

**Ad Hoc Custody Workgroup  
Minutes**

<b>Date:</b> June 22, 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:** Kay Radwanski, Susan Pickard

**Voting Members Attending: Quorum attained**

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| <ul style="list-style-type: none"> <li>■ William Fabricius, Chair (telephonic)</li> <li>■ Thomas Alongi</li> <li>■ Sidney Buckman</li> <li>■ Daniel Cartagena (telephonic)</li> <li><input type="checkbox"/> Grace Hawkins</li> </ul> | <ul style="list-style-type: none"> <li>■ Brooks Gibson (telephonic)</li> <li>■ Judge Colleen McNally (telephonic)</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><input type="checkbox"/> Mike Espinoza</li> <li><input type="checkbox"/> Patrick Lacroix</li> <li>■ Kendra Leiby</li> <li>■ 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>■ Brian Yee</li> </ul> |
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**Staff/Admin. Support:** Kathy Sekardi, Kay Radwanski, Susan Pickard

**Guests:** Theresa Barrett, Administrative Office of the Courts; Joi Davenport, parent; Ariel Serafin, CLS Intern

**Matters Considered:** The meeting was called to order without a quorum in attendance by Sidney Buckman.

I. Welcome and Announcements

William Fabricius reminded the members of the Workgroup's web page. The web site has a link on the DRC site.

II. The Call to the Public (taken out of agenda order).

Joi Davenport addressed the members. She disagrees with the suggestion that was made on 5/27 regarding make-up time for extracurricular activities that occur during the other parent's time with the child. Her belief is that both parents should cultivate the child's interests and make-up time for one parent may unreasonably punish the other. Ms. Davenport also recommended that the group keep the primary caretaker language. She is in agreement with the premise that removal of that consideration from the best interest section may have a profound effect on the child. She presented her research gathered from speaking with custody evaluators, parenting coordinators and therapeutic interventionists. Clarifying questions were asked and answered.

III. 25-401: Jurisdiction (Taskforce: Tom, Sid, Colleen) No printed version was handed out to the Workgroup.

Given the work accomplished during the May 27 meeting, Tom Alongi noted that this section does not require further amendment. This section will come before the Workgroup at the August 6 meeting for consideration for final approval.

IV. Minutes (taken out of agenda order)

With a quorum achieved the minutes for May 7 were approved. Because the minutes for May 27 were just received and could not be reviewed in total before the meeting, they will be considered for approval at the August 6 meeting. Additionally, the minutes for March 19 will also be addressed during that meeting.

V. Brainstorming (taken out of agenda order)

**Question:** How will stakeholders know about the information being posted to the web site?

- A. The Domestic Relations Committee (DRC) members should be advised of the site and alerted when items are posted for comment. They should be kept informed of the Workgroup's progress and direction. The DRC members should be encouraged to speak with colleagues and solicit comments
- B. The members were reminded that during the 5/27 meeting Steve Wolfson volunteered to liaise with the legislature.

**Question:** When we post final proposed amendments, will we be explaining the changes?

**Question:** How do we gather comment before the January legislative deadline?

- A. Agenda item for August 6.
- B. Invite Katy Proctor to August meeting for insight regarding who at the legislature should be contacted and how best to have the discussion.
- C. Some individuals should be met with rather than asking them to join a meeting to make public comment.
- D. Elections may have an impact on which legislators we speak with and when. It will be crucial to educate the legislators about custody arena before January.

Stakeholders were roughly defined as legislators, members of the State Bar Family Law Section, judicial officers, and mental health providers.

**Question:** Will we be voting to approve the statute a section at a time or compiling them into final proposed amendments to the statute then voting?

- A. Label each section as "FINAL VERSION" when no further amendment is needed.
- B. Send separate from other meeting materials clearly designated as "FINAL VERSION" and as a voting item on the agenda.
- C. Steering committee will compile the FINAL VERSION's into a comprehensive custody statute.

**Question:** Is this a bill that will be moving forward in the 2011 legislature? Is there a way to seek an extension, so that this legislation is thoroughly researched and vetted?

- A. Chair urged the group to stay on track with the current timeline to retain the energy and momentum.
- B. The consensus of the members was that continuing contact with Senator Allen regarding our progress and direction is necessary.
- C. It was acknowledged that once this product is finished, time will be needed for public comment and maybe adjustments.
- D. Public hearings at the DRC level are anticipated by the Workgroup members.

**Question:** What should be presented at the next DRC meeting?

- A. A progress report.
- B. Steering committee to make plan

VI. 25-403; Best Interests (Taskforce: Bill, Grace) Version 4, June 21, 2010 (incorporating feedback from workgroup meeting on May 27, 2010 and comments from Tom Alongi sent on 5/17)

- A. Because parenting plans may be different for children of different ages, the child's age has been added to paragraph (C)(1)
- B. Paragraph (C)(3) - ~~the child's parent or parents~~ – This language was struck because these interactions and interrelations are now addressed in paragraph (C)(7). There was discussion about whether to include references to criminal conduct of "other persons" and whether parents should tell each other who else is living with the child.
- C. Paragraph (C)(7) – Judge Cohen's comments, which were included in the meeting materials, regarding concern about blending parenting time factors with custody factors were reiterated. Judge Cohen had noted that this revision was closer but recalls struggling with making 7 work with idea of other relationships.
- D. Paragraph (C)(8) – The members discussed the use of alternate language such as, "clear, convincing

evidence of false reporting.” Do we need to expand this paragraph to consider other false accusations with levels less than “conviction?”

Tom Alongi introduced Ariel Serafin. Ms. Serafin shared her research into the use of the word “conviction” in this paragraph. She ordered and received a recording of the December 9, 2003, Family Services Committee meeting. The brief portion of the tape regarding the omnibus striker bill that addressed the use of “conviction” yielded no additional information.

Danny Cartagena proposed adding “convicted of false reporting of child abuse, neglect, or domestic violence.” Domestic violence cannot be added to this section because it is not a crime to falsely report domestic violence. Mr. Cartagena added that it may be worth putting domestic violence false allegations on par with false reports of child abuse.

Kendra Leiby noted that the crime of domestic violence false allegations would need to be added to Title 13 before any language could be added here.

It was suggested that 13-2907.01 which states:

13-2907.01. False reporting to law enforcement agencies; classification

A. It is unlawful for a person to knowingly make to a law enforcement agency of either this state or a political subdivision of this state a false, fraudulent or unfounded report or statement or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer.

B. Violation of this section is a class 1 misdemeanor.

**Comments:**

1. Whether this language prevents or encourages false reporting
2. Impact of adding domestic violence false allegations on victim reporting where mandatory reporting does not exist.
3. Collateral effect on privacy of peoples’ homes where batterers try to persuade victims not to report
4. Balancing the victim protections with protections for those who are falsely accused in the areas of child abuse or neglect, or domestic violence

It was suggested that Judge Brotherton be invited to the next meeting to hopefully shed light on the conviction standard.

**Action Item:** Tom Alongi volunteered to call Judge Brotherton for information about the origination of “conviction” language.

**Action Item:** John Weaver was asked to send his research to Susan for distribution to the members.

Overall the group agreed with the amendments to paragraphs (C) 1, 3 and 7.

The members will revisit the discussion on paragraph (C)(8) during the August 6 meeting. This will allow time for further research into whether to expand beyond “conviction” and the impact of adding language about false allegations of domestic violence.

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

The following structure is being drafted for the amended sections of 25-401, et. seq.

- A. Jurisdiction - Does the court have jurisdiction? Should include reference to UCCJEA.
- B. Public Policies - promote safety and involve both parents
- C. Definitions - Decision-Making, access A.R.S. § 8-531 to be used for comparison purposes
- D. Special Circumstances

1. **Mandatory Preliminary Inquiry; Special Circumstances**

This section as proposed would make it clear that the court must first determine if special

circumstances exist before getting into parenting time, custody, etc. Current custody statutes address murderers and sex offenders but remain silent on other types of criminals. The best interest considerations don't include prior convictions for other crimes (armed robbery).

## 2. Intimate Partner Violence and Child Abuse

The phrase "domestic violence" has gotten a black eye like "legal custody." It implies violence had to occur in the home, when separation violence, which is equally or even more prevalent, often occurs outside the home. By using the term "intimate partner violence" we are trying to convey a broader scheme.

- a. Subparagraph A is a combination of NCJFCJ definition of domestic violence and language from research and is an introduction to the topic.
- b. Subparagraph B is identical to current statute. Language was added to indicate that an act of domestic violence is just as damaging to a child and not in his/her best interest whether the act was witnessed by the child or not. Children are affected even if domestic violence occurs outside their presence; they witness the property damage, injury to parent, atmosphere of hostility and fear.
- c. Subparagraph C addresses significant history of domestic violence.  
**Suggestion:** define "significant"
- d. Subparagraph D addresses instances where a preponderance of the evidence shows that a parent has previously committed an act of intimate partner violence or child abuse not listed in subparagraph C, the offending parent must prove that he or she can still appropriately exercise decision-making responsibility despite the history of abuse or violence. New to this is the victim has the opportunity to ask court to decide that the offending parent has not proven his/her suitability.
- e. Subparagraph E provides the offending parent in D a means of showing that he/she is a candidate for decision-making responsibility.
- f. Subparagraph F addresses coercive control. Research exists that shows that some acts of domestic violence are prompted by controlling motivation. The controlling element makes domestic violence offenders dangerous and sets a poor example for children. The court would have to examine whether one parent coercively controlled the other. Coercive control has been defined by 19 factors drawn from domestic violence screening tools used by shelters, coalitions, and attorneys. The concern is how do we recognize the red flags of coercive control? When the factors appear in clusters, that's when there's greater concern.

### Comments:

- a. There are going to be many families to whom the special circumstances section does not apply. Laying it out simply assists a person in determining whether the section applies to them or not.
- b. The educational component for someone in this situation that is detrimental to kids is good.
- c. Gives all involved transparency about behavior and consequences of conduct.

**Action Item:** Members were asked to read the materials about intimate partner violence for detailed discussion at the August 6 meeting.

### Votes Taken:

- I. Motion to accept May 7 minutes – seconded – approved 5-1-1  
Mr. Alongi abstained stating he was not present at May 7 meeting.