

MINUTES – FAMILY LAW SECTION COUNCIL MEETING

Date: May 2, 2020
Location: Video Conference – Zoom
Time: Networking 9:00 a.m.; Meeting 9:30 a.m.

I. Administrative Matters

A. Call to order and Welcome

The council was called to order by chair, Elizabeth Bransdorfer.

B. Introduction and Attendees

The following 21 council members were present: Sean Blume, Matt Catchick, James Chryssikos, Shon Cook, Christopher Harrington, Joe Hohler, III, Sahera Housey, Jennifer Johnsen, Shelley Kester, Mathew Kobliska, Michelle Letourneau-McAvoy, Anthea Papista, 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.

The following ex officio and former council members were present: Amy Yu, Anne Argiroff, Bob Treat, Elizabeth Sadowski, Gail Towne, Kent Weichmann, Peter Kulas-Dominguez, Rebecca Shiemke, and Scott Bassett.

The following guests were present: Stephanie Johnson of KJL, Alicia Storm, Hon. Bill Callahan, Brianna Scott, Carol Hogan, Catrina Farrugia, Chris French, David Harrison, Erin Magley, Jason Blevins, Katelyn Schaffer, Katherine Sharkey, Kristen Wolfram, Hon. Lisa Neilson, Lore Rogers, Melissa Kelleigh, Hon. Michelle Rick, Pamela Wall, Peter Conway, Rebecca Seller, Stephanie Witucki, Wanda Roberts, Gary Allan Gardner, Lisa McNiff, and Dion Roddy.

C. Chair report: Liz Bransdorfer

1. Name change of 20-Year Review Committee to Dedicated Family Court (DFC) Committee
2. DFC – position statement to Court, reaction from Court
3. SBM Task Force – reopening the profession
 - disparity among what courts are doing
 - disparity among interpretations of EO
 - Lawyers need to be back at their offices for various reasons
4. SCAO –
 - interest in Settlement Week and Mediation Week alternative

- no apparent interest in state-wide extension of internal case deadlines from scheduling orders and court rules
 - Court triage does not include getting our cases concluded if not emergency issues
5. Other input –interpretation of school year for parenting time and child support enforcement of parenting time orders, advice and options for remedies.
 6. Appoint nominating committee: Michelle L. and Steve R. Terms are up for the following council members: Sean Blume, Shon cook, Shelley Kester, Mathew Kobliska, Vanessa Moss Wilson, Steve Reinheimer and Amy Spilman.

D. Approval of Minutes

Recording secretary report/minutes. Kristen Robinson moved to approve the March minutes. Council voted and approved the minutes unanimously.

E. Treasurer's Report

Chris Harrington reported that the most recent financial reports from the State Bar of Michigan indicating the section has a higher revenue than last year at this time. Chris moved to approve the February and March financial reports. Council voted and the financial reports were approved unanimously.

II. Key Committee Reports

A. Amicus. Anne Argiroff/Gail Towne

Anne reported that the committee is currently working on two separate amicus briefs that are being filed in support of granting leave to appeal in each case. One case is *Pohlman* involving the effect of the mandatory court rule and statutory provision requiring domestic violence screening at mediation. The other is *O'Brien v. D'Annunzio* involving the trial court's compliance with statutory and due process requirements in child custody proceedings.

Liisa Speaker reported the committee is also looking at rights juveniles have on appeal in the *In re Ross, Jr. (Minor)* case. Do protections in criminal cases apply to juveniles in delinquency proceedings? The issue is 42 versus 56 day time limits for appeals. The committee would like to support the position that the time limit should be 56 days rather than 42 days. **Motion:** Liisa Speaker moved for approval by the council for the Amicus Committee to write and file an amicus brief in the *In re Ross Jr. (minor)* Supreme Court docket no. 158764. **Motion passed unanimously.**

Kent Weichmann reported that in the Supreme Court opinion of *Foster v. Foster*, Justice Viviano's concurring opinion supports the Family Law Section amicus position.

B. Court Rules & Ethics. Jennifer Johnsen and Peter Kulas-Dominquez, Co-Chairs

Jenny Johnson reported that the committee had two meetings since the last council meeting. On March 31, 2020 the committee had a discussion surrounding voting on the proposed amendment to the Michigan Code of Judicial Conduct 2(F). The committee had a very lively discussion and the consensus of those on the call was that the proposed language is vague. There was talk that judges are worried that this proposed amendment could be used against them. The word "invidious" was concerning to the committee as the definition can be construed in many ways. There was a motion by a committee member which was seconded to support the amendment. The motion to support the amendment failed: 4 in favor, 6 opposed, 2 abstentions. There was a second motion to oppose the language unless modified to be more specific which was seconded. The motion to oppose the language unless modified to be more specific passed: 5 in favor, 3 opposed, 3 abstentions. It was clear by the vote counts on the phone conference that this is an issue for which there is not wide support for either position. Jenny noted that since the committee's vote, the Representative Assembly voted and approved the proposed amendment as written so no council action is required.

The committee also discussed the following issue at the request of Liz Bransdorfer who has been asked to be a part of a group trying to address amendments/suspensions/adjustments to court rules and statutes considering COVID-19. All Committee members are encouraged to communicate their thoughts to Liz ASAP. The list already includes: Scheduling orders; Response to discovery; MCR 3.215(E): Referee recommended order deadline; MCR 2.508; Summary disposition matters; Notary requirements; E-platforms; Child support; Ex parte motions; Preliminary hearings; NA removals using Skype as only means for judiciary to see Kids.

Jenny also reported that at the April 28th committee meeting, ADM file 2019-36 which is a proposed amendment that would clarify the process of investigation of the unauthorized practice of law, was discussed. This issue was tabled in an effort to contact prior council members (including Jim Harrington) to access their institutional memories regarding this issue. The comment period does not expire until August so there is time to fully investigate. That issue will be discussed at the next Court rules & Ethics Committee meeting which is scheduled for June 2, 2020 at 1 PM via phone conference.

C. Legislative - James Chryssikos/Randy Velzen, Co-Chairs

Jim Chryssikos reported:

- 1. HB 5321** – No action items for council; however, an overview is that this bill amends EPIC as to procedures related to child born as a result of assisted reproduction or a gestational agreement. The bill is very lengthy (46 pages) and impacts adopted children's rights to inheritance, and children conceived posthumously using assisted reproductive technology. The bill references "gestational agreements", which are illegal in Michigan. Maybe it's anticipating a big change to come in that regard, or simply addressing gestational agreements legally entered into in another state. Stephanie Johnson did not think this bill was introduced in anticipation of the upcoming gestational agreement bill. The committee voted to table this bill. In the meantime, Liz Sadowski will send the bill to the ABA ART Committee to ask for input. The committee also believes the Adoption Committee should review the bill and comment on it from their perspective. Stephanie will also ask for background on this bill and help fill in the picture for us. We will address this again at the 4/30/20 Legislative Committee meeting.

2. **HB 5442** - A bill to increase District Court Judge's salaries to that of Circuit Judge salaries. The 20 Year Review Committee reviewed this bill and motioned to refer this matter to Legislative because of concerns that this leads down the path of a court of one justice and elimination of the family division (i.e., everyone can do everything). There was a discussion about whether to support this bill with comments, oppose it with comments, or take no position but issue a statement that, while the Section does not take a position on what judges are paid, the Section is concerned about whether this will in any way have a negative impact on the concept of a dedicated family court, and if the purpose is to allow district judges to handle family matters. The committee voted to respond using the "other" box on the State Bar website (i.e., taking no position) with comments consistent with those expressed above, the purpose being to both communicate that we don't take positions on judicial salaries, but we have concerns about where this is headed and that the Section would adamantly oppose any bills that would negatively impact a dedicated family court. Since the Committee meeting, the SBM took a position to support HB 5442 so the council cannot take a position contrary. However, Stephanie Johnson recommended making our position known. **Motion:** Jim moved that the council take steps necessary to let the Legislature know our concerns with this bill. **Motion passed 21 – 0.**

3. **Advisory item**

Stephanie Johnson provided an update on COVID-19 and its impact on the legislature. There is currently no legislative activity and nothing much happening in Lansing that isn't directly related to the health crisis and related budget matters. One state representative and one legislative staffer have passed as a result of the virus. Stephanie reported not to expect any legislative activity until the virus has peaked and new cases begin to go down. There is currently no legislative plan for testimony on proposed legislation. The current budget deficit is tracking to be 2.5 to 3 billion so budgetary issues are front and center.

2. **HB 5806**

Jim reported an update on bill regarding e-filing which is opposed by "anti-trolling" groups because it allows electronic access to new filings. SBM Board of Commissioners supported the bill as written with a small change: "made available to non-parties."

IV. **Standing Committee Reports**

A. **Adoption – Dion Roddy, Chair**

Dion reported that the committee has decided on an amendment to MCR 3.802 that would specify time of service on a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a parent under MCL 710.51(6). Specifically, the proposed amendment would set the time for service in accordance with MCR 5.108, which provides for personal service 7 days and service by mail 14 days prior to the hearing. The

Adoption Committee requests approval from the Council to proceed with actions required to submit this proposed amendment to change the Court Rules. See Adoption Committee's written committee report for a copy of the proposed amendment. **Motion:** Liisa Speaker moved for council to approve the Adoption Committee going forward with the process to amend the court rule as recommended by the committee. **Motion passed 21 – 0.**

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

Kristen reported on the challenges of booking a resort and airfare due to COVID-19 for the Midwinter Conference. She is still working on securing a location but needs a vendor that does not require non-refundable payments.

Liz reported the Midsummer Conference, as of now, is still being held. The dates are July 29 – Aug. 2, 2020 at Mission Pointe Resort on Mackinac Island. Those interested in attending should contact Mission Pointe directly to book rooms.

C. Domestic Violence – Rebecca Shiemke, Chair.

Rebecca first thanked the members of the DV Committee for their work on writing articles for the Family Law Journal. She also addressed the impact of COVID-19 on DV survivors specifically, the news reports of increased DV due to stay-at-home orders across the nation. There are concerns over the live broadcast of Zoom PPO hearings. Also, be aware of new service guidelines requiring petitioner to serve a copy of the administrative order on respondent. Also see written report circulated with the agenda for other issues discussed by this committee.

D. Annual Meeting – Sahera Housey, Chair

Sahera 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, assuming such gatherings will be allowed at that time. 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.

E. Dedicated Family Court Committee – Tina Yost-Johnson/Liz Bransdorfer

Tina reported that the newly re-named committee (formerly 20-year Review Committee) will be working on issues pertaining to securing a dedicated family court bench. Right now the committee is looking at the position for which the section may want to advocate when an open judicial seat will be or will likely be a family law seat. They are investigating whether the FLS can give a recommendation to the Judicial Qualifications Committee. The committee would like to put together a list of what the FLS believes are qualifications necessary for a Family Court judicial candidate. The committee now is focusing on Justice Clement's task force and would like to get the Supreme Court to enforce Family Court plans.

F. Family Law Journal – Anthea Papista/Amy Spilman, Co-chairs

Anthy thanked Amy S., Liz B., Rebecca Schiemke, and Rebecca Ellis for their contributions to the April journal. As always, she is looking for authors to submit articles to the journal. Amy S. reported that the deadline for articles is the 15th day of the preceding month.

G. Family Law Journal Advertising – Sean Blume, Chair

Sean reported that he has fallen behind on sending bills to advertisers. He has been in communication with the executive committee on a plan for getting billing caught up.

H. CLE/ICLE – Shon Cook, Chair - No report.

I. Family Support – Kent Weichmann/Carlo Martina, Co-chairs

Kent reported that there have been no comments on the post-minority support proposal. He invites comments on the first draft. The new Child Support formula is coming out the end of this year.

J. Political Action Committee – Matt Catchick, Chair

Matt reported on the activities of the committee. He reminded council members to give to the FL PAC and any amount is welcome and no amount is too small. Personal checks only – send c/o Stephanie Johnson.

K. QDRO/Taxation – Bob Treat, Chair – No report

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

M. Family Court Forum –

Sahera Housey reported that the Family Court Forum for 2020 has been cancelled. The committee is now working on 2021.

N. ADR/Collaborative – Randy Pitler, Chair

Randy P. reported that the FOC/ADR program was under budget by about \$600. The committee is investigating recreating this format for other family law related topics.

O. Membership – Steve Reinheimer, Chair

Steve reported that the section has no new members since the last report. The update on the Young Lawyers Summit is that the section is not participating this year for a number of reasons.

P. Technology/Social Media/Website – Liz Sadowski/Peter Kulas-Dominguez, Co-chairs - No report

V. LIAISON REPORTS

- A. SCAO Child Support – Kent Weichmann/Carlo Martina. See Family Support Committee report above.
- B. SCAO Forms – Amy Yu/Gail Towne, Co-Chairs. Amy reported last meeting was canceled and has not been rescheduled yet.
- C. SCAO Parenting Time Guidelines – Shelley Kester. No report
- D. Children’s Law Section (Chris Piatkowski) – No report
- E. Committee on Civil Procedure & Courts (liaison requested) – No report
- F. Law Student Section (inactive per State Bar) - No report
- G. LGBTQ Committee. Peter Kulas-Dominguez. Peter reported that his section is looking at ART and other bills impacting LGBTQ issues.
- H. Probate and Estate Planning Section (Patricia Ouelette) - No report
- I. State Bar Board of Commissioners (Judge Shauna Dunnings) – No report

VI. NEW BUSINESS – Discussion of June meeting in Battle Creek and whether to have it in person or via Zoom. The consensus was via Zoom.

VII. ANNOUNCEMENTS – None.

VIII. ADJOURNMENT

Motion by to adjourn by Joe Hohler. 2nd by Sahera Housey. Motion approved unanimously. The meeting adjourned at 12:15 p.m.

Respectfully Submitted,

Kristen Robinson, Recording Secretary