

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes
State Courts Building
1501 W. Washington, Phoenix, AZ
Conference Room 119 A/B
September 16, 2011

MEMBERS PRESENT:

Honorable Linda Gray - <i>telephonic</i>	Honorable Peggy Judd
Honorable Terri Proud	David Horowitz
Theresa Barrett	Ella Maley
Honorable Michael R. Bluff	Patti O'Berry
Sidney Buckman	Donnalee Sarda
Daniel Cartagena - <i>telephonic</i>	Ellen Seaborne - <i>telephonic</i>
Honorable Mary Ellen Dunlap	Russell Smolden
William Fabricius - <i>telephonic</i>	David Weinstock
Grace Hawkins	Steve Wolfson
Danette Hendry	Brian Yee
Honorable Katie Hobbs	Honorable Wayne Yehling - <i>telephonic</i>

MEMBERS ABSENT:

Honorable Lela Alston	Jack Gibson
Todd Franks	Honorable Leah Landrum Taylor
Jeffery Hynes	

GUESTS:

Honorable Carey Hyatt	Maricopa County Superior Court
Lindsay Simmons	Arizona Coalition Against Domestic Violence
Kay Radwanski	Administrative Office of the Courts
Julie Graber	Administrative Office of the Courts

STAFF:

Kathy Sekardi	Administrative Office of the Courts
Tama Reily	Administrative Office of the Courts
Amber O'Dell	Arizona State Senate
Ingrid Garvey	Arizona House of Representatives

CALL TO ORDER

With a quorum present, the September 16, 2011, meeting of the Domestic Relations Committee (DRC) was called to order at 10:05 a.m. by Representative Terri Proud, Co-Chair.

ANNOUNCEMENTS

Representative Proud welcomed the following new members:

- Honorable Wayne E. Yehling – Commissioner, Family Law Bench, Pima County Superior Court
- Honorable Michael Bluff – Associate Family Law Presiding Judge and Conciliation Court Judge, Yavapai County Superior Court
- Honorable Mary Ellen Dunlap – Clerk of Court, Cochise County

Member, David Horowitz, noted that one of his paralegal studies students from Phoenix College was in attendance today.

Representative Proud congratulated Senator Linda Gray, who received the **Century Council** award in recognition of her ongoing dedication to fighting drunk driving, and Representative Katie Hobbs, who was named to the Center for Women Policy Studies' **National Honor Roll of State Legislators**, in recognition of her commitment to women's human rights.

Member introductions were made around the table and on the conference call.

APPROVAL OF DRAFT MEETING MINUTES

The draft minutes for the June 3, 2011 meeting of the DRC were presented for approval.

- MOTION:** To approve the June 3, 2011 DRC draft meeting minutes as presented.
- SECOND:** Motion seconded.
- VOTE:** Approved unanimously.

FAMILY COURT CONCERNS

Donnalee Sarda, member and Executive Director for Defenders of Children, briefly described the agency's mission and explained her concerns regarding family court.

- 1) Parents are sometimes sanctioned for procedural missteps in a fashion that results in punishing the child as well as the parent. For example, a judge may take away parenting time when a parent does not follow a court order. She wondered if judges could make use of other sanctions, such as fines.
- 2) Family court seems to emphasize expedient case processing, sometimes at the expense of a child's wellbeing.
- 3) Judges are ordering supervision at parenting and supervising centers that employ unqualified, unlicensed individuals. There is no oversight or regulation of the parenting centers.
- 4) Judges are ordering reunification therapy for a minimum of one year.

Ms. Sarda requested feedback from the committee and suggestions on how these issues could be addressed.

During discussion, Dr. Yee noted it is generally the *order* for reunification therapy that is assigned for one year, not the therapy itself. He echoed Ms. Sarda's concerns as to the

quality of the supervision by some providers. Grace Hawkins shared that in Pima County they use one contracted provider and that contract is monitored through the Conciliation Court. She also mentioned there is an organization, Supervised Visitation Network (SVN), which sets out guidelines for facilities to follow although there is no regulating body to enforce the guidelines. It was suggested Ms. Hawkins report on the Pima County program be placed on a future agenda. David Horowitz remarked that the courts have improved significantly the time in which family law cases are processed, whereas in earlier times cases could languish for years. He's also observed judicial officers spending additional time with cases when substantive matters, such as complex financial or mental health related issues are present.

Representative Proud suggested that these issues be placed on a future agenda for further discussion.

MEDICAL RECORDS STATUTE

Dr. David Weinstock, member, presented proposed amendments to A.R.S. § 12-2293: Medical Records Statute. Dr Weinstock discussed a lack of clarity in the statute due to contrasting language in paragraphs B(1) and B(3), which leaves practitioners uncertain as to how to process records requests. He suggests the addition of the term “adult” in paragraph B(1) and the addition of the term “minor” in paragraph B(3).

- MOTION:** To adopt the proposed language as discussed.
- SECOND:** Motion seconded.
- VOTE:** Approved unanimously.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

Members, Steve Wolfson and Brian Yee, Co-Chairs of the Substantive Law/Court Procedures Workgroup (SL/CP), updated the committee on the progress of the custody statute review since the last DRC meeting. He reiterated the workgroup's history and task and reviewed their approach. Currently there are two different drafts proposed by various members of the workgroup, in addition to the original Legislative Council version. He reported that this version has been circulated to judges on the Maricopa County Family Law Bench and the State Bar of Arizona Family Law Section for input. Mr. Wolfson related the challenges the SL/CP has faced in obtaining a quorum and therefore, stated no proposal has been voted on as of yet.

Dr. Yee shared that some of the feedback received from the public and others includes concerns with the length and complexity of the statute, as well as the content and language, which he states stems from the innovative nature of the product. He explained that the three drafts are attempts to respond to those concerns. Mr. Wolfson noted that they are seeking guidance from the DRC, as they are faced with two main issues:

- 1) To provide a comprehensive version or to provide a less comprehensive product that incorporates the concepts and ideas put forward by the Ad Hoc Custody Workgroup.
- 2) Whether or not to include the domestic violence factors and incorporate them into a provision that resembles the current 25-403(A), “best-interest” factors, or separate the domestic violence provision into a structure like the current 403.00 section. The controversy is whether or not to include the aspect of domestic violence known as “coercive control” into the version and whether or not to include the notion of false allegations of domestic violence.

At this point, David Horowitz suggested a few agenda items the workgroup could bring before the DRC for discussion:

- 1) Discuss the recommendation of the SL/CP regarding the scope of the final work product.
- 2) Outline the substantive factors that are controversial.
- 3) List and outline the coercive control issues for the DRC.

MOTION: To place the three suggested items on the next DRC agenda.
SECOND: Motion seconded.
VOTE: Approved unanimously.

Some members would like further discussion of whether to include domestic violence language within the custody statute and where to locate the language, if it is included. It was agreed to include this fourth item on the next agenda:

- 4) The DRC will discuss and decide whether or not to include domestic violence language within the custody statute and where to locate the language, if it gets included.

MOTION: To amend the above motion to include item number four as an item on the next agenda.
SECOND: Motion seconded.
VOTE: Approved unanimously

Also, Senator Gray would like to hear the concerns and recommendations from the State Bar Family Law Section regarding the coercive control issue. Mr. Wolfson stated the Family Law Section Executive Council will be meeting in October and he will report to the DRC a summary of their recommendations, or he will invite the Executive Council members to report at the next DRC meeting.

Senator Gray suggested that Amber O’Dell, Senate Research Analyst, prepare a chart, or summary report that compares all of the current custody versions and present it in a concise, easily decipherable manner for the next meeting.

CALL TO THE PUBLIC

Speaking under a pen name, Bryan Times addressed the committee; however, his comment is considered out of order and will not be recorded in the minutes.

Luis Martinez discussed his concerns regarding false allegations of domestic violence, and stressed that the committee needs to include this issue in the custody statute if domestic violence is to be included.

Jeff Deiley thanked the committee for considering the public's point of view on these matters. He stated he appreciates the serious approach the members take to their work on this important issue and encouraged them to continue their work.

Michael Espinoza stated that the issue of false allegations is covered in SB 1314. He feels there is no accountability for professionals whom he believes are often in collusion with one of the parents. He stated the public wants both parents to have maximum parenting time if the parents are capable and fit to parent. He is concerned that the workgroup and committee's is so focused on domestic violence language that it does not touch on important language in the custody statute that needs revision.

Brent Miller stated that the system is a meat-grinding process with a bias against men. He maintained there are no remedies for false allegations and no sanctions for mothers who make false allegations. He also stated there are five proposals to consider if the Ad Hoc Custody Workgroup product is included, and there is no quantifiable evidence to validate the expansion of domestic violence language. In addition, he asserted that the statute uses "legalese" and is not suitable for use by pro pers.

Eddie Olivares asked that the committee look more closely at the problem of false allegations and its effect on children.

Alric Kunitz thanked the committee for allowing him to speak. He addressed concerns related to therapeutic intervention for divorcing parents with custody problems. He spoke to his personal situation in which therapy was ineffective and the court process failed them. He also asked that false allegations be given the attention they demand due to their detrimental effect on children.

Crystal Stapley spoke regarding coercive control, domestic violence, and false allegations language in the statute. She stated the committee needs to be very careful because this language will allow one parent to use the system against the other parent. She stated this will simply undermine the children.

Joi Davenport expressed her feelings that the opponents of coercive control and domestic violence language are wrong. She reiterated what the goals of the Ad Hoc

Custody Workgroup were, which included adding new provisions with specific considerations and procedures that will enable litigants, judges, and attorneys to identify and evaluate cases involving domestic violence and child abuse. She stated that abuse exists and currently the family court fails to protect the children from these abusive situations and a change is needed.

Lindsay Simmons with the Arizona Coalition Against Domestic Violence stated that 49 states accept that domestic violence and child custody are inextricably linked, and argued that the domestic violence language needs to remain in Title 25. She asserted that coercive control is real, and that members of the SL/CP workgroup heard from numerous experts from around the country as to why including coercive control is a step toward safety for victims. Merely focusing on physical injury does not relate what victims of coercive control really experience. She also contended that the occurrence of intentional and malicious false allegations is actually very low. Moreover, she noted the draft bill does address sanctions for litigation misconduct such as making false allegations. The sanctions include financial, civil contempt, and possible modification of parenting time.

ADJOURN

Meeting was adjourned at 12:15pm.

NEXT MEETING

Friday, October 21, 2011
Conference Room 345 A/B
State Courts Building
1501 W. Washington
Phoenix, AZ 85007