

MINUTES OF THE MAY 2, 2009 FLS MEETING

Council Members Present:

Carlo Martina
Traci Rink
Amy Yu
Judith O'Donnell
Kristen Robinson
Liisa Speaker
Lorne Gold
Carol Breitmeyer
John Hammond
Jim Harrington
Jules Hanslovsky
Erika Salerno
Donna Mobilia
Kent Weichmann
Todd Selin
Richard Halloran

Guests Present:

Chris Harrington
Monica Copeland
Ross Stancati
Neil Colman
Kathleen Oemke
Toni Raheem

Ex-Officio

Elizabeth Sadowski

I. Administrative matters

A. Meeting called to order at: 9:35.

Introduction of attendees/guests

B. Chairperson's Report- In packet, there is attendance roster. Changed by-laws to rule that required to no more than two absences. Third absence is considered a resignation. Connie Thacker could not make it and recognized this ended her terms. If she is not here, opening will be announced and the election will be next month. By-laws allow Chair to give excused absence. Jules asked about what constitutes 'excused'. Carlo says the by-laws do not give direction. Illness is not an excused

absence. Todd has one absence every year because of Ingham Bar association, not excused because it is not a State Bar activity. Carlo thinks may be appropriate to extend purely beyond State Bar business, but doesn't think the Chair should have too much discretion. His report may ask the incoming chair to work with incoming Board to discuss excused absences. Jim Harrington says the rule is unduly harsh and was sort of rushed though and doesn't recognize the other work Council members do – their 'body of work' and focuses only on attendance. Lorne said he didn't like rule when proposed, but by-laws shouldn't necessarily be revisited. Rule is sort of undermined when someone who resigns due to absence immediately runs again. Judith O'Donnell, who has been on Council 9 years, says the reason it was changed was because there were people who missed two, attended one, then missed two, attended one. Two absences are enough. Kent believes it is appropriate to ask for a level of commitment that allows no more than two absences. Carlo points out we have a lot of power to affect change in the law, etc., and the commitment is important. Kristen says that as a new member that it is odd that someone can run for the same spot after being removed for absences. Carlo cited by-law. Neil was off for many years and thinks the old rule missing two then going to one was inappropriate. Judge Hammond said on may committees he's been on, absences were routinely excused. Can't recall where someone made a habit of it – Council rules are somewhat draconian and harsh. Maybe the fourth absence should be a resignation. Other things are terribly important.

Procedures regarding Committee reports- Carlo and Jim Harrington discussed an outline for committee reports to go to State Bar and section. Please look at Jim's draft 2009 Annual Report form.

Meeting packets. Used to receive in mail a week or more in advance. Haven't done this because of waste of money in sending and timing. Doesn't make sense because Committee meetings would need to happen right after (week or two) Council meeting in order to be included in packet for the next meeting. This last week, several e-mails to Council members were bounced back (e-mail). Carlo will ask that Committee reports be submitted no later than Monday the week leading up to the Council meeting. Liz said the mail system used by State Bar to send does result in spam filters rejecting the mail. In his report to the incoming chair, Carlo wants to suggest this be the responsibility of the recording or corresponding secretary to make sure the reports is in. John Hammond says we need to make sure e-mail addresses are correct. Carlo wants to make this something he passes on to the incoming chair as something to correct.

Lifetime achievement award. Nominations need to be made by May 15 to Carlo by e-mail or regular mail. Executive Committee will try to do this by unanimous vote.

C. Recording Secretary- Meeting minutes approved from April Council meeting. Attendance sheet discussed.

D. Treasurer's Report- didn't make packet. Amy will ask for approval next meeting.

Introduction of Local Bench/Bar guests

Monica Copeland here from Livingston. Co-chair of local family law section. Judge Reader is making changes at FOC. She is trying to put together something on computer for local bar. They have 'model court' for abuse and neglect cases. They were selected nationally to participate. Kathy Oemke says that the referees are assigned to specific Judges. She and Jerry Eidt are referees for Judge Garagiola. Lori Moran has even cases for Judge Reader, Dave Huntly has odd cases for Judge Reader, Kathy has even cases with Judge Garagiola and Jerry Eidt has odd cases. Motions go before referee. Ten motions in the morning and 10 motions in the afternoon. They decide if the issue needs more time or additional hearings. May try referring to mediation before they go to hearing. They do not see the Judge the same day.

Monica says there is a family law committee page on the Livingston County website. She is looking at including things on website like Judge decisions, etc. Lorne says Livingston County FOC has always been really accessible. Other FOC changes; referees may do mini-trials. Bar is concerned about lining up experts, etc for second and third trial dates.

II. Standing Committee Reports

Adoption- no report

ADR –no report

Alternative Families- Liz just back from ABA where there was great 'track' on this topic. Liz doesn't want us to drop the ball on this. Connie is still on top of this. Not sure about the future of the committee. Judge Hammond discussed some of the costs involved medically with some of these issues.

Amicus- Liisa said they are watching cases right now but nothing on their agenda at this minute. There are no official requests right now. Hunter is pending in Supreme Court. Decision probably by 7/31/09. Holmes case- child support, watching this.

Annual Meeting - Annual meeting Thursday September 17, 2009, dinner on September 16th at the Henry Ford Mansion.

CLE/ICLE- Traci, Barb and Ron Bookholder met with Shel Stark and other representatives at ICLE to discuss contract. ICLE wants to pay more to us up front, then give us an additional sum of money and ask for participation in the cost of sponsoring the Judge's attendance. This is being worked out.

Court Rules –

- 1) Anti-trolling court rule. The Section and Council are concerned about attorney checking out public filings and contacting defendants to target for legal representation. There could be ppo pending. Informed the Representative Assembly about this position. Liz and Kristen attended Representative Assembly meeting. Kristen said she and Liz and two other speakers spoke on this. Meeting broke after they spoke. General opinion was that it was a positive experience. People there were not aware of the issue. Other side is concerned about constitutional issues. Cooley law professor was there who volunteered with constitutional issues.
- 2) Order for Asset/Liability Disclosure. There are various forms different Counties use. This is approximately the 5th reading of it! Only new tweak is pension language changes. This order can be shrunk down to fewer pages. Suggest this form be submitted to SCAO for their approval. Ross points out that other than income, doesn't ask for documentation. Taxes only, but if it refers to a trust or k-1, those should be included. Todd pointed out that obviously, in cases with significant assets, discovery will go further. Says that order doesn't include question with regard to whether a party has sold or transferred assets. Jim not opposed to including this. Monica offered that Livingston County uses form mirroring Oakland County form that asks about bankruptcy and transferred assets. Judge Hammond pointed out that this is already 6 pages, and the inclusion of a bunch of documents could make it very long. Monica says one of their Judges does it and one doesn't. She points out that depending on the timing of the form the information may or may not be accurate. Judge Reader gives 70 days from date of filing. Directs parties to file witness lists, assigns dates, name appraisers and mediators all within 70 days. May be too early with regard to accuracy. Dick Halloran points out that it would be helpful if the various judges use the same form, even if problematic, helpful if all are using the same one if there has to be a form. Jim says this form is not meant to be mandatory in any county or that it mandates any particular timing (70 days). Just a tool they can use.

Motion was made to adopt form. A Friendly amendment was made to: 1) include whether litigants have filed for bankruptcy or transferred assets within 12 months.

Motion was made to submit form to SCAO with cover letter and amendment. Passed
15-0

- 3) Also looking at Supreme Court disqualification of judge and another looking at all judges. Kent points out that we have as much interest in this issue as any other Section. Jim will look at issue.

Liisa says she is an officer of the appellate practice committee and she would be happy to convey to that committee our input as a committee or individually. Their meeting is 5/15.

5/26 at 1pm is next meeting - telephonic

Domestic violence – No report. Carlo mentioned recent Council Listserv discussions about seminar- 2500 are served per day by an agency, many requesting legal representation. We are coming up to pro bono month in October and he is concerned that we are lacking in coverage for domestic violence survivors. Carlo doesn't want to miss the opportunity. We should do some nuts and bolts training on issue. Considering a ½ day training, lawyers to be given materials and seminar free in exchange for taking 2 pro bono cases. No federal dollars but maybe work with some local bar associations. John Hammond worries we may not be asking the right questions, violence includes non-physical. Carlo says we need the lawyers doing the pro bono cases and working their way into leadership positions to be sensitive to it. Judge Halloran said at one point it was supposed to be mandatory for Judges to be trained in domestic violence and it became optional. Judge Halloran talked about a letter an attorney sent to a PPO petitioner scheduling to schedule their deposition. They are entitled to have a deposition but it can be a very coercive tool.

Family Court Forum- Barb is at daughter's graduation. Forum is June 5th.

Journal- No report. Carlo talked to Mark Sherbow. He has first 12/13 years of Journals indexed, might be old technology. Carlo will meet with Mark about how we might do this. Need to equip successor Councils to follow up with projects that were started. Jules says there may be a 'pink index'

Family support – No report. There are issues with regard to federal incentives for child support collections. Todd says Marilyn Stephan will be at Ingham County Bar Association Wednesday May 27th at 12:00 p.m. at the State Bar building. All invited, please RSVP. She will stay to answer all questions. Lunch meeting.

Journal advertising- We have lost a few advertisers. If you know someone who wants to put an ad in the journal, encourage them!

Legislation- There was a lot of reintroduced legislation.

HB 4005 A Reintroduction of bill we supported last term. When a bio dad signs off on parental rights, apparently there is a problem with these being forged. This bill would require the signature to be notarized. Adoption committee disagrees with our position on this. Recommendation was that we support, with the addition that a bio dad may also sign in front of an attorney who acts as a witness. Liz read John Mills letter regarding his disagreement to our position. He believes that this requirement would make it difficult for bio dad to effectuate termination. Kent said this objection was also voiced by Luran Howard. Ross and Judge Hammond spoke on behalf of Council's position with regard to the importance of verifying identity of someone waiving a right as fundamental as whether they are a legal parent or not. Jules also supports. Motion to support the Legislation Committee's recommendation to support with inclusion passed 14-2 in favor.

HB 4015 Also involves adoption. When biological parents put a child up for adoption, they file a form expressing whether they want child to be allowed to contact them or not. Currently, the default (if they don't make an election) is that the adoption record remains confidential. This bill would change the default to releasing the information unless the parent made an affirmative choice that the contact was not to be permitted.

Motion to support Committee's position that the bill be opposed passed 15-1

HB's 4794, 4795 and 4795 identity theft safeguards applying to orders/pleading in family support action, paternity actions, divorce or separate maintenance. Bills say any document attached or filed with the order. Lorne points out that this barely scratches the surface or what's in a court file. Can only include name and address. Does it include phone numbers or e-mail address? Dick asks, what is the penalty? Kent thinks the federal act speaks to penalties. Todd points out that this will include place of employment, birthdates. Kent suggests we leave the bill to just include orders because there are too many other documents in a court file, even allegations in motions, etc. Exempts orders that are required by order rule to include the info. Bill includes that court may redact. Jules indicated that he now opposes, although on committee he supported. Liz asks who is sponsoring. Traci and Dick and Todd suggest we take the position that there is a lot to look at here and required further examination because of the multitude of issues.

Unanimously vote to table.

SB458 Would eliminate pre-sentence reports in felony non-support. Committee position to oppose bill.

Passed unanimously,

FOCA package 99-107 Took positions opposing certain provisions. We need to take positions on remaining bills (the ones we didn't oppose). Recommend supporting SB's 101-107, except for provisions of 99 and 100 we previously opposed.

Committee position passed unanimously

Joint Resolution L- Eliminate term limits for legislatures. Jim Harrington supports a unicameral legislature. Jules doesn't think there was enough discussion about it. He doesn't think their institutional memory was all that helpful. Amy points out that not one legislator showed up for the 'law school for legislators' we presented. Committee recommended supporting resolution.

Motion to support passed 14-2

Joint Resolution P regarding disqualification of Supreme Court justices. Tabled by the committee

Membership /mentor roundtables - no report. Todd points out that we have had lots of attendance from local bar associations when we go to their area. Two from Livingston today.

Mid-Winter- Brochures are going out next week. Great price for Caneel Bay!

Mid-Summer Seminar- mailed last week, being received as we speak. Cost under \$600. Lorne thanks sponsors we have who have allowed us to keep costs down. Traci asks anyone attending who is willing to speak to contact her. Topic should/can be something interesting you have recently 'sunk your teeth into'.

PAC – 2600 members of Section, with only 26 contributing to PAC. Everyone on Council should contribute. Send him a check. Neil was encouraged to see just how aggressive we can be about soliciting.

QDRO. No report. Liz talked about ERISA problems with regard to taxation for QDRO distributions for child support and alimony.

Tech- no report

AD HOC COMMITTEES

Resource Allocation- Report given last month

Parent Coordination Committee- Dick said meeting was interesting. 13 States have parenting coordinator statutes/court rules. E-mail Dick if you want a copy of information.

5/29 meeting 2:00 p.m., use State Bar conference number.

Retainer Language Clarification Committee

Jim – Supreme Court needs language in June time frame. Suggests we submit one or two paragraphs to Supreme Court that would be appropriate. Long term project for fee agreement in divorce cases and other issues like retention of files, etc.

Parental Alienation Committee- Carlo recognized that there was crossover in interest in parental alienation and parent coordinator committee. He didn't want to keep progress from being made on parent coordinator committee work. Want to reinstitute this ad hoc committee.

III. New Business

With regard to Connie Thacker's position; position will be open for election next month as well as her position on executive board. Erica pointed out that Phil Navarre has missed his third meeting as well so his position will be available.

Lorne Gold requests Council ratify contract signed with Grand Traverse Resort for summer conference. Unanimously approved.

Meeting adjourned: 12:31 p.m.