

DOMESTIC RELATIONS COMMITTEE

Meeting Minutes – February 16, 2007

MEMBERS PRESENT:

Theresa Barrett
Sidney Buckman
Daniel Cartagena
William Fabricius
Honorable Beverly Frame
Linda Leatherman

Donnalee Sarda
Ellen Seaborne, Acting Chair
David Weinstock
Honorable Thomas Wing
Steve Wolfson
Brian Yee

MEMBERS ABSENT:

Honorable Peter Hershberger, Co-Chair
Honorable Linda Gray, Co-Chair
Honorable Paula Aboud
Honorable Karen Adam
Honorable Tim Bee
Honorable Andy Biggs
Honorable David Bradley

Jodi Brown
Barbara Fennell
Ella Maley
Honorable Rebecca Rios
George Salaz
Russell Smoldon

PRESENTERS/GUESTS:

Todd Franks
Perleta Ramos, Arizona Coalition Against Domestic Violence
Janet Sell, Attorney General's Office
Miranda McDonald, State House of Representatives
Candace Stewart, State Senate
Honorable David Lujan, State House of Representatives

STAFF:

Kathy Sekardi
Kim Ruiz
Eden Rolland
Amber O'Dell

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

CALL TO ORDER

Ellen Seaborne, Acting Chair, called the meeting to order at 10:17 a.m. without a quorum present.

ANNOUNCEMENTS

Ellen introduced guests that are prospective Committee members:

- Perleta Ramos, Director of Systems Advocacy for the AZ Coalition
- Todd Franks, an attorney that has been an active member of the Creditors Issues Workgroup and is having his name submitted for membership to the full Committee

Kathy Sekardi gave the following update:

- Since the discussion on the possession of child pornography during the January 26 committee meeting, the State Bar has been contacted. Lisa Dean, Director of the CLE program, voiced interest in developing a seminar regarding this topic. Members of this committee are requested and encouraged to be active members in the process or recommend people that should be involved. Cindi Nanetti and David Weinstock will be presenters and they are looking for more.
- Kim Ruiz, support staff to the Committee has been promoted to another division of the AOC and this is her last meeting. Her replacement should be present at the March meeting.

Ellen asked the Committee members to introduce themselves and briefly give a summary of their professional background and their involvement with the Committee.

After the introductions, Ellen explained to the guests that it is not unusual for their not to be a quorum at the beginning of the year when the legislative session starts. Involvement tends to strengthen as the year goes on. While the lack of attendance affects the Committee's ability to vote on issues, the real work of the Committee comes out of the workgroups and they continue to be productive.

APPROVAL OF MINUTES

Ellen presented the November 17, 2006 and January 26, 2007 minutes for discussion.

No changes were proposed. They will be presented for approval at the March meeting since there is not a quorum present.

2007 LEGISLATIVE UPDATE

Eden Roland, Analyst for Human Services Committee at the House of Representatives and Miranda McDonald, Human Services Intern for the House of Representatives gave updates on the following House bills (last day for bills to be heard in the House is today):

HB 2584 Integrated Family Court; appropriation; extension	Extends the unexpended funds appropriated to the IFC to FY 2008-2009, to ensure the pilot program runs a full two years. <ul style="list-style-type: none">▪ Awaiting a hearing in the Judiciary committee, but it is not likely to be heard. Most likely dead.
HB 2211 Children; temporary court orders	CSC legislation. Allows the courts to issue temporary custody and parenting time orders pending judicial establishment of paternity. <ul style="list-style-type: none">▪ Passed through Human Services and Judiciary Committees. It was put on the consent calendar and is awaiting third read

	on the floor.
HB 2214 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. <ul style="list-style-type: none"> Amended in Human Services to clarify that the filing parties are responsible for placing the information on the sensitive data sheet and the court is responsible for maintaining the information in the state case registry. Passed in CAL and is awaiting third read.
HB 2248 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 who have never received public assistance and whose payment exceeds \$500 each year. This is a prop 108 bill and requires a 2/3 majority vote since it involves imposing a new fee. <ul style="list-style-type: none"> It passed Human Services and is awaiting a hearing in Rules.
HB 2249 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 as presented. <ul style="list-style-type: none"> Originally was an omnibus then it was split to three pieces. The only part that made it out of committee was: (1) allowing DES the authority to suspend a person’s professional license as a form of child support enforcement. When it was heard on the floor the following was added back in: (2) contract service employers reporting requirements to New Hire state reporting and (3) DES authority to administratively release a lien in title IV-D cases if the obligee can’t be found or is unwilling to sign the release. Passed the floor and is awaiting third read.
HB 2250 Domestic relations; child support; committees	AOC legislation. Extends the time of the Domestic Relations and Child Support committees to 2017. <ul style="list-style-type: none"> Passed through committee, caucus and the floor. It now passes to the Senate.
HB 2251 Child Support Committee; membership	AOC legislation. Changes a requirement in one of the membership categories to allow for a designee. <ul style="list-style-type: none"> Passed through committee, third read on

	floor and passed to the Senate
HB 2594 Domestic relations; support judgments; interest	CSC legislation. Eliminates interest on past child support judgments (not retroactive). <ul style="list-style-type: none"> Passed Committee but with a lot of controversial discussion. Had more dissention than other bills.
HB 2635 Deployed military; custodial rights	Custody orders based on a military deployment of a custodial parent are temporary and revert back to the original decree at the end of deployment. <ul style="list-style-type: none"> Passed through committee and is awaiting Rules. It will then will go on the consent calendar and bypass caucus and to third read.
HB 2263 CPS; interviews; right to refuse	CPS workers must verbally inform a family under investigation that the family is not obligated to allow CPS workers to enter the home and they are not obligated to allow them to interview the child. <ul style="list-style-type: none"> Heard in committee yesterday as a strike everything amendment. Replaced with the same bill but in a new format. Now in a list format with the addition that CPS must inform families in writing and verbally. It passed out of committee.
HB 2662 Judicially appointed health professionals; complaints	No update, because not assigned to the Human Services Committee.
SB1356 Marriage; dissolution; community property	DRC legislation <ul style="list-style-type: none"> Passed public safety and Human Services Committee. Ellen mentioned proposed changes from the Creditor Issues workgroup. Explained further under the Creditor Issues Workgroup report.
SB 1357 Dissolution of marriage; attorney fees	DRC legislation <ul style="list-style-type: none"> Passed Public Safety and Human Services.
SB 1358 Marriage; property; debts	DRC legislation; language was changed in Legislative Council. Will need to amend the language once it is assigned to a committee. <ul style="list-style-type: none"> Did not pass out of committee.
SB 1247 Homestead exemptions; judgments; child support	Disallows a person from claiming a homestead exemption to protect against child support or spousal maintenance, arrearages, or related costs and attorney fees. Not the homestead contempt remedy legislation DRC proposed. This was put forward by Arizona Land and Title Association (ALTA). <ul style="list-style-type: none"> Heard and amended in the Committee of the Whole. The amendment limits the court to consider the homestead as a resource for support only in certain circumstances.

SB 1190 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. <ul style="list-style-type: none"> ▪ Still waiting to be heard in caucus.
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Committee comments:

- **HB2584:** Ellen explained the importance of the bill and inquired as to how it can be kept alive. It was suggested that it be attached to another bill, with likelihood of passing, on the floor as an amendment.
- **HB2214:** Janet Sell summarized the background for this legislation and keeping with federal requirements for TANF funds.
- **HB2248:** Members inquired about the difference between title IV-D services and public assistance. Janet Sell explained that title IV-D services are not a form of public assistance. They are state services available to anyone that applies.
- **HB2594:** Members inquired why this legislation was not routed through this Committee for feedback. Concern was voiced that this is a blanket policy change to address only some of the cases. There needs to be a qualifier for extreme cases.
- Janet Sell summarized the reason it was considered in the Child Support Committee and all the issues that were involved. This was the best possible solution out of all the options considered.
- **HB2635:** It was noticed that part of the proposed amendments was changing “defined” to “prescribed”. Discussion ensued and it was agreed that they really mean defined and prescribed is not an appropriate legal term in this case.
- **ACTION:** The bill will be passing to the Senate Public Safety and Human Services Committee. Sen. Linda Gray is the chair of that Committee, as well as this one, so we will forward the recommendation to her.
- **SB1356:** Steve Wolfson reported that the Family Law section of the Executive Council of the State Bar has concerns about how the new language will impact the application or continued effectiveness of preliminary injunctions, because it doesn’t refer to it.
- The proposed new language seems to cause a conflict within the statute between A and B.
- The following language was added to SB1356:
C. THE PROVISIONS OF THE FOREGOING SUBSECTION B SHALL NOT ALTER ANY RIGHTS OR OBLIGATIONS SET FORTH IN A.R.S. 25-315.
- **SB1357:** Steve Wolfson reported that the Family Law section of the Executive Council of the State Bar has concerns about how the new language will impact awards all together.
- Rule 82, *ARFLP*, requires the court to make findings of fact and conclusions of law if a party requests them and submits them ahead of time.
- The following language was added to SB1357 (A) after “...under this chapter or chapter 4, article 1 of this title.”:
IF REQUESTED BY A PARTY OR ANOTHER COURT OF COMPETENT JURISDICTION, WHETHER BEFORE OR AFTER ISSUANCE OF A FEE AWARD,
- **SB1247:** It was questioned how the amendment affects child support liens issued pursuant to A.R.S. 25-516. The title company ought to be able to recognize those as well.

- It was agreed to add the following to A.R.S. 33-1103(A)3 from the Creditor Issues Workgroup:
UNLESS A LIEN EXISTS PURSUANT TO A.R.S. § 25-516
- **SB1190:** This is not a bill out of Coconino County. Coconino County is not opposed to it, but it was not generated from Coconino.
- There were a few domestic relations related bills not on the agenda. The Committee staff and members need to bring forward all the bills for discussion and information. We also need to develop a relationship with legislators that if proposed legislation impacts domestic relations it should be sent through our Committee for discussion.
- Legislators that sponsor domestic relations related bills should be invited to the Committee meetings to present and discuss the legislation.
- It was recommended that a joint committee meeting of Domestic Relations Committee and Child Support Committee be scheduled in October or November to discuss possible legislation from each for the following session.

CREDITOR ISSUES WORKGROUP REPORT

Ellen tabled the discussion of A.R.S. § 25-318 amendments to the March meeting since there is not a quorum for a vote and it will be legislation for the next legislative session.

Todd Franks reported on the changes made in the workgroup meeting prior to the Committee meeting today. The Workgroup met with Sen. McCune-Davis, Lee Miller, representing ALTA and Larry Phelps with Capital Title Agency. The following proposed amendments came out of that meeting:

SB1356: Changes made in Legislative Council removed a key phrase and lost the intent of the amendment. The following addition to A.R.S. 25-211(B) will be amended on the floor:

2. Change the status of community property used to acquire new property or the status of that new property, *IF ACQUIRED WITH COMMUNITY ASSETS*, as community property.

SB1247: The McCune-Davis amendment that went through yesterday was a blending of two separate amendments that did not belong together. The Workgroup separated them and redrafted them as intended. The following was added to (3) for ALTA's intent (includes the above added language regarding A.R.S. § 25-516):

3. A lien for child support arrearages, spousal maintenance arrearages or costs or attorney fees awarded in relation thereto. *NOTWITHSTANDING THE FOREGOING, AN AWARD OF COURT ORDERED SUPPORT OR ATTORNEYS' FEES SHALL NOT CONSTITUTE A LIEN FOR THE PURPOSE, UNLESS AN ARREARAGE HAS BEEN REDUCED TO JUDGMENT, UNLESS A LIEN EXISTS PURSUANT TO A.R.S. § 25-516, OR UNLESS THE COURT ORDERS A SPECIFIC SECURITY INTEREST OF THE PROPERTY FOR SUPPORT.*

The original DRC approved language was added back to A.R.S. 33-1103 as follows:
C. THE COURT MAY CONSIDER THE PORTION OF PROPERTY CLAIMED AS EXEMPT BY THE HOMESTEAD PURSUANT TO ARS 33-1101(A) AS A RESOURCE FROM WHICH AN OBLIGOR HAS ABILITY TO PAY IN A

CONTEMPT PROCEEDING BROUGHT TO ENFORCE PAYMENT OF ANY FORM OF CHILD SUPPORT, SPOUSAL MAINTENANCE, ATTORNEYS' FEES AWARDED PURSUANT TO ARS 25-324, TO THE EXTENT BASED ON THE DIFFERENCE IN THE RELATIVE RESOURCES OF THE PARTIES, OR AN AWARD OF ATTORNEYS' FEES OR EXPENSES RELATED TO ENFORCEMENT OF ANY SUCH AWARDS.

CALL TO PUBLIC

No public was present.

WORKGROUP REPORTS

Substantive Law

Brian Yee reported on the changes to HB2215 and HB2216 Steve Wolfson, Judge Wing, Todd Franks and he drafted.

Judge Wing reported on the discussion they had about an issue with Title 25-509. The discussion was regarding the judge making at least a preliminary determination of existing parenting time for each parent before writing a child support order. The formula under Title 25-320 requires the judge to compute parenting time for the obligor before child support. The language in 25-509 should be amended to require at least in the record what the amount of parenting time has been or is currently in order to write a new child support order.

Daniel Cartagena reported on their discussion regarding the enforcement of protective orders, the consistency of an Order of Protection and a superior court order and the education of defendants. The DV Rules Committee is currently addressing the issues in the following ways:

- Developed a Defendant Guidesheet to inform defendants that when they are the subject of an Order of Protection they have to honor that regardless of the actions of the plaintiff.
- New procedure where limited jurisdiction courts, upon issuing an Order of Protection, will refer the case to superior court if there is a pending DR matter or a parenting plan in effect.
- A one hour orientation for superior court judges will be developed to instruct them how to rectify inconsistency between orders from limited jurisdiction courts.

They also discussed possibly addressing issues of paternity fraud and holding mothers responsible to list all possible fathers when establishing paternity.

Education & Prevention

William Fabricius reported that the Workgroup gathered information from Texas and Massachusetts regarding the child component of their parenting education classes. When he reviewed them he found they didn't involve the children, the way Hawaii's *Kids First* program does. William also reported that the Workgroup sent out a survey to the Parenting Class Educators in all fifteen counties to find out if any of them currently include a component with the child's point of view in their classes. There are still a few counties that need to respond. The child component they envision would involve the whole family with children meeting in one room while the parents meet in another then bringing them together.

COURT PROCEDURES

Brian Yee reported that the Court Procedures Workgroup is looking for a new mission. The initial issues that created the Workgroup have been addressed, so it is time to return to the strategic planning topics developed in early 2006. Brian suggested the following for the March meeting:

- Review, prioritize and assign the Strategic Planning Topics from 2006.
- Brainstorm ways to improve intelligence gathering and improving access to legislation
- Reserve finalizing the 2007 meeting schedule until the work plans of the Workgroups and the goals of the Committee are determined in March. The work of the Committee should drive the schedule, not the other way around.

Committee comment:

- There was a time when the work of the Committee was impacted by public comment and the number of guests that came to the meetings and presented.
- The lack of public has been affected by the lack of legislators present. The Committee usually had strong public turnout because they were the legislators' constituents. Without the legislators the constituents do not attend.

INTEGRATED FAMILY COURT

Ellen updated the Committee on the progress of the IFC and presented the most recent quarterly report.

- Ellen invited the Coconino IFC group to give a presentation to the Committee in April or May.
- The independent evaluators, Mark Morris and Associates, start next week. They reviewed past DRC minutes for the core goals envisioned for the IFC. A family law judge with the consultants will be monitoring the evaluation. They have seen many other programs, so they have ideas for us and are open to our ideas.

CALL TO THE PUBLIC

Representative David Lujan reported on the following legislation he sponsored:

- **HB2662** *Judicially appointed health professionals; complaints* was never heard so it is probably dead. Rep. Lujan is planning on meeting with various stakeholder groups to try and work through it before the next legislative session. The purpose behind it is to ensure mental health professionals are not silenced through frivolous complaints in order to have them removed from a case.
- **A.R.S. 25-403** Rep. Lujan sponsors the proposed legislation amending the statute to:
 - Priority list domestic violence when determining parenting time
 - Remove the word "significant" from the first sentence of 25-403.03.
 - Remove the "meaningful contact" clause when there is domestic violence.

The legislation had too much opposition to be introduced, so Rep. Lujan will develop an informal group in late March to discuss the issues and try and address the issues before the next legislative session.

Rep. Lujan explained that bills are never fully dead until the session is over. Strike everything amendments can happen to any bill. If the sponsor of a "dead" bill is the Chairman of a Committee they have the ability to bring it back through the strike all amendment.

Ellen suggested the Substantive Law Workgroup work with Rep. Lujan and maintain contact regarding the above two pieces of legislation for 2008.

ADJOURNMENT

The meeting was adjourned at 2:14 p.m.

NEXT MEETING

Friday, March 23, 2007
Arizona Courts Building
Conference Room 345 A/B
10:00 a.m. – 2:00 p.m.
(602) 452-3193
Pass code: 1116