

MSBA



## Judicial Administration Section

### COUNCIL MEETING MINUTES

March 26, 2008

**IN ATTENDANCE:** *Hon. Lynne A. Battaglia, Chair; Hon. Ruth Jakubowski, Vice Chair; David C. Chiu, Esquire, Secretary; Hon. Sally C. Chester; Hon. Robert C. Nally; John E. Nunn, III, Esquire; Franklin B. Olmsted, Esquire; David L. Palmer, Esquire; T. Christine Pham, Esquire; Rosalyn E. Pugh, Esquire; and Hon. Julia B. Weatherly.*

The minutes of the **February 21, 2008**, meeting were approved.

Legislation Sub-Committee Chair Frank Olmsted gave his normal superb report on the three bills referred for consideration since the March meeting. After discussion, the non-bench members of the Council voted to take no position on Senate Bill 921, no position on House Bill 1556, and oppose House Bill 1559.

Chair Lynne "Jeff Foxworthy" Battaglia gave more details as to how the summer conference presentation of "Are You Smarter Than A Law Student" will be done. Closely mimicking Fox network's Thursday night 8pm hit prime time game show, our Maryland civil procedure seminar promises to be extremely entertaining and enlightening and another SRO event. (Details will not be revealed in this published report... you will just have to attend!)

There was a brief mention of an unreported study by a Committee headed by Baltimore City District Court Judge Nathan Braverman that opposes the use of cameras in *trial* courtrooms. Although unreported, the committee recommendation has been released to the media. This Committee finding is limited to the use of cameras in *trial* courtrooms as opposed to cameras permitted in *appellate* proceedings which have been universally found to be non-intrusive, educational and enlightening.

The largest portion of the meeting was spent in a spirited discussion on self representation and what if anything the Council could or should do to address the recommendations of the *2007 Report of the Maryland Judiciary Work Group on Self-Representation*.

Just about everyone agreed that a represented party who must litigate a matter against an unrepresented party actually feels *disadvantaged*, particularly when the judiciary, who is supposed to be the unbiased trier of law and fact, steps in to assist the unrepresented party.

The discussion of the 2007 Report raised numerous issues. From the judicial perspective, there is the ethical question, particularly in domestic and custody cases, whether the court should step in so that the correct decision is made or should the judiciary turn a blind eye and allow a clear injustice to occur as a result of an impoverished and unrepresented party's unfamiliarity with judicial technicalities. At what point is the judicial obligation to enforce the rules of evidence and procedure outweighed by the ultimate judicial responsibility of carrying out justice? And should this sliding scale apply when both sides are represented but one attorney is less experienced or less competent than the other? Under what circumstances should the judiciary take over the questioning of a witness?

Another issue raised by the report is the different degrees of legal advice provided by different jurisdictions to potential parties who come to a courthouse with basic legal questions ranging from "How do I subpoena someone?" to "Should I be filing for an *ex parte* or for a *protective order*?" A possible project might involve another survey inquiring how judges, judges' staff, courtroom clerks and the clerk's office from different jurisdictions are trained to deal with these inquiries.

Another possible project was discussed suggesting that rather than a *judicial* comment on the findings of the 2007 judicial Report On Self Representation, a recommendation from practicing members based on their perspective, experiences and observations from the other side of the bench on the various issues raised by self-representation might be helpful.

It was suggested that narrowing preliminary inquiries to a single area of practice might make the initial study more manageable. Towards that end, it was proposed that the *Family Law Section* be contacted to see if its members would be interested in participating in a joint project and having a joint Judicial Administration Council/Family Law Section meeting sometime in April instead of our regularly scheduled April 24<sup>th</sup> Council meeting (which needed to be rescheduled anyway).

With that, the meeting was adjourned.

Respectfully submitted,

**DAVID C. CHIU, Esquire**  
*Secretary, JAS Council*