

MINUTES OF THE OCTOBER 4, 2008 FMAILY LAW COUNCIL MEETING

Council Members Present:

Carol Breitmeyer
Bob Treat
Rebecca Shiemke
Anne Argiroff
Liisa Speaker
Jules Hanslovsky
Todd Selin
Lorne Gold
Philip Navarre
Judith O'Donnell
Erika Salerno
Richard Halloran
Amy Yu
Carlo Martina
Connie Thacker
Traci Rink

Guests Present

Jane Enrighnt
Matt Kobliska
Saraphoena Koffron
Neil Colman
Judith Curtis
John Hammond
Zenell Bown

Ex-Officio

John Mills

I. Administrative Matters

A. Meeting was called to order at 9:41

B. Chairperson's Report- Welcome by Carlo Martina, introductions of Council members and guests. The Chair indicated that council members could either get hard copy or e-mail of agenda for future meetings. A sign up sheet was passed around to indicate your choice.

Carlo Martina asked the member for input as to what to do with Section budget surplus. He would like to invite local bar sections and their representatives to attend future

Council meetings, particularly when the meetings are held in their region and compare what local projects the bar associations are working on for possible joint projects. Future meetings will be held in Lansing, Grand Rapids, Ann Arbor, East Lansing and Novi. Technology will continue to be updated. The Chair requests more articles in the journal and include authors other than Council Members, perhaps law professors. Perhaps a brochure could be prepared for distribution at ICLE events, law schools, and other appropriate venues. Carlo Martina is particularly interested in exploring the issue of parent/child alienation and the paternity statute. By the end of year, he would like to put together a list of due dates for future chair/council activities. For Council members, circulate phone and cell numbers. Council members expected to join committees and write articles. Sign up for one or more committees.

C. Recording Secretary's Report: Minutes from the last meeting will be e-blasted. Connie Thacker was not able to get the minutes here for today. Council members will receive two sets of minutes for next meeting.

D. Treasurer's Report: Year-end was filed in August. The report was disseminated. At that time there was a \$24,000 surplus. Currently there is a \$13,000 plus surplus to carry over less the cost of the annual meeting. Year-end report is due mid-October. Fund balance is over \$100,000. Excess will be used for the winter conference. The Chair thanked Barb Kelly for simplifying the categories from 38 to 13.

Barb Kelly presented ideas for spending some of the budget surplus. She suggested that perhaps Council could provide funding for legal aid attorneys or attorneys serving underprivileged clients to attend the ICLE Family Law Institute. Currently, ICLE comps Judges and a limited number of referees to attend. The cost is roughly \$300 per person. We could try to negotiate lower price directly with ICLE. There was a Motion to accept treasurer's report. Carlo will get the financial records related to advertising from Mark Snover and get them to Amy Yu. Todd Selin will work with Amy on advertising records. Lorne will provide summer seminar numbers, but thinks we made a profit of about \$2000. Motion to adopt report was approved. Barb Kelly made a Motion to allocate \$3000 to send legal attorneys to ICLE. Discussion about how the funds would be transmitted. FLS would pay ICLE directly and work with Rebecca Shiemke on the various legal aid agencies/.attorneys around the state. Discussed legal aid attorneys versus new attorneys as being worth providing scholarships to. Motion to table the motion was made, with 15 voting to proceed, rather than table. Question was called and vote was taken regarding approving \$3000 to send legal aid attorneys to the ICLE Family Law Institute. 17 approve 2 oppose. Lorne Gold suggested Carlo Martina mention in his opening comments at the ICLE Institute that the Council provided scholarships to the legal aid attorneys to whom they were awarded.

II. Committee Reports

Adoption- no report

ADR – no report

Alternative Family

Connie Thacker and Traci Rink request a council member volunteer to chair this committee\

Amicus

Report was passed out

Two cases were brought to the Committee's attention; Cooper and Hunter

1) Hunter- third party custody. Our participation has been requested. Committee requests Council support the mother in this case who complied with all court requirements in a guardianship proceeding but who was not allowed to regain custody of her children. Saraphoena Koffron recounted facts of case. Issues include parental fitness in third party custody case. The Court of Appeals majority opinion included (in dicta) comments that she was unfit based on her unmarried status and the fact that she made barely above minimum wage. Anne Argiroff made Motion to file brief on behalf of appellant by section, motion was seconded and a discussion was had regarding competing statutory and common law fitness standards. Brief may request uniform standard of fitness, but will have time to research and discuss specifics for next council meeting to bring to attention of full council. Motion to file brief on behalf of appellant passes 18 / 0.

2) Cooper. Case involves minimum non-refundable fees. Committee feels that what Ms. Cooper did was 'reasonable' and thinks it would be advisable file brief and support Ms. Cooper. Committee feels there are good facts to support the position. There was a discussion about the motivation of AGC who may be trying to permanently to do away with non-refundable fees agreements. Question was called. Anne Argiroff made motion that we file brief to support Ms. Cooper, the motion was seconded. Motion passed 18 / 0.

Legislation

Report was passed out.

SB 1418 and 1419 See committee report. The main objective of both bills is to improve communication between DHS and FOC, but 1418 also made FOC mandatory reporters of suspected abuse. 1418 has passed senate and house and is ready for the Governor's signature (signed since date of meeting). The only way to block passage of 1418 is to oppose 1419 (which the committee feels is innocuous) because it is tie-barred to 1419. 14/ 0 passed to oppose (take committee's position) 1419 in hope of defeating 1418.

1501 council voted 15/ 0 to adopt committee position to oppose bill which would require anyone giving a child support payer money or property to notify the IV agency.

1502 Casino must notify agency if a child support payer has casino winnings of \$1000 or more. The committee recommends this bill be support. Support committee's position to support 15/0

6264 Regarding additional grounds for termination of parental rights. This will be tabled until next month to see if children's law committee will take it up.

6265 Great Grandparent visitation committee recommends opposing bill. Discussion. 16/0 to support committee position

FOCA package – Committee recommends reiterating prior positions. Amy Yu indicted that FOCA president Suzanne Hollyer said that many of the Council positions have been incorporated into the revised bills. They have not changed the bill which would remove FOC requirement to enforce spousal support. Motion passed 17/0.

1423 Court shall order FOC investigation only if 'substantial' change of circumstances are shown. Committee position is that any new statute should mirror existing law, omitting 'substantial'. Discussion was held. Richard Halloran made friendly amendment to modify to indicate 'allegations' of proper cause or change of circumstances. Lorne Gold offered language to add the following: "if custody has been established by court order, the court shall order an investigation only if the court first finds that there has been proper cause shown or because of a change in circumstances or if the court determines the need to investigate whether that initial threshold has in fact been met". Question called. Motion (as amended) passed 17/0.

SB506 Putative fathers standing. We had participated in McManus' workgroup on this, but there is now a new draft. Changes were made with regard to how long a putative father has to come forward, and treats families on public assistance differently. Discussion was held. This may be opportunity to take position. Time period extended for challenging. May be opportunity to push for hospital blood testing for all children born to unmarried women. SB 506 is taking 'baby steps'. Kent Weichmann indicated Council's position was that it was a good first step. New draft gets some things wrong. Court of Appeals keeps getting it wrong. Vote on motion 17/0 to take committee's position.

Court Rules

Report was passed out

MCR 3.201 (a) (1) and (2) and 2.108. Michigan Judges Association proposed changes to rules regarding default, the most significant of which is that the court must make specific findings when taking a default judgment. Motion to adopt Judge's Association proposal passed 16/1.

MRE 703 FOC report – judge can read. Not evidence. 1109 (9) does not allow everything FOC touches to be evidence. This was not the intent. Richard Halloran said it would be almost impossible to change. Says purpose was to stop dueling experts. At the time there was a proposal to exempt domestic relations. Motion was made to continue consideration of request to exempt domestic relation passed 15/0, with one abstention.

Mandatory asset/liability exchange. Still working on this

3.204 transfer of all cases involving same family to be transferred to one county. A SCAO workgroup is working on this. We will not have representative. We may complain about it later anyway.

CLE/ICLE - No report

Domestic Violence- will send out reminder e-mail for next meeting

Family Court Forum- No report

Journal- Lorne Gold thanks Rebecca Shiemke for article for next journal and Jim Harrington for upcoming article. Deadline is first week of month preceding the publication

Family Support- no report

Journal Advertising – previously discussed

Mid-Winter Seminar - There will be a loss because of contract that was signed. The contract was brought to council and it was believed the regular seminar attendees would commit. Not enough. Worked with State Bar to try to get out of contract. Hotel allowed some leeway. Choice was to cancel at \$12-\$15,000 loss or proceed at a loss of about \$7000. Judith O'Donnell has had a few people call to try to join but there are no seats. Perfect storm of economy and airline issues. Seems to be almost no air alternative. Barb Kelly acknowledged that Judith did everything she could to salvage the best deal for council and all steps taken were done with care and diligence.

Summer Seminar- Lorne Gold and Traci Rink- went very well, survey responses were very positive and it is quite possible we may go back to the Homestead. We intend to work on getting sponsors which may have been why we were able to turn a profit.

PAC- Neil Colman and Bill Kandler are going to figure out where to spend the surplus!! Pitch for PAC contributions by council members- should be 100% participation by members. Carlo Martina reminds us that contributions, even if modest, are helpful and symbolic to Judges and legislators willing to work with us on family law issues.

QDRO/Taxation - social security numbers to be eliminated from Judgments/EDRO's and QDRO's. US Supreme court qdro/edro case pending regarding whether the judgment of divorce is sufficient to remove beneficiary or is QDRO needed

Tech- no report

New Business— see new requirement for council members.

See meeting locations. January meeting time not firmed up. Reminder that Lansing meeting is going to be at State Bar office and not University Club

Richard Halloran- SCAO working on rules for parenting time coordinators.

Carlo Martina will be resigning seat and there will be a vote at November meeting for new council members.

Meeting adjourned 12:04