

**Ad Hoc Custody Workgroup  
Minutes**

<b>Date:</b> May 27, 2010	<b>Time:</b> 10:00 a.m. – 1:00 p.m.	<b>Location:</b> State Courts Building Conference Room 230
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**Minute Taker:** Susan Pickard

**Voting Members Attending: Quorum attained**

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| <ul style="list-style-type: none"> <li>■ William Fabricius, Chair</li> <li>■ Thomas Alongi</li> <li>■ Sidney Buckman</li> <li>■ Daniel Cartagena</li> <li>■ Brooks Gibson</li> </ul> | <ul style="list-style-type: none"> <li>■ Grace Hawkins</li> <li>■ Judge Colleen McNally</li> <li>■ John Weaver</li> <li><input type="checkbox"/> David Weinstock</li> <li><input type="checkbox"/> Steve Wolfson</li> </ul> |
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**Participating Members Attending:**

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| <ul style="list-style-type: none"> <li><input type="checkbox"/> Bruce Cohen</li> <li>■ Mike Espinoza</li> <li>■ Patrick Lacroix</li> <li>■ Kendra Leiby</li> <li><input type="checkbox"/> Patricia Madsen</li> <li><input type="checkbox"/> Donnalee Sarda</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Ellen Seaborne</li> <li><input type="checkbox"/> Russell Smolden</li> <li><input type="checkbox"/> Judge Randall Warner</li> <li><input type="checkbox"/> Thomas Wing</li> <li><input type="checkbox"/> Brian Yee</li> </ul> |
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**Staff/Admin. Support:** Kathy Sekardi, Kay Radwanski

**Guests:** Joi Davenport, Ariel Serafin, Richard Franco, Gina Kash (legislative researcher, House Health and Human Services)

**Matters Considered:** Quorum in attendance.

1. Announcements

- a. Dr. Fabricius will be on sabbatical for one year beginning at the end of May. Grace Hawkins has volunteered to act as meeting moderator during this period. In this position, Grace will assist with meeting flow.
- b. Detailed minutes of each of this workgroup's meetings will be generated to document the process for possible publication. This idea was generated by Peter Salem, executive director of the Association of Family and Conciliation Courts.
- c. Process changes
  - i. Call to the Public/Brainstorming – each person will be given two minutes – during this portion of the meeting. Additional time will be available to address clarifying questions from the other members. The brainstorming session is not intended to be a substantive discussion.
  - ii. Section versions – The first version of a section will be presented to gather the initial reactions of the workgroup. The second version of a section, which may incorporate the initial reactions, will be presented to gather detailed input. The third version, when presented, should be the final or near final version of the proposed section. The final legislative version will be created upon the finalization of each section.

2. Call to the Public/Brainstorming

- John Weaver presented statistical data regarding the increase in the number of statutes enacted over the last ten years.
- Judge McNally asked that the workgroup develop a method for addressing definitions after approving changes to each section. She recommended that the definitions be looked at substantively.
- Sidney Buckman reminded the members of the importance of using broad language that does not

micromanage the court and preserves judicial discretion.

- Tom Alongi asked for direction on how the workgroup should handle ideas that are radically different from ideas presented by a taskforce.
  - Mike Espinoza reminded the members of the passage of SB1314 and the inherent guidance it received from this workgroup.
  - Dr. Fabricius set forth the process for sharing ideas with or joining a section taskforce.
    - Anyone having ideas they would like to share with a task force should send them to Susan Pickard. Susan will then share the idea with the members of that taskforce.
    - To comply with the Open Meetings Law, there should be no voting or polling outside of public meetings. No taskforce can consist of a quorum of the voting members of the main workgroup. Others can join a taskforce as long as it does not contain such a quorum.
    - Anyone having an interest in joining a taskforce should call Dr. Fabricius or Grace Hawkins.
3. 25-401: Jurisdiction (Taskforce: Tom, Sid, Colleen) No printed version was handed out to the Workgroup.  
Tom Alongi read a prepared revision to the statute. He noted that the proposed language adds a new sentence regarding jurisdiction, the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) and the Parental Kidnapping Prevention Act (PKPA). It also changes “custody” to “decision-making responsibility.”
4. 25-402: Definitions (Taskforce: Tom, Sid, Brooks) Version 1, May 26, 2010.  
Mr. Alongi suggested that a list of definitions should not be built just for the sake of having a list. Judge McNally recommended that at the end of each presentation, members should decide on words from the presentation that should be defined. She suggested waiting until later in the process to approve definitions since they could change as other parts of the statute are developed.

Members were asked to decide on the term for what is now known as “legal custody.” With the choices of “decision-making responsibility,” “shared decision-making authority,” and “parental decision-making,” the consensus was to use the term “parental decision-making.” As each section is completed and approved, it will be reviewed for necessary additions to this section.

Some of the concerns raised during the discussion of this term included:

- The need for the term to make sense in context. It was suggested that others, such as judges and members of the Committee on Superior Court, be asked for feedback.
- The possibility that other jurisdictions might not understand the term. Judge McNally recommended that a sentence in the Definitions handout should be included to ensure full faith and credit. The sentence reads: “For purposes of interpreting or applying any federal law, uniform code, or other state statute, ‘decision-making responsibility’ shall have the same meaning as ‘legal custody.’”
- Whether the term should include “joint,” “final,” or “sole” should be added to the term and whether such an addition would move the term away from the model. Members’ opinions were varied, and there was a concern about the power behind the “decision-maker” term. For example, could a parent who has sole decision-making power dictate what takes place during the other parent’s parenting time? Judge McNally noted that sole custody might be the appropriate order for some families but not for others. Dr. Fabricius suggested that an explanation of the court’s authority should be included. He also noted that the workgroup’s April meeting minutes endorsed the three-part definition.
- The effect of decision-making authority and parenting time. For example, if one parent scheduled a child’s extracurricular activities during the other parent’s time with the child, would the other parent be entitled to make up the time? Would that constitute deprivation of parenting time? How is time given back to a parent when there is a geographic distance involved? Should an activity that a child enjoys be taken away from him/her? Grace Hawkins noted that part of the parenting time plan should look at how to deal with decisions long term, to get parents thinking about how they will discuss and agree, and what to do if they cannot agree. Danny Cartagena suggested that a plan should include three to four emails per week regarding schedules. If parents share more decision-making, then more collaboration occurs. He said parents need to discuss and find solutions, and if

they are more on even ground, they will be more reasonable.

- Whether a child's wishes, rather than "best interests," should carry more weight. Members discussed whether this would be appropriate in statute, if it would lead to conflict in mediation, and could cause a child to be caught in the middle between the parents.

Dr. Fabricius recommended that these concerns be considered by the taskforce.

5. 25-403; Criteria for Best Interests (Taskforce: Bill, Grace) Version 3, May 21, 2010.

Dr. Fabricius presented an overview of the revisions that have been incorporated into Version 3. Concerns about specific sections in Version 3 include:

- C(7) – "The historical nature of the relationship between the parent and the child including whether one parent performed a disproportionate amount of primary care, the current relationship between the parent and the child, and the potential future relationship of the parent and the child."
  - Mr. Cartagena had concerns about the term "primary care" and whether one parent would be pitted against the other in an attempt to be labeled the primary care provider. He said that, prior to divorce, one parent might try to control the other parent's parenting time to establish the schedule as the *status quo* arrangement. Such a situation could put the judge and evaluators in difficult positions. He suggested substituting the phrase "the level of involvement" or "the level of active involvement in the child's life."
  - Dr. Fabricius said the purpose of this language is to try to isolate cases where a parent has been absent and not involved. The intent is not to have the court measure involvement because things change after divorce but to consider the minimally involved parent. Mr. Alongi said it is not a matter of disputing a parent's involvement because of a parent's work. He saw a problem with disbanding the criteria altogether and suggested that possibly separate criteria would be suitable. He said the law cannot afford to cater to one specific type of relationship.
  - Mike Espinoza noted the absence of the term 'abandonment' in this version. Mr. Alongi said that *abandonment* is a term of art, and the juvenile code has a definition of *abandonment* that can lead to termination of parental rights. Judge McNally said she preferred the addition of the new criteria and suggested avoiding terms on edges, like *abandonment* or *primary*.
  - Mr. Alongi recommended that past involvement be kept as a separate factor. He suggested using the phrase "*disproportionate amount of care*" and removing the word *primary*.
  - Brooks Gibson noted the use of the term *historical* and the need to address the "gatekeeper" problem. Mr. Alongi said that C(6) resolves the "gatekeeper" problem. Mr. Espinoza suggested adding "complete" to *historical relationship*. Mr. Alongi questioned whether section C(3) already covers this concept.
- C(8) – "Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02."
  - John Weaver said that Arizona is the only jurisdiction that requires a conviction of false reporting, not just the making of a false report. He said this could lead to abuse of female children. It was noted that a proposal in SB 1314 that would provide for economic sanctions against a parent who made unfounded allegations of parental unfitness against the other parent had been amended out of the final bill. Mr. Weaver said the Florida statute considers evidence that either parent has knowingly provided false information. Mr. Alongi said that the Arizona statute sounded like compromise language and suggested that the group look at the legislative history behind the Arizona provision.
  - Mr. Buckman said false reporting of sexual abuse is not epidemic, but it would be worthwhile to review the legislative history. Mr. Alongi volunteered to do the legislative research. Ms. Hawkins added that parents are required to report allegations of abuse, while Dr. Fabricius speculated about bad faith or strategic reports of abuse.
  - Mr. Espinoza questioned whether attorney fees sanctions should be included in this section. Mr. Alongi said that SB 1314 amends A.R.S. § 25-324 to provide for attorney fees.
  - Mr. Espinoza said there should be a provision that allows one parent to require information

about the other parent's partner, to do a criminal background check on that person, and to have the names of other members of the household. Judge McNally said the court could grant such a motion, but she was not sure this provision belongs in the best interests section because it pertains to the type of information parents have to disclose to one another. Mr. Alongi suggested considering a section regarding "mandatory disclosures."

6. Decision Tree (Taskforce: Tom, Sid, Colleen) Version 1, May 26, 2010.

Mr. Alongi briefly presented the group's initial proposal for

(1) a new Section 104 entitled Mandatory Preliminary Inquiry: Special Circumstances. This section would precede current A.R.S 25-403, and

(2) a new Section 105 entitled Intimate Partner Violence and Child Abuse. This section would replace A.R.S. 25-403.03 and be moved to follow Section 104 and precede 25-403.

The purpose is "to provide a clear decision process that requires the court to first determine whether there are special circumstances to limit the available choices for decision-making and parenting time prior to considering best interests. To describe the factors that must be considered in determining whether a parent has committed intimate partner violence or child abuse and, if so, to preclude or limit that parent's ability to exercise decision-making responsibilities and/or parenting time." Dr. Fabricius commented that the descriptions in the new Sec. 105 of the various behaviors in such clear and concrete terms should be very helpful to courts and informative to parents. The taskforce is continuing its work on this section.

7. Web Site – The page is in development, and Ms. Pickard is drafting appropriate descriptive language for it. The page will launch from a link on the Domestic Relations Committee web page.

**Votes Taken:**

1. None