Ad Hoc Custody Workgroup
Minutes

Date: December 10, 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

- ■ William Fabricius, Chair (telephonic)
- ■ Thomas Alongi
- ■ Sidney Buckman
- ■ Daniel Cartagena
- ■ Grace Hawkins
- ☐ Brooks Gibson
- ■ Kendra Leiby
- ■ Judge Colleen McNally
- ■ John Weaver
- ■ Brian Yee

Participating Members Attending:

- ■ Mike Espinoza
- ☐ Patrick Lacroix
- ■ Patricia Madsen
- ☐ Donnalee Sarda
- ☐ Ellen Seaborne
- ☐ Russell Smolden
- ☐ David Weinstock
- ☐ Thomas Wing
- ☐ Steve Wolfson

Staff/Admin Support: Kay Radwanski, Lorraine Nevarez

Guests: Aaron Barnes, public; Theresa Barrett, Administrative Office of the Courts; Dean Christoffel, attorney; Joi Davenport, public; Terry Decker, public; Ashley Donovan, public; Karen Duckworth, public; Marty Lamb, public; Dennis Levine, attorney; Honorable Carey Hyatt, judge; Seth Roman, public; Kathy Sekardi, Administrative Office of the Courts; 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 gave the following update:

- The March 25, 2011, meeting date has been rescheduled to April 1, 2011.
- Public comments have been received through the workgroup webpage. As comments are received, they will be distributed to workgroup members and be put on the agenda for discussion.
- Workgroup members were reminded to report any outreach efforts to Kay Radwanski for entry on the workgroup webpage.
- Patrick Lacroix and Donnalee Sarda have indicated by email that they will no longer be participating members. Judge Bruce Cohen also has withdrawn from the workgroup.
- An email was sent to Ellen Seaborne, Russell Smolden, and Judge Thomas Wing to inquire if their schedules will allow them to continue in the workgroup. They are designated as participating members.
- The Steering Committee met and discussed procedural rules regarding membership. A question has been raised about whether voting members of the workgroup must also be members of the Domestic Relations Committee (DRC). This issue has been submitted to the DRC chair for clarification.

II. Minutes

Minutes from the October 29, 2010, workgroup meeting were reviewed. Dennis Levine's name will be corrected. A vote was not taken on the minutes pending a response from the DRC chair regarding voting members.

III. Discussion: Workgroup Goals and Principles

Dr. Fabricius discussed the importance of having information about the workgroup's development and purpose on the workgroup webpage. Dr. Fabricius developed a *Principles, Operating Procedures, and Goal* document that will be put on the webpage for the public. The workgroup reviewed and made some changes to the document. All agreed that providing information about the workgroup on the webpage would be helpful.

IV. Brainstorming:

Members from the public commented during the Call to the Public:

Terry Decker -- referenced the *Principles, Operating Procedures and Goals* document. He said the introductory statement "taking into account the child's best interest" is circular logic. He noted SB1314 already states that as policy. He suggested that reference to domestic violence should be left in Title 13but said not all Title 13 results should affect parenting time and custody. He suggested changing the word "adversarial" in paragraph 4 to "to promote less conflict."

Karen Duckworth -- said criminal investigation resources are not always involved in the court process and family courts are not designed to accommodate those types of procedures. She suggested revising language in Title 13.

Marty Lamb -- said he believes there is a huge incentive for persons to make false allegations. He suggested including language that would discourage persons from making false allegations.

V. Taskforce Report: Jurisdiction, Definitions, Special Circumstances (Version 7)

Tom Alongi reported on the updates to Version 7. He noted that taskforce members had not had an opportunity to review the updates. Among the modifications shown on the tracked changes version are:

- Section 102(A) -- last sentence amended
- Section 103(1) -- "Batter's intervention program" definition amended
- Section 103(3), regarding coercive control, was moved to Section 105(E)(7), and the section was renumbered.
- Sections 103(10) and (11) -- definitions regarding "primary caregiver" and "primary residence" were deleted.
- Section 105(C) and (E) -- word revisions were made for improved readability.
- Section 105(E)(7) -- coercive control section was inserted.
- Section 105(M) made a word change from "competent" to "conclusive."

Mr. Alongi responded to other members' questions about the relationship between Orders of Protection (Title 13) and child custody (Title 25).

Public Comment:

- Mr. Decker suggested Section 106(E)(3) be removed. He said the words "victim" and "batterer" are sexually biased and should be removed. He said after reading the article written by Mr. Alongi, he wanted to note that men are not always the persons committing domestic violence.
- Dennis Levine -- noted his 37 years of experience as a lawyer in family law. Specifically, he has

been practicing for 11 years in domestic violence. He noted the lack of a distinction between physical violence and coercive control. He said expert psychologists use definitions of domestic abuse that show it can also be emotional abuse.

- Joi Davenport -- thanked Mr. Alongi on his efforts and contributions to the workgroup. She said the proposed language will help judges and attorneys.
- Dean Christoffel -- noted Mr. Alongi's hard work and contribution.
- Ms. Duckworth noted Section 105(C) regarding the 10-year conviction. She said it seems contradictory regarding the requirement and purpose of a parent attending a batterer's program.
- Jarrett Williams -- noted his surprise regarding the removal of the word "family" in Section 101.
- Mr. Lamb noted neglect as a form of abuse.

Mr. Alongi noted his agreement with emotional abuse as domestic violence. However, for legal proceedings, the court needs a clear definition for domestic violence. The coercive control factors have been documented in research and were taken from different sources, including the National Council for Juvenile and Family Court Judges, Peter Jaffe, and the American Bar Association.

VI. Taskforce Report: Criteria for Best Interests (Version 8)

The taskforce had nothing new to report.

Public Comment:

- Ms. Duckworth thanked the taskforce for its efforts. She recommended judicial training for judges.
- Mr. Decker said he liked that families are promoted.
- Mr. Levine noted Section 403.02(6) and said cooperation can be difficult when domestic violence has occurred. He said that usually a victim does not want to deal with the abuser, and he suggested that there should be a language change. He said that the phrase "logistically possible" (Section 403.03(5)) should be defined.
- Ms. Davenport asked whether the term "suitable age" (Section 25-403.02) would be defined. Ms. Hawkins responded that each child develops differently so this factor would be case specific.
- Mr. Lamb thanked the taskforce for its work.
- Kathy Sekardi -- suggested adding the new law regarding notification requirements in A.R.S. 25-403.05(B), which is referenced in A.R.S. § 25-403.02(6); parenting plans.

VII. Taskforce Report: Temporary Orders (Version 2)

Mike Espinoza reported on the updates to Version 2. He indicated that the other taskforce members had not seen the draft prior to the meeting. He said his focus was to make sure the child's rights are not violated. The changes are as follows:

- All definitions were listed
- The purpose of the section is included.
- Included language to promote fairness regarding parenting time.

Workgroup Comments:

- It was suggested to wait on definitions until the section is complete. This will help determine which words need to be defined.
- Need to be considerate of the child's age to ensure the best interest of the child and to determine the best way to implement parenting time.
- The substantive information should be focused on custody standards and procedures.
- Include clarifying language to communicate that the same legal standards and findings need to be applied in temporary order hearings.

Public Comments:

- Mr. Decker suggested defining a term to explain the time of filing until the temporary order hearing.
- Ms. Duckworth noted the importance of maintaining the parenting time that was in place before the parties separated. She suggested including language to help speed the process so parents do not lose parenting time with their child and modifying the language in the preliminary injunction provision.
- Ms. Davenport noted that language should be included to address allegations of domestic violence. She said there is inadequate time in a temporary orders hearing to present clear and convincing evidence, the standard being proposed for this section.
- Mr. Lamb thanked the taskforce for their efforts.
- Mr. Williams noted having definitions are helpful. He thanked the taskforce for their efforts.
- Honorable Carey Hyatt -- noted her involvement in a workgroup at the Superior Court in Maricopa County. The workgroup is discussing protective orders and temporary orders. They are trying to determine ways to conform Family Court processes with the Arizona Rules of Protective Order Procedure (ARPOP).

VIII. Taskforce Report: Stress Test

The Stress Test Taskforce had nothing to report.

IX. Next Meeting

Friday, January 14, 2011
9:30 a.m. – 12:00 p.m.
Conference Room 345A/B
Arizona State Courts Building

X. Adjournment

The workgroup adjourned at 1:00 PM

Votes Taken:

- ✓ None