**October 16, 2015 Minutes**

**Executive Council Meeting**

**Family Law Section**

Present: Jen Feingold, Kristi Wells, Rebecca Alexander, Robin Beattie, Jerremy Ramp, Bonnie Schriner, Ray Weaver, Joan McWilliams, Bill King, Martin Brown, Halleh Omidi, Katie Ahles, Marie Moses, Trish Cooper, Todd Stahly

On phone: Meredith Cord, Peggy Walker, Marc Chapleau, Kevin Sidel, John Eckelberry, Deb Andersen

Excused: Laura Page, Laura Ammarell, Jamie Rutten, Anne Gill, Jennifer Rice, Steve Epstein, John Haas, Ann Gushurst

Unexcused:

Guests: Diana Powell

September minutes - Rebecca moves to approve without any changes; Bonnie seconded; approved unanimously.

**Officer Reports**:

**Todd Stahly (Chair):**

Email reports to Todd one week before the meeting.

Judicial Nomination Commission information – 34 vacancies. Applications due October 31st. Some attorney vacancies throughout the state. Open slots disseminated for the section to review and get involved.

LLLT’s – Today the section needs to take a position on the LLLT’s for the CBA. Next LLLT/Supreme Court commission meeting will be October 30th. The goal is to increase the FLS presence in the dialogue and process.

Halleh Omidi (McGuane & Hogan) – young attorney reviewed the LLLT information and expresses concern about consumer protection and issue spotting with potential and current clients on issues that the clients are seeking counsel and expertise on. Concern is LLLTs may not be able to competently spot these issues (i.e. military pension may not show up anywhere and someone who is not trained would not spot this issue) – especially without adequate supervision. Concern over supervision requirements. Also, what happens when cases fall apart at the last minute – LLLTs cannot go to the court so how does this negatively impact the clients and their interests? Concern over the list of what LLLTs can/cannot do that do not allow for thorough representation that consumers/clients will not know. Finally, does this create unfair competition to licensed attorneys?

Katie Alice (law clerk at The Woody Law Firm) – will become an associate in November. Agrees with Halleh’s concerns. Concern over how they define “simple cases,” which is a misnomer in this area of practice. Concern over how this is addressed? Not enough data from WA to fully understand the impact of this program. CO should perhaps take more time to get more data before deciding on how much time to spend on implementing a similar program in CO. Thank you to Halleh and Katie.

Jim Bailey (on behalf of Todd) – access to justice problem is real and this would contribute to solving the problem. LLLTs would increase legal services to low and moderate means clients. But would this not also negatively impact attorneys but whose responsibility to protect consumers?

Open Discussion:

Concern shared that this will happen one way or another so the section needs to consider how to work with this system.

Maybe one angle is related to the fiscal issues involved – WA’s bar put up a tremendous amount of money to do this program. CBA is not in the same position. Financial impact both ways on Attorney Regulation and law schools but concern expressed over whether the financial gain for some institutions that see this as a ‘money maker’ outweighs the consumer protection concerns.

Issue is we need solutions now. The Court dockets are filled with significantly under or unrepresented litigants throughout the state. The judiciary is asking and imploring us for help.

WA – requires 3000 hours of training by someone supervising. What about requirements once they are licensed? Ethical requirements? Insurance coverage?

Consideration that LLLTs can be in a variety of areas (on their own, in the courts, with a firm) and it will be difficult to regulate this profession with any uniformity. Perhaps warning labels about what the consumer is getting need to be mandated (i.e. “This is not a lawyer and cannot provide legal advice…..”)

Concern expressed that this is really a pro se issue not a pro bono issue. The Modest Means committee did a lot of hard work – perhaps that committee’s work needs to be beefed up to address this issue.

Suggestion that there be more collaboration with young lawyers to help accomplish same thing. Other suggestion for “small claims” court dedicated to family law.

Prevailing issue is why is this a problem???

Suggestion to table the LLLT concept to truly look at other solutions. LLLTs are a diversion for the CBA as opposed to more closely looking at modest means issues and other ways to solve the problem because LLLTs will not solve this problem.

Continued concerns regarding what are standards for the 3000 hours of supervision? What are the checks/balances there?

Overarching concern with LLLTs is the unauthorized practice of law.

Suggestions:

Is the FLS willing to form a young lawyer committee instead to address this – maybe 4 section members to meet with Justice Rice and Coyle to determine the exact need the LLLTs would be “fixing” and then go back to CBA to work closely with them on alternative solutions?

DU and CU both have resident apprentice programs in place. But not enough law firms are taking advantage of these programs. How to increase use of these programs?

Really this is a two pronged issue: 1.) Low income/modest means litigants and 2.) pro se litigants. The pro se litigant piece is really a PR/marketing issue for all of the FLS/CBA. Maybe we need to work with attorney regulation through a subcommittee regrading changing requirements of requisite pro bono hours. Perhaps recertify a requirement for pro bono work for all attorneys on an annual basis to address modest means issue. Perhaps this needs to be mandated by the CBA/Attorney Regulation. The reality is that even with training, supervision, etc. for LLLTs takes away from billing model of law firms same as if a certain amount of pro bono hours were required each year. If pro bono requirements were across the board, law firm models and billing expectations would have to change and reform as well.

The PR problem needs to be addressed and discussed. This is the issue that begs to be addressed regarding the pro se litigants and the access to justice issue is a modest means/low income issue. It should not be confused with pro se litigants who simply do not want to hire attorneys. That is a PR issue.

If attorneys can’t figure out what LLLTs can/cannot do, how can the consumer?

Modify/strengthen list of “issues” that a LLLT cannot take? No data on this issue from WA.

Helen – part of super committee – meets every other month.

Martin makes a Motion: Section does not agree with the LLLT proposal due to too little information available and need additional time so we can review after more data is available.

Marie makes a friendly amendment that more specificity is needed because the CBA needs the section to take a leadership position on this issue.

Rebecca makes a friendly amendment: The LLLTs as proposed is not designed to address the issue it purports to address with regard to the two issues – modest means and pro se litigants – and would be more prudent since the concern is that the risk to consumers outweighs the benefits of the program is to review with more information and data in years to come as it is otherwise premature. The Section should come up with a list of other ideas/suggestions that were discussed today in terms of looking at other solutions, including a strategic plan for increased marketing and advertising.

Discussion evolves; motion is rescinded.

Trish moves that: The EC vote in factor of the CBA taking a position formally opposing the creation of the LLLT profession in CO in family law matters because 1.) The potential harm to consumers outweighs any potential benefit of the program and 2.) Such a program may negatively impact the profession and the further licensing of non-attorneys in this matter does not adequately address the issue it seeks to address as between modest means/low income litigants and pro se litigants. More time is necessary to study the WA model for adequate data concerning the usefulness and effectiveness of the LLLT program but in time and with more data, the consideration can be more thoughtful. The FLS is committed to revisiting and discussing mandatory pro bono requirements and/or programs with young lawyers to provide training or structure to provide the same resources as the LLLT is designed to do to address the concerns.

Bonnie seconded.

Friendly amendment – to include a list of other solutions by separate motion.

Vote – 1 opposed; Motion carries.

One other consideration is to how to connect FLS young lawyers with the CBA young lawyers. Katie/Halleh to connect with Zach with CBA Young lawyers to collaborate.

Marie moves that: If the LLLT proposal moves forward over our opposition, the FLS proposes the following changes be addressed:

1. Enhanced education requirements;
2. Enhanced insurance requirements
3. Enhanced standards and requirements for the immediacy and quality of attorney supervision for those 3000 hours and
4. Relicensing and continuing education requirements be carefully crafted and enhanced;
5. Ongoing attorney supervision requirements be implemented.

Helen seconded. Approved unanimously.

**Laura Page (Chair-Elect):** Status of FLI -meeting with my committee the following week to decide on presentations, etc.  Looking at different keynote speakers/options.  Nothing in stone yet.  Contacts with Justice Sotomayor fell through so that’s not looking like it will happen.  Will have a lot more information for November meeting.

**Jennifer Feingold (Secretary**): Email absences to jennifer@feingoldhorton.com.

**Robin Beattie (Treasurer):** Budget on track.

**Trish Cooper (Immediate Past Chair):** No report.

**Committee Reports:**

**Judicial Liaison:** Rebecca – assignments being passed out. Responsibility of the liaisons it to communicate with the district about their local practices and resources available. Instructions given as to how to access and update the website. Each liaison should speak with the district contact to make sure the content and information is up to date so we can best be serving our members. Once you get the information, Robin updates the website so please email her the updates and copy Rebecca by email. Initial contact must be made by December 31st. This will help us evaluate whether or not to continue with this committee.

Bill – please mention to the districts about the Special Master program as well. The link to special masters is also included on the FLS website.

Kudos to Rebecca for her organization on this committee.

**Legislative Committee:** Marie reports that the Uniform Trust Decanting Act meetings continue. The FLS has 2 problems: 1) The Section does not want the existence of the decanting statute to change the law under Balanson with regard to changing the nature of the trust interest. Marie has been successful in getting that addressed and expects the scope paragraph will include “this act….does not alter a beneficial interest…in the context in a dissolution matter. 2) The actual exercise of a decanting power should not be exercised for divorce planning (i.e. someone is thinking I may be getting divorced in a year so I should contact my trust attorney to decant the trust out of my name now) – there is much more pushback from the committee on this issue.

Marie and the committee continue to explore all options such as a timeline that can be introduced to help address this issue? Or when a trustee proposes a decanting and notice is provided to beneficiaries, can we add spouses to notice requirements? A lot of pushback on these suggestions so far.

Next week there is a uniform law commission meeting. The trust section will ask to wait to run the bill until next year due to the length the process is taking. But unclear at this point whether or not that will happen. There is still time to address this issue within the CBA. The FLS should be thinking if we are not able to get certain edits to this bill pursuant to the second issue, do we want to split the bar and as a section oppose the bill? Just something to consider for future discussions and the issue is trusts are created across the country. How can CO preserve family law while addressing the trust issues around the country?

**CJD Mediator Standards:**  Current status – still no final draft; not sure what the delay is. Part of it is believed to relate to the complaint process so the whole process is slowed. ODRAC committee – some folks are going outside the committee to start planning a training in April in CO. The education will be pursuant to the Board of Governors 2007 report with regard to UPL which really says you *can* practice law as non-lawyer. This is the continuing concern and liability as it will only relate to *willful and wanton conduct* under that standard. Unclear as to Justice Rice’s position.

Trish still working with Bill and Helen to update the letter she previously drafted with the update on behalf of the section to Justice Rice. Holly Panetta and Judge Pleugh to write article for the Colorado Lawyer explaining the credentialing need/process.

FLS supports education but concern is similar to the LLLT program from a consumer protection standpoint.

**18th Judicial District:** Comments have been received about Magistrate White’s CMO from senior members of the CBA. Committee should contact Lesleigh Monahan who, on behalf of AAML, is presenting the CMO Best practices paper today with the Supreme Court Family Law committee.

Adjourn.