

*Ad Hoc Custody Workgroup*  
*Minutes*

Date: January 14, 2011

Time: 9:30 a.m. – 12:00 p.m.

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

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

**Participating Members Attending:**

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

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

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

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

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

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

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- Ellen Seaborne, Russell Smolden, Judge Thomas Wing, Judge Colleen McNally and Kendra Leiby have withdrawn from the workgroup due to schedule conflicts.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

II. Minutes

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

III. Received in November and December

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

of the materials for the next meeting.

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

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

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

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

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

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

#### *Public Comment Summary:*

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

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

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

The discussion was tabled until the next meeting.

#### *Public Comment Summary:*

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

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

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

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

#### VII. Taskforce Report: Stress Test

The taskforce had no report.

#### VIII. Brainstorming

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

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

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

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

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

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

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

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

**IX. Next Meeting**

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

**X. Adjournment**

The workgroup adjourned at 11:53 a.m.

**Votes Taken:**

✓ None