

## DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – January 26, 2007

### PRESENT:

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### CO-CHAIRS:

Hon. Peter Hershberger, Co-Chair  
Hon. Linda Gray, Co-Chair

### MEMBERS:

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- Hon. Paula Aboud
- Hon. Karen Adam
- Theresa Barrett
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- Jodi Brown
- Sidney Buckman
- Daniel Cartagena
- William Fabricius
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- Barbara Fennell
- Honorable Beverly Frame
- Linda Leatherman (telephonically)
- Ella Maley
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- George Salaz
- Donnalee Sarda
- Ellen Seaborne
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- Russell Smoldon
- David Weinstock
- Hon. Thomas Wing
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- Steve Wolfson
- Brian Yee

### STAFF:

Kathy Sekardi  
Kim Ruiz  
Barbara Guenther

Administrative Office of the Courts  
Administrative Office of the Courts  
Senate Democratic Staff Policy Advisor

### CALL TO ORDER

The meeting was called to order by Ellen Seaborne, Acting Chair, at 10:15 a.m. without a quorum present.

## **ANNOUNCEMENTS**

Ellen Seaborne reviewed the following changes in the legislative membership:

- Rep. Peter Hershberger, remain co-chair
- Sen. Linda Gray, replaced Sen Johnson as co-chair
- Sen. Rebecca Rios replaced Sen. Bill Brotherton
- Sen. Paula Aboud, Sen. Tim Bee, Rep. David Bradley and Rep. Andy Biggs remain
- There is still not a replacement for Rep. Debbie McCune-Davis

The following additional announcements were made:

- There are still five vacancies on the Committee and recommendations are welcome from all members.
- Ellen expressed her appreciation for all the past and present members that have served the Committee and worked hard on domestic issues.
- David Weinstock read a statement from Megan Hunter expressing her appreciation for the work she did with the Committee and where she is now.
- The 2006 Domestic Relations Committee Annual Report is complete and on the website.
- Kathy Sekardi congratulated Rep. Hershberger as he was honored with the Arizona Hospital and Healthcare Associations 2006 Legislative Appreciation Award.
- Ellen informed the members of the 4<sup>th</sup> Annual “Stop Violence Against Woman Day”, being sponsored by the Arizona Coalition Against Domestic Violence on February 14 with guest speaker Denise Brown, Nicole Brown’s sister.
- Sid Buckman invited all the members to a Post St. Patties Day party being sponsors by he and Ellen. Further information will be sent out after the meeting.

## **APPROVAL OF MINUTES**

Ellen presented the November 17, 2006 minutes for discussion. The following corrections were made to the minutes:

- Page 4, Folder 104-Premarital and postmarital agreements: language needs to be added stating that it is currently a requirement to register the agreements, but there is no centralized repository.
- Page 5, Folder 106-Post-divorce collection of debts: language was changed and added to clarify it is regarding post-divorce earnings of the spouse who did not incur the debt.

The changes were made and they will be presented for approval at the next meeting since there is not a quorum present.

## **2007 LEGISLATIVE UPDATE**

Kathy Sekardi, Leila Gholum and Jackie Kuder presented the following legislative items:

<b>HB 2584</b> Integrated Family Court;	Extends the unexpended funds appropriated to the
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appropriation; extension	IFC to FY 2008-2009, to ensure the pilot program runs a full two years.
<b>SB1356</b> Marriage; dissolution; community property	DRC legislation
<b>SB 1357</b> Dissolution of marriage; attorney fees	DRC legislation
<b>SB 1358</b> Marriage; property; debts	DRC legislation; language was changed in Legislative Council. Will need to amend the language once it is assigned to a committee.
<b>SB 1247</b> Homestead exemptions; judgments; child support	Not the homestead contempt remedy legislation DRC proposed. This was put forward by Arizona Land and Title Association (ALTA).
<b>SB 1190</b> Integrated Family Court; court orders	Adds clarifying language to allow family court judges in the IFC to order someone to have additional services they are eligible for.
<b>HB 2211</b> Children; temporary court orders	CSC legislation. Allows the courts to issue temporary custody and parenting time orders pending judicial establishment of paternity.
<b>HB 2214</b> Domestic relations; social security numbers	CSC legislation. Redacts social security numbers from pleadings petitions and other documents relations to child support and paternity. Social security numbers will be filed in the "record of the proceeding" which will be the Sensitive Data Sheet.
<b>HB 2248</b> Title IV-D services; fees	DES legislation. Conforming to federal law by introducing a \$25 annual fee to each recipient of title IV-D services whose payment exceeds \$500 each year. This is a prop 108 bill so it requires a 2/3 majority vote.
<b>HB 2249</b> Child support enforcement	DES legislation. Transfers the responsibility of establishing child support orders in uncontested cases, establish paternity by presumption and allow modification of court orders from the courts to the DCSE, IV-D agency through an administrative process. The court is in opposition of this bill. They presented this bill about 10 years ago and it didn't pass then.
<b>HB 2250</b> Domestic relations; child support; committees	AOC legislation. Extends the time of the Domestic Relations and Child Support committees to 2017.
<b>HB 2251</b> Child Support Committee; membership	AOC legislation. Changes a requirement in one of the membership categories to allow for a designee.

Committee members commented on the following:

- HB 2214, it was asked if the redacting of social security numbers was the responsibility of the clerk or the parties. The responsibility lies with the parties, not the clerk.
- HB 2249, It poses great concern to judges and commissioners that work in this area that these cases would not have judicial review. Many stated that it is not only the courts that slow the process of these cases, it is also the agency. All sides agree that the goal is to streamline case processing. DES has agreed to

hold the bill and the courts have agreed to do a trial run of handling appropriate IV-D cases in the expedited manner of non IV-D cases.

- HB 2249, if this authority is placed with DES without court review, it could be questioned if they are an impartial decider. While expedited, will it be fair? There are also considerations DES doesn't address, that the courts do. The courts have a holistic view, rather than just handling one piece.
- HB 2249, Commissioner Adam reported that as a member of a National Judicial Child Support Task Force she has noted that the national trend is moving from it being an administrative function to a function of the court and involving systemic changes along with other family law related areas.

### **CREDITOR ISSUES WORKGROUP REPORT**

Ellen announced that Sen. Debbie McCune-Davis will remain on the workgroup as a member. Sen. McCune-Davis, Rep. Hershberger and Sen. Johnson are sponsoring the bills put forth by DRC. Ellen reported on the following legislation that was presented at the November Committee meeting:

- The following language was added in a new subsection "O" to § 25-216:  
"The documents recorded shall not include confidential data as defined by Arizona statutes, notwithstanding the foregoing. The recorded document may identify a party by the last four digits of the party's social security number."
- § 33-1103 was approved by the Committee in November, but there is confusion with similar legislation dropped by Arizona Land and Title Association (ALTA), which has become SB 1247. The language is far more draconian than the version the Committee proposed.
- The approved legislation for § 25-214 and § 25-215 was changed when it went through Legislative Council and dropped as SB 1358. It will need to be amended when it gets assigned to committee.
- It was agreed that § 25-318 will continue to be table until there is a quorum present to discuss it.

The following Committee comments were made:

- David Weinstock inquired about controversial domestic violence legislation that he has heard about. He voiced concern that there were no legislators present at a legislative committee to provide updates and insight on current legislation.
- Ellen reminded the Committee of the two year legislative cycle and that the first meeting after elections and a change of members always has a low turnout, but it is not reflective of the effectiveness of the Committee. The Committee has put forth many good pieces of legislation over the years, including this session.
- More needs to be done to ensure there is a quorum present at every meeting rather than the trend of no quorum. A quorum is necessary to get work done and if a quorum isn't possible, then the meeting should be held over until the next meeting. Any informational items can be sent out through email if it can't wait for the next meeting.
- It was recommended that the meeting dates for 2007 be cleared through the legislative members' calendars first

Donnalee reported on the domestic violence legislation David had mentioned. The current law requires that domestic violence be taken into consideration when establishing custody. There is an additional provision that when determining parenting

time judges also consider the parents' willingness to promote a good parenting relationship with the other parent (a "friendly parent" provision). The proposed legislation makes the consideration of domestic violence the first priority in custody cases and also exempts parents where domestic violence is an issue from the friendly parent provision. David Lujan is involved in the sponsorship of this bill.

David Weinstock met with David Lujan regarding the language of the legislation because while it has good intentions it also has potentially dangerous, unintended consequences the way it was written. Mr. Lujan agreed to reconsider and change the language to get at the intent but not be as potentially detrimental. Since then, the people that were originally putting the legislation forward did not agree with the changes and dropped the original language with another legislator. It is unknown if the bill has dropped yet and if it has what the bill number is.

Brian Yee also commented on the consequences of the legislation. The existing statutes already address this issue and the judiciary already handles custody and parenting time in this way. The original legislation removes the word "significant" from in front of "domestic violence" which Brian anticipates will increase the cost of litigation, protract the process, clog the system and interfere with protection of victims. The presented legislation lacks understanding of how the current judicial system works, is unnecessary and the unintended consequences are potentially harmful.

Judge Wing voiced concern that this legislation wasn't brought forth by the AOC and that there were no legislative members present to provide further information.

Kathy explained that it is currently not an active bill and she is still investigating who is behind the legislation. She will keep the members informed. The meetings are also a place where the members can bring forth information that Kathy can look into.

Members requested that Kathy send email notifications regarding bills that pertain to domestic relations issues and when they are being heard in committee, so members are informed.

The February meeting should be devoted to legislation review and workgroups.

### **IFC Report**

Ellen gave the following update on the pilot Integrated Family Court:

- The funding was appropriated to have the coordinator designated.
- Ellen was on the IFC judge selection committee that chose Elaine Fridlund-Horne. She will be a dedicated family bench and her position will be funded by the pilot and the county.
- Judge Fridlund-Horne will handle cases with dependency crossovers.
- Judge McCullough will handle cases with delinquency crossovers.
- The evaluation process by an independent evaluator has become a greater process and more expensive than anticipated. An RFP was sent out and a firm out of the San Francisco area was chosen.
- The evaluator will come out for a week to evaluate and offer suggestions.
- Now there is an RFP out for services.

Theresa Barrett informed the Committee that Pinal County is working on a grant to fund another pilot Integrated Family Court that will run under another model with more of a juvenile focus. This will allow for a good comparison of the models after two years.

#### **POSSESSION OF PORNOGRAPHY FOR COURT PROCEEDINGS**

Cindi Nannetti with the Juvenile Crimes Division of the Maricopa County Attorney's Office had David Weinstock summarize his concerns about the possession of pornography for legal purposes. David briefly summarized a case he was involved with that child pornography was an issue. He was in possession of the pornography and a police officer involved in the case informed him that he was in violation of the law. David suggested an amendment to A.R.S. § 13-3553 to allow for a professional exemption.

Cindi explained that the Maricopa County Attorney's Office implemented a policy in 2004 that child pornography is not to be copied or reproduce in any form. It is considered to be contraband just like illegal drugs. In order to adhere to the rules of evidence, they allow the defense or appropriate interested parties to review it under one of two circumstances. They can ask the court to make it available to them and either go to the police station to inspect it with the assigned officer or they can schedule to have the assigned officer bring it to their office and stay there while they inspect it. This option would be available to members of the mental and behavioral health profession involved in custody evaluations.

Cindi further explained that an exemption currently exists for the professional possession of pornography in A.R.S. § 13-3551, which states that it must be actual or simulated exhibition of the genitals or pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer. This puts the burden on the prosecutor to prove it was for the purpose of sexual gratification. That is why mental health professionals and law enforcement are protected.

Cindi's concern with David's amendment was that it provides another defense for an offender to use. They can say they had it for educational purposes for a study, etc.

#### **Committee comments:**

- What do you do with it when a parent or an attorney brings it to you?  
You tell the attorney "I don't want to see that here. I will contact the detective on the case and arrange to inspect it at the station." If a parent brings it, it would be best to contact the police, because you don't really know which parent has been downloading it and for what purpose. The police can then go in and pull the computer and investigate who really downloaded it.
- Members of the legal, behavioral health and law enforcement fields are not educated on this subject. It would be helpful to provide education in this area, because we think we are acting in the best interest of the child, when it may be perpetuating the offense.
- It should be recommended to the state bar to conduct a training on the issue.
- Regarding the storage of the evidence after the case is complete:
  - Cindi explained the problem for the prosecutor's office is that it must be kept because Arizona allows prior subsequent acts of offender in subsequent cases to be used in trial if they re-offend. Every police

department is lacking in storage space, but the prosecutor's office cannot allow for it to be destroyed until the offender has been sentenced longer than the length of natural life or has died.

- Beverly Frame said that with the new court retention schedules for evidence destruction, the court destroys the evidence after the time for appeal and PCR and with a court order and notice to everyone, the court destroys the evidence. The timeliness is subject to the resources available.

#### **CALL TO PUBLIC**

No public was present.

#### **WORKGROUP REPORTS**

##### **Substantive Law**

Judge Wing reported that the members of the workgroup reviewed and discussed the language of the domestic violence legislation presented earlier. The discussion reaffirmed the concern that this wasn't put on the radar for the workgroup to investigate. The legislation references a "single act of domestic violence" and doesn't differentiate between a single incident and a pattern relationship. It also proposes deviating from the fundamental focus of the "best interest of the child" and focus' more on proving something bad is going to happen.

##### **Education & Prevention**

Bill Fabricius reported that the workgroup is looking at the following two issues:

1. Training for parent coordinators
2. Child education component to parent education

Today they addressed the first issue and started to outline the dimensions of the training. The workgroup has been gathering information from other states on the child education component to the parent education.

Members stressed the importance of allowing for more time for the workgroups to meet.

Brian Yee commented on the modification of 403 and that as presented seems to make the judges' and the courts' job more difficult. This is the basic child custody statute and it will affect all the stakeholders in the Committee. A lot of work went into the drafting of 403 and it shouldn't be changed for the sake of change. Brian asked that the sponsors of the bill be invited to the next meeting to present what their intentions are. Then we can discuss if improvements are needed in the child custody statute and if so, what they are.

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

Diana Baker, a custodial parent, read a letter she wrote to the Governor's Office regarding her experiences in family court and her proposed solutions.

She has been going through the family court system for the past 10 years and is the single parent of an eleven year old child.

She recommended a plan very similar to what is currently underway in the integrated family court. Some recommendations were:

- Dedicated family bench

- Dedicated case loads for judges
- More support to the judicial staff
- Standardize pathways for families to follow. Develop the appropriate pathway plan for each family that has points of intervention built in to develop accountability and reward for the families.

#### **ADJOURNMENT**

The meeting was adjourned at 1:30 p.m.

#### **NEXT MEETING**

Friday, February 16, 2007  
Arizona Courts Building  
Conference Room 119A/B  
10:00 a.m. – 2:00 p.m.  
(602) 452-3193  
Pass code: 1116