

**DOMESTIC RELATIONS COMMITTEE
MEETING MINUTES**

January 13, 2012
Conference Room 119 A/B
Arizona State Courts Building
1501 W. Washington
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable Linda Gray
Honorable Lela Alston
Theresa Barrett
Honorable Michael R. Bluff
Sidney Buckman
Daniel Cartagena - *telephonic*
William Fabricius
Todd H. Franks - *telephonic*
Grace Hawkins
Honorable Katie Hobbs

David Horowitz
Honorable Peggy Judd
Patti O'Berry
Donnalee Sarda
Russell Smolden
David Weinstock - *telephonic*
Steve Wolfson
Honorable Wayne Yehling

MEMBERS ABSENT:

Honorable Terri Proud
Honorable Mary Ellen Dunlap
Honorable Adam Driggs
Jack Gibson
Danette Hendry

Honorable Leah Landrum Taylor
Ella Maley
Ellen Seaborne
Brian Yee

GUESTS:

Amy Love
Jenny Gadow
Kay Radwanski
Katy Proctor
Patricia Madsen
Michael Espinoza
Lindsay Simmons
Keith Berkshire
Joi Davenport
Honorable Carey Hyatt
Melissa Verburg
Tom Verburg

Rob Rucker
Jarrett D. Williams
Jessye Johnson
Robert Southwick
Annette Burns
Damien White
Connie Phillips
Kelly Perkins
Janet Sell

STAFF:

Kathy Sekardi

Tama Reily

CALL TO ORDER

Without a quorum present the January 13, 2012, meeting of the Domestic Relations Committee (DRC) was called to order by Honorable Linda Gray, Co-Chair. Members and staff introductions were made around the room.

APPROVAL OF MINUTES

The minutes were not presented for approval at this time due to lack of a quorum.

LEGISLATIVE UPDATE

Amy Love presented an update on domestic relations legislation.

HB 2217: Marriage license; fee; premarital course

This bill would allow the Clerk of the Court to reduce the marriage license fee if the couple presents documentation proving they have completed marital counseling specific to curriculum cited in the statute for marriage preparation.

HB 2252: Custodial parents; medication; full access

This bill would allow each parent with joint legal custody to have full access to medication prescribed to a child. The bill would also establish a class I misdemeanor for either parent for denying medication access to the other parent.

HB 2475: Child custody; relocation of child

This bill would increase the current distance from 100 to 125 miles that a parent would be allowed to relocate with the child without having to provide written notice to the other parent.

HB2587: Domestic relations; children; family unit

Sponsored by DRC member, Representative Judd, this bill would require that a dissolution case involving minor children is automatically transferred to the conciliation court. It also outlines specific information and resources that are to be provided to the parents.

HB2625: Marriage; disposition of property

This bill would permit the court to consider damages and judgments resulting from criminal convictions of domestic violence or abandonment.

SB1027: Domestic violence; supervised probation; fine

This bill expands the penalties for misdemeanor domestic violence to include supervised probation, a minimum \$50 fine, and at least 48 consecutive hours in jail.

SB1034: Electronic digital devices; stalking, threatening

This bill expands the definition of the use of a telephone to terrify, intimidate, threaten, harass, annoy, or offend to essentially include all electronic devices. It would also modify the definition of stalking to include using any electronic, digital or GPS device to surveil a person or their internet activity for 12 hours or more or on two or more occasions over a period of time.

SB1127: Child custody; factors

Expands the list of factors the court must consider when determining child custody to include whether an allegation of domestic violence or child abuse was made in bad faith or an improper purpose.

SUPERVISED PARENTING TIME FACILITIES/PROVIDERS

Senator Gray presented proposed legislation that would require any person providing court ordered supervised parenting time to have a fingerprint clearance card. Questions about supervised parenting time providers and facilities have been discussed at recent DRC meetings wherein members of the public brought forward their concerns regarding the lack of regulation in this industry. During discussion, it was mentioned that some agencies have standards requiring that their parenting coordinators undergo background checks, become certified in CPR, and carry liability insurance. Members asked whether extended family members and/or friends who volunteer to monitor parenting time should be subjected to fingerprinting, or should the language limit the requirement to non-family members who are compensated for the service. Some members worried about a potential “chilling effect” for family members who are required to obtain a fingerprint clearance card.

CALL TO THE PUBLIC

Patricia Madsen, a family law attorney, expressed her concerns regarding court-ordered supervised parenting time.

Judge Carey Hyatt, a presiding family court judge, echoed the earlier comments relating to a ‘chilling effect’ when fingerprinting family members.

Michael Coultrap spoke about his experience with a privately-owned supervised parenting time facility.

Ciara Coultrap a psychologist, made comments regarding false allegations.

MOTION: To require only non-family members who are compensated providers of supervised parenting time to provide a fingerprint clearance card.

SECOND: Motion seconded.

VOTE : Motion passed unanimously.

APPROVAL OF MINUTES

As a quorum was now present, the minutes were presented for approval at this time.

MOTION: Russell Smolden moved to approve the minutes of the December 2, 2011, meeting of the DRC as presented.

SECOND: Motion seconded.

VOTE: Motion passed unanimously.

ARS § 25-320(D)(3) CHILD SUPPORT; FACTORS; METHODS OF PAYMENT

Todd Franks reported on the task group’s proposed language for the standard of living provision. The revisions function to clarify and do not add any substantive policy

changes. Along with their recommended language changes, they suggest that the DRC present the proposal to several stakeholder groups for feedback, including the following:

The Child Support Committee

The Child Support Guidelines Review Committee and any workgroup/committee charged with revisions to the child support guidelines

The Arizona State Bar Family Law Section

The Committee on Superior Court

Judge Carey Hyatt, and /or other Maricopa Superior Court family law judge

Presiding family court judges from the 15 counties' superior courts

There was further discussion about the intent of the standard of living provision and whether it should be removed. It was said that in referring to the "intact home with both parents," the statute disregards scenarios where the parents were never married or living together. Senator Gray stated that committee staff will contact the stakeholders groups to present the proposed language revisions.

MOTION: David Horowitz moved to approve revisions to A.R.S. § 25-320(D)(3) as presented.

SECOND: Motion seconded.

VOTE: Motion passed unanimously

CALL TO THE PUBLIC

Michael Espinoza – expressed concerns that the provision should be completely removed.

Brent Miller – made statements regarding the proposed language.

Robert Southwick – commented on the proposed language and public input.

Damian White – spoke regarding the current statute.

Dene Brown – made comments regarding the statute's standard of living provision.

Jarrett D. Williams – spoke regarding the child support committee.

SUBSTANTIVE LAW/COURT PROCEDURES WORKGROUP UPDATE

Steve Wolfson provided an update on the workgroup's revisions to the custody statute. The workgroup has met once since the last DRC meeting, and it began re-addressing the relocation statute, something previously looked at by the workgroup's Relocation Subgroup. The issue will be further addressed at the next workgroup meeting.

A.R.S. § 25-323.02 DRC MEMBERSHIP

Senator Gray led discussion prompted by recent suggestions that the DRC committee membership be reduced in size. Members reviewed A.R.S. § 25-323.02, which lays out the committee structure, and discussed member term limits, representation on the committee, and attendance and quorum issues. Some members were in favor of member term limits to ensure contribution of fresh ideas. It was noted that while non-judicial members are appointed without term limits, judicial officers are appointed by the Chief Justice with term limits. There was uncertainty with regard to the parent seats on the committee and whether they should be parents who are actively raising dependent

children, or if it is acceptable that they be parents whose children have moved into adulthood. In addition, concerns were expressed that committee members with habitual absences make it a challenge to reach a quorum. Suggestion was made to establish and enforce attendance requirements, perhaps granting the Co-Chairs the ability to replace members who surpass a maximum number of unexcused absences. Using a percentage to assess attendance, rather than a specified number, was recommended as a more effective approach to monitoring attendance for both the full committee and its workgroups. Members also requested that the following seats be added to the committee:

Representative from a sexual assault coalition

Representative from a legal services agency

Parental Seats - reconfigure seats to ensure both genders are represented in each category in the custodial, non-custodial, and joint custody parent seats.

CALL TO THE PUBLIC

Robert Southwick – suggested the committee have additional members of the public.

Patricia Madsen – recommended the committee add a seat for a legal services organization member.

Brent Miller – discussed short term limits for committee members.

Susie Cannata – recommended adding a seat for a legal services organization representative.

Joi Davenport – suggested having both mothers and fathers represented in the parental roles on the committee.

Michael Espinoza – spoke regarding term limits for committee members.

MOTION: Sid Buckman moved to approve attendance requirements as discussed. Members having unexcused absences totaling 1/3 or 33% of committee or workgroup meetings in a one-year period will be asked to step down by the Co-Chairs.
SECOND: Motion seconded.
VOTE: Motion approved unanimously.

MOTION: To add and reconfigure the committee seat categories as discussed.
SECOND: Motion seconded.
VOTE: Approved unanimously.

PROPOSED RULE CHANGE TO ARIZONA RULES OF FAMILY LAW PROCEDURE

Jenny Gadow, Chair, Family Law Rules Committee of the Arizona State Bar, discussed a proposed rule change to Rule 12 of the Arizona Rules of Family Law Procedure (ARFLP). She provided some background on the rule, explaining the rule permits judges to interview minor children about family law matters. The proposed changes would provide clarification and a more concise mechanism by which such interviews would take place. Also, parents would be allowed to hear the recording if they wish. There was a concern noted that this change poses a potential detriment to children. Ms.

Gadow related that the rule change is expected to be submitted in October, with vetting taking place prior to that time. The DRC is asked to review the proposal and provide feedback at a future meeting.

CHILDREN'S BEST INTERESTS

Representative Peggy Judd discussed A.R.S. § 25-403; Custody; best interests of child, and the notion of legislation to encourage parents to stay married in order to have a better outcome for their children. The bill requires an automatic transfer to conciliation court for an action for annulment of marriage, dissolution of marriage, or legal separation where children are involved. She indicated that family counseling would be required to attempt to preserve the family unit. Comment was made regarding unfunded mandates, the cost to taxpayers, and that some counties do not have conciliation courts due to budget constraints. It was also mentioned that often spousal abuse is taking place; however it has not been documented. There is also legislation going into effect in 2013 regarding parent education and it will offer resources for parents who may not otherwise be aware of them.

CUSTODY STATUTE

Senator Gray led review of the current draft 'yellow version' of the custody statute revisions. Members noted some areas of concern related to inconsistent use of terms and lack of clarity due to referring the reader to the incorrect section in the statute. The judges on the committee were asked if they consider factors that are not specifically mentioned in the statute. The judges commented that they consider several factors when making their findings, including the parents' wishes. Question was raised regarding a long-standing provision in the statute that calls for a three month "cooling off" period during which grandparents' visitation is not to occur. There was further discussion regarding false allegations and whether it should remain in the sanctions section.

Members considered how many factors should be included in the statute for coercive control. It was noted the language was designed to ferret out the most egregious of incidents and emphasize the *pattern* of coercive control. Judge Carey Hyatt shared the feedback she obtained from family law judges on the Maricopa bench indicating that the definition examples are helpful. Comment was made that the emphasis on the *pattern* aspects of coercive control is especially useful in helping the court to apply the concept in varying situations.

CALL TO THE PUBLIC

Several members of the public were present for comment.

Patricia Madsen – made comments regarding false allegations.

Brent Miller – discussed awards of attorney fees, reasonable litigation, and the custody statute.

Michael Espinoza – spoke about false allegations.

Damian White – expressed his feelings regarding remedies for false allegations.

Dene Brown – discussed the concept of coercive control.

Joi Davenport – made comments about coercive control.
Robert Southwick – addressed concerns about coercive control.
Lindsay Simmons – discussed litigation misconduct sanctions.

ADJOURN

Meeting adjourned at 2:00p.m.

NEXT MEETING

TBD