**February 19, 2016 Minutes**

**Executive Council Meeting**

**Family Law Section**

Present: Jen Feingold, Todd Stahly, David Littman, Trish Cooper, Kristi Wells, Peggy Walker, Jamie Rutten, Ray Weaver, Steve Epstein, Martin Brown, Joe Pickard, Diana Powell (guest), Bonnie Schriner, Mark Chapleau, Laura Ammarell, Rebecca Alexander, Helen Shreves, Joan McWilliams, Richard Zuber, John Haas, Jeremy ramp, Marie Moses

On phone: Meredith Cord, Terri Harrington, Deb Andersen,

Excused: Robin Beattie, Laura Page, Bill King, Michael DiManna, Kevin Sidel, John Eckelberry, Jennifer Rice

January minutes – revisions made. Todd moves to approve with changes, Jen seconded; approved unanimously.

**Officer Reports**:

**Todd Stahly (Chair):**  Thank you to Ann Gushurst for getting the newsletter out – really great information. Todd had lunch in Adams County with Judge Anderson and Judge Tow – they really appreciate the section. They want to work with closely with us on any Adams County issues so if there are any, please let Todd know.

LLLT – last meeting was in January. Committee is morphing very quickly. The concerns are advance communication and things are happening more quickly than time allows under the CBA rules. The committee is now looking at a “navigator” position which is essentially a glorified Sherlock, such as individuals used in NY. Committee discussed possibility that focus should not be just on domestic but should look at LLLT’s in context of evictions. The Section’s concern is it creates LLLTs outside of family law and then the LLLT concept is back doored without the section’s input. A “navigator” walks with a party into the courtroom, maybe sits with them but not sure exactly what this looks like. CA is also adopting something similar and these models are being monitored.

Next meeting April 22, 2016 at 2:00 pm at Ralph Carr. The NY delegate will be there to discuss what a ‘navigator’ is.

Discussion was had. Should the Section get on the offensive and collaborate with other areas of law? Decision to keep monitoring this for now.

Barristers Ball is in April 2016. Cost is $3250 for a table. Discussion was had about 1) FLS sponsoring a table and 2) who gets to go.

Motion to sponsor a table with notice to the section for a lottery.

Friendly amendment to include emphasis on those who have taken time with a MVL case in the last year or in the next 6 months. David moves to approve, Trish seconds. Motion carries. Notice to go out to Section.

**Laura Page (Chair-Elect):** FLI – Laura Ammarell reports nearly all speakers are confirmed and the committee is finalizing the schedule. Some big speakers will be there and there will be exciting new topics so it’s going to be a great program.

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

**Robin Beattie (Treasurer):** Balance is higher than it’s been and everything is on track. Todd moves for approval of the budget, Jen seconds. Budget approved unanimously.

**Trish Cooper (Immediate Past Chair):** Elections – nomination forms will be going out soon. Goal is notification to be earlier this year than in years past to those that run for council. By-law revisions went out yesterday – section needs to vote.

**Committee Reports:**

**Amicus:** Bonnie reports Tina Patierno, Luke Abraham and Courtney McConomy have joined the committee.

Currently looking at the retroactivity of gay marriage issue. DeLaurentis (sp?) and Palmer (COA) – there was a commitment ceremony in CO and a child conceived by ART. Question is what kind of standing does non-bio parent have? There was no divorce because there was no marriage.

COA has ability to determine standing under C.R.S. 14-10-123 and doesn’t have to address the marriage part so we do not need to weigh in right now on whether common law gay marriage should exist.

**Legislative Committee:** Marie reports

16 bills have been introduced that the Section is monitoring. 7 bills that are being actively working on.

Ombudsman exclusion from reach of subpoenas for DR cases. Success – they removed that language.

HB 1085 – Returning to proper name after Decree – this is a second bite at the apple at changing name after the Decree. The Section liked the concept but the issue was could you do it ex parte? Marie testified at committee hearing but notice is needed and met with an hour with the bill supervisor. Sponsored by representative in Grand Junction. Bill supervisor said no – no amendments and will move forward with the bill including the ex parte component.

HB 1110 – parents bills of right. Hearing on 2/29 – this morning the legislative policy committee gave approval for Section to actively oppose the bill. The section voted to oppose the bill. Discussion about how vocal to be as it is suspected the bill will die. Concern about PR issues related to the CBA opposing a parents’ rights bill which this really is not what it appears to be.

Decanting bill was introduced. CBA voted this morning to support it because the T&E section gave us an amendment we can live with.

Canadian DV bill will be going forward.

HB 1165 – Changes to Child Support Commission. Legislative committee generally supports the proposed changes. Allows agencies to discovery additional sources of income that they can attach to (i.e. insurance claims, etc.) Changes to income adjustment when there are multiple co-parents – if you have a child support order that exceeds the guidelines you are capped at the guidelines. Changing reasonable costs of medical costs – unclear as to exactly what this means. Annual exchange of information will become *shall* instead of *may*. Limiting time period for seeking retro child support based upon a change of residence to 5 years SOL. Notice to possible/presumptive fathers.

The concern is the bill summary where it says “an amendment to the definition of shared physical care so that the actual time is considered rather than number of overnight…” Would this require an analysis of ALL time each parent spends with the child – how is this possible? Do we count hours? Marie spoke to Gina Weitzenkorn who sits on the commission who explained the intent is to address the situation where a parent is providing daycare all day and then other parent picks up kids just for the overnight. A factor for deviating is actual time spent not just overnights.

Proposal is made for the language to read the “amount of time a parent cares for the child, not just overnights, and during the other parents parenting time should be considered.” Even though the law already provides for deviation under this circumstance, the commission wants this specifically addressed.

Discussion was also had on the exchange of annual information – language says every year or less as appropriate: “Shall exchange financial information upon request no more than once a year or less often.” Pursuant to C.R.S. 14-10-1155(c) this includes income documentation minus a full sworn financial statement.

Motion that the legislative committee be permitted to seek LPC permission to support this bill with the changes regarding the exchange of financial information and deviation as discussed. Mark moves; Bonnie seconds.

Discussion about not limiting just to other parents parenting time but also situations where there is more a ‘day parent’ and a ‘night parent.’ This deviation is to be applied under unique circumstances (not as the summary explains). Add “or otherwise” to the end of the sentence.

This is NOT a change but just clarifying where deviation is permissible – where the number of overnights is not equitable and other time involves additional consideration which does not lead to an equitable result.

Vote: One opposed, Motion carries.

Senator Singer is going to introduce a bill – concerning court appointed professionals in DR cases. Constituents will try to dismantle the CFI/PRE system. Marie just got it. Brenda will head up the opposition to this bill.

Discussion was had with the concern that the draft includes language that no recommendations shall be made. This is a policy discussion. On one hand, we need recommendations to settle our cases and advise clients. On the other hand, recommendations on the ultimate issue should not be issued. Is there a distinction between CFI and PRE?

This bill came from an editorial from the Boulder Daily Camera trashing CFI reports.

Additional discussion was had that experts are used in a variety of cases – why would experts be limited for DR cases when they provide really helpful information to the cases? Time constraints already exist – parties won’t be given time and due process to present their cases in a day – the CFI/PRE process allows parties to present their case within the timeframes allotted by the court.

Marie proposes a straw poll that we convey that generally the section believes that recommendations should be issued. Majority of the section agrees with some objection.

**Simplified Family Claims Court** – Helen presents as an offshoot of the LLLT discussion, a small group has gotten together to study this issue and the statistics of pro se litigants. They have looked at one year – 2014 – and want to go through every case on ICCES and get accurate numbers – are the stats just at the date of filing or does it consider lawyers that enter their appearance during the case? They would like to study the parties’ SFS’ as to income.

Todd relays that individual jurisdictions are not helpful. SCAO looking at this as a public information piece.

The committee would like to see if small claims court can be expanded to family law cases? Why just limit to DR – why can’t small claims be expanded?

Stats to look for:

* Demographics
* Length of marriage
* Kids
* PRE/CFI
* Income
* Maint

**Bench Bar** – Cyndy is working with Judge Arkin on assignments – goal is to circulate by January 18th so everyone can start work.

**Ethics:** Joan McWilliams reports that there is an amendment to professional code rule 2.1 – “in a matter involving divorce and minor child an attorney should (not shall) advise client on adverse impact of the child.”

In the past, this was shot down because it places the attorney in conflict between the client and the child. Now, the use of *advisor* is different from the past and there was a recent case on this issue. Joan will have the language sent to the Section for discussion and review at the next meeting. Not sure if this is going to the Board of Governors, but this is a much more streamlined approach. This is similar to the AAML’s ‘Bounds of Advocacy.’

Best practices could lead to inclusion of such a statement in Fee Agreements.

**Education:** There will be a follow up on John Haas’ spoliation of evidence presentation at an upcoming luncheon. Any experiences with spoliation, please contact John.

**New Business:**

David Littman starts discussion about special recognition for long time work.

David also reports on the GAL committee which has really been struggling with the GAL role. Rule 17(c) is contradictory in its terms with regard to a fiduciary which is in conflict with a GALs role to act in someone’s best interests. GALs should not have a fiduciary duty and the committee is now looking at then who signs a SFS and Separation Agreement and who gives testimony. The committee has been meeting monthly. Jerremy Ramp and David are representing the section and it is a slow process. The number of cases involving people who lack capacity especially when there are no attorneys is on the rise. There are also issues related to GALs and conservators. GALs in a DR case may only be able to advise the court if a conservator should be appointed under the probate code.

Mediator credentialing – everything has been submitted to Justice Rice – all Helen has seen are negative responses on this.

18th judicial committee – will be meeting again.

Adjourn.