

**AGENDA OF THE MEETING OF THE
ACT 156 TASK FORCE ON PARENTAGE LAWS**

FRIDAY, APRIL 26, 2024, 1:00 P.M.

A. Call to Order; Public Notice; Roll Call and Quorum Determination.

Chair Chun calls the meeting to order at 1:04 p.m.

1. Roll Taking and Quorum Determination

Members present:

1. Lauren Chun (in-person)
2. Thaddeus Pham (via Zoom)
3. Hon. Jessi Hall (via Zoom)
4. Carol Lockwood (via Zoom)
5. Dr. John Frattarelli (via Zoom)
6. Dr. Cheryl Andaya (via Zoom)
7. Laurel Johnston (in-person)
8. Mark Nugent (via Zoom)
9. Deirdre Marie-Iha (via Zoom)

Chair Chun confirmed that nine members were present and quorum was reached.

No disclosures were made.

Chair Chun confirmed that there was no public testimony.

B. Action Items

1. **Recommendation and approval of:**

- a. **The addition of Sianha Gualano, Deputy Solicitor General, Appellate Division, as a member of the Task Force pursuant to Act 156 (June 29, 2023), § 1(b)(11).**
- b. **The appointment of Sianha Gualano as vice chair of the Task Force.**

[00:01:16]

Chair Chun proposed having Sianha Gualano step in for her because she will be on maternity leave sometime in mid to late July. Chair Chun expressed that she is unsure when she will return but does not anticipate returning prior to the October final draft deadline. She explained that the act that created the task force provided that a representative from the Department of the Attorney General should serve as chair. Chair

Chun stated that she does not anticipate stepping down but intends to have Sianha shadow and then step in to set meetings, create the agenda, and generally ensure the task force is on track. Chair Chun asked that the task force help her by staying on track for deadlines and make suggestions to Ms. Gualano.

[Geraldine Hasegawa *joins meeting via Zoom 00:03:58*]

Chair Chun observed that once the final drafting PIG is developed, she anticipates that the new PIG would take on a leadership role within the task force as they complete the proposed draft legislation.

Ms. Gualano introduced herself as a new Appellate DAG and briefly summarized her previous professional background.

Chair Chun asked for questions or thoughts.

Ms. Marie-Iha requested that reminders about internal deadlines be made regularly and often.

Chair Chun noted that the next deadline is May 24, and requested that members come to the meeting prepared to discuss the issues and policy considerations to be included in the final report.

Ms. Marie-Iha asked if the task force anticipates voting on overall recommendations where there are policy disagreements. She noted that if there are many decisions to be made, they cannot be made all at once. She further noted that some of these issues will be quite sophisticated, and the task force has multiple knowledgeable people, thus she anticipated that those discussions may take time in order for the whole task force to come to a decision on those issues.

Chair Chun replied that deadlines were set for July for a final draft report and agreed that the task force will probably have more than one meeting before then.

Ms. Marie-Iha suggested that the May concept deadline have a “in writing” deadline to show recommendations and changes to be made to draft legislation so that the task force can determine what issues will be presented and “front load” those substantive conversations.

Chair Chun agreed, noting that those written materials will need to be provided before the May 24 meeting for circulation and public release.

Ms. Marie-Iha proposed that the PIGs provide, at a summary level, what the conversations in the PIGs have been and the recommendations made by each PIG. She also noted that transforming these policy decisions into legislation will be a lot of work.

Chair Chun agreed that the task force will need to consider having more than one meeting between May and July.

Ms. Marie-Iha expressed her hope that the task force can determine the number of policy decisions that the task force will need to make at the May meeting.

[Lorrin Kim *joins the meeting via Zoom* 00:08:13]

[Lorrin Kim *leaves the meeting* 00:12:12]

Chair Chun observed that the addition of Ms. Gualano will push the quorum from 8 to 9. She stressed that if someone will not be able to make the meeting to please notify her office they can ensure quorum will be reached.

[Lorrin Kim *joins meeting* 00:14:44]

[00:15:46] Chair Chun asked for a motion to approve Agenda Item B.1. Judge Hall so moved. Laurel Johnston seconded. The motion passed with unanimity of those members present.

[Lorrin Kim *leaves meeting* 00:16:33]

C. Non-Action Items

1. Status update and reports from

a. Legal Parentage PIG

[00:17:09]

Chair Chun shared that the legal parentage PIG has been discussing the expansion of eligibility to utilize the voluntary establishment parentage (“VEP”) process and creating an uncontested parentage process with the purpose of allowing professed parents (specifically unmarried partners of the birthing parent) to establish parentage. She noted that there has been an ongoing discussion regarding limiting this process to situations where the birthing mother does not know the genetic parent. She also reported that the expansion of the VEP process and draft language was discussed. She noted that only a small change would be required to create the uncontested parentage process but acknowledged that the task force has not voted on the proposal.

Chair Chun referred the task force to the proposed forms circulated by the PIG to show how the uncontested process would function within the courts. She explained that the first few forms were created by Judge Hall and that the remaining forms were modified from the existing uncontested divorce and paternity forms. Chair Chun explained that these forms are proposed as a replacement for an in-person hearing so that the presiding judge could review the forms and set a hearing if they chose to reject the petition. Chair Chun explained that the instructions on the forms were not in final form but provided to demonstrate how the process may look. She also noted that the forms would not be part of the final bill and that it would ultimately be up to the individual circuits to adopt their own forms.

Judge Hall explained that the statute currently requires a hearing, and the proposed change would not require the applicants to come to the courthouse. The “hearing” date would simply be the date that the assigned judge would review the petition.

Chair Chun noted that there are places for the applicants to affirm that there is no other known biological parent.

Judge Hall explained that there would be no default in this process because it requires clear consent from all parties.

Ms. Lockwood expressed her approval.

Judge Hall reiterated that the circulated forms are not final as the documents would need to be approved by the judiciary and possibly modified by the individual circuits.

Chair Chun acknowledged that the task force has not voted on these proposals but observed that in past conversations it seemed that the task force was generally in favor.

Ms. Marie-Iha asked whether there would be rule amendments or just form changes.

Judge Hall said that the proposed changes are simple word changes and would not require rule changes.

[00:25:29] Ms. Hasegawa commented that “professed parent” is not a defined term in the uniform parentage act and proposed that the term “intended parent” be used instead as it is defined in the act.

Mr. Nugent expressed that CSEA has some concerns with the definition of “professed parent” and whether there are potential abuses as it is currently defined. He commented that the task force needs to tighten language up or maybe not expand at all. He also noted that “intended parent” is only for assisted reproduction and is only applicable to a small population and potentially not appropriate in this context.

Chair Chun explained that the definition that the PIG has been using for “professed parent” is an “individual who is not a genetic parent but who along with the agreement from the birthing parent professes an intent to be legally bound as a parent of the child where the identity of the possible genetic parent is unknown and does not include genetic relatives of the birthing parent.” That last portion is to keep family members from becoming professed parents.

Mr. Nugent explained that when the definition was created, they were trying to include situation where birth mother has a same sex partner but did not know who the father and had a partner that wanted to parent the child. He noted however, that the way the definition is currently written may allow just a friend to fit the definition and asked

whether the task force wants to allow this broad of a definition as there is no vetting process build into the proposed professed parent process.

Chair Chun noted that no final decision has been made on the issue of expanding VEP and uncontested parentage eligibility. She expressed that the issue will be further discussed within the PIG and with the rest of the task force to analyze the possible pros and cons.

Mr. Pham noted that it would be helpful to give real world example to help visualize the possibilities being considered.

Chair Chun agreed and noted that all PIGs should consider including case study explanations.

Ms. Johnston questioned whether the changes the task force were considering were required under Obergefell as treating same sex marriages the same as non-same sex marriages. She expressed concern that the task force was going beyond the bounds of its task.

Chair Chun noted that the intent was to expand eligibility to same sex unmarried couples, not necessarily those who are subject to the supreme court cases on same-sex marriages.

Ms. Johnston asked what allows an unmarried male to sign the birth certificate.

Judge Hall explained that the current Voluntary Establishment process does not require that the male prove that they are the genetic parent just that they state that they are the father and waive the right to a genetic test.

Ms. Johnston asked why the state must allow the opposite sex parental designations.

Judge Hall responded that the establishment of parentage process exists because it allows for federal funding. She also noted that she also has concerns about the openness of the professed parent definition but anticipates that narrowing the definition may make it too long and unwieldy.

Ms. Lockwood commented that the state does not require a romantic relationship to enter into a civil union.

Ms. Marie-Iha added that neither does entering into a marriage. She summarized her understanding of the discussion thus far: For the purposes of obtaining federal funding, the state allows a “father” who steps forward to voluntarily establish paternity. The question and challenge before the task force now, is whether the state expands the eligibility to establish parentage in some way and how to do so.

Ms. Lockwood noted that there is a general policy presumption that a child is better with two parents rather than one and that the policy generally favors allowing a second person, who is willing, able, and desirous to be a parent to the child to do so.

Chair Chun commented that Mr. Nugent and Ms. Hasegawa have clarified that federal funding just requires that parentage be established, and those statistics are what matter for federal funding.

[00:38:18] Ms. Hasegawa explained that federal funding requires the establishment of parentage and explained that there are currently two ways to do so: judicially or “administratively” at the medical center or other places of birth. The forms and directions address situations in which there is a mother and a father. It is presumed that the man taking on the responsibility is the genetic parent. She cautioned that there is a section in the draft act that allows for a two-year period in which a professed parent may attempt to negate their parentage. She commented that notice should be given to the person who is not the birthing mother so that they understand that there is only a short time period for the person to change their mind because they are not the genetic parent.

Judge Hall commented that she is not sure she wants to provide this notice. She noted that such a notice is not on the forms for the existing process.

Ms. Lockwood noted that currently, when the woman is not with genetic parent and she puts her current partner, it is unclear whether those parents are aware of the ramifications.

Ms. Hasegawa offered a real example of where a professed father no longer wished to be the parent to a seven-year-old and reached out to the biological father and the biological father expressed an interest in being the parent. She commented that the agency is having difficulties with establishing and disestablishing parentage in that situation.

Judge Hall observed that the agency should not be dealing with this type of issue, and it should be brought to court for adjudication instead.

Ms. Hasegawa continued to explain that in the scenario, there was no bond as the professed father had been incarcerated and simply wanted to “start fresh.” She explained that she recounted this story as an example for why notice should be given.

Ms. Marie-Iha concurred with Judge Hall, commenting that these types of situations should be brought to court.

Ms. Lockwood noted that the key in Ms. Hasegawa’s scenario is that there was an alternative person seeking to become a parent. And expressed concern about situations in which a person sought to disestablish parentage without pointing to an alternative, willing parent.

Chair Chun clarified that the language in the forms proposed by the legal parentage PIG requires that both parents attest that there is no other known genetic parent. She explained that the intent is to decrease the occurrence of these situations.

Ms. Hasegawa stated that if the group of people that are allowed to become professed parents is expanded, these people need to be informed of the responsibilities they are taking on and the time frame within which one could set it aside. She expressed her opinion that notice is best, so all parties know what they are getting into when becoming legal parent.

Ms. Marei-Iha noted that the defined term “intended parent” is related to assisted reproduction and is not related to the professed parent discussed here. She further commented that she does not see the need for additional notice, that the law is notice itself.

Judge Hall observed that the department could make a decision to provide the notice Ms. Hasegawa is proposing but that would not be a decision the task force need make, nor would that have an effect on the potential statute being discussed.

Ms. Lockwood commented that adoption finalization scripts give notice, including warnings about how adoption outlasts the relationship between the parties.

Chair Chun asked for additional comments.

Ms. Marie-Iha reaffirmed that scenarios would be helpful when considering these issues. She expressed that she is amenable to making the statute as equitably applicable as possible but is also concerned with how the policy question is being addressed so that it is addressing that issue and nothing else.

Ms. Lockwood mentioned that Ms. Marie-Iha had shared the concept of “soap opera scenarios” in their discussions.

Ms. Marie-Iha shared that these soap opera scenarios were very helpful when she worked on the marriage equality act to test how the bill would work. She noted that it helped develop one of the provisions in the act by contextualizing these legal concepts.

Chair Chun checked for comments from the public.

Ms. Ashley Mariko introduced herself as a surrogate and owner of a surrogacy agency in Hawaii. Ms. Mariko asked whether the documents being discussed would be filled pre-birth or post-birth.

Judge Hall clarified that the documents the task force were discussing were for post-birth but draft act allows for pre-birth orders as well.

b. Birth Heritage PIG

[00:54:17]

Ms. Johnston shared that PIG was not able to meet but that she proposed the PIG start with the Uniform Law Commission's ("ULC") draft on donor identity in its analysis. She noted that she will be traveling for the next two weeks and expressed concern over the approaching deadlines.

Ms. Lockwood offered that the PIG could present the issues being discussed within the PIG for the committee to decide and suggested that it offer proposals on how the donor identity should work.

Judge Hall asked if Ms. Johnston was referring to the new rules promulgated by Uniform Law Commission.

Ms. Marie-Iha requested a copy of the rules Ms. Johnston was referencing.

Chair Chun confirmed that the materials can be found on the task force's website.

Ms. Lockwood commented on the differing levels of comfort within the PIG regarding anonymous donors.

Judge Hall suggested that the PIG present the reasoning as to each position so the task force can have a better understanding of the perspectives when the issue comes to a vote.

Chair Chun confirmed that there were no public testifiers.

c. Assisted Reproduction and Surrogacy PIG

[01:00:03]

Ms. Marie-Iha reported that the PIG met to discuss and are considering suggesting some definitions to make statute clearer and edits for clarity. She also reported that the PIG has come to the potential conclusion that while the medical and legal practitioners do not favor genetic surrogacy, the PIG would prefer that it be regulated rather than unregulated.

Ms. Lockwood shared that the PIG looked at other jurisdictions to see how genetic surrogacy was addressed elsewhere. She also asked whether Judge Hall may be able to join the PIG to comment on the intentions behind the current proposed sections before the PIG made any changes.

Judge Hall stated that the language was taken directly from the Uniform Parentage Act ("UPA") except for some suggestions from Ms. Lockwood early on.

Ms. Marie-Iha shared that the PIG appreciated the inclusive language in the proposed act but noted that some areas had too many “individuals” and PIG is trying to make line edits to make provisions clearer. She added that the commentary from the most recent UPA has been helpful, and the PIG has been comparing the draft to the most recent UPA. She observed that there were some smaller policy debates that were being considered within the PIG. She asked whether the surrogacy agreements needed to be mandatorily confidential and whether the documents needed to be notarized or simply witnessed.

[01:07:04 *Mark Nugent leaves meeting*]

Judge Hall shared that the confidentiality of documents is related to the way the judiciary’s electronic filing system worked and wanting to ensure that the surrogacy cases remained sealed.

Ms. Marie-Iha noted that there are two provisions, one relating to whether the contract is confidential and another relating to whether the proceeding is itself confidential. She concluded her PIG report by repeating that the big policy question before the PIG is genetic surrogacy, and the group has decided their preference to regulate as opposed to banning it outright or staying silent on the issue

[001:07:33 *Ms. Lockwood leaves meeting*]

[01:07:45 *Mark Nugent returns to meeting*]

[01:07:54 *Ms. Lockwood returns to meeting*]

Ms. Lockwood commented that there are certain outlier cases where genetic surrogacy may make sense.

Ms. Johnston asked whether genetic surrogacy would affect hanai status.

Ms. Marie-Iha clarified that the issues being considered in the PIG relates to the scientific area of surrogacy.

Judge Hall commented that this could not affect hanai status.

Chair Chun asked whether any other state has adopted the genetic surrogacy provisions.

Ms. Marie-Iha confirmed that the UPC has reported that no state that has adopted the UPA has adopted the proposed genetic surrogacy provisions.

Ms. Lockwood shared that states are all over the place with how genetic surrogacy is regulated. It is permitted by default in many states, but she cautioned that dysregulation would lead to unpredictable outcomes.

Ms. Marie-Iha commented that while the doctors and lawyers do not want to do genetic surrogacy, they acknowledged that there were possible scenarios where it would be ok. She mentioned that her preference would be to regulate it. She commented on the significant difference with genetic surrogacy as opposed to traditional surrogacy is that the birthing mother would have 72 hours to change her mind. She observed that by making genetic surrogacy burdensome, the state functionally dissuades people from using it. She also reported that the PIG defined “embryo” and “record.”

Chair Chun confirmed that there was no public comment.

[01:15:16]

Chair Chun reminded the task force that by the next meeting on May 24, each PIG would have their policy decisions, disagreements, and other points of discussion ready to circulate to the task force. She requested that the PIGs send her the materials the morning of the Friday before the meeting as she tried to post the materials early in the day.

Ms. Marie-Iha asked whether morning meant 11:59 a.m. or 10:00 a.m. She requested that all the materials be circulated in one email.

It was agreed that the PIG materials would be provided to Chair Chun’s office by 10:00 a.m. on May 17.

Chair Chun stated that the May meeting will be used to determine what will be decided future meetings and whether additional meetings have to be scheduled.

Ms. Marie-Iha proposed that the May meeting be used to schedule discussions on the issues identified by the PIGs.

Chair Chun adjourned the meeting at 2:23pm.