

**STATE BAR OF MICHIGAN
FAMILY LAW COUNCIL**

MINUTES

Date: June 6, 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, Elizabeth Bransdorfer.

B. Introduction and Attendees

The following (20) 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, Hon. Tina Yost Johnson.

Chairperson Elizabeth Bransdorfer was present.

Council members absent: Vanessa Moss Wilson

Ex-Officio, former council members, liaisons, non-council member committee chairs, and lobbyists present: Anne Argiroff, Scott Bassett, Rebecca Shiemke, Elizabeth Sadowski, Peter Kulas-Dominguez, Ross Stancati, Kent Weichmann, and Stephanie Johnson of KJL.

Guests present: Kathleen Allen, Peter Conway, Jade Edwards, Steve Heisler, Carol Hogan, Melissa Kelleigh, Erin Magley, Penny Parker, Lore Rogers, Breanna Scott, Alicia Storm, Katie Strickfaden, Pamela Wall, Stuart Weiner, Betty Widgeon, and Kristen Wolfram.

C. Chair Report: Liz Bransdorfer.

- Committee chairs please look for annual report to complete. SBM has extended deadline; however, it is coming soon.
- National Association of Women Judges will hold its annual conference in Detroit in 2021. Liz B. has been invited to be on the planning committee.
- Settlement week program update. Wayne County's Settlement Week is next week. Hopefully it will be successful, and the court will decide to do it again - one in July and one in August to help with back log cases. Kent,

Eaton and Calhoun counties are also interested. If other counties are interested, contact Liz B, Sahera Housey or Mark Bank.

- D. Recording Secretary Report:** Kristen Robinson. May 2, 2020 council meeting minutes were circulated prior to the meeting. Kristen moved to approve the May minutes second by Don W. Passed unanimously. 20-0-0

Kristen reported that the council would like to purchase its own Zoom paid account to have meetings and possibly webinars. She spoke with Jennifer Hatter at SBM. The SBM does not have any relationship with Zoom so section can purchase Zoom account. Council needs to establish an email address so that the Zoom account is related to the Section rather than an individual. The cost, depending on what council decides to use it for, is between \$300 and \$500 per year. Kristen moved that council approve the expenditure not to exceed \$500. Second by Don W. Motion passed. 20-0-0.

- E. Treasurer's Report:** Chris Harrington. Chris moved to approve SBM 2020 Trial Balances for the section. Second by Sahera. Discussion of unusual charges for the journal. Motion passed unanimously subject to review of journal charges.

II. Key Committee Reports

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

1. **HB 5806** – Jim reported this is a bill that would require courts to allow attorneys on-line access to the court's register of actions and digital image of all documents filed in the case without fees. There was a concern about a possible push back from courts, as this will be a reduction in their fees, they receive from providing copies; however, the section's responsibility is to our members and the fees issue not our concern. The passage of this bill this will make attorney's jobs easier by having quick and free access to court records. There was also comment that this bill would assist appellate counsel considerably in obtaining documents when a deadline is looming. The committee voted unanimously to recommend that the Council should support this bill requiring on-line access to documents to attorneys for no fee.

• **Jim moved that Council support 5806, second by Tina Yost Johnson.** Discussion regarding how important it is for attorneys to access court files and documents. **Motion passed 20-0-0.**

2. **SB 941** – Jim reported that this is a bill that requires all custody and parenting time orders to remain in full force and effect during a state of emergency or state of disaster declared by the governor. This will would limit a governor's authority to suspend parenting exchanges in the event of a state of emergency or state of disaster. An argument was made that potentially the Section may support components of this bill, such as Paragraph 7, which provided that an alternate or temporary custody and parenting plan agreed to by parents during a state of emergency would not be a change in circumstances to allow a court to change custody/parenting time. The comparison was made to a military parent who is deployed. The main reason for opposition to this bill was because it did not allow for judicial determination of the best interests of the children and whether there was a change in circumstances, but rather, only allowed parents to agree to

such a change during a state of emergency. The committee voted that the Council oppose this bill.

● **Jim moved that Council oppose this bill.** Second by Don W. **Motion passed to oppose bill: 19-0-0.**

3. **HB 5787** – Jim report that this is a bill that would allow for electronic signatures for marriage licenses during the COVID-19 emergency. The primary reason the bill was supported was because it is very narrow and the current COVID-19 crisis was impeding people from getting married. The committee voted unanimously that the Council should support this bill.

● **Jim moved that Council support this bill,** Second by Tina Yost Johnson. **Motion passed to support this bill 19-0-1.**

4. **SB 463** – Jim reported that this is a repeat of HB 4891 from 2018, which would allow parents to eavesdrop on their children's conversations, including those conversations with the other parent so long as the eavesdropping parent has an objective and reasonable basis to believe that doing so is necessary to protect the well-being and safety of the child. It also excludes conversations between a minor child and an attorney or GAL, as well as an investigator or peace officer. The Family Law Section supported this bill with amendments two years ago by recommending that a court order for such eavesdropping would prevent overreaching by a parent. Though some committee members believed the Section's previous position was that we supported that bill with an amendment that a parent can eavesdrop on a child unless there is a court order prohibiting it (where a parent has an objective and reasonable basis to believe that doing so is necessary to protect the well-being and safety of the child). Further, we discussed that the word "custodial" be eliminated from line 20 and 27 of page 2 (paragraph (e) and subparagraph (e) (iii)). The committee thought the law should apply to all parents and found the term "custodial parent" to be unclear and unnecessary. The committee voted that the Council should support this bill with amendments that the words "custodial" be removed before the word "parent" on lines 20 and 27, paragraphs (e) and (e)(iii), and also that language be added to limit a parent's ability to eavesdrop on the child's conversations with the other parent if prohibited from doing so by a court order.

● **Jim moved that Council support this bill with the following amendments: that the word "custodial" be removed before the word "parent" on lines 20 and 27, paragraphs (e) and (e)(iii), and also that language be added to limit a parent's ability to eavesdrop on the child's conversations with the other parent if prohibited from doing so by a court order.** Second by Randy Velzen. Discussion regarding how this would impact the current law regarding eavesdropping. The consensus was that currently parents have the right to monitor their minor children's phone calls with a non-parent. The comment was made that each parent has a constitutional right to have privacy when communicating with their child. There were also many concerns about how this bill would be interpreted by law enforcement as it relates to Federal and State wiretapping statutes. Several participants in the meeting expressed concern that the standard of "a good-faith, objectively reasonable basis" for believing that doing so is necessary to protect the well-being and safety of the child would lead to increased litigation. There were comments that the parent whose call is being listened in on by the other parent will not know and as such the burden should not be on the parent who wants to stop the eavesdropping, rather it should be on the parent who wants to seek permission to eavesdrop on the other parent.

Motion failed 8-11-0

- Based on the discussion from the first motion, **Jim moved that Council support this bill with the following amendments/additions:**

- (1) that the word “custodial” be removed before the word “parent” on lines 20 and 27, paragraphs (e) and (e)(iii);

- (2) that line 20 in paragraph (e) be amended to read “parent, foster parent, guardian or legal custodian of a minor child”;

- (3) that paragraph (e) (iii) be amended to add a period (.) following the word parent on line 27 and remove all remaining language in the paragraph; and

- (4) that additional language be added stating “Nothing in this section shall prohibit a court from ordering supervised or monitored parenting time which may include supervised telephone or electronic/virtual parenting time.”

Second by Liisa Speaker. The motion includes a friendly amendment by Tina Yost Johnson to add the words “legal custodian” to line 20 of the bill as outlined above. Both Jim and Liisa accepted the friendly amendment. Discussion regarding how this version would all allow parents to maintain private conversations with their children unless a court ordered that a parent may listen in on a call or order other monitored communication between the other parent and child.

Motion passed: 13-7-0

5. **SB 865** – Jim reported that this bill will allow individuals to bring a cell phone into courthouses, subject to rules and limitations placed by presiding judges. The statute seems to follow the Michigan Supreme Court amendment to court rules in January of this year, which were to take effect by May 1st. The concern by committee members was whether codifying the existing court rule into a statute is reasonable or whether it constitutes legislative overreach. The committee viewed this bill as an erosion of the separation of powers between the legislature and the courts since what can and cannot be brought into a courtroom is within the authority of the judiciary not the legislature. The Administrative Order earlier this year changed the rule statewide as to cell phones and electronic devices in a courthouse, but if modifications to that order become necessary over time, the SC should be able to do so without legislative action. A motion was made and seconded to oppose this bill, which passed unanimously. The committee voted unanimously to recommend that the Council should oppose this bill.

- **Jim moved that Council oppose this bill.** Second by Don Wheaton. **Motion passed to oppose bill: 19-0-1.**

- Update from section lobbyist Stephanie Johnson. The legislature is still only dealing with COVID-19 and budgetary items. The state has a 3-billion-dollar budget deficit and dealing with this issue is consuming much of the legislators’ time. Since the time for filing taxes was extended much of the information which the committee needed was not available at the May meeting. That revenue estimation conference is now scheduled for Aug 14 after Information regarding income tax returns is available. Not surprisingly politics is playing a fairly significant role in Lansing. The governor has authority to cut programs, if necessary, since the state is required to have a balanced budget and cannot run a deficit. The later those cuts are made the deeper they will have to be to have the necessary effect. The Republicans are waiting to try to force the governor to make those tough decisions. Additionally, COVID-19 has shortened the legislative clock so many bills that were originally thought to go all the way this year may not make it due to shortened time.

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 2019-36** Unauthorized practice of law: Proposed amendment of Rule 15 and proposed addition of Rule 20 of the Rules concerning the SBM. This amendment would clarify the process of investigation of unauthorized practice of law claims and outline procedures for client protection fund. Comment period expires August 1, 2020. The concern includes attorneys who have been disbarred or suspended from the practice and continue as if nothing happened. The discussion centered around the distinction of who the rule is trying to protect, the person reporting wrongdoing, rather than the wrongdoer. The committee voted to recommend that counsel support the amendment.

Jenny moved that council support the proposed amendment. Second by Don Wheaton. Vote: 19 support, 0 opposed, 0 abstained. **Motion passed.**

- **ADM File 2002-37.** Proposed amendment of MCR 2.226 that would clarify the process for change of venue and transfer orders. The comment period expires September 1, 2020. Discussion of cases being left in “no man’s land” for months under current rule and the need for clear forms and clear timelines. The question was posed whether there should be a deadline included in MCR 2.226(A) and if there is a deadline, perhaps this information should be reportable to SCAO when the deadline is not met. The committee voted to recommend that council support the amendment with an addition of a 14-day deadline in sub rule (A), which requires notice/report to SCAO if not met.

Jenny moved to adopt the committee recommendation. Second by Don Wheaton. Vote: 19 support, 0 opposed, 0 abstained. **Motion passed.**

- **Public Policy Items:** The committee discussed the items the Board of Commissioners is taking up. Specifically:

ADM 2019-33 establishes mandatory state training for judicial officials. The Domestic Violence committee supports this proposed rule. The Court Rules & Ethics committee agreed to adopt DV committee’s position.

Motion by Jenny for council adopt the position on this proposed rule as put forth by the DV committee. Second by Shelley K. Rebecca Schiemke discussed DV committee position is that the rule require some component of DV training family court judges as well as all other judges due to parties and witnesses that may be survivors of DV and judges should be trained on how DV can impact witness testimony. Friendly amendment by Tina Yost Johnson to include section members and/or council members and/or DV committee members to have input on training guidelines. Jenny and Shelly accepted friendly amendment. Vote: 19-0-0. **Motion passed.**

- **ADM File No. 2019-32.** This administrative order would list various “Professionalism Principles” for lawyers and judges as submitted by the State Bar of Michigan. The concern was that this language is very broad, and the substantive part of proposed order is actually in the comments section and not the body of the order itself. Discussion of how to enforce this order and the distinction of aggressive or zealous lawyering verses violating this proposal. The Michigan Rules of Professional Conduct and lawyers and judges’ oaths meant to cover the intent of this proposal. The committee voted to recommend that counsel request that the language in the proposed

administrative order state “We aspire to these principles” instead of “We adhere to these principles” and add the section in the comments that starts with “The principles are not intended...” to the order itself to make clear that these principles are aspirational.

Jenny moved that council adopt the position of the committee as stated above. Second by Shelley K. Vote 19 -0-0. **Motion passed.**

C. Amicus. Anne Argiroff/Gail Towne, Co-chairs. No Report

III. Standing Committee Reports

A. Adoption – Dion Roddy, Chair - No Report

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

Kristen reported on the challenges of booking a venue for the Midwinter conference that allows for cancelation due to COVID-19 concerns. So far, all resorts require signing a contract with non-refundable deposits. She is continuing to work on the destination for next year and will keep council apprised.

Shon reported that the Midsummer conference will be held. She is having phone call with resort re: social distancing and other safety concerns. The resort has assured us that they will have spaces to accommodate social distancing requirements. Conference will be held July 29 – Aug. 2, 2020 at Mission Point Resort on Mackinac Island. Those interested in attending should contact Mission Point directly to book rooms.

Shon also reported ICLE update on FLI status. As of now, going forward live and/or via Zoom.

C. Annual Meeting – Sahera Housey, Chair

Sahera reported that the annual Council dinner will be delayed. The annual meeting will be held via ZOOM on September 12, 2020.

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

E. Membership – Steve Reinheimer, Chair

Steve R. reported that we have 48 new members.

F. Dedicated Family Court – Tina Yost Johnson/ Liz Bransdorfer

Tina reported that the annual meeting program intended for Legislators to educate them on Family law and why we need a dedicated family court bench would be more effective in person. She will work with Sahera about the best way to proceed.

G. ADR/Collaborative – Randy Pitler, Chair No report

H. Listserv and Website – Liz Sadowski No Report

I. Member Education and Public Relations – Shelley Kester/Liisa Speaker Co-chairs.

Shelley reported that this new committee's task is to work on putting together educational presentations via Zoom to bring value to section member and market the FLS members as well as promote members in the community. Looking for people to join this committee.

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

Amy Spilman reported thanks to Liz B. who did a great job on chair reports throughout her term; also thanks to editors and authors. The committee is currently working on the June/July issue and Aug/Sept issue.

K. Family Law Journal Advertising – Sean Blume, Chair

Sean reported caught up on advertiser billing.

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

M. Family Support – Kent Weichmann/Carlo Martina, Co-chairs – No report

N. Political Action Committee – Matt Catchick, Chair No Report

O. DRO/Taxation – Bob Treat, Chair – No report

P. Family Court Forum – No report

IV. LIAISON REPORTS

A. SCAO Child Support – Kent Weichmann/Carlo Martina. No report

B. SCAO Forms – Amy Yu/Gail Towne, Co-Chairs. No report

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. No report

H. Probate and Estate Planning Section (Patricia Ouellette) – Anthea Papista reported:

1. The Probate and Estate Planning section is reviewing the governor's Executive Orders 2020-42 and 2020-72 regarding questions about legitimacy of these executive orders. Legislation may be coming to create a savings clause related to these executive orders. Anthea recommends watching Howard Collens on the ICLE website on how to properly utilize remote witnessing and notarizing.
2. The P&E section is working on codifying the definition of undue influence, presumptions, and the burden of proof; and
3. Items of note regarding the Cares Act: IRA mandatory withdrawals are

waived and there is no 10% penalty on early retirement withdrawals. Please contact Anthea if you would like copies of any of the materials P&E section materials she referenced.

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

V. NEW BUSINESS

1. **Bylaw Amendments:** Chris Harrington circulated proposed bylaw amendments in advance of the council meeting. He requested council members e-sign a petition necessary to bring the proposed changes to a vote before the council to add the proposed changes to the agenda for a vote by section members at the annual meeting. He received the requisite 10 council member e-signatures on the petition. Chris moved that council approve submitting the following amendments plus the addition of a grammatical change to section 5.3 to a vote at the annual meeting:
 - a. Section 3.3. Adding the LGBTQA Section of the State Bar as a liaison to the Family Law Section. Also, grammatical “clean up” in first sentence.
 - b. Section 3.8. Clarifying that we fill open Council seats at the annual “Section” meeting and not the annual “Council” meeting.
 - c. Section 4.1. Grammatical “clean up” on how to spell Chairperson-Elect.
 - d. Section 5.2. Struck the last sentence due to obsolescence.
 - e. Section 5.4. Struck certain language due to obsolescence.
 - f. Section 6.4. Updated due to State Bar no longer having an annual meeting or a midyear meeting.
 - g. Section 6.11. Clarify that each member of the Council can (and is encouraged to) join more than one committee, and not just one committee.
 - h. Section 7.1. Clarify that Chairperson-Elect is responsible to arrange for the business of the annual meeting.

Second by Sean Blume. Vote: 19 – 0 -0. **Motion passed.**

2. Liz Sadowski raised the issue of racial equality and asks the Council to take a position. Randy Velzen moved that the council to take a strong position of racial equality and appropriate policing. Second by Randy Pitler. Friendly amendment by Sahera to have Member Education and Public Relations committee work on statement language which was accepted by both Randy V. and Randy P. VOTE: 17-0-0. Motion passed.

IV. ANNOUNCEMENTS – Tina Yost Johnson noted that attorneys should be aware that some court staff and referees have been furloughed across the state.

VII. ADJOURNMENT

Motion to adjourn by Joe Hohler. Second by Mat Kobliska. Motion approved unanimously. The meeting adjourned at 12:28 p.m.

Respectfully Submitted,

Kristen Robinson, Recording Secretary