

**STATE BAR OF MICHIGAN
FAMILY LAW COUNCIL**

MINUTES

Date: December 5, 2020
Location: Zoom
Time: Networking 9:00 a.m.; Meeting 9:30 a.m.

I. Administrative Matters

A. Call to Order/Quorum

The council was called to order by Chair, Sahera Housey, at 9:36 a.m.

B. Introduction of Council Members

The following (21) council members were present: Sean Blume, Matt Catchick, James Chryssikos, Shon Cook, Christopher Harrington, Steven Heisler, Joe Hohler, III, Jennifer Johnsen, Shelley Kester, Viola King, Peter Kulas-Dominguez, Michelle Letourneau-McAvoy, Anthea Papista, Randall Pitler, Kristen Robinson, Liisa Speaker, Amy Spilman, Gail Towne, Randy Velzen, Donald Wheaton, and Hon. Tina Yost Johnson.

The following council members were absent: None.

Ex-Officio, former council members, liaisons, non-council member committee chairs, and lobbyists present: Anne Argiroff, Scott Bassett, Kristina Bilowus, Elizabeth Bransdorfer, Stephane Johnson, Mat Kobliska, Joshua Pease, Chris Piatkowski, Steve Reinheimer, Dion Roddy, Elizabeth Sadowski, Rebecca Shiemke, Kent Weichmann, and Amy Yu.

Guests present: Kathleen Allen, Alicia Bianchi, Jason Blevins, Peter Conway, Kanika Ferency, Keela Johnson, Melissa Kelleigh, Dinah Lynch, Erin Magley, Hon. Lisa Neilsen, Theresa Rose, Lisa Ruby, Katelyn Schaeffer, Alexander Sheldon-Smith, Simone Sprague, Alicia Storm, Kristen Wolfram, and Stephanie Witucki.

C. Chair Report (Sahera Housey)

- Decorum. The chair reminded everyone of the decorum for the meeting to maintain a professional environment, everyone on mute until they are called on.
- State Bar survey on MiFile. Please respond to the MiFile survey to give the

State Bar feedback.

- State Bar issues. We are having several problems with the State Bar so please be patient and submit what you need for us to post on the State Bar to Liz Sadowski, Steve Heisler and Sahera Housey.
- SCAO parenting time guidelines. SCAO were supposed to be out this month.

D. Recording Secretary Report/Approval of Minutes (Liisa Speaker). Liisa Speaker circulated council meeting minutes for the November 7, 2020 meeting. Liisa Speaker moved to approve, seconded by Tina Yost Johnson. Passed unanimously. 21-0-0.

E. Treasurer's Report (Shelley Kester). Shelley reported that the September 2020 financials were circulated, and the October/November will be circulated after the State Bar finalizes 2020. Our net income is overall up, even though seminar revenue is down, and council and travel expenses are down. Shelley moved and Don Wheaton seconded to approve the Treasurer's Report. Passed unanimously 21-0-0.

F. Corresponding Secretary. (Kristen Robinson). No report.

II. Key Committee Reports

A. Post minority support ad Hoc Committee (Kent Weichmann). Kent reported that the committee has explored the issues. They were particularly concerned with how post minority support would affect SSI and other disability benefits for disabled adult children. That was the status 7 years ago when the committee met. Since then special needs trusts have become more common. There is a debate about the parents' obligation to support their children after the age of 18, and also from the court's perspective that the courts do not have to monitor or engage with a family after the child is 18 (or 19½). The law now bars the court under all circumstances after the child is 19½ and to of high school to provide support to the child. What typically happens then with a disabled adult child, the burden is placed on one parent. The vast majority of states allow for some support for post minority children.

Lisa Ruby, who works with the Michigan Poverty Law Program, attended as a guest and reported to Council. For SSI once the child is an adult they are no longer counted as a member of the household. We don't want disabled individuals to lose their health insurance. But SSI money is counted dollar for dollar, if replaced by another source. Therefore there is no net gain for disabled individual because it is replaced dollar for dollar. The problem is that the government benefits often or usually are not enough to live on (for example, the

cap of \$783 per month may not even pay for monthly rent). Special needs trusts are extremely particular and specialized attorneys would need to be engaged to draft. They are also expensive. But any money going to the special needs trust is not countable for purpose of exclusion from government benefits. The MiAble account arises from federal law is easy to set up. The person has to show they have a disabling impairment. They may or may not be receiving SSI. The money can be put into the account by the individual, and any money in that account is exempt – it is not countable to the person. \$15,000 is the limit that can be deposited each year, the total cap is \$100,000. So anybody can provide money to support the disabled person to pay for their expenses, but not countable against government benefits.

- **Don Wheaton moved to support the amendment MCL 552.605b adding paragraph 3 for support to non-minor children, and Randy Velzen seconded. Kristen Robinson made a friendly amendment to first take a vote on the philosophical concept of putting council resources into working on an amendment to post minority support for adult children with disabilities, rather than voting specifically on language contained in the proposed amendment before council today. Don Wheaton approved the friendly amendment and Randy Velzen seconded the friendly amendment.** There was discussion and questions about the concept of post minority support. There was comment about how some disabled adults feels like this type of legislation singles them out and oppose it. There is also a high rate of divorce between parents of disabled children, so this type of legislation could affect a lot of people. One person was concerned about treating intact families differently than divorced children, but we already do that in the divorce process when we set up child support and spousal support. There was much discussion about the pros and cons of the concept of the proposed legislation. **Motion passed 13-8-0.**
- Sahera advised that the motion having passed, FLS members should send their questions, comments, and concerns to the committee, and even join the committee.

B. Amicus – Anne Argiroff/Gail Towne. Gail reported that there are three cases pending in the Supreme Court with amicus briefs from the Family Law Section. In *Pohlman*, the Supreme Court granted a mini oral argument on the application, reframing the question slightly. The committee is working on a new brief for the *O'Brien* case, and will be sending out a poll to obtain some anecdotal evidence from family law practitioners to add to the brief.

C. Court Rules – Jenny Johnsen/Peter Kulas-Dominguez. Jenny reported.

1. **ADM 2020-26.** (Proposed amendment MCR 1.109 and 8.119 to protect personal identifying information). The Committee discussed that the

discovery rules already permitted a judge or party to protect confidential information and there was a concern about clerks making that discretionary decision. The Committee voted to support the amendments.

- **Jenny Johnsen moved to adopt the committee's recommendation to support the amendments as written and Sean Blume seconded. Motion passed 18-0-3.**
2. **ADM 2020-16.** (Proposed amendment MCR 9.261 would allow the Judicial Tenure Commission to share information with the Judicial Qualifications Committee and the Judges and Lawyers Assistance Program).
 - **Jenny Johnsen moved to adopt the committee's recommendation to support the amendments as written and Peter Kulas-Dominguez seconded. Motion passed 20-0-1.**
 3. **ADM 2020-19.** Proposed amendment to MCR 2.302(B) to require that transcripts of audio and video recordings intended to be introduced as an exhibit in a proceeding to be transcribed in advance of the hearing. The Committee recommended opposing the ADM.
 - **Jenny Johnsen moved to oppose the ADM file and Tina Yost-Johnson seconded to oppose the ADM proposal.** There was discussion committee questioned what was meant by a "transcript" and how visual cues and reactions would be lost in a written transcript. In addition, having submitted a transcript, many judges may refuse to watch or listen to the audio or video recording. **Motion passed 19-0-1.**
 4. **ADM 2020-20. Service on LLCs.** The Committee thought this issue would rarely come up, so no vote was taken.
 5. **ADM 2020-17.** The use of restraints on juveniles in court proceedings. The Committee agreed to table the meeting. The comment period expires March 1, 2021.

D. Legislation –Jim Chryssikos/Randy Velzen. Jim reported.

1. **SB 1221.** Regarding prospective adoptive parents who are adopting a child born outside of the U.S., the bill requires the placement agency to send a notice to the prospective adoptive parents that they have to seek citizenship for the child. The Legislative and Adoption Committees voted to support the bill with amendments, so that the notice required is written notice and possibly to add a penalty to an agency who fails to provide such notice.
 - **Jim moved and Randy Velzen seconded. Motion carried 20-0-0.**
2. **SB 1107.** Creates a foster care task force. The committee discussed

proposed an amendment to the Bill so that there is more broad representation on the committee, to include at least one member of the Family Law Section, one member of the Children Law Section, and one person who has completed GAL/LGAL training.

- **Jim moved to support the bill with the amendments and Shelley Kester seconded. Motion carried 20-0-0.**

III. Standing Committee Reports

A. Adoption – Dion Roddy. See Legislative Committee report.

B. ADR/Collaborative – Randy Pitler. No report.

C. Annual Meeting – Chris Harrington. If we are to have an in-person meeting, we are looking in Lansing on September 18, 2021.

D. CLE/ICLE – Shon Cook/Liz Bransdorfer. Liz reminded council that the Family Law Institute will be available on demand starting on December 18, 2020. Shon reported that the FLI live sessions were a big hit.

E. Dedicated Family Court – Tina Yost-Johnson/Liz Bransdorfer. Tina reported that the committee met and is working on having a task force set up by the Supreme Court, along with guidelines for what we would like to see as for qualifications of a family law judge.

F. Domestic Violence – Rebecca Shiemke. No report.

G. Family Court Forum – Sahera Housey. No report.

H. Family Law Journal – Anthea Papista/Amy Spilman. No report.

I. Family Law Journal Advertising – Sean Blume. Sean reported that he and Shelley Kester (as Treasurer) met to discuss a plan to develop advertising further.

J. Family Support – Kent Weichmann/Carlo Martina. No report.

K. Member Education and Public Relations – Shelley Kester/Liisa Speaker. Liisa reported that she and Matt created a video to promote the section. Liisa and Shelley need to meet to start planning on February webinar on Covid-1 provisions.

L. Membership – Steve Reinheimer/Steve Heisler. No report.

M. Midwinter/Midsummer – Kristen Robinson/Liz Bransdorfer/Steve Reinheimer.

Kristen reported that she is starting to consider planning February 2022. Steve reported that they have sent requests for proposals to various resorts and are waiting for the proposals so the committee can evaluate the options.

N. Political Action Committee – Matt Catchick. Liz Bransdorfer reported that the entity identification number between bank and IRS are different from each other. We have no tax liability because we do not give away enough money each year to impose a liability. Nonetheless someone will need to contact the IRS because we do not know how the discrepancy came about. The section might have to pay for tax advice. Matt further reminded that each council member is expected to donate each year. It must be a personal check. PAC checks should be sent to: Attn: Stephanie Johnson, KJL, 124 West Allegan, Suite 1700, Lansing, MI 48933.

O. QDRO/Taxation - Bob Treat. No report.

P. Listserv/Website - Elizabeth Sadowski/Steve Heisler. Elizabeth will be circling back with the State Bar, to get response to our request to manage part of the Section website.

IV. Ad Hoc Committees/ Liaison

A. SCAO Child Support – Kent Weichmann/Carlo Martina. The new formula goes into effect January 1, 2021.

B. SCAO Forms – Amy Yu/Gail Towne. The new form start January 1, 2021 and you are required to use the most up-to-date forms.

C. SCAO Parenting Time Guidelines – Shelley Kester/Liz Bransdorfer. Shelley reported that we are still waiting for the updated guidelines.

D. Children's Law Section - Josh Pease. Josh reported that the Section has paused lobbying because 50% of the budget was going to lobbying and whether to continue as a separate section. Chris Piatkowski reported on other issues that are concerning to the section management and issues, including false positive drug tests identified by a specific drug testing company.

E. Committee on Civil Procedure & Courts (position available). No report.

F. LGBTQA Section - Peter Kulas-Dominguez. Don Wheaton reported that the Section will be creating a CLE to address pronoun challenges. The Section is also looking for a volunteer to go through legislation to make statutory language more inclusive. Finally, the Section is working on creating an electronic bulletin board for members to share updates and ideas with our practitioners.

G. Probate and Estate Planning Section - Anthea Papista/Patricia Ouellette.

Anthea reported that the Section is working on an undue influence statute and the presumptions. The Section is also working on a statute for visitation for family members when the ward has a guardian.

H. State Bar Board of Commissioners - Kristina Bilowus. No report.

V. Announcements/New Business.

- The next meeting is January 9, 2020. The following meeting is March 6, 2021.

VI. Adjournment.

Motion to adjourn by Chris Harrington and seconded by Steve Heisler. Motion approved unanimously. The meeting concluded at 12:17 p.m.

Respectfully submitted,

Liisa Speaker,
Recording Secretary.