

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – December 5, 2003

PRESENT:

-
-

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
- Terrill J. Haugen
- Jennifer Jordan
- Ella Maley
- Hon. Dale Nielson
- David Norton
- Steve Phinney (Designee Dr. Tom Ryan)
- Janet Scheiderer (Designee Theresa Barrett)
- Ellen Seaborne
- Kelly Spence
- Beth Rosenberg (Designee Judy Walruff)
- Steve Wolfson
- Debhora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Diane Brown
Martin Susnjara
Gabriella Santos
Rose Comes
Menyor Scott
Danny Cartagena

AZ Protective Parents Network
Unknown
AZ Coalition Against Domestic Violence
AZ Coalition Against Domestic Violence
AZ Coalition Against Domestic Violence
Parent

STAFF:

Isabel Gillett
Megan Hunter

Administrative Office of the Courts
Administrative Office of the Courts

Rep. Johnson called the meeting to order at 10:22 a.m. with a quorum present.

APPROVAL OF MINUTES

MOTION: Sid Buckman made a motion to approve the minutes with an amendment suggested by Bill Hart regarding the mission statement of the Arizona Coalition Against Domestic Violence which has been changed to clarify that they have always served men, women and children and are gender-neutral. Ella Maley seconded the motion. Approved unanimously.

ANNOUNCEMENTS

Rep. Johnson and Megan Hunter discussed the Child Protective Services bill that would affect the custody statute in Title 25. The proposal would require the court, when determining custody, to consider whether either parent has committed an act of false reporting of child abuse or neglect.

Rep. Johnson introduced Dr. Tom Ryan, serving as Dr. Steve Phinney's designee for the purposes of today's meeting.

SUBSTANTIVE LAW WORKGROUP

JEFF ZIMMERMAN

Jeff Zimmerman, Chair, summarized the changes made to the proposal resulting from suggestions made at the November meeting.

Section 25-402

Page 1, Line 21: a change in terminology from "custody" to "parenting", and "shared parenting", "shared legal parenting" and "shared physical parenting." Joint physical custody under existing law means equal time with the child for both parents. Under the new definition, equal time is defined as the best interests of the child and logistically feasible, which does not equate to a 50-50 presumption.

Page 2, Line 18: contested cases would proceed as they do under existing law. There is no presumption, but instead a statement is expressed that the starting ground should be equality for both parents.

Page 2, Line 23: The proposal states that "shared physical parenting is not in the child's best interest." A suggestion was made that this should be revised to reflect a positive statement."

Page 3, Line 11: A suggestion was made to change the language to: "consider the support of each parent for the child's continuing contact with the other parent." This would eliminate a contest of which parent is better.

Page 4, Line 16: Language has been changed to reflect that a parenting plan is not necessary in a default case.

Page 4, Line 27 through page 5: Parents can submit an agreed upon parenting plan, but they can also submit their own parenting plans with no requirement to mediate or discuss the plans with each other. If there is mediation involved and the issues remain unresolved, the court can make the decision. In a default case, neither a parenting plan nor a hearing are required.

Discussion:

Some members asserted that the new language continues to create a presumption for joint custody. Instead, the courts should look at the child's best interests, not equality of time for parents.

A letter from the Honorable Nanette Warner, Presiding Family Court Judge in Pima County, expressed concern regarding the elimination of the term "custody". Members suggested that the term is legally significant and a change would make the court process more difficult for *pro se* litigants. Jeff clarified that the term "custody" has been left in the draft in some places.

Bill Hart registered opposition to the proposal, stating that custody should be made on a case by case basis and that the arrangement the family had before the separation should be honored. Bill asked the chair to take call to the public before the vote. Jeff replied that domestic violence protections have not been removed.

Steve Wolfson stated that the UCCJEA incorporates all of these definitions. The impact of or consideration of other states' determinations affecting Arizona cases is tremendous; almost a quarter of cases in his office have a connection to some other state. He expressed a concern from the Family Law Section of the State Bar, regarding a change in terminology which may result in increased hostilities. There is significant hesitation on the part of the State Bar to limit the court's discretion.

Members debated whether there is a problem or not. Some research indicates a bias against men who seek custody. Terrill Haugen pointed out that this Committee frequently hears complaints regarding this issue during the call to public which indicates the system is broken. He further stated that people just want to be good parents, but they have to jump through hoops and have no influence in the decision-making process.

Bill Fabricius provided statistics regarding the harm of divorce on children. Specifically, 35% of children of divorce will suffer harmed relationships with fathers as a result of divorce which indicates a breakdown in the divorce system.

Kat Cooper stated that she is concerned about all issues from all stakeholders and urged members to show respect for the involvement of both parents in children's lives.

Commissioner Adam suggested that in order to make an informed decision, the Committee needs more information. She will contact Professor Barbara Atwood, University of Arizona to speak to the Committee about her custody research

Bill Hart called for the question. As there were others who wished to comment, this was delayed.

Members discussed the issue of presumptive physical custody in default cases. The issue of whether to require a parenting plan in every case is a policy matter for the Committee to decide. Judge Nielsen stated that he agrees strongly that fathers play a critical role in the lives of their children and suggested that approximately 95% of all judges try to do what is in the best interest of the children. He can support this bill with some concerns.

Steve Wolfson expressed concerns about an attempt to sugar coat the presumption. Under the draft language, the court has to begin at the “shall”, then a burden is placed on litigants to tell the judge why that should not be the case instead of having a level playing field. Parents who decide to divorce, enter the system at that point and the system has the unenviable task of figuring out how these parents will relate to each other and their minor children. The Family Bar Executive council is not suggesting that fathers do not have as much of a role in their children’s lives as do mothers. Time alone doesn’t answer the question about what is in the best interests and how we help the court determine what is in the best interest of the minor children. Steve stated that the result of this discussion seems to be some level of hypocrisy – we don’t find ourselves on a regular basis legislating how we are going to equalize the economic circumstances during a case or in the aftermath of a dissolution, but we are now apparently attempting to legislate what is in the best interest of a minor child and putting a framework in place where we are saying we know best what is the best interest of kids now and in the future. He cannot do that on the basis of statements about time alone. Time alone does not determine the quality of that relationship and if that relationship will be in the best interest of the children. Steve told the Committee that we should focus on how to help the process in the future, but he cannot support it as drafted.

Bill Hart repeated his call for the question, but a motion had not yet been made. Rep. Johnson allowed for testimony from the public.

CALL TO THE PUBLIC

Diane Brown – Ms. Brown expressed her concern regarding the proposals terminology. She feels it further dilutes the child’s best interest. In her case, joint custody was granted even though there was a finding of domestic violence. As a result, the children endured five years of physical and emotional abuse. There is a huge difference between a high conflict case and a case that has an abusive situation. She agrees with Judge Warner and thinks the entire draft is talking about presumptive joint custody. She said that on one hand she is hearing the supporters say that this is just a change in language, but on the other hand she is hearing that dads will always have as much time with their kids as they want or as the mother does. She does not understand how this bill is going to fix that and believes it considers parental rights over the best interest of the child.

Gabriella Santos – Ms. Santos is a legal advocate with the Arizona Coalition Against Domestic Violence. She struggles on a daily basis regarding how families deal with abusive situations. Proposed language in A.R.S. § 25-403(A) would create a barrier in

trying to reach safety. Shared parenting implies that she (the mother) has a responsibility to continue that communication with the father. When domestic violence or child abuse comes into play, part of the safety is severing ties at least until a safety plan has been put in place, but because of limited resources, her main concern is getting to a domestic violence shelter. Confidentiality within a shelter system may mean severing ties, limited funding, and have limited space. In the meantime, they try the safety plan until they can get the resources. The turnover time for a temporary custody hearing can be days, and if it is contested, she is at risk and is contributing to maybe losing joint custody. Custody and safety for the children is in the mother's uppermost mind. Not only is the family affected by it, but employment and society at large.

Danny Cartagena – Mr. Cartagena commended the Arizona Coalition Against Domestic Violence for changing their mission statement. The notion is that it increases probability for conflict, but in his case the current statute actually increased chance for conflict. He believes this bill would have decreased the conflict in his case. When neither party has the advantage, things get resolved. The parent who goes to work to provide for the child is considered less of a parent. He believes that what is primarily broken is the way we start the process. There is nothing in the statutes now in regard to the time period before a court order. There is ambiguity that needs to be removed.

The Committee dismissed for lunch. The meeting reconvened at 1:02 p.m.

Rep. Johnson announced that the January meeting will be moved from January 23rd to the 16th.

Jeff asked for comments regarding the custody proposal to be submitted to him via e-mail.

Rep. Johnson announced that an article about the Domestic Relations Committee, written by Mr. Jack Levine, appeared in the current issue of the *Maricopa Lawyer*. Copies were provided to members. Mr. Levine attended several meetings and met with Rep. Johnson to gather information about the Committee and the dedicated family bench issue.

Commissioner Adam relayed that Pima County judges had their first all-judicial retreat and planning session in October where Judge Leonardo, Superior Court Presiding Judge in Pima County, discussed the dedicated family bench issue. Five judges expressed support for a separate family court. Forty judges were in favor of the family law bench.

Bill Fabricius discussed a survey he drafted in response to Rep. Pearce's presentation to the Committee on Orders of Protection and custody. Sid Buckman stated that he took the survey to one of the judges in Flagstaff, who commented that it would be very difficult to recall how many Orders of Protection were issued and under what circumstances. Sid checked with the Clerk of the Court and then went to other jurisdictions. They were able to give him some numbers, but did not know under what circumstances they were issued. As detailed as the form can be, Sid does not believe that enough information is available to complete the survey. Bill suggested that perhaps a judge could be asked to keep

records for a few weeks. Megan and Bill will work on gathering statistical information through court databases and other means.

INTEGRATED FAMILY COURT

Ellen Seaborne discussed Coconino County's pilot program report which addresses the IFC recommendations. Financial resources are limited but they would like to participate to the extent possible and are working on creative funding ideas.

When the reports from all three pilot counties have been received by the AOC, they will be shared with the Committee.

She reiterated that we don't have anything in place to measure standards and that should have been set up by Arizona Judicial Council. Ellen commented that she and Karen Kretschman will further discuss the pilot projects and perhaps work with the workgroup on standards and evaluation.

WORKGROUP REPORTS

Substantive Law – Jeff Zimmerman

The report was addressed earlier in the meeting.

Education/Prevention – Terrill Haugen

No report.

Court Procedures- Brian Yee

Nancy Gray Eade spoke on behalf of Brian Yee for the Court Procedures Workgroup. She read aloud the first draft of a letter that will eventually be sent to the trial court commissions concerning the dedicated bench issue. The workgroup will finalize the letter and submit it at the January meeting.

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 January 16, 2004, 10:00 am – 2:00 pm at the Arizona Courts Building, 1501 W. Washington, Conference Room 345.

ADJOURNMENT

The meeting was adjourned at 1:34 p.m.