

# *Substantive Law/Court Procedures Workgroup*

## *Minutes*

<b>Date:</b> April 8, 2011	<b>Time:</b> 12:00 PM – 1:30 PM	<b>Location:</b> Conference Room 230
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**Minute Taker:** Tama Reily

**Members Attending:**

Steve Wolfson	X	Daniel Cartagena	X	Robert Reuss	X	David Weinstock
Brian Yee	X	Jami Cornish	X	Ellen Seaborne	X	Sarah Youngblood
Thomas Alongi	X	Jennifer Gadow	X	Lindsay Simmons	X	
Theresa Barrett	X	Grace Hawkins	X	Laura Sabin Cabanillas		
Keith Berkshire	X	Carey Hyatt	X	Donnalee Sarda	X	
Sidney Buckman	X	Ella Maley		Russell Smolden		

**Staff/Admin. Support:** Kathy Sekardi; Kay Radwanski; Tama Reily

**Guests:** Dean Christoffel, Bill Fabricius; Brent Miller; Karen Duckworth; Terry Decker; Joi Davenport; Sheri Fetzer; Ana Jabkowski; Lisa Royal, Pima County Superior Court  
Donnalee Sarda

**Matters Considered:**

**I. Welcome and Announcements**

The April 8, 2011 meeting of the Substantive Law / Court Procedures Workgroup was called to order at 12:15 p.m. Members and guests were welcomed.

Discussion began with proposed legislation, SB 1373, which significantly impacts community property law. It is a broad bill that prevents the non-military spouse from receiving any share of the property and/or income acquired by the other spouse as a result of military service. The legislation was never vetted in the Domestic Relations Committee (DRC) and Mr. Wolfson suggested that this workgroup make a recommendation to the DRC to oppose the legislation. It was noted that the DRC does not meet again until after the legislative session ends, however, Mr. Wolfson suggested the workgroup contact Senator Gray with a request that she call an “accelerated” DRC meeting, perhaps telephonically, for this purpose and she could then pass the DRC’s comments to the legislature.

With a quorum now present, a vote was taken on the issue.

**Motion:** To communicate the workgroup’s opposition to proposed amendment SB 1373, to Senator Gray as discussed. Motion seconded. Motion approved unanimously.

**II. Approval of Minutes**

The minutes of the Substantive Law / Court Procedures Workgroup meetings November 23, 2010 and March 11, 2011 were presented for approval.

**Motion:** To approve the meeting minutes from the Substantive Law / Court Procedures Workgroup meeting dates November 23, 2010 and March 11, 2011as presented. Motion seconded. Motion approved unanimously.

### III. Independent Review of Custody Rewrite

At previous meetings, the workgroup discussed having an independent review of the re-write product by outside experts, specifically, to consult with mental health expert Peter Salem, Executive Director, Association of Family and Conciliation Courts, for recommendations. A motion to that effect was made.

**Motion:** To consult with outside experts for comment on the re-write draft. Specifically, to request that Peter Salem provide his recommendations for mental health experts to review this custody re-write document and provide feedback. Motion seconded. Motion approved unanimously.

### IV. Review of Comments Received

Mr. Wolfson discussed public comments received at the March 25<sup>th</sup> meeting. He noted a recurring trend in the comments which is to remove all references to domestic violence from Title 25. He pointed out that neither A.R.S. section 13-3601 nor A.R.S. section 13-3602 mention child custody, and the failure to address domestic violence in Title 25 disregards the relationship and impact of domestic violence to parenting time decisions. Additionally, he stated that 49 of the 50 states recognize the relevance of domestic violence and parenting time decisions and include it in their statutory schemes. Mr. Wolfson also noted that other general public comments indicated that “after separation domestic violence stops” however, national studies show that a separated woman is three times more likely than a divorced woman, and 25 more times likely than a married woman, to be victimized by her spouse. According to these studies domestic violence often increases, not stops. The study referenced was provided by the Bureau of Justice Statistics, U.S. Dept. of Justice, Special Report, Violence Against Women; Estimates from the Redesigned Survey 4 (NCJ – 154348, August 1998.)

Mr. Wolfson commented that the workgroup received a comment from Comm. Kathryn Stocking-Tate regarding false reporting of domestic violence and child abuse, and that the comments provided by Judge Bruce R. Cohen are already included as a sidebar into the current version, section 25-450 (Third party rights, page 18.) The Conciliation Court Roundtable have also provided a version with their feedback and comments, as well as a version authored by workgroup member, Jenny Gadow, which focuses on changes to the sections regarding special circumstances and false allegations.

V. Based upon comments received previously, the unified draft has been revised to contain the domestic violence definitions, except “strangulation” and “suffocation,” at the beginning of Article 4, Special Circumstance on page 7. There was no change in the language.

**Motion:** To keep the ordering of the statute in accordance with the above description. Motion seconded. Approved unanimously.

Discussion moved to comments received from the Conciliation Court Roundtable on the definition of “legal parent.” Members considered the suggested terminology and its reference to A.R.S. section 25-814. However, there was no consensus regarding when a person has actually established paternity. After lengthy debate, member, Danny Cartagena volunteered to draft proposed language to clarify establishment of paternity as addressed in A.R.S. section 25-814.

### VI. Call to the Public

Public attendee, Mr. Terry Decker expressed his belief that Title 13 does impact a person’s contact or association with a child and that it takes precedence over Title 25. In addition, he stated that in section 25-422 the parental decision-making definition should include “in a divided family, it shall not include changing the name of the child or representing a changed identity to any entity.” He also made the observation that the workgroup is making many citations, but not tracing them to their conclusions; specifically, he noted child abuse, which he said “ultimately can trace back to things like a parent looking at the other parent’s email.”

Public attendee, Ms. Karen Duckworth, informed members that she provided staff with a copy of a Columbia University study on parental alienation. She commented about the elements of false allegations and other types of child abuse, like mental and psychological abuse. She stated that the legal definition for parental alienation and its tactics needs to be included in the language the workgroup is developing. She encouraged the workgroup to study the Columbia University report. She also commented that her understanding of some of the definitions

which may be stricken now, such as the intimate partner violence, was inconsistent with later references throughout the draft. She stated it is her understanding that A.R.S. section 13-3602 is actually more procedural and doesn't imply that an order of protection should have any bearing on the custody decision-making.

Public attendee, Mr. Brent Miller, commented that he believes daycare should be included in the draft despite the fact that it is something people argue and go to court about. Member, Steve Wolfson, asked Mr. Miller if he didn't think that it might be better to have a broader discussion and explanation in another separate publication as opposed to trying to approach it in this one definition section. Mr. Miller agreed and stated it needs to be expanded upon and further explored because there is so much misunderstanding about it.

**Next Meeting**

April 29, 2011

12:00pm – 1:30pm

Arizona State Courts Building, 1501 W. Washington, Conference Room 230