

*Ad Hoc Custody Workgroup
Minutes*

Date: October 29, 2010

Time: 10:00 a.m. – 1:00 p.m.

Location: State Courts Building
Conference Room 119A/B

Minute Takers: Kay Radwanski, Lorraine Nevarez

Voting Members Attending: Quorum attained

- | | |
|---|---|
| <input checked="" type="checkbox"/> William Fabricius, Chair (telephonic) | <input checked="" type="checkbox"/> Kendra Leiby |
| <input checked="" type="checkbox"/> Thomas Alongi | <input checked="" type="checkbox"/> Judge Colleen McNally |
| <input checked="" type="checkbox"/> Sidney Buckman | <input checked="" type="checkbox"/> John Weaver |
| <input type="checkbox"/> Daniel Cartagena | <input type="checkbox"/> David Weinstock |
| <input type="checkbox"/> Grace Hawkins | <input type="checkbox"/> Steve Wolfson |
| <input type="checkbox"/> Brooks Gibson | <input checked="" type="checkbox"/> Brian Yee |

Participating Members Attending:

- | | |
|---|--|
| <input type="checkbox"/> Bruce Cohen | <input type="checkbox"/> Donnalee Sarda |
| <input checked="" type="checkbox"/> Mike Espinoza | <input type="checkbox"/> Ellen Seaborne |
| <input type="checkbox"/> Patrick Lacroix | <input type="checkbox"/> Russell Smolden |
| <input checked="" type="checkbox"/> Patricia Madsen | <input type="checkbox"/> Thomas Wing |

Staff/Admin Support: Kay Radwanski, Lorraine Nevarez

Guests: Theresa Barrett, Administrative Office of the Courts; Dean Christoffel, attorney; Joi Davenport, public; Karen Duckworth, public; Jenny Gadow, attorney; Dennis Levine, attorney; David Hamu, public; Kathy Sekardi, Administrative Office of the Courts; Sheri Fetzer, Superior Court in Coconino County

Matters Considered:

I. Welcome and Announcements

Sidney Buckman called the meeting to order at 10:10 a.m. and welcomed the members to the Ad Hoc Custody workgroup.

II. Minutes

Minutes from the September 17, 2010, workgroup meeting were approved with an amendment to page 3 regarding Dr. Brian Yee's comment.

MOTION: (By Brian Yee) Motion to approve the October 8, 2010, minutes as amended. Motion seconded. Motion passed.

III. Brainstorming

Three members of the public commented during the Call to the Public:

- Karen Duckworth: Ms. Duckworth noted her concern about paternity and dissolution hearings. She said the custody and parenting time processes often become adversely affected by false allegations of domestic violence. She said there are screening mechanisms in place, but they are not used in court. She said that many times prosecutors, police officers and juries are not available. Ms. Duckworth said the "friendly parent" factor is not being exercised enough because judges are not aware of this option. She said if a parent makes a false allegation, then it demonstrates that parent's inability to make important decisions. Ms. Duckworth asked how a person can become a participating member of this workgroup.

It was noted a person becomes a participating member by becoming familiar with the workgroup's progress, and bringing specific suggestions to the meetings for the workgroup to discuss.

- Joi Davenport: Ms. Davenport provided contact information for outside DV experts to assist the Stress Test Taskforce. She noted Leona Walker, Lundy Bancroft, and Dr. Robert Gaffner. She will forward their contact information to Kay Radwanski.
- David Hamu: Mr. Hamu noted the work being done by the workgroup is important and critical for children and parents. He noted the process of dissolving a family from a legal standpoint does not necessarily need to carry with it unpleasantness. Parents need to find ways to cooperate and collaborate for the benefit of their child.

Announcements (taken out of order)

Dr. Fabricius gave the following update:

- The Domestic Relations Committee (DRC) extended the workgroup for another year.
- The Steering Committee will meet prior to the next regular workgroup meeting to discuss membership issues.
- The workgroup meeting times next year will be 9:30 a.m. – 12:00 p.m.
- Meeting dates for 2011 will be scheduled, and a list will be disbursed to the workgroup.
- A letter was sent to the DRC co-chairs to ask for guidance on outreach. AHCW is awaiting a response.

It was discussed that members would identify their role on the workgroup. Each voting and participating member may submit a brief biography for publication on the workgroup website. Workgroup members were also encouraged to report any outreach efforts.

IV. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (version 6)

Tom Alongi reported the updates made to version 6. After much discussion, the changes are as follows:

- A typographical error regarding a statutory reference in section 103(7), has been corrected.
- Removal of the phrase “Promote strong families and family values.” The taskforce decided to leave it intact at its current location in SB1314, because of its broader application. However, members of the workgroup suggested the taskforce consider not making firm changes to the policy statement.
- Removed the introductory phrase (“[C]onsistent with administrative regulations governing the licensure of counseling programs for domestic violence offenders”) from section 103(1). The introductory language explains the definition. However, putting an explanation about the definition in statute is uncommon. The workgroup agreed to remove it.
- The workgroup addressed section 103(3), regarding coercive control, specifically the phrase “inflicted by one intimate partner against another.” The workgroup discussed whether the language should be revised to read “inflicted by one *parent*...”. The term “intimate partner” is used because in post-decree litigation, if a parent is inflicting violence on a new partner who is a non-parent to the child who is the subject of the custody case, then this paragraph will apply. The workgroup agreed to clarify the language about coercive control.
- The taskforce removed the “historical aggressor” definition. This factor will be covered in the conflicting presumption rule that will be discussed at a later time.
- The taskforce will reword the “primary caregiver” and “primary residence” definition. They will review an appropriate way to define these terms for purposes of public assistance and other programs that require designation of a custodial parent or a child's primary residence.
- The taskforce removed the words “or circulation of blood” from the suffocation definition, as the

phrase was deemed unnecessary for purposes of the child custody statute. The definition had been copied from a criminal statute on suffocation.

- In section 105(D), the taskforce included language to clarify that the court, in determining a person's capacity for parental decision-making, should evaluate both aggravating and mitigating circumstances surrounding intimate partner violence. Subsection E contains aggravating factors, and subsection F contains mitigating factors.
- The workgroup discussed section 105(C), regarding the 10-year look-back period for a parent who has a felony conviction. The taskforce used this benchmark for consistency with other felony codes in statute. The taskforce will consider the suggestion to reduce the standard to something less than 10 years.
- The taskforce suggested defining the term "legal standard" for section 105(E)(3) and subparagraph F(6).
- Reworded language for section 105(H) to make more understandable for the user.
- Added language to section 105(K). The language tries to protect victims from mandated mediation while still giving the court discretion for unusual cases.
- Add language to section 105(L). The language tries to remove the punishment of a parent living in a shelter to be seen as unfit for decision-making or parenting time.

V. Taskforce Report: Criteria for Best Interest (Version 8)

In the interest of time, this discussion was tabled for the next meeting.

VI. Taskforce Report: Temporary Orders (Version 1A and 1B)

Mr. Espinoza reported on the two versions of the Temporary Orders section that were distributed to members for review. The workgroup asked whether the two versions could be combined to make it easier to review them. The taskforce will combine both versions and present at the next meeting.

VII. Taskforce Report: Stress Test

The Stress Test Taskforce had nothing to report.

VIII. Next Meeting

Friday, November 19, 2010

10:00 a.m. – 1:00 p.m.

Conference room 345A/B

Arizona State Courts Building

Votes Taken:

- ✓ Minutes - October 8, 2010 - unanimously adopted as amended.