

DOMESTIC RELATIONS COMMITTEE

Final Minutes

July 11, 2008

MEMBERS PRESENT:

Honorable Linda Gray, Co-Chair
Theresa Barrett
Jodi Brown (telephonically)
Sidney Buckman
Daniel Cartagena
Todd H. Franks
Grace Hawkins
Danette Hendry
Jeff Hynes (telephonically)
Ella Maley
Patti O'Berry

Honorable Rebecca Rios (telephonically)
George Salaz
Donnalee Sarda
Ellen Seaborne
Honorable Sarah Simmons
Russell Smolden
David Weinstock
Honorable Thomas Wing (telephonically)
Steve Wolfson
Brian Yee
William Fabricius (telephonically)

MEMBERS ABSENT:

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

Honorable Beverly Frame
Honorable Leah Landrum Taylor
Honorable David Lujan

PRESENTERS/GUESTS:

Melissa Knight, IFC Pinal County
Laura Sabin Cabanillas, New Life
Counseling

Kay Radwanski, Administrative Office of the
Courts

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 July 11, 2008 meeting of the Domestic Relations Committee (DRC) to order at 10:00 a.m.

ANNOUNCEMENTS

The following announcements were made:

- Senator Gray welcomed new member, Danette Hendry, a custodial parent.
- There is a vacancy on the Committee for the faith based organization position.
- Senator Leah Landrum-Taylor gave birth to a little girl on June 21, 2008.
- Donnalee Sarda announced the opening of a new branch of the Defender's of Children in Colorado City.

Members and staff were asked to introduce themselves.

APPROVAL OF THE JANUARY 11, 2008 MINUTES

As a quorum was now present, the minutes for the January 11, 2008 meeting of the Domestic Relations Committee were presented for approval. It was noted that a correction was needed to indicate that Richard Slatin was not yet appointed to the Committee.

MOTION: Motion to approve the minutes of the January 11, 2008 meeting of the Domestic Relations Committee.

SECOND: Motion seconded

VOTE: Approved unanimously

MOTION: Motion to approve the minutes of the January 11, 2008 meeting of the DRC with amendment as discussed herein.

SECOND: Motion seconded

VOTE: Approved unanimously

LEGISLATIVE UPDATE

Kathy Sekardi presented an update on legislation passed during the 2008 legislative session. Effective date for most of the bills will be September 26, 2008.

Domestic Relations Bills

SB 1112 – Divorce; disposition of property; marriage; dissolution; community property
This bill includes the language of **SB1151**. Amends A.R.S. § 25-318 and A.R.S. § 25-211. Clarifies the process for dissolution of marriage, separation, or annulment. Does not change the status of community property, nor does it change the status if the property has been used to acquire new property

Domestic Violence Bills

Kay Radwanski, AOC Domestic Violence Specialist, presented the following Domestic Violence bills:

HB 2248 – Electronic communications; harassment

Amends A.R.S. § 12-1809, the statute that addresses injunctions against harassment and A.R.S. § 13-3602 which is the order of protection statute. This requires the judicial officer, in addition to reviewing the petition pleading and any other evidence presented by an applicant for a protective order, to also consider any evidence of harassment by electronic contact or communication.

SB 1100 – Domestic violence and child abuse.

Amends A.R.S. § 25-403.03. Changes prohibitive language in the existing statute to permissive language, allowing the court to contact or order services from DES if the court believes the child may be a victim of abuse or neglect.

Kathy mentioned another bill of interest, HB 2505, which passed under Child Support related bills. It addresses child support and medical insurance and would put the responsibility for the medical insurance on the shoulders of the parents. The recently established Guidelines Review Committee will be working on this in the coming months.

Stalled Bills

SB 1107 – Marriage; property; debts

Would have required a joinder of both spouses in order for a creditor to collect a judgment against community assets,

SB 1183 – Pre and post-marital agreements

Required the secretary of state to establish and maintain a registry for filing all of the post and pre-marital agreements.

HB 2009 - Child bigamy; child custody

Would prevent the superior court from granting physical or legal custody or unsupervised parenting time with an individual who has practiced child bigamy and is expected to continue such activities in the future.

Senator Gray added that SB 1183, the pre and post-marital agreements registry with the Secretary of State, was never heard due to the lack of appropriation funding the registry.

INTEGRATED FAMILY COURT UPDATES

Coconino County

Ellen Seaborne presented the Quarterly Program Progress and Final Evaluation Reports for the Coconino County pilot program. She briefly went over some of the information covered in the reports. The independent evaluators, Mark Morris and Associates, will be in attendance at the next Domestic Relations Committee meeting to

review and answer Committee members' questions about the reports. Copies of the reports were provided in today's meeting materials.

Pinal County

Melissa Knight updated the committee on the progress of the Pinal County IFC. They are currently moving into evaluation phase and have submitted a scope of work to the County procurement agency, as well as several other outside agencies. She discussed the ways they continue to work toward providing some of the specialized services that exist in the Coconino County program. She also stressed the need for funding if the program is to continue giving quality services to families.

"THE BATTLE OVER CUSTODY LAWS"

Laura Sabin Cabanillas, a counselor in Yuma, addressed the committee about her concerns on current Arizona statutes regarding custody and best interest of a child. She stated that the current language of A.R.S. § 25.403 lacks a provision for teenagers who are of sufficient age and maturity level to have a voice to speak for themselves and express their wishes. Laura believes the following language should be added to the statute:

"If the child is of age 13 or older, the court is required to conduct an interview with the child, while taking into serious consideration the child's desires."

Committee Comments/Concerns:

- The language should specify whether this refers to contested cases.
- What about suggesting that the judge appoint someone to interview the child?
It is my recommendation that the judge speak directly to the child so there is no miscommunication.
- Some interviews are done with a counselor from the family conciliation court present. Is that acceptable?
Yes, as long as the judge is present.
- This bill could create harm the way it is written. While children should definitely be heard, it is often the case that they don't want the responsibility of making this kind of decision. They love both parents, and this could impose guilt upon the child. In addition, most judges don't have the training to talk with children about these things. There is also the question of the child's ability to know what is best for him/herself. In this age group, a child might prefer one parent over the other because of a permissive environment.
- What about creating language that suggests listening to the child and giving his/her desires more weight, but not using the term "required?"
- Maybe it is not the law that needs to be changed, but the fact that judges aren't necessarily paying attention to the statute as is currently in place. It might be that a series of educational seminars for judges, along with forensic interview training would correct the problem.
- How can we find out if judges aren't adhering to the current statute, which says the judge shall consider the wishes of the child, so that sanctions can be imposed upon them?

- It is possible that it's the attorneys who are not requesting the interview or involvement of conciliation services.
- In any contested case, judges already have to go through all of these factors and make specific findings, as to the wishes of the child if they can.

Steve Wolfson will present this issue for discussion at the State Bar Family Law Section's annual retreat in August, and will have the Substantive Law Workgroup discuss in their meetings.

WORKGROUP REPORTS

Substantive Law

Steve Wolfson reported on the workgroup's clean-up of Arizona Revised Statutes in Title 25, where references to Civil Procedures should be replaced by references to the Arizona Family Law Rules.

MOTION: "To approve the suggestions of the Substantive Law Workgroup on the Arizona Revised Statutes as presented." (A.R.S. §§ 25-315; 25-325; 25-408; 25-415; 25-502; 25-503; 25-504; and 25-812.)

SECOND: Motion seconded.

VOTE: Approved unanimously.

The workgroup expects to present an action item at the next Domestic Relations Committee meeting regarding modification to 25-403. The proposed language will require parents to provide notification to each other of any sexual offenders that could potentially have access to, or contact with, the minor child/children in the household. The workgroup continues to look at A.R.S. § 25-408, (relocation statute), and A.R.S. § 25-803, (presumption regarding legal custody). Steve reported the workgroup will continue meeting monthly, and asked that he be contacted if anyone has issues they would like the workgroup to examine.

Credit Issues

Todd Franks updated the committee on the activities of the workgroup. They have met recently to work on developing an agenda of statutes/issues they will look at this year, and to consider whether they need to resubmit any bills that were not passed this last legislative session. The workgroup is currently working on a revision to A.R.S. § 25-318(a)(b) to address how to deal with omitted property, property that may not have been handled in the original divorce, and may possibly have been willfully concealed. They will also look at the case law that deals with omitted debts, and the issue of joint management and control, which is one of the bills that got "bottled up." They hope to meet with Rep. Farnsworth to discuss why the bill was not heard in committee hearings, and whether or not it may require amending.

CALL TO THE PUBLIC

No comments offered.

ADJOURNMENT:

The meeting was adjourned at 11:50

NEXT MEETING

Friday, September 5, 2008
Judicial Education Center
542 E. Van Buren
Copper and Gold Rooms
Phoenix, AZ 85004