

MINUTES OF THE MARCH 7, 2009 FLS MEETING

Council Members Present:

Carlo Martina
Barb Kelly
Amy Yu
Traci Rink
Rebecca Shiemke
Anne Argiroff
Liisa Speaker
Kent Weichmann
Dick Halloran
Erica Salerno
Todd Selin
Jim Harrington
Phil Navarre
Robert Treat
Lorne Gold
Donna Mobilia
Kristen Robinson

Guests Present:

Stacy VanDyken
Bill Kandler
Erin Magley
Ronald Foon
Jon Van Allsburg
Gail Towne
Jeff Kortes
Thomas Birkhold
Jeff Murphy
Melanie DeStigter
Deborah Autman
Michelle McLean
Deborah McNabb
Sue Keener
James Kraayeveld
Shel Stark
Victoria Radke
Jan Otto
John Potter
Adam Komar
Randy Velzen
Bob Relph

Tony Gauthier
Tom Schultz
Judy Ostrander
Ric Roane

Ex-Officio

Elizabeth Sadowski
David Sarnacki
Ron Bookholder
Meri Stowe

I. Administrative matters

- A. Meeting called to order at: 10:00.
- B. Chairperson's Report- Carlo thanked the local bar for showing up – great turnout. As part of our strategic plan we wanted to work hard to develop relationships with local bar associations. This is a continuation of efforts started by past Chair Dave Sarnacki. Many committees- your input is welcome. Included is copy of financial report for lobbying activities and a letter of welcome to Marilyn Kelly as Michigan Supreme Court Chief Justice. Chair expressed concern that there may be general misunderstanding with regard to the Cooper decision (non-refundable retainers). We need to better understand significance. Carlo will ask for volunteers for committee on this. Need to get clearer on this. Committee will be charged with developing templates. Carlo reminded counsel members that new by-laws require article be written. Judy, Traci and Anne need to write for this term, Donna, Erica, Kristin and Jules for the next year. State Bar Awards nominations are due soon for various awards. Download the applications from the State Bar website.
- C. Recording Secretary- Minutes from January 17, 2009 adopted.
- D. Treasurer's Report. Attached is ledger and balance sheet ending 1-31-09. Motion to adopt approved unanimously.

Introduction of Local Bench/Bar guests

Introductions of all present were made at the beginning of the meeting. Thanks again for those who came from this side of the State to attend.

II. Standing Committee Reports

Adoption- no report

ADR – Cancelled mediation training. First time this has occurred. There was a \$1533 cost we had to pay as our share of loss per our agreement with ICLE. ICLE absorbed some of the administrative and other costs. Collaboration law should look at training on this and other mediation training. Carlo pointed out that ICLE only charged one half of their out of pocket costs and the speakers and St. Johns didn't charge a fee so it was easier for all.

Alternative Families- no report. Michigan recognized custody dispute in case two same-sex adoptive parents in Illinois adoption custody. April 22, 2009 is hearing date on second parent adoption bill.

Amicus- Brief in Hunter filed this week. Arguments were this week. The Court had lots of interesting questions. Case involves the fundamental interest regarding fitness standard. Court had been arbitrary in defining fitness. How do we apply/define fitness? Same as in a custody dispute? Does a fit parent have a right to care, custody and control of children? If you lose custody are you losing the same rights as you would in a parental rights case? How do you define 'fitness' in a custody case? Use termination definition? How is Section 25 of the Custody Act construed? Will probably be a split decision. There are implications for grand-parenting time as well. In a third party custodial arrangement there is an implication regarding a fundamental liberty issue. A state court action which deprives a parent of legal custody should have to state a compelling reason. Bill Kandler points out that 'fitness' is also injected in the joint physical custody presumption legislation. Holmes case will be addressed later.

Annual Meeting - Barb says the annual meeting is Sept 16-19. The Section meeting is Thursday Sept 17th. Working on location for dinner on the 16th.

CLE/ICLE-. Ron Bookholder. Several seminars coming up. April 21st . . . Family Law Certification Program is going on. There is an issue with regard to length of time people have to complete the certification. It is supposed to be completed within 3 years. Ron is requesting ICLE allowed certificate seekers to take 4 years to complete. 120 people have yet to complete. ICLE is sending out letters to those who have to get moving to complete their certificates. Due to economic conditions, he suggests we discuss with ICLE extending it a year. ICLE is our primary educational arm. Section should take position. Shel Start proposes the leadership of ICLE and the section get together to discuss the matter. Would like to discuss it jointly. Carlo wants a committee to look at contract. Lorne, Barb and Ron and Phil Navarre. Shel will be point person to set it up. We have good relationship with ICLE but a few things to work out.

Court Rules- Harrington. The next meeting will be 3-31-09 at 1:00 p.m... Anyone can join meeting. Please call in. They are looking at an asset/liability disclosure. Using forms from various counties. They will probably recommend this be used on a voluntary basis. Committee should have something for final review next month. They are also looking at anti-trolling rule with regard to internet access to court filing. Some practitioners have been contacting parties before they even know a divorce has been filed. Looking at restrictions on this. Consensus was that this may work better with court rule approach

rather than looking to Michigan Supreme court. A proposal was made to the Representative Assembly. They think we should to a MPRC instead of court rule, but the consensus was that we should interface with Rep Assembly on this so there is a better chance of it being handled at the April Rep Assembly meeting. We should try to come up with proposal that Rep Assembly will like. Not enough time (deadline wise) to deal with at April counsel meeting. We will probably have to look at this at September meeting. We can look at something before we break for summer that Rep Assembly will be looking at in September. They have many of their own concerns. Victoria Radtke said Board of Commissioners was vocal in their concerns about this applying to general practitioners. General consensus was that it would be more properly addressed in an ethic rules. Advised that Supreme Court may be looking at ethics rules. This issue will be on agenda- we think we could have representation at 4/18/09 meeting for Representatives to take back to their counties. Carlo said this could help the public perception of lawyers is we could keep this from proliferating. Harrington motioned to move this issue to 'informational only' on Rep Assembly agenda. Approved unanimously.

Collaborative law court rules have been submitted to Rep Assembly. Is rule sufficient to tell practitioners what it is? Conclusion is that there needs to be a statute first, similar to arbitration. This should be by legislative enactment. Kent says instead of presenting as a court rule, hoping we can go forward with uniform collaborative law act. Ron Bookholder thinks court rule will be necessary. Kent- court rule should be after the statute.

Cell phone proposal- attached as agenda item 4. Court rules allow phones on 'silent'. Proposal in Lansing, suggestion is that we support proposal a with regard to cell phone usage.

Hiring of Court employees. This would preclude us from hiring any of our family as law clerks. Was designed to prevent Judges' families from being hired- spouses, sons, daughters. When rule came out it was any practitioner working for the Court. This would be hard to effectuate and even harder in small communities.

Domestic violence- Committee is coming up with training. Agreement with ICLE to do 'studio' presentation. Carlo points out that all committee meetings are phone and all section members should feel free to participate.

Family Court Forum- no report

Journal- no report

Family support- no report. Traci is writing an article practitioners/Judges/FOC referees' experience with the 'new' formula. Please send her comments at traci@tracirink.com.

Journal advertising- Carlo points out that Todd has found a way to make the Journal profitable. He is waiting to get everything back from Neil. Carlo appreciated Todd doing this.

Legislation- everything died at the end of last session. See Committee report.

SB67 - Bill that says if anyone has knowledge that a child support payer is going to receive any money or objects of value, that that person would have to notify friend of the court. Now, just payee has that duty. Committee feel it should have a threshold as to amount of support- 2 months or \$1000 past due. Amy worried (as expressed by Oakland County referees at the Oakland County Bar Association meeting) about enforceability. Liens are applied typically when estates are going to be paid, that sort of thing, maybe this at least provides that there is a duty and can get a little rougher with them, point out something specific that they violated. Personal Representatives (in estates) have duty to notify the county where support may be due. FOC offices are not sure what to do with these because the money may be due in a different county than where the estate is located.

Committee position unanimously adopted

SB 68 Seeks to impose a duty on casino's to check against list from dept of treasury. Recommend to support. Unanimously support.

SB99-107 FOCA package. Bills to make FOC process more refined and cost effective. Many of our changes accepted and modification made. 4 points of opposition we still have to the FOCA legislation as proposed:

- 1) The legislation would make parties pay for custody investigation even if they didn't request. This was without any reference to what the cost may be. Fees are permissive. Court can waive for indigency. Could be onerous to non-indigent party.
- 2) The legislation would exempt spousal support cases only from FOC collection. Currently, FOC has to bear costs without Federal assistance because spousal support collection is not a IV-D function. Last revision was that FOC will not enforce unless court orders it. Grandfather in old cases. FOC is vastly more efficient than private enforcement. Opposed this and thinks FOC should enforce.
- 3) No surcharges unless court orders. Thinks is should be other way around. Surcharges imposed unless exempted.
- 4) Limit income withholding to 50% despite federal allowing 50% plus 10% if no other orders and 5% if no other dependents. Objected to this. Last position hadn't seen latest revisions

Recommendation was to oppose unless these revisions made

Unanimously adopted.

SB185 Would require landlords to release tenants from lease if tenant can present PPO, parole order something like that and then tenant can be released from their lease. Reach of statute too broad. Recommended we oppose. Rebecca Schmiede would like to support bill and ask that statute be amended to require that landlords be prohibited from discriminating against domestic violence victims. She thinks that the records required are appropriate. Perhaps it would be permissible to maybe make them pay a two month penalty or something. She says the landlords are well represented and their issues are not ours. Liz thinks this violates the right of parties to contract. Judge Van Allsberg thinks a good remedy would be to amend the PPO statute to allow Judges to charge the domestic violence offenders to have to pay the costs of the lease, a better remedy.

Committee position to oppose the legislation passed 13-3

HB4061 Reintroduction of bill allowing court to vacate paternity orders where payer finds out they are not the father. Our position has been that there should always be a blood test for all non-married births. These bills are going at this the wrong way. Anne says the acknowledgements are consensual and end up causing problems later; standing, etc. Judge Van Allsberg relayed a story of a revocation of parentage cases- both with dads who knew they were not dads, court required to look at equity too. Judge can say no and cite best interest. Not sure if bill also includes married dads. Victoria Radke Says there is a strong incentive about establishing paternity at the hospital for IV-D funding. May be battle in the end but for now oppose.

Committee position to oppose the legislation passed 16-0.

HB4118 Foster care placements. Requires child placement agency give preference to relative. Protections are strong if relative placement is a problem. Question (Liisa) is this initial placement or later decision placement.

Committee position to support legislation passed 14-1.

HB4197 Last time we opposed this bill to extend grand-parenting time rights to great-grandparents.

Committee position to oppose legislation passed 15-0

Membership /mentor roundtables - We will be getting letters to chairs of local sections to make sure they come to our meetings. Ingham will be having Justice Witbeck presenting in an informal setting. Carlo gives Dave Sarnacki credit for making sure we continue good relationships with local bars. Dave keeps reminding us about keeping with the strategic plan. Liisa wrote article for local bar publication telling them how important it is for family law practitioners to get involved with Counsel. New forms for

membership voted on. Unanimously passed. Liisa passed sample article around and suggests members to write articles for their local bar association to encouraging joining the Family Law section. Article will be posted to website.

Mid-Winter- Mexico mid-winter was FABULOUS!!!! Great seminar. Think about the snow we have in February. Carlo says unfortunately we did lose some money because not as many were there as we originally anticipated. Lost about \$4000. Would have been a greater loss if we cancelled entirely. Trying to get contracts where we don't have to guarantee minimum amount.

Mid-Summer seminar- This year we are going to Grand Traverse Report because they are offering a better deal. Have given us some great rates, but also have a cancellation clause and an attrition clause. These cost the section a lot of money. If we cancel, could be a lot of money. Lorne has been working on contract. They are anxious to have our business but we are trying to mitigate our exposure on the summer seminar.

PAC- Please try to contribute something. We use these funds to contribute to campaigns.

QDRO- Joe- economy is in tank. Legal aid organizations are having to do lots of QDROS. Big thanks to Bob Treat who is doing a lot of this work. Joe encourages pro bono QDRO work.

Tech- Liz encourages anyone not on the listserv to join. Give her your card.

AD HOC COMMITTEES

Resource Allocation- Barb says report is in packet. We were supposed to come up with suggestions by April meeting. Here are the recommendations one month ahead of schedule:

- 1) "Friend to Families" award for a legislator or legislators
- 2) Brochures to encourage membership.
- 3) Regional member forums (credit to Dave Sarnacki). Useful for counsel members to go to different regions of state to outreach to get input from local bar
- 4) Joint meeting with other stakeholders. Have found that we either been at odds with other groups (i.e. AAML, FOCA, MIPA, Michigan Judges assoc, RAM) each send a couple members sometime in August to see what everyone thinks should be 'agenda' of items we would like to see worked on in the coming year.
- 5) Update website. Could be more useful. Dave points out that State Bar is going to control website format- we can add stuff but have to work within their template. Not many people have visited wiki, State Bar doesn't edit. Dave says one idea was to have links to member websites.

We may be in a position to do the “Friend of Families” award(s) soon. Victoria said there are member of the Representative Assembly and Board of Commissioners they are supposed to keep up with what we are up to. These groups should be included. The liason roles are not being well populated. Sometimes we just figure out what the Representative Assembly is doing by chance.

Motion was made for Counsel to approve all five as items for counsel to work on and maybe appoint ad hoc committees. Unanimously approved.

Parent Coordination Committee- we were working on this last summer. Randy Velzen working on this with local bar. Loose collection of mental health professionals and local attorneys are working on this. Thinks we need legislation to move this concept forward. Rather than having this be a Grand Rapids issue, we should make it a statewide proposal Kent says Dick Halloran is getting form orders from other jurisdictions. Judge Hallmark, Janice Tracht and others in Oakland/Washtenaw are interested in working on this. Carlo thinks this may be a good way to work on an issue of great concern; parent/child alienation. Perhaps better parent coordination rules would help with this issue. Ron Bookholder expressed concern about the potentially binding effect of parent coordinator legislation/rules. Also, this is a big cost to litigants. Be careful about legislation. Randy attached Oklahoma statute. Lorne points out that Counsel has never taken a formal position on whether there should be any uniform order on this at all. Dick Halloran points out that SCAO didn’t necessarily take a position that there should be an issue to wade into, but he and Kent and others felt it should be looked at. Halloran points out that this is out there, so we might as well stay in the forefront. Kent says just because we may choose to do nothing, it doesn’t mean nothing will be done. We will be more knowledgeable about why we choose to do nothing.

III. New Business

New Ad Hoc Committee! Carlo wants a committee to come up with a template for new retainer language - to be set up as a reaction to Cooper. Include AAML, member of Grand Rapids Bar, Anne Argiroff, and Jim Harrington. Anyone who wants to be involved let him know.

Old Business - will table his pet peeve issue, parental alienation issue. Is hopeful this will be furthered by parental coordination committee.

Lifetime achievement award. It has been a few years since this has been given. We will be giving one out at the September annual meeting. Deadline is 5/15/09. Last one was Kittie Barnhart, before that, Fred Morganroth. Will provide list of former recipients.

Amy appointed to FOCA advisory counsel. Meets quarterly. Will be liaison to Section. Working on court rule regarding FOC having to report to CPS.

Carlo said we will be asking Executive Committee members to do a couple pages on what your job entails. Who are the people you need to know? Who are 'go-to' people? This should help the next officeholder.

Todd pointed out that the April Meeting will be at the Doubletree in Novi, but the May meeting will be back at the University.

Bill Kandler says there will be legislation to 'save marriage' put out by Christian and Jewish groups. Maybe a 2 year waiting period to get divorced.

Meeting adjourned: 12:18 p.m.