

**STATE BAR OF MICHIGAN  
FAMILY LAW SECTION  
MEETING MINUTES**

**DATE:** April 5, 2008

**PLACE:** Wyndham Garden, Novi

**TIME:** 9:30 am

**Administrative Matters**

**A. Call to order:**

Karen Sendelbach called the meeting to order. Karen indicated that she has received positive feedback and questions from attorneys regarding involvement in the Family Law Section, and our website.

**B. Recording Secretary's Report:**

The Recording Secretary presented the minutes from the February and March meetings. A motion was made to adopt the minutes. The motion received support and the motion received unanimous approval from the Council members.

**C. Treasurer's Report:**

The Treasurer indicated that she did not have any new financial information since the last meeting. The Section remains on track similar to last year.

**D. Committee Reports:**

**Adoption Committee:** No report.

**ADR Committee Report:**

The ADR Committee considered three issues. Those included the collaborative discussion as set forth in the Court Rules section below. The second agenda item considered by the Committee included the annual meeting. The Chairperson indicated that the Committee will be working with the ADR section to provide a presentation after our annual section business meeting, which may include a hands-on demonstration. The third issue considered by the Committee was its decision to continue with the mediation training located at the St. John's Inn in Plymouth.

**Alternative Family Committee:**

The Chairperson indicated that the Committee continues to meet and will continue to schedule regular monthly meetings.

**Amicus Committee:**

The Amicus Committee reported that the case of *Casman v. Hoffman* resulted in a published opinion by the Court of Appeals, which was issued on 4/1/08. The Committee indicated that they have received information that one of the litigants may appeal to the Supreme Court and the Amicus Committee will keep the Council informed.

In addition, the Amicus Committee reported that the Michigan Supreme Court vacated the Court of Appeals' order in the *Zimmerman* case and remanded the matter to the Ottawa County trial court for further determination based upon its order. The Committee indicated that the order from the Court of Appeals is somewhat vague and the committee is concerned that vague orders issued by the Court of Appeals or the Supreme Court may cause questions among practitioners. Bill Chandler suggested that the Committee may want to collaborate with the Appellate section to provide some resolution regarding vague orders. Council members also discussed the possibility of written articles to local law reviews so as to link orders to a law review article.

**Annual Meeting:**

The Committee indicated that the facilities at the Dearborn Inn have been reserved for our annual dinner, which will occur in the Grand Ballroom. The dinner is scheduled for Wednesday, September 17<sup>th</sup> at a time to be announced. The business meeting for the section will occur the following day, the 18<sup>th</sup>, Thursday, at 8:30 a.m.

**Continuing Legal Education:**

The Chairperson reported that the certification program with ICLE is going well. In addition, the Committee reported that the Family Law Institute is scheduled at the St. John's Inn in Plymouth for November 20<sup>th</sup> and 21<sup>st</sup>.

## **Court Rules:**

The Court Rules Committee conducted its monthly meeting via telephone conference. The Chairperson indicated that its next regularly scheduled meeting would be held on April 22<sup>nd</sup> at 1:00 p.m. via telephone conferencing. Several agenda items were considered by the Committee and they were as follows:

1. **Agenda No. 1 - Proposed Court Rule on Collaborative Mediation, arising out of proposal by Robert Gardella, Livingston County in the Representative Assembly**

**RECOMMENDATION TO COUNCIL:** Because the issue involves the Legislative Committee, the ADR Committee, Court Rules and Ethics, a broad based Ad Hoc Committee be established and specifically tasked to address on a comprehensive basis Collaborative Law issue.

**Council Action:** The Council voted unanimously to accept the recommendation of the Committee.

2. **Agenda No. 2 - Court Rules Committee – Amendment to MRPC 7.3 re: Solicitation from Public Records**

The Committee discussed MRPC 7.3, which would appear to be an efficient Rule to cover an Amendment. After discussion the following language in (c) was viewed as acceptable by the Committee:

### **Rule 7.3. Direct contact with prospective clients**

- (a) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and non-deceptive letters to potential clients known to face particular legal problems" as elucidated in *Shapero v. Kentucky Bar Ass'n*, 486 US 466; 108 S Ct. 1916; 100 L.Ed.2d 475 (1988).

- (b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:
  - 1) the prospective client has made to the lawyer a desire not to be solicited by the lawyer; or
  - 2) the solicitation involves coercion, duress or harassment.
- (c) A lawyer shall not solicit professional employment or make known the lawyer's availability for prospective legal services in a domestic relations matter to a prospective client with whom the lawyer has no family or prior professional relationship for a period of twenty-one (21) days after the filing of a Complaint for Divorce or prior to the filing of a Proof of Service, whichever is earlier.

**RECOMMENDATION TO COUNCIL:** Under the circumstances the Chairperson recommended that the issue be referred back to the Court Rules/Ethics Committee for discussion, evaluation and recommendation regarding approaching on both fronts, or whether the MRPC avenue should be held in abeyance pending a Court Rule Amendment. Mr. Schnelz will be invited and welcome to participate in this process.

**Council Action:** The Council voted unanimously to accept the recommendation of the Committee.

3. **Agenda #3 - Proposed Asset-Liability Exchange Order. Continued discussion of proposed Asset-Liability Exchange Order**

The Chair requested additional input and assistance from Council members interested in participating in drafting of the Asset-Liability Exchange Order.

**RECOMMENDATION TO COUNCIL:** Continued input and evaluation by the Court Rules Committee.

**Council Action:** The Council voted unanimously to accept the recommendation of the Committee.

4. **Agenda #4 – Followup on Jules Hanslovsky list of items pending with SCAO as reported at Council Meeting, March 8, 2008**

Insofar as Legislative Chair Weichmann and Court Rules Cochair Harrington concur that certain matters are within the purview of the Legislative Committee and certain matters with the scope of the Court Rules Committee, the matters shall be allocated as follows:

**The Legislative Committee should address:**

- a. Prohibit removal of children from the county of current residence
- b. Encourage voluntary payment of support before an order enters
- c. Encourage attendance at divorce orientation programs
- j. Order the parties to exchange financial and parenting information
- l. Require the parties to notify each other of retirement

**The Court Rules Committee should address:**

- d. Order the parties to refrain from harassment and abuse
- e. Order the parties not to conceal, damage or dispose of assets
- f. Require a verified personal financial statement
- g. Order the parties not to conceal records or terminate insurance
- h. Order the parties not to incur additional debt that would bind the other party
- i. Allow attorney fees and fines against a party violating a restraining order
- j. Order the parties to exchange parenting and financial information
- k. Bind the plaintiff to new requirements on filing and defendant on service

Issue “j” may be appropriate for discussion by both committees because financial information is covered by a court rule proposal, but the parenting plan comes up in legislation from time to time.

The Committee recognized that some of the issues are duplicative, “e”, “g” and “h”, and have already been directly addressed and submitted to the SCAO for consideration (such as the Uniform Status Quo Order approved by Council and submitted to the SCAO in June, 2007. Others, such as “f” and “j”, are already under consideration by the Court Rules Committee.

**RECOMMENDATION TO COUNCIL:** The Court Rules Chairperson in conjunction with Legislative Committee Chairperson will prepare a correspondence outlining the status of the matters and forward it to the appropriate State Bar Office and FOC Advisory Committee.

**Council Action:** The Council voted unanimously to accept the recommendation of the Committee.

**NEW MATTERS referred to the Court Rules Committee for discussion:**

**Agenda #5 – Proposed Legislation regarding Supreme Court Justice Disqualification House Joint Resolution 2008 RR**

**RECOMMENDATION TO COUNCIL:** These disqualification issues do not uniquely affect Family Law, and no specific position or action is recommended at this time.

**Council Action:** The Council voted unanimously to accept the recommendation of the Committee.

**Agenda #6 – House Bill 5669—Re: Per Diem Rates for Juvenile Services**

**RECOMMENDATION TO COUNCIL:** The issue does not specifically impact upon the Court Rules & Ethics Committee and therefore, no specific position or action is recommended at this time.

**Council Action:** The Council voted unanimously to accept the recommendation of the Committee.

**Domestic Violence:**

The Chairperson reported that the Committee is considering establishment of a Domestic Violence corner in the Journal for monthly and regular articles. The Committee also indicated that they perceive a need for judges and attorneys to obtain appropriate domestic violence training. As a result, the Committee is presently undertaking the concept of putting together a Powerpoint presentation for circulation.

**Family Court Forum:**

The Chairperson indicated that the Court Forum is scheduled for June 6<sup>th</sup> in Ann Arbor and that Justice Kelly will be our opening speaker.

**Family Journal:** No report.

### **Family Support:**

The Chairperson indicated that the Committee did have an action report, however, he did indicate that he has made presentations to the Michigan Judicial Institute and while doing so, he and others have noted additional concerns and modifications that should be made to the Child Support Formula. However, rather than asking for changes at this time, it was his recommendation that we wait until after the October Formula is implemented so as to flush out all issues and then seek revision and/or modifications.

### **Journal Advertising:**

A Committee member indicated we are still receiving advertising dollars. The Treasurer reported that our advertising money is our second biggest revenue builder for the section, second to dues.

### **Legislation:**

The proposals considered by the Legislative Committee and their recommendations, and resulting votes, were as follows:

- a. **Prohibit removal of children from the county in which they currently reside.** The position of the legislative committee was that this proposal was unduly restrictive, especially for families who live near the edge of county. The Committee recommended the Council oppose the proposal.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

- b. **Encourage the payment of support before an order enters.** The position of the Committee was that support may always be ordered retroactive to the date of the complaint, which allows couples to work out voluntary arrangements if they wish. The Committee recommended that the Council oppose the proposal.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

- c. **Encourage attendance at a divorce orientation program.** The position of the Committee was that parties are already encouraged to attend divorce orientation programs. The Committee further indicated that different counties are experimenting with more directive methods of obtaining the parties' attendance, and the most successful practices tend to be adopted

by other counties. This is preferable to legislative action. The Committee recommended that Council oppose the proposal.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

- d. **Order the parties to refrain from harassing and abusing each other.** The Committee noted that in the text of the proposal, mutual restraining orders without specific facts being pled to justify the order violated federal law. In addition, the terms are so vague as to be unhelpful.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

- e-h. Referred to court rules.

- i. **Allow the court to sanction a party who violates a restraining order by awarding attorney fees or assessing fines.** It was the position of the Committee that the current court rules and statutes governing attorney fees are adequate. The Committee noted that the difficulty is getting the court to apply the law as written.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

- j. **Order the parties to exchange financial and parenting information.** The Committee indicated that the financial exchange is part of a court rule initiative. The text of the proposal regarding parenting information would require parties to exchange parenting plan proposals at the outset of a case. It was the position of the Committee that the Council would have the tendency to encourage parties to take conservative positions early, and then lock into those positions as the case progresses.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

- k. Referred to the Court Rules Committee.

- l. **Require the parties to notify each other if one of them retires and provide that if a party retires to avoid the consequences of an order, spousal support and property division may be reopened.** It was the position of the Committee that this proposal would be more appropriate



for a judgment provision in a particular case, rather than a legislative initiative.

**Council Action:** The Council unanimously approved the motion from the Legislative Committee that Council oppose the proposal.

**Joint Custody Bill.** Bill Chandler reminded the Council members and visitors at the meeting that the House Judiciary Committee will be holding a mandatory hearing regarding the proposed joint custody bill on 5/7/08 at 9:00 a.m. Bill indicated that he is meeting with the Chairperson of the Committee prior to the hearing to express the views of the Council and its opposition to the proposed legislation.

#### **Membership/Mentor Roundtables:**

The Chairperson indicated that we now have four Roundtable mentor counties up and running. Those include Ingham, Kalamazoo, Kent and Oakland. The dates and times for the Roundtable meetings are available on the Section website.

#### **Mid-Winter/Mid-Summer Seminars:**

The Chairperson indicated that the Committee is in the process of securing the Tides, located in Mexico, for the mid-winter break. The resort is an all inclusive, and including air fare, the cost will be approximately \$2,600 per person. The facility is part of the small luxury hotels with 72 rooms. The Chairperson also indicated that the cost for the trip going through a travel agent would be \$3,500 per person and that, as a result, the Committee is recommending that the Council proceed directly with room bookings through the hotel, which would place the Council on the hook for \$91,000 for the pre-advanced booking contract. The Chairperson indicated that if the rooms are not reserved by the Council or Section members by July 15<sup>th</sup> that they will release the room for further booking.

With respect to the summer seminar, the Chairperson reported that the summer seminar is scheduled for 7/24/08 through 7/26/08 at the Homestead and that they are seeking speakers for the seminar.

**PAC:**

The Chairperson indicated that he is still accepting checks from Council members and would like to obtain full Council contribution.

**QDRO:**

The Committee representative indicated that they are still in process of attempting to reconcile the issues with respect to inclusion of social security numbers in EDROs.

**Technology:** No report.

**E. Standing Committees:**

**FOC Advisory Committee:** See Legislative report.

**F. New Business:**

Jules Hanslovsky reported that he has prepared a checklist to begin a general or civil divorce case. The checklist may be obtained from Jules or any other Council member/guest attending the meeting.

**H. Next Meeting:**

The University Club, Lansing

9:00 am Breakfast

9:30 Meeting

**I. June Meeting**

Saturday, June 7, 2008

Weber's, Ann Arbor

9:00 am Breakfast

9:30 Meeting

**Attendance: Council meeting—4/5/08**

Council Members:

Barb Kelly  
Neil Colman  
Karen Sendelbach  
Connie Thacker  
Donna Mobilia  
Traci Rink  
John T. Hammond  
Jules Hanslovsky  
Ross Stancati  
Rebecca Shiemke  
Amy Yu  
Kent Weichmann  
Carlo J. Martina  
Jim Harrington  
Mark Snover  
Judith O'Donnell  
Phil Navarre  
Anne Argiroff

Non-Members

Ron Bookholder  
Liisa Speaker  
Elizabeth Sadowski  
Bill Kandler  
Toni Raheem  
Katherine Barnhart  
Veronique Liem