

## **DOMESTIC RELATIONS COMMITTEE**

Minutes

January 11, 2008

### **MEMBERS PRESENT:**

Honorable Linda Gray, Co-Chair  
Theresa Barrett  
Jodi Brown  
Sidney Buckman  
Daniel Cartagena  
Honorable Beverly Frame  
Todd H. Franks  
Jeff Hynes (telephonically)  
Honorable David Lujan  
Patti O'Berry

Honorable Rebecca Rios  
Grace Hawkins (telephonically)  
Ella Maley  
Donnalee Sarda  
Honorable Thomas Wing  
Brian Yee  
Russell Smolden  
Honorable Leah Landrum Taylor

### **MEMBERS ABSENT:**

Honorable Peter Hershberger, Co-Chair  
Honorable Andy Biggs  
Honorable Tim Bee  
Honorable David T. Bradley  
David Weinstock

George Salaz  
Honorable Sarah Simmons  
Steve Wolfson

### **PRESENTERS/GUESTS:**

Paul O'Connell, IFC Pinal County

### **STAFF**

Kathy Sekardi  
Tama Reily  
Eden Rolland  
Amber O'Dell

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

### **CALL TO ORDER**

Without a quorum present, Honorable Linda Gray, Co-Chair, called the meeting to order at 10:10 a.m.

### **ANNOUNCEMENTS**

Senator Gray announced the appointment of the following new members:

Richard Slater, a joint custodial parent and educator for a mediator education program at the University of Phoenix.

Todd Franks, a Family Law attorney and member of a blended family.

Grace Hawkins, Director of the Conciliation Court in Pima County.

Reappointed members were Ellen Seaborne and William Fabricius.

Donnalee Sarda, children's advocacy representative, informed the committee that the Justice for Children Arizona agency has dissolved as of December 31, 2007, and a new organization has been developed, called Defenders of Children. It has a similar, but wider scope than Justice for Children, which concerns child abuse and child abuse prevention. The new organization will have the same staff members as those who were with Justice for Children.

#### **DOMESTIC RELATIONS COMMITTEE – COMPLETION OF PROPOSED LEGISLATION**

Credit Issues Workgroup proposed legislation:

- A.R.S. § 25-211 – Community property. Adds subsection B to the statute with the intent of clarifying that filing and service of a petition for divorce, legal separation or annulment does not change the status of pre-existing community property.

Committee comments:

It seems that subsection B (3), is in direct conflict with the present statute 25-315 A (1) (a), because there is a difference in the parties' rights to deal with property once the petition for dissolution of marriage is filed. They cannot do various things such as transfer, encumber, conceal, sell, or otherwise dispose of community property unless it is in the usual course of business, and for the necessities of life, including the right to pay attorney fees.

*Response:* Mr. Franks suggested this conflict be resolved by inserting the clause “*except as set forth in A.R.S. § 25-315 A (1) (a)*” at the end of subparagraph B.

As a quorum had been reached at this time, Senator Gray requested a motion on the proposal.

**MOTION:** Motion to accept the proposal of A.R.S. § 25-211.

**SECOND:** Motion seconded.

**VOTE:** Motion approved unanimously.

**MOTION:** Motion to amend A.R.S. § 25-211 B (3) to read “Alter the rights of either spouse with respect to the management of community property except

as set forth in A.R.S. § 25-315 A (1) (a).”

**SECOND:** Motion seconded.

**VOTE:** Motion approved unanimously.

**MOTION:** Motion to accept the proposal of A.R.S. § 25-211 as amended.

**SECOND:** Motion seconded.

**VOTE:** Motion approved unanimously

- A.R.S. § 25-213 Separate property. Grammatical clean-up to subsection C; does not change the intention of the statute. Addition of subsection D. is intended to avoid hardships and resolve inconsistencies that are present under existing case law determinations concerning the impact of a party investing his or her sole and separate property in joint, common or community name.

#### Committee Comments:

Judge Wing expressed concern that subsection D. would drastically change existing law by *requiring* the court to do what the current law allows *if* there is clear and convincing evidence. He also noted there would likely be serious misunderstandings over what was community property and separate property when/if dissolution came about, as most people won't be aware of this change in law. He recommended the proposal not be passed.

Senator Landrum Taylor agreed with Judge Wing and further suggested the proposal adds an element of confusion the way it is worded so that it is unclear how it is to be interpreted.

Patti O'Berry described a scenario where the sole and separate property owner might be in a situation of financial distress, and could use the spouse's good credit rating to refinance the personal property in order to alleviate the situation. In such a circumstance, the result of the joint ownership status becomes detrimental to the other spouse. It seems like there should be some loopholes built in to the statute to protect against such possibilities.

**MOTION:** Motion to accept the proposal of A.R.S. § 25-213

**VOTE:** Motion failed 11:5

- A.R.S. § 25-214 Management and Control. The proposed change to subsection A. is purely grammatical clean-up and does not alter the substance of the statute. The proposed addition to subsection B and C(3) are intended to clarify two aspects of the statute, first that either party has the same right to manage and control community property, irrespective of the named owner, and, second, the

right to manage and control community property remains subject to pre-existing legislative limits. Mr. Franks clarified that if a spouse takes community money to establish an LLC, that spouse cannot then take whatever gains come from that entity as his/her sole property.

Judge Wing asked if section C(3) would mean that the spouse who sells Avon or Mary Kay products would be solely liable for the debt that exists in that arrangement at the time of the filing of the dissolution.

*Response:* Mr. Franks explained that it would depend on the form of entity. People can incur debts as individuals, as has been the case, and those are community obligations. What section C(3) is saying is that when there is an entity set up as an LLC, and a partnership is formed with an outside individual, and that partnership goes out and borrows money, or guarantees the debt of a third party, there needs to be a waiver signed by both spouses. The way the current law has evolved, the other spouse becomes liable as well in such a situation because there is a partnership. This was not the original intent of the law, and the proposal seeks to correct this.

**MOTION:** Motion to strike “other entity” from A.R.S. § 25-214 C(3).

**SECOND:** Motion seconded.

**VOTE:** Motion approved unanimously.

**MOTION:** Motion to change the word “each” to “that” in A.R.S. § 25-214 A.

**MOTION:** Motion seconded.

**VOTE:** Motion approved unanimously.

**MOTION:** Motion to accept the proposal of A.R.S. § 25-214 as amended.

**MOTION:** Motion seconded.

**VOTE:** Motion approved unanimously.

- A.R.S. § 25-215 Post-Divorce collection of debts. Committee will table discussion/vote on this statute until a later date.

- A.R.S. § 25-216 Pre-marital Agreements Registry.

The purpose of A.R.S. § 25-216 is to create a uniform location and procedure for parties to register prenuptial or postnuptial agreements (or appropriate notice of such agreements) and for creditors (or potential creditors) to search for and obtain notice of such agreements. Instead of individual counties’ websites (some don’t have a website), there would be one location for all prenuptial agreements. The Secretary of State is being asked to maintain the responsibility for this website. There would be a registration fee for individuals, and these monies would pay for the work incurred in the process of starting and maintaining the website.

Senator Landrum Taylor asked if there would be a start-up fee incurred for such a process. Senator Gray stated there would be only the cost for programming of the website.

**MOTION:** Motion to accept the proposal of A.R.S. § 25-216.

**SECOND:** Motion seconded.

**VOTE:** Motion passed unanimously.

- A.R.S. § 25-318 Disposition of property; retroactivity; notice to creditors; assignment of debts.

Changes to this proposal include adding provision R. to say if any part of the divorce or separation court order could be construed as either being property division or in the nature of support, the court needs to make a determination whether property is intended to be in the nature of support or for property division. This is because the word *property* includes payment of debts and there are various forms of payment of debts that can be in the nature of support. This creates a problem in bankruptcy court because support orders are non-dischargeable and the courts then have to determine what the intent of the parties was for the property. The proposed language asks the judges to issue findings about this. Other changes are in B., which proposes that in dividing property, judges take into consideration all debts or obligations that are related to the property, including taxes that have not yet been paid. In addition we are clarifying that judges may consider the tax exempt status of particular property.

**MOTION:** Motion to accept the proposal of A.R.S. § 25-318.

**SECOND:** Motion seconded.

**VOTE:** Motion passed unanimously.

- A.R.S. § 33-413 Invalidity of unrecorded marriage contracts. This proposed statute goes hand-in-hand with the proposed registry created by proposed A.R.S. § 25-216 and provides that prenuptial or post-nuptial agreements are not valid, as against creditors or purchasers or property, unless the creditor or purchaser has notice of the agreement, either through actual notice or constructive notice occurring because the parties registered the agreement with the Secretary of State.

Senator Gray commented that this presents a problem for those individuals who have already registered their agreements with the County Recorders, in terms of getting the information transferred to the Secretary of State. Mr. Franks suggested adding a statement at the end of the provision to say it would apply “only to agreements entered into after the effective date of this statute.”

**MOTION:** Motion to accept the proposal of A.R.S. § 33-413.

**SECOND:** Motion seconded.

**VOTE:** Motion approved unanimously.

**MOTION:** Motion to accept the proposal of A.R.S. § 33-413 as amended above.  
**SECOND:** Motion seconded.  
**VOTE:** Motion approved unanimously.

- A.R.S. § 13-3102 Misconduct with weapons; Domestic violence.

A.R.S. § 13-3102 would allow persons who are under a protective order to carry a concealed weapon without acquiring a permit. It has been suggested that this allowance be part of the protective order itself when it is issued. The proposal recommends waiving the expense of the concealed weapon permit and the required course; however, there remains a question as to whether the waiver should be for a period of 6 months, or for the duration that the protective order is in effect.

Danny Cartagena questioned whether the individual requesting the order of protection could be carrying a concealed weapon before a full hearing has established grounds for the protective order.

Beverly Frame had concerns about what system would be in place to keep weapon registries current for law enforcement, the courts, and the public, and to make clear which individuals should or should not be carrying a concealed weapon.

Representative Lujan agreed with these points, noting the relative ease with which a person can get a protective order prior to a full hearing where both parties are heard by the court. He suggested it might be good to have the legislation drafted so that the ability to carry the concealed weapon wouldn't apply until the full hearing before the judge.

Senator Gray agreed that these points should be considered as the proposal goes forward.

- A.R.S. § 25-803 Persons who may originate proceedings; custody; parenting time; conciliation court.

Danny Cartagena updated the committee on the work of the Substantive Law workgroup on A.R.S. § 25-803. They have focused much of their efforts on section D, which assigns custody to the parent with whom the child has resided for the greater part of 6 months. They continue to work toward improved measures for determining custody.

#### **APPROVAL OF NOVEMBER 9, 2007 MINUTES**

The minutes from the November 9, 2007 Domestic Relations Committee meeting were presented for approval at this time.

**MOTION:** Motion to approve the minutes of the November 9, 2007 Domestic Relations Committee meeting as presented.  
**SECOND:** Motion seconded.  
**VOTE:** Motion approved unanimously.

## **SB1190**

Senator Landrum Taylor presented SB1190 which amends A.R.S. § 25-323.02 concerning domestic relations committee; membership; duties; pilot programs; report. It allows a judge in the family court the ability to refer a family to different services that may be helpful in keeping them together.

**MOTION:** Motion to accept A.R.S. § 25-323.02 as presented today.  
**SECOND:** Motion seconded.  
**VOTE:** Motion approved unanimously.

## **DES/DCSE Proposed Legislation**

Veronica Hart Ragland, Assistant Director, Division of Child Support Enforcement addressed the committee regarding three areas where DES wants to propose legislation:

- To obtain the administrative authority to establish paternity after genetic testing results of at least 95% confirmed paternity.
- To establish support orders through an administrative process when the matter is uncontested. It would permit the establishment of a temporary order if either party fails to attend a mandatory conference. The temporary order may be appealed to Superior Court within 60 days. All contested cases would still go before the Superior Court.
- To seek judicial authority to order cash medical support when neither party has insurance that is accessible and available at a reasonable cost. The Deficit Reduction Act defines reasonable cost as no more than 5% of the obligated parent's gross income or such higher amount as prescribed by the child support guidelines.

## **Mental Health Provider Complaint Bill**

Representative Lujan updated the committee on the status of **HB2662**, concerning judicially appointed health professionals. It was decided that legislation will not be pursued on the issue this year, and will instead be addressed through court orders and custody evaluators.

## **CALL TO THE PUBLIC**

Mr. Robert Reuss, a paternal grandfather, addressed the committee about his concerns that Arizona courts are failing to look adequately at the best interest of the child where custody cases exist, and erring to frequently on the side of the mother.

## **ADJOURNMENT**

The meeting was adjourned at 1:35 pm.

## **Next Meeting**

Domestic Relations Committee  
July 11, 2008  
10:00 am to 2:00 pm  
State Courts Building  
Conference Room 119 A/B