

FAMILY LAW SECTION ANNUAL REPORT 2002-2003

REPORT FROM THE CHAIR

Susan E. Paletz – Chairperson, Family Law Section

This has been a productive and exciting year for the Family Law Section. It was also a year of experimentation and innovations. We started our year with the first annual "Roast". Scott Bassett was chosen to be the first recipient of this honor. A good time was had by all and we were able to show our appreciation to Scott who has given so much to the section.

This was also the year of the first annual ICLE Family Law Institute held in Ann Arbor. It was very well attended and informative. The second Institute has been planned for the fall and promises to be even better.

We had two Sunday meetings to accommodate some concerns of our members. Many expressed their appreciation for our effort but the meetings were not well attended by non-council members. Therefore, it was decided to return to Saturday only meetings in the coming year.

Our committees have worked very hard to assure that we follow our mission statement to improve the practice of family law. We have been encouraged by legislators to present our opinions on proposed legislation. Our efforts have been well received. We have also submitted amicus briefs at the request of the Michigan Supreme Court.

Our annual meeting will be unique. We elected the option to hold our meeting separate from the State Bar's meeting in Lansing. Our meeting will be in Detroit and will offer the opportunity to have all members of the section attend a dinner-dance-award ceremony the night before the annual meeting and election. Members will also be able to participate in some special events around the City. We will also be presenting the Lifetime Achievement Award to Fred Morganroth in recognition for everything he has done for the section and the practice of family law.

The scope and importance of the work of the council members cannot be easily summarized. The following committee reports is only the tip of the iceberg of the work that is done by the council and committee members. Many thanks to all who have given so much of their time.

ADOPTION COMMITTEE REPORT

John F. Mills – Chair

It was a relatively quiet year for the Adoption Committee as no new legislation was proposed by anyone other than the committee which directly modified or amended the existing adoption code. The committee proposed new legislation to amend MCL 710.23d regarding temporary placement of infants involved in an adoption to non-Michigan residents. Present law precludes such a placement requiring the infant to be placed in foster care until the adoption can be completed. As of the date of this report, that bill has not been introduced however should emerge this session and hopefully pass into law. The chair of the committee testified in

opposition to legislation commonly referred to as the "Deceived Father Bill" which, among other things, would have a chilling effect on some step-parent adoptions. The Section also opposed the legislation. The chair of the committee also appeared on several national television and radio programs in opposition to that legislation as well as a number of print interviews. The Section's position paper on that issue was authored by the chair. The committee has provided input on a proposed revision of the "Safe Delivery of Newborns" legislation. Legislation to revise that law has yet to be introduced.

ALTERNATIVE DISPUTE RESOLUTION COMMITTEE

Fred Morganroth – Chair

In March 2003, the Family Law Section cosponsored with I.C.L.E. the Second Annual A.D.R. Institute held in Plymouth, Michigan. This was a major success.

In addition, the section was mindful of the need to provide mediation training for our members. In June 2003, the section in conjunction with I.C.L.E. brought in a national trainer, Woody Mosten, who provided training to comply with the Michigan Mediation Court Rule with the exception of the domestic violence component. Ron Bookholder and Fred Morganroth, co-chairs of the committee, along with Nina Dodge Abrams and others worked to promote alternate dispute resolution and to provide educational opportunities in conjunction with the Institute of Continuing Legal Education in the area of alternative dispute resolution.

The Family Law Section continues to recognize and be supportive of all forms of alternative dispute resolution encouraging members to utilize the A.D.R. as a vehicle when appropriate to resolve issues in cases.

AMICUS COMMITTEE

Karen Sendelbach – Chair

I am pleased to report another successful year for the amicus curiae committee. This year, we wrote three excellent amicus briefs. The first, *Derose*, involved the controversial issue of the validity of Michigan's grandparent visitation statute after the U.S. Supreme Court *Troxel* decision. This required much debate in Council, and we submitted two briefs: a majority (urging the Michigan Supreme Court to find the statute unconstitutional) and a minority (urging it to be held constitutional).

The second brief was in the matter of *Rose v. Stokley*, a case where the constitutionality of the Michigan statute requiring fathers to pay the mother's confinement costs was raised. This matter is being heard before the 7 judge, special panel of the Court of Appeals, who specifically requested that the Family Law Council submit an amicus brief. Importantly, for the first time in the history of the Council, the Court granted the Council oral argument for the entire 30 minute period. I believe this reflects the Court's respect for both the opinions of Council and the briefs we submit.

I continue to be proud of the briefs submitted by the Committee, and honored to serve as its chair.

CLE COMMITTEE

Judith A. O'Donnell – Chair

CLE has had a very successful year. The seminars were well attended and covered a wide range of topics. The mid-winter seminar was held in conjunction with a cruise. The mid-summer seminar, held in Philadelphia, offered a unique opportunity to visit the many historic sites that were the birthplace of our democratic government. In addition, we offered a timely seminar on the new child support formula.

FAMILY SUPPORT COMMITTEE

Carlo Martina - Chair

The Family Support Committee was created in the fall of 2002 to address three issues of concern to family law practitioners; child support, spousal support, and the Friend of the Court. It is co-chaired by Carlo J. Martina and Jack Keiser.

The Committee's primary focus for the 2002-2003 Council year has been the Michigan Child Support Formula Manual, and the modifications necessary to make it more equitable in meeting the reasonable needs of children, while being fair to the payer and payee of support.

The Committee's work in that area began in the spring of 2002 when, after a lively debate following Sue Paletz's delivery of a lecture on the Shared Economic Responsibility Formula, it was decided that there was a need for an Ad Hoc Committee to evaluate the Michigan Child Support Manual's Shared Economic Responsibility Formula, and the harmful effect of its 128 day cliff. The Ad Hoc Committee was also to analyze the underlying methodology used to determine child support. Its findings were to be reported to the Council.

Once it was learned that the SCAO was already in the process of conducting its own review, with the efforts of PSI, Inc., it became clear that a position needed to be taken by the Family Law Council on a number of issues that were the subject of the PSI report, starting from the underlying basis for determining child support to the methods for adjustment of support when physical custodial duties are shared.

The Ad Hoc Committee meetings commenced on May 3, 2002 and continued throughout the summer, with a goal of having recommendations presented to the Council by October 2002.

Three interim reports were produced by the Committee and provided to the Council and members of the Family Law List Serve. The reports provided background information on how the SCAO initially arrived at the present system for determining child support, and the alternative methods existent, both then and now.

Contact was made by Committee members with the SCAO, Friend of the Court Advisory Committee, the Michigan Judicial Council, and the Friend of the Court Association. A questionnaire was posted on the Family Law List Serve, soliciting input from its participants.

Utilizing these varied sources of information, the Committee analyzed the PSI report and its recommendations, and provided Council with the Committee's position on the issues addressed by PSI.

Because the Family Law Council's first meeting in September was primarily designed to address the election process for membership, the Committee, now known as the Family Support Committee, presented its Final Report and Conclusions of the Family Law Council's Ad Hoc Committee to evaluate the Child Support Formula and the Shared Economic Responsibility Formula to the Family Law Council at its October 5, 2002 meeting. The Council voted on the recommendations of the Committee, and those recommendations as adopted by the Council, were submitted to John Ferry, Administrator, and William Bartels, Analyst, of the SCAO, on October 16, 2002.

In November, the Family Support Committee was given an advanced copy of the proposed 2003 Michigan Child Support Formula Manual, by Barbara Kelly, who had received it as course material for a training session designed for Friend of the Court personnel. Copies of the manual were distributed amount Committee members who met in December, reviewed the manual's contents, and on January 4, 2003, issued its Report and Recommendation of the Family Support Committee regarding the 2003 Michigan Child Support Formula Manual. The Committee's report was discussed at the Family Law Council January meeting. The Council voted to adopt the Committee's recommendations, and those recommendations were communicated to the SCAO, Mr. Ferry and Mr. Bartels. Additionally, the Council's position was presented directly to the SCAO Friend of the Court Advisory Committee.

Despite the Family Law Council's concerns with certain provisions of the 2003 Manual, the SCAO's Manual appeared to be headed for implementation in July of 2003.

Subsequent thereto, Chief Justice Maura Corrigan of the Michigan Supreme Court, announced that a decision had been made to postpone implementation of the 2003 Michigan Child support Formula Manual, until further public comment could be had on a number of significant, substantive issues.

In late April of 2003, the SCAO posted for public comment, the substantive changes it wished to make to the Manual, some of which reflect changes and apparent response to the concerns expressed by both the Family Law Council, and the AAML, among others. Many of the SCAO's proposed changes, however, remained the same.

The Family Support Committee, being the progeny of the child support, spousal support, and Friend of the Court Committee of the years past, will continue to monitor and report to Council SCAO actions regarding the Michigan Child Support Formula Manual. The Family Support Committee plans on conducting a review of concerns regarding the Friend of the Court. The Committee wants to see whether or not it may, in some way, assist in at least analyzing the problems faced by the Friend of the Court presently, and be in a position to provide Council with some helpful solutions. The Committee will also be working with the Open Justice Committee of the State Bar, which is analyzing the possibility of a State-wide guideline for spousal support.

This Committee, co-chaired by Carlo J. Martina and Jack Keiser, looks to individuals and the Council for input as to potential subjects for its evaluation. The 2002-2003 session has been a most interesting one, and posed a challenge for the Council and the Committee to keep up with the various changes occurring on both the legislative as well as State Court Administrative level.

The Family Support Committee, with continued support of its core members, Ross Stancati, Nina Abrams, Laurel Stuart Fink and Susan Paletz, and regular guest attendees such as Kent Weichmann, Craig Ross, Roland Fancher, Neil Coleman, Murray Davis and others, look forward to meeting any future issues brought before it. It is anticipated that the 2003-2004 session of the Council will be equally exciting.

COURT RULES COMMITTEE

Elizabeth Sadowski – Chair

The Court Rules Committee had an especially active year due to the enormous amount of proposed changes to court rules and rules of evidence effecting family law practice. Recently we have seen critical change in MRE 703, which requires that the bases of experts' opinion be in evidence. The prior rule allowed the court to exercise its discretion in this regard. This rule change is sure to have a profound impact on the practice of family law in many cases. At this writing, the Supreme Court is considering changing MRE 702, which will impose a mandatory gatekeeper function on courts, as well as a number of court rules relevant to domestic relations practice, and it is anticipated that the committee will play a vocal part in the public hearing scheduled in June before the Supreme Court.

FAMILY COURT FORUM COMMITTEE

Barbara Kelly – Chair

The fourth annual Family Court Forum was held in Ann Arbor Michigan on June 6, 2003. The program discussed the latest psychological research relevant to custody determinations, with Dr. Pamela Ludolph as the main speaker. There was also a panel discussion with Dr. Ludolph, Judge John Fields and Attorney Meri Anne Stowe after the lecture.

Once again the participants included representatives from various professions working in the family law field, including judges, attorneys, Friend of the Court personnel, mediators and therapists. The Forum was funded by donations from several professional organizations and various private law firms. The success of the Forum in the past has made securing donations a relatively easy task.

2002-2003 LEGISLATIVE COMMITTEE REPORT

Lisa Sullivan - Chair

I. BILLS REVIEWED AND BROUGHT TO COUNCIL FOR ACTION

During the 2002-2003 Session for the Family Law Section, the Legislation Committee met on a regular basis to review all bills introduced by the Legislature which involve Family Law issues. Many of these bills were brought before Council for debate and votes. The Section'

s positions were then communicated to the bill's sponsors, appropriate committee chairs, and the State Bar of Michigan.

II POSITION PAPERS

The Family Law Section drafted, approved, and distributed position papers on legislative issues, such as paternity fraud and the use of CASA workers.

III TESTIMONY

The Family Law Section appeared before House and Senate Committees to communicate the Section's position and recommendation on legislative proposals.

IV MEETINGS OUTSIDE THE COMMITTEE

The Family Law Section met with representatives from the Legislature, Judiciary and Executive Branches to discuss proposals which impact the practice of family law. Many of these meetings were to discuss informal proposals to obtain the Section's feedback before the proposals were introduced.

LOBBYING/PAC COMMITTEE

Neil Colman – Chair

Once again our lobbyist, William Kandler, worked closely with the Family Law Council and the Legislation Committee, Chaired by Lisa Sullivan, to advance the interests of family law practitioners with the state legislature. The Family Law Section's efforts have been rewarded on many occasions, especially with requests for our opinion on language in proposed legislation.

The Family Law PAC made campaign contributions to legislators who have been receptive to Family Law Section concerns and who have promoted Section goals. Contributions to PAC are important, appreciated and encouraged.

MEMBERSHIP COMMITTEE REPORT

_____ Karen Sendelbach - Chair

There are currently 2793 total Section members; 139 of those are free members, 27 law students, 8 legal assistants.

MID-SUMMER AND MID-WINTER SEMINAR COMMITTEE REPORT

_____ Fred Morganroth – Chair

In February, 2003 we conducted a state of the art seminar of matrimonial law on the high seas when participants learned from many experts and also engaged in a 7 day cruise in the Caribbean.

The Mid-Summer seminar will be held at the Ritz Carlton in Philadelphia, Pennsylvania in July, 2003 where participants will enjoy two days of seminars and learn about the early days of America and the historical aspects of this wonderful City.

TAXATION/QDRO COMMITTEE REPORT

Joseph Cunningham - Chair

Early last summer, three members of the Committee gave a presentation to Michigan Legal Aid Poverty Program (MILAPP) on the preparation of qualified domestic relations orders (QDROs). This was the "kick-off" of an initiative through which members of our Committee will provide assistance to legal aid attorneys. The objectives of the program are as follows:

- To instruct legal aid attorneys on various aspects of QDRO preparation, particularly "traps for the unwary".
- To provide resource and reference materials on QDROs to legal aid offices.
- To provide consulting services to legal aid attorneys when they have questions or need guidance in the preparation of QDROs.
- To prepare QDROs for legal aid attorneys where such involves complications beyond their expertise.

This program, including the use of members of our Committee for consulting or the actual preparation of QDROs, was launched this past fall and has met with the approval of all involved. Lynelle Morgan has been the primary coordinator of this program with our Committee on behalf of MILAPP.

The Committee was informed of complaints filed with the State Bar of Michigan Unauthorized Practice of Law Committee (UPLC) regarding the preparation of QDROs by non-attorneys. The Committee reviewed pertinent substantive materials regarding the issue of whether the preparation of QDROs constitutes the practice of law. Further, the Committee exchanged correspondence and conferred by telephone with Victoria Kremski, of the UPLC, regarding a resolution to this matter. In the course of these deliberations, Committee members noted, inter alia, the following:

- Some of the most capable, knowledgeable preparers of QDROs are non-lawyers.
- Many lawyers who delegate QDRO preparation to others, including non-lawyers, inappropriately shirk responsibility for ensuring that the terms of the QDROs are consistent with those negotiated in the divorce settlement.
- Many divorced individuals choose not to involve the services of their divorce counsel with respect to preparation of the QDRO.

A tentative resolution of the issue was agreed to during the Committee's conference with Ms. Kremiski while we noted there is more work to be done on relatively minor, tangential issues.

Further, the results of this endeavor will include wide spread publication to divorce lawyers of their responsibility with respect to QDROs that remains with them regardless of "subcontracting" the QDRO preparation.

We also decided we would publish a "model" engagement letter to be used for the preparation of QDRO and also a model transmittal letter sent by the QDRO preparer that accompanies the QDRO, indicating that the QDRO is being prepared for review and approval by divorce counsel.