

**STATE BAR OF MICHIGAN  
FAMILY LAW COUNCIL**

MINUTES

Date: March 7, 2020  
Location: Weber's Inn, Ann Arbor  
Time: Breakfast 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, Elizabeth Bransdorfer.

**B. Introduction and Attendees**

The following (18) council members were present: Sean Blume, Matt Catchick, James Chryssikos, Shon Cook, Christopher Harrington, Joe Hohler, III, Sahera Housey, Mathew Kobliska, Michelle Letourneau-McAvoy, , Randall Pitler, Steven Reinheimer, Kristen Robinson, Liisa Speaker, Amy Spilman, Randy Velzen, Donald Wheaton, Vanessa Moss Wilson, Hon. Tina Yost Johnson.

Chairperson Elizabeth Bransdorfer was present.

**Council members absent:** Jennifer Johnsen, Shelley Kester, Anthea Papista.

Ex-Officio, former council members, liaisons, non-council member committee chairs, and lobbyists present: Amy Yu, Elizabeth Sadowski, Peter Kulas-Dominguez, Ross Stancati, Dion Roddy, Stephanie Johnson of KRKM and Chris Piatkowski.

Guests present: Steve Heisler, Alicia Storm, Jason Blevins, Susan Murphy, Jessica Larson, Jeff Murphy, and Jeff Kirkey of ICLE.

**C. Chair Report:** Liz Bransdorfer.

- Cynthia Price, a reporter from the Legal News was present to observe the meeting.
- Shelley Kester finished a draft of the welcome letter to new members. The letter is now waiting for review by the Chair.
- Announcement regarding one-day divorce training for paralegals in Southfield, MI on May 1, 2020. Liz B. and Jenny Johnsen are presenting.
- Felicia Brabec of Ann Arbor is running for Michigan House of Representatives. She has a mental health background and contacted

Liz B. to let her know she is interested in family law related issues and in working with the FLS if elected.

- Peter Cunningham from the SBM called Liz B. to discuss Carlo Martina's testimony at the legislature regarding HB 5296. Carlo's testimony and written testimony was not in compliance with SBM rules. Liz will circulate the applicable rules to the Legislative Committee for future and Stephanie Johnson stated she would make sure to prepare people who are testifying in the future to avoid potential problems.
- Liz B. is interested in proposing an amendment to the bylaws to add a liaison from the LGBTQA Section to the Family Law Section and do away with the existing Alternative Family Committee. If anyone would like to suggest any other bylaw amendments, bring suggestions to Liz's attention before the next meeting.
- The Supreme Court had its Justice for All town hall meetings around the state. Liz B. attended the GR presentation.
- Save the date for AAML Seminar May 7, 2020 at the Townsend Hotel in Birmingham, MI.
- WLAM requested the Family Law Section sponsor the Annual Meeting in Grand Rapids on April 17-18. Sahera Housey moved that the FLS sponsor the meeting by buying a FLS advertisement in the program for \$250; second by Sean Blume. Motion passed unanimously.

- D. Recording Secretary Report:** Kristen Robinson. December 7, 2019 and January 18, 2020 meeting minutes were circulated prior to the meeting. Kristen moved to approve the December minutes, second by Sean Blume. Passed unanimously. Kristen moved to approve the January minutes, second Matt Catchick. Motion passed unanimously.
- E. Treasurer's Report:** Chris Harrington. FOC/ADR update – he received communication regarding the registration process from SBM, specifically regarding the process of getting check to the SBM. Note to include SBM rules in new member packet for those council members who collect funds for Section events. Chris moved to approve November 2019 – January 2020 Trial Balances. Second by Sahera. Motion passed unanimously.

## **II. Key Committee Reports**

### **A. Legislative – James Chryssikos/Randy Velzen, Co-Chairs**

1. **HBs 5417, 5418, 5419 and 5476** – Jim reported that the committee discussed these bills together as they have already been introduced in the House and the first three are tied barred and the fourth seems to be a close cousin. These bills would amend EPIC to allow parents or guardians to enter into Do Not Resuscitate Orders (DNR) for minor children with advanced illnesses. They require that both parents sign the order and, where parents share legal decision-making authority, both parents must execute the DNR order. There was a question as to whether these are family law issues. Some argued that this is not a family law issue and there are already

processes available in juvenile court to determine if a minor should be taken off life support. It seemed that the committee agreed with the approach in the bill, which is that both parents must agree to execute a DNR and the Family Court has no authority to rule in favor of the parent supporting the DNR like it would for other medical disagreements. There was also discussion about a parent who's been out of the child's life for an extended period of time, but who's parental rights haven't been terminated, or an active parent who's been denied legal custody, and their rights to have input in the execution of a DNR. Should a sole legal custodian have the authority to execute a DNR, or should it be a higher standard than legal custody, such as the other parent's parental rights have been terminated in order for one parent to execute a DNR? Stephanie said that there was a first hearing on this. HB 5418 provides that DNR orders can be kept on file at schools and provides schools civil and criminal immunity from honoring a properly executed DNR. HB 5419 allows a guardian to execute a DNR for a minor. The committee voted to support the cluster of bills and the committee vote passed by a majority.

- **Jim moved that Council support all four bills, second by Don Wheaton.** Discussion re: whether this is a FLS issue. Concern about relying on school files and schools having the burden of making a decision to hold and produce a DNR. Concern over a guardian having the right to execute DNR was expressed. Discussion of the gravity of this bill and all the implications. Jim withdrew motion. Don (second) agreed to withdraw.

- **Joe H. moved that Council take no position on these bills.** Second by Sean Blume. 5 support 12 oppose. Motion failed.

- **Motion by Jim to support HB 5417 with the deletion of section that gives guardians the right to execute a DNR for their ward and delete the provision where the child's school retains a copy of the DNR.** Second by Randy V. 4 in favor, 13 opposed, 1 abstention. Motion failed.

- **Motion to oppose all four bills made by Sahera Housey,** second by Joe H. 12 in favor, 4 oppose 2 abstain. Motion passed.

2. **SB 790** – Jim reported that this bill provides that videos of court proceedings must be made available to the public and provides the manner, cost, timetable, etc. for making a video available to the public. The Legislative Committee reviewed this bill under the Keller permissible option as “affecting the practice of law” part of our charge. Committee discussion included problems with people, including unhappy litigants, putting videos out on the internet of various judges. It was also pointed out that MCR 8.119 (H) and other court rules that regulate the use of videos in the court and their availability to the public. The argument was made that the legislature should not be making rules for the judicial arm of the government. Another argument was made that this bill merely promotes transparency and that accessible videos of court proceeding for video enabled courtrooms is essential because they are available much quicker and cheaper than transcripts, which is the other option, and therefore what harm is there is passing legislation providing for videos to be made available to the public. The committee voted to oppose this bill as it is an overreach of power by the legislature and presents a separation of powers issue and the motion passed by a majority.

- **Jim moved that Council oppose this bill.** Second by Sahera H. Discussion of why shouldn't parties get a copy of their video. There was also discussion regarding separation of powers argument – can legislature dictate judiciary procedure? Concern was expressed about when the video is used inappropriately outside of court. Video have been edited and posted online. Should sensitive witness testimony of minors be available to the public? Many courts allow viewing at the courthouse only, however, some courts don't allow viewing or any other access to

the videos. Motion to call the question by Randy V. Second by Sahera H. Unanimous vote to call the question. Motion passed to oppose bill: 11 in favor; 6 opposed; 1 abstention.

### 3. Advisory Items:

- Regarding a draft bill from Senator McCann proposing changes to the child support statute for children 18 years old and older who have not graduated from High School and addresses the issue raised in *Weaver v Giffels*. **Tabled until next meeting.**

- ROPA draft bill: changes the requirements for an alleged father to obtain standing in a ROPA action by, among other things, removing the requirement that alleged father did not know the mother was married at the time of conception. The committee opposed the draft bill. Motion by Jim, second by Sahera H. to communicate to the drafter that council is “not in favor” of this bill as currently drafted. Discussion regarding the following: standing issues; constitutional rights as described in US Supreme Court cases flow from relationship with child not just biology; rights of child versus rights of parents; impact of change on children. Vote: 9 support, 6 opposed, 3 abstained. Motion passed.

- Post-minority Support – see written report submitted by Kent Weichmann.

Next Legislative Committee meeting is at 4:30 on Thursday, April 2, 2020 by teleconference.

#### **B. Court Rules & Ethics. Jennifer Johnsen and Peter Kulas-Dominguez, Co-Chairs**

Peter Kulas-Dominguez reported that the committee reviewed the following ADM files:

- ADM file 2018-19 re: MCR 3.229 re: confidential files. This is an amendment to rule 3.229 that requires the filer to identify nonpublic documents when they are submitted to the clerk and stipulates that the filer waives any claim of confidentiality where such documents are filed without a designation of confidentiality. This was issued on December 27, 2019 and there is no comment period for this ADM File, as it became effective December 27, 2019. The Committee felt that, while this has already been enacted, it was not necessarily a waste of time to voice our concerns to the SBM and SC. This amendment was in response to a concern that the clerk’s office was going to have to scrutinize every document filed and make a determination on confidentiality. The discussion centered around subpart (B) and the following language: “The filer waives any claim of confidentiality to any item filed under subrule (A) that is not identified by the filer as confidential.” The language seemed punitive and extreme. The intent of the language was not to impose a consequence, but rather take the onus off the clerk’s office for determining the confidentiality designation. The committee voted unanimously to suggest replacing the above bolded language with “The court assumes no responsibility in determining the confidentiality of any document not properly designated by the filing party.” **Don Wheaton moved to adopt the Court Rules Committee recommendation to suggest the modified language to ADM file 2018-19 as listed in the committee report.** Second by Michelle L. Discussion of whether this new ADM file puts the burden on the court clerk to determine what is or is not confidential, what to do about pro per litigants that attach confidential documents without making same as confidential, other potential remedies (i.e. motion to strike). Vote: 10 support, 0 opposed, 8 abstained. Motion passed.

- ADM File 2002-37. This is an proposed amendment to MCR 1.109, 2.002, 2.302, 2.306, 2.315, 2.603, 3.222, 3.618, 4.201 and 8.119 towards the process of designing and implementing the statewide electronic-filing system. The committee discussed this file on the January and March conference calls. The committee voted to support ADM File No. 2002-37 with A) a friendly amendment of Rule 1.109(D)(1)(a) to include the phrase “Excluding exhibits” before “[t]he font size must be 12 or 13 point for body text and no less than 10 point for footnotes, except with regard to forms approved by the State Court Administrative Office” and B) the following question posed: “Regarding Rule 1.109(G)(3)(e), does that mandate include the FOC or not?” **Don Wheaton moved to adopt the committee recommendation.** Second by Sean Blume. Vote: 18 support, 0 opposed, 0 abstained. Motion passed.

### **C. Amicus. Anne Argiroff/Gail Towne, Co-chairs.**

- Anne Argiroff reported that the Committee discussed the *Pohlman vs. Pohlman* case, COA Case No. 344121 (January 30, 2020). Plaintiff (Mrs. Pohlman and Appellant) is filing an Application to the Supreme Court. The issue involves the fact that the mediator never made the inquiry regarding domestic violence that is required by MCR 3.216(H)(2) as well as MCL 600.1305(2),(3), which took effect August 1, 2016.

Also at issue, is the fact that the trial court did not hold an evidentiary hearing regarding the voluntariness of the agreement. The plaintiff appealed the denial of an evidentiary hearing before the entry of the judgment. In a split decision, the Court of Appeals affirmed, with Judge Gleicher dissenting. The majority opinion suggested that the plaintiff raised the issue too late in the proceedings before the trial court, but also held that the mediator’s failure to screen for domestic violence in violation of MCR 3.216(H)(2) was harmless error because they did not think that the plaintiff had asserted or demonstrated any prejudice due to the failure to screen.

The Amicus Committee fears that this ruling undermines the statute and court rule that were intended to protect survivors of domestic violence in mediation. The Court of Appeals’ opinion indicates that it is not essential for mediators to provide screening for domestic violence, even though that screening was mandated by the legislature and the Michigan Supreme Court. This ruling gives mediators a license to ignore the statute and court rule because there is no penalty for failure to screen. The committee recommends writing an amicus brief that the trial court should have conducted an evidentiary hearing to allow the plaintiff to present evidence regarding the voluntariness of the agreement, and the Court of Appeals should have remanded the case for that evidentiary hearing. The Amicus Committee asks Council to authorize the filing of a brief and supporting pleadings in opposition to the Court of Appeals ruling in *Pohlman* and in support of application to the SC.

**Lisa Speaker moved to support the recommendation of the committee.** Second by Sean Blume. Discussion: malpractice issue and how it is not an appropriate remedy; concern over whether this is the right case for amicus to take up due to the facts of this case; this issue is important because mediators, litigants and judges need direction as no consistency on how domestic violence screening is handled and when courts need to hold a hearing. Vote: 13 in favor, 2 oppose, 3 abstain. Motion passed.

- Another request pending for the section to write an amicus brief relating to the issues in *O’Brien v. Annunzio*. Amicus will report on status of request at next meeting.

- Amicus Committee would like to become more proactive in looking for cases where an amicus brief could help the practice of family law.

### III. Standing Committee Reports

#### A. ADR/Collaborative – Randy Pitler, Chair

Liz B. thanked all those who helped with the FOC/ADR programs across the state. Randy P. reported that the overall program was very successful – approximately 300 people attended statewide. Early figures appear as though the program came in under budget. Thanks to Matt Catchick for getting sponsors.

#### B. Midwinter/Midsummer – Kristen Robinson/Liz Bransdorfer, Chairs

Kristen reported on the success of the Midwinter Conference in Jamaica and the feedback from attendees regarding the roundtable discussion and how they would like more discussion at future seminars. She is working on the destination for next year.

Shon has speaker slots for Midsummer filled. Conference will be held July 30 – Aug. 2, 2020 at Mission Point Resort on Mackinac Island. Those interested in attending should contact Mission Point directly to book rooms.

C. **Domestic Violence – Rebecca Shiemke, Chair.** See written report circulated with agenda.

#### D. Annual Meeting – Sahera Housey, Chair

Sahera H. reported that the annual Council dinner will be held on September 11, 2020 at Dusty's English Inn and the Annual Meeting will be held on September 12, 2020 – both in Lansing. The program for the Annual Meeting will be an overview of Family Law issues (similar to last year); however, for 2020 the Council will invite State legislators to attend. The Criminal Law Section asked the FLS to participate in a joint annual meeting. Due to the plan to invite legislators, we will not participate in 2020 but keep this idea in mind for the 2021 annual meeting.

#### E. Membership – Stever Reinheimer, Chair

Steve R. reported that the Young Lawyers Summit moved to the fall and will be in Detroit. The YL Summit falls on the same day as our FLS Annual meeting. Sponsorship has gone up 10-fold (now \$2500). However, there is a table option for \$500. **Sean Blume moved to investigate the possibility of splitting cost of a table with LGBTQA Section or another section and spend up to \$250.** Second by Sahera H. Vote: 14 in favor, 3 opposed, 1 abstention. Motion passed.

- F. Technology/Social Media/Website – Liz Sadowski/Peter Kulas-Dominguez, Co-chairs.** No report
- G. Family Law Journal – Anthea Papista/Amy Spilman, Co-chairs**  
Amy Spilman requested photos from Section Events to publish in the FLJ.
- H. Family Law Journal Advertising – Sean Blume, Chair**  
Sean reported things are going well and he is catching up on advertiser billing.
- I. Family Court Forum –**  
**Sahera Housey moved that Council support the Family Court Forum with a contribution from the section up to \$2000.** Second by Chris H. Vote: 18 in favor, 0 opposed, 0 abstained. Motion passed.
- J. CLE/ICLE – Shon Cook, Chair**  
**Motion by Shon for the following: (1). Participate as a Silver sponsor for Family Law Institute for \$2500 to include new lawyer discount and vendor table etc.; and (2). Contribute an additional \$2500 for 13 legal aid attorneys to attend the institute.** Second by Sahera H. Vote: 17 in favor, 0 opposed, 1 abstention. Motion passed.  
  
Jeff Kirkey reported that the Family Law Institute will be held Nov. 12 – 13 at Suburban Collection Showplace. He still has some slots for speakers. Email him if you are interested in presenting.
- K. Adoption – Dion Roddy, Chair**  
Dion reported that the committee has several items on which it is focusing including: HB 5148 and 5149; amendment to court rule regarding timeline to identify a putative father; and working in conjunction with the Michigan Probate Judges Association to amend the Adoption Code. See the committee's written report for more details.
- L. Family Support – Kent Weichmann/Carlo Martina, Co-chairs –** No report
- M. Political Action Committee – Matt Catchick, Chair**  
Matt reported on the activities of the committee. He reiterated the success of the name badge ribbon at the FLI. He reminded council members to give to the FL PAC.

**N. QDRO/Taxation – Bob Treat, Chair – No report**

**O. Alternative Family – Peter Kulas-Dominguez, Chair. No report**

#### **IV. Ad Hoc Committee Reports**

**A. Twenty Year Review – Tina Yost Johnson/ Liz Bransdorfer**

Tina reported that regarding the Supreme Court's request for a group to look into issues related to the Family Court, the committee decided to go with the "task force" option. The committee recommended the following topics for the task force: family court plans; training for judges; one family-one judge case assignments; coordinated services; case processing speed and workload balance for family law judges; resources for judges (staff, services, public defenders, research attorneys); funding issues; and lack of uniformity in practice. The SC requested that various members serving on the task force include following qualities: diversity (including geographic); prosecutor with family law background; person(s) with historical and institutional knowledge; newer lawyer with 5 or 6 years of experience; citizen(s); judiciary; RAM; DV/legal aid. Council to submit a list of names of potential candidates for the task force.

**B. SCAO Child Support – Kent Weichmann/Carlo Martina**

Amy Yu reported that everyone (i.e. stakeholders) accepted all proposed changes to the child support formula. New information regarding the child support formula changes will be out in November of 2020 as the new formula will go into effect January 1, 2021. Notable changes include the calculation for health insurance for children will change as to which parent will pay the premiums/cover the children. Other changes to the formula are changes not too drastic.

**C. SCAO Forms – Amy Yu/Gail Towne, Co-Chairs.**

Amy Yu reported that the new proposed court forms and changes to existing forms will to be given to the committee next week. One task facing the forms committee will be making all forms gender neutral.

**D. SCAO Parenting Time Guidelines – Shelley Kester. No report**

#### **V. LIAISON REPORTS**

**A. Children's Law Section (Chris Piatkowski) –**

Chris reported that committee meetings moved to every other month. The CLS will be looking at changes to Juvenile forms. If you have suggested changes contact Chris.

**B. Committee on Civil Procedure & Courts (liaison requested) – No report**

**C. Law Student Section (inactive per State Bar)**

**D. LGBTQ Committee. Peter Kulas-Dominguez – No report**

**E. Probate and Estate Planning Section (Patricia Ouelette)**



Liz B. reported that the Probate and Estate Planning Section is looking at the proposed Uniform Prenuptial Agreement Act.

F. State Bar Board of Commissioners (Judge Shauna Dunnings) – No report

VI. **NEW BUSINESS** – none

VII. **ANNOUNCEMENTS** – Peter reported that Our Family Wizard has a new feature offering a GPS ping to determine where a party is a given time.

VIII. **ADJOURNMENT**

Motion by Sahera Housey to adjourn. 2<sup>nd</sup> by Joe Hohler. Motion approved unanimously. The meeting adjourned at 12:28 p.m.

Respectfully Submitted,

Kristen Robinson, Recording Secretary