

Referees' Quarterly

September, 2006

PRESIDENT: KATHLEEN M. OEMKE
WWW.REFEREES-ASSOCIATION.ORG



Volume IX, Issue 3

PUBLISHER: KENNETH D. RANDALL
EDITOR: LINDA S. WEISS

A Problem-Solving Court for Child Support

By Justice Maura D. Corrigan



Michigan Supreme
Court Justice

Maura D. Corrigan

You and I have every reason to be concerned about Michigan's future. You know the numbers. Roughly two-thirds of all new filings in Michigan's judicial circuits are family court cases. We have more than a million open child support cases. Half of our child support caseload consists of paternity matters involving unmarried parents. Michigan parents owe billions in unpaid support, and a shocking number of our children are trapped in a cycle of poverty and deprivation, made a virtual likelihood if the child is reared in a single parent household.

Michigan certainly is not alone. Across the nation, parental conflict is devouring our judicial resources and dividing our families. The trend is frightening because numerous studies have shown that children from single-parent families are significantly more likely to be abused, to suffer emotional illness, to become delinquent, to take drugs, to be expelled or drop out from school, to be unemployed, to engage in crime, to commit suicide, and to become unmarried parents themselves.

No doubt you have been hearing more lately about ideas for nonadversarial justice, such as mediation/conciliation, conference trials, and small claims divorce.

In a demographically diverse state like Michigan, each of these methods should be carefully considered in relation to the needs and resources of the individual counties. You should know about an exciting concept I have encountered as one of approximately twenty members of the National Judicial Child Support Task Force put together by OCS/HHS in D.C. The goal of the National Judicial Child Support Task Force is to cut \$100 billion in child support arrearages owed in the United States. Twenty members have been meeting for about two years, and one of our ideas is to utilize problem-solving courts for child support.

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Important Dates—Mark Your Calendars!

RAM Board Meeting Dates

(all meetings at the State Bar Building unless noted):

- November 9, 2006, 10:00 a.m.
- December 14, 2006 (Holiday Luncheon), Time and Location to be announced
- February 8, 2007, 10:00 a.m.
- April 19, 2007, 10:00 a.m.

Annual Conference - May 23rd - 25th, 2007

Perry Hotel, Petoskey, MI

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A Problem-Solving Court for Child Support, continued from page 1

The concept of “problem-solving courts” began in drug cases around 1990. It was pioneered by Judge William Schma, in Kalamazoo, who is known as the father of drug courts. I’m sure you have heard of drug courts, as they now exist in every state in the nation. We have approximately seventy such courts in Michigan. What is new is to bring the techniques used in the drug courts to family court, and specifically to the area of child support. This is the creative, pioneering work we’re doing on the OCS Task Force.

Essentially, a problem-solving court is a specialized tribunal that brings community resources together to address personal problems that cause some litigants to appear in court on the same issues again and again and again.

How often have you been confronted with a divorce or paternity case in which support goes uncollected, or the parents fight endlessly, because of some underlying problem such as addiction, unemployment, or mental health? How often have you told yourself in such cases that, unless the underlying problem is treated, attempts at negotiation or enforcement will be ineffectual or even futile?

Problem-solving courts are designed to handle these kinds of cases, and their goal is much more than efficient docket management. The goal is to remove the personal barriers that prevent parents from taking responsibility for their lives and their children.

There are three critical characteristics of problem-solving courts that have contributed to their success. One, participation is **voluntary** on both sides. The process is offered to parties who are “good risks,” and then they must choose this approach as an alternative to traditional litigation. Two, the court functions as the **team leader** of community-based service agencies, and not just as a decision-maker. Instead of simply referring a parent to a rehabilitative program, the judge consults with professionals who can treat the particular problem and report on the parent’s progress. Three, the parties truly are **monitored** outside the courtroom to guard against relapse or regression. It is one thing to be consigned to a care provider who can be ignored when things get tough and quite another to face the judge and answer questions each time a deadline is missed or a commitment is broken.

I have been a vocal critic of the effect adversarial justice has had on families. Courtroom warfare causes parents to place their personal grievances ahead of their children, and actually makes it *less likely* that they will provide the financial and emotional support their children need.

We have to find a better way, and I think problem-solving family courts are part of the solution. Michigan already has had success with drug courts, which have reduced the rate of relapse and the expenses of re-arrest and incarceration.

At their 2004 annual meeting, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution favoring the “broad integration...of the principles and methods employed by problem-solving courts into the administration of justice” as a means of “enhancing judicial effectiveness and meeting the needs and expectations of litigants, victims, and the community.”

So, we have our marching orders and I am sounding the trumpet.

Problem-solving family courts are being tried, with encouraging results, in states such as Arizona, New York, and Pennsylvania. The program that inspires me the most, however, is in Wake County, North Carolina. I have come to know this program firsthand because of the National Child Support Task Force. I am assigned to the Problem-Solving Court subcommittee and work directly with the judge who founded that program.

In July 1999, Wake County, where Raleigh, NC is located, decided to try the experiment of having one judge preside entirely over child support cases. The goal, through specialization, was to increase dispositions, improve collections, and benefit children. Judge Kristen Ruth volunteered.

(Continued on page 3.)

A Problem-Solving Court for Child Support, continued from page 2

Hoping to “break the cycle” of bench warrants, contempt orders, and jail sentences, Judge Ruth called upon the local IV-D Agency and three community services to assist her. The first was Working For Kids (WFK), a government office that helps unemployed non-custodial parents find jobs. The second was Carolina Dispute Settlement Services (CDSS), a cost-free mediation center that settles visitation disputes and helps non-custodial parents establish relationships with their children. The third was Reliant Monitoring Services, a private company that fits and monitors electronic tethers.

In collaboration with the IV-D caseworkers, Judge Ruth used these service organizations to attack the three most common problems underlying non-payment of support: unemployment, parental conflict or alienation, and defiance. Electronic tethers were used as a less expensive and more productive alternative to incarceration. When delinquent payers opted for the tether (and the vast majority did), Judge Ruth required them to remain at home unless they were at work or engaged in some other essential activity. This permitted the judge and the caseworkers to carefully oversee compliance with the conditional release and to act immediately when a violation occurred.

The results from Judge Ruth’s program have been stunning.

Although some of the tethered parents ended up in jail, the vast majority obeyed the conditions of release, quickly grew tired of the confinement, and unshackled themselves by making a substantial payment on their arrearage. Over two years, this saved Wake County \$1,700,000 in jail costs. (Housing an inmate in Wake County costs \$68 per day while the tether costs only \$10 per day).

In FY 2003-2004, Wake County collected \$28,524,194 in child support, an amount that far exceeded any previous year’s total. Among the parents who were referred to Working For Kids, ninety-three percent either began making payments or increased their payments after enrolling. Two-thirds of those who found

As for the mediation center, 876 cases were referred by Judge Ruth during FY 2003-2004, and 770 were settled. These disputes consumed 991 hours of *free* mediation services, while they saved the County untold hours of court time, staff work, and legal fees.

Most recently, statisticians from a local university have put Judge Ruth’s caseload under their microscope and they have proved that her PSC approach really does work. The same statistical and scientific testing that was done in the drug courts in the early 90s is now being done with child support PSC’s. The data shows Judge Ruth’s approach works!

Winston Churchill once said that facts are better than dreams. Well, these facts are compelling. They should bring hope to even the most hardened child support professional. What was accomplished in North Carolina can be accomplished in Michigan.

Please understand that I am not proposing problem-solving courts as the *whole* answer to the challenges facing our family courts and our child support program. But I am saying they represent a unique and critical piece to the puzzle. The idea is to establish a problem-solving court option in every circuit that can support it. Then we can devote the rest of our resources to cases and families that do not keep coming back because of these peculiar problems.

Two Michigan judges already have volunteered to serve in a pilot project for problem-solving family courts. They are Judge Lita Popke in Wayne County and Judge Jennie Barkey in the County of Genesee. And they will be going to the OSC meeting in the fall in Raleigh to meet with Judge Ruth and see firsthand, in greater depth, how she is doing it.

The concept of problem-solving courts has given me a better vision of the future. In that vision, I see a new standard for the collection of child support. I see a potential remedy to the scourge of dead broke dads, clogged dockets, overcrowded jails, uncollectible arrearages, and helpless impoverished children. I am sharing that vision in the hope that you will help me achieve it. I welcome your feedback on this concept!

Justice Maura Corrigan was elected to the Michigan Supreme Court in 1998 and served as Chief Justice from 2001-2004.

The President's Corner by Kathy Oemke

Hello to all!

In my first months as the president of the Referees' Association, I have come to appreciate the value of having friends and colleagues throughout the state. These months have been marked by my own personal growth, which has been supported by the people I admire most, my colleagues and my family. The experiences I have had have been unbelievable.

First, I have been campaigning for the office of Probate Judge here in Livingston County. Next, my mother died very quickly after being diagnosed with lung cancer that had gone to her brain. Third, my father, who was ill at the time my mother was diagnosed; suffered a minor heart attack at her funeral, died 40 days after her death, the day after my loss in the primary election. My mom and dad had been married for fifty seven years; they had never been apart for very long.

My parents encouraged me in the pursuit of judicial office. Prior to their illnesses, they had planned to participate in the campaign as did my siblings, of which I have seven. This turn of events just illustrates that life does not go as planned. Acceptance and moving on is the only way to handle such unexpected occurrences. Life lessons from my mother and father: nothing ever stays the same, be flexible, never refuse help, and say "thank you" with grace.

How can I apply this professionally? My colleagues in RAM have been very helpful and most supportive. I appreciate all of their sympathy and support.

Each day in our hearing rooms, we see anger and frustration; and it is our job to assist people in coping with these stresses. Our job is to be the impartial person to follow the law and look out for the children involved in the situations presented. Each of the referees in the association has valuable skills that have been honed by conducting the day to day activities of their job. Take time to get to know them. They have some very good approaches to the difficult problems which we all face each day. Sometimes the approach is unique to the personality of the individual and other times the ideas can easily be adapted. Even if they do not have the solution, they have empathy for the problems and dilemmas of being a referee.

The people that become referees have a special calling for the work that is done. They are some of the most pleasant, dedicated, witty, and articulate people I know. I am proud to be a referee and I hope all referees in the State will look to our organization as a chance to be able to share experiences and ideas with each other.

For me, I just say, "Thank you."



Prancing in Lansing

by Referee Jon T. Ferrier, 17th Circuit Court Family Division

Our Legislature remains alert, and it is on the lookout for ways to improve and support the Institution of Marriage. Education program proposals rise and fall, aiming to make prospective spouses more aware of the sobering challenges they will face as a married couple, including budgetary matters, child rearing and communication. And yet, while everyone seems to think that pre-marriage education is a good idea, the devil is in the details of whether it would be “mandatory,” who would provide it, and what its curriculum would be.

Regardless of the fate of marital, and even divorce education programs, a couple of legislative proposals recently introduced provide evidence that our Solons in Lansing are focused like a laser beam on the period immediately preceding the marriage.

House Bills 6351 and 6352 (tie-barred) would make proxy marriages available for members of the armed forces who are unable to appear at a marriage ceremony. The second bill uses the device of a special power of attorney, solely for the purpose of authorizing the third party to participate in the solemnization of the marriage on the armed forces member’s behalf. There are details concerning the filing of the power of attorney with the county clerk, the language the clerk must place concerning the proxy on the marriage license, and so forth.

When I saw these bills, introduced by Representative Steve Bieda (D-25th dist.), they seemed familiar. I wondered whether such legal devices had been used before in times of war – for some reason, the American Civil War came to mind. So I tried to contact Rep. Bieda’s office by email, hoping to fetch a reply from a staff person with a little background on the proposal, history and reasons why they believed it should be enacted. Unfortunately, Rep. Bieda’s office was unable to respond before the deadline for this article for the *Quarterly*, so I took a fateful and dangerous step: I went to the Internet to do some research on “proxy marriage.”

According to the website of the organization “About Marriage,” “A proxy marriage is one where someone stands in for the other party. That is, either the bride or the groom is not physically present for the wedding. During the solemnization of the marriage, based upon a power of attorney, an agent acts on behalf of one of the parties.”

Clear enough. The website further informs that proxy marriages are fairly old, one having been famously contracted in 1810 by Napoleon, who married Archduchess Marie Louise by proxy. California, Colorado, Texas and Montana currently allow proxy marriages. California’s law limits them to members of the armed forces deployed for conflicts or wars, and Colorado’s law also limits who may be married by proxy.

Compelling (and possibly true) though this general information may be, it is no substitute for the perspective of the introducing legislator’s office as to what the evil to be cured is, why this proposal and not something else should be the solution, and why anyone should care enough to support or oppose it. Referees who cannot rest until they have the answers are urged to bombard Representative Bieda’s office with inquiries on this compelling topic, in hope that they, at least, will receive prompt replies, and your Humble Author’s apologizes for not having been able to provide such information for this article.



“WHILE EVERYONE
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Prancing in Lansing, continued from page 5

Introduced just yesterday, on September 6, 2006 by a whole slew of State Reps. was HB 6417. This bill, like HB 6352, would amend the law concerning minimum ages for contracting marriage, and providing for civil licenses to marry, etc., by adding a new subsection 2 to MCL 551.103:

AN INDIVIDUAL SHALL FILE A SWORN STATEMENT WITH AN APPLICATION FOR A MARRIAGE LICENSE INDICATING WHETHER EITHER PARTY TO THE INTENDED MARRIAGE HAS BEEN PREVIOUSLY MARRIED. IF EITHER PARTY TO THE INTENDED MARRIAGE HAS BEEN PREVIOUSLY MARRIED, A COPY OF A FINAL DECREE OR JUDGMENT OF DIVORCE FOR THE MOST RECENT MARRIAGE SHALL BE PROVIDED TO THE COUNTY CLERK. A COUNTY CLERK SHALL NOT ISSUE A MARRIAGE LICENSE IF 1 OF THE INDIVIDUALS WAS PREVIOUSLY MARRIED UNLESS THE COUNTY CLERK RECEIVES A COPY OF A FINAL DECREE OR JUDGMENT OF DIVORCE FROM THE MOST RECENT MARRIAGE.

This appears to be an attempt to prevent bigamous marriages from being contracted. I did not contact any of the sponsoring Reps. to find out what their take on what the evil was, etc., partly due to not knowing which one to single out, and partly due to my disappointing lack of response from Rep. Bieda's office. But I have a couple of concerns and observations: In limiting the required proof to only a judgment of divorce from the "most recent marriage," are we missing other, earlier marriages which, not being properly proven terminated, could void the intended marriage? Or is the presumption that the most recent of a number of marriages is valid potent enough to avoid that eventuality? And should we not also require judgments of annulment to be provided if an earlier marriage was voided through annulment rather than dissolved through divorce?

As to the questions and concerns about HBs 6351 and 6352, nothing really looms on the horizon or blips on my radar, and so my waggish spirit turns to absurdities – what about proxy *honeymoons*? Not sure exactly how much call for that there would be, but what about proxy *divorces*? Isn't there something deliciously compelling about the idea of sending a stand-in to act as your stunt-plaintiff or –defendant to sit through the torture of litigation? Proxy *parents*, for those annoying, day-to-day tasks associated with child-rearing? Proxy *spouses* for those tedious marital duties?

All of the above are suggestions worthy of the Legislature's note, in my humble opinion, but I'd really be happy if they amend MCL 552.507 for the creation of the MOST NEEDED PROXY OF ALL: proxy *Referees!* Now there's a legislative proposal I'll bet every disgruntled grumbler reading this can get behind!



Don't delay, let Rep. Bieda know today!!!



"IN LIMITING THE REQUIRED PROOF TO ONLY A JUDGMENT OF DIVORCE FROM THE "MOST RECENT MARRIAGE," ARE WE MISSING OTHER, EARLIER MARRIAGES WHICH, NOT BEING PROPERLY PROVEN TERMINATED, COULD VOID THE INTENDED MARRIAGE?"

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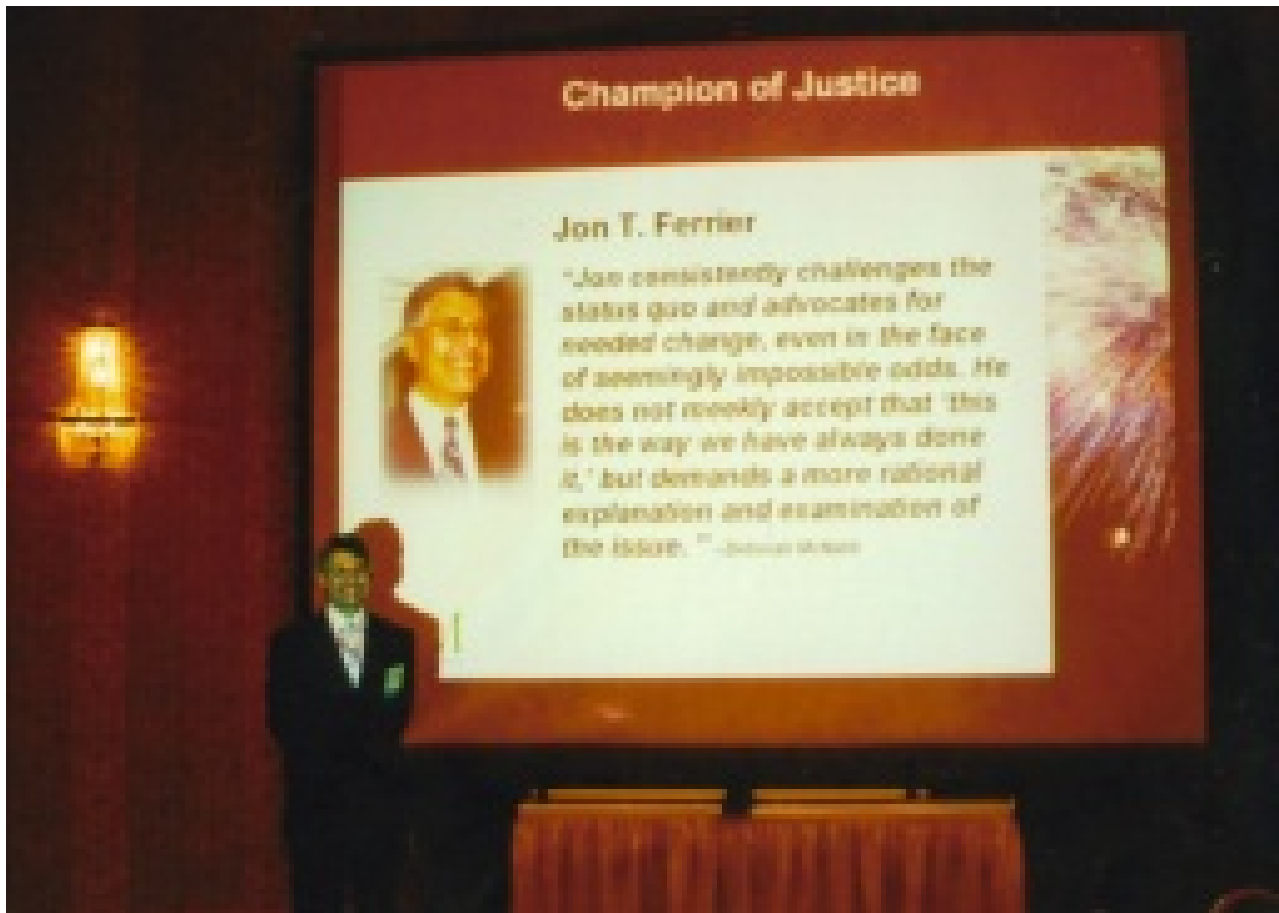
Jon T. Ferrier: Champion of Justice

State Bar of Michigan



“Jon consistently challenges the status quo and advocates for needed change, even in the face of seemingly impossible odds. He does not meekly accept that ‘this is the way we have always done it,’ but demands a more rational explanation and examination of the issue.”

--- Deborah McNabb



Quotation in honor of Jon by Deborah McNabb.

Also check out: <http://www.michbar.org/news/releases/archives06/>

Jon T. Ferrier Recognized as “Champion of Justice”

Ypsilanti, MI – On September 13, 2006, Kent County Referee Jon Ferrier was presented with the State Bar of Michigan’s “Champion of Justice Award.” The prestigious award is the second highest honor presented by the State Bar.

To be considered a “Champion of Justice,” one must be an attorney for at least ten years, show “superior professional competence” as well as “integrity and adherence to the highest principles and traditions of the legal profession.” One must also show that they have performed “an extraordinary professional accomplishment that benefits the nation, the state or the local community.” For those who know Jon Ferrier, and have followed his 25 year referee career, he more than fits the bill. (An article outlining some of Jon’s achievements is located on page 2 of the March edition of *Referees’ Quarterly*.)

The State Bar was impressed that Jon “has helped shape the way family law is practiced in Michigan.” Further, that “Ferrier was instrumental in helping to revise entire sections of the Michigan Court Rules pertaining to family law. He frequently testified before Senate and House committees on pending legislation.” And, important to our group, “Ferrier is a co-founder and past president of the Referees’ Association of Michigan.” Finally, “He also created the Domestic Relations Education Program in Grand Rapids, a free, monthly family law forum that is open to the public and attorneys working in the field.”



Jon with his wife, Kayne



Addressing the State Bar audience.

Jon’s nomination originated in February 2006, by a unanimous vote of the RAM executive board. RAM’s nomination was mailed to the State Bar of Michigan in formal book form. The book contained numerous letters of support from judges and lawyers throughout the state, including Michigan Supreme Court Justice Marilyn Kelly.

The awards banquet was held in conjunction with the State Bar of Michigan’s annual meeting at the Marriott Eagle Crest. The tasteful event had a celebratory air of a wedding reception. Approximately 300 people attended – including Jon’s wife of 29 years, Kayne Ferrier, as well as an entourage of referees who reveled vicariously in Jon’s achievement.



Many fellow Referees came to join Jon in the celebration:

(L-R) Kayne Ferrier, Doug Dok, Deb McNabb, Jon Ferrier, Art Spears, Kathy Oemke, Ken Randall.



When entering the large banquet hall, one could hear harp and flute music. In the two front corners of the palatial room, giant screens displayed photos of the award winners with brief write-ups regarding their character or achievements. Jon’s photo was next to a nice quotation by Kent County colleague and former RAM president, Deb McNabb (see photo). Deb states, “Jon consistently challenges the status quo and advocates for he needed change, even in the face of seemingly impossible odds. He does not meekly accept that ‘this is the way we have always done it,’ but demands a more rational explanation and examination of the issue.”

Jon addressed the group with his customary decorum, eloquence and humor. He concluded with a quotation by Will Rogers saying “Never miss a good chance to shut-up!” As you might expect, Jon received a standing ovation.

Jon Ferrier is the first referee to win an award from the State Bar of Michigan.

Congratulations, Jon!

Juvenile Sex Offender Treatment: A Community Approach: Part 2

The “Nuts and Bolts” of the Program

*Contributed by Linda Weiss
Juvenile Court Referee/Administrator
Midland County*



The Midland County Juvenile Sex Offender (JSO) Treatment Program has been actively working with three juvenile court wards since its inception, with another youth slated to begin treatment in the next month. Two of the current JSO wards are male, and one is female. All have offended against younger members of their own families. In past years, juvenile sex offenders who exhibited serious predatory tendencies or were at high risk for re-offending would have likely been placed in residential facilities outside the community—largely due to a lack of local alternatives. Now, particularly for JSOs deemed at low or medium risk for re-offending, our Court is able to offer a local option, based at the Midland Juvenile Care Center and integrated with the Day Treatment Program.

When a youth is considered for the Midland JSO Treatment Program (“the Program”), one of the first steps is a complete evaluation by a local psychological services agency, with an eye toward the youth’s amenability to treatment in a local setting. Based on the evaluation and any other case and family information that is available, JSO committee members determine if the Program is an appropriate fit for the youth’s unique needs. The initial evaluations can be conducted either locally or through a program at Central Michigan University, and can take up to 20 direct-contact hours to complete, and 2-3 weeks to return the report to the Court. The evaluations can cost between \$400-\$700 each—not an inexpensive tool, but the information gained is invaluable in determining the appropriate treatment program for a youth.

Youths considered to be “high risk” are still sometimes referred to institutional programs outside the community, if the local Program is not deemed to be likely to effectively treat the youth, or if community safety cannot be assured through local resources. “Medium risk” youth are generally placed into the JCC detention facility (at least initially), licensed foster care homes, or (if the JSO did not offend against a person living in their home) the youth’s own house with security safeguards such as electronic monitoring. Finally, youths deemed to be at “low risk” of reoffending are generally treated within their own homes using intensive services. In all cases, however, placements are highly individualized and tailored to the unique needs and risk levels of each youth.

After the counseling agency and the Court have determined that a youth is appropriate for treatment in the local JSO Program, the agency and the Court execute a formal agreement to provide services. The individualized agreement contains a detailed outline of the types of services, costs, contact hours, and treatment objectives for each phase of the program (*e.g.*, first six months, next six months, last six months). One of the current agreements outlines the general terms as follows:

- One year of treatment starting with intensive individual and family treatment for six months, followed by regular individual and family treatment for six months, followed by treatment aftercare services as needed.
- Individual counseling (2 sessions per week)
- Family Counseling (1-2 sessions per week)
- In-Home Intervention Counseling
- Crisis intervention (respite care, etc.)
- Case management services, including biweekly meetings with all team members

The projected costs for the entire treatment period (in this case, 18 months) are incorporated into the agreement, and become the basis for the Court’s projected figures when drafting the County (General Fund) and Child Care Fund budgets. By utilizing our own Juvenile Care Center, we are able to keep local dollars for juvenile placement in the local community.

Of the three youths who were the “charter wards” in the Program, all three began in secure detention, coupled with Day Treatment and the counseling treatment services outlined in their respective agreements. Today, all three youth are progressing through the Day Treatment program, and two of the three have left detention and are in licensed foster care. The third is slated to transition to foster care within a month. The families of all three have been actively involved in the Program, and have had extensive contact with their children over time, preserving the family bonds and relationships that are so crucial to the youth’s success and reentry into the local community and, hopefully, the family home.

What have we learned so far? . . .

The “Nuts and Bolts” of the Program, continued

To answer this question, I asked some of the persons directly involved with treating the JSO youth in our Program. Some of their observations:

- We have a good start with our existing foster homes, but need more licensed foster homes who are trained to work with adolescents who have sexually offended;
- Where the situation and resources permit, sexual offenders should be separated from non-sexual offenders for purposes of treatment and placement;
- The youths in treatment have been making good individual progress;
- The families in treatment have been making somewhat slower progress, and coordinating the family’s treatment goals and youth’s goals can be a challenge;
- One youth, in particular, has been a huge “success case” - *but for* the local Program, the youth would likely still be in a non-local treatment facility for offending against a sibling; instead, the youth has made significant progress in treatment, and will probably be returning to the family home in the near future.
- The ability to preserve the youth’s physical and emotional ties to the local community, particularly the family, is extremely important.

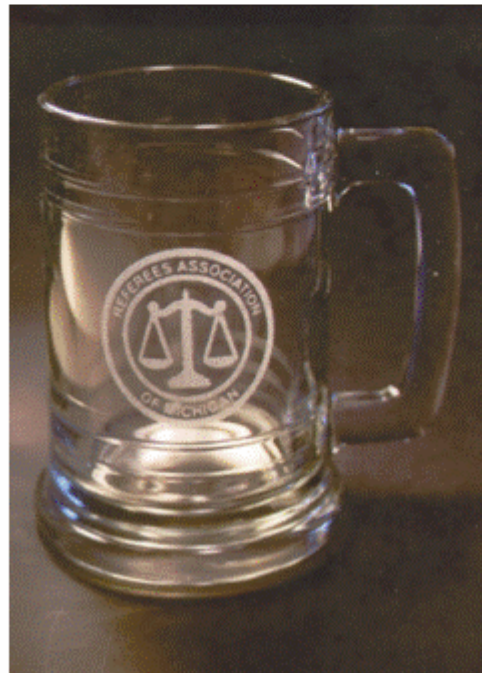
As with any Court-based program, our JSO Treatment Program is a “work in progress.” Thus far, however, we have been pleased with the progress the youths and their families have made, and we are encouraged by the community’s support for a locally-based treatment option for juvenile sex offenders. In the future, we hope to further adjust and enhance the Program based on what we learn along the way, and we are committed to helping these youth rehabilitate their behaviors and become healthy, productive members of their community, while at all times keeping the public safety paramount in our minds.

For more information about the Midland County Juvenile Sex Offender Treatment Program, please contact Linda Weiss at lweiss@co.midland.mi.us.



Visit the RAM Website and check out our Shopping Page. There’s something for everyone!

www.referees-association.org



COMMON ETHICAL ISSUES FACING REFEREES

Victoria V. Kremiski
Deputy Division Director, Professional Standards
State Bar of Michigan



Referees play a unique and integral role in our judicial system. In many cases, the semi-formal role of referees facilitates settlement between the parties or allows for a speedier adjudication of issues important in litigant's lives. However, this unique and semi-formal role often poses ethical issues for referees that judges may not face.

In this day of shrinking court budgets and the growing inability of many litigants to afford counsel, expediency and innovation in moving cases is often the guiding principle in court operations. Several State Bar of Michigan ethics opinions remind us however, that expediency and innovation cannot be the guiding principle if the cost is the erosion of the ethical dictates governing judicial officers and attorneys.

State Bar of Michigan Ethics Opinion JI-128 holds that a full time employed circuit court referee may not act in the dual capacity of referee and at other times as advocate of the Friend of the Court in contested matters. The Committee found that representing the Friend of the Court constitutes "advocacy" which is inconsistent with judicial office and is prohibited under the Michigan Code of Judicial Conduct 5f.

Part time referees, however, may engage in advocacy, through a private practice, under certain circumstances. Part time family court referees may not represent private clients in domestic relations matters before any judge that appointed them, supervises their performance or hears appeals of their decisions. (State Bar of Michigan Ethics Opinion JI-126). JI-126 suggests that this disqualification may be waived by the parties, however, this author strongly discourages pursuing a waiver under these circumstances.¹

Part time family court referees also may not represent private clients before other part time family court referees in the same circuit. (State Bar of Michigan Ethics Opinion JI-126).

Referees who wear many different "hats" must be especially vigilant in guarding against situations where their adjudicative role may be compromised. In State Bar of Michigan Ethics Opinion JI-129, the Ethics Committee rejected a bright-line prohibition against part-time referees performing other public agency functions, stating simply that a part-time referee may not ethically participate personally and substantially in an extra-judicial role that is inconsistent with his or her judicial role.

A Friend of the Court referee may not serve as an expert witness. (State Bar of Michigan Ethics Opinion JI-127).

Finally, a perennial issue often facing referees is the issue of ex parte contact. The informal nature of some referee proceedings sometimes leads attorneys and referees to forget that referees are adjudicative officers and that ex parte contact with a referee regarding a substantive issue in a case pending before the referee is prohibited.

When in doubt about the propriety of any given situation involving your role as a referee, a helpful guideline to remember is that situations should be avoided where there is a risk of inconsistency of roles and the possible erosion of the public's confidence in the impartiality of the legal system.

¹This is one of those situations that an attorney is well-served by following the adage: "Just because you can, does not mean you should." A primary principle underlying the Code of Judicial Conduct and the Michigan Rules of Professional Conduct is to promote public confidence in the impartiality of the legal system. Conflict waivers may work in situations involving sophisticated corporate business clients who have the benefit of independent or in-house counsel. However, most individual litigants view conflict issues as a question of loyalty. Especially when dealing with highly emotional and significant situations like custody, child support, etc. where it is likely that the outcome will not be to either party's liking, asking a client to sign a conflict waiver creates a "built-in" issue for a client to later focus on if he or she is not happy with the outcome of the case. The client is likely to believe that the attorney did not adequately advocate their interest or that the referee was biased, because of the pre-existing relationship, thus eroding the litigant's confidence in the integrity and impartiality of the legal system.

WHAT REFEREES NEED TO KNOW ABOUT THE UNAUTHORIZED PRACTICE OF LAW (UPL)



Catherine M. O'Connell
Assistant Professional Standards Counsel
State Bar of Michigan

What is unauthorized practice of law?

Every state has a rule that prohibits non-lawyers from engaging in the practice of law. In Michigan the rule is statutory. MCL 600.916 states:

A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state.

MCL 450.618 extends the prohibition to corporations or voluntary associations. Violation of MCL 600.916 is punishable by injunction and criminal contempt for violation of an injunction. Violation of MCL 450.618 is a misdemeanor punishable by a fine of up to \$1,000 or 6 months in jail or both. There is substantial case law in Michigan that elaborates on these statutes. The most recent, and most significant, is *Dressel v Ameribank*, 467 Mich 557 (2003). In *Dressel*, Plaintiffs brought an unauthorized practice of law action against the bank that prepared an adjustable rate note and mortgage to secure a real estate loan. The bank charged a \$400 “document preparation” fee. The Plaintiffs argued that the bank, by charging a fee for the preparation of the note and mortgage, engaged in the unauthorized practice of law. The Court went through a detailed examination of the history and purpose of the statute as well as the case law. The Court determined that the purpose of the unauthorized practice of law statute was protection of the public and based its decision in great part on that fact. The Court held that “a person engages in the practice of law when he counsels or assists another in matters that require the use of legal discretion or profound legal knowledge.” Because the bank employees did not actually draft the mortgage document, but used a standard form provided by the federal government and merely completed the standard form the Court found that the bank was doing nothing more than performing a secretarial function. The Court found that no legal knowledge or discretion was involved in completing the form and the bank didn’t counsel Plaintiffs as to the legal validity of the form or regarding whether or not the Plaintiffs should enter into the transaction.

What do the statutes and case law mean to you?

Unauthorized practice of law frequently becomes an issue in the family law arena and can be very frustrating for judicial officers and court staff. There are many “paralegals” who open their own business without the supervision of an attorney. These paralegals claim to be mere document preparers or scriveners. They claim that they only fill in forms for people and don’t provide any advice. Unfortunately, sometimes they complete inappropriate forms or only complete some of the necessary forms. They also, frequently, do much more than merely completing forms, either giving legal advice or preparing non-ordinary documents. These individuals market themselves to the public by advertising that they can assist people for substantially less money than an attorney. There are also many instances of friends or family members who have been through similar situations and believe that they have the knowledge necessary to advise others as to how to proceed. This is also dangerous because no two legal situations are the same and the well-meaning advice given by friends or family can actually be detrimental to the interests of the party.

When individuals are guided by non-lawyers there is a significantly higher likelihood that proper procedure may not be followed which can lead to unnecessary delay to the parties and backlog in the Courts. In certain circumstances it can also lead to dismissal of an action requiring the parties to incur additional costs

(Continued on page 13)

WHAT REFEREES NEED TO KNOW ABOUT THE UNAUTHORIZED PRACTICE OF LAW (UPL) *(continued from page 12)*

How to spot the unauthorized practice of law

There are many signs that can alert Referees to the unauthorized practice of law. The most obvious is where a non-lawyer tries to advocate for the third party at a hearing. The Referee can, and should, simply prohibit the individual from speaking. UPL that occurs behind the scenes is harder to spot. How do you know that a non-lawyer has been giving advice or preparing pleadings or other documents? A few clues include the following:

- The unrepresented party files pleadings which look and “sound” professional but the party doesn’t know what they say or understand what they mean.
- The unrepresented party makes legal arguments but doesn’t seem to understand them.
- Some, but not all, necessary documents are filed.
- The unrepresented party refers to a “lawyer” who assisted them but no lawyer has made an appearance.

What duties do Referees have with regard to the unauthorized practice of law?

As lawyers, Referees are governed by the Michigan Rules of Professional Conduct. Referees are also governed by the Code of Judicial Conduct. Both the Rules of Professional Conduct and the Code of Judicial Conduct contain rules that relate to unauthorized practice of law. MRPC 5.5(b) states that a lawyer shall not “assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.” Canon 2(B) states, in pertinent part, that “A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary.” Canon 3(A)(1) states that “A judge should be faithful to the law and maintain professional competence in it.” Canon 3(B)(1) states “A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.”

The State Bar of Michigan Ethics Committee has also issued an opinion, JI-26, which states that Judges have an ethical duty to prevent UPL and to report incidents of UPL to the State Bar of Michigan. The opinion requires that when UPL occurs in the presence of the Judge that the Judge “stop the proceeding; place as much information on the record as possible; advise the party to seek the services of a licensed lawyer; and take other remedial action authorized by law.” When UPL occurs outside the presence of the Judge, the Judge must “report the incident to the appropriate authority empowered to investigate the matter.” The duty to report requires Judges to forward the following information: “(a) names and addresses of all persons having information concerning the matter, (b) transcripts of proceedings recorded, and (c) copies of all available pleadings, documents and correspondence.”

What should you do if you suspect the unauthorized practice of law?

If you suspect that UPL is taking place you should take steps to ascertain whether it is actually happening. You may be able to obtain substantial information from the party who is being assisted by a non-lawyer. It is important to remember that these individuals have not done anything wrong and you should make that clear to them. As stated above, Judges and Referees have not only a duty to prevent UPL but also a duty to report incidents of UPL. Rule 16 of the Supreme Court Rules Concerning the State Bar authorizes the State Bar of Michigan to investigate and prosecute instances of UPL. A written complaint is necessary to initiate an investigation. If you have knowledge that an individual, or an entity, is engaged in the unauthorized practice of law, you should gather any documentation that exists that would substantiate the occurrence of UPL and forward that information along with a written complaint to the State Bar of Michigan UPL Department and can be faxed to (517) 346-6323, e-mailed to aemmons@mail.michbar.org or mailed to 306 Townsend, Lansing, MI 48933.



Ready? Set? DEVIATE!

Inherent Inequity in the Child Support Formula

Contributed by Ken Randall
FOC Referee and Assistant Director
Midland County Friend of the Court



On October 1, 2006, Michigan's minimum wage increases from \$5.15/hour to \$6.95/hour. Unfortunately, for those at the lower end of the pay scale, the Michigan child support formula hits them the hardest. The numbers are shocking, and all referees, judges and family law attorneys should recognize the inherent inequity. A 35% increase in the minimum wage corresponds to a 151% increase in child support. As an example, if you have two new single parents, both earning minimum wage at Burger King, the non-custodial father's support would rise from \$98/month to \$246/month.

The problem will only be exacerbated when the minimum wage increases to \$7.15 on July 1, 2007, and \$7.40 on July 1, 2008.

When discussing this mathematical inequity, one cannot ignore that of the approximate \$8 billion in uncollected arrearages owed in Michigan, 70% is owed by individuals who earn less than \$10,000/year – in other words the people who are most financially stressed and least able to pay. Uncollected arrearages affect the incentive money collected by the State of Michigan under its federal IV-D funding. So, ultimately, even the State of Michigan loses when the minimum wage child support calculation increases to an amount where low-income individuals will be unable to pay.

Michigan's child support debt pattern is paralleled in other states. In 2004, the OCSE distributed a memorandum number 04-04 entitled *The Story Behind the Numbers, Who Owes the Child Support Debt?* That national study revealed that 63% of debtors, holding \$70 billion in arrearages, earned less than \$10,000. And 34% of those individuals had no reported earnings.

Most of my referee colleagues routinely impute minimum wage when individuals have an ability to earn income, but they don't actually have jobs. Charging \$98/month seems appropriate. It's a low figure that one may reasonably be able to pay even if picking up bottles or working sporadic part-time jobs. The new \$246/month figure, however, is different, and may as well be \$1,000/month to some individuals who are marginally employable, but who do not meet the criteria for SSD or other assistance.

What, then, is the solution?

Really, there are two solutions. First, for the foreseeable future many referees and judges may have to deviate when a non-custodial parent is marginally employable. Deviation is appropriate where the recommended amount is "unjust" or "inappropriate." Referees and judges should note three things: (1) the recommended support amount, (2) how support deviates, and (3) the reasons why application of the child support formula would be unjust or inappropriate in each case. (Usually there is an additional requirement to show the value of property or consideration in lieu of the payment of support, where applicable.)

A second solution is a review of the child support formula. Currently SCAO/FOC Bureau Director Dan Wright chairs a committee to revamp the formula. Federal law requires each state to review its child support formula every four years. Michigan must complete its review by the end of 2007.

All referees will want to be consistent in how they rule on this issue. After all, the theory behind the child support formula is that there is uniformity and an expectation of equality no matter what section of the state one lives. Yet, in many instances, low-income deviation may now be the norm until the new 2008 formula hopefully resolves this inequity. It's an issue that needs to be addressed.

Marriage on a Shelf



*Contributed by Ken Randall
FOC Referee and Assistant Director
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According to recent census studies, Americans are waiting longer to get married. In the 25 years from 1978 to 2003, the median age for first time marriage for women rose dramatically from 21.8 to 25.3 years (an increase of 3 years 6 months), and for men rose from 24.2 to 27.1 years (an increase of 2 years 11 months). Similarly, between 1970 and 1998, the ratio of women age 30-34 who had never married tripled, from 6.2% to 21.6%.

The trend toward postponing marriage (or never getting married) certainly exacerbates a statistic of which we are all familiar: that one third of all children born in the United States are born out of wedlock. Clearly, if marriage were a more urgent social goal, the “one third” statistic would go down. But, for now, nuptials are being pushed farther in age than any time in our nation’s history.

As my referee colleagues can attest, this postponing marriage trend corresponds to an increase in family law litigation in terms of paternity establishment, as well as child support and parenting time enforcement. And to our community as a whole, there are very real social and economic costs.

So why are Americans waiting to tie the knot? No doubt there are many factors that explain this social phenomenon.

One may be related to the women’s’ liberation movement of a generation ago. Since then, more women are attending college and obtaining bachelor and postgraduate degrees. During this process, and as women go on to pursue professional careers, marriage often gets postponed, or put on a shelf entirely.



A less significant factor, but one interesting to note anecdotally, is an increase in our life expectancy. In 1850, a male born in the United States could expect to live 38.3 years, and a woman could expect to live 40.5 years. Obviously, marriage and family would be a more urgent goal if one were middle age at the age of 19 or 20! By the year 2000, men could expect to live 74.5 years and women 80.2 years.

In addition to living longer, we are living fuller lives. “Fifty is the new thirty” is more than just a slogan to many baby boomers, and no doubt will be too for generation X. A corollary of our new attitude on aging is that there is less social pressure to get married at a young age – if at all. And the pressure lessens as the unmarried population increases. According to the 2000 census, married couple families in the United States now hold a slim (and shrinking) 52% majority of all households.

As is true with most social trends, we will not fully understand the socio-economic implications for many years. Yet, one thing is clear. So long as the getting-married-later phenomenon continues, so will our burgeoning family law dockets. It’s a trend worth watching.



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