

*Ad Hoc Custody Workgroup
Minutes*

Date: February 11, 2011

Time: 9:30 a.m. – 12:00 p.m.

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

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

Other Participants:

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

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

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

II. Workgroup Membership and Meeting Procedures

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

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

III. Minutes

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

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

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

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

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

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

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

IV. Legislative Process

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

V. Timetable and Scope of Workgroup

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

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

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

VI. Review of Public Comments Received Since Last Meeting

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

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

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

VII. Taskforce Report: Jurisdiction, Definitions, Special Circumstances

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

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

Summary of Comments:

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

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

VIII. Taskforce Report: Criteria for Best Interests

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

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

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

IX. Call to the Public

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

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

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

X. Next Meeting

Friday, March 4, 2011

9:00 a.m. – 12:00 p.m.

Conference Room 119A/B

Arizona State Courts Building

Votes Taken:

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