

Minutes - Family Law Council, Family Law Section
Family Law Section Meeting, Saturday, February 6, 2010
Location: Weber's Inn - Ann Arbor, MI

Attendance: :

- ° **Council Members Present:** Carol Breitmeyer, Neil Colman; Lorne Gold, Hon. Richard Halloran, Jules Hanslovsky, James J. Harrington, III; Barbara Kelly; Donna Mobilia; Antoinette Raheem; Traci Rink; Kristen Robinson, Erika Salerno, Rebecca Shiemke, Liisa Speaker, Connie Thacker; Robert Treat, Elizabeth Kitchen-Troop; Kent Weichmann; Amy Yu. (19) Council members present.
- ° **Ex Officio & prior Council members:** Carlo Martina, Judith O'Donnell, Richard Victor, Elizabeth Sadowski, Ross Stancati, Ron Bookholder, Karen Sendelbach, Joseph Cunningham,
- ° **Guests:** William Berlin, Lisa Wenger, Mark Bank, Christopher Harrington, Patricia Oulette, Sheldon Stark, Daniel Victor, Maria Zagorski, William Kandler

I. Administrative matters:

- A. Call to Order: 9:35 a.m. Introduction of Council Members & Guests.
- B. Chairperson Person Report - **Barbara Kelly:**
 - 1. Journal Ads: We are trying to reduce the size of advertisements in the Journal; however, we will continue to have a "free" ad for the S.M.I.L.E. video. By unanimous vote of 19-0, the "free" ad for the S.M.I.L.E. video will continue.
 - 2. **Richard Victor:** Will continue to donate copies of the publication *"You and Me Make Three"* to the libraries in the six County metropolitan Detroit area. His contribution in this regard is most appreciated.
 - 3. Member Forum in Kalamazoo: Ross Stancati has organized the Member Forum in Kalamazoo on February 18th; Barb Kelly & Erika Salerno will be representing Council at this event.
 - 4. Tuscola County Bar Association: Barb Kelly and Kent Weichmann represented Council at this meeting. Their efforts in this regard are most appreciated.
- C. Recording Secretary report:
James J. Harrington, III: By Motion, with second, the minutes from the December 5, 2009 meeting were approved 19-0.
- D. Treasurer's Report: **Connie Thacker.** The report from the State Bar of Michigan and schedules were accepted by Council, with a Motion, second, and unanimous vote, 19-0.

II. Standing Committee Reports:

- A. **Adoption - Kent Weichmann:** The Legislature will be taking up the issue of opening up Adoption records. **Liisa Speaker:** there was an Adoption Committee meeting last month; no recommendations at this time.
- B. **Alternative Dispute Resolution - Ronald Bookholder:** Council had allocated \$500, and this sum shall be carried over for next year. **Sheldon Stark:** If the seminar is to be held in the Spring of 2011, then a decision will have to be made by July 1, 2010.
- C. **Alternative Family - Carol Breitmeyer:** A meeting of the Alternative Family Committee will be scheduled on March 6, 2010 at 9:00 a.m., prior to the next Council meeting in East Lansing.
- D. ***Amicus* Committee : Erica Salerno/ Liisa Speaker.**
1. Discussion regarding *Foster* decision. By Motion, and second, Council unanimously voted, 19-0 to support the recommendation of the *Amicus* Committee regarding Issue #1, that an *Affidavit of Parentage* is not a Court Order.
 2. Discussion regarding 2nd issue in *Foster*, and by Motion, and second, Council supported the recommendation of the *Amicus* Committee, and voted 17-2, to answer “No” to the question of whether or not this violated the *Equal Protection* clause.
 3. Discussion regarding the *forum non conveniens* doctrine, and by Motion, and second, Council voted 19-0 that this doctrine does not apply insofar as this is a determination for the “home state” to make.
 4. Discussion regarding the affidavit of parentage issue, and by Motion, and second, Council voted unanimously, 19-0 to accept the recommendation of the *Amicus* Committee that an affidavit of parentage is insufficient for child support purposes.
 5. Discussion regarding the “Fugitive Dis-entitlement Act” and its possible application to Parenting Time, Custody, and Family Law Cases. By Motion, second, and subsequent Amendment, Council voted unanimously, 19-0 to support the principle that this Statute should not apply in any Family Law case.
- E. **Annual Meeting - Barbara Kelly/Amy Yu:** The annual Council dinner will be September 29, 2010 at the Amway Grand Hotel in Grand Rapids. Council expressed its sincere and deep appreciation to Marcie Lay for her hard work and efforts in coordinating these events.
- F. **CLE/ICLE - Ron Bookholder:** No report. **Shel Stark:** still looking for topics for the annual Family Law Institute.
- G. **Court Rules/Ethics Committee - J. Harrington:** The extensive CR/E report was presented and discussed by Council.

1. **Anti trolling Court Rule/MRPC. J. Harrington:** The challenge of putting together a comprehensive package for the Representative Assembly has been significant. It may make more sense to defer this to the September meeting of the Representative Assembly. **R. Halloran:** It may be possible to obtain substantive feedback from the Michigan Judges Association. **Carlo Martina:** We need research on the Constitutional issues associated with restrictions on *commercial Free Speech*. By Motion, and second, Council voted unanimously, 19-0, to defer the presentation before the Representative Assembly from the March 27, 2010 meeting in Lansing, MI until the September 30th meeting of the Representative Assembly in Grand Rapids.
2. **ADM 2009-06: MRPC Amendments re: Attorney fees and other issues.** Extensive discussion regarding various components to the proposed changes to the MRPCs, which would have the effect of repealing the Supreme Court Order in the *Cooper v AGC* case, making minimum, non-refundable engagement fees illegal, outlaw “enhanced fees” and require prior client notification prior to any withdrawals from I.O.L.T.A. **Carlo Martina:** This will reverse *Cooper*. Specific language should be recommended to the Supreme Court which will permit time allocated on behalf of a client to be charged against a minimum, non-refundable retainer. **R. Victor:** The “results obtained” for a client have always been a permissible factor in attorney fees pursuant to the MRPCs. An “enhanced fee” is not held to be a “contingent fee” in other jurisdictions. **L. Gold:** The “commentary” proposed by the AGC should be stricken. Also, permitting an “enhanced fee” as a result of a specific attorney client agreement is not inconsistent with a prohibition against an attorney unilaterally charging a client fee based upon the attorney’s sole discretion. **R. Halloran.** In the *Olson v Olson* case, the Court specifically approved fees not directly related to hourly rates. The AGC proposal could open the door to after-the-fact attacks upon specific Court rulings based upon the facts and evidence before it.

Council voted as follows on these Motions:

- a. Council voted 19-0 to oppose the AGC proposal to reverse the Order in *Cooper* regarding minimum non-refundable attorney fees and Council likewise voted to include the specific definitional language set forth in the comprehensive analysis of these issues by former Council Chair, Carlo Martina. Council further supported the addition of language which would permit future services to be credited against a non-refundable retainer, while clearly stating that in no circumstances would any portion of a non-refundable retainer be returned to client.

b. Council voted unanimously 19-0 to support the position of the AGC in Alternative B, that “a fee agreement shall not give sole discretion to an attorney to enhance a fee”.

c. Council voted unanimously, 19-0 to add the following language to (C)(4)” “An Attorney and client may consent in writing to an enhanced fee in a case which may take into account the results obtained for a client, provided that such fee is reasonable pursuant to all of the factors set forth in MRPC 1.5(a) and is agreed to by the attorney and the client”.

d. Council voted unanimously, 19-0, to strike the proposed commentary to MRPC 1.5 insofar as Council disagrees that an “enhanced fee” is an impermissible contingent fee, and an enhanced fee based upon results obtained for a client is not necessarily an impermissible “bonus” nor a “contingent fee”. Council also expressed its concern that problems could arise with after-the-fact attacks on rulings by a Trial Court on attorney fees; *Olson v Olson*.

e. Council voted 17-2 to oppose the proposed requirement that every withdrawal from IOLTA be preceded by prior notification to client; that a reasonable period of thirty (30) days would avoid the administrative burden of simultaneously notifying client every time an expense was paid, advanced, or otherwise incurred on behalf of client.

H. **Domestic Violence:** There will be a Domestic Violence Seminar on July 13th, 2010 from 9:00 a.m. to 11:00 a.m.

I. **Family Court Forum:** Will be June 4, 2010.

J. **Family Law Journal:** We have some new advertisers. Great job Neil !

K. **Family Support:** No report.

L. **Journal Advertising: N. Colman.** We will be looking at reducing the size of ads for the Journal.

M. **Legislation: Kent Weichmann:** A comprehensive and thorough Legislative Report was presented to Council, including:

1. **HJRNN & HB5887 & 5588:** Council voted 16-0 to adopt the recommendation of the Legislative Committee and support the resolution repealing the banning of same gender unions; amending the statute to permit same gender unions; recognizing the same gender unions of other states.
2. **HB 5643:** Council voted unanimously, 19-0, to adopt the Committee

recommendation and oppose this bill, for the reason that the bill confuses two concepts, adoption proceedings and removal under the Juvenile Code.

3. **HB 5715:** Council voted unanimously, 19-0, to adopt the Committee recommendation in support of this bill which would provide statutory authorization from the Federal requirement that States assess a \$25 annual fee against a recipient who has never received TANF benefits.
4. **Collaborative Law:** Council voted 16-2 to support the concept of Collaborative Law, but not necessarily all of the provisions of the UCLA.
5. **Revised Uniform Arbitration Act.** Council voted 18-0 to support the recommendation of the Committee that the RUAA be supported if it is Amended to clearly defer to the DRAA and if the different time lines of the Acts are reconciled.
6. Pending Senate Bill which would have Supreme Court Justices elected from geographical districts was opposed by Council by a vote of 18-1.

N. **Membership/Mentor Roundtables:** No report.

O. **Midwinter/MidSummer Meetings:**

MidWinter Seminar. No report.

MidSummer. **T. Rink.** We are looking at three different places: the Homestead, the Grand Hotel, and the Mission Point resorts. The Grand Hotel is slightly more expensive than Mission Point. The Homestead dates would be July 15 -18, the same as the Grand Hotel. The Mission Point time block would be for the following weekend, July 22-24.

P. **Political Action Committee: Neil M. Colman.** Keep the \$\$\$\$ coming ! You know where to send the checks. You know who you are ! A near World Record donation of \$500 was received. There is \$10,400 in the P.A.C. account.

Q. **QDRO/Taxation.** The "tax checklists" are being revised. Also, a polling of the participants in the QDRO training was very favorable.

R. **Technology - E. Sadowski:** No report.

III. Ad Hoc Committees

A. **Resource Allocation.** No report. The Committee was "dissolved".

B. **Parenting Coordination. Richard Halloran.** No report.

IV. New Business

- A. **Forms Committee.** A significant number of new Friend of the Court forms are pending or in process. A subcommittee consisting of Connie Thacker, Donna Mobilia, and Jon Ferrier was proposed to review the forms.

By Motion & 2nd, the February 6, 2010 meeting concluded at 12:10 p.m.

The Next Family Law Council meeting is scheduled for Saturday, March 6, 2010 at the University Club, East Lansing Michigan. Breakfast at 9:00 a.m. and the meeting immediately thereafter at 9:30 a.m.

James J. Harrington, III
Recording Secretary

March 6, 2010