

DOMESTIC RELATIONS COMMITTEE

AMENDED Meeting Minutes – August 20, 2004

PRESENT:

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CO-CHAIRS:

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

MEMBERS:

- Hon. Karen Adam (designee Annette Burns)
- Lucille Antone-Morago
- Hon. David Bradley
- Hon. Bill Brotherton
- Jodi Brown
- Sidney Buckman
- Kat Cooper
- William Fabricius
- Hon. Beverly Frame
- Nancy Gray
- Bill Hart
- Terrill J. Haugen
- Karen Kretschman
- Ella Maley
- Jay Mount
- Hon. Dale Nielson
- David Norton
- Ellen Seaborne
- Judy Walruff
- David Weinstock
- Steve Wolfson
- Debbora Woods-Schmitt
- Brian Yee
- Jeff Zimmerman

GUESTS:

Helen Davis
Sharon Farmer
Therese L. Martin
Anella Nahom
Joanne Zazzi

The Cavanaugh Law Firm
AZPPN
AZ Attorney General's Office
Parent
Conciliation Court Volunteer

STAFF:

Isabel Gillett
Barbara Guenther
Megan Hunter
Javan Mesnard
Patsy Osmon

Administrative Office of the Courts
Senate
Administrative Office of the Courts
Senate
Senate

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

ANNOUNCEMENTS

Lucy Antone-Morago was introduced as the new parent member appointed by Governor Napolitano. Ms. Antone-Morago replaces Kelly Spence. Ms. Antone-Morago has extensive experience as a Tribal Court Advocate and Deputy Prosecutor with the Gila River & Salt River Indian communities. She has also served as the Children's Court Judge for the Gila River Indian Community and at present serves as the Family Preservation/Family Support Coordinator of Against Abuse, Inc. There she works with the State and Child Fatality Review Teams and Multidisciplinary Teams for Pinal and Gila Counties. She has a B.S. Degree in Business Management and a Master's Degree in Organizational Management.

Jay Mount was introduced as the new custodial parent member appointed by House Speaker Flake. Mr. Mount replaces Dr. Rene Bartos. Mr. Mount is returning to serve on the Domestic Relations Committee. He comes to the Committee as a lay person who has gone through the divorce and custody process.

David Weinstock, J.D., Ph.D., was introduced as the new Marriage and Family Therapist member appointed by House Speaker Flake. Dr. Weinstock replaces Frank Costanzo. Dr. Weinstock is a practicing psychologist and works in the fields of therapy, custody and forensics. He is also an attorney.

Linda Leatherman (absent) from Tucson was recently appointed by Governor Napolitano to serve as the faith-based representative member position. She will be attending the September meeting.

APPROVAL OF MINUTES

MOTION: Ellen Seaborne made a motion to approve the minutes of the June 18, 2004 and July 16, 2004 meetings. David Norton seconded. Approved unanimously.

INTERVIEWING CHILDREN – HELEN DAVIS (PRIVATE FAMILY LAW ATTORNEY)

Ms. Davis presented an overview of the current practice in the Maricopa County Superior Court regarding interviewing children in custody cases. In the past, this was a frequent occurrence, then it subsided for awhile but is now on the rise again. The practice is haphazard at best. The judge either has to allow hearsay from a parent or the judge has to interview children in chambers. Often, parents' motivation for allowing children to testify is for the parents' best interests. Lawyers use this to their client's advantage at times.

Ms. Davis believes that the approach should begin with the child's best interest. Children have an interest in their own custody. A.R.S. § 25-403 allows the court to interview children as well as seek the advice of a professional. Interviewing children is controversial. It is intended to alleviate stress for the child, and some believe there may be some merit to that. However, others believe that bringing a child into the courtroom to meet with a stranger is not always best. There is usually no preparation for the interview. If a record is made, the judges seal it and do not share it with the litigants. There is also the question as to whether a child can be cross-examined or not. The parents' rights to their children and their custody are potentially impacted by evidence that is not shared with them. The Maricopa County Juvenile Dependency Action stated

that the court may interview a child with only a court reporter present but the transcript must be made available to the parties and counsel, and recess must be taken in order for the parties to make decisions. However, the Supreme Court vacated this ruling.

Ms. Davis mentioned that there are alternatives such as custody evaluations or videos. Evaluators know how to elicit appropriate information from a child. She also stated that the Court has to think about who is requesting the interview and the motives. Dr. Yee noted that he has found most judges for whom he provides custody evaluations have no desire to interview children. Annette Burns commented that it is mainly new judges to the bench who practice this. David Norton said that the age of a child should be taken into consideration. It is much different interviewing a five-year-old than a sixteen-year-old.

Senator Brotherton mentioned that there are times when a child needs to be heard. Ms. Davis said children are not allowed to contract or have that much control over their lives in other areas, why should they influence the outcome of a custody decision? Dr. Yee noted that it is not just a matter of empowerment, it is also a burden. When children are interviewed, they feel they bear the responsibility of amputating a parent. Ms. Davis said that interviewing children should not be the standard, but should be the far, far exception.

Ellen Seaborne brought up another concern – when children are in therapy, the therapist will not testify as to the child’s best interests due to a conflict of interests. She suggested having trained interviewers appointed to interview the child be added to the Integrated Family Court (IFC). In this way, the interviewer would speak for the child. Sid Buckman suggested that custody evaluation is the appropriate venue where children may be interviewed. There is a major danger in adding to the child’s conflict by doing a judicial interview and that very few children want to be in that place. Ms. Davis volunteered to assist if a workgroup is formed to study this issue, and Senator Anderson stated that the Committee will use Ms. Davis as a resource.

**CUSTODY EVALUATOR MINIMUM STANDARDS WORKGROUP –
REPRESENTATIVE DAVID BRADLEY AND NANCY GRAY**

Representative Bradley and Nancy Gray reported to the Committee that the workgroup had spent 3 ½ hours in discussion and hearing testimony, and thirty minutes developing minimum standards. Ten members of the workgroup were also DRC members. The workgroup used some of California’s standards as a base. The mission of the workgroup was to address three areas:

1. Instruction for initial domestic violence training;
2. Instruction for initial child abuse training; and,
3. Instruction for subsequent training.

Legislation was not intended to duplicate training requirements beyond the licensing standards of various professions that provide the service. The legislators did not want to add to what is already required of these professionals.

The workgroup’s goal was to have balance between being general enough to cover a broad range but also be specific enough to comply with the law.

MOTION: David Norton moved to adopt the draft minimum standards for child abuse and domestic violence training as submitted by the Custody Evaluator Minimum Standards Workgroup.

Senator Brotherton stated that he believed the training should be done through current continuing education. Dr. Yee said there was no discussion by the workgroup as to who will monitor the training. Nancy said that the workgroup agreed that the training should be up to the Administrative Office of the Courts (AOC) and the individual counties.

Ellen stated that in Area One, #3 should be part of #1. She said that new judges should have some idea of this at the beginning of their tenure. Senator Anderson said there was a report required that the trainings have been completed. Megan clarified that people who prepare reports for the courts are required to indicate on the report that they have received the required training.

Annette mentioned that there was no reference to cultural or ethnic dynamics. Nancy said that in Area One, #1(d), the workgroup listed “Intergenerational transmission of familial violence” and thought that this covered Annette’s concerns. Representative Bradley also stated that in Area One, #2 speaks to “social and family dynamics.” Dr. Yee stated that he believes that domestic violence is domestic violence, no matter what the cultural or ethnic background, but would have no objection to adding something regarding culture and ethnicity.

Amended Motion: Ellen amended the motion to accept with the addition of the word “cultural” in Area One, #2 to read: “The social, CULTURAL and family dynamics,” and also to add “cultural” to Area Two, #3 to read: “The social, CULTURAL, and family dynamics,” and add a #6 in Area One: “SUGGESTED PARENTING PLANS FOR FAMILIES AFFECTED BY DOMESTIC VIOLENCE.”

Members discussed the meaning of “suggested parenting plans”. Senator Anderson suggested an amendment to Ellen’s motion: “SUGGESTED PARENTING PLANS FOR FAMILIES AFFECTED BY DOMESTIC VIOLENCE AND THE RELEVANT SECTIONS OF LOCAL, STATE, AND FEDERAL LAW OR RULES.” Ellen accepted the amendment. The motion was approved unanimously.

Senator Anderson and Kat Cooper thanked the workgroup for their work on these standards, and Nancy Gray thanked Ellen Seaborne and Annette Burns for their suggestions.

CALL TO THE PUBLIC

Ariella Nahom, parent, asked who would be providing the training for the custody evaluators. **Dr. Yee explained that the professionals are governed by a regulatory board and instructors are usually respected, recognized and published professionals.** Ms. Nahom wanted the Committee to know that in her experience, domestic violence goes beyond physical abuse. There is also emotional and financial abuse, and their effects on society are very similar. She recommended that decision-makers should focus on behaviors, things done and said instead of diagnoses which may or may not be accurate. They should assess behaviors and hold abusers accountable. Ms. Nahom said that children are affected by those behaviors, and the cycle

continues. She also stated that it is generally the parent with money who has power to influence the decision-makers, and because of this, the other parent and/or victim is at a disadvantage.

BREAK/LUNCH

The Committee dismissed for lunch at 11:50. The meeting reconvened at 12:30.

2005 LEGISLATIVE PROPOSALS

The Committee will be discussing 2005 domestic relations-related legislative proposals at each Committee meeting through January.

Bill Hart noted that the Arizona Coalition Against Domestic Violence is gathering information from its constituency. They will meet on September 13, 2004 to make the first attempt at establishing legislative priorities, and will determine several priorities on that day.

Senator Brotherton asked if the spousal rape law is on the books for the Coalition. Bill Hart responded that the spousal rape law is criminal, and does not meet within this Committee's parameters. Senator Brotherton said it does affect this Committee and should be discussed in this Committee if it does come forward.

Ellen said she felt the concern about interviewing children has a lot of merit, and would like the Committee to follow up on that after discussing the creditor issue. She thinks it would be a worthwhile piece of legislation. Representative Johnson asked if it is a needed legislative proposal, because she does not like to propose legislation that is not necessary. Sid said that he does not think it should be done legislatively. Nancy echoed Sid's concerns. She recommended doing a survey to find out if it is a statewide problem. Dave Norton said that it should be statewide and should include very structured age definitions. Ellen said that A.R.S. § 25-405 is ambiguous. She suggested that the Committee review the statute and make changes to make it more usable to protect children and due process. She said she does not want to tell judges how to run their courtrooms, but that the state needs some ground rules.

Dr. Yee stated that he is concerned about making sweeping legislation changes based on four judges' practices in one county. He said the Committee also needs to consider rural counties because they do not have access to forensic psychologists.

Representative Johnson asked Dr. Yee if the Court Procedures Workgroup would take on this issue, and Dr. Yee agreed to do that. He will provide an overview of A.R.S. § 25-405 at the September meeting.

Dr. Weinstock was of the opinion that age limits should not be set, because there are legal and psychological issues. He thought that perhaps it could be geared toward legal issues of interviewing children. Senator Brotherton suggested that the Committee might want to look at other options such as repealing the statute, if need be.

Annette Burns mentioned that Commissioner Adam has spoken on this subject nationally. She said that Judge Adam is quite versed in this area and urged the Committee to include her in future discussions. Representative Johnson agreed to invite Judge Adam and Judge Davis to speak on this subject at the September meeting.

David Norton mentioned that he will make a presentation to this Committee at the September meeting on proposed changes in Order of Protection statutes.

Jay Mount proposed to the Committee that litigation could be reduced if there was a class for the divorcing parties regarding the process of divorce. David said that Judge Joseph Heilman at Northwest Superior Court teaches a class on Divorce 101. He has suggested to Judge Heilman that he produce a web-based program. Judge Heilman will also be present next month for David's presentation. Megan said that she will contact Judge Heilman about this issue.

CREDITOR ISSUE – ELLEN SEABORNE

Ellen met with Tanya Wheelless, president of the Arizona Banker's Association, who declined to attend and provide a presentation at this meeting.

Ellen explained that the Committee has three options:

1. Drop the issue completely;
2. Work on it from a national perspective because it affects other states; or,
3. The Committee can study this issue by breaking it down into smaller pieces.

David Norton stated that this is a two-pronged approach: it is a Federal issue and the Committee can do whatever we can on a state level by breaking it down into smaller pieces. Karen Kretschman said she was reluctant to let it die at our Committee level. She suggested the Committee look at what other community property states do to address this issue.

Representative Johnson asked Ellen to have her workgroup study this issue. She said that Ellen Poole would be willing to give input to the workgroup. Ellen agreed, and several members volunteered to be a part of this workgroup: Judy Walruff, David Norton, Representative Johnson, and several attorneys from the Arizona State Bar.

WORKGROUPS

Court Procedures – Dr. Brian Yee, Chair

Dr. Yee had no report.

Custody Re-Write – Steve Wolfson, Chair

Megan reported on behalf of Steve that the workgroup has met once and begun developing language.

Substantive Law – Jeff Zimmerman, Chair

Jeff had no report.

Education/Prevention – Terrill Haugen, Chair

Terrill was not present.

INTEGRATED FAMILY COURT

Pilot Project Update – Karen Kretschman

Karen noted that the final report on the three pilot projects is due in December. Pinal County has been unable to start their pilot project. Coconino County is struggling but

Judge Newton is meeting with the Board of Supervisors next week. A request to include half a million dollars in the AOC legislative budget proposal has been forwarded to the AOC Director. The money would go toward helping the three pilot projects; however, there will be no statewide funding until the data from the pilots has been received and studied. Representative Johnson thought there might be a possibility of the legislators assisting in the funding as this is not an astronomical amount.

Representative Johnson mentioned that she is most interested in getting a dedicated family bench. Karen Kretschman said the recommendation from John Greacen and Associates is that Maricopa County Superior Court should work toward taking care of the rotation problem. Representative Johnson asked Karen to keep the Committee up to date on this issue.

Workgroup Update – Ellen Seaborne

Ellen also said that the Coconino County Superior Court is going to the Board of Supervisors regarding raising filing fees for the Integrated Family Court. Ellen will give an overview of the Integrated Family Court at the September meeting.

CALL TO THE PUBLIC

No requests were received for the Call to the Public.

NEXT MEETING

The next meeting will be held on September 17, 2004, 10:00 am – 2:00 pm at the Judicial Education Center, 541 E. Van Buren Street, Suite B-4, Phoenix, Silver and Turquoise Conference rooms.

ADJOURNMENT

The meeting adjourned at 2:00 p.m.