**March 18, 2016 Minutes**

**Executive Council Meeting**

**Family Law Section**

Present: Jen Feingold, Todd Stahly, David Littman, Kristi Wells, Peggy Walker, Jamie Rutten, Ray Weaver, Steve Epstein, Martin Brown, Diana Powell (guest), Bonnie Schriner, Mark Chapleau, Helen Shreves, Joan McWilliams, Richard Zuber, John Haas, Jerremy Ramp, Marie Moses, Laura Page, Ann Gushurst, Terri Harrington, Bill King, Brenda Storey, Tina Patierno (guest).

On phone: Russell Murray, Mark Chapelau, John Eckelberry, Robin Beattie, Kevin Sidel, Anne Gill, Trish Cooper, John Haas, Joe Pickard, and David Littman.

Excused: Laura Ammarell, Rebecca Alexander, Meredith Cord, Mike DiManna, Jennifer Rice, Deb Andersen

February minutes – Bonnie provides revisions; Jen moves to approve; Kristi seconds – minutes approved.

**Officer Reports**:

**Todd Stahly (Chair):**  LLLT – reminder about April 22nd meeting about the Navigator program from New York program.

Todd recently had lunch with Judge Tow and Judge Anderson who expressed their appreciation to the Section. Even though Judge Anderson is rotating out, she would love to still be involved in the section.

**Laura Page (Chair-Elect):** FLI is nearly done. Brochure should be available next month.

**Jennifer Feingold (Secretary**): Email absences to jennifer@feingoldhorton.com. Arapahoe County Officers Brown Bag report – see minutes in the packet.

**Robin Beattie (Treasurer):** Budget looks good. Terri moves to approve, Helen seconds, and motion carries.

**Trish Cooper (Immediate Past Chair):** Ballots should be coming out in May.

**Committee Reports:**

**Amicus:**  Johnson & Johnson – Christina Gomez (Holland & Hart did the brief) – court has invited the Section to file an amicus brief before April 18. Facts are there was a divorce in 1982 wherein a child support order entered for $400/mo. Father paid all but one year for a total arrears of $4800. Mother later moved for a judgment on the arrears with interest at 12% compounded annually which resulted in a total judgment of approximately $46,000. The Court of Appeals said he owes the $4800 as principal and latches was not a defense to the accrual of child support interest even though it was being imposed from 1995 to 2015. $46,000. The issue on cert is did the Court of Appeals err as a matter of law that latches can never apply as a defense in a child support interest matter?

Do we vote in favor of applying latches to interest in the presence of extraordinary facts and circumstances and where the circumstances of the child is not jeopardized?

Discussion was had. Ann opined that to treat arrearages as if it is solely a debtor/creditor is wrong. The well-being of the parent financially who was deprived of the support, not just the child, should be considered and the 12% interest rate is purposefully punitive given the statutory interest rate and prime interest rate are lower. Ann offered that the Section should advance the notion that child support arrears are different than your typical creditor/debtor issues.

Trish suggested we do the amicus brief with the position that latches is not precluded with regard to child support interest and the standard to be applied is discretionary to better balance the inequity that can arise in a case such as this.

Brenda disagrees and states child support is support for the child. The concern is opening the door now that people will start arguing latches should apply after 2 or 3 years which may very well deprive a child of support.

Martin offered that CSE doesn’t even collect interest so why are we allowing this here for a private party? John agrees that it is the wrong message when the CSE isn’t collecting interest.

Anne and Bonnie explained that there is a 1960’s case that holds that latches is not available on a child support interest case versus the case last year that held in a civil case, latches can apply on an equity basis. The issue is reconciling these two cases for the Supreme Court. Anne likes making the possibility available but only under extreme circumstances such as here when the child is 36 and there is arguably no harm to the child.

Ray suggested the Section oppose having latches washed away and that it should not apply. Should we contact CSE?

Further discussion that family law are courts of equity by nature and should be in favor of allowing the court discretion to apply equitable considerations such as latches.

Steve offered that latches should be a defense to interest. Is this something like ‘special’ or ‘super’ latches or is that something different? Once a child turns 19, does it go to the child or is it still a constructive for the parent who was owed the support?

Equitable estoppel versus latches are different animals. Regardless of latches, the court has other means such as equitable estoppel in which they can apply discretion.

Motion: If the court considers factors that apply, it should consider the financial circumstances of the parent that did not receive support from the payor and the discrepancy between interest rates of 12% and the prevailing interest rates of the economy.

It was suggested that the brief includes the legislative history on interests rate, which used to be 16% and- the whole idea was that it is punitive to ensure child support payments are made.

Brenda makes a friendly amendment that the section submit an amicus brief that latches will never apply to child support interest. Bonnie seconds.

Vote in favor – 6, remainder vote to oppose. Motion fails.

Bonnie moves that the amicus brief take the position that latches can be applied to the collection of child support arrears intersect and that while there are the usual latches elements, the court can also consider in the presence of extraordinary facts or compelling circumstances, and where the impact of nonpayment of interest on the child’s welfare and the welfare of the recipient is considered by the court. Helen seconds.

Vote in favor 15, remainder oppose; Motion carries.

**Legislative Committee:** Marie reports:

Civil Unions Bill – this is designed to be as noncontroversial as possible and tries to meld the process of people who were in civil unions that can now be married. This provides a process for converting the civil union into a marriage. Bigamy issues were raised because they are still on the books. If you are in a civil union with one person and then marry another this is still considered bigamy. The Legislative Committee recommends we support this. LPC preapproved our request to support the bill if we do.

Page 6 of the bill references C.R.S. 18-6-201 that discusses bigamy. This is the old statute but this is not being addressed alongside the civil union matter.

Bonnie moves to support the bill, Jen seconds. 4 opposed (bigamy based not civil union based), motion carries.

HB 13-11 Monetary Judgments – seemingly innocuous and looks at Title 18. The idea is basically to eliminate debtor’s prison. However, the section should make clear that this bill should NOT apply to 107 contempt proceedings.

On page 5, subparagraphs (d), (e) or (f) should clearly state that as it relates to actions pursuant to this section it shall NOT apply to Rule 107 contempt proceedings.

Marie moves to approve, Bonnie seconds. Motion carries.

SB 149 – 14-10-128.5 if a party applies to vacate, modify or correct an arbiter’s award based on a de novo review, the court must consider whether the decision:

1. Failed to consider the best interests of child;
2. Failed to consider whether domestic violence was involved;
3. Applied a law, rule or legal code of a jurisdiction outside of the US and territory that is repugnant to this dignity of the state;
4. Failed to grant the parties the same fundamental constitutional rights guaranteed by the constitution including due process, equal protection, and free speech and;
5. Failed to consider whether the determination of apr or related issues might place the child in substantial risk of harm.

Discussion that the concept of this bill turns arbitration on its head – which may not be a bad thing when you have cases where arbiter is not an attorney.

There is a recent case that redefines what a de novo hearing is.

This Bill is already through the Senate and is getting teed up in the House. The Committee requested that a meeting be set up because there is concern that no time has been provided to voice concern as this was just given to the committee this week. It is sponsored by the most conservative of representatives. This was flagged today at LPC for the same reason. The ADR section has not yet taken a position yet due to timing. Right now arbitration is a lawless land and this puts parameters on it that otherwise would not exist.

First, do we want 14-10-128.5 to apply to arbitration under Title 13 and, if so, are these the considerations we want applied?

Discussion was had regarding the level of complexity regarding how this may affect Title 13 arbitration and requires additional thought and discussion. There is concern that there is general support for the idea that under 14-10-128.5, Colorado law should apply but is that contrary to the arbitration statutes?

Marie requests general authority to oppose this bill as drafted because it is ambiguous and inartfully drafted but allow for discussion with sponsors to see if we can work with them on a bigger period of study to work on redrafting so that we can have additional discussion and consensus. Bonnie moves, Helen seconds. 2 opposed, Motion carries.

The name change bill will go through as it is currently drafted.

The child support commission bill incorporated changes as discussed at the last meeting.

Special thanks to Marie for her very hard work on the legislative committee.

**Simplified Family Claims Court** – there is a data collection letter in the EC packet that was prepared in response to addressing the data we receive regarding the number of pro se parties. The proposal is to look at Denver cases from 2014. It is a lengthy process – the last time something similar was done was with ISLES and it took 8 months to even get information. SCAO wants a letter explaining the purpose and process for the data collection.

Bill asked if there is a process through ODRAC looking at this? We may want to talk to Laurie Macativsh because they are starting to code this as well. Might this save some time? Their next meeting is May 9th.

Helen explains this proposal is a little different because we would like more in depth data.

Helen moves to approve the letter; Martin seconded. Martin has one change – add ‘licensed’ to LLLT. Motion carries. Thanks to Helen and Todd for preparing this.

**Budget Committee/Grant –** Up until last year we approved $7500 for FLI. Last year Gary asked for $10,000 which we granted with the promise that the cost for attendance would be kept as low as possible. CLE submitted a 2016 grant request also for $10,000. Kevin asked CLE for the same commitment – that some of the funds would be used to keep costs low. Gary’s first priority is to assist judicial officers if the CJI funds don’t come through, then to provide costs low for MVL lawyers, then tuition assistance for scholarships and then depending on what is left they would try to keep costs lower for section members and ensure there is a gap between section and non-section members to provide a benefit to section members. Budget committee has not yet had a chance to meet.

Laura is talking to CJI and they do not meet until April 15. They are considering financial support for tuition but not likely lodging or other expenses. Laura is working with Gary on this with regard to lodging to see if CJI will cover tuition, we can probably offer more lodging for judges.

Kevin moved to approve the grant request. Bonnie seconded.

Robin makes a friendly amendment to approve only if no CJI funds are granted, but if CJI gives money, then we should give $7500 as we used to.

CJI is clear that they may offer scholarships only but nothing else. Last year, CJI didn’t provide notification until May which then in turn led to a decrease in applications.

Robin withdraws her friendly amendment.

Vote passes unanimously.

CBA asked the section if we wished to keep dues as is or increase them and decide by April 1st. Committee recommends to leave them as is now and revisit this over the summer when we have a full year of financials complete.

Adams County Brown Bag

Filings are up and they need more resources which they are looking at now. Judge Anderson will be rotating out of domestic.

With pro se parties, Judge Quick will hand out an informational sheet to them. They are considering whether mandatory mediation will help. They have 3 ENE teams, one is Spanish speaking. They do not like CFIs unless there are DV or abuse issues. Some discussion about LLLTs and non-attorney mediators. Gripes about parties coming in without appraisals.

They would love if the table of contents for the bench bar book be on the cover.

Urgent need to talk with Kara Martin about education for judges – they are denying requests for CFI/PRE and educating these judges about the nuances of these issues.

**Ethics**:

Joan – Rule 2.1 of the RPC; proposed language changes are included in the EC packet. This was looked at years ago and shut down because there was concern over potential causes of actions that could be raised by children in later years for wrongs. Recent case came out that held third parties cannot sue so this may be the right time to revisit this as it pertains to the advisor role only.

Steve raised concerns as to whether this creates a duty to the child. Joan says no, duty is still to the client, but just creates the responsibility to *advise* the client.

Discussion with Judge Cross, Moss, and McClean and there is a lot of support behind this proposal.

Discussed was had and it was suggested that the proposal replace ‘divorce’ with: In an action involving the allocation of parental rights and responsibilities for a minor child(ren)….and reducing “parental conflict.”

If approved, Joan will go to the ethics committee.

Ann moves, Helen seconds with thanks to Joan for heading this up. Motion passes unanimously.

**18th Judicial District:** Similar to what officers have conveyed. Continue to receive some concerns and feedback.

Adjourn.