

Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations

Meeting Summary – July 9, 2019

The Workgroup to Study Child Custody Proceedings Involving Domestic Violence or Child Abuse Allegations held its third meeting of the 2019 interim on Tuesday, July 9, 2019, in Room 230 of the House Economic Matters Committee Room in Annapolis, Maryland. The following members were present:

Secretary of State John C. Wobensmith, Chair

Senator Susan C. Lee

Senator Mary Beth Carroza

Delegate Vanessa E. Atterbear

Ms. Camille Cooper

Mr. Paul Griffin

Ms. Sonia Hinds

Ms. Anne Hoyer

Ms. Ruby Parker

Ms. Claudia Remington

Ms. Laure Ruth

Ms. Nenutzka Villamar

The protective parent member was also present.

Welcome and Introductions

The chairman of the workgroup, Secretary of State John C. Wobensmith, commenced the meeting and asked the members of the workgroup for their introductions. He thanked the members of the audience who were in attendance and welcomed their participation and input. The secretary took a moment to acknowledge the difficult task ahead and noted the workgroup's responsibility to prepare thoughtful recommendations on how to best protect children.

Survivor Testimony

The workgroup heard from Ms. Susan Carrington, who shared her experience in the Maryland family courts with the workgroup. She noted that when courts see cases such as hers where there are over 700 docket entries, it is automatically assumed that these are just two people who do not get along without recognizing that abusers often harass their victims through persistent litigation. Although she left her marriage because she felt that not doing so demonstrated to her daughters that the abuse that their father was inflicting was okay, she is not sure that it was the right decision as now she has not seen her children in almost nine years. The judge in the custody proceedings did not want to hear about the domestic violence instances even though the judge was aware that there were two prior protective orders. Her ex-husband repeatedly violated the orders

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yet was never held accountable. Mr. Paul Griffin, who assisted with the case, reminded the workgroup that statutory provisions do require courts to consider prior domestic violence when making custody determinations, yet the trial court in Ms. Carrington's case ignored this. He cited this as an example of even when there is a good law in place, it sometimes is not enough; Ms. Carrington's case amounted to a miscarriage of justice. Ms. Carrington noted that throughout the course of the litigation she appeared in front of 12 judges, and no one was going back to look at prior case history. She thought a dedicated domestic violence court might be beneficial.

Ms. Laure Ruth asked the chairman to think about requesting a pre-session briefing in front of the Judiciary and Judicial Proceedings committees where Ms. Carrington's story could be shared in front of the members who first consider relevant legislation. In response to a question from Senator Mary Beth Carroza, Ms. Carrington stated that the court failed her by not holding her ex-husband accountable for violating the protective orders (in addition to a failure of not taking the domestic violence or prior convictions into account). She also noted the extreme weight that the court placed on a problematic custody evaluation. The secretary asked her to elaborate on the financial burden of her litigation. Ms. Carrington stated that she has incurred hundreds of thousands of dollars in litigation expenses and that her ex-husband, who has family money, has used serial litigation to manipulate her.

Ms. Nenutzka Villamar noted that in her experience, courts often impose additional impediments, such as psychiatric evaluations and counseling, on parents (including domestic violence victims) who have their children removed from the home. Mr. Griffin noted a lack of evidence that anger management has any effect on abusers. On further clarification, he advised that he was distinguishing abuser intervention programs from anger management. After hearing Ms. Carrington state that her ex-husband has prohibited her children from receiving counseling and getting the help they need, Ms. Sonia Hinds remarked that it might be helpful for the committee to look into how to advocate for a child when a parent opposes therapy.

Presentation from Richard Ducote

The remainder of the meeting was spent with Mr. Richard Ducote sharing experiences and insight from his 41-year career, which has involved thousands of cases in 46 states. He began his presentation by sharing his background with the workgroup, including noting that his early experience working as a juvenile probation officer while in law school helped shape his professional career. In the course of his work with families involved in the foster care system, he noticed the system's inability to deal with youth in bad situations. Mr. Ducote noted the continued emphasis on reunification, even when parents are horribly abusive. He advised of the conflicting messages that the system gives mothers: if you are in an abusive relationship and you do not leave to protect your child, we come in and take your child, however, the family courts then deem the mother as vindictive for trying to take the child away from the father. He noted that the vast majority of custody arrangements are worked out without conflict by the parents, yet there is a

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small percentage that get most of the courts' attention and end up skewing the courts' perception. Because the abusive parent is generally more prominent and has more financial resources, having those involved in the legal system understand the psyche of abusers and realizing that abusers will do anything to prevent their victims from leaving is critical. He also emphasized the importance of due process and thorough fact-finding in these cases. In Mr. Ducote's opinion, the significance of facts in family courts has diminished over the years; instead, practices and procedures have allowed family courts to become an industry for mental health professionals and various types of lawyers who have realized and benefited from the lucrative nature of family litigation.

Mr. Ducote noted that Maryland already has some excellent laws, including Sections 9–101 and 9–101.1 of the Family Law Article. However, he believes that even with these laws, the fact-finding process is compromised with the use of attorneys who are tasked with representing the best interests of the children. In his opinion, there is no legitimate basis in having an attorney who plays that role when the decisions are supposed to be made on evidence and facts. Judges are ignoring the evidence and facts and relying too heavily on the opinions of best interest attorneys. He also discussed *Nagle v. Hooks* or “child’s privilege” attorneys (which are unique to Maryland), who make the determination as to when a child’s privilege should be waived. He expressed incredulity that there can be a situation in which a child discloses abuse or neglect to a therapist, yet a court charged with determining the best interests of the child never hears that critical information because a *Nagle v. Hooks* attorney has refused to waive the privilege on behalf of the child. He would suggest eliminating best interest and child’s privilege attorneys; however, he believes child advocate attorneys work well.

His next recommendation was to examine the legitimacy of custody examiners and the weight to which judges are giving custody evaluations. He pointed out that while most custody examiners have been involved in dozens of cases, there is no way of measuring the accuracy and effects of prior recommendations (*i.e.*, the evaluators serve a temporary role in the cases and do not follow up with the children to see whether or not the recommendations made turned out to be the right ones). He thinks custody evaluations are performed most often in cases where a child is most at risk (*e.g.*, cases involving domestic violence or child abuse allegations), yet nothing that is done in a custody evaluation can answer the question of whether or not abuse has occurred. He also noted the problems in having an individual observe the alleged abusive parent and the child interact in the typical evaluation setting, as the child is often deceptively going to appear to have a healthy relationship with the parent. Mr. Ducote also noted that a custody evaluator is often inappropriately making determinations as to the credibility of witnesses, which under the rules of evidence is the job of the trier of fact. He also notes that while the Maryland Rules require custody evaluators to have specified training in domestic violence and child abuse, exceptions exist under grandfather clauses. It is also extremely problematic that a custody evaluator’s report can be admitted into evidence without the evaluator’s presence (and availability for cross-examination). It is also critical to ensure that the tools the custody evaluator relies upon for the examination are actually designed for and demonstrably useful in assessing what the evaluation is seeking to

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examine (*e.g.*, personality tests cannot determine whether or not a person is abusive). Custody evaluators should not be making factual determinations and should be cross-examined.

In response to a question as to whether there is any expert testimony that can be useful in helping a court understand a child's testimony of abuse, Mr. Ducote said that having an expert testify that it is not inconsistent for an abused child to still appear to have a good relationship with the abusive parent when in a public or other controlled setting (such as a therapist's office) is often valuable. Expert testimony may also be useful in explaining that a child may perceive or describe sexual acts in different ways and that there is often no medical or physical evidence of abuse.

Ms. Ruth noted that despite the enhanced criminal penalty in cases involving a child who has witnessed domestic violence, the family courts do not seem to recognize the impact this has, and the justification of "well, he didn't hurt the children" is common in the ordering of joint custody in cases involving domestic violence. She also said that in her experience, she has generally heard that when a child's privilege attorney invokes the privilege, it is done so in furtherance of the therapeutic relationship in order to protect the child's line of communication to the therapist. In Mr. Ducote's opinion, the need to get the facts about a child's abuse clearly outweighs the benefits of a therapeutic relationship. Mr. Ducote once again reiterated the value of child advocacy attorneys and suggested the elimination of best interest and child's privilege attorneys.

Closing Remarks and Adjournment

Chair Wobensmith made brief closing remarks and the meeting was adjourned.

Note: This summary has been prepared at the request of the Chairman; however, please note the archived livestream video of the workgroup meeting, available at <http://dls.maryland.gov/policy-areas/workgroup-study-child-custody-child-abuse-domestic-violence>, is also available and constitutes as the official minutes of the meeting.