

## Minutes

### American Bar Association Family Law Section

### Council Meeting October 21, 2010

Attendees: Noel K. Tucker, Karl W. Topor, Bart Resnicoff, Lori W. Nelson, Melissa Avery, Bobbie Batley, Edward H. Newman, Linda J. Ravdin, Jean Crowe, Greg Ortiz, Scott Friedman, Maryann Foley, Randy Kessler, Debra Lehrmann, Mitchell Karpf, Timothy Walker, Marshall Wolf, Gregg Herman, Edith Osman Linda Elrod, Gail D. Baker, Kathleen A. Hogan, Peter M. Walzer, Jonathan Levine, Brian Karpf, Peter Ruane, Mary T. Vidas, Diana Gould-Saltman, Ken Raggio, Joe D. Moss, Allen M. Bailey, Rhonda F. Butterfield, Yolanda Sonnier, Virginia R. Dugan, Kendra Jollivet, Eric Fish, Henry DeWoskin, Ron Nelson, Allen Gary Palmer, Spencer Fox, Jeff Atkinson

**Minutes** from Council meeting in San Francisco were corrected- Linda Ravdin's name spelling was corrected, then Maryann Foley made a motion to approve minutes with the correction and Ed Newman Seconded- motion approved unanimously.

**Chair**, Debra Lehrmann welcomed everybody and thanked everybody for being in Ft. Worth. Debra went over logistics of meetings and events. Debra went over New Comers breakfast, black tie event and other event details.

#### **Report from Chair Elect-** Randy Kessler

Randy is planning his fall meeting Oct 26-29, 2011 in Las Vegas, NV and his spring meeting at the Eden Rock in South Beach, Florida in April 2012.

**Vice Chair-** Maryann Foley reported on her meeting plans: October 6-11, 2012 Philadelphia, Four Seasons Hotel. Maryann reported David Hofstein and Mary Vidas will be chairing her Host Committee in Philadelphia. Maryann's spring meeting will be in Anchorage, Alaska April 16-21, 2013 at Captain Cook Hotel \$125 night per room rate.

#### **House of Delegates Report:**

Tim Walker reported at the Annual meeting ABAFLS had no resolutions but was asked to co sponsor HR 111- remove all barriers to same sex marriage Indian reservations and passed unanimously.

Marshall Wolf reported Tab 2, under Legal Services Resolution 104- at the ABAFLS Council meeting the delegates advised Council that the Officers had met with Mike Greco and members of the litigation section about the proposed Civil Gideon resolution. During the officers meeting we negotiated some changes to the wording of the resolution and the officers recommended these changes to Council which passed at our Council meeting. At the House of Delegates meeting in

San Francisco the litigation section was forceful in arguing an amendment to their resolution-principle negotiator was Mike Greco-he refused to stand up and endorse the amendment and the amendment we wanted failed at the house. The Litigation section said they did not have the authority to amend the language from their co sponsors of the resolution.

Tim Walker reported that the Civil Gideon resolution passed but doubt that very many state legislatures will approve to provide counsel for all in custody disputes. Marshall agreed indicating his belief that very few states will follow.

It was further reported that any resolution for midyear meeting in Atlanta must be submitted by November 17<sup>th</sup> to Rules and Calendar. It was also reported The chair of House of Delegates, Linda Klein, has named Tim Walker to a select committee of house and in August 2011 Tim will start on the Board of Governors.

MaryAnn Foley- added with respect to Civil Gideon that the mechanics they have for getting attorneys for representing litigants in custody disputes will only be meeting four times year.

Marshall reported the states had to find money to pay civil Gideon lawyers and needed to fund a screening committee to determine qualifications.

Randy Kessler indicated it was clear FLS was willing to work to get the resolution passed and not simply worried about us not making enough money as attorneys.

Edith Osman- liaison to Board of Governors reported she is from Florida-she is a family lawyer and asked to be liaison to family law section. Edith reported the biggest issue is pension for ABA employees and also membership as the membership committee is coming up with tag lines and other tools-she is excited to be here she is the past president of the Florida bar. There was general discussion about website development and Randy Kessler said the website should have ability to find a lawyer in a certain state. ABA wants ground rules to change for outsiders to be able to access names of lawyers in a particular section and also ABA members. Could there be an opt in out provision was questioned?

Ken Raggio-mentioned in Texas there is a Class Action suit dealing with these issues.

**Resolution HB 2240-** Patricia Apy not here so defer to next meeting

Model Relocation of Children Act- Jeff Atkinson- Reporter and Debra Lehrmann is Chair. Jeff reported Act is intended to provide uniform procedures and factors for court to consider in relocation cases. Jeff asked for input from attorneys, psychologists, ABA members, AFCC, etc.

Some highlights of the act include: for a Change in residence and custody, the party seeking to relocate shall provide 45 days notice unless exigent circumstance, then 30 days to file notice of objection or to file for alternative resolution.

No presumption before or against relocation-both parties have burden of proof. The act protects victims of DV and child abuse. Transportation and child support may be modified

Drafting committee will be meeting Friday October 22, 2010 9:30AM-Noon

Question-Does Act distinguish between initial and post decree modifications?

Marshall Wolf asked when we would see a final draft- Debra says hoping to get the resolution before the House of Delegates in Toronto.

Diana Gould-Saltman asked the question is there an assumption the person is moving regardless of outcome?

Jeff says make an initial determination- is move going to be allowed or not- and if so, then determine the details.

Motion was made: The family law section council expresses its general support for the Model Relocation of Children Act and authorizes the section to seek support or co sponsorship of the act from other entities within the ABA.

Discussion was held and comments that motion is asking Council to support something that is not yet finished and hard to seek co sponsorship of a working draft.

Jean Crowe said Tennessee has a strong presumption of placement and in order to take child away there must be a showing of bad faith.

Trend in law is to focus on child's right says Debra-

Gregg Herman says is any change of residence count as a relocation and this is problematic to him.

Maryann Foley moved to table the motion until we have a final draft and seconded by Ed Newman and Motion unanimously passed.

#### **Greg Ortiz- Financial Report Tab 4A**

Net revenue was \$124,000 and investments improved \$64,000 but many unknowns. Officers and Council want these funds committed to important projects and things that have gone largely underfunded and unfunded in the past.

Motion was made to authorize the financial officer to earmark money necessary and to notify the officers for the potential financial needs for Families Matter, equipment budget, marketing, membership, mediation program, TAI, scholarship. Friendly amendment to fund Schwab Essay contest was made by Linda Elrod and accepted. Marshall seconded and unanimously passed.

Motion was made for staff to prepare, no later than December 1, 2010 an equipment wish list for capital improvements. Maryann Foley made the motion and it was seconded by Randy Kessler and unanimously approved.

Linda Elrod reported she is open to creative ideas for projects where e contest can go- put in plug for Schwab Dollar amounts of Schwab Essay contest.

A general discussion occurred regarding earmarks and that it is discretionary. How to designate money will be discussed by the Officers and recommended by the Financial Officer to fund certain categories.

Question was asked -What did ABA do to make it more difficult to make money with teleconferences- Greg says we must make a minimum number of attendees and they have a sliding scale between different ranges of participants.

**Families Matter**-Scott Friedman reported on the Action Plan written by the smaller Families Matter Committee

Ed Newman made a motion that Families Matter Committee be made a bylaws committee of ABAFLS.

Gregg Herman is Chair of Bylaws Committee and they are meeting Friday in Ft. Worth. The Bylaws Committee will consider this issue and they will discuss if a motion is appropriate.

**Uniform Law Commission**- Eric Fish reported and there was a general discussion about NCCUSL details.

Eric reported on the Military Custody and Visitation act-trying to harmonize 32 state laws that differ in this area.

Premarital and marital agreements- working with joint editorial board of probate as well for a model act.

All of this will be on NCCUSL website.

Meetings open to the public.

2 new developments:

Hague Maintenance Convention in 2008 takes ideas from UFISA treaty has been ratified by senate. All state must have changes by 2013.

UCCJEA changes-domestic and signatory

UCL- Uniform Collaborative Law Act brought in 2010 and it was withdrawn-feedback trying to legislate what should be court rules- act can be adopted by state in whole or partial or by court rule- limitation to family law only. Allow courts to control how to stay proceedings.

Deleted guardianships of minor from definition of family law.

NCCUSL-1892 uniform law commission Eric told story of NCCUSL and how it works-goal is to have national uniformity.

Debra- calling for volunteers of Hague Committee project.....

Advisors let Debra know by Wednesday if you want to volunteer.

Study committee on model tribal legislation and DV

Uniform Landlord and Tenant Act if you want to volunteer let Debra and Hilary know.

Need a CV or bio to be sent if volunteering.

**Trial Advocacy Institute-** reporting on behalf of TAI Board-Marshall Wolf

NITA gold standard of trial advocacy institutes- we will be partnering and program to be held at their facility outside of Denver and benefits of their trademark and publicity.

**Section Pro Bono Awards-**Jean Crowe

Julie Jacobson-new atty practicing in Tarrant Cty

Honorable Joe Moss-Bonham Texas-establish legal clinic in Bonham, TX and donated 942 hours to pro bono clients

Ken Fuller-Dallas, TX-5824 hours since 2002

**Membership-**Bobbie Batley

3.4% decrease in membership last year.-

Increase in student associates probably because it is a new category- she has participated in SOC membership calls.

Kathy Hogan- ABA website re design. She spoke to Bill McDonough- he says 18 months for the website to be completed.

Randy says they told us at SOC it would be ready in February, 2011.

Marketing Plan-we need to work with membership committee- Maryann Foley made a Motion for the section marketing plan of October 4, 2010 be reviewed by the member benefits

development committee with the purpose of bringing a review and recommendations of the feasibility to the officers prior to Spring Meeting 2011 and second by Marshall Wolf- unanimously approved

Diana Gould-Saltman- reported on the **ABA commission on Women in the Profession- Margaret Brent Award** but very few family law honorees in the past so please nominate.

**Family Advocate**-Kathleen Hogan- Tab # 10 current issue is Ethics

Need 18 months to have an issue prepared.

**Family Law Quarterly**- Linda Elrod reported FLQ was under budget but because issues were a little smaller this year.

Summer 2010 issue is now out

A second year in row an article from FLQ got picked as best in section for GP Solo-Board will meet Saturday morning in Ft. Worth-give Linda ideas for new article.

**Publications Board**- 10 people hope to have a good year.

Gregg Herman's book-"101+ Practical Solutions for the Family Lawyer, 3rd Edition".

Mark Chinn's book was released.

Debra served on Publications Board and says the people work really hard and thanked the Publications Board members.

Linda Ravdin says very important to have Amelia Stone at meetings to sell books and we do sell books.

**Long Range Plan**- defer to next meeting

**Scope Committee**- Virginia Dugan- this morning meeting with committee chairs and co chairs- they felt given their appointments but they don't know exactly what to do. They asked for a starter kit on what to do. Bobbie Batley and Virginia will work on starter kit.

**Young Lawyers Committee** -Brain Karpf reported YLD is trying to increase membership. Brian trying to get list serve going and a newsletter

Tried to organize a meet and greet

Maryann- who is young lawyer's chair- Peter Stambleck-how large is family law committee at YLD? Anybody who is on family law committee at YLD general discussion of this took place.

**40 hour Family Law Mediation training** in Boston- Debra Lehrmann reported this training had to be canceled this year. We are still working with our partner- process of doing an advanced training in spring and perhaps an advanced training program.

Motion was made for council to give **Deborah Akers Parry** an excuse for this meeting- Ed Newman made motion and Maryann Foley seconded and it unanimously approved

Scott Friedman mentioned Sponsorship and Finances and thanked everybody for tightening our belt financially in the last year.

Jean Crowe- movement towards doing something to **ABA staff pensions**. Resolution asking BOG to make every effort to consider all alternatives and to try the most not to hurt staff.

Discussion occurred about pension plan and Edith Osman from BOG

Motion- will be made at Council meeting the next day.

Council meeting tomorrow at Omni Hotel and we have a Debate on uniform child support guidelines

Motion to adjourn by Maryann Foley and seconded by Randy Kessler and approved- meeting adjourned.

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There was a misstatement or misunderstanding on a motion passed the day before in Council.

Motion to amend minutes from Day # 1 of Council to reflect Deborah Akers Parry be excused from past absences from Council- motion made by Scott Friedman and seconded by Tim Walker and Council unanimously approved.

Gregg Herman-reported on bylaws committee meeting about making Families Matter a bylaws committee. The Bylaws Committee agrees that Families Matter is an important concept and turning into a reality for the section. But perhaps Families Matter being made a Bylaws Committee is premature at this time.

The Bylaws contain a provision that to establish a committee of the section, it must done by the Chair, with approval of the section.

Motion was made that ABAFLS Council advise and consent that the Chair of the section make Families Matter a committee of the section. Motion was made by Scott Friedman and seconded by Lori Nelson- the motion unanimously approved.

Pension Plan for ABA staff was explained by Paula Nessel as to the current issues.

Motion was made by Jean Crowe and seconded by Melissa Avery- this motion unanimously passed.

The American Bar Association Family Law Section Council urges the Chair of Section Officer's Conference, to convey to the Board of Governors, to delay implementation of any material change to the detriment of the ABA staff's retirement benefits, until there has been a thorough review of the data upon which the need for any change has been based.

Uniform Child Support Guidelines discussion by Laura Morgan

Family support act in 1988 required every state to create guidelines that were presumptive. State developed each guideline.



Income shares model

Percentage of income model of non custodial parent

Melson Formula- complicated income share model

Hybrid model based on ALI enhanced model expenditure model

Father rights try to advocate for costs sharing method trying to figure out post divorce costs for the child.

Child support is mostly income driven.

Guidelines reviewed by Federal government every 4 years but they do not necessarily have to revise it.

4 main goals of a uniform guideline:

Increase adequacy of child support awards

Increase consistency of child support awards

Increase compliance of child support awards

Ease of administration of child support awards

Forum shopping idea can be alleviated by UIFSA.

Discussion of high income child support cases took place.

More general discussion took place regarding child support, its uniformity and differences among states.

Motion to adjourn the meeting was made by Mary Vidas, seconded by Noel Tucker. Meeting adjourned.