

## **MINUTES OF THE JUNE 6, 2009 FAMILY LAW SECTION MEETING**

### **Council Members Present:**

Amy Yu  
Erika Salerno  
Dick Halloran  
Carol Breitmeyer  
Connie Thacker  
Donna Mobilia  
Jim Harrington  
Anne Argiroff  
Rebecca Shiemke  
Judith O'Donnell  
Philip Navarre  
Kristen Robinson  
Liisa Speaker  
Kent Weichmann  
Bob Treat  
Jules Hanslovsky  
Carlo Martina  
Barb Kelly

### **Guests:**

Joe Baessler  
Elizabeth Kitchen-Troop  
Mark Watry  
Dennis Germain  
Ashley Ciaffone  
John Lemire  
Zenell Brown  
Bill Kandler  
Ross Stancati  
Brad Shires  
Toni Raheem  
Neil Colman  
Joe Cunningham

### **Ex-officio:**

Ron Bookholder  
Elizabeth Sadowski

## **I. Administrative Matters**

A. Meeting called to order at 9:35  
Introduction of attendees and guests.

At the May 2009 meeting, bylaw 6.3 requires the resignation of any council member that has three absences, and that the vacancy is filled at the next meeting. Connie Thacker and Phil Navarre have had 3 absences. There are 6 individuals on the nomination ballot. Ron Bookholder commented that there is commitment necessary to be on the council, to be at the meetings, to participate and do your fair share of the work; the workload has increased. The council needs to take precedence and the chair should not be pressured to give excused absences. Carlo Martina said that perhaps the chair will want guidance for the discretion of the excused absences, but in the past there are only excused absences for this council's business. The election is for the remainder of the term. Some of the committees will be meeting all summer.

The nominees are: 1) Eric Janes; 2) Elizabeth Kitchen-Troop from the Washtenaw Bar Association practicing for five years and chair of the Washtenaw Family Court Committee; 3) John LeMire retired Wayne County Referee who has left the court one year ago and has time to volunteer and does work with Native American groups; 4) Phil Navarre who has been on council since September 2003 and is running for his seat. He is committed to having excellent attendance and contribute; 5) Brad Shires from Royal Oak who has been doing corporate legal work for 8 years and practicing as an attorney for 1 ½ years, running a small business, has adopted a child and started a non-profit company; 6) Connie Thacker apologized for the election. She knew the rules and the consequences and is rerunning for her seat; 7) Kay Swartzberg offers a different perspective from most and wants to address the felony non-support problem; 8) Joe Baessler was on council for a decade, has been off for 7 years, and said that he can attend and participate and council meetings are always like a mini seminar.

Nominees were encouraged that even if they were not elected, they can get on committees so that they participate and become known to the council, and then can run again later. Ballots were distributed and collected. Connie Thacker and Phil Navarre were reelected to their former seats.

## **B. Chairperson's Report**

### **1. SCAO has a time guideline committee.**

Cases need to be completed by the guidelines:

- a.) DO 90% completed within 91 days from filing date  
98% completed within 273 days  
1,005 completed within 365 days

Only 25% of the circuits are meeting the first level. The timeline committee thinks that DOs should be completed 90% within the first 6 months, and 98% within one year; 99% of the cases are completed within 1 year. Requiring the court to have completed all within 1 year gives the court no discretion. SCAO says the judges do not get their hands slapped. SCAO does monitor the completion times and the chief judges have concerns. Justice Kelly is very concerned about our input.

- b.) DM 90% to be completed within 245 days (8 months)

98% to be completed within 301 days  
100% to be completed within 364 days

The timeline committee recommends that 90% be completed within 10 months and that 98% be completed by one year. Ron Bookholder brought up that bankruptcies, houses under water, high money or complex cases with valuations require more time. In actuality, 96% of the DM cases are completed within 273 days (9 months), so the courts are close. It is the perception of the attorneys that the judges face serious consequences if they do not stay within the guidelines, which is inaccurate. The perception of the judges is that there is pressure to stay within the guidelines and that it can lead to an investigation. Liisa Speaker said that custody cases should have a shorter time because custody trials can linger because the dates given are weeks apart to finish a case. John Hammond said the parties can agree to dismiss the case, or agree that if the parties go to ADR that the guidelines do not apply. He thinks that the court needs to be given some discretion, that the court should be able to distinguish what parties want to go to trial and those that want to work things out and need more time. He thinks parameters need to be established for the 10% that get more time. The time periods need to be lengthened and additional guidance given for the % that is given additional time to complete the case. Jim Harrington said in Wayne County the judges put different cases on different tracks, depending on the complexity and time constraints.

The proposed motion: The court shall waive the guidelines if the parties mutually stipulate to waive the guidelines. The court on its own may extend/waive the guidelines and shall provide a statement on the record of why the guidelines. Motion passed unopposed 19:0.

**2. Lifetime Achievement Award:** This is awarded to the nominee who has participated on council, continued to participate with the council, it is required that the executive committee have unanimous consensus to Ronald Bookholder, Esq. Ron will be honored at the annual meeting dinner which will be held at the Henry Ford Estate to formally recognize his lifetime commitment to family law.

**C. Recording Secretary-** Meeting minutes approved for the May Council Meeting.

**D. Treasurer's Report-** Report for April and May approved. Motion to approve the bus to and from Grand Rapids expense was approved unanimously.

## **II. Standing Committee Reports**

**A. Adoption:** No report. Carlo appointed Liisa Speaker to be co-chair of this committee.

**B. ADR:** Ron Bookholder reported that the mediation seminar was canceled.

**C. Alternative Families:** No report

**D. Amicus:** Anne Argiroff reported that the committee did two briefs and that they will be meeting over the summer.

**E. Annual Meeting:** Barb Kelly reported that the annual meeting dinner will be at the Henry Ford Estate on September 16, 2009.

**F. CLE/ICLE:** Ron Bookholder reported that there is an outstanding relationship with ICLE that the executive committee and council want to continue by the end of May, with an extension date. The council needs to approve the contract. Specific changes to the contract include: 1) the family law certificate program will continue, it has been successful but some people are not completing the program with in the time parameters, can be extended one year. 2) Limited enrollment for the custody, parenting time, and property with the role of FLS as co-sponsor with ICLE. ICLE is the major educational arm. (The FLS has 3 outside seminars which we do not participate with ICLE: the midwinter, the midsummer and the mid-Michigan seminars.) 3) The mandatory contribution by ICLE has been increased from \$4500 to \$7500. 4) The term of the contract is 3 years, which can be continued year to year, and an opt out provision with 60 days notice. 5) The name of the trainer for the mediation training has been taken out. 6) The annual seminar will have 40 slots for free registration for judges and Friend of the Court personnel. The motion to adopt the new contract and give authority to sign the contract on behalf of the council was approved unopposed.

**G. Court Rules Committee:**

1) Jim Harrington reported that there will be scheduled committee meetings for the summer to discuss ADM 2009-04 regarding the justice/judge's disqualification and Justice Weaver's analysis and Mr. Bauman's 38 page article. We will need to have a midsummer council vote. It is noted that constitutional amendments are harder to change than court rule which can be changed by the MI Supreme Court.

2) ADM 2009-09 provides notice to the SCAO of the appointment of all magistrates and referees. The committee recommended to support this rule. The Motion to support was passed unopposed.

3) HB 4868 judges eligible for assignment as visiting judges which the committee thought it was in the legislative committee's purview and HB 4640 Notarial Acts also in the legislative committee's purview.

**H. Domestic Violence:** The council is encouraging pro bono representation. The State Bar had a program on how to do a domestic violence case. The funding was lost for the program, and shelters are now underfunded, and there is no funding for lawyers. October is pro bono month, and also domestic violence awareness month. Some counties are going to try to do the training.

**I. Family Court Forum:** There were 185 participants with very positive reviews. The forum has been supported by the council, with the biggest problem is that it is so popular

and there is a limit to how many people can be accommodated. People had to be cut and every 3 years the list is changed so new people can be added.

**J. Family Law Journal:** No report.

**K. Family Support:** Carlo has been reappointed to the Child Leadership Council. Carlo discussed getting bad debt cases off the book so that there is improved federal matching funding. Incentive dollars are being lost if we cannot improve the collection percentage of arrearages. Zenell Brown said that in Wayne County, if the youngest child is 28 and there have been no payments in 10 years, they close out the cases if it meets the statute of limitations.

**L. Journal advertising:** No report.

**M. Legislation:**

The committee considered two bills introduced to amend the Domestic Relations Arbitration Act. These bills were introduced at the request of the Family Law Council to address the issues raised by the Supreme Court decision in Harvey, 470 Mich 186 (2004). In that decision the Supreme Court rendered arbitration in custody, parenting time and child support disputes almost pointless because the circuit court was required to make its own findings on those issues if either party objected to the arbitrator's decision. The Court's opinion was based on 722.24 and the Domestic Relations Arbitration Act.

1. **SB 568** modifies MCL 600.5080 (2) and says that review of a child support, child custody or parenting time arbitrator's decision shall be made "based on the record made under section 5077(2). If the court finds that the record is insufficient to determine whether the award is adverse to the best interests of the child, the court may take additional evidence." The standard in subsection (1) of the statute says the court shall not modify the award unless it finds the arbitrator's decision is adverse to the best interest of the child.

2. **SB 569** amends 722.24 to authorize the Circuit Court to review an arbitrator's award pursuant to the Domestic Relations Arbitration Act. The amendment says "In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act and chapter 50b of the revised judicature act of 1961, 1961 PA 236, MCL 600.5070 to 600.5082.

Motion to support SB 568 and SB 569 was approved 18:1.

Three bills were sent back to the Legislation Committee at the Council meeting in May. All three deal with personal information being put in the public court file, but they cover different kinds of actions. The bills are: [HB 4794](#) for family support actions, [HB 4795](#) for paternity actions and [HB 4796](#) for divorce actions. All three contain the same provision:

(4) An order under this section, or any document attached to or filed in the case file with the order, shall not contain personal identifying information unless specifically required by state or federal law, rule, or regulation, or by a court order or rule. This section does not affect an obligation of a person to provide personal identifying information to the friend of the court or another person.

(5) The court may order that an order or document that does not comply with subsection (4) be filed in the case file if the personal identifying information is redacted.

(6) As used in this section, "personal identifying information" means that term as defined in section 3 of the identity theft protection act, 2004 PA 452, MCL 445.63, except that personal identifying information does not include a person's name or address.

Section three of the Identity Theft Protection Act defines personal information as:

(o) "Personal identifying information" means a name, number, or other information that is used for the purpose of identifying a specific person or providing access to a person's financial accounts, including, but not limited to, a person's name, address, telephone number, driver license or state personal identification card number, social security number, place of employment, employee identification number, employer or taxpayer identification number, government passport number, health insurance identification number, mother's maiden name, demand deposit account number, savings account number, financial transaction device account number or the person's account password, stock or other security certificate or account number, credit card number, vital record, or medical records or information.

After much discussion the committee recommends two changes to the act. First, that it be amended to include other pleadings by inserting the following phrase after the words "filed with the order" in section 4" or pleadings, motions, affidavits, or other papers required to be filed in the court file". The statute would then cover all pleadings put in the file and not just orders. The section would then read:

(4) An order under this section, or any document attached to or filed in the case file with the order, or pleadings, motions, affidavits, or other papers required to be filed in the court file, shall not contain personal identifying information unless specifically required by state or federal law, rule, or regulation, or by a court order or rule. This section does not affect an obligation of a person to provide personal identifying information to the friend of the court or another person.

Motion to support the bill with the amendment "or pleadings, motions, affidavits or other papers to be filed in the court file" was passed with 16 in favor and 2 in opposition.

“The clerk may refuse to file a paper offered for filing that does not conform to the requirements of this section. Upon discovery that a paper offered for filing does not conform to the requirements of this section, the clerk shall advise the person submitting the paper that it does not conform to the requirements of this section and will not be filed unless redacted. If redacted the paper will be filed if it otherwise complies with law and court rules and the paper will be deemed as filed on the first day first received by the clerk’s office.”

This gives the Clerk specific authority to refuse to file pleadings that do not comply with the statute, but does not require them to review all pleadings for a violation. If the opposing party finds the violation they may bring it to the Clerk’s attention for correction, instead of having to file a motion to obtain an order to have it redacted. It also preserves the filing date if the pleading is redacted to comply with the statute, so parties who inadvertently violate the statute will not be penalized for late filing.

The motion to support the bill with the amendment to give the clerk specific authority to refuse to accept paper work that does not conform to the requirements, allow the person submitting the paperwork to redact the document before it is refilled and use the date when the documents were originally received by the court was passed 16 in favor, with one abstention.

The Committee saw no reason to respond to the FOCA response to our objections to their proposed statutes.

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

**O. Midwinter/Midsummer Seminars:** Judy O’Donnell reported that 25 rooms are booked and 2 are on the waiting list for St. Johns, Caneel Bay.

**P. Political Action Committee:** Neil Colman reported that \$2700 of contributions this year that the same people contribute. Bill Kandler said that next year will be a big election year for the senate, house and governor races. We will award both of the houses early next year.

**Q. QDRO/Taxation:** Joe Cunningham reported that they will meet next month for legal aid preparers for QDROs.

**R. Technology:** No report.

### **III. Ad Hoc Committees:**

**A. Resource Allocation:** No report.

**B. Parenting Coordinator Committee:** Dick Halloran reported that they will have an in person meeting in July to go over all the literature that they have collected. Pam Ludolph is now on the committee. Florida just passed parent coordinator legislation; 10 states currently have legislation.

**C. Retainer Language Clarification Committee:** In response to the Cooper case, the following proposed language was proffered:

“An attorney and client may agree to a minimum non refundable fee contract, in which the fee is earned by the attorney at the time of the agreement, which may provide the client credit for fees and costs incurred against the minimum non refundable fee, so long as the agreement is in writing, is clear and unambiguous, is signed by the attorney and client, and is not clearly excessive as provided for in MRPC 1.4(a) above.”

Ron Bookholder proffered that we should not work on any language. There was a friendly amendment to take out the language “and is not clearly excessive as provided for in MRPC 1.4(a) above.”

“An attorney and client may agree to a minimum non refundable fee contract, in which the fee is earned by the attorney at the time of the agreement, which may provide the client credit for fees and costs incurred against the minimum non refundable fee, so long as the agreement is in writing, is clear and unambiguous, and is signed by the attorney and client.”

This version was adopted by motion with a vote of 14 in favor, 1 in abstention.

**D. Parental Alienation Committee:** Carlo said he would stay involved in this committee after his term was over, and that the committee would meet this summer.

**IV. Old Business:** Final committee reports have to be sent to Carlo this weekend. Dick Halloran reported that PPOs will remain in the family division.

**V. New Business:** If anyone is not on the list serve, contact Liz Sadowski. Carlo discussed the 3 and out policy, that there has been wide divergence of the effect of the 3 and out policy for absences. Jim Harrington will solicit information for the council. Carlo thanked the council and executive committee and said he would stay involved in the council. The council thanked Carlo for his hard work.

Meeting adjourned at 12:30 p.m.



