

COMMISSION ON CHILD CUSTODY DECISION-MAKING

MINUTES

Commission Meeting

November 12, 2014 ◦ 9:00 a.m. – 5:00 p.m.

Location: The Judiciary Education and Conference Center
2011 C/D Commerce Park Drive, Annapolis, Maryland 21401

Commissioners in Attendance:

Honorable Cynthia Callahan, Chair
Renee Bronfein Ades, Esq.
Honorable Shannon E. Avery
Paul Berman
Delegate Kathleen M. Dumais
Dorothy J. Lennig, Esq.
Delegate Susan K. McComas
Carlton Munson, Ph.D., LCSW-C
Kathleen A. Nardella, Esq., LCSW-C
Laure Anne Ruth, Esq.
Master Richard J. Sandy
Keith N. Schiszik, Esq.
Vernon Wallace, Jr.
Lauren Young, Esq.

Department of Family Administration Staff:

Connie Kratovil-Lavelle, Esq.
Michael Dunston
Christine Feddersen
Sarah R. Kaplan, Esq.
Meredith Kushner
David R. Shultie, Esq.
Joseph Warren
Pen Whewell

Interpreters:

Carolina Schutz Spanish
Carrie Quigley, ASL

Public Attendance:

Kelly O'Connor, Maryland Judiciary
Drew Snyder
R. Abdullah, Office of Public Defender
David W. Smith, Sr.

Chair, Judge Cynthia Callahan, opened the meeting.

Review of Minutes

The minutes of the October 8, 2014 Commission meeting were adopted without change.

The Attachments to the minutes were then reviewed. Attachment A, "Overlap/Joint Recommendations", was modified. Recommendation #1, Judicial Training, was modified to include training on issues related to disability, bias, children's developmental needs and the role of parents in the lives of their children (see Attachment A- Revised).

Attachment B, Recommendations Based on the Research and Reports from the Committee, was modified to include: a recommendation under the domestic violence section that any expedited custody process should not preclude or encourage courts in a protective order hearing from awarding custody or emergency family maintenance; a recommendation under the bias section that the statute should require the court to articulate any nexus between parental disability and the best interest of the child; a recommendation under the bias section that whenever possible, statutes, rules, court forms and instructions should use gender neutral terms (see Attachment B- Revised).

Attachment A and Attachment B were adopted with the changes above.

Review of Report of the Statutory Considerations Committee

The Commission chair then asked Keith Schiszik, chair of the Statutory Considerations Committee (SCC), to give that committee's report.

Keith Schiszk described the SCC's composition, tasks and the three (3) areas of focus for the committee's work. Those areas are: 1) whether there should be a presumption of joint custody 2) what factors, if any, should be contained in a statute and 3) how third party custody and visitation should be addressed. Mr. Schiszik explained that three subcommittees were formed to research, explore, and make recommendations regarding the three focus areas.

Regarding a presumption of joint custody, the majority of the SCC (all but one) agreed that there should be no presumption. It was noted that while there was broad consensus, it was not unanimous. Mr. Schiszik further noted that historically, presumptions regarding custody have proven to be flawed and to exclude one parent over the other, citing the presumption of paternal custody, the maternal presumption, and the tender years presumption.

Mr. Schiszik reported that there was consensus within the SCC that if both parents are healthy mentally, emotionally, and otherwise, it is best for children to have as much contact as possible with both parents.

Mr. Schiszik then described the committee's deliberations regarding a joint custody presumption, noting that one committee member argued first that thirty (30) states had a joint custody presumption then modified the assertion to fourteen (13) states and the District of Columbia having a statutory presumption. The committee then undertook an in-depth examination of the statutes in each of the fourteen jurisdictions.

Following the committee's research into the fourteen, the committee concluded that a small number of states (7) have a statutory presumption of joint physical (and possibly legal) custody, and another 6 states have a statutory presumption in favor of joint decision-making. Thus, the majority of states do not subscribe to a presumption of joint custody. The majority (all but one) of the SCC members concluded that custody decisions should be tailored to the individual case and not based on presumptions.

Mr. Schiszik then described the research undertaken by the committee regarding statutory factors for custody determinations. He explained that they completed an in depth review of the statutes from all fifty (50) states and the District of Columbia. As part of the research, any and all factors used in custody decisions in any jurisdiction were identified. Any preference or presumption for joint custody in any state statute was identified and thoroughly explored. Mr. Schiszik explained that many states' statutes expressly promote a policy to promote to the active participation of both parents in the lives of their children, but very few articulate have created a presumption of joint (50-50) custody.

Dr. Paul Berman, Ph. D., a Commissioner and member of the Literature Review committee, then provided an overview of the research and literature on children and the involvement of parents in the child's life. Dr. Berman explained that the in general, children do better when they have regular contact with both parents, assuming both parents are reasonably adequate parents and that that is the case for the vast majority. He further explained that the literature supports better outcomes for children when both parents are actively involved in the lives of their children. Dr. Berman also stated that in general, the 30%-33% with each parent is desirable for the majority of parents, but cautioned that it does not include situations where domestic violence is present, or a parent has mental health or substance abuse problems which significantly impair their parenting, or where a parent has difficulty meeting a child's needs or other impairment in parenting.

In response to a question, Dr. Berman then added that the research does not support a presumption of joint custody nor a 50-50 time sharing arrangement. He described the work of two leading researchers on the importance of fathers in the lives of their children. Dr. Berman cited eminent researchers Michael Lamb and Arnold Shienvold who advocate for active participation of fathers in the lives of their children, but do not support a presumption of joint custody.

Keith Schiszik noted that the primary advocate on the commission for a presumption of joint custody, David Levy, was not present at the meeting. In Mr. Levy's absence, Mr. Schiszik summarized the arguments and recommendations made by Mr. Levy in the committee's deliberations.

At the outset Mr. Levy advocated that most states – as many as 30 – had statutory presumptions for an award of joint (50/50) custody. Over time, as the Commission's research revealed that there were far fewer states with a presumption of any kind, Mr. Levy recommended that the draft statute should contain language requiring a court to one-third to one-half time to each parent, requiring a court to articulate the reasons for doing otherwise.

Delegate Kathleen Dumais then reported on the work she did with the committee chair, Mr. Schiszik, to convert the findings and recommendations of the SCC and other committees into a draft comprehensive custody statute.

The Commission members reviewed, edited, and reached consensus on the draft statute. The Chair, Judge Callahan, then described next steps; revising the statute to reflect the changes made by consensus of the commission members; circulating the revisions and the final report to the members for feedback, and submitting the final report to the General Assembly by December 1, 2014.

The Chair thanked the members for their work.

Adjournment

Judge Callahan adjourned the meeting.