

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes

October 21, 2011

State Courts Building

1501 W. Washington, Phoenix, AZ

Conference Room 345 A/B

MEMBERS PRESENT:

Honorable Linda Gray

Honorable Terri Proud

Honorable Lela Alston

Theresa Barrett

Sidney Buckman

Daniel Cartagena - *telephonic*

Honorable Mary Ellen Dunlap - *telephonic*

William Fabricius - *telephonic*

Todd H. Franks

Grace Hawkins

Honorable Katie Hobbs

Honorable Peggy Judd

Ella Maley

Patti O'Berry - *telephonic*

Donnalee Sarda

Russell Smolden

Steve Wolfson

Brian Yee

Honorable Wayne Yehling - *telephonic*

MEMBERS ABSENT:

Honorable Michael Bluff

Jack Gibson

Danette Hendry

Honorable Leah Landrum Taylor

Ellen Seaborne

David Weinstock

GUESTS:

Connie J.A. Beck, Ph.D.

Thomas Alongi

Honorable Peter Swan

Kiilu Davis

Lindsay Simmons

Amy Love

Kay Radwanski

Wendy Greenwood

Katenjng Halfwassen

Linda Stenholm

Jessica Holsman

Yessica Morales

University of Arizona

Community Legal Services, Inc.

Arizona Court of Appeals

State Bar of Arizona, Family Law Executive Council

Arizona Coalition Against Domestic Violence

Administrative Office of the Courts

Administrative Office of the Courts

Phoenix College

Phoenix College

Phoenix College

Phoenix College

Phoenix College

STAFF:

Kathy Sekardi

Tama Reily

Amber O'Dell

Barbara Guenther

Katy Proctor

Administrative Office of the Courts

Administrative Office of the Courts

Arizona State Senate

Arizona State Senate

Arizona State Senate

CALL TO ORDER

Without a quorum present, the October 21, 2011, meeting of the Domestic Relations Committee (DRC) was called to order at 10:05 am, by Senator Linda Gray, Co-Chair.

APPROVAL OF MINUTES

Without a quorum present, the draft minutes of the September 16, 2011, DRC meeting were not presented for approval at this time.

A.R.S. § 12-2293(B); RELEASE OF MEDICAL RECORDS

Senator Gray reported on the DRC’s current proposed language changes to A.R.S. § 12-2293(B), and the suggested alternative amendments made by legal counsel to the Arizona Hospital and Healthcare Association. The alternate amended language would maintain consistency with HIPAA Privacy Rules while still providing the clarification the DRC is seeking. As a quorum was not yet present, a vote was not called for at this time.

A.R.S. § 25-320(D)(3); CHILD SUPPORT FACTOR – STANDARD OF LIVING

Senator Gray discussed striking the provision in paragraph three that requires the supreme court to base guidelines and criteria for deviation on relevant factors including the standard of living a child would have enjoyed had the marriage not been dissolved. Her concern is that it is impossible for two separate households to maintain the same standard of living post-dissolution. Mr. Horowitz pointed out that this provision is enabling legislation and that the provision merely sets out a factor for the supreme court to consider when establishing guidelines for support. After a brief discussion, it was determined to table the matter for a future meeting.

SUMMARY REPORT ON CURRENT CUSTODY STATUTE VERSIONS

Amber O’Dell, Senate Research Analyst, reviewed the results of her research comparing the current custody statute with the three Substantive Law/Court Procedures Workgroup versions of the statute. Members were provided with copies of two comparison tables that outlined the various versions’ similarities and differences, including the issue of domestic violence provisions.

APPROVAL OF MINUTES *(Item taken out of order)*

With a quorum now present, the draft minutes of the September 16, 2011, meeting of the DRC were presented for approval.

- MOTION:** Russell Smolden moved to approve the September 16, 2011 DRC draft meeting minutes as presented.
- 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, reported on the September 22, 2011 meeting, explaining that a

vote was passed to take a larger, more comprehensive approach to revising A.R.S. § 25-401 rather than offering piece-meal drafts.

COERCIVE CONTROL PRESENTATION

Connie J.A. Beck, Ph.D, University of Arizona Associate Professor and member of the Clinical Psychology Program, presented her research on coercive control. She noted there have been many empirical studies as well as theoretical articles and books published on the topic and coercive control is considered a significant, growing area of research. Her own work on domestic violence and coercive control has been ongoing for 11 years. Today's presentation focused on her study of nearly 1,000 couples, between the years of 1998 and 2000. Dr. Beck reviewed the parameters of the study and the key findings, including the central message that coercive control is a better measure than physical violence to account for relational distress. Based on her knowledge of domestic violence and coercive control, she noted the following regarding the statute rewrite:

- 1) The statute is gender neutral, so the female perpetrator of coercive control will be looked at as well as the male for domestic violence or controlling type behaviors.
- 2) The statute's caution for children is justified because coercive control has been shown to create a hostile environment, which detrimentally impacts children. Additionally, studies show there is some overlap between child abuse and coercive control of one's partner (this ranges from 30 to 60 percent), therefore, it is important to look closely at these situations for parenting behaviors and potential child abuse. The investigation of coercive control could be conducted through an evidentiary hearing where a judge considers all of the testimony in order to make a determination. She emphasized the factors that can be looked at to substantiate allegations of coercive control, such as establishing a paper trail for hard evidence, which may include documents such as police reports and protective orders. When looking at patterns of controlling behavior regarding finances, it may be important to establish whose name is on the checkbook, credit cards, and who signs the credit card receipts. Additionally, evidence may be gathered by interviewing neighbors, friends, and extended family members as to whether the alleged victim participates in family gatherings and other social events.
- 3) The statute language should include false reporting of both types - specifically, both *false allegations* and *false denials*. They are equally important to consider and verify by gathering evidence.

During the presentation, Dr. Beck explained that this was an archival study of case files, and her study's participants were self-reporting. She added that she did confirm police reports and protective orders were on file to substantiate participants' reports of domestic violence. Committee questions included whether studies show differences in how men and women perceive particular acts and behavior in the context of reporting coercive control versus physical violence. Dr. Beck noted that the scope of her study did not.

CALL TO THE PUBLIC

Several members of the public were present for comment.

Michael Espinoza spoke about domestic violence language in the proposed custody statute.

Jeff Taylor commented regarding coercive control language in the proposed custody statute.

Rena Selden shared remarks on domestic violence and coercive control language in the proposed custody statute.

Bonnie Peplow made statements regarding supervised visitation providers in Arizona.

Nisha Chirnomas spoke regarding supervised visitation providers in Arizona.

Rob Rucker shared his feelings regarding supervised visitation providers in Arizona.

Joi Davenport commented regarding domestic violence and the proposed custody statute.

Lindsay Simmons spoke regarding domestic violence and coercive control language in the proposed custody statute.

Shelly Griffen commented regarding her personal experience as it relates to custody issues.

Sen. Gray acknowledged the attendance of several students from Phoenix College.

SCOPE OF CUSTODY REWRITE

This item was not addressed during the meeting.

STATE BAR FAMILY LAW EXECUTIVE COUNCIL SPEAKERS

Judge Peter Swann and attorney Kiilu Davis of the State Bar Family Law Executive Council addressed the committee regarding their own observations about the provisions in the custody statute proposal.

Mr. Davis shared some of his concerns and suggestions:

- In practice, the current system isn't set up to prove or identify coercive control due to the time restraints involved. He noted that family law attorneys get about three hours of court time.
- A separate domestic violence court might be useful for situations where allegations for domestic violence/coercive control exist. A separate court would

allow the time needed to fully explore the allegations/denials in these cases and to call on expert witnesses.

- Cases involving allegations of this type do not fall clearly within the realm of family law, as they bring in a criminal element of the law.
- It may be prudent to limit changes to cleaning up the language in A.R.S. §§ 25-403 and 25-408. This would be useful, less controversial, and therefore, more likely to be passed by the legislature.

Judge Swann stated that his comments reflect his perspective alone. He noted that it is important to remember that the goal of the family court judge is to do as little harm to families and children as possible. Also, current time allotments for family court are limited. He went on to discuss some specific provisions in the proposal:

- 25-407 – Although alternative dispute resolution is beneficial, requiring mediation can be too costly and may take too long. Hiring a private mediator may be financially limiting and this could result in placing additional burdens on conciliation services. Most people who come to family court do not have an attorney and there should be access to justice even for those unable to seek mediation.
- 25-410(B) – Requires the Arizona Court of Appeals to review de novo any superior court determination that evidence of family violence was outweighed by other considerations. The concern here is that the appeals court would be unable to give deference to the conclusions of the trial courts. Judge Swann suggests the committee reconsider including this provision.
- 25-411(B) – This provision is concerning because there have been no adjudication of facts and no certainty as to why a person may have agreed to deferred prosecution. This could lead to the courts being an instrument of injustice rather than an instrument of justice.
- 25-406(B) – Requiring a parenting plan is a good idea in the ideal cases; however, often the court is working with people that have difficulty articulating their case details. Mandating a parenting plan means that many people will not be able to comply with the law.

Judge Swann also commented that the *coercive control* provisions are lengthy and complex, saying they could lead to excessive litigation. He asserted that the coercive control definitions should be made with an eye toward the pursuit of justice, minimizing the potential for abuse of the system, keeping the proceedings reasonably short, and avoiding the invitation of litigation.

CONTROVERSIAL ISSUES

This item was discussed as part of the “Coercive Control Issues” below, and not discussed as a separate issue.

COERCIVE CONTROL ISSUES

There was lengthy discussion on the inclusion of coercive control language in the statute. Todd Franks expressed his thoughts, namely, that there are enough factors for

judges to consider currently including the mental and physical health of all parties and other factors pertinent to the proceedings. The coercive control provisions as indicated in the draft are too convoluted and excessive. Sid Buckman noted that the Conciliation Court Roundtable in March addressed the issue with the judges present who argued that they already consider factors of coercive control and it is not necessary to have it spelled out in the statute. They shared concerns about the findings they would be required to make, and the requirement of clear and convincing evidence, and the time that would be necessary to fully address the issue.

Tom Alongi, member of the Substantive Law/Court Procedures Workgroup responded to some of the comments about the coercive control language. He argued that judges are expected to consider 11 different best interest factors and eight relocation factors to make findings currently. He also mentioned there are 23 hearsay exceptions the court must weigh, as well as additional trial time when a business is involved. He expressed concerns that because coercive control is controversial it is viewed as too time intensive. Additionally, he pointed out there is a version five draft of the statute that no longer contains the *de novo review* provision for the court of appeals and the *mandatory mediation* section has moved into the modification portion of the proposal. He also emphasized that the coercive control language was drawn from authoritative sources and materials.

Discussion continued with several members stating they would like to see the coercive control language kept in the statute in some fashion. There was mention of whether a judge has the training and education to interpret factors of coercive control and whether a separate domestic violence court might be the best solution. Although good co-parenting is what the family court is hoping for, one member noted that co-parenting is not really possible when one parent is afraid of the other parent, so it is extremely important that such situations be considered by the court. Currently, courts may not be able to consider allegations of pure coercive control because such allegations do not fall under the statutory definition of domestic violence, which requires physical threat or activity. There is no relief for the true victim of coercive control or the falsely accused in the current statutory scheme.

Steve Wolfson noted that the Family Executive Council is meeting again tomorrow (10/22/11) and is expected to continue its discussion on the most recent version of the draft proposal. Dr. Yee said the evidence and feedback received today leads to a conclusion of not whether to include coercive control, but how to do it practically, so that the potential problems mentioned do not come to fruition.

INCLUSION OF EXPANDED DOMESTIC VIOLENCE LANGUAGE

This item was discussed as part of the “Coercive Control Issues” above, and not discussed as a separate issue.

Senator Gray stated that as work on the proposal continues, and in order to accomplish the desired revisions, there may need to be additional committee meetings scheduled.

She said another December meeting would be prudent, as well as a meeting the first Friday after the legislative session begins.

ADJOURN

Meeting was adjourned at 2:00 p.m.

NEXT MEETINGS:

Friday, December 2, 2011
10 a.m. to 2 p.m.
State Courts Building
Conference Room 119 A/B

Friday, December 9, 2011
10 a.m. to 2 p.m.
State Courts Building
Conference Room 345 A/B

TENTATIVE DATES DURING THE LEGISLATIVE SESSION 2012:

Friday, January 13, 2012
Friday, February 17, 2012