

**Ad Hoc Custody Workgroup
Minutes**

Date:
May 7, 2010

Time:
10:00 a.m. – 1:00 p.m.

Location:
State Courts Building
Conference Room 119A/B

Minute Taker: Kathy Sekardi

Voting Members Attending: Quorum attained

- | | |
|---|---|
| <input checked="" type="checkbox"/> William Fabricius, Chair | <input checked="" type="checkbox"/> Brooks Gibson |
| <input checked="" type="checkbox"/> Thomas Alongi – Proxy Patricia Madsen | <input type="checkbox"/> Judge Colleen McNally |
| <input checked="" type="checkbox"/> Sidney Buckman | <input checked="" type="checkbox"/> John Weaver |
| <input checked="" type="checkbox"/> Daniel Cartagena | <input type="checkbox"/> David Weinstock |
| <input checked="" type="checkbox"/> Grace Hawkins | <input type="checkbox"/> Steve Wolfson |

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 checked="" type="checkbox"/> Patrick Lacroix | <input checked="" type="checkbox"/> Russell Smolden |
| <input checked="" type="checkbox"/> Kendra Lieby | <input type="checkbox"/> Thomas Wing |
| <input checked="" type="checkbox"/> Patricia Madsen | <input type="checkbox"/> Brian Yee |

Staff/Admin. Support: Kathy Sekardi, Kay Radwanski

Guests: Theresa Barrett, Administrative Office of the Courts; Katy Proctor, AOC Legislative Liaison; and Holly Hunnicutt and Cav Smith, Legislative Council

Matters Considered: Quorum in attendance.

1. Approval of Minutes from April 16, 2010

Motion to approve the April 16, 2010 draft minutes was seconded. No discussion. Minutes were approved unanimously.

2. SB1314 – Domestic Relations bill

SB1314 was signed by the Governor and will become effective on July 29, 2010. Ms. Proctor indicated that she appreciated all the work done by many individuals, and that the collaborative efforts placed the DRC in a good position at the legislature.

A question was asked concerning what the status is of a policy statement. Ms. Proctor answered that the policy statement compliments the existing standards of statutes. The statement is not intended to trump or override other statutes. Furthermore, it has no legal force and effect on other sections.

Ms. Proctor reported the AOC's legislative group usually solicits internally for bill drafts in July. Ms. Proctor offered to assist with drafting, putting proposals together and running the proposals through various internal committees. If the DRC proposals are passed through AJC she could obtain their opinion as to whether or not they would support the proposals. If AJC were to decide to support, then Ms. Proctor would be able to purport to the legislature that the AJC supports this legislation. One of the internal committees is the Committee on Superior Court (COSC) which is staffed by Kay Radwanski. The next meeting of COSC is September 10th wherein Ms. Proctor could attend to share draft input and concerns from judiciary on pieces of legislation. Meeting with COSC also provides an additional opportunity for input.

3. Legislative Council:

Arizona Legislative Council members, Cav Smith and Holly Hunnicutt, presented information regarding re-writing of bill drafts. Ms. Hunnicutt suggested it's easier to clean-up bill language rather than making complicated substantive changes. Unless there is a compelling reason, Ms. Hunnicutt cautioned against giving

new numbers to sections and sub-sections when re-organizing or rewriting as it may create ambiguity and errors. Many agencies using section and sub-section numbers have relied on the statute numbers remaining static as they are an integral part of their forms and documentation. Furthermore other bills may amend those sections that are being changed. Making these kinds of changes could create an undue burden on agencies that work with these section/sub-section numbers. She suggested an alternative method is to transfer an article and assign a new section/sub-section numbers. She also suggested using a delayed effective date when statutes can be conformed during the next session.

Cav Smith stated the use of legal jargon is unnecessary and using normal language allows the reader to gain a greater understanding. Mr. Smith suggested sending bill drafts in a Word document format rather than an Adobe PDF document. The Word document format allows them functionality of the cut and paste feature. The deadline for agencies to provide bill drafts is November 15th, however, Legislative Council will accept bill drafts sooner than this date. If drafts are provided earlier than this date, Legislative Council will draft and transfer to a final version and inform the sponsor that it is ready to be pre-filed. This allows agencies (such as the DRC) to review what Legislative Council has drafted and to make further changes before being filed. Cav Smith suggested making sure that the workgroup’s goal is as understandable as possible. Determine what the intent is when making these changes. Go back to the statement of intent to see if it clearly reflects the intent. The statute is where the intent of the bill is explained completely. Placing an intent section with an actual bill should be avoided.

Russell Smolden shared that since 2010 is an election year, a lot of new legislative members will take an interest on issues and will be busy by November, so getting the drafts done earlier is better. Russell suggested this workgroup have the drafts as close to bill-ready form for Legislative Council. Russell explained he has worked many years with the legislature and offered his experience to the workgroup when drafting language.

4. Steering committee report

Grace Hawkins reported the steering committee met telephonically on had a brief meeting to discuss current status and where the committee was going next. The next task force group assignments are:

- 25-403.01, and 25-403.06 - Bill and Grace
- 25-403.02 – Brooks and Grace
- 25-403.03, 25-403.04 and 25-403.05 - Tom, Judge McNally and Sid

Grace Hawkins asked if 403.06 may be better placed after custody 403.01. Russell reiterated that changing around the statute numbers create retraining issues and Theresa Barrett noted that Ms. Hunnicutt’s message was to reach out to the agencies that use the statute numbers prior to changing their sequence. Bill asked Russell to double-check with Legislative Council to ascertain whether or not the “.0” could safely be removed from the statute numbers. (Russell reported later during the meeting that Ms. Hunnicutt didn’t see a problem removing the “.0”, but that she hasn’t checked all her resources.) Other ramifications may center around these references in the Arizona Family Law Rules of Procedure (ARFLP) and the Model Parenting Time Guide as well as the Child Support Guidelines.

5. Open floor to brainstorming

Bill encouraged comments from the floor or public to put on the table.

From	Comment
Judge Cohen	(Refer to handout in packet) 1. Development of factors for custody that are issue specific. The statutory factors that are particular to legal custody be segregated from statutory factors that are specific to parenting time. 2. If there is to be a departure from custody titles and designations (such as sole or joint), how will our “Parenting orders” be subject to enforcement for interstate custody battles and for criminal charges (that all use legal custody designation as an important factor.) 3. Re-organize the statutes so that in loco parentis and third party custody and visitation be set forth together rather than be separate statute for grandparents, etc. 4. Further, relocation should be detailed in its own statutory section.

<p>Danny Cartagena</p>	<p>25-403(a)(2) – wishes of child as to custodian Change custodian to something else Wishes of child regarding parenting time? Context – where is the child physically? What does the child want if able to articulate Task force: Wishes of the child as to parenting time when appropriate Patricia/Tom: Wishes of the child if of suitable age and discretion Taking into consideration the age of the child Joi: Should there be an age (e.g., six-year-old child)? Patricia – consensus is to stop referring to custodian Mike – Will this hinder parenting time? Grace – would be a factor to be considered; not defining factor Mike – multiple children who want to go with each parent Grace – judge would consider wishes of each child Barbara – go broader than wishes. Child’s perspective broadens – child’s viewpoint Mike – situations where child is treated differently before divorce and then when it’s filed (e.g., no TV when family intact but at time of divorce, child can now have X-Box and television in bedroom); how to articulate that – judge to have in camera interview with child Grace – one of many factors that judge will consider; parent will present concerns in court regarding issues that judge should explore; judge takes into account what each parent says in court, aware that parents may try to influence child; professionals trained to ask questions. May not be appropriate for statute – general language. How judge ascertains – trainings, how to interview children. Specificity may encourage parents to coach/influence child in preparation of interview. Russell – good/bad – flexibility v. inflexibility</p>
<p>Danny Cartagena</p>	<p>25-403(a)(7) - Primary care – whether one or both parents are active parents Removes notion of “primary care” where it’s used adversely Sid – agrees. How is the child’s care apportioned between the parents? Rather than who provided what. Add something about parents’ capability to provide care going forward. Family unit is different and things will change. Don’t focus on just what they did but what can they do going forward. Bill and Grace will be providing draft of this section.</p>
<p>Joi Davenport</p>	<p>Anything in statute that mandates judge to interview child? (age appropriate) Bill – mechanism for information from child to judge Joi – mandatory is strong Patrick – ARFLP Rule 10 and Rule 12 – discretion to perform in camera interviews where appropriate; there are provisions that allow judges to make discretionary call Sid – ARFLP means Arizona Rules of Family Law Procedure Barbara – presented her empirical survey regarding child interviews found that some interview children others don’t; Family bench would resist mandate to interview children; don’t want to put child in situation. Judicial discretion is important to keep in statute. Bill – good data always welcome Bill - Australia law – child talks to child specialist who conveys child’s perspective to judge or into mediation with parents Sid – Conciliation Court Services has similar practice Patricia – rare that children talk to judges Sid – counties w/o Conciliation Services – more child interviews with judges Joi – is Conciliation Services different than evaluator? Grace – explained various services, separate roles of CCS, evaluators, coordinators</p>
<p>Danny Cartagena</p>	<p>25-403(a)(10) – add false reporting of domestic violence Patricia – conviction for false reporting of DV? Danny – yes Bill – will have report on that</p>
<p>John Weaver</p>	<p>Compared 2000 and 2010 (ARS) – interesting changes from political perspective Number of statutes have doubled in 10-year period</p>

Mike Espinoza	Definition of Substantial - abundant – plentiful, maximum participation Meaningful – significant, abounding
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6. 25-401; jurisdiction

Pat Madsen reported Tom Alongi sent a draft copy of a re-organization of the custody statutes to their workgroup members. Tom drafted some language for jurisdiction and definitions. Two out of the three members were not in attendance so this group will report their progress regarding jurisdiction issues.

Danny requests he be considered to be a member on this task force.

Grace questioned whether or not moving the UCCJEA is a realistic expectation given the cautionary advice from Legislative Council. She suggests keeping this in mind when considering moving that section. Tom's version clarifies and directs to the later section with that information. This task force is requested to submit the documentation in the appropriate format for the next meeting.

7. 25-402; definitions

This task force reports they haven't met since April 16. This subject matter may continue to be a work in process because other words will need to be defined as the project progresses. Bill suggested that when the workgroup comes to an agreement on a definition, that terminology should be included in the ongoing drafts. Sid inquired as to what Florida has done with custody definitions. John Weaver stated the definitions are in separate paragraphs, and that Tennessee and Washington do the same. Grace provided staff the custody laws of Florida which were immediately provided to the entire workgroup via email. The workgroup will depend on John to research other states.

8. 25-403; best interests of the child

Grace and Bill reported that their intent in this section is (a) to incorporate the language of SB1314, (b) to revise the 11 statutory factors as needed; and (c) to provide some "decision tree" guidance regarding weighing of the factors and sequential steps for judicial consideration.

Comparison of original and revised 11 statutory factors:

Original 25-403.A	Proposed revision of 25-403.C
A.1.	eliminated because redundant; each parent now submits a parenting plan Replaced with C.1. feasibility of each parent's plan
A.2. – A.6	C.2. – C.6.
A.7.	replaced with new language in C.7. to broaden to consider relationships
A.8.	eliminated because vague
A. 9, A.10, A.11	C.8, C.9., C.10 (reordered)

The workgroup reviewed version number 2.

a. 25-403(A) Added (3). Strike "together" in (3).

In 25-403(A)(1) Why use the word "regular" versus "frequent"? Took out "frequent" and replaced with "regular" because frequent means many separate instances or frequent contact means many transitions. The intent was to spend more parenting time, not to recommend more transitions. Black font is what was presented to the workgroup last meeting; the blue font words are the newest revisions. Brooks suggests eliminating "regular" altogether.

b. 25-403(C) The workgroup agreed to keep the first sentence as is and to replace "...first consider any evidence contrary to either or both of the parents' proposals, including..." with "consider all relevant factors including..."

c. 25-403(C)(2) Barbara commented that "viewpoint" instead of "wishes" broadens the definition in order to keep discretion. Patrick thinks 25-403 will apply to both custody and parenting time issues; the judge has discretion to determine if relevant. Workgroup couldn't think of an instance where two lists would be needed; one list for custody issues and another list for parenting time issues. Everything applied to both parenting time and decision making. The workgroup decided to keep it simple with "perspective of child" then an evaluator can apply where necessary. The workgroup discussed the word "perspective" because it doesn't really mean the

child's opinion, frame of reference, or wishes of the child; rather it could be a third-party view. Discussed expanding the "child's wishes." The group agreed on the following language: "The child's own viewpoint and wishes."

d. 25-403(C. 6) Should the language be positive or negative language; "support" or "restrict"?

e. 25-403(C. 7) Added the word "the" where appropriate.

f. 25-403(C. 8) The group wanted to discuss whether a person had to be convicted of false reporting of domestic violence (8). Pat Madsen offered that the word "conviction" is in (8) because it is a legal determination of false reporting of domestic violence and it is better to err on the side of safety. The domestic violence statutes are criminal statutes.

g. 25-403(D) Eliminate the double negative in first sentence in (D) by striking "Absent evidence to the contrary that such a plan would not be in a child's best interest or would cause harm to a parent" and start with "Consistent with the child's physical safety and emotional well-being," then replace "favor a plan that allows the child the most substantial, meaningful, regular and continuing parenting time with each parent, with "the court shall adopt a plan that maximizes parenting time with both parents..." This new language will eliminate a qualifier on decision-making.

Votes Taken: (continue on separate sheet if necessary)

1. Motion to approve the April 16, 2010 minutes.
2. No other motions made or votes taken.