

Minutes

Family Law Section Meeting, Saturday April 4, 2009

Administrative matters:

Chairperson's report:

- Nominations for Lifetime achievement are being requested. The criteria for the award were included in the agenda packet for today's meeting and generally require at least 25 years of practice, significant contributions the improvement of family law and contributions outside the practice of law. An example of making contributions outside the practice of law is Richard Victor, who also happens to be a former section chair and one of the past recipients of the Lifetime Achievement Awards. He was instrumental in publishing an excellent book for children based on the SMILE program, something he did in addition to his practice. Proceeds from its sale, along with those from a stuffed bear who is featured in the book, are given to various charities. Those are the kind of contributions to the field that we want to recognize and honor. Nominations for the award are due by May 15.
- Carlo would like thank Connie and Todd Selin for bringing out so many people to the March meeting in Grand Rapids.
- Jim Harrington suggested a form report to use at the end of the year for each committee chair and volunteered to draft a form to use for the report. This should help tremendously with institutional memory and help incoming chairs get organized more quickly at the start of a year. This is a great idea and Carlo asked Jim to draft a proposed form to use.
- Michigan Lawyers Weekly will be focusing on Family Law; they are looking for articles, due May 4.

Recording Secretary's report: The minutes were included in the Council packet. A motion was made and seconded to adopt the minutes. Carol Breitmeyer pointed out one correction, she is not listed as attending the March meeting, but she was there. With that correction to the minutes the motion passed.

Treasurer's Report: The financial report from the Bar through February was included in the agenda packet. A motion was made and seconded to adopt the report and the motion passed.

Guests:

- Camille Dennis and Zenell Brown from the Wayne County FOC talked about its recent restructuring. The office has a new strategic plan and they are trying to address several problems. They have worked through a huge rev/mod backlog processing over 800 requests. They are working on training and ways to increase IVD funding. They have set up attorney work lounges which have computers available to draft orders and other things. They got new phone technology and clients will start to receive phone call reminders of appointments. Eventually it will call parties to tell them the order has been received and put on the system, and then recite the terms of the order and method of payment. Toni Raheem talked about the mediation program Zenell set up and asked if it was used in other Counties because she has found it enormously successful. Jim Harrington asked if flash drives could be used with the attorney lounge computers and

the Zenell said yes. They have already downloaded many forms from the SCAO site, include UCSOs, and they are available on the computers in the attorney lounge.

- Don McGinnis from the State Bar Representative Assembly attended. He reported the State Bar President, Edward Pappas, has started a civility campaign around the State. The State Bar also started a law school for legislators to try to provide information to new legislators. The Bar also reviews all the Court Rules and other proposals and they rely on the views of the Family Law Council on Court Rules that affect our area of practice.

Standing Committee Reports

Adoption: No report

Alternative Dispute Resolution: No formal report, but Toni Raheem said the State committee asked if we could devote an issue of the Family Law Journal to ADR. Carlo suggested that Toni and Carlo speak with Norm Robbins about that proposal.

Alternative Family: No report

Amicus: No report

Annual Meeting: The Annual Meeting is 9:00 AM Thursday 9/17 at the Hyatt in Dearborn.

CLE/ICLE: Carlo reported we started meeting about renewing the ICLE contract and are making progress. One of the things we are talking about is who we will use for ADR /Mediation training in the future. He spoke to Zena Zumeta about her involvement in the program, and asked her to submit a proposal, which she has done. He will circulate it among the ICLE contract review group.

Court Rules:

- The proposed court rule to prevent trolling will be discussed at the Rep Assembly meeting in April as an information agenda item. The committee is revisiting proposing this as an amendment to the Michigan Rules of Professional Conduct in light of recent changes in the court. We may also limit the provision to family law cases, and will look at the concerns expressed about the 21 day limit. We would like to work in tandem with the Representative Assembly and will see their input in April.
- The committee has drafted a proposed Asset Liability Disclosure Order. The intention is that it not be required, but rather a suggestion on the SCAO web site. Use would make it easier to practice across county lines and function as a cross check to make sure attorneys are getting all the info needed. The intention is that it would be exchanged with opposing counsel, but not filed with the court. They are still looking for input on this form but the final version will be submitted to Council at the May meeting.
- Jim asked about the asset/liability restraining order that Council approved last year, it was approved by the FOC liaison committee and is before the Supreme Court. Jim was given some names to contact to check on the progress of that proposed form order.
- The committee will meet again April 28 at 1:00, you can participate by phone.

Domestic Violence: There was no formal report from the committee, but Carlo asked about further training on this issue. He will write to the Open Justice committee to see if they plan to run training programs again.

Family Court Forum: The invitations are out and we expect another excellent turn out.

Family Law Journal:

Family Support: Nothing specific is going on with this committee, but there will be a meeting Monday of the Child Support Leadership Council in Lansing and Carlo will attend. Marilyn Stephens submitted a report that will be discussed at the Leadership council, which indicates Michigan has improved collections considerably. Marilyn Stephens report also talks about some of the special projects the Office of Child Support has initiated, for example a project group

working on the underground economy and how to collect from payers working off the books among other projects. Camille Dennis talked about another amnesty program for child support debt, which is part of the Wayne County strategic plan. Carlo asked Camille to prepare a bullet point outline of what an amnesty program might look like, which she agreed to do.

Journal Advertising:

Legislation:

- SB 197 reintroduces a bill we supported last term. The bill allows biological fathers standing to sue for paternity of a child that was conceived or born during the mother's marriage to someone else. The action must be brought within a year of the child's birth, and the mother must acknowledge the claimant as the biological father, or the child must have been conceived during a legal separation from the husband. The Council previously supported this bill as a first step in addressing these problems. The committee recommended that Council support this bill and a motion was made and seconded to do that. John Hammond raised a concern that blood tests were not required in all of these cases, although Council has previously voted to support such a requirement. The motion to support this bill passed 14 to 1.
- SB 220 would repeal the adultery statute. The committee viewed this as more of a criminal law matter than a family law issue and recommends Council take no position on this bill.
- SB 227 is a reintroduction of a bill we supported last term. It allows guardians who are related to the child placed in their care to obtain assistance payments if they are otherwise qualified. The legislative committee recommends that Council renew its support for this bill. A motion was made and seconded to support the legislation and it passed 15 to 0.
- SB 325 would prohibit the installation or use of a GPS tracking device on a vehicle without the knowledge and consent of the owner. This occasionally happens in domestic abuse cases, or more casual instances of marital spying. Some on the committee felt that this was not a family law issue; others believed that marital spying should not be criminalized. The committee recommends that council take no position on this bill.
- HB 4131 is a reintroduction of the second parent adoption bill that Council supported last term. It allows two unmarried persons to petition to adopt a child. This would include same-gender partners. The bill would increase the number of potential adoptive homes for children. The committee recommends that Council reaffirm its previous support for this bill. A motion was made and seconded to support this legislation and it passed by a vote of 13 to 2.
- HB 4169 requires a parent whose child is being removed from the home to disclose the names and identifying information of the child's relatives to assist in relative placement. The committee viewed this as being outside the primary focus of the Family Law Section. The committee recommends that Council take no position on this bill.
- HB 4222 is a reintroduction of the bill allowing PPOs for sexual assault victims, but providing that the petitions need not be heard in the family division. Last term we supported the bill with the suggested amendment that the petitions remain in the family division. The committee recommends that Council should reaffirm its support for this bill, with the recommendation that the petitions remain in the family division. A motion was made and seconded to adopt the committee recommendation and the motion passed 14 to 1.
- HB 4312 and 4470 are identical bills providing that any company that allows parental leave on the birth of a child must also allow adoption leave for parents of a child under

five years of age. A majority of the committee felt that this was not within the primary focus of the family law section. The committee recommends that Council take no position on this bill. A motion was made and seconded to support the bill, contrary to the committee recommendation. Concern was raised about the costs to employers of such leaves and the five year age limit in the bill was questioned. The motion to support the bill passed 12 to 3.

- HB 4535 is a reintroduction of a bill we deferred to the Children's Law section last term. It limits the circumstances under which parental rights to a child can be terminated based solely on a prior termination. The Children's Law section supports this bill with certain amendments. The committee recommends that Council take no position on this bill.
- HB 4641 is a reintroduction of a bill that Council supported last term, providing that if the unemployment commission determines that an employee left a job due to domestic violence, the employee is not disqualified from receiving unemployment benefits. Some on the committee argued this was not a family law issue; some felt that employers should not be burdened with such claims. The motion to renew support for this bill failed. The committee makes no recommendation to Council on this bill. A motion was made and seconded to support the bill. Discussion ensued about the costs of this bill to individual employers. The legislation requires that any such claims be paid out of the non-chargeable benefits account, so they will not be passed through to individual employers. It appears from the legislation that the burden of proving such a claim is on the employee. Questions were raised about the ability of referees at the unemployment agency to determine these issues. The motion to support the bill passed 9 to 5, with one abstention.
- HB 4671 & 4672 provide an expedited process for attorneys to obtain acknowledgments of parentage. The state or local registrar must provide without fee a copy of an acknowledgment of paternity or a statement that the acknowledgment does not exist to an attorney or a court clerk employee within one day of receiving a request by telephone, mail or fax. The committee felt that prioritizing these request to this extent may force the state to reprioritize more essential services. We also felt that it is the parties to the acknowledgment who should be entitled to their records, not any person who represents themselves as being an attorney. The records subject to disclosure include live birth records, records of still-birth, and acknowledgments of parentage, all of which should be subject to limited disclosure. The committee recommends that Council oppose this bill in its present form. A motion to adopt oppose the bill was made, seconded and passed by a vote of 15 to 0.
- HB 4704 is a reintroduction of a bill Council previously supported. It allows husbands to obtain a restoration or change of name upon divorce under the same conditions that wives obtain these changes. The committee recommends that Council renew its support for this bill. A motion was made to support the bill and it passed 15 to 0.

Marketing: No report

Midwinter/Midsummer seminars: The midwinter seminar will be in St. Johns, from January 23 to January 31 2010 and the cost is about \$2000 per person. The contract requires a non refundable commitment for 15 rooms. Judith requested e-mail confirmation from members who have attended in the past and received at least 15 responses from people who said they would attend next year. Although these are not binding they are the best she can do at this time. The Section is liable if fewer than 15 people attend the seminar and the contract is quite clear about that. A motion was made and seconded to give Judith authority to sign the contract and it passed unanimously.

Political Action Committee: Neil made a plea for contributions. Bill is going to give all the new members of the legislature copies of the materials prepared for the State Bar's law school for legislators.

QDRO: No report

Technology: No report

AD Hoc Committees

- Resource Allocation Committee: the committee made five recommendations for projects Council should undertake over the next year and they were adopted at the March meeting. Carlo made a motion to add a project to hire someone to compile an index of Journal articles for the last five years. All the Journals are available on the State Bar website now and the index would make using them easier. The motion was seconded. Jim Harrington suggested we could hire a law student to do this. Kent pointed out we could request head notes from those submitting Journal articles in the future to put on the Wiki and to keep the index up to date. The motion passed by voice vote.
- Parenting Coordinator committee: The committee met briefly and has an outline of things to consider on this issue. The next meeting is April 24 at 2PM, you can participate by phone. Contact the Chair for information, Richard Halloran.
- Retainer language: Anne Argiroff is chairing this committee; anyone interested in working on it should contact Anne or Jim Harrington. The Attorney Discipline Board is willing to discuss language for retainer agreements that would pass muster in light of the Cooper decision.

Old business: Carlo is not going forward with the Parental Alienation Ad Hoc Committee because he believes the Parenting Coordination committee will address many of the issues involved.

New Business:

- Dick Halloran said there is a task force talking about the Indian Child Welfare Act and how it is being applied. The final report of the committee is due May 11. There will be some proposed changes to court rules and in other areas to help with application of the Act.
- Carlo is on a committee discussing the length of time in the case load standards for processing DO and DM cases and he would like feedback on that issue. Specific instances where application of the standards had an impact on a case would be particularly welcome.
- Bill Kandler said the mandatory joint physical custody bill will be reintroduced. Buzz Thomas, Democrat from Detroit is thinking of raising it, so contact him if you are in Wayne County.

Meeting adjourned at 12:04