

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – July 21, 2006

PRESENT:

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CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair
Hon. Karen Johnson, Co-Chair

MEMBERS:

- Hon. Paula Aboud
- Hon. Karen Adam
- Lucille Antone-Morago
- Theresa Barrett
- Honorable Tim Bee
- Honorable Andy Biggs
- Honorable David Bradley
- Honorable Bill Brotherton (also designee for Hon. Peter Hershberger and Hon. Karen Johnson)
- Jodi Brown
- Sidney Buckman
- Daniel Cartagena (telephonically)
- William Fabricius
- Honorable Beverly Frame
- Linda Leatherman
- Ella Maley
- Hon. Debbie McCune-Davis
- George Salaz
- Ellen Seaborne
- Russell Smoldon
- David Weinstock
- Hon. Thomas Wing
- Steve Wolfson
- Brian Yee

STAFF:

Megan Hunter
Kim Martineau
Kim Ruiz

Administrative Office of the Courts
Senate Family Services Committee Analyst
Administrative Office of the Courts

CALL TO ORDER

The meeting was called to order by Senator Brotherton, acting Chair, at 10:14 a.m. with a quorum present. Sen. Brotherton was appointed by the co-chairs to chair this meeting in their absence.

ANNOUNCEMENTS

Commissioner Karen Adam won an award from the National Council of Juvenile and Family Court Judges (NCJFCJ) for registering the most new members this year. Judge Adams indicated this was due in part to support from the AOC who capitalized on the availability of year end funds to register all the Arizona family court judges and administrators. It is the hope of the AOC that courts will see the benefit of this national membership and add this operating cost to their annual budgets in future years.

It was noted that there are a number of vacancies on the Committee. The following vacancies need to be filled:

- A member of the coalition (Dale Wiebusch is no longer with the coalition and the coalition has been contact to fill the vacancy)
- Representative from a Law Enforcement Agency
- Domestic Relations Educator (Wanda Weber resigned this week and went into another field of work)
- Representative from a Children's Advocacy Agency (Judy Walruff resigned earlier this year and there have been a few applications submitted for that position)
- Two parent vacancies (Note: Staff still seeking clarification whether they are custodial, non-custodial or joint custodial)

All members are encouraged to provide both custodial and non-custodial recommendations to help fill vacancies on both the Domestic Relations Committee and Child Support Committee. Please forward all recommendations to Theresa Barrett or Kim Ruiz. Theresa Barrett and Kim Ruiz will be the AOC contacts until Megan's position is filled.

Save the Date Announcement from Ellen Seaborne

"Assessing False and True Allegations of Child Sexual Abuse and Domestic Violence"

Presenter: Bill Eddy

Flagstaff, AZ

September 29, 2006

9:00 a.m. – 4:15 p.m.

\$40 (includes a book and lunch)

It qualifies for the required 6 hours of domestic violence training.

They are inviting members of law enforcement, CASA, court staff, public and mental health professionals and students.

APPROVAL OF MINUTES

The minutes from the March 17, 2006 meeting state that there were not enough members for a quorum, although 15 of the 28 members were marked as present. The minutes were amended to reflect that due to members arriving and departing, there was not a quorum present.

MOTION: Judge Wing made a motion to approve the March 17, 2006 minutes as amended.
SECOND: Commissioner Adam seconded the motion.
VOTE: Unanimous.

The February 17, 2006 meeting minutes need to be approved, so it will be added to the August 18 agenda.

LEGISLATIVE UPDATE – KIM MARTINEAU, SENATE FAMILY SERVICES COMMITTEE ANALYST
 Kim Martineau provided members with an overview of family law-related legislation. Member’s comments are indicated in relevant sections under “Comment(s)”. The general effective date this year is September 21, which is an unusually late date due to the late sine die. The general affective date is always 90 days after the legislature adjournment sine die.

BILL	DOMESTIC RELATIONS
SB1087	Signed by the Governor on May 2 and will become effective on the general effective date. (Note: This bill was Senator Brotherton’s final piece of legislation to pass into law.)
SB1267	Emergency measure. Signed by the Governor on June 21 and went into effect immediately due to the emergency clause.
HB2026	Assigned to House Judiciary but did not receive a hearing. It did not pass into law this session.
HB2559	Vetoed by the Governor on June 28, 2006. Comment(s): Part of the reason for the veto had to do with the procedure for reopening a termination for parental rights action. The jury trial option will sunset on January 1, 2007.
HB2561	Held in the House Ways and Means Committee and did not pass into law this session.
HB2716	Original version of the bill was held in the House Human Services and Rules Committee and the latter version was held in the Senate Family Services Committee. Comment(s): Some form of this legislation will be brought back next year. The Senate committee had the following concerns about the bill: that it was an “immunity” bill, complaints could be dismissed too early and the board would not have a chance to hear them, and the domestic violence community were concerned that victims would be less likely to file complaints with the provision that they would have to pay the legal fees incurred if the complaint was dismissed. Unfortunately, the domestic violence community was not fully informed on the legislation, which resulted in victims groups not supporting the healthcare professionals who are attempting to protect victims.
HB2794	Assigned to the House Judiciary Committee, but did not receive a hearing, so it did not pass into law this session. Comment(s): The Creditor Issues’ Workgroup will meet with the Secretary of State prior to introducing this next year.
BILL	CHILD SUPPORT - STATUS
HB2279	Assigned to the House Human Services and Rules Committee, but did not receive a hearing, so it did not pass into law this session.
HB2292	Signed by the Governor on April 21, 2006 and will become effective on the

	general effective date.
HB2342	Signed by the Governor on April 12, 2006 and will become effective on the general effective date.
HB2488	Signed by the Governor on April 25, 2006 and will become effective on the general effective date. Comment(s): Sections of this bill address the Hayden case and the elimination of the three year limit.
SB1194	Never received a Third Read in the Senate, so it did not pass into law this session.

BILL	DOMESTIC VIOLENCE - STATUS
SB1097	A strike everything amendment was adopted in the Senate Family Services. Another strike everything amendment passed the House and was vetoed by the Governor.
SB1147	Signed by the Governor on May 2, 2006 and will become effective on the general effective date.
SB1342	Held in the Senate Government Committee, so it did not pass into law this session.
SB1493	Held in the Senate Government Committee, so it did not pass into law this session. Comment(s): The Chief of Police was opposed to this bill.

INTEGRATED FAMILY COURT PILOT PROGRAM

Ellen Seaborne gave a brief history of the work behind SB1267, to establish the Integrated Family Court (IFC) Pilot Program. It was a bipartisan effort that Senator Johnson led, getting funding for the program for two years for one county. The goal of the IFC Pilot Program is to eventually expand statewide with permanent funding. The focus now should be on preparation for funding, utilizing a funding expert.

Theresa Barrett informed the Committee that Pinal County graciously deferred to Coconino County for implementation. The AOC queried the presiding judges of the remaining counties under 500,000, and received support for the AOC's intent to recommend implementation of Coconino County. Coconino County's administration is drafting their plans for the IFC, while the AOC is working on drafting the funding agreement and other administrative paperwork.

CREDIT ISSUES REPORT

The Credit Issues Workgroup was formed to address the issue of unfairness in the community property arena. Ellen Seaborne presented the following legislation proposals for the next session.

Management and Control A.R.S. § 25-214

Issue: A non-participating spouse can be held responsible by a creditor for the lending debt of their spouse, even if the non-participating spouse was unaware of the debt.

Solution: Propose a model similar to Wisconsin, a community property state that requires creditors to have the signatures of both spouses to bind the community and make both parties responsible for the debt. The lending and creditor community is strongly opposed to this.

Comment(s): This seems to be a significant deviation from the current community property ruling that will complicate people getting credit. If the committee wants to

move forward with this, the workgroup will most likely look for one of the DRC members to sponsor the bill. The bill will not be retroactive—the workgroup will draft language to clarify this point.

Note: Changes to A.R.S § 25-215 were made in coordination with A.R.S § 25-214; this will ensure the related statute is not inconsistent with A.R.S § 25-214. The non-retroactive aspect will also be added to this bill.

Marital education: Plan; Administration A.R.S § 25-130

Issue(s): The marital education plan was too comprehensive, with too much information to cover in a short period of time, which would hinder the freedom of parties to quickly enter a marriage. Committee comments included:

- Dr. John Horan, Arizona State University Counseling and Psychology Program, demonstrated more effective and efficient ways to present the material for marital education and possibly other areas of family education.
- The mandatory nature of the bill is concerning. It is one thing to make the information available to people, but the mandatory nature goes against our freedom to enter into a marriage quickly. The materials should be made available, but discretionary in nature.
- A possible amendment would be to require that the information be handed out with all marriage licenses, similar to California.
- The workgroup should research other states efforts to determine how this is being handled elsewhere and to find out if their format is successful. It was suggested, the National Center for State Courts (NCSC) and National Conference of State Legislatures (NCSL) would probably have data gathered on this topic and applicable statutes. When looking at other states' statutes members need to consider their Education statutes along with the Domestic Relations statutes.
- California has an area on their marriage license where people have to acknowledge they received information about having children.
- Trends show that more of the population is moving away from the institution of marriage and are choosing to live together and have children out of wedlock. This legislation, as mandatory, makes it even more difficult for those that want to get married, possibly encouraging them to choose co-habitation instead.
- Delete section (B) of the proposed A.R.S § 25-130, since the "opt-out" clause will no longer be necessary if it is not mandatory.

CONSENSUS: Overall consensus was to remove the mandatory aspect of the statute.

Subjects to include in the education material (staying within areas of statute):

- Fundamental aspects of community property law, including acquisition of property
- Impact of title and responsibility for debts
- Options for types of marriage, including covenant marriage
- Options for prenuptial and post-nuptial agreements
- Spouse's respective rights to make decisions
- Legal responsibilities toward children
- Rights and consequences attendant to divorce, legal separation or annulment

The issue was transferred to the Education Workgroup to establish the material. They will work with Dr. Horan to create the education materials and partner with the State Bar Family Law Section to distribute.

Filing of Pre-Nuptial/Post-Nuptial Agreements and Amendments A.R.S § 25-206

The proposed bill addressing this issue failed this year, believed largely in part due to lack of support from the Secretary of State, because the impact on her office was unclear. The Creditor's Workgroup will meet with the Secretary of State to explain the purpose of a central registry and get her backing for the legislation this session.

CONSENSUS: Members present supported moving forward with this proposal.

Note: Changes to A.R.S § 33-413 were made in coordination with A.R.S § 25-206; this will ensure the related statute is not inconsistent with A.R.S § 25-206.

Management and Control A.R.S § 25-214

Addresses the "community" of a business in a divorce. The intent of the proposed change is to acknowledge the community interest, unless there is a written waiver of the right to manage the partnership. When one member of the marriage enters into a business partnership with people outside the marriage, a statement that the uninvolved member of the marriage waives their right the business removes the business from community property. Discussion included:

- This will probably be strongly opposed by the domestic violence community, when considering the issue of coercion.
- The draft language is still confusing. The workgroup needs to rework this proposed amendment.

Separate Property A.R.S § 25-213

This protects the separateness of a property when people enter into a marriage. Problems arise when people refinance a property and in the refinance the personal property becomes a community property in the change of title, even though the purpose of the refinance may have been for a small improvement. Most people do not realize they have gifted their personal amount of the property to the community. It raises it to the "clear and convincing" level of evidence.

- Section (E) needs to be amended to make a complete sentence.
It now reads:
E. A spouse's use of separate property to pay a community debt incurred to purchase community property shall create a sole and separate lien against that property, unless there is clear and convincing evidence of a gift.
- The body of case law we are currently operating under needs to be researched more, because the expansive language of this change will undo it. There is no requirement of documentary proof of private property in the current language. It is potentially a very significant change in the law.
- As it currently stands, it will fuel more litigation.

The workgroup will continue to work on the language.

Property acquired during marriage as community property A.R.S § 25-211

The proposed change is to clarify the statute for unrepresented litigants. It states: if it was community before the service of petition of dissolution of marriage, it remains

community property; if it was separate property prior to service, it remains separate property.

Homestead-Judgment Lien A.R.S § 33-964

The change preserves a lien until the support debt is satisfied or lifted; removing the current five year limit. The five year limit language could not be struck, because it would remove the limit for all liens not just liens for support.

The language drafted for section (B) is to give judges discretion to look at the resources and make a decision on forcing the sale of a home based on information for each party.

CALL TO THE PUBLIC

There was no public present.

2006 STRATEGIC PLANNING

The Workgroups met to review the topic heading of the Strategic Planning List drafted at March 17, 2006 meeting.

Strategic Planning will be tabled for the next meeting when the chairs are present.

WORKGROUP REPORTS

Substantive Law: Will work on failed HB2716 to bring it back for the next legislation.

Education and Prevention: Will work on providing information to people applying for marriage licenses about various aspects of marriage. It was suggested they also consider the content of the Parent Education Program with an eye toward modifying a version toward parents that may never have been married or lived together.

The current minimum standards for the content of the Parent Education Program is available online at:

<http://www.supreme.state.az.us/dr/pdf/ped.pdf>

No other Workgroups reported.

NEXT MEETING

The next meeting will be held on August 18, 2006, Arizona Courts Building, Conference Room 119A/B.

William Fabricius, Ph.D., will give his presentation that he prepared for the *International Conference on Divorce and Children*, on new research of physical health outcomes for children of divorce. (September meeting)

CALL TO THE PUBLIC

There was no public present.

ADJOURNMENT

The meeting was adjourned at 2:02 pm