

# FAMILY COURT IMPROVEMENT COMMITTEE

**Minutes**

February 18, 2021, 10:00 a.m.

Virtual Meeting

**Present:**

**Telephonic:** Judge Paul McMurdie (Chair); Kip Anderson; Brian Bledsoe; Judge Bruce Cohen; Benjamin Deguire; Kellie DiCarlo; Judge Elaine Fridlund-Horne; Judge Joseph Goldstein; CaSaundra Guadalupe; Joi Hollis, PhD; Jeremiah Kaplan; Patricia Madsen; Tracy McElroy; Jennifer Mihalovich; Judge Michael Peterson; Judge Greg Sakall; Janet Sell

**Absent/Excused:** Vance Simms

**Presenters/Guests:** Molly Bright, Department of Economic Security – Division of Child Support Services (DES/DCSS); Lori Ford; Judge David Gass, Court of Appeals, Division I; Nicole LaConte, AOC; Jerry Landau, AOC Government Affairs Consultant

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett; Angela Pennington; Susan Pickard (after 11:45); Kathy Sekardi

**I. REGULAR BUSINESS**

**A. Welcome and Opening Remarks**

The February 18, 2021, meeting of the Family Court Improvement Committee (FCIC) was called to order at 10:05 a.m. by Judge Paul McMurdie, Chair. Kathy Sekardi went over housekeeping issues and completed roll call. Judge McMurdie discussed the Call the Public and how to submit information to speak during that time.

The Chair called for any comments or corrections to the minutes from the FCIC’s October 15, 2020, meeting. Janet Sell noted a correction to the minutes.

**Motion:** Approval of the October 15, 2020, minutes with the correction from Janet Sell. **Moved by Ms. Sell. Seconded by Judge Peterson.** Motion passed unanimously.

**II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS**

**A. Prop 207**

This discussion was tabled until the presenter arrived.

**B. SB 1389 - Alleged Incapacitated Person; Special Investigator**

Judge McMurdie introduced SB 1389. This bill would amend Title 25 permitting the appointment of a special investigator to evaluate an allegedly incapacitated person. Upon

passage of the bill, the Supreme Court will need to consider rule changes. Judge McMurdie noted the Statutes and Rules Workgroup had discussed the bill, found the amendment to be good and necessary, but expressed concerns about the investigator compensation funding source.

**Motion:** To support the need for family courts to address incapacitated persons and how SB 1389 would allow them to do that, without taking position on the funding. **Moved by** Judge Cohen. **Seconded by** Ms. Sell. Motion passed unanimously.

### C. Prop 207 (cont.)

Jerry Landau, AOC Government Affairs Consultant, greeted the committee and advised the members of that SB 1389 had passed out of the Senate Judiciary Committee. The bill still needs to pass both the Senate and the House. He suggested that members speak with Liana Garcia, AOC Government Affairs Director, about any suggested amendments. Judge McMurdie asked about opposition to SB 1389. Mr. Landau stated no one had signed in against the bill, but it was too early to get the voting results. He also confirmed that there was no funding for SB 1389 listed in the AOC budget.

Mr. Landau then moved to his main topic, Prop 207. He gave a brief overview of the proposition and its provisions. He discussed his concern regarding A.R.S. § 36-2852(A) which states, “...for imposing penalties of any kind... or for abrogating or limiting any right or privilege conferred or protected by the laws of this state or any locality.” Mr. Landau stated that this statute in conjunction with Prop 207 will affect the way that family court is able to evaluate parents.

There was avid discussion about the interpretation and use of the statute. Important points included:

- It would not be unreasonable for a judge to restrict use for reason such as with alcohol.
- Will these changes affect parenting time?
  - This could be addressed by the existing statutory language in A.R.S. § 36-2813(D).
  - There is nothing in SB 1389 or Prop 207 about parenting time.
  - Mr. Landau stated the medical marijuana and legalized marijuana statutes should be read together.
  - Prop 207 didn't implement Title 13 or Title 36 provisions. This legislation is Prop 105 protected, requiring a  $\frac{3}{4}$  vote and proof the amendments will further the initiative or the amendment must go to the ballot.
- While other states have also legalized recreational marijuana, their implementations in family court are diverse. The FCIC will need to research and develop an Arizona solution.

- If a person involved in a family court case was to have their record expunged, how would this impact legal decision-making, and parenting time?
  - Prop 207 talks about abusing alcohol or drugs as well as the conviction and the statute. This part of the proposition becomes effective July 12.
  - A party in a pending case that might fall within the provisions of the statute can file for dismissal with the effective date of the proposition.
  - Prosecutors and probation departments are being proactive, working to dismiss cases and probation in cases that will fall under the expungement provision.

Judge McMurdie asked that the Statutes and Rules Workgroup draft proposed language to address this issue. Upon FCIC approval, that language will be included in the FCIC legislative packet.

#### **D. Arizona Child Support Guidelines**

Judge David Gass, Chair, FCIC-Child Support Guidelines Review Subcommittee (FCIC-CSGRS), began by thanking several of the members who participate on both committees. He then presented the updated Arizona Child Support Guidelines to the members by providing a comprehensive overview of the assigned tasks, and amendments to the Guidelines, giving a brief explanation of each.

There was some discussion about the changes and about the subcommittee’s wish to have a “standing interim committee.” Judge Gass was also asked about a prefatory comment such as have been used in the past. He stated he would work with the FCIC-CSGRS to come up with a draft. Ms. Sell asked to comment and offered her thanks to Chris Gorman and Don Bays for their assistance on the FCIC-CSGRS.

**Motion:** To accept the work of the FCIC-CSGRS and forward it on to the Arizona Judicial Council. **Moved by** Ms. Sell. **Seconded by** Judge Goldstein. Motion passed unanimously.

After the motion, Judge McMurdie thanked Judge Gass and the FCIC-CSGRS members for their work.

#### **E. A.R.S. §§ 8-533 and 25-416**

Judge Cohen discussed the possibility of amending A.R.S. §§ 8-533 and 25-416. A.R.S. § 8-533 provides the grounds necessary to file a termination of parental rights. A.R.S. § 25-416 provides that for a child born as a result of a sexual assault, a person convicted of that sexual assault has no rights to legal decision-making or parenting time regarding that child.

Because A.R.S. § 25-416 limits termination of parental rights to convictions, Judge Cohen is advocating for a change to the Title 8 statute, which would allow for termination of parental rights upon clear and convincing evidence of sexual assault. He had originally planned to request that the issue be assigned to a workgroup; however, SB 1007: parental rights;

termination; sexual assault, passed unanimously through the Senate Judiciary Committee during this committee's lunch break. Judge Cohen now requests that the issue be tabled until the journey of this piece of legislation is completed.

There was minimal discussion about the content of the bill. Judge McMurdie suggested the inclusion of a provision about parental rights and paternity actions under sexual assault circumstances in the FCIC legislative packet. For those paternity actions, Judge Cohen suggested using the language from SB 1007 and inserting it into A.R.S. § 25-416.

## F. Rule Change Petitions

Judge McMurdie presented the 2020 proposed amendments to the Arizona Rules of Family Law Procedure. The committee discussed the petitions and voted on whether to submit comments.

### Arizona Rules of Protective Order Procedure (ARPOP)

- R-21-0010 – Rule 16. Currently at a Protective Order Hearing, a plaintiff is limited to the allegations in the petition. This rule change would allow the plaintiff to amend the petition.
  - Take no action today, but the Statutes and Rules Workgroup will work on and circulate a draft comment.

### Arizona Rules of Family Law Procedure (ARFLP)

- R-20-0016 – Rule 37(b), and R-21-0014 - Rule 37(b) and 37.1 relate to the condition of incapacity, in addition to incompetence.

**Motion:** To file a comment of support for both R-20-0016 and R-21-0014. **Moved by** Ms. Sell. **Seconded by** Judge Sakall. Motion passed unanimously.

- R-20-0033 – Rule 44(a). This petition was adopted as modified effective January 1, 2021.
  - Judge McMurdie will check with the staff attorneys to find out why it is out for comment again. If a comment is necessary, the committee will issue one.
- R-21-0019 – Rule 76.1. This petition requests an amendment to allow parties to file pretrial statements 5 days before the hearing date, but would also require additional filings, including a Notice of Issues and an outline of their pretrial statement.
- Concerns noted were:
  - Disregards the reality of *pro se* litigants in family court cases and creates an additional hurdle;
  - Pretrial statements are beneficial to the court; however, compliance and access to justice through the rules is impacted by how this petition is written.

**Motion:** For Judges Sakall and Cohen to draft a comment explaining the FCIC's objections and aiding in the draft of a better solution. **Moved by** Judge Sakall. **Seconded by** Judge Cohen. Motion passed unanimously.

## G. Workgroup Updates.

### Statutes and Rules Workgroup

Judge McMurdie discussed two legislative proposals to be included in the FCIC legislative packet. The Statutes and Rules Workgroup suggests eliminating A.R.S. § 25-330, because that language is already addressed in A.R.S. § 25-513. The workgroup also made additions and corrections to A.R.S. § 25-408 to clarify who must give notice when a parent is attempting to relocate a child out of the state.

- Does A.R.S. § 25-408 only apply if the parties have joint legal decision-making and parenting time? What about those who have just parenting time?
  - The parent who wants to relocate the child must have legal decision-making rights. However, they must be cognizant that any order for parenting time must still be followed, regardless of location, or unless a new order is issued.
- A motion was made, and a question was asked after the motion, but before the vote: what if a 3<sup>rd</sup> party with *in loco parentis* status wanted to relocate the child? Judge McMurdie requested the motion be withdrawn and the issue be tabled so the workgroup could conduct a more in-depth look.

Judge McMurdie also informed the members that he filed two petitions previously approved by the FCIC: R-21-0002 regarding ARFLP Rule 20; and R-21-0003 regarding ARPOP Rule 35 and ARFLP Rules 91.6 and 91.7. The petitions are out for comment at this time.

### Forms/Instructions/Publications Workgroup

Janet Sell, Workgroup Chair, stated that she had nothing to share at this time.

### Research and Innovation Workgroup

Judge Sakall, Workgroup Chair, presented the following update. The first matter the workgroup tackled was whether there should be a statewide parenting plan form. Currently, pre-trial statements indicate that “the child should live primarily with mother/father or Parent A/Parent B” but do not address vacation time, holidays, or other parenting plan issues. This lack of information requires judges to spend time during a hearing to gather those answers from the parents. Judge Cohen is currently working on revising a form. The point at which the form should be used is an ongoing conversation. The workgroup is advocating for a rule change that would require the parties to file the form much like the Affidavit of Financial Information.

It was mentioned that the Maricopa County Law Library and Resource Center (LLRC) might already have such a form within their packets to establish paternity, legal decision-making and parenting time, for non-married parties. An interim step would be to ask the LLRC to pull this

form forward and highlight it as a standalone document so that more parties are aware of its existence and uses.

Judge Sakall noted that the Superior Court in Pima County has received a grant which was applied to their parent education program. Working with TraCorp, the grant has allowed them to develop an on demand, self-paced program. The program is nearing finalization. The workgroup would like to see this program utilized on a statewide basis.

Judge Sakall concluded by letting the members know his workgroup has also begun work on tier-approach case processing like that used in the Family Justice Initiative. The envisioned approach will include trauma-informed processes for family court.

### **Training Workgroup**

Judge Peterson informed the committee that the Training Workgroup is approaching judicial training from a multi-faceted front. In the works are an approximately 2-hour training for all judges pertaining to all matters in family court along with an outline for a family court judicial bench book with both paper and electronic copies. Additionally, the workgroup is working on training modules through the AOC. Their next step will be to present the draft products.

Talk moved to the possibility of presenting the training at the upcoming judicial conference. Theresa Barret, AOC Court Programs Unit Manager, will follow up to find out if there will be a family law session at the judicial conference in June. Should the conference take place as planned, Judge Cohen would like to have a break-out lunch for the presiding family court judges, or if from a rural county, the appropriate family court judges.

## **III. OTHER BUSINESS**

### **A. Announcements/Call to the Public**

- Lori Ford, member of the public addressed the FCIC.
- Ms. Pickard read comments from Debra Giannecchini and Kimberly Kling to the FCIC.
- There were no announcements.

### **B. Next Meeting.** Thursday, May 20, 2021; 10:00 a.m. Virtual Meeting

The meeting adjourned at 1:20 p.m.

# FAMILY COURT IMPROVEMENT COMMITTEE

## Minutes

May 20, 2021, 10:00 a.m.

Virtual Meeting

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**Virtually Present:** Judge Paul McMurdie (chair), Brian Bledsoe, Judge Bruce Cohen, Benjamin Deguire, Kellie DiCarlo, Judge Elaine Fridlund-Horne, Judge Joseph Goldstein, CaSaundra Guadalupe, Joi Hollis, PhD., Jeremiah Kaplan, Patricia Madsen, Tracy McElroy, Jennifer Mihalovich, Judge Michael Peterson (Proxy Judge Travis Ragland), Judge Greg Sakall, Janet Sell

**Absent/Excused:** Kip Anderson, Vance Simms

**Presenters/Guests:** Molly Bright, Department of Economic Security – Division of Child Support Services (DES-DCSS); Lori Ford; Deborah Giannecchini; Ronnie Gomez; Sandra Kirkby; Judge Denneen Peterson, Santa Cruz County Superior Court; Malinda Sherwyn

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Angela Pennington, Susan Pickard

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The May 20, 2021, meeting of the Family Court Improvement Committee (FCIC) was called to order at 10:00 a.m. by Judge Paul McMurdie, chair. Susan Pickard completed the roll call and reviewed housekeeping and meeting etiquette.

### B. Call to the Public

Judge McMurdie performed an early call to the public. Debra Giannecchini, Lori Ford, Ronnie Gomez, and Sandra Kirkby addressed the FCIC.

### C. Approval of the February 18, 2021, Minutes

Judge McMurdie presented the February 18, 2021, minutes for approval.

**Motion:** To approve the February 18, 2021, minutes as presented. **Moved by** Judge Goldstein. **Seconded by** Judge Sakall. Motion passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Department of Child Safety (DCS) Records in Parenting Assessments in Family Court

By statute, records from the DCS relating to specific dependency cases or investigations are confidential. But there is information contained therein that may be relevant to and necessary for the preservation of a child's best interests in a family court proceeding. The law allows for dissemination of DCS records under specific circumstances and subject to specific limitations.

To comply with applicable law and to streamline the process for securing such records for use in proceedings brought under Title 25, a workgroup was formed to make recommendations for standardized orders in family law cases. Membership of the workgroup included various stakeholders from DCS, the court, the State Bar of Arizona, and the mental health provider community. The proposed orders would address the need for the information and records while also ensuring compliance with applicable law and the ability of DCS to provide timely disclosure of the pertinent records. Two separate orders were created by the workgroup. Judge Cohen presented the draft orders and asked for the FCIC's to support the use of the proposed orders as a best practice.

#### **Questions/Comments:**

- Will the DCS records be available to private practitioners via a request to the court?
  - The law allows anyone to request and receive their own records.
  - A private practitioner may file a motion to request the release of the records and include a proposed order. In this circumstance, all parties would receive the records.
- Under this protocol, would a judicial officer, requesting DCS records on the judge's own motion, be required to give DCSS notice and an opportunity to object?
  - Yes. Additionally, the process should be amended to allow judges to request DCS records on the judge's own motion.
- Do we have a way to address the release of records from DCS that include records for dependency cases in which the parents were minors?
  - Yes, under the exceptions on the Initial Order for Release of Department of Child Safety (DCS) Records, the verbiage can be modified to not include the records of the parent as a minor unless ordered by the court.

**Motion:** To approve this process for securing records from DCS as a best practice statewide.

**Moved by** Judge Cohen. **Seconded by** Ms. Sell. Motion passed unanimously.

After the motion, dissemination of the orders was discussed. Because FCIC is an advisory committee to the Arizona Judicial Council, it was noted that additional vetting may be needed before the orders are distributed.

#### **B. September 16<sup>th</sup> Meeting and Yom Kippur**

The September 16<sup>th</sup> meeting was unknowingly scheduled to occur on Yom Kippur. In deference to and out of respect for several committee members, Judge McMurdie is asking that the meeting be rescheduled. The meeting was rescheduled to occur on August 27, 2021.

#### **C. R-21-0025: Petition to Add New Rule 22.1 to the Arizona Rules of Family Law Procedure**

Ms. Sell presented Rule Petition R-21-0025. The State Bar of Arizona has filed a petition proposing a rule that sets a statewide process for numbering exhibits. The proposal states that either the Petitioner's exhibits would be number 1 – 499 and the Respondent's exhibits would be 500 – 999 or the Petitioner's exhibits would be numbered and the Respondent's

exhibits would be lettered. The members discussed the petition and their thoughts on the choices for proposed numbering systems.

- Neither of these systems allows for three parties; Title IV-D child support and paternity cases always have three parties.
  - Ms. Sell recommends a comment reflecting such.
- Numbering such as a letter to indicate the party: P (Petitioner), R (Respondent), TH (Third-Party), and I (Intervenor) with a number to indicate the exhibit (e.g. P1, P2, R1, R2, TP1, TP2, etc.) was suggested.
- The numbering is less important than having a standardized statewide system.
  - Evidence numbering should be the same for all case types and the online evidence repository.
  - Input from the clerks is necessary, as they number the exhibits.

Ms. Sell suggested that a comment be drafted that says the FCIC recognizes there is a problem, describes the committee discussion, and recommends the court explore a universal solution rather than a solution just for family court.

**Motion:** To grant authority to the Chair to draft the comment as suggested, with Judges Cohen and Sakall and Ms. Sell's review before filing. **Moved by** Judge McMurdie. **Seconded by** Ms. Sell. Motion passed unanimously.

#### D. Workgroup Updates

##### **Forms/Instructions/Publications (FCIC-FIP)**

Ms. Sell stated that the FCIC-FIP workgroup has not been tasked with any new projects and thus had no report.

##### **Research and Innovation (FCIC-R&I)**

Judge Sakall reported that the FCIC-R&I workgroup had met several times since the last meeting, most recently in April. The FCIC previously expressed interest in informal domestic trial programs. Judge Sakall has reached out to the National Center for State Courts for information. After compiling the studies and their results, he asked the workgroup to discuss the research further. Any recommendations will be brought forward.

Joi Hollis, Ph.D. discussed Pima County's pilot parent education online program funded by the State Justice Institute grant. The "Divorcing Track" is nearing implementation and will be used as the pilot for this on demand, self-paced format beginning in June. The project team plans to conduct data analysis and survey those who have participated for feedback. Ms. Hollis explained that interest in this project has been expressed at state and national levels.

##### **Training (FCIC-Training)**

Jeremiah Kaplan presented for FCIC-Training workgroup on behalf of Judge Peterson. Mr. Kaplan discussed the four module, trauma-informed, online, self-guided and self-paced format. He also presented a video clip that introduces the modules. Further, Mr. Kaplan explained that he and Judge Peterson are also working on a judicial bench book in both

paper and electronic forms which would serve as a reinforcement and retention tool based on the videos.

## **Statutes and Rules (FCIC-S&R)**

### **Legal Separation and Reforming the Marriage**

Judge Cohen discussed the need for relief of legal separation if the parties reconcile. He stated there are very few differences between a divorce and legal separation. In both, the marital community property and debt are subject to equitable division; and parenting issues, child support, and spousal maintenance are addressed. He also gave reasons some people decide to separate instead of divorce. His proposed amendment to A.R.S. § 25-313 would allow for termination of the separation versus dismissal or vacating the decree of legal separation. This process would preserve the rights of creditors and protects the parties against property and debt issues. As part of the amendment, support obligations would be deemed satisfied unless the parties agree to other circumstances and the judge agrees. Judge Cohen suggested that this process would promote reconciliation and abolish the workarounds that judges have been using. Judge McMurdie stated that while this is not a huge problem, it is a problem when it occurs. He stated it will be added to the legislative packet for January.

**Question:** What happens to any child support that the state was assigned during the time of legal separation if the receiving party was on public assistance?

#### **Action Items:**

- Judge Cohen will amend the proposal to include an exception for any support orders entered under Title IV-D.
- Ms. Sell will draft language for the amendment and send it to the FCIC staff.

**Motion:** To include this proposal in the Title 25 legislative package proposal with the amendment. **Moved by** Judge Cohen. **Seconded by** Janet Sell. Motion passed unanimously.

#### **Title 25 Sections**

Judge McMurdie referred the members to the Title 25 Tracking Table and the proposed amended sections in the meeting packet. He then led a statute-by-statute discussion regarding the amendments. Sections 25-301, 302, 311-314, 316-328, 331 and 401 were discussed with some additional edits. Comments included:

- 25-315 – While this section was in the packet, discussion regarding any changes was tabled.
- 25-319 – Along with the proposed changes, the members discussed defining a marriage of long duration, but determined that it would eliminate judicial discretion.
- 25-322 – There was robust discussion but ultimately it was decided to leave it as proposed with the inclusion of the phrase “unless the court orders otherwise.”
- 25-323 – This section is duplicative and should be realigned in section 25-319.

- Staff was asked to conduct a global search for “order of assignment” and replace the term with “income withholding order” to be consistent with federal terminology.

**Note:** During the discussion about 25-325, Judge Ragland left the meeting to conduct a hearing.

- 25-328 – This section will be abrogated as proposed because the language is procedural in nature and discusses bifurcated trials which are not conducted in family court cases.
- 25-330 – This section will be deleted as it is duplicative of 25-513.
- 25-331 – It was noted that attorney’s fees and costs need to be added to the list of findings that can be requested.
- 25-404 – Changes to this section must comply with 25-411 and should be made consistent with Family Law Rule 47(j) Enforceability of Temporary Orders. Lengthy discussion continued about 25-404, but no final decisions were made.

At this time, Judge Fridlund-Horne informed the chair she had a calendar beginning shortly and would need to leave early. The meeting quorum was confirmed. Title 25 sections 404, 406, and 510 were tabled.

**Motion:** to approve and include sections 25-301, 302, 311-314, 316-328, 331 and 401 in the Title 25 legislative package proposal as discussed. **Moved by** Judge Sakall. **Seconded by** Ms. Sell. Motion passed unanimously.

#### **E. Child Support Guidelines Review Update**

As time for the meeting had expired, this topic was tabled.

#### **F. New Ad Hoc Workgroups**

As time for the meeting had expired, this topic was tabled.

### **III. OTHER BUSINESS**

#### **A. Announcements/Call to the Public**

- Malinda Sherwyn addressed the committee.
  - Judge McMurdie stated they would look at Rule 76 on Resolution Management Conferences based on Ms. Sherwyn’s comments.

- B. Next Meeting** Tuesday, August 27, 2021, 10:00 a.m.  
Arizona State Courts Building, Conference Room TBD  
1501 W. Washington, Phoenix, AZ 85007

The meeting adjourned at 2:39 p.m.

# Family Court Improvement Committee

## Minutes

August 27, 2021, 10:00 a.m.

Virtual Meeting

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### Present:

**Telephonic:** Judge Paul McMurdie (chair), Kip Anderson, Brian Bledsoe, Molly Bright, Judge Bruce Cohen, Benjamin Deguire, Kellie DiCarlo, Joshua Eisenstein proxy for Patricia Madsen, Judge Elaine Fridlund-Horne, Judge Joseph Goldstein, CaSaundra L. Guadalupe, Joi Hollis, PhD., Jeremiah Kaplan, Tracy McElroy, Jennifer Mihalovich, Madeline Montoya, Judge Michael Peterson, Judge Denneen Peterson, Judge Greg Sakall, Janet Sell

### Absent/Excused:

**Presenters/Guests:** Liana Garcia, AOC Legislative Officer; Elise Kulik, AOC Legislative Officer; Nicole La Conte, AOC Court Specialist

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Kathy Sekardi, Angela Pennington, Susan Pickard

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The August 27, 2021, meeting of the Family Court Improvement Committee (FCIC) was called to order at 10:05 a.m. by Judge Paul McMurdie, Chair. Susan Pickard reviewed virtual meeting etiquette.

### B. Good of the Order/Call to the Public

Judge McMurdie announced the committee would hold the Call to the Public at the beginning of the meeting. The following members of the public addressed the committee:

- Rochelle Beaudoin
- Lori Ford
- Malinda Sherwyn
- Camille Swanson

### C. Approval of the Minutes

May 20, 2021, meeting minutes were presented for approval. A motion to approve the minutes of the May 20, 2021, meeting was moved, seconded, and passed unanimously.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Pima County Parent Education On-Demand Course

Joi Hollis, Ph.D., Superior Court in Pima County, Family Center of the Conciliation Court, Division Director discussed the SJI-funded project to move the A.R.S. § 25-351 mandated Parent Education Program to an online, self-paced platform.

This project seeks to:

- (1) enhance access to, and convenience for, parents mandated to complete the parent education curriculum (for parents who reside locally as well as those who live in other areas of the state or out-of-state);
- (2) maintain a high-quality parent education curriculum and court-user experience using an on-demand, virtual format;
- (3) use technology to enhance operational efficiency (e.g., free up court staff who will then be available to serve parents and children in other ways);
- (4) build the internal capacity of court staff by strengthening knowledge, skills, and competencies so they can convert other curricula/trainings to an on-demand format; and
- (5) provide the opportunity for judicial officers to waive or defer the class fee for clients who are economically stressed, as explained above to preserve access to justice due to court closures during the pandemic.

The program will be evaluated, and a report will be submitted to the SJI for review. Once approved, the report will be shared with the project team, court staff who were involved with the project, and the court's leadership. Findings and lessons from the report will be shared statewide and nationally.

### B. Proposed Amendments to Title 25

The Statutes and Rules Workgroup presented, and the committee, considered, the proposed amendments to Title 25. The proposals to Title 25 aim to:

- make the statutes consistent with case law, common nomenclature, and various family structures; and
- reorganize the title for better readability and ease of use.

The following motions were made regarding the inclusion of the proposed amendments to Title 25 in the FCIC Legislative Proposal:

- **Motion:** to include the proposed amendments to Chapter 1 – Marriage in the FCIC Legislative Proposal. **Moved by** Janet Sell. **Seconded by** Josh Eisenstein. Motion passed unanimously.

- **Motion:** to include the proposed amendments to A.R.S. § 25-218 Surrogate Parentage Contracts in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Mr. Eisenstein. Motion passed unanimously.
- **Motion:** to include the proposed amendments to Chapter 3, Article 2 – Dissolution of Marriage with the friendly amendment below in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Mr. Eisenstein.
  - **Amended Motion:** to add a process for agreement withdrawal in A.R.S. § 25-314.01 Summary Consent Petition and Decree. Accepted by Ms. Sell and Mr. Eisenstein. Motion passed unanimously.
- **Motion:** to include the proposed amendments to Chapter 3, Article 7 – Conciliation Court in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Ms. Hollis. Motion passed unanimously.
- **Motion:** to include Chapter 4 (subject to changes made during the meeting) in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Judge Elaine Fridlund-Horne. Motion passed unanimously.
- **Motion:** to reject amendments made to A.R.S. § 25-502. **Moved by** Judge Greg Sakall. **Seconded by** Madeline Montoya. Conceding the issues, Ms. Sell withdrew her proposal.
  - This statute applies to jurisdiction regarding child support matters but does not address any associated legal decision-making and parenting time.
  - It was suggested that an expedited procedure be drafted as a rule change.
- **Motion:** to include the changes as presented to Chapter 5, Article 1 except A.R.S. § 25-502 which was withdrawn, and Chapter 5, Article 2, A.R.S. § 25-532 in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Judge Joseph Goldstein. Motion passed unanimously.
  - There was substantive discussion about the distribution of restricted stock units (RSUs) and employer compliance with 505.01(M).
  - It was noted that there was language missing from A.R.S. § 25-522, regarding administrative review of a custodial parent’s distribution action that is controlled by A.R.S. §46-408. Judge McMurdie directed staff to ensure that language would be included in the legislative proposal.
- **Motion:** to include proposed amendments to A.R.S. § 25-504 and those made during the meeting in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Judge Goldstein. Motion passed unanimously.

- A.R.S. § 25-504(R) was amended to read “In any proceeding under this section the court may award attorney’s fees or cost pursuant to A.R.S. § 25-324.”
- **Motion:** to include proposed amendments to Chapter 6, Article 1 - Maternity and Paternity Proceedings and those made during the meeting in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by** Judge Goldstein. Motion passed unanimously.
  - In A.R.S. § 25-804 the language, “during the pregnancy of the mother or” should not be removed.
  - In A.R.S. § 25-807 the language “delay for paternity tests” should not be removed.
  - In A.R.S. § 25-808 the alternative language, “until further order of the court, the entry of final orders of the court, or dismissal of the action.”
  - In A.R.S. § 25-809(F), “The court may order past support retroactive to more than three years... if the court makes a written finding...”
- **Motion:** to include Chapter 8 in the FCIC Legislative Proposal. **Moved by** Ms. Sell. **Seconded by.** Judge Goldstein. Motion passed unanimously.

### C. Workgroup Updates

Forms/Instructions/Publications Workgroup - No update was provided.

Research and Innovation Workgroup – An update will be provided at the November meeting.

Training Workgroup - Jeremiah Kaplan inquired about:

- whether the judicial members of the FCIC had reviewed the trauma informed modules developed in partnership with Arizona State University;
- barriers experienced during the training, and
- whether they would participate in a survey about the training to assist in the development of a bench book and more practical, hands-on materials.

**Action Item:** Judge McMurdie asked Ms. Pickard to send out the link for the training again.

### Child Support Guidelines Training Update

Ms. Pickard discussed the Family Court Improvement Committee – Child Support Guidelines Review Subcommittee Training Workgroup. She explained that the workgroup is developing an 8-point video recording that will highlight all the major changes to the Child Support Guidelines. Judge Welty has graciously permitted the use of the Superior Court in Maricopa County

EzCourtForms and Excel-Based child support calculators statewide. Ms. Pickard should have a demo available on August 30, 2021 for training purposes.

### **III. OTHER BUSINESS**

#### **A. Announcements**

- There were no announcements.

#### **B. Next Meeting.** Thursday, November 18, 2021, 10:00 a.m.

The meeting adjourned at 2:16 pm.

# Family Court Improvement Committee

## Minutes

November 18, 2021, 10:30 a.m.

Virtual Meeting

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### Present:

**Telephonic:** Judge Paul McMurdie (chair), Brian Bledsoe, Molly Bright by her proxy Kristi Wisdom, Judge Bruce Cohen, Benjamin Deguire, Kellie DiCarlo, Judge Elaine Fridlund-Horne, Judge Joseph Goldstein, CaSaundra L. Guadalupe, Joi Hollis, PhD., Jeremiah Kaplan, Patricia Madsen, Tracy McElroy, Jennifer Mihalovich, Madeline Montoya, Judge Michael Peterson, Judge Greg Sakall, Janet Sell

**Absent/Excused:** Kip Anderson

**Presenters/Guests:** Lori Ford, Robin Mueller

**Administrative Office of the Courts (AOC) Staff:** Theresa Barrett, Angela Pennington, Susan Pickard, Kay Radwanski, Kathy Sekardi

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## I. REGULAR BUSINESS

### A. Welcome and Opening Remarks

The November 18, 2021, meeting of the Family Court Improvement Committee (FCIC) was called to order at 10:02 a.m. by Judge Paul McMurdie, Chair. Judge McMurdie moved right into the Call to the Public.

### B. Good of the Order/Call to the Public

The following members of the public addressed the committee:

- Robin Mueller; and
- Lori Ford.

## II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

### A. Proposed Amendments to Rules 78.1, 83(c), and 78(e)(3), Arizona Rules of Family Law Procedure (Out of Order)

Judge McMurdie presented a proposed amendment to ARFLP 78.1, regarding post-decree petition appeals. The rule states that post-decree rulings are only appealable after all issues in the petition have been resolved. This mirrors Rule 78, which addresses pre-petition. Rules 83(c)(1) and 78(e)(3) were amended to reflect the addition of Rule 78.1.

Minor discussion ensued, with two suggestions:

1. Add language to the proposed rule as appears in 78(b) "... the court may direct the entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines there is no just reason for delay and recites that the judgment is entered under Rule 78(b)"; or
2. Amend 78(b) to apply to both 78 and 78.1. This would require that the definition of judgment in Rule 78 be amended as well.

Judge McMurdie thanked everyone for the input and concluded by stating he would take all the suggestions back to the group he is working with to continue revisions.

**B. Approval of the Minutes (Out of Order)**

Ms. Pickard addressed the committee with a quick review of meeting etiquette. Judge McMurdie then presented the August 27, 2021, minutes for approval.

**Motion:** To approve the August 27, 2021, minutes as presented. **Moved by** Janet Sell. **Seconded by** Benjamin Deguire. Motion passed unanimously.

**C. Adoption of the 2022 Meeting Schedule (Out of Order)**

Ms. Pickard proffered the following schedule for the 2022 quarterly meetings: February 2, May 4, September 7, and November 2. Judge Bruce Cohen mentioned that there was an out-of-state conference he and some other members would need to attend during the week of the February meeting. February 9th was offered and accepted as an alternate date.

**Motion:** To approve the 2022 meeting schedule as presented. **Moved by** Judge Elaine Fridlund-Horne. **Seconded by** Brian Bledsoe. Motion passed unanimously.

**D. Department of Child Safety Records in Parenting Assessments in Family Court Update**

Judge Bruce Cohen in conjunction with a group of lawyers, judges, and staff of the Department of Child Safety (DCS) and the Office of the Attorney General has developed a form of order to address the timely receipt DCS records by the court. This standard form was presented to the Arizona Judicial Council which supported the form. The form has been accepted as a “Best Practices” form rather than a mandatory form. Judge Cohen has communicated to DCS that other court forms of this nature should be accepted. A second form regarding source reporting information is in the works.

Minimal discussion ensued. One member noted the expediency with which he received records after using the form. Another member noted Judge Cohen might want to add a section, such as on the form she uses, for protection and appropriate dissemination of the records. Judge Cohen asked for the member to send a copy of that form.

**E. Incarcerated Parent’s Child Support Modification Pilot Project Update**

Judge Cohen discussed child support modification for parents sentenced to incarceration. Based on research, incarcerated parents are likely to willfully disengage from their children and their support obligation due in large part to the excessive amounts of child support arrearages and interest that accumulated while they were in prison.

A parent who received Title IV-D services prior to being sentenced to incarceration continues to receive services including assistance with modifying a child support order. This is not the case parents in non-IV-D cases. For a non-IV-D parent to receive assistance with modifying child support, s/he must apply with DES-DCSS.

The Child Support Modification Pilot Program is intended to:

1. Add child support owed by the defendant to the sentencing colloquy;
2. Offer a much-abbreviated *Request for Title IV-D Child Support Service* to be completed at the time of sentencing; and
3. Apply to parents who will be incarcerated by the Arizona Department of Corrections for over a year.

**Note:** The case processing required when filing a petition for modification will not instantaneously provide a modified order. Arrears are still possible.

The members had questions and comments:

- It is possible because of this pilot project that the Attorney General’s Office and the Division of Child Support Services (DCSS) will learn about a parent’s incarceration sooner.
- Are the services ongoing?
  - The services are meant to be limited. The application includes a clause in which the parents agree that their case will be closed upon completion of the modification.
- Will the child support recipient be offered the same kind of services after the incarcerated parent is released from custody?
  - Again, the services are limited. The child support recipient can always apply for IV-D services.
  - This could be addressed as a judicial training or judicial education issue. When granting the modification based on incarceration, include the term of incarceration in the order modifying child support. This will provide the child support recipient a timeline to petition for another modification or IV-D services upon the incarcerated parent’s release.
  - The release date could be included in the DCSS “closure” letter. Additionally, the letter could provide information about options for the child support recipient.
- Would it be possible to do a fixed term award?
  - A fixed term award would remove the burden of requesting the child support modification from the child support recipient.
- It is not possible to modify the child support solely after the incarcerated parent’s release as Arizona does not allow for retroactive adjustments.
  - This would require a statutory change but would most likely also be contraindicative to the federal statute.

#### **F. Child Support Calculator**

The revised Arizona Child Support Guidelines have been approved and adopted by the Arizona Supreme Court. They will go into effect January 1, 2022. Along with the guidelines, new calculators will be adopted for statewide use. To avoid duplication of efforts, Maricopa Superior Court graciously agreed to maintain the statewide calculator moving forward. The 2022 Calculators will be based on Maricopa’s Excel and ezCourtforms. The ezCourtforms version is intended for use by self-represented litigants.

#### **G. Child Support Guidelines Training Update (Out of Order)**

Judge David Gass addressed the committee regarding the revised child support guidelines, the calculators, and the related training. He offered his praise on the calculator and stated he was hearing a lot of positive feedback on it. Training has been ongoing. In December, Judge Cohen will provide a statewide judicial officer training. Later in that month, the State Bar of Arizona will be offering training sessions for attorneys, certified licensed document preparers, law librarians, and paralegals.

#### **H. Workgroup Updates**

**Research and Innovation Workgroup** – Joi Hollis, Ph.D. spoke to the committee about the Pima County On-Demand Parent Education Program. Approximately 400 people with cases in Pima County have completed the program. The Supreme Court’s Administrative Office of the Courts (AOC) is seeking a means by which the program could be adopted for use statewide, as well as assisting with a Spanish language version.

Judge Sakall then spoke to the committee about the Informal Domestic Relations Trials (IDRT). The goal of the IDRT is to provide judges and litigants a potentially less contentious alternative trial process. Essential elements of all programs include the following:

- Opt-in process. Both parties must agree;
- Parties provide pretrial documents (pretrial statement, financial affidavits, parenting plan) just as in a regular trial case;
- Parties participate in an ADR process before trial;
- Parties consent to the process and waive right to trial under the regular rules;
- Each party gets an opportunity to speak to the Court, and the Court, not the parties, have the right to question the testifying party. The other party may suggest issues or questions that the Court should inquire of the testifying party. There is no cross-examination;
- Additional witnesses are in the judicial officer's discretion;
- Rules of evidence are relaxed; the Court considers any relevant evidence;
- Expert reports can be admitted without testimony;
- Judicial officers typically announce decision before leaving the courtroom; and
- Parties retain appeal rights;

**Motion:** To draft and submit a petition by January 10, 2022, requesting permission to conduct an IDRT Pilot Program. **Moved by** Judge Elaine Fridlund-Horne. **Seconded by** Janet Sell. Motion passed unanimously.

**Training Workgroup** – Jeremiah Kaplan requested feedback on the trauma informed training modules. Judge Michael Peterson stated the judicial bench book was coming along and should be completed soon.

**Statutes and Rules Workgroup** – Judge McMurdie discussed:

- R-21-0025 - The Clerks of the Superior Court are working to define exhibit numbering; and
- Proposed Amendments to Title 25 – The workgroup will sort through the comments received regarding the amendments.

Judge Sakall asked that the next workgroup agenda include a discussion about the temporary rule changes which were enacted during the pandemic and whether they should be adopted on a permanent basis.

### III. OTHER BUSINESS

#### A. Announcements

- There were no announcements.

#### B. Next Meeting. Wednesday, February 9, 2022, 10:00 a.m.

The meeting adjourned at 12:13 pm.