State University (ASU), referred to as the "Decision Theater." The facility is a multimedia room with seven screens capable of displaying seven different aspects of a problem simultaneously. He added that the room would comply with open meeting laws as it contains a conference room for observers/members of the public, and meetings held in the room are streamed live on the web. The workgroup plans to meet again on November 13, 2009, here at the State Courts Building, and tentatively on December 4, 2009, at the ASU "Decision Theater" facility.

INTEGRATED FAMILY COURT REPORT

Ms. Holly Hulen, Integrated Family Court (IFC) Coordinator in Coconino County, provided an overview of the mission, model, and services of the IFC, and reported its accomplishments to date. She reported on the funding challenges the IFC continues to face, and disclosed some of the recent contributions, including \$430,000 from the Coconino County Board of Supervisors, and offers from fifty local attorneys to donate their services to litigants in the IFC program.

APPROVAL OF MINUTES

With a quorum now present, the September 18, 2009 minutes were presented for approval.

MOTION: To approve the minutes of the DRC September 18, 2009 meeting as presented.

SECOND: Motion seconded.
VOTE: Approved unanimously.

SB1206

Senator Gray discussed last session’s proposed SB1206, which would have amended A.R.S. §§ 25-318, 25-319, and 25-320; relating to dissolution of marriage. The proposed bill strikes the language “without regard to marital misconduct” in the statute sections. Senator Gray explained the expected outcome of this revision is that the judge would determine whether to consider marital misconduct.

Mr. Todd Franks commented that there is concern within the State Bar that this would essentially return the courts to a fault-based system and signify a great step backward. Several members representing different aspects of the system were in agreement with the perspective that the language should not be stricken from the statute.

DOMESTIC VIOLENCE: TEEN DATING AND WARNING SIGNS

Senator Gray discussed the issue of domestic violence in teen dating and current efforts to educate teens in grades 7 through 12 on this issue. Senator Gray informed members about a program being advocated by a coalition of parents, *Moms and Dads for Education to Stop Teen Dating Abuse* (MADE), together with the *National Foundation for Women Legislators* (NFWL), who are supporting the introduction of legislation to make the program’s free curriculum part of the public school curriculum. Senator Gray provided the website (<http://loveisnotabuse.com/>) where information can be found on the services offered through the program, as well as the features and structure of the curriculum.

MOTION: To support public schools’ implementation of requiring a one-day class on teen dating and violence in public schools.

SECOND: Motion seconded.
VOTE: Passed 15-0-1.

PROPOSED LEGISLATION FROM THE ARIZONA COALITION AGAINST DOMESTIC VIOLENCE

Ms. Kendra Leiby, Systems Advocacy Coordinator for the Arizona Coalition Against Domestic Violence (AzCADV), presented legislation being proposed by the AzCADV.

A.R.S. § 25-323.02 *Domestic relations committee; membership; duties; pilot programs; report*

The coalition plans to propose adding a seat to the DRC for a representative of a statewide sexual assault coalition. Appointing authority has not been determined.

A.R.S. § 25-403.03 *Domestic violence and child abuse*

Proposed legislation adds the words “or a child” to this statute to comply with provisions in A.R.S. § 13-3601 *Domestic violence; definition; classification*

A.R.S. § 13-3601 *Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure; notice*

This statute was revised last session; however unintended consequences have caused some issues with orders of protection and injunction against harassment applications. The coalition proposes to draft language to include the term “dating” in A.R.S. § 13-3601 and remove the dating language from A.R.S. § 12-1809, as victims of dating violence are now eligible for orders of protection. Further changes would recognize first degree murder, second degree murder, negligent homicide, manslaughter, sexual assault, animal cruelty and prevention from using a telephone in an emergency as domestic violence if the perpetrator and victim meet the relationship requirements as outlined in A.R.S. § 13-3601.

A.R.S. § 13-1204 *Aggravated assault; classification; definition*

Proposed legislation elevates strangulation and suffocation when in the context of a relationship as outlined in A.R.S. § 13-3601, to a felony 4.

A.R.S. § 12-1809 *Injunction against harassment; petition; venue; fees; notices; enforcement; definition*

Ms. Leiby noted that the proposed legislation is in draft form and welcomes feedback from the DRC prior to finalizing this bill legislation.

A.R.S. § 36-3001 *Definitions*

The coalition intends to revise the language in Title 36 to mirror recent revisions to A.R.S. § 13-3601.

Arizona Human Trafficking Statutes

The coalition has not yet drafted legislation but intends to model state code after federal laws.

Predominant Aggressor Legislation

The coalition is interested in exploring legislation that would require courts and law enforcement, when confronted with potentially mutual incidents of violence, to make the determination of who was the predominant aggressor. This would include a prohibition against dual arrests if a law enforcement officer determines that one party was the predominant aggressor, and would require the court to determine predominant aggressors in contested custody cases if confronted with evidence of seemingly mutual violence.

Duty to Warn

Although legislation has not been drafted, the coalition may propose imposing a duty on domestic violence advocates to warn third parties of credible threats of violence that the advocate has reason to believe will be carried out, or that the person has the means of carrying out. This would offer liability protection to community-based advocates.

Gun Show Legislation

Unlicensed private sellers are permitted by law to sell privately-owned guns at gun shows, or at private locations in 24 states, including Arizona, without a background check as required by Brady. The coalition has not drafted language yet, but believes their proposal would close this unintended loophole.

SCHEDULE NEXT DRC MEETING

Senator Gray informed members that the next DRC meeting is tentatively set for Friday, November 20, 2009.

ADJOURN/CALL TO THE PUBLIC

No public comments offered.

Meeting adjourned at 11:58 a.m.

NEXT DRC MEETING

Tentatively - November 20, 2009
10:00 a.m. to 12:00 p.m.
Conference Room 345 A/B
1501 W. Washington, Phoenix, AZ

DOMESTIC RELATIONS COMMITTEE

Judicial Education Center, Building 4
541 E. Van Buren, Phoenix, Arizona
Turquoise/ Silver Conference Rooms

Minutes
March 5, 2010

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Sidney Buckman
William Fabricius
Jack Gibson
Jeffeory G. Hynes - *telephonic*
Honorable David Lujan

Patti O'Berry - *telephonic*
Laura Sabin Cabanillas
George Salaz
Donnalee Sarda
David Weinstock
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Edward Ableser
Honorable Andy Biggs
Honorable David T. Bradley
Daniel Cartagena
Honorable Steve Court
Honorable Sharon Douglas
Todd Franks
Grace Hawkins

Danette Hendry
David Horowitz
Honorable Leah Landrum Taylor
Ella Maley
Honorable Rebecca Rios
Ellen Seaborne
Russell Smolden
Honorable Thomas L. Wing

GUESTS:

Katy Proctor
Honorable Colleen McNally
Honorable Sylvia Allen
Barbara Guenther
Roger Thompson
Ana Jabkowski
Dave Hoover
George Garcia
Dennis Olson
Gina Kash

Patricia Madsen
Kendra Diegan
Elizabeth Houde
Michael Espinoza
Richard Franco
Brooks Gibson
Timothy T. Frank
Joi Davenport
Carey Snyder Hyatt
Dene Brown

STAFF:

Kathy Sekardi
Tama Reily
Ingrid Garvey

Administrative Office of the Courts
Administrative Office of the Courts
State House of Representatives

CALL TO ORDER

Without a quorum present, Senator Linda Gray, Co-Chair, called to order the March 5, 2010 meeting of the Domestic Relations Committee (DRC) at 10:06 a.m.

Senator Gray announced that this meeting was called to allow the committee to weigh in on some of the domestic law and child support related bills that are currently being considered at the legislature. She stated that the senate had expressed a desire for input from the DRC on some of these bills. Analysts from both the house and the senate are present today.

APPROVAL OF MINUTES

As a quorum was not present, the minutes of the October 23, 2009 DRC meeting were not presented for approval.

DOMESTIC RELATIONS LEGISLATIVE UPDATE

Ms. Katy Proctor, AOC legislative liaison, presented an update on domestic relations and child support related bills, with a focus on the following bills:

HB2650/SB1199 Divorce; waiting period

This bill has two major provisions. First, it would extend the waiting period for divorce from 60 to 180 days after service of the divorce petition. Second, it introduces changes to the educational programs and mandates that certain instructional areas/topics be included in the programs.

SB1314 Domestic relations

This bill would require that all court rulings regarding community property and debt or parental fitness include written explanation of the conclusions, analysis of each issue, and a detailed list of facts and laws supporting its decision. It would also prohibit sole custody orders when both parents are found fit, unless both parents agree otherwise.

SB1095 Access to child; notification

This bill adds the requirement that parents notify each other of the possibility that a convicted or known sexual offender may have access to their child or children.

DISCUSSION OF SB1095 Access to child; notification

There were some opposing views expressed by committee members regarding this bill. Some argued that this legislation is unnecessary as this type of information is already available to parents, which includes internet websites that provide details such as identifying daycare and schools in the sex offender's area. However, other members argued that the focus of this legislation is the „personal acquaintance“ type of offender - family friend, in-law, relative of a friend - consequently, the offender may be present in the parent's home for holidays, birthday parties, or other occasions, and could potentially have easy access to the child. Furthermore, Ms. Elizabeth Houde, Executive Director of the Arizona Sexual Assault Network, pointed out the usefulness of internet information on sex offenders is limited since most offenders do not commit these acts in their own local areas.

Members discussed whether it would be useful to define the term “access” so as to aid the interpretation of the bill; however, it was noted that numerous discussions and language changes have taken place over the course of many workgroup meetings, and the resulting language choices reflect thorough analysis on this point.

DISCUSSION OF HB2650/SB1199 DIVORCE; WAITING PERIOD

Judge Colleen McNally, Maricopa County Superior Court Presiding Family Court Judge, shared her concerns about some of the changes SB1199/HB2650 would bring about – particularly to the increased divorce waiting period. Judge Colleen McNally expressed great concern about the provision that increased the divorce waiting period to 180 days, especially in light of the extra burden of proof required to establish abuse for the victim of domestic violence. She also explained the steps taken by the courts to encourage reconciliation, including offering free counseling through conciliation services. She reported the court will order a 60-day conciliation stay (unless good cause can be shown, such as the presence of abuse), even in instances where only one of the parties is willing to try counseling. Judge McNally proposed an alternative to the bill’s waiting period that would allow the court to expand the conciliation stay up to 120 days at the request of the parties. She also suggested the DRC be allowed to review and consider this legislation prior to further legislative action.

Several members spoke of the potential negative impact a protracted, conflict-ridden situation can have on children. There was particular concern that in relationships where domestic violence is present, the extended time period could significantly increase the risk of violence toward the woman and/or children. Other concerns focused on the increased cost to the parties. While members discussed general support for the education piece of the bill, there was concern voiced regarding the increased cost of revamped educational programs, and that due to the state budget status, some counties would be unable to offer these services.

DISCUSSION OF SB1314 DOMESTIC RELATIONS

Senator Sylvia Allen, the primary sponsor of SB1314, discussed the premise that joint legal custody is in the best interest of the child. She emphasized this bill may not be necessary in many situations – only in cases where couples disagree and/or one parent wants to pursue sole custody and the other parent doesn’t object. She states that too often it is the rule rather than the exception that sole custody is awarded.

Judge McNally explained this bill is focused on *joint legal custody*, which entails decision-making about health and welfare issues versus physical custody, which is about sharing parenting time. She explained there is currently no presumption of joint custody being in the best interest of children and no burden of proof, so judges have maximum discretion to decide these issues. This amendment would place the burden of proof on the parent seeking sole custody in the best interest of the child. She noted that as a whole, the bill is a good idea, but there are many gaps and more time is needed for review. She recommended the DRC as a good venue for review and development of the bill.

Numerous DRC members voiced concerns regarding the bill's lack of clarity in language and terminology and argued that the DRC needs time to work on the bill prior to any ruling by the legislature. Dr. Weinstock stated that the notion of a „default“ joint custody is good, however, he maintained that parental „fitness“ is a loose concept and does not sufficiently address the conflicts that even „fit“ parents can have regarding parental decisions, especially when the relationship is contentious. DRC member, Steve Wolfson, added that the DRC Ad Hoc Custody Statute Workgroup has invested a lot of time studying the issues involved and should be allowed to complete their work. Mr. Wolfson also informed the committee that the State Bar Family Law Section is strongly opposed to the bill, noting its impact on A.R.S. § 25-403 and the unnecessary restriction on the court's discretion to consider all of the factors in a case.

Mr. Bill Fabricius added that the Ad Hoc Custody Statute Workgroup's research on the custody statute is incomplete and recommended that more time is needed in order to hear from various specialists in the field, such as custody evaluators, to complete their study. Representative David Lujan agreed that the group should proceed with further study and revisions and he suggested the bill be brought back to the legislature next year.

Senator Gray announced that the Ad Hoc Custody Statute Workgroup is scheduled to meet again on March 19th and encouraged interested parties to attend the meeting.

Numerous members of the public were present at the meeting and gave testimony of their own personal situations as evidence of the need for SB1314, including Mr. Timothy Frank, Mr. Richard Franco, Mr. Michael Espinoza, Mr. Dennis Olson, Mr. Dave Hoover, Mr. Roger Thompson, and Mr. Terry Decker. There were many examples provided to point to the perceived failure of the current system, for example the ease with which individuals can successfully „game“ the system, using unethical tactics and bad-faith claims to gain sole custody. There was much support expressed for the establishment of a statutory definition of *fit* or *unfit* parenting.

Other members of the public expressed opposition to SB1314, including Ms. Patricia Madsen, who noted that joint custody does not address the problems underlying the conflict between parents, and she contended without addressing such issues, joint custody is not in the best interest of the child. Ms. Dene Brown spoke and shared her personal experience to demonstrate the ease with which an *unfit* parent could successfully convince the court of his/her parental fitness.

ADJOURN/CALL TO THE PUBLIC

Public comments are included under the respective bills to which they refer.

Meeting adjourned at 12:45 p.m.

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
Meeting Minutes
July 23, 2010

MEMBERS PRESENT:

Honorable Linda Gray
Theresa Barrett
Sidney Buckman
Daniel Cartagena
William Fabricius - *telephonic*
Jack Gibson
Grace Hawkins
Honorable Jeanne Hicks - *telephonic*

David Horowitz
Jeffery G. Hynes - *telephonic*
Patty O'Berry
Ellen Seaborne
Russell Smoldon
David Weinstock
Honorable Thomas Wing
Steve Wolfson

MEMBERS ABSENT

Honorable Edward Ableser
Honorable Andy Biggs
Laura Sabin Cabanillas
Honorable Steve Court
Honorable Sharon Douglas
Todd Franks

Danette Hendry
Honorable Leah Landrum Taylor
Ella Maley
Honorable Rebecca Rios
George Salaz
Donnalee Sarda

GUESTS:

Katy Proctor
Terry Decker
Karen Duckworth
Timothy Frank
Brooks Gibson

Ana Jabkowski
Kendra Leiby
Brent Miller
Debra Brimhall Pearson
Kevin Wassen

STAFF:

Kathy Sekardi
Tama Reily
Holly Ambuehl - *telephonic*
Ingrid Garvey
Barbara Guenther
Amber O'Dell

Administrative Office of the Courts
Administrative Office of the Courts
Arizona House of Representative
Arizona House of Representatives
Arizona State Senate
Arizona State Senate

CALL TO ORDER

Without a quorum present, the July 23, 2010, meeting of the Domestic Relations Committee (DRC) was called to order at 10:03 a.m. by Senator Linda Gray, Co-Chair.

Introductions were made around the room.

ANNOUNCEMENTS

Senator Gray welcomed new member Honorable Jeanne Hicks, recently appointed to the DRC by Chief Justice Rebecca White Berch. Ms. Hicks is the Clerk of the Superior Court in Yavapai County.

THE LEGISLATIVE PROCESS (*Item taken out of order*)

Amber O'Dell, Research Analyst to the Senate Public Safety and Human Services Committee, and Ingrid Garvey, Research Analyst to the House Health & Human Services Committee discussed their roles as legislative research analysts. Ms. O'Dell explained that they produce research based written summaries of bills, looking at the history of the current law and how the bill would change or create law. They also summarize the bill in committee hearings, but are limited to imparting facts and prohibited from lobbying. Research Analysts can also facilitate the drafting of bills with the stipulation that it has a sponsor.

Ms. O'Dell provided an overview of the legislative process, beginning with the drafting of a bill, through the committee hearings, public and expert testimony, to the forwarding of the bill to the caucus in both chambers.

Ms. Garvey reviewed the process of the bill going to the committee of the whole (COW) in both parties, amendment procedures, the vote in each chamber, to the sending of the bill to the governor. A printed version of the PowerPoint presentation was provided in today's meeting materials.

APPROVAL OF MINUTES

With a quorum now present, the DRC minutes for the October 23, 2009, and March 5, 2010, meetings were presented for approval.

MOTION: To approve the meeting minutes of the October 23, 2009, meeting of the DRC.
SECOND: Motion seconded.
VOTE: Approved Unanimously.

MOTION: To approve the meeting minutes of the March 5, 2010 meeting of the DRC.
SECOND: Motion seconded.
VOTE: Approved Unanimously.

THE DOMESTIC RELATIONS COMMITTEE

Kathy Sekardi, Administrative Office of the Courts (AOC) staff to the DRC, and Katy Proctor, AOC Legislative Staff, gave a presentation on the DRC and how it functions to achieve legislative changes to improve domestic relations laws.

Ms. Sekardi gave a brief history of the committee and explained its main objectives and reporting requirements. She explained the statutory requirements, such as member categories, appointing authorities, term lengths, and quorum requirements, as well as open meeting laws. She also discussed the advisory committees (workgroups) and the DRC's process of getting recommended legislation to the legislature. She explained the Arizona Code of Judicial Administration (ACJA), which *„compiles the policies and procedures that guide the courts and assists them in conducting their administrative function“*. Ms. Sekardi explained the role of AOC committee staff and informed members of the new committee website, which can be found at <http://www.azcourts.gov/cscommittees/DomesticRelationsCommittee.aspx>.

Ms. Proctor discussed the Arizona Judicial Council (AJC), and its role in assisting the *“Supreme Court and the Chief Justice in development and implementation of policies and procedures for the state’s courts and to ensure the administration of justice,”* and discussed the AJC's legislative process. Ms. Proctor stated that the AJC drives the overall policy decision-making in the judicial branch. She explained AJC standing committees, the various subject areas they cover, and gave examples of how they work to identify issues that may require legislation. She described the basic responsibilities of the AOC's legislative staff and their role representing the AOC and the AJC at the legislature. Ms. Proctor noted their emphasis on the *administration of justice* side of issues, versus the *policy side*, which she characterized as the *implementation and logistical concerns*, versus the merit and necessity of the issue.

Ms. Proctor described how legislative staff presents pending legislative proposals to the respective standing committees for approval, and finally to the AJC, which advises legislative staff how to proceed at the legislature. When representing AJC at the legislature, legislative staff will lobby on proposals as directed, which might mean expressing support, opposition, or neutrality on a bill. It also could take the form of seeking agreement or compromise through discussion and the educating of legislators on the issues from the AJC's perspective. The final step of the AJC legislative process is implementation. Ms. Proctor further explained that because many of the bills have major impacts on the courts, legislative staff will gather direction from the standing committees as well as AJC to ensure a successful outcome.

In addition, Ms. Proctor described the way in which her role and Ms. Sekardi's role interact, where some of the proposals that come out of the DRC are then taken through the AJC process. She noted that it is often beneficial for proposals to receive the additional exposure to various committees and subject matter experts and it provides helpful input and perspectives. She added that this also gives legislative staff direction from AJC as to whether they should become involved in lobbying a proposal at the

legislature. Ms. Proctor offered to make this a part of the routine process with DRC proposals and commit her time to working with the committee in this capacity.

Russell Smolden asked Ms. Proctor how the AJC review process could be workable since DRC is a legislatively created committee. Ms. Proctor stated that the legislative group routinely takes both internal and external proposals through the AJC process, so this would not be an obstacle for the DRC.

LEGISLATIVE UPDATE

Ms. Proctor also provided highlights of some of the domestic relations legislation occurring during the recent session. Effective date, unless specified otherwise, is July 31, 2010.

SB 1094; MARRIAGE DISSOLUTION; DISPOSITION OF PROPERTY

Would establish provisions regarding the deliberate or willful concealment of property, assets, debt and obligations by directing the Court to sanction the concealing party in a post-decree proceeding filed by either party within 180 days after discovery of the property, debt or obligation for which no provision was made in the decree. Potential sanctioning options include, but are not limited to: an unequal division of the asset or allocation of debt, an award of attorney fees, expert fees and court costs, judgment in the nature of fraud or other monetary damages. Failed on the House floor.

SB 1095; ACCESS TO CHILD; NOTIFICATION

Requires a child's parent or custodian to immediately notify the other parent or custodian if the parent knows that a convicted or registered sex offender or a person who has been convicted of a dangerous crime against children may have access to the child. The parent or custodian must provide written notice to the other parent or custodian should they find out that a sex offender or person who has committed dangerous crimes against children has access to the child. Requires the educational program and proposed parenting plan to include a statement that each parent has read, understands and will abide by the notification requirements outlined above. Passed.

SB 1111; CHILD SUPPORT; MEDICAL INSURANCE

Narrows the cash medical support provisions to apply only to IV-D cases. The requirement to pay cash medical support terminates if the parent obtains private insurance, and if private insurance terminates, the cash medical support order automatically resumes on the first day of the following month. The requirement to obtain medical insurance or pay cash medical support is the responsibility of the noncustodial parent. Passed.

SB 1090; WELFARE ASSISTANCE; ASSIGNMENT OF RIGHTS

Retroactive to October 1, 2009, prohibits the state from obtaining an assignment of rights to support from persons applying for TANF cash assistance that accrued prior to receiving TANF benefits. Passed.

SB 1113; CHILD SUPPORT COMMITTEE; MEMBERSHIP

Allows a division or section chief from the Attorney General's Office to designate someone to sit in his or her place on the Child Support Committee. Passed.

SB 1114; MATERNITY; PATERNITY; GENETIC TESTING

Expands maternity and paternity testing procedures to all genetic testing, rather than specifically drawing blood or DNA testing. Requires that testing procedures be conducted by an accredited laboratory. Passed

SB 1115; CHILD SUPPORT; ORDER FOR ASSIGNMENT

Repeals §25-506: foreign support order, and makes conforming changes. Failed.

SB 1116; LIMITED INCOME WITHHOLDING ORDERS

Expands the definition of lump sum payments that may be subject to a limited income withholding order for arrearages owed by an obligor for child support, by adding excess proceeds, retroactive disability proceeds, and personal injury awards. Passed.

SB 1032; COMMUNITY PROPERTY; SEPARATE DEBTS

In order for a credit card to be considered part of a community property, both spouses must sign the credit card application. If an application is only signed by one spouse, then the credit card will be a separate debt and the obligation of that spouse. Failed.

HB 2207; CHILD BIGAMY; CHILD CUSTODY

Unless the court finds that there is no significant risk to the child and states its reasons in writing, the court shall not grant a person sole or joint physical or legal custody of a child or unsupervised parenting time with a child if the court finds sufficient evidence to believe that the person has engaged in the practice of child bigamy and will continue to engage in the practice of child bigamy in the future. Failed.

HB 2353; UNMARRIED COUPLES; RESPONSIBILITIES

Creates domestic partner registry, outlines rights, allows for fees. Failed.

HB 2459; CHILD DEVELOPMENT; SUPPORT; FATHERS' RESPONSIBILITIES

Prohibits the state registrar from issuing a birth certificate if the father's name is not listed on the certificate, unless the mother is unable to determine paternity. In that case, the certificate must indicate "paternity undetermined". Failed.

SB 1189; ADMISSIBILITY OF EXPERT OPINION TESTIMONY

In a civil or criminal action, expert testimony regarding scientific, technical or other specialized knowledge may only be offered by a qualified witness. In essence, legislatively applies *Daubert* to Arizona, however, the bill requires the judge to apply the above enumerated factors if applicable; Daubert provides discretion to the trial judge as to whether to apply the factors. Passed.

HB 2650/SB 1199; DIVORCE; WAITING PERIOD; EDUCATIONAL PROGRAMS

Would have allowed persons in conciliation court to extend their stay an additional 120 days. The petition for extension must include the basis for the extension, which may include a plan for reconciliation or a counseling schedule. Failed.

SB 1308; SCHOOLS; INSTRUCTION; DATING ABUSE

Permissively allows school districts (7-12th grade) to incorporate age-appropriate information about dating abuse into existing health curriculum. Passed.

SB 1309; PARENTS; RIGHTS

A parent's right to direct the upbringing, education, health care and mental state of a child is a fundamental right, and the state or any government entity is prohibited from infringing on these rights unless it demonstrates that the compelling governmental interest as applied to the child is of the highest order, is narrowly tailored and not otherwise served by a less restrictive means. Passed.

SB 1314; DOMESTIC RELATIONS

Contains a public policy statement declaring that in the state of Arizona, it is in a child's best interest to have substantial, frequent, continuing and meaningful parenting time with both parents and to have both parents engage in decision-making for the child, unless there is evidence to the contrary. Passed.

SB 1162; DOMESTIC RELATIONS COMMITTEE

Adds a "representative of a statewide coalition that combats sexual assault and assists victims of sexual assault who is appointed by the governor" to the DRC. Failed.

HB 2011; WELFARE; BUDGET RECONCILIATION; 2010-2011

In pertinent part, removes the cap of \$2.50 on the monthly fee paid by an obligor to the support payment clearinghouse and instead allows the Director of the Department of Economic Security to set the amount of the fee in rule. Exempts the Department from the rulemaking process for the purpose of establishing the fee. Provides that it is the intent of the Legislature that the additional revenue collected through the fee not exceed \$1,050,000. Passed. Effective date: 6/15/10.

Steve Wolfson asked about the change to SB1314, where the word *petition* was changed to *pleading*. He stated the change results in filings potentially being seen as inappropriate or not in good faith, so it is not as helpful as it would have been had the word change not been made. Ms. Proctor stated she was not involved in the discussion and is unaware of what transpired

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

Dr. Brian Yee, Chair of Court Procedures Workgroup, reminded members that the Substantive Law and Court Procedures workgroups have held joint meetings for the past couple of years due to the overlap of their topics. The two issues they are currently looking at are the relocation and Title 25 custody statutes

Ad-Hoc Custody Workgroup

Bill Fabricius, Chair, briefed the committee on the work of the Ad Hoc Custody Workgroup, noting their role in the language changes to the SB1314. He explained they continue the process of reviewing Title 25, chapter four, and described their four basic goals: 1) updating terminology and language to reflect current day custody terms; 2) organizing & cleaning up to reduce redundancy; 3) restructuring the sequence of sections so that the statute is easier to use, such as placing issues of child abuse and domestic violence before best interest items; 4) looking at substantive changes about the interests of children. The workgroup will report its work to the Substantive Law Workgroup. Mr. Fabricius announced there is now a webpage for the workgroup at <http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx> where the working documents can be found. He noted that members of the public are welcome to attend meetings.

Relocation Workgroup

Dr. Yee stated that the workgroup met prior to the DRC meeting this morning and proposals for modification to the relocation statute were discussed. It is a work in progress as they attempt to consolidate the different parts of the statute and make it coherent and user friendly in light of the number of pro se litigants that will be reading the statute. Mr. Wolfson added they are looking at A.R.S. § 25-408 as far as moving away from a mileage standard. The group will bring their proposal to the next meeting of the DRC.

PROPOSED CHILD SUPPORT GUIDELINES REPORT

David Horowitz, member of DRC and the Guidelines Review Committee (GRC), addressed the committee regarding the proposed child support guidelines. He provided some background on the quadrennial review process, which occurs in all states, and discussed the criteria as laid out in A.R.S. § 25-320(D), that must be considered in the review. Importantly, the criteria include ensuring the child retains the standard of living he or she would have enjoyed had the parents remained married. Mr. Horowitz pointed out that the current guidelines do not fulfill this requirement and this was one of several factors that led to the proposed change in the child support model.

Mr. Horowitz related the way in which the benchmarks of middle class living standard and minimally adequate income were developed with the help of expert consultants as well as with data obtained in an ASU survey of a pima county jury pool. He went on to describe how the *Child-Outcome Based Support* (COBS) model was created. He noted that economic consultants and experts were utilized in creating the grid and interpolation. Mr. Horowitz reviewed several data tables and explained the analyses, which are a result of a software program called *childshare*. He provided step by step examples of a disparate income situation, demonstrating how the current guidelines would result in the custodial parent living beneath the minimum adequate income level – or poverty line. He then used the COBS method to analyze the same income situation, which produced an outcome of an acceptable standard of living. Mr. Horowitz also addressed the 18 month phase-in period and stressed that every parent who wishes to do so will have the opportunity to go before a judge to request an extension and explain how their circumstances would justify an extension.

Committee Comments/Concerns:

- The current guidelines have an income cap. Will this be the case in the proposed guidelines?
 - *The proposed guidelines allow a \$20,000 income cap per parent, whereas the current guidelines allow a „combined“ income cap of \$20,000.*
- Are there instances in COBS where the custodial parent makes the higher income and the child support goes to the non-custodial parent?
 - *Yes. These are referred to as „negative support payments“. This occurs particularly when there is a significant disparity in income coupled with significant amounts of parenting time for the person designated as the non-custodial parent.*
- Is there a time when the non-custodial parent is required to pay more than 51 percent?
 - *There is no provision under the proposed guidelines for this to occur.*
- Is there an automatic review process for parents whose support amount increases by 15 percent or more? Also, has there been an analysis to estimate the potential influx of cases when the new guidelines go into effect and the courts' ability to manage them?
 - *There has not been an analysis specifically looking at this issue. However, reviews of child support orders are not done automatically, regardless of the change in support amount. They are done strictly by request.*
- If the court adopts the proposed new guidelines, do the support amounts change automatically, or do individuals need to request a hearing before the court?
 - *There are no automatic reviews in child support cases, so individuals will need to request a hearing. Also, changes to the support amount are retroactive only to the date of service of the request to modify, not the hearing itself.*
- The proposed guidelines seem a bit like spousal support; did the GRC consider whether the new guidelines might deter the recipient from taking the initiative to improve their economic circumstances? Also, it appears the figures could work out so that a person could have a spousal support order in addition to the child support order.

Ms. Karen Duckworth acknowledged the work done by the GRC and the need for improvement to the current child support guidelines. However, she noted the following problems with the proposed child support guidelines:

- Child support should not create disincentive (economic) for a parent to remarry, but this could be the case under COBS since it includes a new spouse's income in its calculations.
- A mother has a moral obligation to work and improve herself to rectify a disparate income situation, rather than burdening the noncustodial parent with „closing the gap“.
- The *Income Shares Model* could be improved and even benefit by incorporating some of COBS features, but COBS is too radical to replace the current model.

Mr. Kevin Wasson expressed concerns that COBS will benefit parents rather than children:

- In cases of high income disparity, there is already ample case law for judges to follow.
- While there are areas of the current guidelines that could be improved, the COBS model is essentially alimony disguised as child support.
- COBS is an „ALI“ (American Law Institute) model that's been relabeled to make it more palatable. Over the past 10 years, the ALI model has been repeatedly rejected by most states.

Mr. Timothy Frank voiced concerns about the financial uncertainty for himself and others, that will be created by the COBS method. He provided materials to support his concerns, some of which are included here:

- The *Income Shares Model* allocates the marginal cost of parenting to each parent as a proportion of their incomes, while COBS seeks to equalize the standard of living of the parents.
- This represents a significant change in the state policy of child support, which has yet to be discussed or debated by elected officials and the directly affected citizens.
- The GRC and the Supreme Court lack the authority to impose such changes to state policy.
- Elected officials need to be brought in to consider this matter.

Mr. Brent Miller expressed his unhappiness with the seemingly covert manner in which the GRC conducted its work. He provided a letter detailing his concerns with COBS, which include some of the following items:

- COBS was developed in a „cloak of secrecy“ without public or legislative input, or legitimate „vetting“.
- GRC documents and information are not readily accessible – the committee website is obscure and provides very little of the information related to the development of COBS.
- The GRC has refused to seek an independent review of the COBS model.
- GRC staff have not been forthcoming with answers to direct questions.

- There is a conflict of interest in that the COBS model is based on a child support theory developed by a voting member of the GRC.

Ms. Deborah Brimhall Pearson addressed the committee about the unfair impact of COBS on fathers. Some of the concerns she mentioned were as follows:

- The COBS model manipulates the statistics.
- The GRC has demonstrated prejudice against fathers.
- There should be a method of accounting for expenditures to ensure child support money is used for the needs of the child.
- The phase in period is not sufficient.

Mr. Terry Decker discussed his objections to the GRC's statistical approach and to the involvement of the supreme court in the child support guidelines.

- The GRC has not made clear the methodology used in acquiring COBS data and the data is inaccurate due to a flawed statistical approach.
- It is not within the Supreme Court's authority to implement a change in state policy such as COBS.
- The COBS model is combining spousal support with child support.

ADJOURN

The meeting was adjourned at 1:25.

DOMESTIC RELATIONS COMMITTEE

State Courts Building
1501 W. Washington
Conference Room 345 A/B
Phoenix, AZ
Meeting Minutes
October 15, 2010

MEMBERS PRESENT:

Honorable Linda Gray	Honorable Jeanne Hicks - <i>telephonic</i>
Honorable Steve Court	Jeffeory G. Hynes - <i>telephonic</i>
Theresa Barrett	Ella Maley
Sidney Buckman	Patti O'Berry
Laura Cabanillas - <i>telephonic</i>	Donnalee Sarda
Daniel Cartagena - <i>telephonic</i>	Russell Smoldon
Honorable Sharon Douglas - <i>telephonic</i>	Honorable Thomas Wing
Todd Franks	Steve Wolfson
Jack Gibson	Brian Yee
Grace Hawkins	
Danette Hendry	

MEMBERS ABSENT:

Honorable Edward Ableser	Honorable Leah Landrum Taylor
Honorable Andy Biggs	Honorable Rebecca Rios
William Fabricius	George Salaz
David Horowitz	David Weinstock

GUESTS:

Kendra Leiby	Sheri Fetzer – IFC Coordinator
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STAFF:

Kathy Sekardi	Administrative Office of the Courts
Tama Reily	Administrative Office of the Courts
Gina Kash	Arizona House of Representatives
Amber O'Dell	Arizona State Senate
Sarah Wharton	Arizona State Senate

CALL TO ORDER

Without a quorum present, the October 15, 2010, meeting of the Domestic Relations Committee (DRC) was called to order at 10:00 a.m. by Senator Linda Gray, Co-Chair.

ANNOUNCEMENTS

Senator Gray welcomed new member, Honorable Jeanne Hicks, Clerk of the Superior Court in Yavapai County.

Introductions were made around the room and Judge Wing noted he will be retiring and anticipates his last meeting as a member of the DRC will be in December.

COCONINO COUNTY INTEGRATED FAMILY COURT UPDATE *(Item taken out of order)*

Ms. Sheri Fetzer, Integrated Family Court (IFC) Coordinator presented a report on the IFC program in Coconino County. She discussed the integrated philosophy of the IFC, its scope, and the many services provided. She also related the successes of its various services and shared testimonials received from individuals who have benefited from the IFC's approach to family matters. In addition, Ms. Fetzer shared budget facts and funding challenges, and described various volunteer services that benefit the program, such as pro bono attorney services.

Ms. Ellen Seaborne provided additional details regarding the history of the IFC. She revealed how the IFC Workgroup endeavored to develop the IFC pilot program in 2002 and the various challenges faced to obtain funding. Ms. Seaborne elaborated on the different types of outcomes that are achieved under the IFC model compared to the outcomes prior to the formation of the IFC. Further, she spoke of the many attorneys in Coconino County who contribute greatly to the success of the IFC by volunteering their services in the interest of what is best for children and in support of the IFC.

Mr. Russell Smolden inquired about the 19 percent of Orders of Protection said to be involved in the IFC's cases. Ms. Seaborne explained that at times a protective order may be issued early in a case or may have been in place prior to transferring over to the IFC, and these cases could create the appearance of a high number of protective orders. Mr. Smolden went on to praise the work and success of the IFC and encouraged its progression to other counties.

Senator Gray thanked Ms. Seaborne for all of the work she has invested in the IFC project and the positive results that are being observed. She also praised the IFC for its model program, citing as one example the impressive reduction in number of evidentiary hearings and trials, which decreased from 42 percent for pre-IFC cases to less than 4 percent in 2010 IFC cases. Senator Gray emphasized the achievements of the IFC benefiting not only families and the children of divorce, but also the tremendous advantage to the courts.

APPROVAL OF DRAFT MEETING MINUTES

With a quorum now present, the draft minutes of the July 23, 2010, meeting of the DRC were presented for approval.

- MOTION:** To approve the July 23, 2010 DRC draft meeting minutes as presented.
- SECOND:** Motion seconded
- VOTE:** Approved unanimously

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

▪ AD-HOC CUSTODY WORKGROUP UPDATE

In the absence of Dr. Bill Fabricius, Chair of the Ad-Hoc Custody Workgroup, Workgroup member, Ms. Grace Hawkins, reported on the progress of the workgroup's efforts to review and recommend changes to A.R.S. § 25-403: custody; best interests of the child. Ms. Hawkins reviewed the Interim Report of the workgroup which gave a brief recap of the genesis and formation of the workgroup as an ad-hoc task group within the Substantive Law Workgroup. She also detailed the workgroup's goals and planned approach, and how the diverse composition and classification of its members evolved. Ms. Hawkins explained that the diverse make-up of the group is expected to produce the best outcome by offering a multi-perspective view in this examination of the custody statute. She reported some of the statute issues identified thus far, and the sheer breadth and complexity of the task before them necessitates more time than originally granted for this project. Thus, the workgroup is requesting that the DRC extend the timeframe for the workgroup to complete its charge.

MOTION: To charge the Ad-Hoc Custody Workgroup with presenting final recommendations for improvements to Arizona Revised Statutes, Title 25, Chapter 4; Child Custody to DRC in October 2011.

SECOND: Motion seconded

VOTE: Approved unanimously

Ms. Hawkins also informed members of the new Ad-Hoc Custody Workgroup website: <http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx>, where DRC members can follow the workgroup's progress, find meeting information, documents, and minutes.

▪ RELOCATION WORKGROUP UPDATE

Mr. Wolfson updated the committee on the workgroup's review of the relocation language in A.R.S. § 25-408. He noted they are specifically focused on the standard for the application of the relocation statute which involves a move out of state, or more than 100 miles from the current residence, and evaluating whether that standard is still relevant in current times. The workgroup concluded that the 100-mile rule is no longer relevant and has drafted new language. Mr. Wolfson noted their revisions were made with two main issues in mind; first, recognizing there are procedural differences among the counties which could impact how the rule is applied, second, there are concerns that certain cases will amplify issues, or seek to prevent relocations from occurring. These concerns were taken into account in the revisions presented. The workgroup requested feedback and/or suggestions from the DRC. Their plan is to present the final draft proposal at the December DRC meeting.

Senator Gray inquired whether military deployments were considered and questioned what the filing fees are for exemptions. Hon. Hicks noted that the current statewide fee is \$81.00, however, some counties have additional fees, or surcharges, on top of the basic fee. Mr. Smolden mentioned a phenomenon sometimes referred to as „the creep” meaning that a parent can “creep” across the state by moving short distances several times over a period of a few years, but never more than 100 miles at a time. He expressed concern that the distance can sometimes escape the notice of the court and wants to be sure the revised statute addresses this issue. Judge Wing observed that paragraph (D) mentions a “written parenting time plan” which he believes seems vague. He suggested it should state clearly “*court ordered written parenting plan*” Ms. Seaborne replied it was their intention to have that language included and will be corrected in the next version. Mr. Franks offered some specific language suggestions to clarify some of these issues being discussed. He also encouraged specificity for “*means of notice*”, and to define certain actions as “*presumptive notice*”. Mr. Wolfson recognized the need to provide clarity and stated the workgroup would likely seek advisement of the State Bar Family Law Practice and Procedure Committee on some of the issues raised today.

GOOD OF THE ORDER/CALL TO THE PUBLIC

No public comments offered.

The meeting adjourned at 11:34 a.m.

NEXT MEETING

Friday, December 3, 2010
Arizona State Courts Building
Conference Room 119 A/B
1501 W. Washington
Phoenix, Az 85007

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes

TELEPHONIC MEETING

State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
December 3, 2010

MEMBERS PRESENT:	
Honorable Linda Gray	Ella Maley
Theresa Barrett	Laura Sabin-Cabanillas
Sidney Buckman	Donnalee Sarda
Daniel Cartagena	Ellen Seaborne
Honorable Sharon Douglas	Russell Smoldon
William Fabricius	David Weinstock
Jack Gibson	Thomas L. Wing
Grace Hawkins	Steve Wolfson
Jeanne Hicks	Brian W. Yee
David Horowitz	
Jeffery Hynes	
MEMBERS ABSENT:	
Honorable Edward Ableser	Ms. Danette Hendry
Honorable Andy Biggs	Honorable Leah Landrum Taylor
Honorable Steve Court	Patty O'Berry
Mr. Todd Franks	Honorable Rebecca Rios
GUESTS:	
Ms. Kathleen Mayer	Pima County Attorney's Office
STAFF:	
Kathy Sekardi	Administrative Office of the Courts
Tama Reily	Administrative Office of the Courts
Ingrid Garvey	Arizona House of Representatives
Amber O'Dell	Arizona State Senate

CALL TO ORDER

Without a quorum present, the December 3, 2010, meeting of the Domestic Relations Committee (DRC) was called to order at 10:02 a.m. by Senator Linda Gray, Co-Chair.

ANNOUNCEMENTS

Senator Gray made the following announcements:

- Judge Thomas Wing will be retiring at the end of the year and today will be his last meeting with the DRC. Senator Gray thanked Judge Wing for years of service on the committee and commended his dedication to the court community. Senator Gray noted Judge Wing's knowledge and expertise will be sorely missed.
- DRC member, George Salaz, resigned from the committee in November due to numerous commitments. Senator Gray acknowledged his years of service to the DRC and wished him well in his future endeavors.

PROPOSED LEGISLATION

Kathleen Mayer, Legislative Liaison, Pima County Attorney's Office, presented several legislative proposals for consideration. The intent of the proposed bills is to bring the statute language up to date with technological strategies being employed by individuals who use electronic devices to harass and/or stalk their victims.

A.R.S. § 13-2916 *Use of telephone to terrify, intimidate, threaten, harass, annoy or offend*

Currently, the statute specifies the use of a telephone to harass and intimidate. The expansive language in the proposal includes various electronic, digital and/or wireless methods of communication.

MOTION: To support the proposed changes to A.R.S. § 13-2916 as presented.
SECOND: Motion Seconded.
VOTE: Passed 16-1-0

A.R.S. § 13-2923 *Stalking; classification; definitions*

The current statute stipulates that stalking include visual or physical proximity to the person being stalked. The proposal will expand the definition of „course of conduct“ to include electronic, digital, and/or wireless methods.

Judge Wing suggested a clarification in (C)(1) where the phrase “on two or more occasions” is somewhat vague. Ms. Mayer agreed to make the requested clarification.

MOTION: To support the proposed changes to A.R.S. § 13-2923 with changes as discussed.
SECOND: Motion Seconded
VOTE: Passed 16-1-0

A.R.S. § 13-1302(D) *Custodial Interference; child born out of wedlock; defenses; classification*

This statute underwent changes in 2000, and consequently an unintended language omission occurred. This proposal would add back in the omitted language in (D)(4),

which would reduce the violation to a misdemeanor if there is a voluntary return of the child by the parent or defendant prior to arrest.

David Horowitz asked if the statute should state explicitly that the penalty reduction may apply contingent upon whether the individual is returning the child at the direction of the defendant or at the direction of the parent who committed the custodial interference. Ms. Mayer stated it is her understanding that this is already the case without specifying it in the statute. However, she will check with her domestic violence prosecutors and notify Amber O'Dell of any additional changes needed.

The DRC did not move this proposal forward.

APPROVAL OF MINUTES

With a quorum now present, the draft minutes of the October 15, 2010 meeting of the DRC were presented for approval.

MOTION: To approve the October 15, 2010 DRC draft meeting minutes as presented.
SECOND: Motion seconded.
VOTE: Approved unanimously

MEDICAL RECORDS STATUTE A.R.S. § 12-2293

David Weinstock, presented proposed changes to A.R.S. § 12-2293, the current statute for release of medical records. Dr. Weinstock noted that the confusing and seemingly contradictory statutory specifications have led to disagreement among practitioners as to what constitutes appropriate release of records. He stated the confusion has a direct impact on custody evaluations and offered a few examples in order to demonstrate the ambiguities. Dr. Weinstock requests the committee to approve clarification of the statute.

MOTION: To review the statute and bring it back for further evaluation.
SECOND: Motion seconded.
VOTE: Approved unanimously.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATES RELOCATION STATUTE

Steve Wolfson provided an update on the workgroup's progress with the modification of the relocation statute, A.R.S. § 25-408. Mr. Wolfson stated they last met on November 23, at which time the Relocation Subgroup presented its proposed amendments to the statute. The workgroup's concerns regarding the draft amendments were explained to the subgroup for consideration. The draft being presented to the DRC today incorporates many of the workgroup's suggested changes, as well as the DRC's suggested changes made at the October DRC meeting. The workgroup would like to move the proposal forward to legislative council for final bill drafting.

Lengthy discussion ensued on the matter. Several members questioned how the public would learn about the relocation statute change. Mr. Wolfson stated that notification to the public regarding new legislation is considered a public relations issue. With regard to potential frivolous litigation by the opposing parent when a parent gives notice of plans to relocate, there is a provision to allow for a move for a judgment on the pleadings under The Rules Of Family Law Procedure, and the court can rule upon the move without a hearing. Several members had questions regarding the proposed move of section 25-403 (Custody statute.). Mr. Wolfson assured the DRC members the relocation workgroup is not addressing the custody sections at this time. Ms. Hawkins explained that while working on changes to 25-408, it became apparent that aspects of the statute did not belong in the relocation section. Thus, they set them aside and focused their work on the relocation section only. The other statutes will need to be dealt with at some point in the future, but the workgroup and subgroup will complete the initial task at hand first.

At this point discussion turned to a letter received from Tom Alongi, Senior Staff Attorney at Community Legal Services, in which he presents concerns regarding the draft of the new relocation bill. Members were unprepared to have meaningful discussion on the issues enumerated by Mr. Alongi as his letter was made available just prior to the start of the meeting. One member asked if Mr. Alongi were to appear at a future DRC meeting to discuss his concerns, and the current draft proposal had already been submitted to the legislature, could the committee still submit modifications to the legislation based on its consideration of Mr. Alongi's suggestions? Senator Gray answered this question in the affirmative and reported this scenario is a frequent part of the bill-making process.

Senator Gray suggested that she submit the proposed amendments to A.R.S. § 25-408 to Legislative Council to draft, and have the draft emailed back to Kathy Sekardi to distribute to the committee. She noted it may be necessary for the DRC to reconvene to review the issue at that time, if there were any substantive changes made to the bill.

AD HOC CUSTODY WORKGROUP UPDATE

Bill Fabricius gave a brief update on the status of the workgroup. He reported the work continues to progress and there are no major changes to present at this time. The workgroup considers public outreach a primary endeavor in terms of getting the word out about the group's existence, its goals, and the website contents. He stated they believe it is important to obtain as much input from the public and stakeholders as possible to aid in guiding the workgroup's efforts.

DRC 2011 MEETING DATES

Senator Gray directed members' attention to the 2011 DRC meeting dates displayed on the screen. The dates are as follows:

- June 3, 2011; Conference Room 119 A/B
- September 23, 2011; Conference Room 345 A/B

- October 21, 2011; Conference Room 345 A/B

Meeting dates are all on Fridays at the Arizona State Courts Building. More specific meeting details will be provided to members as each meeting date approach.

GOOD OF THE ORDER/CALL TO THE PUBLIC

Mr. Terry Decker detailed several suggestions he has regarding the proposed amendments to A.R.S. § 25-408. His written comments are provided in Addendum A - Public Comment.

ADJOURN

Meeting was adjourned at 11:44 a.m.

NEXT MEETING:

Friday, June 3, 2011
Conference Room 119 A/B
State Courts Building
1501 W. Washington
Phoenix, Arizona

Addendum A – Public Comment

**Proposed language submitted by:
Terry Decker, a member of the public**

Proposed Amendments to §25-408

25-408. Rights of the noncustodial parent, Relocation of child; exception;
enforcement

A. A parent who is not granted custody of the child is entitled to reasonable parenting time rights to ensure that the minor child has frequent and continuing contact with the noncustodial parent unless the court finds, after a hearing, that parenting time would endanger seriously the child's physical, mental, moral or emotional health.

A. A parent shall provide written, **RETURN RECEIPT** notice to the other parent as ~~soon as~~ **within three days of when** he or she becomes aware of any actual or impending change to his or her current physical address or contact information. The notification must include the effective date of such changes and the following language.

You have received notice from the other parent regarding a change of residence of the child or children. Arizona Law, A.R.S. § 25-408, ~~gives you the right to request a hearing to object to the move if you believe that the move will substantially or adversely impact your court-ordered parenting time.~~ **REQUIRES ME TO REQUEST A HEARING UNLESS I HAVE YOUR AGREEMENT.**

A residential move that may ~~substantially or adversely~~ impact a current court-ordered parenting plan or written agreement regarding parenting time includes, but is not limited to, a residential move that:

1. Results in a change to the school the minor child will attend after such a move;
2. Increases the travel time for transportation of the minor child for the exercise of parenting time to such a degree that the child's time with either parent will be decreased significantly.
3. Significantly impacts the child's established routine in his or her home, school, or community.

ANY ADDITIONAL OR INCREASED COST TO VISITATION SHALL BE BORN BY THE MOVING PARENT UNLESS THERE IS AGREEMENT OTHERWISE.

~~YOU MUST FILE A REQUEST FOR HEARING WITHIN 20 DAYS OF THE RECEIPT OF THE NOTICE IF YOU OBJECT.~~

THE BURDEN IS UPON THE PARENT PROPOSING RELOCATION TO EITHER

- 1. OBTAIN WRITTEN, NOTARIZED AGREEMENT FROM THE OTHER PARENT OR**
- 2. FILE A REQUEST FOR HEARING WITHIN 30 DAYS OF THE RECEIPT OF THE NOTICE.**

OTHERWISE THE MOVE CANNOT BE MADE.

B. A parent who intends to make a residential move must provide the notice required by section a to the other parent no less than sixty days prior to relocating the child. ~~If an objection is filed the child may not be relocated without a court order after a hearing.~~ **THE RELOCATION CANNOT BE MADE WITHOUT THE AGREEMENT OF THE PARTIES OR AN ORDER OF THE COURT.**

C. The notice required by Section A shall include the anticipated date of relocation and the proposed location, including a physical address if known. The notice shall

also state the reason that the parent is proposing the relocation of the child. The notice required by this section must be made either by certified mail, return receipt requested, or be served pursuant to the Arizona Rules of Family Law Procedure. The court shall sanction a parent who, ~~without good cause,~~ does not comply with the notification requirements of this subsection. The court may impose a sanction that will affect custody or parenting time ~~only in accordance with the child's best interests.~~

D. ~~Except as provided in the Servicemembers Civil Relief Act, within twenty days after notice is 24 received, the nonmoving parent may petition the court to prevent the proposed move of the child if the move may substantially or adversely impact a current court-ordered parenting plan or written agreement regarding parenting time. After expiration of this time any petition or other application to prevent the proposed move of the child may be heard only on a showing of good cause for the delay. 28.~~ A parent who is proposing to move the child may petition the court for a hearing, on notice to the other parent, to determine the appropriateness of the move that may adversely affect the other parent's custody or parenting time rights.

For purposes of this section, a residential move that may substantially or adversely impact a current court-ordered parenting plan or written agreement regarding parenting time includes, but is not limited to, a residential move that:

1. Results in a change to the school the minor child will attend after such a move;
2. Increases the travel time for transportation of the minor child for the exercise of parenting time to such a degree that the child's time with either parent will be decreased significantly.
3. Significantly impacts the child's established routine in his or her home, school, or community.

E. Notice is ~~not~~ required if a provision for a proposed move of a child has been made by a court order or a written agreement of the parties that is dated within one year of the proposed move of a child.

F. The court shall not deviate from a provision of the current court-ordered parenting plan by which the parents specifically have agreed to allow or prohibit relocation of the child ~~unless the court finds that the provision is no longer in the child's best interests. There is a rebuttable presumption that a relocation provision from the current court-ordered parenting plan is in the child's best interests.~~

G. The parent who has given notice of a proposed move may move for judgment on the pleading and shall follow the procedure set forth in Rule 32(C), Arizona Rules of Family Law Procedure.

H. The court shall determine whether to allow the parent to relocate the child in accordance with the child's best interests. The burden of proving what is in the child's best interests is on the parent who is seeking to relocate the child. To the extent possible the court shall also make appropriate 18 arrangements to ensure the continuation of a meaningful relationship between the child and both parents.

- I. In determining the child's best interests the court shall consider all relevant factors including:

- II. 1. The factors prescribed under section 25-403.
2. Whether the relocation is being made or opposed in good faith.
 3. ~~The prospective advantage of the move for improving the general quality of life for the child.~~
 4. The likelihood that the parent with whom the child will reside after the relocation will comply with parenting time orders.
 5. Whether the relocation will ~~allow a realistic opportunity~~ CHANGE for parenting time with each parent.
 6. The extent to which moving or not moving will affect the child's stability and the emotional, physical or developmental needs of the child.
 7. Whether a parent's primary motive in requesting or opposing relocation is to gain a financial advantage regarding continuing child support obligations.
 8. A PARENT MAKING FALSE ALLEGATIONS OR STATEMENTS WILL BE CONSIDERED A LESS THAN FIT PARENT BECAUSE THAT PARENT HAS DEMONSTRATED THAT THEY DEEM THEIR CHILD A PAWN AND ARE PROMOTING CONFLICT.

~~J. In the event that the moving parent has primary physical custody and has the exclusive right to make 1 educational decisions for the child or children and the proposed change of residence for the child or 2 children would allow for reasonable and meaningful access which is not significantly less than 3 provided under the current parenting time order, there shall be a presumption that it is in the child's 4 best interest to relocate with the moving parent. 5~~

K. A parent who is required by any one of the following circumstances: health, safety, employment or involuntary change of residence of that parent or that parent's spouse to relocate in less than sixty days after written notice has been given to the other parent may temporarily relocate with the child only if both parents execute a written agreement or a parent obtains a court order pursuant to Rules 9 47, 48 OR 91, Arizona Rules of Family Law Procedure.

L. Hearings conducted on petitions to permit or to prevent relocation of a child shall ~~not~~ be considered as motions to modify child custody and the parties ~~are not~~ **SHALL BE** required to comply with the provisions of A.R.S § 25-411 .

EXCLUSIVE OF PARAGRAPH H or Rule 91(d), Arizona Rules of Family Law Procedure.

M. THE NONCUSTODIAL PARENT SHALL ALWAYS HAVE THE RIGHT OF FIRST REFUSAL FOR CARING FOR THE CHILD WHEN THE PARENT EXERCISING PARENTING TIME CANNOT BE WITH OR CARE FOR THE CHILD. THE NONCUSTODIAL PARENT SHALL TAKE PRECEDENCE REGARDING PARENTING TIME OVER ALL OTHER PERSONS WHEN THE CUSTODIAL PARENT CANNOT EXERCISE THEIR TIME WITH THE CHILDREN PERSONALLY. THIS SHALL APPLY TO ANY TIME GREATER THAN ONE HOUR. REASONABLE BEHAVIOR

SHALL BE MAINTAINED AND ABUSE SHALL BE SANCTIONED. THE CHILDREN SHALL NOT BE USED AS A PAWN.

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes
State Courts Building
1501 W. Washington
Conference Room 119 A/B
Phoenix, AZ
June 3, 2011

MEMBERS PRESENT:

Honorable Linda Gray	Honorable Peggy Judd
Honorable Terri Proud - <i>telephonic</i>	Ella Maley
Honorable Lela Alston	Donnalee Sarda - <i>telephonic</i>
Theresa Barrett	Russell Smoldon
Sidney Buckman	Steve Wolfson
Laura Sabin-Cabanillas	Brian W. Yee
Daniel Cartagena	
William Fabricius - <i>telephonic</i>	
Honorable Katie Hobbs	
David Horowitz - <i>telephonic</i>	
Jeffery Hynes - <i>telephonic</i>	

MEMBERS ABSENT:

Todd Franks	Patty O'Berry
Jack Gibson	Ellen Seaborne
Grace Hawkins	David Weinstock
Ms. Danette Hendry	Honorable Sylvia Allen
Honorable Leah Landrum Taylor	

GUESTS:

Amy Love	Administrative Office of the Courts
Katy Proctor	Arizona State Senate
Kay Radwanski	Administrative Office of the Courts

CALL TO ORDER

Without a quorum present, the June 3, 2011, meeting of the Domestic Relations Committee (DRC) was called to order at 10:00 a.m. by Senator Linda Gray, Co-Chair.

ANNOUNCEMENTS

Senator Gray made the following announcements:

DRC member, Judge Sharon Douglas, resigned from the committee. Her service to the committee was acknowledged. The following new appointees were introduced and welcomed to the committee:

- Representative Terri Proud, Co-Chair
- Representative Lela Alston
- Representative Katie Hobbs
- Representative Peggy Judd

LEGISLATIVE UPDATE

Ms. Amy Love, AOC Legislative Liaison, updated the committee on legislation passed during the recent session. The bills can be found in [Appendix A](#).

SUBSTANTIVE LAW / COURT PROCEDURES WORKGROUP UPDATE

Members, Steve Wolfson and Brian Yee, Co-Chairs of the Substantive Law/Court Procedures Workgroup (SL/CP), provided an update on the workgroup's progress with custody statute review. Mr. Wolfson briefly reviewed the genesis and history of the Ad Hoc Custody Workgroup (AHCW) that began revisions on the custody statute in 2010. In April 2011, the AHCW passed their work product to the SL/CP. The workgroup has met several times over the last three months and will continue to work on a final recommendation to the DRC. He explained that the revisions to date have consisted of some reorganization, revisions, and significant changes in terminology. The term "custody" has been replaced by the term "parental decision-making." There is also a new section for special circumstances that addresses such issues as domestic violence, now termed "intimate partner violence" (IPV), including coercive control, and substance abuse. Mr. Wolfson explained this is a slow process as the workgroup has sought and continues to seek input from nationally-renown experts in the field and the Arizona State Bar Family Law Section members. The workgroup has several meetings scheduled during the summer and they hope to have the project completed by September.

Dr. Yee added that the workgroup is still in the very early stages of review and emphasized the intent is to continue taking the time to gather input from experts and obtain feedback from the public. Due to the sheer depth and breadth of the document, it is very much a work-in-progress, and it is possible the final product presented to the DRC may look quite different from the product revealed at today's meeting.

Senator Gray noted that the current draft should be provided to Legislative Council so they can prepare the proposed statutes in the proper bill format. Senator Gray stated she was glad to see the term "custody" replaced with "parental decision-making" but, did not like replacing the term "domestic violence" with "intimate partner violence" (IPV) since the remainder of the statute uses the term "domestic violence."

CALL TO THE PUBLIC

Member of the general public, Terry Decker, stated the following:

- He has attended most of the workgroup meetings and is interested in reduced conflict for children of divorce.
- Quoted statistics regarding suicide among veterans who are involved in the family court and sociopaths who come from fatherless homes.
- Does not believe references to domestic violence should be in the custody statute. Believes it would be prudent to have a stand-alone bill for domestic violence issues.
- The bill should say equal parenting time and joint custody are in the best interest of the children.

General public member, Karen Duckworth, discussed the following:

- Public input is paramount in the process and thanked the workgroup for giving her the opportunity to contribute in the meetings.
- She is concerned about the “overexpansion of the language about domestic violence” in the custody statute. It has created unnecessary conflict.
- There need to be laws in place regarding coercive control, but they should not be written into family laws. She believes it would lead to the negative consequences of persons reading about coercive control in the statute and then making false allegations against the other parent.

Member of the general public, Brent Miller, expressed the following:

- The statute is deliberately wordy, making it difficult for a lay person representing themselves and that it also encourages litigation.
- Believes members of the SL/CP are not representative of actual parents.
- The interest holders need to be removed from the workgroup and replaced with actual stake holders.
- Members of the public should be actively participating with the workgroup during this process.

Member of the general public, Michael Espinoza, voiced the following:

- Agreed with the comments of Ms. Duckworth that domestic violence language belongs in the criminal code rather than the custody statute.
- The definition of “legal parent” is incorrect as it is cited elsewhere in the statute with a different definition.
- The gender of the parents should not be specified or mentioned.
- Members of the public have put forward many proposals to the workgroup but they are just pushed aside.
- Believes the public agrees with the workgroup on the custody issues, it is only the domestic violence aspect they disagree with, so the statute should go forward without the domestic violence language rather than continuing to hold up the process.

General public member, Joi Davenport, observed the following:

- The language provided from the AHCW is revolutionary and will help anyone involved in family court, including pro pers.
- Mental, emotional, and verbal abuse are not addressed in family court. Unless there are obvious signs of physical abuse, domestic violence is disregarded. This is why domestic violence needs to be in the statute.
- Mental, emotional, and verbal abuse impact children significantly.
- Ms. Davenport asked why the opposing members of the public are so afraid of having the domestic violence references in the custody statute.

Member of the general public, Debra Pearson, stated the following:

- The proposed language needs to be looked at – it favors women and is prejudiced against the father.
- She was a previous victim of verbal abuse and did not need the court to help her get out of her situation. Courts just make a bigger mess of things.
- The system already favors mothers.

Following the comments from the general public, Senator Gray requested input from members. Several members responded to the general public comments. Laura Sabin-Cabanillas stated she respects the feelings of all who spoke, however, she took exception to comments regarding the composition of the workgroup – specifically that there are no “actual parents” on the workgroup, rather there are “interest holders.” She stated that she is a non-custodial parent and has no monetary stake in the outcome of the final product. Furthermore, she stated she is concerned because emotional abuse is the most prevalent type of domestic violence that happens in the home and it’s actually the most damaging to the children. She believes it is crucial that the coercive control and domestic violence language remain in the custody statute.

APPROVAL OF DRAFT MINUTES

A quorum now having been achieved, the minutes of the December 3, 2010, DRC meeting were presented for approval.

- MOTION:** To approve the December 3, 2010, DRC draft meeting minutes as presented.
- SECOND:** Motion seconded.
- VOTE:** Passed unanimously

Mr. Wolfson stated he took exception on behalf of the workgroup to some of the comments from the general public. The perception that members of the workgroup have a financial stake in the outcome is untrue. He pointed out members Danny Cartagena and Robert Reuss are both parents on the workgroup. Other members are public servants. Their time is volunteered and they receive no compensation. The meeting agendas are published 24 hours in advance of the meetings pursuant to open

meeting law and are therefore available to the general public. The work being done by the workgroup is aimed at making the rules easier and educating everyone as part of the process. However, the custody statute is complicated in parts because these issues and court determinations are complicated.

Several workgroup members reiterated Mr. Wolfson's comments. Bill Fabricius, a non-custodial parent with no stake in the outcome, commented that the comments of the general public are recorded so that their insights can be used as a tool. He suggested it would be better for the general public to work together with the workgroup rather than make general criticisms. Moreover, he suggested that anyone can submit alternate language to the workgroup at any time. Danny Cartagena, a joint-custody parent, noted that he was falsely accused of domestic violence in his personal situation and pointed out that the statute language refers to a pattern of coercive behavior, versus a one-time incident. In addition, he noted that they are looking very closely at the possibility of including language regarding false allegations. Sid Buckman, stressed that the workgroup has endeavored to write a comprehensive bill that is unbiased and research-based, while striving to keep it as simple and user friendly as possible.

At this time, the committee began to address the language of the statute. There was some discussion of placing the domestic violence language toward the back of the bill. There were several suggested language changes from Senator Gray that were made to the statute. There was lengthy discussion about using the term "domestic violence" as defined in section A.R.S. § 13-3601 rather than "intimate partner violence" or using both concepts as some other states have done. Senator Gray stated that the changes incorporated to the statute today will go to legislative council for review and then come back to the workgroup for continued work.

GOOD OF THE ORDER

Senator Gray informed members that legislators will be receiving a letter to the effect that any domestic-related legislation must come before the DRC before moving forward at the legislature.

ADJOURN

Meeting was adjourned at 11:44a.m.

NEXT MEETING:

Friday, September 16, 2011
Conference Room 345 A/B
State Courts Building
1501 W. Washington
Phoenix, Arizona

Domestic Relations Committee
Legislative Update
June 3, 2011

HB 2302: PROTECTED ADDRESS; SECRETARY OF STATE

CH 173

Representative J.D. Mesnard

<http://www.azleg.gov/legtext/50leg/1r/bills/hb2302s.pdf>

Amends A.R.S. § 16-153, *Voter registration; confidentiality*, to include border patrol agents in persons eligible to request that the general public be prohibited from accessing the address, telephone number, and voting precinct number contained in their voter registration record.

The court may seal the change of name application and judgment on request if a person is protected under an order of protection or is a victim of stalking pursuant to A.R.S. § 13-2923, *Stalking, classifications, definitions*. If the offense took place in another jurisdiction, but would be classified as a violation or attempted violation of A.R.S. § 13-2923 if committed in this state, these provisions still apply. A person who obtained a judgment on or after Jan. 1, 2009, may request that the court seal the application and judgment pursuant to this section.

Directs the Secretary of State (SOS), by December 31, 2012, to establish the Address Confidentiality Program (ACP). The ACP allows victims of domestic violence, sexual offenses, or stalking to keep their residential address confidential, by giving them a substitute lawful address. Outlines what the application will include and what is considered evidence of domestic violence, a sexual offense, or stalking.

Allows an ACP participant to be served by certified or registered mail with any process, notice, or demand required by law and clarifies that this provision does not prescribe the only or necessary means of serving an ACP participant. Adds five days to the timeframe within which an ACP participant legally has a right to act, if they were served in accordance with law by mail or first-class mail. This provision does not apply if the time period is otherwise corrected by a court rule.

Individuals are certified into the ACP for four years following the date of filing. Certification may be renewed by filing a renewal application with the SOS within 30 days of the current certification expiring. ACP participants may withdraw certification by filing a request for withdrawal that is acknowledged before a notary public. If the ACP participant fails to notify the SOS of a change in legal name, current address, telephone number, or knowingly submits false information, certification of the program participant can be cancelled. Requires the SOS to send notice and the reason for cancellation to the program participant if it is determined that there is reason for cancelling certification. The program participant has 30 days to appeal the cancellation decision. Under A.R.S. § 41-155, the SOS cannot disclose any address or telephone number of an ACP participant except under the following circumstances:

- The information is required under a court order
- The SOS grants a request by a state or local government entity pursuant to A.R.S. § 41-157, *Request for disclosure*

Any person to whom an ACP participant's actual address or telephone number has been disclosed cannot further disclose the information to any other person unless required by court order or as otherwise provided by law. The SOS shall immediately notify an ACP participant if it has disclosed a participant's information.

If an ACP participant is involved in divorce proceedings, child support, or the allocation of parental responsibilities or parenting time, the SOS must notify the court that the participant has been certified and is part of the ACP.

Anyone who knowingly and intentionally obtains or discloses an ACP participant's information is guilty of a Class 1 Misdemeanor.

The ACP participant is responsible for requesting that a state or local government entity use the substitute address as the participant's residential, school, or work address.

Except as otherwise provided for in the statute or by order of the court, if a participant submits a current and valid address confidentiality program card to the court, the court shall accept the substitute address as the home, work, and school address for the participant. The court may make a photocopy of the card and shall return the card to the participant.

Outlines how participants shall be able to register to vote and to vote.

A state or local government agency requesting disclosure of an ACP program participant's actual address must make the request in writing on letterhead. This provision does not apply to the court. The SOS must notify the participant of a request for address disclosure and allow the participant an opportunity to be heard regarding the request. The SOS must provide the participant with written notification if a request for disclosure has been granted or denied. Notice or opportunity to be heard shall not be afforded to the participant if the request for disclosure is made by a state or local law enforcement agency conducting a criminal investigation or if providing notice would jeopardize an ongoing criminal investigation or the safety of law enforcement personnel. The director of the program, or the director's designee, must be available to state and local governments 24 hours a day for purposes of a request for disclosure.

Outlines an expedited disclosure process to be used by a court, criminal justice official or agency, or a probation department when disclosure is required pursuant to a trial, hearing, proceeding, or investigation involving an ACP participant. An official or agency obtaining information under the expedited disclosure process shall certify to the SOS that it has a system in place to protect the confidentiality of a participant's actual address from the public and personnel involved in the trial, hearing, proceeding, or investigation. A court or administrative tribunal may seal the portion of any record containing an actual address.

Permits a state or local government agency, at its discretion, to use an actual address in any document or record filed with a court or administrative tribunal if, at the time of filing, the document or record is not a public record.

Effective January 1, 2012, adds A.R.S. § 12-116.04, *Address confidentiality program assessment*, that adds a \$50 assessment for a person who is convicted of a domestic violence offense, a sexual offense, or stalking. The court may waive all of or a portion of the assessment if the court finds that the defendant is unable to pay the assessment. 95% of the assessment goes to the address confidentiality fund and 5% is retained by the clerk of the court for administrative costs.

Defines “actual address,” “address confidentiality program,” “applicant,” “application assistant,” “domestic violence,” “program participant,” “public record,” “sexual offense,” “stalking,” “state or local government entity,” and “substitute address.”

The SOS program sunsets July 1, 2021.

Statutes amended: A.R.S. § 12-601, 16-153, 39-123, 39-124

Statute enacted: A.R.S. § 12-116.05

SB 1080: CUSTODIAL INTERFERENCE; CLASSIFICATION

CH 224

Senator Linda Gray

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1080h.pdf>

A parent who has no legal right to do so and either takes, entices, or withholds a child from the other parent before the entry of a court order, or has joint legal custody of the child and withholds the child from the other custodian, is not guilty of custodial interference if the person has filed an emergency petition regarding custodial rights, has received a hearing date and the person has a good faith and reasonable belief that the child will be in immediate danger if left with the other parent.

The law defining the crime of custodial interference is clarified to state that the Class 1 Misdemeanor classification applies only if the child or incompetent adult is returned by the parent or defendant, or the agent of either, no later than 48 hours after the child was taken.

It is a Class 1 Misdemeanor to intentionally make a false report of vulnerable adult abuse or neglect to a law enforcement agency or to a person who is required by law to report the information to a law enforcement agency.

Statute amended: A.R.S. § 13-1302

Statute enacted: A.R.S. § 13-2907.04

SB 1187: DISSOLUTION OF MARRIAGE; LEGAL SEPARATION

CH 305

Senator Linda Gray

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1187h.pdf>

Makes various changes to the required educational programs provided by each county’s Superior Court regarding divorce. Specific standards must be implemented by January 1, 2013, including the following:

- The emotional, psychological, financial, physical and other effects of divorce on adults and children
- Alternative options to divorce
- Resources available to improve or strengthen marriage
- The legal process of divorce and options available for mediation
- Resources available after divorce

If either party wishes to extend the 60 day waiting period after filing a petition for conciliation, they must file a petition with the court that explains the reason for the extension and includes a plan for reconciliation and counseling. The waiting period may be extended up to 120 days, for good cause, during which time neither party may file for annulment, dissolution of marriage, or legal separation. The court shall deny exemption if the other party objects with good cause.

Statutes amended: A.R.S. § 25-351, 25-381.17, 25-381.18

SB 1192: CHILD SUPPORT MODEL; REVIEW; REPORT

CH 228

Senator Linda Gray

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1192s.pdf>

The Supreme Court shall not adopt the Child Outcome Based Support model (COBS) unless the court selects a nationally recognized independent research organization to review the methodology used in creating the COBS model and the effect the model would have on the courts and on child support for families in Arizona.

Contains a *legislative intent* clause.

Session Law, no statutes affected.

SB 1283: CHILD CUSTODY; MILITARY FAMILIES

CH 346

Senator Kyrsten Sinema

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1283s.pdf>

Removes the requirement that a custodial parent who is a member of the US armed forces file a military family care plan prior to any deployment. Requires the court to enter a temporary order modifying parental rights during a period of military deployment or mobilization on motion of either parent if the deployment or mobilization will have a material effect on the military parent's ability to exercise parental rights and responsibilities or parent-child contact. Requires the court to allow a parent to present testimony and evidence by electronic means on motion of a deploying parent if reasonable advance notice is given and good cause is shown. The court is required to hear motions for modification due to deployment as expeditiously as possible.

Permits a military parent to request the court to delegate parenting time to a family member or other individual with whom the child has a close and substantial relationship if the court finds that doing so is in the child's best interest. Prohibits the court from delegating parenting time to a person who would otherwise be subject to limitations. Directs the parents to utilize the dispute resolution process outlined in their parenting plan unless excused by the court for good cause. Clarifies that a court order delegating parenting time does not establish a separate right to parenting time for a person other than the parent.

Temporary modification orders must include a specific transition schedule to facilitate a return to the redeployment order within ten days after the deployment ends, taking into consideration the child's best interests.

Prohibits the court from entering a final order to modify parental rights and parent-child contact in an existing order until 90 days after the end of temporary military duty, deployment, activation or mobilization orders. Applies to the parent with whom the child resides a majority of the time and an exemption is made if both parents agree to a modification.

Prohibits the court from considering absence caused by deployment or mobilization or the potential for future deployment or mobilization as the sole factor supporting a real, substantial and unanticipated change in circumstances.

Statute amended: A.R.S. § 25-411

SB 1373: Governmental mall commission; public terms (Sen. Antenori)

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1373p.pdf>

Strike everything amendment.

In pertinent part, expands the list of exceptions as to what is considered communal property between a married couple to include any property acquired as a result of service the U.S. armed forces.

In a proceeding for dissolution of marriage, the court shall divide communal property without regard to separate property.

Titles affected: 23, 25, 28, 41

SB 1396: DOMESTIC RELATIONS; NOTIFICATION REQUIREMENTS

CH 236

Senator Sylvia Allen

<http://www.azleg.gov/legtext/50leg/1r/bills/sb1396s.pdf>

Requires the court to provide written notice to all parties in a custody proceeding of the right to request conclusions of fact and law regarding child custody, relocation requests, spousal maintenance, community property, community debt, and child support, if contested. One must file a written request with the court before the trial or evidentiary hearing to request conclusions of fact and law. If a request is submitted before the trial or evidentiary hearing, the court will make conclusions of fact and law as part of the final decision.

Statute enacted: A.R.S. § 25-331

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes
State Courts Building
1501 W. Washington, Phoenix, AZ
Conference Room 119 A/B
September 16, 2011

MEMBERS PRESENT:

Honorable Linda Gray - <i>telephonic</i>	Honorable Peggy Judd
Honorable Terri Proud	David Horowitz
Theresa Barrett	Ella Maley
Honorable Michael R. Bluff	Patti O'Berry
Sidney Buckman	Donnalee Sarda
Daniel Cartagena - <i>telephonic</i>	Ellen Seaborne - <i>telephonic</i>
Honorable Mary Ellen Dunlap	Russell Smolden
William Fabricius - <i>telephonic</i>	David Weinstock
Grace Hawkins	Steve Wolfson
Danette Hendry	Brian Yee
Honorable Katie Hobbs	Honorable Wayne Yehling - <i>telephonic</i>

MEMBERS ABSENT:

Honorable Lela Alston	Jack Gibson
Todd Franks	Honorable Leah Landrum Taylor
Jeffery Hynes	

GUESTS:

Honorable Carey Hyatt	Maricopa County Superior Court
Lindsay Simmons	Arizona Coalition Against Domestic Violence
Kay Radwanski	Administrative Office of the Courts
Julie Graber	Administrative Office of the Courts

STAFF:

Kathy Sekardi	Administrative Office of the Courts
Tama Reily	Administrative Office of the Courts
Amber O'Dell	Arizona State Senate
Ingrid Garvey	Arizona House of Representatives

CALL TO ORDER

With a quorum present, the September 16, 2011, meeting of the Domestic Relations Committee (DRC) was called to order at 10:05 a.m. by Representative Terri Proud, Co-Chair.

ANNOUNCEMENTS

Representative Proud welcomed the following new members:

- Honorable Wayne E. Yehling – Commissioner, Family Law Bench, Pima County Superior Court
- Honorable Michael Bluff – Associate Family Law Presiding Judge and Conciliation Court Judge, Yavapai County Superior Court
- Honorable Mary Ellen Dunlap – Clerk of Court, Cochise County

Member, David Horowitz, noted that one of his paralegal studies students from Phoenix College was in attendance today.

Representative Proud congratulated Senator Linda Gray, who received the **Century Council** award in recognition of her ongoing dedication to fighting drunk driving, and Representative Katie Hobbs, who was named to the Center for Women Policy Studies' **National Honor Roll of State Legislators**, in recognition of her commitment to women's human rights.

Member introductions were made around the table and on the conference call.

APPROVAL OF DRAFT MEETING MINUTES

The draft minutes for the June 3, 2011 meeting of the DRC were presented for approval.

- MOTION:** To approve the June 3, 2011 DRC draft meeting minutes as presented.
- SECOND:** Motion seconded.
- VOTE:** Approved unanimously.

FAMILY COURT CONCERNS

Donnalee Sarda, member and Executive Director for Defenders of Children, briefly described the agency's mission and explained her concerns regarding family court.

- 1) Parents are sometimes sanctioned for procedural missteps in a fashion that results in punishing the child as well as the parent. For example, a judge may take away parenting time when a parent does not follow a court order. She wondered if judges could make use of other sanctions, such as fines.
- 2) Family court seems to emphasize expedient case processing, sometimes at the expense of a child's wellbeing.
- 3) Judges are ordering supervision at parenting and supervising centers that employ unqualified, unlicensed individuals. There is no oversight or regulation of the parenting centers.
- 4) Judges are ordering reunification therapy for a minimum of one year.

Ms. Sarda requested feedback from the committee and suggestions on how these issues could be addressed.

During discussion, Dr. Yee noted it is generally the *order* for reunification therapy that is assigned for one year, not the therapy itself. He echoed Ms. Sarda's concerns as to the

quality of the supervision by some providers. Grace Hawkins shared that in Pima County they use one contracted provider and that contract is monitored through the Conciliation Court. She also mentioned there is an organization, Supervised Visitation Network (SVN), which sets out guidelines for facilities to follow although there is no regulating body to enforce the guidelines. It was suggested Ms. Hawkins report on the Pima County program be placed on a future agenda. David Horowitz remarked that the courts have improved significantly the time in which family law cases are processed, whereas in earlier times cases could languish for years. He's also observed judicial officers spending additional time with cases when substantive matters, such as complex financial or mental health related issues are present.

Representative Proud suggested that these issues be placed on a future agenda for further discussion.

MEDICAL RECORDS STATUTE

Dr. David Weinstock, member, presented proposed amendments to A.R.S. § 12-2293: Medical Records Statute. Dr Weinstock discussed a lack of clarity in the statute due to contrasting language in paragraphs B(1) and B(3), which leaves practitioners uncertain as to how to process records requests. He suggests the addition of the term "adult" in paragraph B(1) and the addition of the term "minor" in paragraph B(3).

- MOTION:** To adopt the proposed language as discussed.
- SECOND:** Motion seconded.
- VOTE:** Approved unanimously.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

Members, Steve Wolfson and Brian Yee, Co-Chairs of the Substantive Law/Court Procedures Workgroup (SL/CP), updated the committee on the progress of the custody statute review since the last DRC meeting. He reiterated the workgroup's history and task and reviewed their approach. Currently there are two different drafts proposed by various members of the workgroup, in addition to the original Legislative Council version. He reported that this version has been circulated to judges on the Maricopa County Family Law Bench and the State Bar of Arizona Family Law Section for input. Mr. Wolfson related the challenges the SL/CP has faced in obtaining a quorum and therefore, stated no proposal has been voted on as of yet.

Dr. Yee shared that some of the feedback received from the public and others includes concerns with the length and complexity of the statute, as well as the content and language, which he states stems from the innovative nature of the product. He explained that the three drafts are attempts to respond to those concerns. Mr. Wolfson noted that they are seeking guidance from the DRC, as they are faced with two main issues:

- 1) To provide a comprehensive version or to provide a less comprehensive product that incorporates the concepts and ideas put forward by the Ad Hoc Custody Workgroup.
- 2) Whether or not to include the domestic violence factors and incorporate them into a provision that resembles the current 25-403(A), “best-interest” factors, or separate the domestic violence provision into a structure like the current 403.00 section. The controversy is whether or not to include the aspect of domestic violence known as “coercive control” into the version and whether or not to include the notion of false allegations of domestic violence.

At this point, David Horowitz suggested a few agenda items the workgroup could bring before the DRC for discussion:

- 1) Discuss the recommendation of the SL/CP regarding the scope of the final work product.
- 2) Outline the substantive factors that are controversial.
- 3) List and outline the coercive control issues for the DRC.

MOTION: To place the three suggested items on the next DRC agenda.
SECOND: Motion seconded.
VOTE: Approved unanimously.

Some members would like further discussion of whether to include domestic violence language within the custody statute and where to locate the language, if it is included. It was agreed to include this fourth item on the next agenda:

- 4) The DRC will discuss and decide whether or not to include domestic violence language within the custody statute and where to locate the language, if it gets included.

MOTION: To amend the above motion to include item number four as an item on the next agenda.
SECOND: Motion seconded.
VOTE: Approved unanimously

Also, Senator Gray would like to hear the concerns and recommendations from the State Bar Family Law Section regarding the coercive control issue. Mr. Wolfson stated the Family Law Section Executive Council will be meeting in October and he will report to the DRC a summary of their recommendations, or he will invite the Executive Council members to report at the next DRC meeting.

Senator Gray suggested that Amber O’Dell, Senate Research Analyst, prepare a chart, or summary report that compares all of the current custody versions and present it in a concise, easily decipherable manner for the next meeting.

CALL TO THE PUBLIC

Speaking under a pen name, Bryan Times addressed the committee; however, his comment is considered out of order and will not be recorded in the minutes.

Luis Martinez discussed his concerns regarding false allegations of domestic violence, and stressed that the committee needs to include this issue in the custody statute if domestic violence is to be included.

Jeff Deiley thanked the committee for considering the public's point of view on these matters. He stated he appreciates the serious approach the members take to their work on this important issue and encouraged them to continue their work.

Michael Espinoza stated that the issue of false allegations is covered in SB 1314. He feels there is no accountability for professionals whom he believes are often in collusion with one of the parents. He stated the public wants both parents to have maximum parenting time if the parents are capable and fit to parent. He is concerned that the workgroup and committee's is so focused on domestic violence language that it does not touch on important language in the custody statute that needs revision.

Brent Miller stated that the system is a meat-grinding process with a bias against men. He maintained there are no remedies for false allegations and no sanctions for mothers who make false allegations. He also stated there are five proposals to consider if the Ad Hoc Custody Workgroup product is included, and there is no quantifiable evidence to validate the expansion of domestic violence language. In addition, he asserted that the statute uses "legalese" and is not suitable for use by pro pers.

Eddie Olivares asked that the committee look more closely at the problem of false allegations and its effect on children.

Alric Kunitz thanked the committee for allowing him to speak. He addressed concerns related to therapeutic intervention for divorcing parents with custody problems. He spoke to his personal situation in which therapy was ineffective and the court process failed them. He also asked that false allegations be given the attention they demand due to their detrimental effect on children.

Crystal Stapley spoke regarding coercive control, domestic violence, and false allegations language in the statute. She stated the committee needs to be very careful because this language will allow one parent to use the system against the other parent. She stated this will simply undermine the children.

Joi Davenport expressed her feelings that the opponents of coercive control and domestic violence language are wrong. She reiterated what the goals of the Ad Hoc

Custody Workgroup were, which included adding new provisions with specific considerations and procedures that will enable litigants, judges, and attorneys to identify and evaluate cases involving domestic violence and child abuse. She stated that abuse exists and currently the family court fails to protect the children from these abusive situations and a change is needed.

Lindsay Simmons with the Arizona Coalition Against Domestic Violence stated that 49 states accept that domestic violence and child custody are inextricably linked, and argued that the domestic violence language needs to remain in Title 25. She asserted that coercive control is real, and that members of the SL/CP workgroup heard from numerous experts from around the country as to why including coercive control is a step toward safety for victims. Merely focusing on physical injury does not relate what victims of coercive control really experience. She also contended that the occurrence of intentional and malicious false allegations is actually very low. Moreover, she noted the draft bill does address sanctions for litigation misconduct such as making false allegations. The sanctions include financial, civil contempt, and possible modification of parenting time.

ADJOURN

Meeting was adjourned at 12:15pm.

NEXT MEETING

Friday, October 21, 2011
Conference Room 345 A/B
State Courts Building
1501 W. Washington
Phoenix, AZ 85007

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes

October 21, 2011

State Courts Building

1501 W. Washington, Phoenix, AZ

Conference Room 345 A/B

MEMBERS PRESENT:

Honorable Linda Gray

Honorable Terri Proud

Honorable Lela Alston

Theresa Barrett

Sidney Buckman

Daniel Cartagena - *telephonic*

Honorable Mary Ellen Dunlap - *telephonic*

William Fabricius - *telephonic*

Todd H. Franks

Grace Hawkins

Honorable Katie Hobbs

Honorable Peggy Judd

Ella Maley

Patti O'Berry - *telephonic*

Donnalee Sarda

Russell Smolden

Steve Wolfson

Brian Yee

Honorable Wayne Yehling - *telephonic*

MEMBERS ABSENT:

Honorable Michael Bluff

Jack Gibson

Danette Hendry

Honorable Leah Landrum Taylor

Ellen Seaborne

David Weinstock

GUESTS:

Connie J.A. Beck, Ph.D.

Thomas Alongi

Honorable Peter Swan

Kiilu Davis

Lindsay Simmons

Amy Love

Kay Radwanski

Wendy Greenwood

Katenjng Halfwassen

Linda Stenholm

Jessica Holsman

Yessica Morales

University of Arizona

Community Legal Services, Inc.

Arizona Court of Appeals

State Bar of Arizona, Family Law Executive Council

Arizona Coalition Against Domestic Violence

Administrative Office of the Courts

Administrative Office of the Courts

Phoenix College

Phoenix College

Phoenix College

Phoenix College

Phoenix College

STAFF:

Kathy Sekardi

Tama Reily

Amber O'Dell

Barbara Guenther

Katy Proctor

Administrative Office of the Courts

Administrative Office of the Courts

Arizona State Senate

Arizona State Senate

Arizona State Senate

CALL TO ORDER

Without a quorum present, the October 21, 2011, meeting of the Domestic Relations Committee (DRC) was called to order at 10:05 am, by Senator Linda Gray, Co-Chair.

APPROVAL OF MINUTES

Without a quorum present, the draft minutes of the September 16, 2011, DRC meeting were not presented for approval at this time.

A.R.S. § 12-2293(B); RELEASE OF MEDICAL RECORDS

Senator Gray reported on the DRC’s current proposed language changes to A.R.S. § 12-2293(B), and the suggested alternative amendments made by legal counsel to the Arizona Hospital and Healthcare Association. The alternate amended language would maintain consistency with HIPAA Privacy Rules while still providing the clarification the DRC is seeking. As a quorum was not yet present, a vote was not called for at this time.

A.R.S. § 25-320(D)(3); CHILD SUPPORT FACTOR – STANDARD OF LIVING

Senator Gray discussed striking the provision in paragraph three that requires the supreme court to base guidelines and criteria for deviation on relevant factors including the standard of living a child would have enjoyed had the marriage not been dissolved. Her concern is that it is impossible for two separate households to maintain the same standard of living post-dissolution. Mr. Horowitz pointed out that this provision is enabling legislation and that the provision merely sets out a factor for the supreme court to consider when establishing guidelines for support. After a brief discussion, it was determined to table the matter for a future meeting.

SUMMARY REPORT ON CURRENT CUSTODY STATUTE VERSIONS

Amber O’Dell, Senate Research Analyst, reviewed the results of her research comparing the current custody statute with the three Substantive Law/Court Procedures Workgroup versions of the statute. Members were provided with copies of two comparison tables that outlined the various versions’ similarities and differences, including the issue of domestic violence provisions.

APPROVAL OF MINUTES *(Item taken out of order)*

With a quorum now present, the draft minutes of the September 16, 2011, meeting of the DRC were presented for approval.

- MOTION:** Russell Smolden moved to approve the September 16, 2011 DRC draft meeting minutes as presented.
- SECOND:** Motion seconded.
- VOTE:** Approved unanimously.

SUBSTANTIVE LAW / COURT PROCEDURES WORKGROUP UPDATE

Members, Steve Wolfson and Brian Yee, Co-Chairs of the Substantive Law / Court Procedures Workgroup, reported on the September 22, 2011 meeting, explaining that a

vote was passed to take a larger, more comprehensive approach to revising A.R.S. § 25-401 rather than offering piece-meal drafts.

COERCIVE CONTROL PRESENTATION

Connie J.A. Beck, Ph.D, University of Arizona Associate Professor and member of the Clinical Psychology Program, presented her research on coercive control. She noted there have been many empirical studies as well as theoretical articles and books published on the topic and coercive control is considered a significant, growing area of research. Her own work on domestic violence and coercive control has been ongoing for 11 years. Today's presentation focused on her study of nearly 1,000 couples, between the years of 1998 and 2000. Dr. Beck reviewed the parameters of the study and the key findings, including the central message that coercive control is a better measure than physical violence to account for relational distress. Based on her knowledge of domestic violence and coercive control, she noted the following regarding the statute rewrite:

- 1) The statute is gender neutral, so the female perpetrator of coercive control will be looked at as well as the male for domestic violence or controlling type behaviors.
- 2) The statute's caution for children is justified because coercive control has been shown to create a hostile environment, which detrimentally impacts children. Additionally, studies show there is some overlap between child abuse and coercive control of one's partner (this ranges from 30 to 60 percent), therefore, it is important to look closely at these situations for parenting behaviors and potential child abuse. The investigation of coercive control could be conducted through an evidentiary hearing where a judge considers all of the testimony in order to make a determination. She emphasized the factors that can be looked at to substantiate allegations of coercive control, such as establishing a paper trail for hard evidence, which may include documents such as police reports and protective orders. When looking at patterns of controlling behavior regarding finances, it may be important to establish whose name is on the checkbook, credit cards, and who signs the credit card receipts. Additionally, evidence may be gathered by interviewing neighbors, friends, and extended family members as to whether the alleged victim participates in family gatherings and other social events.
- 3) The statute language should include false reporting of both types - specifically, both *false allegations* and *false denials*. They are equally important to consider and verify by gathering evidence.

During the presentation, Dr. Beck explained that this was an archival study of case files, and her study's participants were self-reporting. She added that she did confirm police reports and protective orders were on file to substantiate participants' reports of domestic violence. Committee questions included whether studies show differences in how men and women perceive particular acts and behavior in the context of reporting coercive control versus physical violence. Dr. Beck noted that the scope of her study did not.

CALL TO THE PUBLIC

Several members of the public were present for comment.

Michael Espinoza spoke about domestic violence language in the proposed custody statute.

Jeff Taylor commented regarding coercive control language in the proposed custody statute.

Rena Selden shared remarks on domestic violence and coercive control language in the proposed custody statute.

Bonnie Peplow made statements regarding supervised visitation providers in Arizona.

Nisha Chirnomas spoke regarding supervised visitation providers in Arizona.

Rob Rucker shared his feelings regarding supervised visitation providers in Arizona.

Joi Davenport commented regarding domestic violence and the proposed custody statute.

Lindsay Simmons spoke regarding domestic violence and coercive control language in the proposed custody statute.

Shelly Griffen commented regarding her personal experience as it relates to custody issues.

Sen. Gray acknowledged the attendance of several students from Phoenix College.

SCOPE OF CUSTODY REWRITE

This item was not addressed during the meeting.

STATE BAR FAMILY LAW EXECUTIVE COUNCIL SPEAKERS

Judge Peter Swann and attorney Kiilu Davis of the State Bar Family Law Executive Council addressed the committee regarding their own observations about the provisions in the custody statute proposal.

Mr. Davis shared some of his concerns and suggestions:

- In practice, the current system isn't set up to prove or identify coercive control due to the time restraints involved. He noted that family law attorneys get about three hours of court time.
- A separate domestic violence court might be useful for situations where allegations for domestic violence/coercive control exist. A separate court would

allow the time needed to fully explore the allegations/denials in these cases and to call on expert witnesses.

- Cases involving allegations of this type do not fall clearly within the realm of family law, as they bring in a criminal element of the law.
- It may be prudent to limit changes to cleaning up the language in A.R.S. §§ 25-403 and 25-408. This would be useful, less controversial, and therefore, more likely to be passed by the legislature.

Judge Swann stated that his comments reflect his perspective alone. He noted that it is important to remember that the goal of the family court judge is to do as little harm to families and children as possible. Also, current time allotments for family court are limited. He went on to discuss some specific provisions in the proposal:

- 25-407 – Although alternative dispute resolution is beneficial, requiring mediation can be too costly and may take too long. Hiring a private mediator may be financially limiting and this could result in placing additional burdens on conciliation services. Most people who come to family court do not have an attorney and there should be access to justice even for those unable to seek mediation.
- 25-410(B) – Requires the Arizona Court of Appeals to review de novo any superior court determination that evidence of family violence was outweighed by other considerations. The concern here is that the appeals court would be unable to give deference to the conclusions of the trial courts. Judge Swann suggests the committee reconsider including this provision.
- 25-411(B) – This provision is concerning because there have been no adjudication of facts and no certainty as to why a person may have agreed to deferred prosecution. This could lead to the courts being an instrument of injustice rather than an instrument of justice.
- 25-406(B) – Requiring a parenting plan is a good idea in the ideal cases; however, often the court is working with people that have difficulty articulating their case details. Mandating a parenting plan means that many people will not be able to comply with the law.

Judge Swann also commented that the *coercive control* provisions are lengthy and complex, saying they could lead to excessive litigation. He asserted that the coercive control definitions should be made with an eye toward the pursuit of justice, minimizing the potential for abuse of the system, keeping the proceedings reasonably short, and avoiding the invitation of litigation.

CONTROVERSIAL ISSUES

This item was discussed as part of the “Coercive Control Issues” below, and not discussed as a separate issue.

COERCIVE CONTROL ISSUES

There was lengthy discussion on the inclusion of coercive control language in the statute. Todd Franks expressed his thoughts, namely, that there are enough factors for

judges to consider currently including the mental and physical health of all parties and other factors pertinent to the proceedings. The coercive control provisions as indicated in the draft are too convoluted and excessive. Sid Buckman noted that the Conciliation Court Roundtable in March addressed the issue with the judges present who argued that they already consider factors of coercive control and it is not necessary to have it spelled out in the statute. They shared concerns about the findings they would be required to make, and the requirement of clear and convincing evidence, and the time that would be necessary to fully address the issue.

Tom Alongi, member of the Substantive Law/Court Procedures Workgroup responded to some of the comments about the coercive control language. He argued that judges are expected to consider 11 different best interest factors and eight relocation factors to make findings currently. He also mentioned there are 23 hearsay exceptions the court must weigh, as well as additional trial time when a business is involved. He expressed concerns that because coercive control is controversial it is viewed as too time intensive. Additionally, he pointed out there is a version five draft of the statute that no longer contains the *de novo review* provision for the court of appeals and the *mandatory mediation* section has moved into the modification portion of the proposal. He also emphasized that the coercive control language was drawn from authoritative sources and materials.

Discussion continued with several members stating they would like to see the coercive control language kept in the statute in some fashion. There was mention of whether a judge has the training and education to interpret factors of coercive control and whether a separate domestic violence court might be the best solution. Although good co-parenting is what the family court is hoping for, one member noted that co-parenting is not really possible when one parent is afraid of the other parent, so it is extremely important that such situations be considered by the court. Currently, courts may not be able to consider allegations of pure coercive control because such allegations do not fall under the statutory definition of domestic violence, which requires physical threat or activity. There is no relief for the true victim of coercive control or the falsely accused in the current statutory scheme.

Steve Wolfson noted that the Family Executive Council is meeting again tomorrow (10/22/11) and is expected to continue its discussion on the most recent version of the draft proposal. Dr. Yee said the evidence and feedback received today leads to a conclusion of not whether to include coercive control, but how to do it practically, so that the potential problems mentioned do not come to fruition.

INCLUSION OF EXPANDED DOMESTIC VIOLENCE LANGUAGE

This item was discussed as part of the “Coercive Control Issues” above, and not discussed as a separate issue.

Senator Gray stated that as work on the proposal continues, and in order to accomplish the desired revisions, there may need to be additional committee meetings scheduled.

She said another December meeting would be prudent, as well as a meeting the first Friday after the legislative session begins.

ADJOURN

Meeting was adjourned at 2:00 p.m.

NEXT MEETINGS:

Friday, December 2, 2011
10 a.m. to 2 p.m.
State Courts Building
Conference Room 119 A/B

Friday, December 9, 2011
10 a.m. to 2 p.m.
State Courts Building
Conference Room 345 A/B

TENTATIVE DATES DURING THE LEGISLATIVE SESSION 2012:

Friday, January 13, 2012
Friday, February 17, 2012

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes

December 2, 2011

State Courts Building

1501 W. Washington, Phoenix, Arizona

Conference Room 119 A/B

MEMBERS PRESENT:

Honorable Linda Gray

Honorable Lela Alston

Theresa Barrett

Honorable Michael Bluff

Sidney Buckman -*telephonic*

Daniel Cartagena - *telephonic*

Honorable Mary Ellen Dunlap - *telephonic*

William Fabricius - *telephonic*

Todd Franks - *telephonic*

Grace Hawkins

Honorable Katie Hobbs

Honorable Peggy Judd

Ella Maley - *telephonic*

Donnalee Sarda

David Weinstock - *telephonic*

Steve Wolfson

Brian Yee

Honorable Wayne Yehling

MEMBERS ABSENT:

Jack Gibson

Danette Hendry

David Horowitz

Honorable Leah Landrum Taylor

Patti O'Berry

Honorable Terri Proud

Ellen Seaborne

Russell Smolden

GUESTS:

Amy Love

Kay Radwanski

Barbara Guenther

Katy Proctor

Ingrid Garvey

Don Vert

Lindsay Simmons

Administrative Office of the Courts

Administrative Office of the Courts

Arizona State Senate

Arizona State Senate

Arizona House of Representatives

Maricopa County Clerk's Office

Arizona Coalition Against Domestic Violence

STAFF:

Kathy Sekardi

Tama Reily

Administrative Office of the Courts

Administrative Office of the Courts

CALL TO ORDER

With a quorum present, the December 2, 2011, meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray, Co-Chair, at 10:06 a.m.

APPROVAL OF MINUTES

The draft minutes of the October 21, 2011, DRC meeting were presented for approval. Sid Buckman observed a grammatical error on page two of the minutes. Judge Wayne Yehling requested a correction to indicate he was telephonically present at the meeting.

- MOTION:** To approve the minutes of the October 21, 2011, DRC meeting with corrections as discussed.
- SECOND:** Motion seconded.
- VOTE:** Approved unanimously.

A.R.S. § 25-320(D)(3): CHILD SUPPORT FACTOR – STANDARD OF LIVING OF CHILD

Senator Gray discussed a proposed amendment to strike A.R.S. § 25-320(D)(3) that currently states “3. *The standard of living the child would have enjoyed had the marriage not been dissolved.*” The proposal stems from the concern that it is difficult to maintain the same standard of living in two households post-dissolution and that the current language sets up an impossible standard for most people. Lengthy discussion followed. Some members pointed out that the provision is intended for use by the Supreme Court when developing the child support guidelines, specifically, as one relevant factor to consider when deviating from the guidelines, versus use by family court judges to determine an amount for child support. Some members agreed that modifying the language, particularly removing reference to the standard of living during the marriage, would be helpful in preventing confusion about the aim of the provision. Other members asserted that striking this language will adversely affect the Supreme Court’s ability to promulgate the child support guidelines because the court needs econometric data as a starting point. Todd Franks, Judge Michael Bluff, and Steve Wolfson will work together to develop modified language to bring before the committee at the next DRC meeting.

A.R.S. §§ 25-681 AND 25-685: CHILD SUPPORT OR SPOUSAL SUPPORT ARREST WARRANT

Don Vert, Manager of Family Court Services, Maricopa County Clerk’s Office, and member of the Child Support Committee’s Statute Review Workgroup, presented the workgroup’s proposed amendments to A.R.S. §§ 25-681 and 25-685. The changes would allow spousal support arrest warrants to remain in effect until executed or extinguished by the court, just like child support arrest warrants. Presently, spousal support warrants expire after 12 months. Commissioner Yehling commented that the current statute references section 25-502, which pertains strictly to child support, and recommended including language specific to spousal support. Mr. Vert added that sponsorship for the proposal is being sought. Ms. Barrett made the following motion:

- MOTION:** Theresa Barrett moved to support proposed changes to A.R.S. § 25-681 and A.R.S. § 25-685 with revision as discussed.
- SECOND:** Motion seconded by Rep. Hobbs.
- VOTE:** Approved unanimously.

Senator Gray agreed to sponsor the bill.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP REPORT

Steve Wolfson updated the committee on the progress of the workgroup. The workgroup has met twice since the last DRC meeting and additional changes to the draft proposal were made. The most recent legislative draft of the custody statute rewrite is presented to the committee for review today as the updated “yellow” version.

DISCUSS “YELLOW” VERSION OF CUSTODY REWRITE

Senator Gray led discussion on the “yellow” version of the proposed custody statute. Steve Wolfson made the following motion:

- MOTION:** To insert “unilaterally” into line 37, page 4, of the “yellow” version as discussed.
- SECOND:** Motion seconded by Grace Hawkins.
- VOTE:** 17-0-1.

Grace Hawkins made the following motion:

- MOTION:** To strike the final sentence beginning on page 2, lines 19 through 21, and insert a period after the word “care.”
- SECOND:** Motion seconded by Judge Bluff.
- VOTE:** Passed unanimously.

During extended discussion, there was concern expressed regarding the coercive control definition, specifically, the number of factors it contains, and the language “discernable pattern.” Some members found it ambiguous and preferred a more concise definition, such as Oklahoma’s statute, to provide clearer direction to courts and pro pers. Attention was also directed to the language on sanctions for false allegations. It was noted that the court does not have the jurisdiction to impose punishment for false allegations and a provision to impose attorney’s fees is already in place.

Following discussion, Senator Gray indicated there is still work to be done on the proposal before moving it to the legislature. Another member stated a delayed effective date should be considered to allow time for judicial training. She recommended the DRC meet again in January 2012 to continue its review of the draft proposal.

CALL TO THE PUBLIC

Several members of the public were present to address the committee.

Gerald Chirnomas spoke regarding supervised visitation facilities.

Marissa Prins Verburg discussed supervised visitation facilities.

Thomas Verburg made statements regarding supervised visitation facilities.

Brent Miller made comments regarding A.R.S. § 25-320 and the proposed custody revisions.

Michael Espinoza addressed the proposed custody rewrite.

Lindsay Simmons spoke regarding coercive control and the custody statute.

Timothy Frank discussed A.R.S. § 25-320(D)(3).

Joi Davenport made comments regarding the proposed custody rewrite.

Crystal Stapley spoke about the coercive control concept in the proposed custody statute.

ADJOURN

The meeting was adjourned at 1:00pm.

NEXT MEETING:
January 13, 2012
10:00am to 2:00 pm
Conference Room 119 A/B
State Courts Building
1501 W. Washington
Phoenix, AZ 85007

**DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES**

January 13, 2012
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Linda Gray
Honorable Lela Alston
Theresa Barrett
Honorable Michael R. Bluff
Sidney Buckman
Daniel Cartagena - *telephonic*
William Fabricius
Todd H. Franks - *telephonic*
Grace Hawkins
Honorable Katie Hobbs

David Horowitz
Honorable Peggy Judd
Patti O'Berry
Donnalee Sarda
Russell Smolden
David Weinstock - *telephonic*
Steve Wolfson
Honorable Wayne Yehling

MEMBERS ABSENT:

Honorable Terri Proud
Honorable Mary Ellen Dunlap
Honorable Adam Driggs
Jack Gibson
Danette Hendry

Honorable Leah Landrum Taylor
Ella Maley
Ellen Seaborne
Brian Yee

GUESTS:

Amy Love
Jenny Gadow
Kay Radwanski
Katy Proctor
Patricia Madsen
Michael Espinoza
Lindsay Simmons
Keith Berkshire
Joi Davenport
Honorable Carey Hyatt
Melissa Verburg
Tom Verburg

Rob Rucker
Jarrett D. Williams
Jessye Johnson
Robert Southwick
Annette Burns
Damien White
Connie Phillips
Kelly Perkins
Janet Sell

STAFF:

Kathy Sekardi

Tama Reily

CALL TO ORDER

Without a quorum present the January 13, 2012, meeting of the Domestic Relations Committee (DRC) was called to order by Honorable Linda Gray, Co-Chair. Members and staff introductions were made around the room.

APPROVAL OF MINUTES

The minutes were not presented for approval at this time due to lack of a quorum.

LEGISLATIVE UPDATE

Amy Love presented an update on domestic relations legislation.

HB 2217: Marriage license; fee; premarital course

This bill would allow the Clerk of the Court to reduce the marriage license fee if the couple presents documentation proving they have completed marital counseling specific to curriculum cited in the statute for marriage preparation.

HB 2252: Custodial parents; medication; full access

This bill would allow each parent with joint legal custody to have full access to medication prescribed to a child. The bill would also establish a class I misdemeanor for either parent for denying medication access to the other parent.

HB 2475: Child custody; relocation of child

This bill would increase the current distance from 100 to 125 miles that a parent would be allowed to relocate with the child without having to provide written notice to the other parent.

HB2587: Domestic relations; children; family unit

Sponsored by DRC member, Representative Judd, this bill would require that a dissolution case involving minor children is automatically transferred to the conciliation court. It also outlines specific information and resources that are to be provided to the parents.

HB2625: Marriage; disposition of property

This bill would permit the court to consider damages and judgments resulting from criminal convictions of domestic violence or abandonment.

SB1027: Domestic violence; supervised probation; fine

This bill expands the penalties for misdemeanor domestic violence to include supervised probation, a minimum \$50 fine, and at least 48 consecutive hours in jail.

SB1034: Electronic digital devices; stalking, threatening

This bill expands the definition of the use of a telephone to terrify, intimidate, threaten, harass, annoy, or offend to essentially include all electronic devices. It would also modify the definition of stalking to include using any electronic, digital or GPS device to surveil a person or their internet activity for 12 hours or more or on two or more occasions over a period of time.

SB1127: Child custody; factors

Expands the list of factors the court must consider when determining child custody to include whether an allegation of domestic violence or child abuse was made in bad faith or an improper purpose.

SUPERVISED PARENTING TIME FACILITIES/PROVIDERS

Senator Gray presented proposed legislation that would require any person providing court ordered supervised parenting time to have a fingerprint clearance card. Questions about supervised parenting time providers and facilities have been discussed at recent DRC meetings wherein members of the public brought forward their concerns regarding the lack of regulation in this industry. During discussion, it was mentioned that some agencies have standards requiring that their parenting coordinators undergo background checks, become certified in CPR, and carry liability insurance. Members asked whether extended family members and/or friends who volunteer to monitor parenting time should be subjected to fingerprinting, or should the language limit the requirement to non-family members who are compensated for the service. Some members worried about a potential “chilling effect” for family members who are required to obtain a fingerprint clearance card.

CALL TO THE PUBLIC

Patricia Madsen, a family law attorney, expressed her concerns regarding court-ordered supervised parenting time.

Judge Carey Hyatt, a presiding family court judge, echoed the earlier comments relating to a ‘chilling effect’ when fingerprinting family members.

Michael Coultrap spoke about his experience with a privately-owned supervised parenting time facility.

Ciara Coultrap a psychologist, made comments regarding false allegations.

MOTION: To require only non-family members who are compensated providers of supervised parenting time to provide a fingerprint clearance card.

SECOND: Motion seconded.

VOTE : Motion passed unanimously.

APPROVAL OF MINUTES

As a quorum was now present, the minutes were presented for approval at this time.

MOTION: Russell Smolden moved to approve the minutes of the December 2, 2011, meeting of the DRC as presented.

SECOND: Motion seconded.

VOTE: Motion passed unanimously.

ARS § 25-320(D)(3) CHILD SUPPORT; FACTORS; METHODS OF PAYMENT

Todd Franks reported on the task group’s proposed language for the standard of living provision. The revisions function to clarify and do not add any substantive policy

changes. Along with their recommended language changes, they suggest that the DRC present the proposal to several stakeholder groups for feedback, including the following:

The Child Support Committee

The Child Support Guidelines Review Committee and any workgroup/committee charged with revisions to the child support guidelines

The Arizona State Bar Family Law Section

The Committee on Superior Court

Judge Carey Hyatt, and /or other Maricopa Superior Court family law judge

Presiding family court judges from the 15 counties' superior courts

There was further discussion about the intent of the standard of living provision and whether it should be removed. It was said that in referring to the "intact home with both parents," the statute disregards scenarios where the parents were never married or living together. Senator Gray stated that committee staff will contact the stakeholders groups to present the proposed language revisions.

MOTION: David Horowitz moved to approve revisions to A.R.S. § 25-320(D)(3) as presented.

SECOND: Motion seconded.

VOTE: Motion passed unanimously

CALL TO THE PUBLIC

Michael Espinoza – expressed concerns that the provision should be completely removed.

Brent Miller – made statements regarding the proposed language.

Robert Southwick – commented on the proposed language and public input.

Damian White – spoke regarding the current statute.

Dene Brown – made comments regarding the statute's standard of living provision.

Jarrett D. Williams – spoke regarding the child support committee.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

Steve Wolfson provided an update on the workgroup's revisions to the custody statute. The workgroup has met once since the last DRC meeting, and it began re-addressing the relocation statute, something previously looked at by the workgroup's Relocation Subgroup. The issue will be further addressed at the next workgroup meeting.

A.R.S. § 25-323.02 DRC MEMBERSHIP

Senator Gray led discussion prompted by recent suggestions that the DRC committee membership be reduced in size. Members reviewed A.R.S. § 25-323.02, which lays out the committee structure, and discussed member term limits, representation on the committee, and attendance and quorum issues. Some members were in favor of member term limits to ensure contribution of fresh ideas. It was noted that while non-judicial members are appointed without term limits, judicial officers are appointed by the Chief Justice with term limits. There was uncertainty with regard to the parent seats on the committee and whether they should be parents who are actively raising dependent

children, or if it is acceptable that they be parents whose children have moved into adulthood. In addition, concerns were expressed that committee members with habitual absences make it a challenge to reach a quorum. Suggestion was made to establish and enforce attendance requirements, perhaps granting the Co-Chairs the ability to replace members who surpass a maximum number of unexcused absences. Using a percentage to assess attendance, rather than a specified number, was recommended as a more effective approach to monitoring attendance for both the full committee and its workgroups. Members also requested that the following seats be added to the committee:

Representative from a sexual assault coalition

Representative from a legal services agency

Parental Seats - reconfigure seats to ensure both genders are represented in each category in the custodial, non-custodial, and joint custody parent seats.

CALL TO THE PUBLIC

Robert Southwick – suggested the committee have additional members of the public.

Patricia Madsen – recommended the committee add a seat for a legal services organization member.

Brent Miller – discussed short term limits for committee members.

Susie Cannata – recommended adding a seat for a legal services organization representative.

Joi Davenport – suggested having both mothers and fathers represented in the parental roles on the committee.

Michael Espinoza – spoke regarding term limits for committee members.

MOTION: Sid Buckman moved to approve attendance requirements as discussed. Members having unexcused absences totaling 1/3 or 33% of committee or workgroup meetings in a one-year period will be asked to step down by the Co-Chairs.

SECOND: Motion seconded.

VOTE: Motion approved unanimously.

MOTION: To add and reconfigure the committee seat categories as discussed.

SECOND: Motion seconded.

VOTE: Approved unanimously.

PROPOSED RULE CHANGE TO ARIZONA RULES OF FAMILY LAW PROCEDURE

Jenny Gadow, Chair, Family Law Rules Committee of the Arizona State Bar, discussed a proposed rule change to Rule 12 of the Arizona Rules of Family Law Procedure (ARFLP). She provided some background on the rule, explaining the rule permits judges to interview minor children about family law matters. The proposed changes would provide clarification and a more concise mechanism by which such interviews would take place. Also, parents would be allowed to hear the recording if they wish. There was a concern noted that this change poses a potential detriment to children. Ms.

Gadow related that the rule change is expected to be submitted in October, with vetting taking place prior to that time. The DRC is asked to review the proposal and provide feedback at a future meeting.

CHILDREN'S BEST INTERESTS

Representative Peggy Judd discussed A.R.S. § 25-403; Custody; best interests of child, and the notion of legislation to encourage parents to stay married in order to have a better outcome for their children. The bill requires an automatic transfer to conciliation court for an action for annulment of marriage, dissolution of marriage, or legal separation where children are involved. She indicated that family counseling would be required to attempt to preserve the family unit. Comment was made regarding unfunded mandates, the cost to taxpayers, and that some counties do not have conciliation courts due to budget constraints. It was also mentioned that often spousal abuse is taking place; however it has not been documented. There is also legislation going into effect in 2013 regarding parent education and it will offer resources for parents who may not otherwise be aware of them.

CUSTODY STATUTE

Senator Gray led review of the current draft 'yellow version' of the custody statute revisions. Members noted some areas of concern related to inconsistent use of terms and lack of clarity due to referring the reader to the incorrect section in the statute. The judges on the committee were asked if they consider factors that are not specifically mentioned in the statute. The judges commented that they consider several factors when making their findings, including the parents' wishes. Question was raised regarding a long-standing provision in the statute that calls for a three month "cooling off" period during which grandparents' visitation is not to occur. There was further discussion regarding false allegations and whether it should remain in the sanctions section.

Members considered how many factors should be included in the statute for coercive control. It was noted the language was designed to ferret out the most egregious of incidents and emphasize the ***pattern*** of coercive control. Judge Carey Hyatt shared the feedback she obtained from family law judges on the Maricopa bench indicating that the definition examples are helpful. Comment was made that the emphasis on the ***pattern*** aspects of coercive control is especially useful in helping the court to apply the concept in varying situations.

CALL TO THE PUBLIC

Several members of the public were present for comment.

Patricia Madsen – made comments regarding false allegations.

Brent Miller – discussed awards of attorney fees, reasonable litigation, and the custody statute.

Michael Espinoza – spoke about false allegations.

Damian White – expressed his feelings regarding remedies for false allegations.

Dene Brown – discussed the concept of coercive control.

Joi Davenport – made comments about coercive control.
Robert Southwick – addressed concerns about coercive control.
Lindsay Simmons – discussed litigation misconduct sanctions.

ADJOURN

Meeting adjourned at 2:00p.m.

NEXT MEETING

TBD

**DOMESTIC RELATIONS COMMITTEE
DRAFT MINUTES**

Friday, June 29, 2012
Arizona State Courts Building
Conference Room 119A/B
1501 W. Washington Street
Phoenix, Arizona 85007

Present: Senator Linda Gray, Co-Chair; Representative Terri Proud, Co-Chair; Representative Lela Alston, Theresa Barrett, Sidney Buckman, Mary Ellen Dunlap, Todd H. Franks, Grace Hawkins, Representative Katie Hobbs, David Horowitz, Representative Peggy Judd, David Weinstock, Donnalee Sarda, Ellen Seaborne, Russell Smolden, Steve Wolfson, Shannon Rich.

Absent/Excused: Judge Michael R. Bluff, Daniel Cartagena, Senator Adam Driggs, William Fabricius, Jack Gibson, Danette Hendry, Senator Leah Landrum Taylor, Ella Maley, Brian W. Yee, Wayne Yehling

Presenters/Guests: Ingrid Garvey (Legislative Staff), Elizabeth Navran (Legislative Staff), Katy Proctor (Legislative Staff), Amber Witter (Legislative Staff), Judge Carey Hyatt (Superior Court in Maricopa County), Sarah Hicks, Thomas Alongi, Sarah Youngblood

Staff: Kathy Sekardi (AOC), Kay Radwanski (AOC), Kym Lopez (AOC), Julie Graber (AOC)

CALL TO ORDER

Without a quorum present, the June 29, 2012 meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray, Co-Chair. Members and staff introductions were made around the room.

LEGISLATIVE UPDATE

Amber Witter presented an update on domestic relations-related legislation.

SB1176: Requires people who supervised parenting time for compensation to have a fingerprint clearance card. The house made two changes, both to the mandatory recording section of statute. The first change removed supervisors from the list of mandatory reporters and the second exempted certain school personnel from reporting certain injuries of students, specifically the physical injury of one student by another student under certain circumstances. The bill was vetoed by the Governor and in her veto message the Governor said she was concerned about bullying but that she appreciates the underlying bill and she looks forward to addressing the fingerprinting requirement in the future.

SB1074: The bill would have allowed the court to issue spousal support arrest warrants similar to child support arrest warrants. The bill was drafted by the Child Support Committee but was not sponsored by the CSC co-chairs. The bill was subsequently vetted and approved for proposed legislation by the DRC and sponsored by Sen. Linda Gray. It passed the Senate 22-7 but never received a hearing in House Judiciary Committee.

SB1187: This was a Child Protective Services (CPS) omnibus bill. It was a compilation of several recommendations that were made by the Governor's Child Support Task Force. It passed the Senate 30-0 but never received a hearing in House Judiciary Committee. The relevant provisions were later attached to HB2794. As a result, it was signed by the Governor.

SB1247: This bill modified and added appointments to the DRC. It passed the Senate 30-0 but was not given a final read in the House.

SB1036: The DRC worked for the past several years with the hospital and health care association to draft language regarding when providers may deny a records request. This bill became a striker; however the germane provisions were included into HB2369, which was signed by the Governor.

SB1246: This bill clarified the standard of living factor related to the child support guidelines. It passed the Senate 30-0 and the House 56-1 and was signed by the Governor.

SB1248: Child Custody Draft. The senate removed the coercive control language from the bill and made some technical changes as well. It passed the Senate 17-13 but was not heard in House Judiciary Committee. Meanwhile SB1127 was assigned to House Health and Human Services Committee. SB1127, as originally written, modified the best interest factor related to false allegations. While in the House provisions of SB1248 were added to SB1127 along with some technical and substantive modifications such as the sanctions for litigation misconduct section.

SB1127 Domestic relations; decision-making; parenting time:

Discussion ensued regarding the implementation of this bill. Comments included:

- Concerns that the addition of the term "parenting time" in A.R.S. § 25-411(A), may conflict with A.R.S. § 25-411(N). Current A.R.S. § 25-411(A) only addresses modifications of a custody decree, not parenting time.
- Under the current law there is a differentiation between physical custody and parenting time; parents may petition to modify parenting time less than a year after entry of the order. Is there an unintended consequence by including parenting time language in A.R.S. § 25-411(A)? How should the judiciary apply this provision given that the new A.R.S. § 25-411(N) states that subsection L does not apply if the requested relief is for the modification or clarification of parenting time?
- Will inclusion of parenting time in A.R.S. § 25-411(A) allow the judiciary to resolve or clarify parenting time issues in a timely fashion or will it create a backlog?

Committee member comments included:

- This was not a substantive change to A.R.S. § 25-411.
- There always has been and continues to be an exception to the year caveat where the health or physical safety of the children is at issue.
- The one-year waiting period exists to deter parties from going to court on a frequent basis for modifying custody issues.

- Recommendations were not designed to change the one-year rule.

It was suggested that this concern be addressed at the upcoming family law judicial training conference in order to fully vet as to interpretation and implementation issues.

Another issue regarding SB1127 is that A.R.S. § 25-403.01(D) may lower the burden regarding findings to restrict parenting time to less than substantial, frequent, meaningful and continued contact. The current statute has findings for “endanger seriously” and the language within SB1127 is changed to “endanger,” which could be interpreted differently.

APPROVAL OF DRAFT MINUTES

A quorum now having been achieved, the minutes of the January 3, 2012 DRC meeting was presented for approval.

MOTION: David Horowitz motioned to approve the January 3, 2012 draft meeting minutes as presented.

SECOND: Sid Buckman.

VOTE: Motion passed unanimously.

A.R.S. §25-408 Change in residential address of child:

The members discussed previous legislation that may be ready to recommend for this legislative session. The members discussed the last revision of A.R.S. § 25-408. This proposed legislation was the result of collaborative efforts between the DRC and special interest advocates from a previous legislative session.

MOTION: David Weinstock moved that DRC rewrite the proposed last draft of changes to the statute.

SECOND: Donnalee Sarda.

ORIGINAL MOTION WITHDRAWN by David Weinstock.

SECOND: Katie Hobbs.

Members made a few suggestions including:

- Request Legislative Council draft this section so that it conforms to current statutory conventions, or to establish a subcommittee charged to re-write it as they deem appropriate and then send it to Legislative Council.

MOTION: Russell Smolden moved to send SB1127 to Legislative Council along with the latest relocation draft and ask them to prepare a bill draft so the subcommittee can start the process with the new language of SB1127 and the relocation draft incorporated into one bill.

SECOND: David Weinstock.

VOTE: Opposed by Todd Franks and Ellen Seaborne. Passed.

A new workgroup called Relocation Subcommittee was established. Members: Ellen Seaborne (Chair), Russell Smolden, David Weinstock, Donnalee Sarda, David Horowitz, Shannon Rich, Steve Wolfson. Participants: Lela Austin, Tom Alongi.

Break for lunch.

CALL TO THE PUBLIC

Gerald Chirnomas - Discussed SB1176 and the regulation of supervised visitation facilities.

Melissa Prins Verburg – Discussed SB1176 and the types of agencies licensed to provide court ordered supervision.

SUPERVISED PARENTING TIME FACILITIES/PROVIDERS

Member request for future discussion: supervised parenting, regulations and A.R.S. § 13-3620(A)(1), duty to report.

Meeting adjourned 12:25 pm

Next scheduled meeting: TBD

DRAFT

**DOMESTIC RELATIONS COMMITTEE
DRAFT MINUTES**

December 7, 2012
Arizona State Courts Building
Conference Room: 119A/B
1501 W. Washington
Phoenix, Arizona 85007

Present: Theresa Barrett, Sidney Buckman, Daniel Cartagena, Senator Adam Driggs, William Fabricius, Senator Linda Gray, Representative Peggy Judd, Ella Maley, Shannon Rich, Donnalee Sarda, Ellen Seaborne, David Weinstock, Steve Wolfson, Brian W. Yee.

Present Telephonically: Mary Ellen Dunlap.

Absent/Excused: Representative Lela Alston, Judge Michael R. Bluff, Todd H. Franks, Jack Gibson, Grace Hawkins, Danette Hendry, Representative Katie Hobbs, David Horowitz, Senator Leah Landrum Taylor, Representative Terri Proud, Russell Smolden, Judge Wayne Yehling.

Presenters/Guests: Garth Camp, (Legislative Staff), Ingrid Garvey (Legislative Staff), Amy Love (AOC Legislative Liaison), Kathy McCormick (Proxy for Judge Michael R. Bluff), Pele Peacock (Legislative Staff), Katy Proctor (Legislative Staff), Amber Witter (Legislative Staff).

Staff: Kathy Sekardi (AOC), Kym Lopez (AOC).

CALL TO ORDER

Without a quorum present, the December 7, 2012 meeting of the Domestic Relations Committee (DRC) was called to order by Senator Linda Gray, Co-Chair. Introductions of DRC members and legislative staff were made.

APPROVAL OF DRAFT MINUTES

Without a quorum present, the approval of the June 29, 2012 draft minutes is tabled.

PROPOSED LEGISLATION

Domestic relations; conforming changes: Although terminology changes to SB1127 resulted in the term “custody” being replaced with “legal decision-making,” not all provisions within Title 25 were changed. This “clean-up” bill will conform terminology in the remainder of Title 25; however, it’s unknown if this bill will be sponsored this legislative session.

A.R.S. § 25-408 Parenting time; relocation of child: Amber Witter reported that the language from folder 129, page 2, lines 21-37, is the same language in the new relocation rewrite. Senator Barto will most likely be the sponsor for this bill.

Member comments and questions included:

- Has there been any consideration about including some kind of bright line, such as reducing the 100-mile rule to 20 miles? Both these bills would make it necessary to notify the other parent of any move and the other parent could object. Ms. Witter stated that no mileage was listed due to discussion with stakeholders. Sen. Gray stated there is a provision that disallows a parent from bringing a frivolous motion, such as objecting to a move from one apartment of an apartment complex to a different apartment in the same building.
- Concern was stated that in many domestic violence cases, an abuser will use this provision as an opportunity to exert more control over their victim by objecting to a move even if the court considers it frivolous. There have been objections to removing mileage from this proposal in the past. Ms. Witter stated that in both drafts, notice is only required if there is joint legal decision-making or unsupervised parenting time.
- A member stated that “residential move” is defined in folder 36, page 2, line 37, and that this negates the issue of having to specify mileage.
- Concern was stated for the terminology “and primary residence” in folder 129, page 1, line 41. This term might confuse situations where custody is split 60/40 or if one parent has a slightly higher parenting time percentage than the other parent. A member commented that perhaps this is an oversight and this language should be stricken. One of the reasons that all the language regarding temporary moves was eliminated was because the rewrite references back to ARFLP Rule 47, which allows for temporary orders.
- Folder 36, page 2, lines 8-9, a member stated that the committee might want to consider including an eviction situation in line 16. Another comment included distinguishing between voluntary and involuntary moves such as military personnel. Many service members do not receive a lot of notice before they are deployed to another base or overseas. A member stated this type of move would most likely fall under the “good cause” exception.
- In folder 36, page 1, line 35, sometimes the word “child” is used and other times “child or children” is used. Need to keep the wording consistent throughout the bill.
- In folder 36, page 4, line 17, strike “~~endanger seriously~~” and replace with “seriously endanger”.
- Concerning the language in folder 36, page 1, lines 10-11, referring to “joint legal decision-making or unsupervised parenting time,” notice only has to be provided in these two situations. As it stands now, there are several statutes that only become applicable to situations where the parents share legal decision-making or if there is unsupervised parenting time. In many situations where a parent will begin reintegration into a child’s life, there may be some period of time when

there is supervision of parenting time. In those situations, the way the bill is drafted, a parent would be able to leave the state of Arizona without any notice to the remaining parent who is participating in a court-ordered reintegration program. It was suggested that revised language should not restrict the groups of people it applies to. Suggested language would strike lines 9-10 and the rest of the sentence on line 11. The paragraph would start with “A parent who wishes to move...” This revision allows all parents to have notice if the other parent wants to move with their child.

- In folder 36, page 1, line 9, suggestions made:
 - “A. Except as provided in subsection B of this section ~~if by written agreement or court order both parents are entitled to joint legal decision-making or unsupervised time~~” a parent who wishes to move from the current residential address with a child must provide the other parent with at least sixty days’ advance written notice before that move takes place. the notice must include:”
 - In subsection B add a line to exclude victims that have been previously identified as domestic violence victims in court.
- One member stated their objection to the suggested changes because they are not convinced the revisions would protect victims in domestic violence cases when that parent has sole legal decision-making authority and there is supervised parenting time, as notice would still be required.
- In folder 36, page 2, line 3, insert “a domestic violence order” before “court order”.
- In folder 36, page 1, line 25 strike “notice” and insert “statement”.
- Folder 36, page 1, lines 16-19, the language was added as a carryover from ARFLP Rule 7. Confirm consistency with ARFLP language.
- A member inquired as to whether or not a parent would be permitted to object if they haven’t received notice or is receipt of notice required in order to file an objection to a move? If a parent failed to notify the other parent that they were moving, the non-noticed parent would be able to request a hearing when they know the other parent is moving.
- Next steps: Sponsorship is needed for this bill and Legislative Council will need to prepare an introductory set. The date for introductory bills is near the end of January.

The 2013 Ad-Hoc Relocation Sub-Committee will be meeting in January 2013. Hon. Mary Ellen Dunlap requested membership to this workgroup.

A.R.S. § 25-407 Parenting time hearings:

This bill will be introduced by Senator Barto.

A member was concerned that requiring a 60-day hearing deadline may slow down the process considerably in the smaller counties. Ms. Love stated that there is a court rule that requires hearings within 30 days and if issues are not resolved, an evidentiary hearing is set for 60 days out.

Additional concern was that RMC's are not evidentiary hearings and this accelerates the process. Courts may not have the resources available to hold hearings in the 30-day period. Ms. Love stated that if parties can reach an agreement at the RMC then an evidentiary hearing does not need to be held.

Call to the Public

Michael Espinoza discussed comments made in stakeholder meetings regarding amending section A.R.S. § 25-407.

Brent Miller discussed amending section A.R.S. § 25-407.

Tom Alongi, representing Community Legal Services, discussed the burdens that will be imposed on the court regarding amending section A.R.S. § 25-407.

Deborah Pearson commented that this issue also impacts rural courts.

Roger Thompson discussed his experience with relocation issues.

A.R.S. § 25-411 Modification to legal decision-making or parenting time:

Questions received regarding this bill included:

- In folder 130, page 3, line 16, why are dates included? Ms. Witter noted this was a policy decision to provide a stop-gap for people who had orders in place after the bill's effective date. A member stated that there is substantial concern from attorneys and judges in family court that this provision will clog the court calendars and that there would be significant stakeholder opposition to the bill as written.
- A comment was made that "legal decision-making" should be replaced with "parenting time" on line 18.
- A member asked if this provision should be limited to cases that have been brought before the court in the last 5 years, or should it be longer? If a change would be in the children's best interest, then a review would be appropriate. There are many circumstantial changes that exist that are covered in the statute that already give parents the ability to return to court.

DISCUSS DEVELOPMENTS REGARDING SUPERVISED PARENTING TIME PROVIDERS AND REVIEW LEGISLATION SB 1176

Although SB 1176 was vetoed by Gov. Brewer due to the amendment that the School Board Association supported, it is hoped that the legislation will go forward mirroring the same version that came out of the senate last session.

Call to the Public

Nisha Chirnomas commented on visitation agencies.

Gerald Chirnomas commented on visitation agencies and provided a handout.

Jeff Daley discussed professional counselor immunity against complaints.

Melissa Prins Verburg commented on supervised visitation and non-regulated court appointed mediators.

Roger Thompson spoke about visitation agencies.

Deborah Pearson discussed language regarding parenting time and relocation.

Brent Miller talked about relocation, Arizona Rules of Family Procedure, Rule 7.

Michael Espinoza commented on A.R.S § 25-403(A)(6) and relocation.

Tom Alongi, representing Community Legal Services, discussed relocation issues.

Ms. Love stated that the Secretary of State created the Address Confidentiality Program and judges are being informed to implement the program in their courtroom.

A member stated that the last time the Substantive Law Workgroup Committee met, the committee voted to include the word “substantial” in A.R.S. § 25-403(A)(6), but the word was inadvertently omitted in SB 1127. The workgroup included the word “substantial” to keep it consistent with the other language. Ms. Gray stated that the committee will work with legislative staff to insure the word “substantial” is inserted back into A.R.S. § 25-403(A)(6).

Meeting adjourned 12:47 p.m.

Next scheduled meeting: TBD