

State Bar of Michigan
Domestic Violence Committee
Minutes of Meeting
July 25, 2009

Present: Amy Krause, Christine Pfeiffer, Gail Krieger, Elizabeth Eggert, Mary Lovik, Rebecca Shiemke, Sarah Prout, Leslie Hagen, Darnell Jackson, Mary Rubio, Heidi Naasko Amanda Chubb

Approval of Minutes

Gail moved to approve, Rebecca seconded. Approved unanimously.

Old Business

Family Law Journal

Next article due to editors Aug 24 is by Cathy Church on the use of GALs in DV cases. She reported to Amanda she's on schedule. J. Krause and Mary Rubio are editors. Article will be published in October issue.

Fall issues – Lundy Bancroft agreed to a 4 part series beginning in the November issue. 1st - batterers' characteristics in custody cases. 2nd– effect of battering on parenting. 3rd – risks to kids and how kids can recover. These articles are all edited versions of Bancroft articles. 4th is DV and best interest factors by Sarah. J. Jackson will edit Sarah's article.

In January 2010, Gail will work with Judge Garagiola on an article on using batterer intervention services in family law cases. J. Krause will edit.

Also discussed doing a special Bar Journal issue on DV. First available date is August 2010. We must submit proposal to advisory committee, which next meets in October. We will discuss at September meeting.

Training for 2010 District Judge's Meeting

J. Krause reported that J. Hansen is involved, but she no knowledge of plan or agenda. Tabled until next meeting.

New Business

Moldowan v City of Warren, et al. - Sarah Prout discussed outcome of this case, a SLAPP suit where she represented victim of sexual assault sued by assailants. Great result in 6th circuit court of appeals where she succeeded in getting client dismissed from suit. We lost Sarah's connection. Mary L. provided the case cite to committee and Heidi offered to send a copy of the decision to Amanda to share with committee.

HB 5036

This bill would permit the court to dismiss a SLAPP suit against an individual based on the individual's communication with a governmental unit, public official or another person in furtherance of constitutional right to petition and award treble damages and sanctions against the plaintiff and plaintiff's attorney.

Discussion – Rebecca noted there are common law remedies and this bill could abrogate those remedies without at least a savings clause, or require complex statutory construction; and, the language “in furtherance of” may exclude application to a crime victim who isn't the complaining witness. Sarah commented she thought common law remedies were adequate. Concerned bill will make victim's position worse by asking judges to do statutory construction. Leslie asked whether it's retroactive or only applies to suits filed after enactment. Sarah – trouble with the defense to a motion to dismiss is that defendant can argue victim had knowledge of the falsity and require retrial of case. Mary – there is a Maine statute that includes a savings clause. Heidi – the bill includes the definition of person instead of individual and individual is used throughout. Also, contrary to Fourier decision that said that victim doesn't have to prove testimony was false or re-litigated the suit. Preponderance of evidence standard is problematic. Sarah-also permits discovery. Liz – agrees with comments including definition of individual and notes that sec1 A and B conflict. Sarah – complaining witness issue is also a problem. If it only applies to complaining witnesses, won't reach most dv victims because they won't be complaining witness.

Motion by Sarah – oppose as written with concerns noted: savings clause; meaning of “in furtherance of”; definitional section regarding person and individual; Sec A and B regarding person referred to, are contradictory; standard of proof and retroactivity.

Second by J. Jackson

In favor- Sarah, Leslie, Rebecca, Christine, Liz, Heidi, J. Jackson

Opposed - none

Abstain: Mary L, Gail, J. Krause, Mary R

Motion passes.

Keller – affects access to courts and court procedure with sanctions on attorneys.

HB 5114

This bill provides for mandatory joint custody unless by clear and convincing evidence a parent is unfit, unwilling or unable to care for the child or a parent is unable to maintain the child's school schedule after moving out of the usual district.

Motion by Rebecca to oppose. Second by Liz.

Discussion: Negative effects on DV survivors – limits safety for victims and increases harm to kids. Abrogates best interest factors and doesn't consider what's best for kids. Unfitness standard is same for parental rights termination. Presumptions don't allow trier of fact to consider issues and fails to consider cases on individual facts.

In favor-Rebecca, Sarah, Christine, Liz, Mary R, Leslie, J. Jackson, Heidi

Abstain-Mary L, Gail, J. Krause

Motion passes.

HB 4222

The bill would amend the stalking PPO statute to allow a sexual assault victim to obtain a PPO and fills the gap for victims who suffer only 1 incident.

Discussion: Leslie – Concerned with reference to obscene material -- Is that what MI statute calls pornography? Only refers to print material. Suggest that the definition be clarified. Also, concerned that where there isn't a conviction you will be trying the rape case in the PPO case. Others noted that's already happening in PPO cases and burden is lower in PPO case than criminal case. Also, rape cases develop slower than dv cases, so is it possible that the criminal defendant will petition for sexual assault PPO first? Does it outweigh importance of relief to victims?

Motion by Leslie – support in concept, but need to clarify definition of obscenity.

In favor – Leslie, Mary R, Liz, Christine, Rebecca, J. Jackson

Abstain - Gail, Mary L, J. Krause

I'll contact Heidi and Sarah re their vote since they left meeting.

Meeting Schedule

No August meeting.

Next meeting is September. Amanda will circulate dates to members.

Leslie – motion to adjourn, which was seconded by Gail

Motion passed unanimously.

Meeting adjourned.

Addendum to Minutes

July 27, 2009

By email, Heidi N and Sarah P vote in favor of the motion regarding HB 4222.