

**MINUTES - FAMILY LAW COUNCIL, FAMILY LAW SECTION
COUNCIL MEETING**

Date: October 5, 2013

Place: Amway Grand, Grand Rapids

Present: James J. Harrington III, Rebecca Shiemke, Carol Breitmeyer, Dick Halloran, Kent Weichmann, Daniel Bates, Elizabeth Bransdorfer, J. Matthew Catchik, Jr., Christopher J. Harrington, Sahera Housey, Tina (Yost) Johnson, Mathew Kobliska, Peter Kulas, Colleen Markou, Anthea Papista, Steven Reinheimer, Kristen Robinson, Allison Sleight, Ross Stancati, Gail Towne, Robert Treat

Absent: Randall Velzen

Guests: Elizabeth Sadowski, John Potter, Bill Kandler, Michael Buckles

I. Administrative matters

A. Jim Harrington III called Council to order at 9:30 a.m.

C. Chair Report - Jim Harrington noted items he had sent out to council members: the Council roster with email addresses, the reimbursement request form, the Family Law Section demographics, parliamentary rules, Family Law Section bylaws, and the section financial report. Jim appointed an ad hoc committee of Bob Treat, Barb Kelly and Kent Weichmann to review the Section's financial trends and report back to Council. Jim also advised that committee members who failed to regularly participate in committees would be removed from those committees.

D. Recording Secretary Report. Minutes from the September 19th annual meeting and Council meeting were approved.

E. Treasurer's report – The treasurer's report was accepted. Rebecca Shiemke moved that Council provide 13 legal aid scholarships for the Family Law Institute at a cost of \$170 per person, for a total of \$2,210. Motion passed 20-0.

II. Key Committees

A. Amicus – Rebecca Shiemke reported that the Section's motion for leave to file an amicus brief in *Forneau v Miller* had been granted. (*Forneau* deals with the trial court's imposition of an attorney-client duty toward the child of the party the attorney was representing.) Rebecca also noted that the committee was putting all available briefs onto the Section's website.

B. Court Rules – Matt Kobliska reported the results of two electronic votes that the council had made over the summer.

ADM 2013-18. On August 21, 2013, Council voted 19-0 to support the following position:

"The Family Law Section, through its council, court rules committee, and an issue-specific work group, have reviewed and considered this proposal over the last several months. The Family Law Section supports the proposed e-filing rules, with the following amendments:

- I. That there will be no e-filing fees for Personal Protection Orders (PPOs), including motions to terminate or modify;
- II. No fee would be required on a request to waive fees. Any waiver or suspension of fees should be applied to e-filing fees as well;
- III. No fee would be required to e-file orders or judgments or proposed orders or judgments;
- IV. Each county would maintain a no cost e-filing education program;
- V. The proposed new rules refer to the development of filing policies and standards of the State Court Administrative Office which would govern e-filing. The committee believes that the development of SCAO standards should require the input in a meaningful manner of all sections of the State Bar;
- VI. The committee believes that the rules need a precise definition of "reasonable convenience fees" under proposed section 2E.005 Transaction Fees; and
- VII. The committee remains concerned that mandatory e-filing inhibits access to courts. Inasmuch as the e-filing pilot project has been expanded to 2014, the committee believes that e-filing should allow for optional counter (paper) filing as is the case in other jurisdictions."

ADM 2013-10. On September 24, 2013, the Council voted 21-0 to support the proposed court rules with a suggested amendment as underlined:

"Rule 2.107 Service and Filing of Pleadings and other Papers

(A) [Unchanged.]

(B) Service on Attorney or Party.

(1) Service required or permitted to be made on a party for whom an attorney has appeared in the action must be made on the attorney except as follows:

(a)-(b) [Unchanged.]

(c) After a final judgment **or final order** has been entered and the time for an appeal of right has passed, papers must be served on the party unless the rule governing the particular postjudgment procedure specifically allows service on the attorney;

Rule 2.117 Appearances

(C) Duration of Appearance by Attorney.

(1) Unless otherwise stated or ordered by the court, an attorney's appearance applies only in the court in which it is made, or to which the action is transferred, until a final judgment **or final order** is entered disposing of all claims by or against the party whom the attorney represents and the time for appeal of right has passed. The appearance applies in an appeal taken before entry of final judgment **or final order** by the trial court. Unless otherwise stated or ordered by the court, or as otherwise provided by these rules, an attorney's appearance in motions brought after entry of a judgment or final order, applies only in the court in which it is made, or to which the action is transferred, until a judgment or order is entered which resolves those issues raised by or against the party whom the attorney represents and the time for appeal of right has passed.

Matt noted that the Supreme Court had adopted a number of court rule changes that Council had supported, included those concerned the Indian Child Welfare Act, the Uniform Interstate Depositions Act, and the revised case management guidelines.

Liz Sadowski raised a concern with e-filing fees, particularly those that would be authorized by HB 4064. She introduced Mike Buckles, the Government Affairs Director for the Michigan Creditors Bar Association, a group including over 80 collection attorneys. He urged Council to oppose the setting of filing fees by the Supreme Court, and to support the legislative setting of a marginal increase in fees to create a uniform statewide filing system. Chair Harrington appointed an

ad hoc committee chaired by Dick Halloran to review the issue. Matt Kobliska reminded Council that the position should be consistent with Council's position on ADM 2013-18.

C. Legislative Committee – Kent Weichmann presented the report of the Legislative Committee, requesting Council action on the following bills:

SJR W proposes that a constitutional amendment to repeal the ban on same sex marriages be placed on the ballot. The committee believes that the original amendment was achieved through misrepresentation and homophobic furor, and was a huge mistake that should be rectified as soon as possible.

Council supported this resolution 20-0.

SB 405 would reflect the repeal in the marriage statutes MCL 551.2,3, & 9.

Council supported this bill 20-0.

SB 406 updates MCL 551.271 to reflect the repeal.

Council supported this bill 20-0.

HJR V is the House version of SJR W.

Council supported this resolution 20-0.

HB 4909 is the House version of SB 405.

Council supported this bill 20-0.

HB 4910 is the House version of SB 406

Council supported this bill 20-0.

HB 4881 is the "name equality act". It allows parties to a marriage to select a variety of name combinations upon marriage by entering the new name in their marriage license, saving them the trouble of filing a name change petition in Probate Court. **Council supported this bill, as long as it is tie-barred to a bill making change of name on divorce gender neutral. 20-0.**

SB 457 is the second parent adoption bill, which Council has supported in previous terms. The bill allows to unrelated adults to petition to adopt a child. **Council supported this bill 20-0.**

SB 519 requires the SCAO to compile a list of individuals who owe money to the state, and requires the Treasury department to compile a list of individuals who owe support, and to provide these lists to the clerk of each trial court. The attorney for any party who wins a monetary award in a civil suit would have to check these lists and pay off the indebtedness before remitting any money to their client.

The legislative committee thought it could be a conflict of interest to require the plaintiff's attorney to police this issue, and any duty should be placed on the civil defendant's attorney. The plaintiff's attorney fees should also take priority over the other obligations of the plaintiff.

Council opposed this bill unless those amendments are made.19-1

SB 520 eliminates the requirement in a felony non support case that the individual have appeared in, or received personal service of the action in which support was ordered. Making a voluntary or involuntary payment of child support would be sufficient. Thus, if Defendant had never left the State of California and never been served with notice of a child support action, but Michigan was able to administratively intercept his tax refund, the defendant would be guilty of felony non-support.

The bill clarifies that child support restitution in the criminal case would be paid in the same manner as child support.

Lastly, the bill would allow consequential damages to be assessed against the defendant.

Council opposed the bill unless it was amended to restore the requirement of personal service or appearance, and eliminate the provision for consequential damages. 20-0

SB 521 changes the Friend of the Court enforcement procedure from court Orders to Show Cause to attorney issued subpoenas to appear in conjunction with enforcement motions. This eliminates the illusion that the court is meaningfully reviewing the issuance of OSCs. The bill also requires the court to assess FOC costs of enforcing spousal support against the payer. **Council supported this bill, but proposed that it be amended to make the process for enforcing support and enforcing parenting time the same, and to make the assessment of spousal support enforcement costs permissive, rather than mandatory.20-0**

SB 522 is a technical cleanup of the seldom used RURESAs, to update references to the SDU and service fees.

Council supported this bill. 20-0

SB 523 -525 are intended to allow qualified IRAs that are not covered by ERISA to be enforced against by IWOs instead of QDROs. The legislative committee had no issue with the concept, but we were not sure if this state law would be pre-empted by federal law. **These bills were referred to a subcommittee consisting of Bob Treat.**

SB 526 allows the Friend of the Court to redirect child support to the person who is providing the actual care of a child, rather than only to the person legally responsible for doing so. The FOC must give the payee actual notice and an opportunity to object to the redirection. **Council supported this bill.20-0**

SB 527 requires the Friend of the Court judgment fees be paid at the time of filing the action. This clarifies current procedure, which varies from circuit to circuit. **Council supported this bill.20-0**

SB 528 changes the references in the lottery intercept statute to OCS and SDU from Treasury and FOC. This reflects the current practice. **Council supported this bill.20-0**

SB 529 places the responsibility for allocating child support in accordance with federal law in the OCS. **Council supported this bill. 20-0**

SB 530 updates the FOC act to refer to collection and disbursement by the SDU, and refers to DHS and OCS as the IV-D agency, which allows for frequent name changes without revisiting the statute. It also replaces references to ADR with Domestic Relations mediation, and strikes the separate FOC qualifications in favor of the SCAO standards. **Council supported this bill.20-0**

III. Standing Committees

C. Annual meeting – Jim Harrington announced that the 2014 annual meeting would be in Grand Rapids from September 17-19. The 2015 annual meeting is slated for the Suburban Collection Showplace in Novi.

D. CLE/ICLE – Liz Bransdorfer reported that attendance figures for this year's Family Law Institute are ahead of last year at this time. ICLE has been requested to increase the number of low cost slots available to referees.

F. Family Court Forum – No report.

G. Family Law Journal – Anthea Papista announced that we are aiming for January launch of the electronic Family Law Journal. With one exception, the authors invited to submit articles for January's issue have accepted.

H. FLJ Advertising – Kristen Robinson discussed the effect of the electronic journal on advertising, and suggested a review of rates and the development of contracts. Liz Sadowski thought that there was some regulation on the balance of articles to ads. Jim Harrington mentioned that the old "build" password for our website will soon be phased out in favor of the user's p number.

J. Membership – Liz Sadowski stated that the committee continued to work with law schools to encourage students to become acquainted with the FLS. Liz pointed out that our bylaws required us to charge students \$10 per year for membership, whereas new lawyers had free membership for two years.

K. Midwinter/Midsummer Seminars – The midwinter seminar for 2014 will be at Peter Island, BVI. The midsummer seminar will occur in the second or third week of July, at a location to be determined. The 2013 seminar made a small profit for the section.

L. PAC – Ross Stancati urged Council members to set an example for other section members by contributing to the PAC.

IV. Ad hoc Committees

A. Parenting Coordination – Dick Halloran reported that the Parenting Coordination statute had been issued in draft form by the Legislative Service Bureau, and we hoped to see it bill form shortly.

B. Social Media – Allison Sleight explained that to see the Section's Facebook site, we have to be her friend.

V. Adjournment

Next meeting Saturday, November 2, 2013 at Doubletree Hotel, Novi, MI. Breakfast at 9:00 a.m., business meeting at 9:30 a.m..

Respectfully submitted,

Kent Weichmann, Recording Secretary
October 15, 2013