Ad Hoc Custody Workgroup
Minutes

Date:	**Time:**	**Location:**
April 16, 2010	**10:00 a.m. – 1:00 p.m.**	**State Courts Building Conference Room 345B**

Minute Taker: Susan Pickard

Voting Members Attending: Quorum attained

- ■ William Fabricius, Chair
- ■ Thomas Alongi
- ■ Sidney Buckman
- ☐ Daniel Cartagena
- ☐ Grace Hawkins
- ■ Brooks Gibson
- ■ Judge Colleen McNally
- ■ John Weaver
- ☐ David Weinstock
- ■ Steve Wolfson

Participating Members Attending:

- ☐ Bruce Cohen
- ☐ Mike Espinoza
- ■ Patrick Lacroix
- ■ Patricia Madsen
- ☐ Donnalee Sarda
- ☐ Ellen Seaborne
- ☐ Russell Smolden
- ☐ Thomas Wing
- ■ Brian Yee

Staff/Admin. Support: Kathy Sekardi, Susan Pickard

Guests: Theresa Barrett, Administrative Office of the Courts; Gina Cash, Legislative Staff

Matters Considered: (continue on separate sheet if necessary)

1. **Action Item:** The Minutes for the March 19 meeting of this workgroup will be amended to reflect the participation of Thomas Alongi and Patricia Madsen.
2. Fabricius provided a Steering Committee update. The Steering Committee met by phone on April 1 and amended the list of Voting Members to 10 individuals (Alongi, Buckman, Cartagena, Fabricius, Hawkins, Gibson, McNally, Weaver Weinstock, Wolfson), and established 4 task forces to present initial drafts at the April 16 Workgroup meeting (25-401; Jurisdiction – Alongi, Buckman, McNally; 25-402; Definitions – Alongi, Buckman, Gibson; 25-403; Best Interests – Fabricius, Hawkins; "Decision Tree" – Alongi, Buckman, McNally)
3. The Chair established rules for conducting business within the workgroup, noting the free flow of ideas while conducting oneself in a manner suited for a legislative workgroup. He would like these meetings to be respectful, highly participatory, with evidence, experiential and research-based deliberations.
   a. To address stakeholder inclusion and quorum issues, Dr. Fabricius announced the classification of members and circumstances for reclassification as following:
      i. <u>Members of the Public</u>, who are attending and providing ideas for improvements or assisting in identifying unintended consequences in draft proposals during the call to the public, may become a participating member.
      ii. <u>Participating Members</u> may, by a majority vote of the Voting Members, become a voting member.
      iii. <u>Voting Members</u>, who are not attending, may be designated as participating members.
   b. To assist staff with version control and commenting the proposed amendments for submission to the Domestic Relations Committee (DRC) and legislative members, all proposed amendments should contain standard header information. This information includes:
      i. Version Number
      ii. Date of version
      iii. Current section number and short title e.g. 25-401; jurisdiction
      iv. Names of members
      v. Purpose

      It was also agreed that proposed amendments be drafted as separate documents and sent as attachments to an email rather than being included in the body of an email message.

4. By general consensus, the members set an ambitious meeting schedule; May 7, May 27, June 25, August 6, August 27 and September 17.
5. Katy Proctor, AOC Legislative Liaison, provided an update on SB1314. She noted that while the policy statement may not solve the problems which it is trying to address, the statement will serve the purpose to set roadmap for the workgroup's further work. This bill version, which retains the attorney fee language and the workgroup's additional suggestions being added via a floor amendment, is moving forward. The section of the amended bill addressing 25-103 is as follows:

   25-103. Purposes of title; application of title
   A. It is declared that the public policy of this state and the general purposes of this title are:
   1. To promote strong families;
   2. To promote strong family values.
   B. IT ALSO IS THE DECLARED PUBLIC POLICY OF THIS STATE AND THE GENERAL PURPOSE OF THIS TITLE THAT ABSENT EVIDENCE TO THE CONTRARY, IT IS IN A CHILD'S BEST INTEREST:
   1. TO HAVE SUBSTANTIAL AND MEANINGFUL FREQUENT AND CONTINUING PARENTING TIME WITH BOTH PARENTS.
   2. TO HAVE BOTH PARENTS PARTICIPATE IN DECISION-MAKING ABOUT THE CHILD.
   C. A COURT SHALL APPLY THE PROVISIONS OF THIS TITLE IN A MANNER THAT IS CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION."
6. <u>25-401; jurisdiction</u>
   a. To assist with ease of use, UCCJEA should be moved from Chapter 8-Uniform Child Custody Jurisdiction and Enforcement Act to before or be included in Chapter 4; Child Custody and Visitation.
   b. **Action Item:** Staff will contact Legislative Council regarding guidelines for renumbering and moving entire sections.
   c. The members agreed that we should avoid decimal-pointed paragraphs (i.e., 25-403.01 and 25-403.07) if at all possible.
   d. Because this chapter includes provisions for grandparent visitation and *in loco* parentis, drafters should ensure that these issues are also included in this section.
7. <u>25-402; definitions</u>
   a. The drafters reviewed the current definitions in this section as well as those in Title 8 for adoption, juvenile court and termination of a parent-child relationship.
   b. There was general consensus on the following definition of Parenting Time:

      "Parenting Time", (formerly visitation), means the condition under which a parent has the right to have a child physically placed with the parent and the right and responsibility to make, during that placement, routine daily decisions regarding the child's care consistent with the major decisions made by a person having decision-making responsibilities.

      However, it should be expanded to include discussion about
      i. meaningful
      ii. frequent (number of discrete times per month and number of transitions)
      iii. substantial
      iv. continuing
   c. There was general consensus on the following definition of Decision-Making Responsibility:

      "Decision-making Responsibility", (replaces the term "Joint Legal Custody"), means the condition under which both parents share 'legal custody' and neither parents rights are superior, except with respect to specified decisions as set forth by the court or the parents in the final judgment or order.

      Referencing the work by Dr. Lamb, the member consensus was to include discussion about or definitions for the issues listed below: *Legal custody decision*
      i. Shared
      ii. Final - Consultation requirement, if dispute final decision lies with parent A.
      iii. Sole – For example, where significant domestic violence or abuse exists, or a parent is incarcerated.
   d. Primary residence should be defined for instances of substantially equal parenting time. Suggested thoughts below:

      The child's address for purposes of determining school district, when necessary for federal aid and tax purposes (head of household, child care and dependency exemptions) [where it is necessary… the court shall make it clear in the decree…] Move 25-403.07 into definitions – should the

designation of primary residence be added to the list of items that should be addressed in a parenting plan - *See Florida Statutes & Federal Statutes*

e. Unanswered question – should terms included in the policy statement be defined.
f. **Action Item:** Tom Alongi will provide additional terms to be considered for inclusion by the drafters of this section.

8. <u>25-403; best interests of the child</u>
   a. This section is being drafted with the understanding that it applies to decision-making responsibilities and parenting time.
   b. The wishes of the child should be limited to the discussion of parenting time.
   c. Paragraph A.3., as read by Bill, should be placed into the draft.
   d. The domestic violence protective statement, previously in Paragraph C.6., should be returned to the paragraph.
   e. Paragraph C.8. A question was raised about why a conviction is required only in this case; Tom Alongi and Patricia Madsen will consider and report on this at the next meeting.
   f. Rework Paragraph D into a more positive statement. Suggested language that was offered by Judge McNally and Tom Alongi is below.

      The court shall adopt a parenting time plan that maximizes access with both parents consistent with the child's physical safety and emotional well being.
9. <u>Decision Tree</u>
   a. The members discussed, what is being termed at the moment as, the "Decision Shrub". The shrub currently contains: establishing jurisdiction, setting forth public policy, defining terms and addressing special circumstances (domestic violence, substance abuse, sexual molestation, etc.)
10. <u>Brainstorming</u>
    a. <u>Research</u>
       i. Tom Alongi shared that he had contacted the National Conference of State Legislatures and National Council for Juvenile and Family Court Judges (NCJFCJ) seeking information about other states' experiences with the topics of domestic violence and joint custody presumptions. He will update the group upon receipt of information. He is working with Katheryn Yetter, Staff Attorney at NCJFCJ.
       ii. Ensure that the research evidence is as non-political as possible, and is of high academic caliber
       iii. Members are asked to send their research to Susan.
    b. <u>Legislative input</u>
       i. Judge McNally and Steve Wolfson provided ideas on how to maintain communication with the legislature. Including: Draft a letter on behalf of workgroup that invites legislative stakeholders to the meeting(s) for the purpose of engaging their input and keeping them up-to-date.
       ii. The recipients should at minimum include Senator Linda Gray, Representative Steve Court, Senator Allen and Katy Proctor, AOC Legislative Liaison. Another legislator who was mentioned was Rep. Adam Driggs.
       iii. In August/September the members should review the makeup of the Senate/House Judiciary, Health and Human Services and other committees, and research staff to the Minority and Majority Caucuses to which the proposed legislation could be assigned, invite beginning in August to start the dialog. Set a wide net, including those involved with SB1314.
       iv. Dr. Fabricius asked Steve Wolfson to act as our "Legislative Liason"
    c. Because completely rewriting the statutes may create an imbalance among fully and lesser funded lobbying factions, these folks should be invited to the table.
    d. The goals are to address A.R.S. 25-401 et. seq. to make it clear and understandable without changing the good concepts contained therein.
11. <u>Website</u>

    Our materials will soon be our website: www.azcourts.gov > AZcourts > Committees and Commissions > Supreme Court Committees > Domestic Relations Committee > our site coming soon!

Votes Taken: (continue on separate sheet if necessary)

1. No motions made or votes taken.