

**MINUTES - FAMILY LAW COUNCIL
COUNCIL MEETING
Date: May 2, 2015
Place: Amway Grand Plaza Hotel, Grand Rapids**

I. Administrative Matters

A. Chair Rebecca Shiemke called Council to order.

16 council members were present: Rebecca Shiemke, Carol Breitmeyer, Dick Halloran, Kent Weichmann, Robert Treat, Elizabeth Bransdorfer, J. Matthew Catchik, Jr., Christopher Harrington, Peter Kulas, Anthea Papista, Kristen Robinson, Randall Velzen, Steven Reinheimer, Daniel Bates, Tina Johnson (Yost), Vanessa Moss-Wilson

Absent: Sahera Housey, Mathew Kobliska, Colleen Markou, Amy Spilman, Gail Towne

Ex-Officios & Former Council Members: Ross Stancati

Guests: Rio Vale, Bill Kandler, Hon. Jon Van Allsburg, Hon. Kathleen Feeney, Jenny Johnson, Patricia Ouellette

B. All attendees introduced themselves

C. Chair Report – Chair Rebecca Shiemke introduced Rick Roane, who attended the U.S. Supreme Court oral arguments in the same sex marriage cases of Obergefell v. Hodges (Ohio) and DeBoer v. Snyder (Michigan). Rick described how the Court discussed two questions: (1) Does the 14th Amendment require a State to license a marriage between two people of the same sex? (2) Does the fourteenth amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out of state? Rick gave a very descriptive and interesting account of the day's events, and provided notes of the exchanges between the justices and counsel

Rebecca also noted that committee chair annual reports will be due soon.

Last, Rebecca commented on the State Bar Committee / Work Group on the future of the practice of Law, and asked if any council members wanted to be involved. Christopher Harrington and Kristin Robinson each responded, stating they would like to be involved.

- D. Recording Secretary: Bob Treat moved that the April 11, 2014 minutes be approved. Ross Stancati noted an amendment was needed to complete the minutes for the PAC committee. A motion to approve the minutes, with such amendment, passed 16-0.
- E. Treasurer's Report – Chair Halloran noted that the monthly SBM financial report/trial balance had not been received yet. He also urged those who wish to submit expense reimbursement forms to do so soon.

II. Key Committees

A. Amicus –

In re Helton, SC No. 148927 (September 24, 2014). The Supreme Court affirmed the Court of Appeals decision, and clarified some of the issues presented. This order is generally consistent with the positions that the Family Law Section took in our Amicus, although the Supreme Court did not address all the issues set out in its original order granting leave to appeal.

Proposed Amendment to MCR 7.215 (S Ct ADM File No. 2014-09): The Committee supports the Court Rules Committee's proposed amendment broadening who may request publication of an unpublished Court of Appeals opinion.

In re Glaubius, SC No. 150206 (December 23, 2014): This case is presently in active settlement discussions and it has been represented to our committee that settlement looks possible, and that another extension will be requested. The Amicus committee voted to table further work on an Amicus on this case in light of the potential settlement. However, if the case does not settle, we will address the issues presented as requested by the Michigan Supreme Court.

Case Summaries: The Amicus Committee has people assigned to do case summaries through September.

B. Court Rules – Co-Chair Christopher Harrington Reporting

The committee's position paper on the proposed amendments to **MCR 7.215(A) – (C)** was submitted to the State Bar on April 14, 2015.

Amendment to MCR 7.215(D); Request for publication. The committee reviewed the Co-Chairs' initial draft of proposed language for an amendment on this Court Rule. There are two objectives the Committee is seeking with the proposed language. First, to expand the opportunity for "good" or "helpful" opinions to obtain "published" status. Second, we want to create an opportunity to safeguard and oppose any requests for "bad" decisions (*Funk v. Funk*) to become published. The second objective would not create an "obligation" of any Section, just an opportunity to do "damage control" if it becomes necessary. Language was approved by the Committee 8-0. A similar version of this proposal was submitted to Amicus prior to our respective meetings and

the final version approved by Court Rules committee looks slightly different than the version initially sent to Amicus. We look forward to comparing notes between the two committees to settle on a proposed amendment to this Court Rule. The Council voted 15-0 (one council member had left the meeting briefly) to approve the proposed amendment to MCR 7.215(D).

Limited Appearance/Unbundling. There is a report being prepared by the Michigan State Bar Foundation to address the issue of “unbundling” or Limited Scope Representation. This report is based on research commissioned by the Foundation over the past year, using actual experience of lawyers on this topic. The report will be available for circulation during Summer 2015 and Co-Chair Harrington is in contact with Linda Rexer of the State Bar Foundation to facilitate communication on this issue.

Supreme Court Orders issued after the teleconference. There were several Administrative Orders which are relevant to Family Law matters, issued after our Tuesday teleconference. The committee has not had a chance to discuss these in depth, but they are worth mentioning in this report: (a.) **Administrative Order 2015-3.** State Court Administrator to establish standards for Trial Courts that use websites and/or social media as part of their “service to the public.” (b.) **Proposed Amendment to MCR 2506.** Proposed amendment would permit e-service of subpoena or order to attend. The service recipients under this proposed order would be limited to the specifically named government departments and agencies. (c.) **Proposed Adoption of new rule MCR 3.617.** New rule requiring confidentiality for Michigan parents adopting foreign birth child.

C. Legislation – Chair Kent Weichmann reporting.

Guest Hon Kathleen Feeney, 17th Circuit Court Judge, discussed HB 4141 (mandatory equal parenting time) and the problems with it. Others on the council spoke out in concurrence to such opposition, from a number of perspectives.

HB 4476 (SB 253) is a reintroduction of a bill we supported last term. It prohibits the court from ordering mediation in domestic violence situations, unless both parties consent to the mediation, and absolutely prohibits mediation of Personal Protection Orders (in accordance with PPO law). This reflects current practice. The committee recommends that “order” be replaced with “compel” on p.1, l.3. In some courts, parties are automatically ordered to mediation upon filing, but not compelled to participate if they qualify under an exception. On p.2, l.7 we recommend adding “and has no legal representation” as a qualifier. The council voted 15-0 (one member left the meeting momentarily and did not vote) to support the bill, with those amendments.

HB 4477 requires the Court of Appeals to facilitate service of a party who is subject to a protection order. The bill doesn't provide any mechanism for the Court of Appeals to discern the protected party's address, rendering the process

unworkable. The committee recommended opposing the bill until that issue is resolved. Council voted 14-0-1 to oppose the bill (one member was out of the room, and Dick Halloran abstained), but with comments that we like the idea, but the problem of the mechanism needs to be solved for such a bill to be operable.

HB 4478 is a reintroduction of a bill we supported last term and allows pet protection in Personal Protection Orders. One of the tactics abusers use to control their victims is to threaten to hurt or kill their pet if the victim leaves. The definition of protected animals is tricky, but provides the court with sufficient guidance to provide protection. Council voted 16-0 to support this bill.

HB 4480 modifies factor (j) of the child custody act: “The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.” to add the language: “**A COURT SHALL NOT CONSIDER NEGATIVELY FOR THE PURPOSES OF THIS FACTOR ANY ACTION TAKEN BY A PARENT TO PROTECT A CHILD OR THAT PARENT FROM THE CHILD'S ABUSIVE PARENT.**” This addresses one of the problems with child alienation claims, where an abusive parent blames their bad relationship with the child on the other parent. There was discussion about phraseology, but the council voted 10-6 to support this bill.

HB 4481 expands the prohibition on awarding custody of a child conceived by Criminal Sexual Conduct to a parent convicted of that act. This bill extends that prohibition to a parent found by clear and convincing evidence to have committed nonconsensual sexual penetration. The committee feared that this would require family courts to conduct criminal sexual conduct trials without any of the machinery or protections of the criminal court. This could consume a lot of time, and pull the focus away from the child’s best interests. Council voted to oppose the bill 14-0, with 2 abstentions.

HB 4482 is tie-barred HB 4071. The House has split the Senate’s military deployment bill into two parts. This part is the one that we support, clarifying the definition of active duty and deployment. Council voted 16-0 to support this bill.

III. Standing Committee Reports

- A. Adoption – No Report
- B. Alternative Dispute Resolution (“ADR”) Chair Randy asked for volunteers for anyone interested in serving on the domestic violence subcommittee of the ADR section. He also moved that the Family Law Section allocate \$200 to a luncheon that will be given to seek out members willing to work on this committee. The motion passed 16-0.
- C. Alternative Family – Peter Kulas deferred to the discussion given to the council by Rick Roane at the beginning of this meeting.

- D. Annual Meeting and Dinner– The Annual Dinner will be on October 7th at the Suburban Collection Showplace in Novi, and the Annual Meeting will be October 8th, likewise at the Suburban Collection Showplace. We will likely be able to have the “Bare Assets” provide the music for the dinner.
- E. CLE/ICLE – no report.
- F. Domestic Violence – no report.
- G. Family Court Forum – no report
- H. Family Law Journal – Committee Chair Anthea Papista reiterated how outstanding the April special edition re child support is, and praised the authors who contributed articles.
- I. Family Law Journal Advertising – Committee Chair Kristin Robinson announced that the Great Lakes Honor Roll was down and advertising in general is also down. She noted this is in part due to collection problems. There was discussion of the placement and layout of the ad for the Great Lakes Honor Roll, with Kristin said she would consider.
- J. Family Support – Kent Weichmann mentioned that Bill Bartels had not formed the committee as yet.
- K. Membership – The committee recommended amending the Section bylaws to remove section 2.4 which provides that section members who are 70 years of age or older shall not be required to pay section dues. It was noted that statistics provided to us by SBM show that there are currently 415 section members who are not paying dues as a result of this bylaw. It was asserted elimination of this bylaw could increase Section revenue by \$24,900. There was considerable discussion with numerous pros and cons put forth, and the motion was tabled for now.
- L. Mid-Winter/Mid-Summer Seminars
 - a. Mid-Winter – Kristin announced that there is capacity for considerably more attendees than in the past, since the resort is larger. She encouraged council members to get the word out regarding the new capacity.
 - b. Mid-Summer – Co-Chair Liz Bransdorfer stated we had an early offer from Mission Point for the 2016 seminar, but we would not be considering it seriously as yet, though the seminar will likely be on Mackinac Island.
- M. Political Action Committee – Committee Chair Ross Stancati reported we have received \$5,885 for the fiscal year commencing Sept -2014 from 64 member contributors. We have paid out of the fund in the month of April \$150 to Stephanie Chang fundraiser; \$250 to the Vanessa Guerra fund raiser; \$250 to

the Jeff Irwin fund raiser. Ross announced that in his attempt to do some kind of a raffle as a fund raiser, I first contacted the SBM general council, and was referred to another SBM contact, and was then referred to the Secretary of State Director of Elections, who referred him to Laurie Bourbenu. He was promised some response soon, and he hopes to stay on it until he have some definite answers to my questions. Ross also stated that there should be a co-chair for the PAC committee, since the committee consists of Ross, and someone may need to take over the chair at some point.

N. QDRO/Taxation – No report

O. Technology/Social Networking/Website – There was discussion of the need to update our website, and better utilize electronic technology to better reach our membership, especially the younger of us.

IV. Ad Hoc Committees

A. Judicial Recognition – Chair Dick Halloran announced that we have some data as to judges serving 10 years, and 15 years, but there is more data to obtain, and he will continue to work on the initiative and get back with more data and what the judicial recognition program will cost.

VI. Future Council Meetings will begin at 9:30 a.m., with a breakfast buffet at 9:00.

June 6, 2015

Ann Arbor - Weber's Inn

September 12, 2015

Novi – Doubletree Inn

VII. Adjournment

Respectfully submitted,
Robert Treat, Recording Secretary
May 2, 2015