

## DOMESTIC RELATIONS COMMITTEE

DRAFT Meeting Minutes – November 14, 2003

### PRESENT:

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### CO-CHAIRS:

Hon. Mark Anderson, Co-Chair  
Hon. Karen Johnson, Co-Chair

### MEMBERS:

- Hon. Karen Adam
- Hon. Bill Brotherton
- Sidney Buckman
- Kat Cooper
- Frank Costanzo
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart (Designee Julianna Koob)
- Terrill J. Haugen
- Jennifer Jordan
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney
- Janet Scheiderer (Designee Karen Kretschman)
- Ellen Seaborne
- Kelly Spence
- Beth Rosenberg (Designee Judy Walruff)
- Steve Wolfson
- Debhora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

### GUESTS:

Tina Booth  
Martin Susnjara

Maricopa Lawyer  
Unknown

### STAFF:

Isabel Gillett  
Marianne Hardy  
Megan Hunter  
Sean Laux

Administrative Office of the Courts  
House of Representatives  
Administrative Office of the Courts  
Senate

Sen. Anderson called the meeting to order at 10:16 a.m. with a quorum present.

#### **APPROVAL OF MINUTES**

**MOTION:** David Norton made a motion to approve the minutes with an amendment regarding Sen. Brotherton's comments on page 7. Debbora Woods-Schmitt seconded the motion. Approved unanimously.

#### **ANNOUNCEMENTS**

Sen. Anderson asked members to review the survey prepared by Bill Fabricius regarding domestic violence, orders of protection and custody. Beverly Frame noted that some of the requested information could possibly be extracted from the court's automated systems. Comments should be directed to Megan within one week – the revised survey will be distributed at the next meeting, then sent to the judges.

The 2004 meeting schedule was reviewed. Meetings will be held monthly during January through May and October through December. The June and July meeting will be combined as will the August and September meetings. Megan will distribute the meeting schedule at the next meeting.

Julianna Koob discussed the new mission statement from the Arizona Coalition Against Domestic Violence. In the past, violence against women and children was recognized in the statement, but men were not mentioned. They have now added men to that statement. Ms. Koob explained that 95-97% of domestic violence homicide victims in Arizona are women. The change came as a result of a concern brought to this Committee during the call to the public by Danny Cartagena.

#### **INTEGRATED FAMILY COURT**

**Pilot Projects.** Karen Kretschman reported the following:

**Pinal County** – They are doing what they can with coordination between judges and attorneys to address overlapping classes. Funding is still a problem.

**Maricopa** – The IFC is still located in the Juvenile Court at the Southeast facility in Mesa. Two judges handle overlapping issues – one is a family court judge while the other is a juvenile court judge. They have eliminated two case processing staff who were tasked with identifying overlapping cases. Referrals now come in from judges or attorneys with overlapping issues. They do expect to expand into Durango facility next year.

**Coconino** – They are exploring the idea of a subsequent filing fee and have support for the idea from their Board of Supervisors. A \$25 subsequent filing fee would be assessed on any post-decree domestic relations motion or petition. This fee would raise approximately \$69,000 per year. An increase in the Response fee to \$226 from \$176 would raise an additional \$5700 per year.

## **Workgroup**

The IFC workgroup has not been meeting; however, Ellen Seaborne commented that part of the IFC proposal was to have a person to which the information from pilot programs would gather information and communicate best practice issues, share information statewide, to look at funding, etc. Ellen recommended that the pilot programs should be supported and evaluated by an overseeing entity responsible for implementation. She noted that there is nothing that can be measured at this point and that a method for pre- and post- evaluation is needed. Because the Committee spent a great deal of time on standards, the pilot programs need to understand what is in IFC proposal and what is expected of them. The IFC report says the Supreme Court should set goals, objectives and standards, and that a Family and Juvenile Court Committee would be established. To date, this has not happened. The Arizona Judicial Council (AJC) is doing some overview, but not as comprehensive as outlined in the recommendations. Ellen asked the Committee to review the document and at the next meeting decide whether this can be put in the form of a recommendation to the Administrative Office of the Courts (AOC). Ellen mainly wants the pilots to know the original goal of helping families in our state and to ensure it does not get lost.

Karen Kretschman responded by clarifying the AOC's position. After the IFC proposal was completed, Rep. Johnson did not introduce an IFC bill because of the state funding crisis. Instead, she and Chief Justice Jones discussed the matter and it was presented to the AJC which authorized that three pilot projects be set up to initiate the IFC concept in order to collect data. There was no adoption by the Supreme Court of the plan that came out of this Committee. The Administrative Order recommended that each of the three counties implement the plan as much as possible on a local basis. There is no mandate from the Plan for the Supreme Court or to the pilots to do the entire plan. They are struggling mightily with resource issues, as is the Supreme Court. The AOC is doing as much as it can to monitor the pilots and have done and will continue to continually update the Committee. At this point, the AOC does not have available financial resources for implementing Ellen's suggestions. Comments and suggestions are welcome.

Nancy Gray recommended that the IFC workgroup should be meeting and suggested getting dialogue going between the IFC workgroup and pilot project personnel. She suggested that the IFC workgroup could help monitor and evaluate the projects.

Megan will set up a meeting between the IFC workgroup and IFC Presiding Judges to coincide with the Arizona Judicial Council meeting.

## **JOINT CUSTODY PRESENTATION & DISCUSSION**

Jeff Zimmerman discussed the history of the joint custody proposal which originated from a desire that parents have joint custody. Instead of re-writing the statutes, a simple change was made. The proposal has been controversial in the workgroup and other

forums. Jeff drafted language that incorporates the objections and concerns he has heard to date. The last draft has not been discussed by the Substantive Law Workgroup yet, but Jeff wanted the Committee to have a draft to discuss today. Rep. Johnson wants this to be ready for the 2004 legislative session.

One of the biggest objections to the proposal is that every family cannot be crammed into an equal custody arrangement. Under the proposal, the child would have as substantially equal time with both parents as logistically feasible and consistent with child's best interests.

Jeff discussed the provisions of the proposal:

1. Parents will have shared custody after a divorce unless: 1) the court finds after a hearing that it is not in the child's best interest, or 2) the parties agree to some other arrangement, or 3) it is a default situation.
2. Specific language about the burden of proof and findings of the court with respect to shared custody have been removed compared to previous versions discussed by the Substantive Law workgroup.
3. The definitions of joint custody, joint legal custody and joint physical custody are changed to use the words "shared" and "parenting" instead of "joint" and "custody". These terms are then used consistently throughout.
4. "Joint custody" used to mean joint legal, joint physical or both. Now "shared custody" means both shared legal and shared physical parenting. The language flows better where those terms are used. The court can still order one or both, and an agreement can be called a shared custody agreement even if it only has shared legal or shared physical custody but not both, since the name of the arrangement can be important to the parents.
5. Shared physical custody is no longer defined as "substantially equal" time with both parents. Now it is as equal an amount of time with both parents as is consistent with logistics and the child's best interest. Logistics are also a factor in the laundry list of factors for the court to consider.
6. Parenting plans are required in most cases; however, unnecessary hearings and parenting plans are eliminated. No hearing is necessary if the parties settle or there is a default. No parenting plan is necessary in a default case (if the defaulted party someday comes back to court to change the order, then they will have to do a parenting plan at that time). If a petitioner in a default case submits a parenting plan, it can be approved on default.
7. The parents can submit a separate parenting plan. They do not have to meet or discuss them if there are safety concerns.
8. The court can modify the parenting plan if the resolution of disputes under the existing plan is not working.
9. The best interest of the child standard stays like it always has been and takes precedence over the parents' wishes.

Sen. Anderson likes the “shared parenting” terminology. Some other states use this terminology.

Circumstances change with divorce in some families and some fathers become more involved. Members inquired about what would happen when a parent who has not been involved in a child’s life, but asserts that he/she will make changes and be involved – would the judges have a timeline to monitor whether or not this occurs. Jeff explained that the judge would first determine whether shared parenting would actually work for these particular people. Kat Cooper said that separation, divorce and the threat of loss of children causes some parents to reconnect to their kids. Circumstances change on both sides and each situation should be looked at individually so that kids’ best interests are taken into account. She would not want to see children affected negatively because the parent was not previously that involved commented that she supports the proposal because it is in the best interests of the children.

Ella Maley asked question regarding 25-403(B) – is there a specific age at which the child can have input? Jeff explained that the judge would take into account whether the child should have input – this provision has not changed from current language.

Debbora Woods-Schmitt commented that she had to go back into the workforce after her divorce. When the father remarried, the new wife stayed home and they filed for custody. This proposal does not consider life changes due to divorce, nor manipulation by a noncustodial parent when the custodial parent’s work status has changed. Jeff commented that he did not know if there was anything that could be done about this without micromanaging. Debbora also said that this assumes that everyone is going to get along in mediation, and that is not always the case.

Jennifer Jordan commented that the term “share parenting” projects a continuum of parenting concept. The remaining language clearly makes a presumption for joint custody and that we are looking at where the child should go instead of looking into the best interest of the child. The Washington state Parenting Act study showed that the best interest of the child should be the primary factor for the courts to consider.

Bill Fabricius agreed with Jennifer regarding the Washington State study, and said that children are served by the continuing involvement of both parents. Most of the research on conflict and divorce is ambiguous when you get into the measures that are used. The measures - quality of time is more important than quantity of time - is based on flawed data. Research on conflict says that severe conflict is what is especially harmful to children. Research also shows that conflict goes down over time for most parents. It might be reasonable to expect that something like this kind of language in the law would probably reduce conflict around the time of the divorce if it is communicated to parents that the courts are going to be looking at joint custody.

**MOTION:** A motion was made by Debbora Woods-Schmitt and seconded by Jeff Zimmerman to table the vote to the next meeting. Approved unanimously.

### **DEDICATED FAMILY BENCH**

Rep. Johnson reported that she was invited to meet with Chief Justice Jones on this issue but two scheduled meetings were canceled due to special session. She intends to meet with him after special session is over to persuade him more toward the concept of a dedicated family bench.

Rep. Johnson introduced Judge Armstrong who was here at our September meeting to discuss options surrounding the issue including: changing the culture at the commissions and Governor's office so that more family law attorneys are appointed or people who want to be there (slow process) to changing the constitution itself to make two commissions – jury commission and non-jury commission. One would appoint to criminal and civil (jury) and the other would appoint to family (non-jury). In the past, people with jury trial experience are favored for appointments. Judge Armstrong made a presentation to the trial court commission about the IFC and dedicated bench. They were surprised to learn that 50% of cases at least in Maricopa and probably statewide are family law which includes domestic relations, juvenile and probate cases. Over 44,000 out of 140,000 filings in Maricopa Co. are in family law. They currently have 32 judicial officers in family court, which includes 25 judges and 7 commissioners. Because of the size of this bench and the system of two-year rotations, there is a constant rotation; they are replaced by new judges who are usually enthusiastic or by more experienced judges who do not want to be there. Increasing the size of the bench was intentional in order to process cases more rapidly.

They have looked at it in connection with the IFC which brings together family, juvenile and probate. The dedicated bench issues speaks to getting judges who want to be there and who want to stay for longer periods of time. The goal is to have a dedicated family bench but the real issue is how to achieve that goal. The presiding judge in each county could simply declare the term on each bench but that only looks at one part of the issue, length of term, but fails to look at the other issue of getting judges who want to be there. The result of only lengthening the term is getting judges who do not want to be there being required to stay for longer periods.

Frank Costanza commented that he would support an independent family court and suggested that perhaps commissioners could be retained in those positions for a longer period of time. Judge Armstrong commented that in Maricopa County, commissioners hear uncontested matters. In Pima County, the family law bench is dominated by commissioners because they cannot get any judges to do it; therefore, they do have dedicated commissioners on the bench, but because of a bad reason. Those commissioners are not accountable to the public, are not selected by the Governor, nor do they face retention elections, but serve solely at the pleasure of the presiding judge.

Judge Armstrong commented that the Pima & Maricopa presiding judges listed an option in which the Chief Justice would issue an administrative order prescribing presumptive terms, prospectively, which for people who apply in the future, they know they are going to be serving three to five years, or whatever term is decided. Vacancies would be announced as being in family court and would be a measure that could be done within the

courts and would not implicate the constitution; it is a long-term plan because it is prospective, but probably a good beginning.

Nancy Gray, on behalf of Brian Yee, stated that the Court Procedures workgroup has been working on this issue for a long time and suggested that perhaps the workgroup should be eliminated and the topic moved to the full Committee. Nancy reminded members that Arizona's remaining thirteen counties must be looked at as well and suggested focusing first on Maricopa and Pima Counties, then move to the others.

Members discussed sending a letter to the Commissions that would state our viewpoint as to the importance of getting qualified members of the legal community to be appointed to the bench as commissioners or judges. Media outlets are also present at hearings which would also be helpful. Megan will notify members every time a judicial vacancy exists.

**MOTION:** Jennifer Jordan made a motion to ask the Court Procedures Workgroup to prepare a letter directed to all three appointment commissions which would be submitted to the Committee at the December meeting. Debbora Woods-Schmitt seconded the motion. Approved unanimously.

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

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

#### **BREAK/LUNCH**

The meeting was reconvened at 1:00 with continuation of the joint custody proposal discussion.

Kat Cooper - we need to recognize the importance of a dad's role in the child's life. Families are structured differently these days. In the past, law was in sync with what was happening in the home, but things have changed now so the law should follow.

Ellen Seaborne - the law should keep up with the times. For years this Committee has talked about making custody laws consistent with real life. The majority of people who use our courts are self-represented and already submit joint parenting plans. She firmly believes that the majority of her cases that are contested still end up with some type of shared parenting plan. The hotly contested cases are usually sole custody – majority of high conflict cases. High conflict cases usually end up with a sole custody determination and are a small percentage of cases. This proposal recognizes there is a mom and a dad and that they should share parenting responsibilities - the law currently supports shared parenting. A page and a half of the statute is there to protect domestic violence victims – nothing has been changed in that part. There is no language in the proposal that says parents must share parenting – it just assumes that they do share parenting and takes a look at the best interest of the child.

Jeff commented that the proposal provides a range on a continuum from a 50/50 time split down to 0/100 by taking into account the child's best interest. Under this proposal,

if parents do not agree to shared parenting, the case would become a contested case. Jeff asserted that this proposal will reduce litigation because parents will look at it as the State's policy.

Members discussed whether or not a presumption for sole custody is built into the present statute and determined that it depends on the perspective of the practitioner. Lawyers may interpret it as a sole custody presumption while an evaluator may not.

Bill Fabricius commented that we do not have good data on divorces that have joint legal custody. Ten years ago, 50% opted for a shared parenting plan. Anecdotally, it's between half and two-thirds of all cases. Already we have the great majority of parents subscribing to joint legal custody. The majority of cases then would tell us that joint custody is viable. Data from other states shows that divorce rates are lower in states with shared parenting laws.

Jennifer wanted to make sure that everyone understands that there are two issues: 1) changing the language of 25-402 referring to shared parenting, 2) whether or not to change the statute 25-403 to create a presumption of joint custody.

Members thanked Jeff for his dedication to this proposal.

#### **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 December 4, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 119.

#### **ADJOURNMENT**

The meeting was adjourned at 1:58 p.m.