

MINUTES OF THE NOVEMBER 1 2008 FLS MEETING

Council Members Present:

Connie Thacker
Donna Mobilia
Robert Treat
Jim Harrington
Kent Weichmann
Liisa Speaker
Lorne Gold
Carol Breitmeyer
Traci Rink
Todd Selin
Richard Halloran
Jules Hanslovsky
Amy Yu
Barb Kelly
Carlo Martina

Guests Present:

Denise Alter
Kristen Robinson
Bill Kandler
Shauna Dunnings
John T. Hammond
Shel Stark
Gail Towne
Joe Cunningham
Neil Colman

Ex-Officio

Ron Bookholder
Lisa Sullivan
Elizabeth Sadowski

I. Administrative matters

- A. Meeting called to order at: 9:35
- B. Chairperson's Report- welcome to new facility (State Bar of Michigan headquarters). We were going to have a different meeting room- this one is a too small. Introduction of two guests. To further strategic plan, will be inviting local

bar/judiciary to join meetings in their area. Today's local luminaries are Clinton County Judge Lisa Sullivan and Shauna Dunnings, Deputy Court Administrator of the Family Court in Ingham County.

Ms. Dunnings is director of Ingham County Friend of the Court. They have been dealing with the changes in the Child Support Guideline and preparing for increase in child support modification filings. In Ingham they will be using the Marginsoft program to calculate child support. After new MiCSES release in December they may use that program. Will also be addressing new notice provision in Guidelines regarding childcare, similar to how they address termination of support for children who age out of the system. They will have parties return childcare verification form and require them to file a motion if they object. This will be considered a basis for modifying and reviewing an order. They conciliate all pre-judgment cases. Post-judgment conciliations must be referred by order. There will be a recommended order if pre-judgment and a recommendation if post-judgment, then a referee hearing, then a de novo hearing with the Judge. Judge Garcia may see case before/without referee hearing. Ms. Dunnings is reachable by phone.

Carlo discussed executive Board meeting and new Resource Utilization Committee. Traci and Barb will co-chair committee for use of surplus funds. Committee will give a report with ideas for how to use funds. One use will be to create materials describing benefits of Section membership. Talk to your local bar associations about ideas- should be able to do important things.

May also set up law school for legislators in the spring. Each Bar Association section presents something. Karen S and Kent will put together materials. If you have ideas, let Kent or Karen know. At Family Law Institute, Bill Kandler will help us run booth to help people sign up for Section and purchase materials. Would like to help grow our membership, partly through interaction with local bar associations and reach them at programs such as the ICLE two day institute. Bill Kandler says Marcy from his office will help coordinate. By-law changes passed at section meeting and will be on agenda for the Representative Assembly. At Child Support Leadership meeting, the issue of reorganization of Family Support Act and Paternity Act was discussed by/with Marilyn Stephens. It has been a while since the idea of tying these statutes together has been discussed.

- C. Recording Secretary's Report: June 7, 2008 meeting minutes approved and October 4, 2008 minutes approved with the inclusion of Don Campbell as a guest attending 10-4-08. Minutes are posted on the website through June 2008 according to Connie. Connie asked about posting of committee happenings. Contact Heather Anderson Sections and Committee Administrator at State Bar.
- D. Treasurer's Report. Budget in package. New fiscal year started 10-1-08. Budget dated 9-30-08 approved.

Carlo suggests that by the end of the year each of the executive committee members should write up something about their position, contacts and responsibilities. Jim Harrington suggests we also have committee chair include instruction of what their committee does. Carlo agrees that it would be helpful to perpetuate institutional memory. Prepare outlines about what each committee does. Liz Sadowski need to make sure all Council Members are on Council list. Contact Liz at sadowski@mindspring.com. Carlo wants things to be easier to find on the web. Want to make sure section members can access latest journal on line.

E. Introduction of Local Bench/Bar guests

See Chairperson's Report.

Two seats are going to be available. Carlo is resigning his seat and election will be today. Karen Sendelbach's seat is available and will be voted on next meeting. Carlo's term ends in 2010. Appointments to replace Chair have traditionally been appointed to fill the rest of term but by-laws say election to replace his term is just until next election. When that term ends, they run to fill the remainder of the term. Todd Selin asks about how this affects 9 year total. Carlo doesn't have answer.

John Hammond was nominated to return to Council and was not opposed. Unanimous vote for John to fill Carlo's seat. John Hammond says that if our rules are parallel to other State Bar sections, the rules provide for no more than 9 years, meaning 9 years total. Barb Kelly believes the rule is for three full consecutive terms.

II. Standing Committee Reports- Previous Chair's Status Report

Adoption- no report

ADR – Ron Bookholder, Kent Weichmann and Shel Stark are promoting mediation training scheduled for January. Shel Stark says there are 450 registrants for ICLE Family Law Institute- sold out. Unfortunately, there are only 3 registered for mediation training and need 16 to break even. A push should be made to push registration for mediation training. At ICLE perhaps a Section table should include Council members with brochures at table to encourage registration. Richard Halloran asks how many new attendee's- usually 40% or so. Halloran says he sees many attorneys practicing before him are new to family law. Bookholder says more work is being done on Collaborative Law. Do we want to have section involved more in collaborative law? Kent says there is an ad hoc committee already formed on collaborative law. Ron says also there is a uniform arbitration act being worked on by the ABA.

Alternative Families- Carol Breitmeyer will chair.

Amicus- Anne couldn't be here but Kent says handout talks about non-refundable fee case. A proposed MRPC rule change was passed out to help address issue raised in case

(Cooper). Carlo says this makes it clear that this rule makes it so that this type of fee agreement would have to be in writing. John Hammond says that sometimes retainer agreements specify why portion of fee is non-refundable. This proposed rule says that whole fee is non-refundable and apparently does not accommodate fee agreement that allowed for only portion to be non-refundable. Carlo says that flat fee retainers are not a problem- they have been upheld, dealt with separately. Liisa suggests we take out lump sum language. This should only pertain to the portion that is non-refundable. Neil Colman says why not a minimum non-refundable, if it exceeds, not returnable. File could be billed when it exceeds that. Carlo suggests that language could be changed to reflect this. Kent says may be easier just to refer to it as minimum non-refundable fee arrangement rather than a lump sum would be OK. Motion made to approve proposed fee arrangement with elimination of 'lump sum or'. Liisa suggests 'factors or consideration' and removing brackets. Harrington says Cooper holding was meant to strike all of these sorts of agreements. Thinks intent was for all attorneys to have to put all monies in IOLTA accounts. Hammond concurs. Carlo states Anne's brief (which will be done Monday) states that what was done was reasonable. We were also asked what language could be added to MRPC that would eliminate ambiguity. Question called. Motion to accept Amicus Committee's recommendation with changes above. Passed 16-0.

Lisa Sullivan said for opinion dated 10-30-08, the US Supreme Court invited amicus briefs on termination of parental rights case. In Re Hudson and Migration minors. Anne has sent this around to the amicus committee (according to Kent).

Carlo states that we received inquiry from legislator regarding whether costs of confinement can only be assessed against father.

Annual Meeting - There will be one

CLE/ICLE- Ron Bookholder reports that the November two day ICLE/FLS Family Law Institute is sold out. Limited enrollment seminars are down by about 3/4/5, Shel says maybe more. Ron says they are well received (certificate programs, property, custody) but attendance is down. Those taking courses are practitioners who have never previously practiced family law. It is a positive that these seminars are educating the uneducated family law practitioners.

Barb Kelly reports that as a follow up to last month's Council decision to sponsor legal aid attorneys attendance at the Family Law Institute. A rate of \$265 (consistent with the new attorney rate) was negotiated and these spots have been filled

Court Rules- Jim Harrington reports there was a meeting on 10-21. Next meeting will be the second or third Tuesday of the month at 1:00 p.m. 11/18. If you want to be on committee, call him.

MRE 703 and 1101 hearsay and workaround still being worked on. When the Committee reaches a consensus they will make a recommendation. It is likely that Judge Giovan will probably oppose. Carlo argued to Supreme Court when this first came up. Council took

position that domestic attorneys should be exempted from 703. Carlo has material for committee supporting the original testimony on this. Liz suggests that if there is any other material that anyone wants to present for Council meeting, e-mail it to her and she can post. State Bar program has glitches that need to be worked around. Materials should be on FLS website.

Still working on mandatory asset/liability form.

Taking close look at electronic discovery rules. Party can't destroy- actually same prohibition as other discovery rules regarding prohibition against destroying evidence. Need to look at issue of inadvertent disclosure. Doesn't cover inadvertent disclosure by receiving party. Jim thinks court rule should more closely follow case law.

Jules says a form mutual restraining order is still being discussed by SCAO and the FOC bureau.

Richard Halloran asks if we are included on SCAO form reviews. Carlo says we are making strides on being included on this.

Jules asks if we should have a representative on this committee.

Domestic violence- Donna Mobilia is working on materials for domestic violence training seminar. Materials on a DV Training outline and memo was passed out to the council members present. ICLE willing to help formulate, hopefully by spring 2009. Carlo says Open Justice Committee at State Bar has materials that could be used. Lorne says also committee on law enforcement could be a resource.

Family Court Forum- Barb reports the date will be June 12th. The program is being set up. They are looking back at 10 years of these programs. Barb asks for Section to contribute \$2000. Other contributors are AAML, MIPA, and various law firms. Motion for Section to contribute \$2000 again this year passed.

Journal- no report

Family support- no report

Journal advertising- Todd will get Neil up to speed.

Legislation-

HB6571 regarding automatic COLA adjustment to preserve value of child support dollars. Problem is that wages aren't keeping up with inflation and leads to unfair result. Bill will place burden on the person objecting. Bill allows choice of COLA index- Detroit or outstate. Will not help FOC because we will have to determine order by order which standard applies. Probably unfair in more cases than not. Motion to accept Committee recommendation to oppose was supported 16-0.

HB6281 proposes inclusion of a category of PPO petitioners to include victims of threatened sexual assault even if no domestic relationship exists and there has not been a pattern of stalking. One incident of sexual assault or threatened sexual assault with a reasonable apprehension of harm would qualify. Committee agreed if these petitioners should be entitled to get a PPO if there was a conviction for an assault, but the Committee did not agree on whether a one time threat should allow issuance of PPO. Discussion regarding Committee's position to support. Halloran discussed his involvement with DV issues and was the only PPO Judge in Wayne County for years. Halloran described a case in which he was the assigned Judge with facts that lead to the proposed category to be included by the new bill. He believes that in some incidents, one incident should allow issuance of PPO. Is use of threat of assault enough? There are non-threats as well. Wants to know what group thinks. Lorne adds that this change would not help Judge's scenario, since assault was not sexual, says there will still be people who fall through the cracks. Threat language is worthy of discussion. Carlo says language appears to be litmus test for issuance. Hammond cites MCR 3.704 (a)(5), which states that a judge has to state reasons for denial of a PPO. He says they are 'pushed' to sign these because of the requirement that they write an opinion when they don't sign the requested PPO. Look at consequences – barred by federal law from buying firearm/ammunition. There is a bias towards issuing them. Carlo points out that language includes 'reasonable apprehension' which would be a gatekeeper on this. Jules- this is carved out exception in stalking language. One statement could constitute a threat justifying a PPO. A threat is in the opinion of the person. Barb says the petition should not be granted unless the petitioner is 'placed in reasonable apprehension of sexual assault by the individual to be enjoined'. This is class that merits protection. Liz asks why 'family division' language is struck. Halloran says all PPO's go to family court. He says some are pushing to remove PPO's from circuit court. Todd Selin agrees this is a trend- they are issued by family division but heard by district court judge. Hammond says different courts are set up differently. In his county all judges cross assigned. They (ppo's) went to criminal division for violation. Now they go to family division. This results in enforcement down the road 6 weeks, which is pointless. Usually parties don't show at that point. Justice delayed is justice denied. No statewide uniformity. In some places victim isn't protected in some counties defendant is not protected. Halloran said only circuit has power to do equity. Motion to adopt Legislative Committee's position with amendment that we strike the striking of language 'family division'. Lorne says this is change that also a prisoner could be petitioner for PPO only if respondent was convicted of sexual assault in which petitioner was victim. Jules proposes amendment to exclude 'or threatened' and later 'threatening to'. Question called. Motion is to support legislative committee's position passed 14-2.

Bill Kandler says with election next week, it looks like the democrats will control House and that there will be a further pick up of seats. Senate will stay republican so no overall change of balance of power. Both houses will have to spend some time on committee chairs and appointments.

Neil pushed for PAC contributions to help with our legislative goals. We were asked to support candidacy of Manderfield. We should perhaps support candidacy of judges with family law background generally. Carlo invites Neil to attend Executive Committee dinner at Eve's on the 25th of November.

Carlo reiterates the desire of the Section to assist local bar associations and get feedback.

Mid-Summer seminar- Lorne and Traci reports that we will probably go to the Homestead again because of the positive feedback from this year's mid-summer conference.

PAC- see above

QDRO- Joe Cunningham. The Committee is helping do pro bono QDRO's. He reports that John Forczak was named legal aid champion of the year.

Tech- Liz reports that the first week in April will be the ABA tech show conference in Chicago. Really cool event. Good for beginners and advanced

III. New Business

There will be a new committee formed known as the Resource Utilization Committee. Looking for ideas that will further our strategic plan and Council goals.

January 17th for January/February meeting. February meeting conflicts with Mid-winter seminar. This date will remain despite some conflict with ADR event. Jules asks about participation by speakerphone. Carlos says this is being looked at. Jules will follow up with Liz

Law school for legislators. Kent Weichmann and Karen Sendelbach will work on this.

Ad hoc committee on parent coordinator order. Kent says there are meetings to see what is going on around the state on this (SCAO). What is current practice? Should there be better regulation? Meeting was chaotic. Wide range of opinions. When can a judge order without parties consent? What powers do they have? If given arbitration authority, what if judge is not comfortable enforcing bad order from parenting coordinator? Often the parties involved have mental health issues. Mental health professionals would like some protection because this is a high conflict litigious group. Carlo called Larry Friedberg. Ron Bookholder talked about Oakland proposed order that is not uniform and does not make things binding. Kent says Doug Van Epps (SCAO) is not in a position to tell judges what to do and suggests that others take up the cause if they want uniformity. There are groups who are working on this. We should take some leadership role on this and reach out to interdisciplinary groups (like MIPA). Arbitration model requires attorney be parent coordinator, non-binding could be mental health professional. Protection needed for mental health professional. Suggests we have ad hoc committee on this. Richard Halloran will chair ad hoc committee.

Fatherhood policy forum. Barb says everyone on executive committee invited. Not sure what they were trying to accomplish. Conference was sponsored by US Department of Health and Human Services and other Michigan other groups. Started same day as batterers' convention ended. Fathers stood up and gave their stories about FOC. Not many FOC employees included. The objective of the conference was not clear. Bill Kandler says it arose because Sen. Bill Hardiman really wants fathers involved. Carlo is glad Council had a presence.

Richard Halloran said these is an ICWA (Indian Child Welfare Act) benchbook being developed. The SCAO is having meetings on this. He is also on national committee on this issue.

Carlo- Kathleen Conklin, who is the Program Manager for Justice Initiatives, is dealing with the issue of the 91 day requirement for adjudication of juvenile misdemeanors. Kym Worthy wrote letter criticizing this requirement. Traci to get juvenile referee to participate. She will talk to Art Spears (RAM president) to appoint someone from RAM to serve on the workgroup reviewing Administrative Order 2003-7 regarding fast track on juvenile matters. Need juvenile Court Attorney Referee.

Meeting adjourned: 12:00 p.m.