

# DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – January 16, 2004

## PRESENT:

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## CO-CHAIRS:

Hon. Mark Anderson, Co-Chair

Hon. Karen Johnson, Co-Chair

## MEMBERS:

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Hon. Karen Adam

Hon. David Bradley

Hon. Bill Brotherton

Sidney Buckman

Kat Cooper

Frank Costanzo

William Fabricius

Hon. Beverly Frame

Nancy Gray

Bill Hart

Terrill J. Haugen

Jennifer Jordan

Ella Maley

Hon. Dale Nielson

David Norton

Steve Phinney

Karen Kretschman

Ellen Seaborne

Kelly Spence

Judy Walruff

Steve Wolfson

Debbora Woods-Schmitt

Brian Yee

Jeff Zimmerman

## GUESTS:

Michael Durham

Martin Susnjara

Sharon Dautrich

Julianna Koob

2<sup>nd</sup> Spoken Voice

Self

House of Representatives

AZ Coalition Against Domestic Violence

## STAFF:

Megan Hunter

Elizabeth Portillo

Administrative Office of the Courts

Administrative Office of the Courts

The meeting was called to order at 10:12 a.m. with a quorum present.

#### **APPROVAL OF MINUTES**

**MOTION:** Karen Adam made a motion to approve the minutes as submitted. Ellen Seaborne seconded the motion. Approved unanimously.

#### **ANNOUNCEMENTS**

Rep. David Bradley was introduced as the House of Representatives member appointed by House Speaker Jake Flake. Karen Kretschman was introduced as the Administrative Office of the Courts member, replacing Janet Scheiderer who resigned due to increased work responsibilities.

#### **LEGISLATION**

Bill Hart discussed several bills, including one regarding spousal rape.

Marianne Hardy and Sean Laux discussed domestic relations-related bills that have been introduced in the House of Representatives and Senate, respectively. Updates will be given in the ensuing months.

#### **PERSPECTIVES AND RESEARCH ON CHILD CUSTODY**

Three presentations were delivered telephonically by Dr. Warren Farrell of California, Dr. Barbara Atwood, of Arizona, and Dr. John Guidabaldi, of Ohio.

Dr. Farrell has written books on child custody dealing with measurable and non-measurable data. He asserted that children do best in intact families, then in shared parenting situations, then in situations where the father has primary custody, and last in situations where the mother has primary custody. The best post-divorce arrangement is to make that family as similar to an intact family as possible.

He went on to explain that parental involvement is highly needed after divorce. The most important finding of the father /child reunion: children raised by single dads are more likely to be assertive without being aggressive and more likely to be empathetic.

Sen. Brotherton stated that the ideal situation after divorce is to attempt to do what is in the best interest of each child with regard to the particular child. Dr. Farrell agreed but stated that a 50/50 starting point should exist.

Dr. Atwood discussed trends of custody laws around the country. Most states have similar laws to Arizona, which is to permit 50/50 if it is in best interest of the child. Nine states have joint legal without joint physical. Florida and Louisiana's presumptions are the strongest. Shared parental responsibility in Florida is in the best interests of the child. In seven other states, more modest preferences for joint legal custody (decision making). Six states have a presumption for joint custody (parental agreements) if the parents agree. A few states have a provision that joint physical custody cannot be awarded if both parents do not agree.

Many states give weight to the relationship of the parent and child and past parenting functions. The ALI asserts that all states should submit a flat requirement for parenting plan for all situations. This is being recognized in our bill and she thinks this is good.

Dr. Atwood explained that providing clarity in the law is important because of the high rate of self-represented litigants. The term “parenting” may have unintended consequences. Other states use terminology such as “joint decision-making authority”, “shared and sole parental responsibility”, and “decision-making responsibility”.

She further explained that she reads the bill as a presumption for joint legal and physical custody and believes we need to be clearer on the intent. She asserted that each child is unique, its relationship with each parent is unique and custody deserves some individual assessment. One-size fits all approach is inappropriate for families and children. We do not know the impact of mandated joint physical custody, but it could possibly encourage continued instability among parents who are the bad-mouthing parents. Family court judges are competent to make assessments about the welfare of children without predisposition about a presumption.

Dr. Guidabaldi discussed his research and findings regarding child custody with the group.

#### **CALL TO THE PUBLIC**

There were no requests to speak during the call to the public.

#### **BREAK/LUNCH**

The Committee dismissed for lunch at 11:50. The meeting reconvened at 12:17 p.m.

#### **SUBSTANTIVE LAW WORKGROUP**

##### **JEFF ZIMMERMAN**

Jeff reviewed change made to the proposal since the December meeting as suggested by Committee members. A workgroup meeting was held on December 15<sup>th</sup> to solidify the proposal

**MOTION:** Jeff Zimmerman made a motion that the Domestic Relations Committee recommend this proposal for legislation this year (2004). The motion was seconded by David Norton. The proposal failed to pass on a vote of 9 voting in favor and 10 voting in opposition.

Jeff expressed disappointment over the failure of the proposal, but would like to see the Committee continue to work on it.

Judy Walruff explained that this was not an issue of evidence. Her problem rested with the language and the approach here in Arizona.

Rep. Johnson expressed her desire to see this proposal continue being worked on.

Steve Wolfson suggested that there are other approaches that we might look at which would focus on the core issue of how to help the children of Arizona thrive in divorce situations, perhaps through education and other vehicles to move toward our common goals.

Members thanked Jeff and the Substantive Law Workgroup members for their dedication to this proposal.

#### **DEDICATED FAMILY BENCH**

Rep. Johnson explained that she and Chief Justice Jones had a meeting scheduled to discuss the dedicated family bench issue, but the meeting was canceled. It will be rescheduled as soon as possible. She indicated that Judge Gottsfield, Superior Court in Maricopa County, wanted her to know how much he was in favor of a dedicated family bench.

Brian Yee reviewed a draft of the Court Procedures Workgroup letter that is to be sent to the Trial Court Commissions which will encourage them to consider family law attorneys for the bench. Currently, there is an opening on the Maricopa Superior Court bench

Rep. Johnson wants us to have Annette Corallo, AOC staff to the Trial Courts Commission, invited to a future meeting to discuss those commissions. We will also invite Judge Armstrong to present at a future meeting to discuss the presentation and discussion he had with the trial court commissions in November.

#### **WORKGROUP REPORTS**

The workgroups did not have an opportunity to meet; no reports were necessary.

#### **SURVEY**

Pima County is now starting to collect data for the survey, which will have actual data rather than estimates from judges. Megan will contact them.

#### **INTEGRATED FAMILY COURT**

Megan Hunter provided a brief reported on the pilot projects. The projects have not changed from the previous month.

Ellen Seaborne reported that Coconino County is moving forward with their project. She indicated that this Committee gave this over to the courts to implement a pilot program and it is stuck there. Maricopa County is progressing but Pinal is not..

At this point, there is nothing for the workgroup to do. She reported that she is hearing that in the Courts and Legislature there is money for other things – she would like to follow through with this and keep it on the front burner. We may want to approach the Governor's office.

Rep. Johnson explained that she serves as a member of the House of Representatives Appropriations Committee. She said we started last year with a large deficit, but the

economy has picked up and the state is still looking at \$350 million deficit so spending programs will be hard to initiate. The budget is driven by initiatives and leaves a much smaller piece of the pie for the Legislature to deal with.

**CALL TO THE PUBLIC**

No requests to speak were received for the call to the public.

**NEXT MEETING**

The next meeting will be held on February 20, 2004, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 119.

**ADJOURNMENT**

The meeting was adjourned at 1:30 p.m.