

# Statute Review Workgroup

## Minutes

<b>Date:</b> June 14, 2011	<b>Time:</b> Noon to 1:00 p.m.	<b>Location:</b> AOC – Conf Room 345A
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**Minute Taker:** Kay Radwanski

**Members Attending:**

<input type="checkbox"/> Comm. Stephen Kupiszewski – Acting Chair	<input type="checkbox"/> Veronica Hart Ragland
<input type="checkbox"/> Theresa Barrett	<input checked="" type="checkbox"/> Janet Sell
<input type="checkbox"/> Pat Griffin	<input type="checkbox"/> Bianca Varelas-Miller
<input checked="" type="checkbox"/> Brandon Maxwell - <i>telephonic</i>	<input checked="" type="checkbox"/> Donald Vert

**Staff/Admin. Support:** Kay Radwanski, Julie Graber

**Guests:** Amy Love, AOC Legislative Liaison

**Matters Considered:** Meeting commenced at 12:11 p.m. without a quorum. Janet Sell led the meeting in the absence of Comm. Kupiszewski.

Minutes from the May 10, 2011, meeting were not voted upon because of the lack of a quorum. Ms. Sell clarified that regarding proposed language for ARS § 25-505.01, the first initiative is to encourage employers to transfer withholdings to the clearinghouse by electronic means.

Members discussed:

1. ARS §§ 25-327, 25-503, and 25-527, regarding overpayments of child support to custodial parents  
 Members discussed the challenges of creating provisions to adjust for overpayments to a custodial parent prior to the termination of the support obligation. Members agreed that while ARS § 25-527 is the only one of the above-referenced statutes that directly addresses overpayment, it is not the appropriate statute in which to place a provision regarding overpayment that occurs prior to the end of a child support case. ARS § 25-527 applies only when the obligation to pay child support has ended. For active IV-D cases, offsets for overpayments would create errors in Atlas as that system works only in a forward direction. Atlas cannot move backward and split a payment between the parents. The same challenges would not exist in non-IV-D cases. Also, public policy might be offended by the notion that a child would be deprived of support to correct an accounting imbalance between the parents. As to the effect on parents, the overpayment may or may not be significant, depending on their individual financial circumstances. The idea of adding language that would give a judge the discretion to enter orders to address overpayments was discussed. Ms. Sell will bring language as a proposed amendment at the next meeting.
  
2. Personal injury awards  
 Ms. Sell explained that six states – Texas, Pennsylvania, Rhode Island, Massachusetts, Oklahoma, and New Jersey – have laws mandating insurance companies and attorneys to search lien databases, including child support, before distributing personal injury awards. Nearly half of the insurance

companies nationwide voluntarily participate in a consortium called the Child Support Lien Network. She said some Arizona insurance companies have gotten information from this network and have made payments in IV-D cases. Arizona does not have high performance measures for child support collection, and mandatory participation in the Network might lead to improvement. For a lien to appear in the Network database, DCSE would first have to file a lien. A public policy argument could be made that child support judgments should be paid when funds are available. She noted that Massachusetts has had a lien program for more than ten years and performs well in collecting child support payments. Ms. Sell will bring draft language to the next meeting.

### 3. Strategic Agenda

Brandon Maxwell raised two concerns for consideration. First, he suggested that when a parent remarries and chooses not to be employed, half of the income earned by the new spouse should be attributed to the non-working parent. He said that on some Internet message boards, there is a perception that one parent is paying child support to augment the other parent's new lifestyle. During discussion, it was noted that the non-working parent may not have the capacity to earn half of what the new spouse earns. There are factors in place to determine how much, if any, income should be attributed to an unemployed or underemployed parent. The Child Support Guidelines address the issue of income attribution, so this is not a statutory issue within the scope of the Child Support Committee. In addition, case law provides direction for situations where a parent receives a regular benefit (e.g., cash from his or her own parents).

Second, Mr. Maxwell asked why child support hearings and parenting time/custody hearings are conducted separately in two different courts. He said requiring parents to keep coming back to court increases animosity between them and does not benefit their children. Ms. Sell explained that IV-D cases are conducted under federal law, which expressly prohibits the court from addressing parenting time and custody issues during a IV-D hearing. The purpose is to expedite processing of child support cases for the benefit of children. Also, as public policy, a parent's obligation to support his or her children is separate from the right to spend time with the children. Mr. Vert noted that in non-IV-D cases, the court can hear the custody, parenting time, and child support issues concurrently.

### 4. Next Agenda

- Ms. Sell will prepare draft language regarding overpayment of child support.
- Ms. Sell will draft a proposal regarding collection of child support arrears from personal injury awards.

Meeting adjourned at 1:07 p.m.