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PARENTS AND CHILDREN TOGETHER P.A.C.T. A New Problem Solving Court

*By the Honorable Michael J. Theile, Circuit Court Judge
Family Circuit Court,, Genesee County, Michigan*

Recently I had ten men in my courtroom for arraignment on bench warrants. One of the gentlemen reminded me of Ted Kaczynski, the Unabomber. 'Ted' was the winner of the day with an arrearage of \$177,000. Realistically, this is money that the ex-wife and five children will never see. In Genesee County alone we have \$865,000,000 in child support delinquencies.

Parents and Children Together

WHAT: A program to help non-custodial parents bond with their children, pay child support, and receive assistance through local agencies.

HOW: Regular reporting to the Court to detail progress or adjust the assistance they need.

WHO: Genesee Family Circuit Court Judge Michael J. Theile, with assistance from the Friend of the Court.

The traditional approach to collection, while effective in many cases, must be re-examined. The emphasis and analysis must shift from retrospective lamentation to front-loaded inducements, positive and negative, for the non-custodial parent (NCP) to become and remain current.
(continued on page 2)

RAM Board Meetings—Mark Your Calendars!

*(*note date/time change!)*

**November 7, 2007 7:00 pm
Lansing Sheraton Hotel**



Dinner will be available at the member's expense. There is limited space, but if you are interested, you are invited. Please advise Paul at [pjacokessr at yahoo.com](mailto:pjacokessr@yahoo.com) if you wish to attend.

**December 13, 2007
Christmas Party, 12:00 noon
Place to be announced**



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PARENTS AND CHILDREN TOGETHER

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The search for a better way has led to the development of Parents and Children Together, P.A.C.T. The key to success of this concept centers upon a co-equal relationship between the Court and the Friend of the Court. The partnership then relies on the collaboration of community agencies who bring a universe of options and services. These partners assist the Court in eliminating all the excuses as to why support is not being paid. The resource pool can be open ended as far as numbers, but must include job training and work referral along with substance abuse identification and treatment. The interpersonal relationship issues are addressed through conflict resolution and anger management. The program makes good use of a parenting time specialist.

"The partnership then relies on the collaboration of community agencies who bring a universe of options and services . . . eliminating all the excuses as to why support is not being paid."

I have been very fortunate to have the full support of our Friend of the Court, Jack Battles. He has been instrumental in assembling our team. We cajoled an overworked, but not underappreciated, Remus Holbrook to spearhead our search for grant based funding. Remus is the Director of Juvenile Probation Casework Services.

Another critical role is filled by our Program Coordinator, Kristy Ocenasek. Ms. Ocenasek is a Friend of the Court Senior Caseworker. She now holds the added title of 'Super Social Worker'. She is responsible for selecting the cases to be scheduled for show cause. The criteria generally include children under ten years of age and arrearages less than \$10,000. These folks must be screened in order to identify the problem areas and services to be utilized. This process streamlines the judicial role and provides the opportunity to generate an order immediately upon the close of proceedings.

(Continued on page 3...)

Missed the last RAM Board Meeting?

Don't be left out of the loop!
Check out the minutes from prior meetings on the RAM website:

<http://www.referees-association.org>



PARENTS AND CHILDREN TOGETHER

Continued from page 2

A second and equally important aspect of P.A.C.T. centers on the relationship between children and the NCPs. The bond of parent and child can be nearly non-existent in DP and DS cases and often needs improvement in DM matters. When parenting time orders are entered, both parties are reminded of the potential downside in the event of noncompliance.

An important component in implementing orders to the fullest extent is the in-court follow-up that can occur as often as twice a month. Intensive oversight by the P.A.C.T. Coordinator between court appearances adds clout to Court directives. In other words, a report card of sorts is kept and the NCPs are given no time to sit on their hands. Those who fail to comply with Court-ordered services and goals will be introduced to sanctions.

Sanctions include, tether, house arrest, in-house treatment programs, sheriff's work detail, and jail. Just having these alternatives available has contributed to our early success.

Special thanks must be given to District Judge Kristen Ruth of Wake County, N.C. She has been generous in sharing her time and expertise in demonstrating the national model.

We owe a debt of gratitude to Michigan Supreme Court Justice Maura Corrigan for her insight in bringing this innovative concept to Michigan.

The Honorable Michael J. Theile has been Judge of the 7th Circuit Court since 2005. He holds degrees from Muskegon Community College (Associate of Arts in Business), Western Michigan University (Bachelor of Business Administration), and Thomas M. Cooley Law School (J.D.). Prior to taking the Bench, he was in private practice from 1977-2005 in Genesee County. Judge Theile served on the Department of Labor and Economic Growth Board of Magistrates in 2005, and was Special Attorney General, appointed by Former Attorney General Frank Kelley, from 1984-2005. He is a member of the Michigan Bar Association, including the Family Law Section, and the Michigan Trial Lawyers Association. Judge Theile is a life member of the Michigan United Cerebral Palsy Association, and is a former Board Member and Officer of the Flint Schools Public Radio Station WFBE.

"Intensive oversight by the P.A.C.T. Coordinator between court appearances adds clout to Court directives . . . the NCPs are given no time to sit on their hands."

The RAM Website has had over
10,700 hits
since April 1, 2005!



<http://www.referees-association.org>

The President's Corner



Contributed by Kathy Oemke



With fall approaching and the change of seasons upon us, people tend to turn indoors. Sometimes we look at winter as a time for hibernation and inactivity. I would like to encourage investment in you by you.



Appreciate your health. I am sure all of know people who are afflicted with cancer, heart problems, and other diseases. At this time in my life, I am reminded each day of how lucky I am to have good health. Sometimes, we get so busy that we overlook exercise. It is important for us to keep fit. We have stressful job. Exercise helps to keep the stress under control. It gives one a better outlook on life by stimulating the endorphins that are released when we engage in physical activity. Exercising helps clear the mind of the clutter and helps us be better able to focus on our tasks. Outdoor activity gives us the added bonus of vitamin D for the development of strong bones and muscles. Many of our referees run, golf, and ride bikes. If you have been meaning to get some physical activity in your life, I encourage you to start now.

Mental health is also important. We all have issues in our personal life, which influence our decision-making. Some of our personal experiences allow us to empathize with those who come before us. At times, if we do not understand our issues, they may interfere with good decisions. Part of mental health is to know when that occurs. We often refer folks to counselors. I hope we are smart enough to listen to our own advice. If you are struggling, do not hesitate to ask for help. Chances are others will notice before you do. Pay attention to your co-workers.



Keeping a good balance in your life has the effect of reducing the stress of situations with which we are presented. The areas of balance are physical and mental health, spirituality, family, and friendships. Use the strengths of the members in the Referees Association to help and encourage you when it is needed. Some times, it may be to bounce and idea around on a case on which you may be working; other times it may be to give you a word of encouragement. Our duties can be burdensome; sometimes we don't get credit for being the caring individuals I know referees to be.

I know that none of the ideas I have mentioned are anything new. This is a gentle reminder to keep in focus your job and yourself, then you are happier and are a better you.



Submitted by:
Kathleen M. Oemke 9-24-07

How Many Lawyers does it take to Measure a Mile?

Contributed by Ken Randall



Judges and legislators generally have the best interest of the public in mind when practicing their craft. Yet, inevitably, mistakes are made. When one side does something well intended, that turns out to be unexpectedly boneheaded in practice, the other side is usually there to push back, to correct a perceived injustice. And through constant checks and balances, the metaphorical dance between the legislative and judicial branches of government, we have what lay people refer to as “the law.”



One recent example of this is MCLA 722.31(1), more popularly known as the “100 mile rule.” Senate Bill 1244 was introduced by Sen. Bill Bullard, Jr. in response to a Michigan Court of Appeals decision in Dehring V Dehring, 220 Mich App 163 (1996). In Dehring, mother’s intra-state move from Alpena to Kalamazoo (an as the crow flies distance of 221 miles) was not deemed a change in circumstances that required reexamination of the best interest factors pursuant to father’s motion for a change in custody. No consideration was given to the effects of the intra-state move on the child and father. Ironically, had the same mother attempted an interstate move from, for example, Niles, MI to South Bend, IN (a distance of only five miles), mother would have been required to obtain the court’s approval.

Dehring forced lawyers and lawmakers to consider how vast a state Michigan really is. For example, Detroit is closer to Baltimore, Maryland than it is to other parts of Michigan. According to MapQuest, Detroit to Ironwood, MI is 601 miles, or approximately a 9 hour 45 min drive. In contrast, Detroit to Baltimore is only 529 miles, or a 7 hour 53 min drive. (Crab cakes anyone?)



Perceiving an injustice in Dehring, the age-old dance between the legislature and judicial branches began, this time with the legislature taking the lead. In 2001, Senate Bill 1244 became enacted into law. MCLA 722.31(1) states, “...a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child’s legal residence at the time of the commencement of the action in which the order is issued.”



Unfortunately, the legislature neglected to define how on measures 100 miles. Is it road miles or as the crow flies? The dance continues, with judges back in the lead.

Several years ago, none other than our own Jon Ferrier gave an entertaining lecture on this very point. With graphics, Jon showed the folly in measuring miles as the crow flies. His reductio ad absurdum example was that someone in Frankfort, MI is, as the crow flies, 91 miles

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How Many Lawyers does it take to Measure a Mile?

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(or 7 nautical miles) from Manistique, MI, notwithstanding that, because of Michigan's unique maritime geography, it is a 4+ hour, 223 mile drive between the towns. We all chuckled, we all laughed.

Enter the Court of Appeals...

On June 1, 2006, the Court of Appeals decided the case of Lash v City of Traverse City, No. 263873. The case considers the 20 mile residency requirement for Traverse City police officers. At issue was whether miles should be measured in "road miles" or "air miles" when the legislature failed to define measurement. Two of the three Appeals judges disagreed with the lead opinion, and opined that "straight line" or "radial miles" should be the measure.

Radial miles!?! Are you kidding me? Suddenly, by analogy, Jon's humorously absurd example could become a reality.

No doubt it is time for more lawyers – FAMILY LAWYERS – to decide how to measure a mile. In truth, it may paradoxically be possible to measure miles indifferent ways.

It has now been over ten years since the Dehring decision, and the ongoing dance between the legislative and judicial branches continues. By the time it's over, everyone's dance card will be full. Meanwhile, finality of the "miles" issue seems to frolic away from us with the levity of a ballerina's pirouette.



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

www.referees-association.org



By Ken Randall, September 2, 2007

Mark Your Calendars for Next Year's Spring Conference!

*May 21st—23rd, 2008
Perry Hotel, Petoskey*




Parenting Time Coordination: A Call for Scientific Examination

By Jon T. Ferrier,
Rhoades McKee



I recently had the opportunity to attend the eighth annual Family Law Forum in Ann Arbor, titled “What to do When the Parties Would Rather Fight than Switch.” During the Forum, participants heard from attorneys, judges and mental health providers on innovative court programs, breaking cycles of conflict behavior, and alternative dispute resolution methods for dealing with the problems presented by high-conflict divorces.



It is always encouraging to experience the enthusiasm of presenters and participants at forums like this – one cannot help but be energized by the success/war stories, the realization that others have confronted familiar frustrations and found ways to deal with them. In short, we often take away from such events a sense of hope that someone is working on the problems we face, and someday we will have better solutions for these problems, all to the good of the parties and their children in our divorce cases.

It is also inescapable, however, to wonder whether a particular “theory *du jour*” is proven out by the facts, and whether there are methods in place to measure the success of the theory. This is the familiar conundrum over whether “anecdotal evidence” is sufficient to confer validity on a practice.

In Family Law we are buffeted constantly by the winds of change from all directions of the compass, be it legislative efforts to defend the institution of marriage, reintroduce fault into the grounds for divorce, or importation of practices and procedures from other jurisdictions that appear to offer solutions to local problems, if we would only try them.



Often conspicuously absent from the discussion of the merits of a particular approach, divorce education programs or alternatives to adversarial litigation, say, is any mention of whether the proposed program actually works. It is also the case, in my experience, that reforms of many kinds in Family Law are instituted on the initiatives of specialists, like family lawyers and others, without much participation from the subjects of the experiment: the parents and the children who must participate in and deal with the novel processes.

We are familiar with the complaint, for example, that the terminology used in Family Law, particularly relating to the custody of children, can be inflammatory, and induces parties to battle

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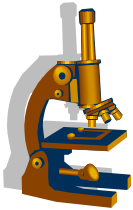
Parenting Time Coordination: A Call for Scientific Examination (con't from page 7)

. . . more over child-rearing issues than would be the case if we simply called “child custody” something else. We saw this impulse in action, a number of years ago, when we legislatively replaced “visitation” with “parenting time.” Did that change help? Did it reduce conflict in divorce cases, to the advantage of kids caught between their parents? Who knows?

As Albert Camus said, “Once you have named it, you have lost it.” What Camus may have meant is that once we categorize or define something by giving it a name (label), we often cease thinking freshly about that thing; we fall into a familiar rut of using a term without really knowing whether our usage and understanding of it is the same as those with whom we communicate who also use it, and thereby lose the ability to communicate about it meaningfully.



When we go beyond renaming the concepts and tools, the raw materials of Family Law, and venture into changing the procedures by which families are moved from “intact” to “fragmented,” the stakes get higher. When dealing with issues involving the creation of new disciplines, like “parenting time coordination,” are we venturing into areas where significant damage may occur, even when balanced with realized improvements? At this point it is difficult to believe we will ever know the answer to such questions. This is because there does not appear to be a lot of “scientific method” in our efforts to reform Family Law.



Remember “scientific method”? We learned in school that the scientific method involves development of a theory, a means of explaining examined phenomena or of approaching and resolving problems. Once the theory is developed, it is tested to determine whether it produces the predicted or desirable result. As evolutionists are scolded by creationists, evolution remains an untested theory, no more entitled to respect or presumptive validity than the explanation in the Bible of how human and other life came to be.

Apart from cosmic theories like evolution, which we could imagine taking eons to test and “prove,” the more finite lifespans of Family Law cases provide hope that empirical testing of theories and policies is at least possible, if difficult.

Testing of a theory by the scientific method usually involves the creation of a “control group,” that does things the same way they’ve always been done, and comparison of relevant data about that group with such data about an experimental group of subjects who participate in the theory. This frequently occurs in drug trials, where the incidence of side effects, for example, in

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. . . those taking a new drug is compared with the incidence of side effects in those not taking the drug, or taking a different drug for the same condition. Viagra's most renowned use was discovered as a "side effect" of a drug intended for a completely different problem – such is the caprice of the scientific method, at times.

One way to test whether "parenting time coordination" is a valid theory for dealing more effectively with parents with disputes about their kids might be to follow a group of families who participated in coordination, and compare their "recidivism" (the rate at which they return to court, post-judgment to resolve problems) with that of families who are not in parenting coordination. The costs such families bear could also be compared, from group to group. Parent, child and attorney satisfaction could be questioned and measured. The Bench's point of view could also be considered, just as the progress, or lack of it, of children following divorce in adjusting to their new family of two or more households.



Assuming someone would be willing to conduct such studies, with adequate funding to assure statistical confidence in the results (the leap beyond anecdotal evidence), we might actually learn whether our guesses and gut feelings that things like parenting time coordination are good for us turn out to be correct.

The pressure not to conduct such experiments and studies is enormous, however. At the Family Court Forum, speaker after speaker effused their confidence and enthusiasm for "innovative court programs for dealing with high conflict cases." A judge shared that she felt less stress when processing her domestic relations docket using litigation-avoidance procedures. Well, DUH! After listening to Family Law cases for 25 years, I can concur with Her Honor that my career would have been a whole lot easier if I didn't have to conduct hearings and trials! Judges are natural and staunch allies of alternative dispute resolution, up to the point where someone starts to question the need for so many judges!



Lawyers generally support ADR as well. It keeps them out of court, gives them a chance to forum shop legally, and provides another alternative revenue stream for some of us. Their clients appear to be happier, and as long as any perceived threat to legal livelihoods never materializes, why on earth wouldn't lawyers embrace parenting time coordination? After all, even the hungriest lawyer must feel the gorge rising when hired to bring yet another parenting time contempt . . .

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Parenting Time Coordination: A Call for Scientific Examination (con't from page 9)



proceeding against their client's ex- for a late return of the children from parenting time.

Clients' self-reported satisfaction, where it can be discerned, may give further support to the theory behind parenting time coordination. On a basic level, it simply has to be more pleasant to talk outside a courtroom, off the record, than to go to court. At least in parenting time coordination there is a higher likelihood the parent will understand what is going on, without having to have it translated by their lawyer.

As to the parenting coordinators themselves, rest assured they are supportive of this new service they provide to divorcing parents. And since parenting time coordination is currently unregulated and unauthorized by court rule or statute, *anybody* can do it! Apparently there is no organization or even website that rates or compares such providers, so the consumer of such services must rely on their lawyer or on word-of-mouth – or on prayer!

None of the above groups appears to spend an undue amount of time considering whether parenting time coordination actually works, or whether methods to determine whether it does work should be developed and implemented. It is just too tempting, for a variety of reasons that may have nothing to do with the success of the procedure, to just go ahead and try it. And if it doesn't work, the complaints will build to a critical mass announcing that it is time to lurch on to the next theory *du jour*, with the familiar carefree attitude that deliberation's absence instills.

But let us assume that interest, and not necessarily self-interest, can be generated to test whether parenting time coordination is a valuable ADR alternative to offer parents who are reorganizing their family into a multi-household format. The next step in the scientific method would be to publish the findings of the research, often called "longitudinal," studies (for their length?), which compiled the results of following the families in the control and experimental groups over a period of years – to see what happens. The published results of the research would then be subject to "peer review," under which other researchers would determine whether the "results" of the experiment could be duplicated. If so, the theory appears to be "valid."



A caution on validity is in order here. Ptolemy devised an elaborate astronomical system to explain the appearances of the cosmic bodies he saw in the sky above. His system was sufficient to explain planetary motion, the apparent "retrograde" movement of planets, and to provide a system under which astronomical events could be predicted with accuracy. Unfortunately, in Ptolemy's

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system, the earth was the center of the universe, and the planets, our sun and all the stars revolved around us! Then Copernicus came along with a better theory. Sir Isaac Newton, in his *Principia* theorized an elegant system to explain the motion of bodies through space and over time, and his theory held up quite well until Einstein came along about a hundred years ago and blew it (and our minds) all to kingdom come. So, scientific theories come and go, but when they are replaced (ideally) it is because a better theory, one that explains the facts more accurately or elegantly has come along, perhaps waiting its turn to be proven wrong.



The advantage of the scientific method is that it takes a lot of the guesswork out of theories, and provides a firmer foundation on which they can stand until demolished by a stronger idea. But why is a firm foundation of our theories of Family Law necessary or even desirable?



Because when we implement new ways of doing things that impact public policy, we expend public resources in various ways. It is desirable not to squander public resources for obvious reasons. It is also desirable not to encourage people to spend their hard-earned money on snake oil. Before we support legislation that would confer *quasi*-judicial immunity on parenting time coordinators (as some of the coordinators at the Forum advocated), we should answer, first of all, some fundamental questions: what parenting time coordination is; what qualifications and training coordinators should be required to possess; and ideally, whether parenting coordination is something into which we are confident and comfortable referring families. After all, with no disrespect of parenting time coordination intended, we put faith in phrenology not too many generations ago, but one would be hard-pressed, I suspect, to locate a board-certified phrenologist these days.



If we deem it desirable to offer parties an alternative to litigation to resolve their general divorce needs and children's issues in particular, we have an obligation to determine whether the "cure" is not worse than the "disease." Regardless of one's personal feelings about litigation, the adversarial system, lawyers and the courts in general, there is something to be said for the common law's development of the theories behind the court-based technology we have used for so long to determine Family Law issues. Each time a trial or appellate court is faced with an issue in Family Law, it has the benefit and the burden of the history of all the cases that addressed the same or similar issues before to assist in assessing the "theory" applied in those cases; to determine whether

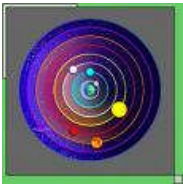
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Parenting Time Coordination: A Call for Scientific Examination (con't from page 11)

the theory continues to properly deal with the facts, if it ever did; to apply the repeatable result, if it works, and to reject it responsibly, if necessary.

Litigation is a pretty weird and frustrating technology for dealing with the issues families discover as they struggle with the separation of the parents. It may be that litigation is as ineffective, when tested against its alternatives, as Ptolemy's view of the cosmos turned out to be, when challenged by Copernicus. There is no way to discover this, however, without employing something like the scientific method to test alternative procedures to those we have traditionally employed.



One of the presenters at the Forum, Jerome Price, included in the materials an article he had published in the *Michigan Family Law Journal's* November, 2003 issue. In it, he suggested one of the reasons families suffer following divorce stems from continuing to be “emotionally married,” yet legally divorced or divorcing. Price claims that part of the difficulty stems from society's response to divorce: “The rituals we currently offer people are sadly bereft of positive emotional content. They [divorcing parties] are simply failures rather than people who have grown apart.” Price's ingenious solution is to offer divorcing parties the opportunity to have a “divorce ceremony,” a “divorce honeymoon,” even a “divorcing cake,” with only one figure on top – all efforts which might be proven to make things better for people in divorce cases, by acknowledging, with ceremonial solemnity, that important stuff is happening when a family transitions to separate quarters, just as it was happening when the family got started, with a marriage.

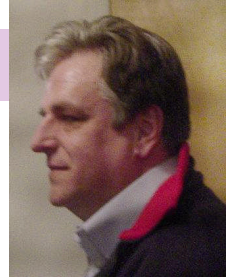
If he is correct in his theoretical construct, perhaps we should be playing music during *pro confesso* divorces, filling the courtroom with (possibly dead) flowers, and so on. Would this make divorce better, or more humane, or make it easier for the parties, their children and society to deal with family disintegration? We'll never know unless we try, unless we experiment. We will never know whether any of our experiments is a success, however, until we start taking a critical, scientific look at the results of such experiments. Before we sanction new disciplines through law or court rule, before we confer immunity on the practitioners of those disciplines, we would be well-advised, I believe, to see whether the study of bumps on the noggin works.

As Price observed: “Life is just one damned thing after another, while pathology is the same, damned thing over and over again.” The cure, I submit, for the same damned thing over and over of trying and discarding untested theories in Family Law, is to give science a chance. Any lawyer-scientists out there? We await your arrival. *(Contributed by Jon Ferrier.)*



CASE LAW, STATUTE, AND COURT RULE UPDATE

Contributed by Ed Messing



The court issued 4 published **Domestic Relations** cases this quarter.

In **Spires v Bergman** __ Mich App__ (2007) (#276722 8/21/07), the court determined that the change of legal residence (100 mile move) provisions of MCL 722.31 have replaced the D'Onofrio factors. When the custodial parent motions to change the domicile of the minor child(ren), the court shall first determine whether MCL 722.31 applies (joint legal custody, parties currently live within 100 miles, the prior order did not authorize a move beyond 100 miles, and the proposed change results in the parties residing over 100 miles apart). If MCL 722.31 does not apply, the court does not apply any factors but must grant the motion to change domicile. The court should have considered the non-custodial parent's motion to change custody, made findings of fact and applied the custody factors even though the parties stipulated to custody provisions relevant to the change of domicile issue. Although the Appellate Courts have not addressed the method of measuring the 100 miles under MCL 722.31, Supreme Court interpreted MCL 15.602(2) (addressing public employee residency requirements) to require measurement of the straight line distance instead of "road miles". **Lash v Traverse City** __ Mich__ (2007) Sup Ct docket # 131632 decided 7/18/07.

Referee procedure was addressed in **Dumm v Brodbeck** __ Mich App__ (2007) # 274600 7/19/07. MCR 3.215 allows the court to hear a *De Novo* hearing the same day as the referee hearing if parties given prior notice and the option to object. MCL 552.507 allows the court to limit the de novo hearing to consider the evidence presented at the referee hearing plus evidence that could not have been presented to the referee, MRE 1101(b)(9) provides that the Rules of Evidence do not apply to the FOC recommendation and thus the referee could verbally present a summary of the hearing and recommendation; change of custody was not warranted by unsupported and previously raised complaints.

In an example of "be careful of what you ask for", the court determined in **People v Nugent** __ Mich App__ (2007) # 267069 7/3/07 that the Prosecutor has standing to bring an action to revoke an Acknowledgement of Paternity and Defendant's mistaken belief that he was the child's father was a mistake in fact that would justify setting aside the Acknowledgement if revocation is proper considering the equities of the case.

And in **Fisher v Fisher** __ Mich App__ (2007) (#270241 8/16/07) the court held that when the Custodial parent receives direct Social Security from the payer's disability claim, the payer is entitled to a credit against arrearages accrued since the date of his disability to the extent that the direct benefits exceed the current support, and any income withholdings from Social Security payments to the payer can be used to satisfy pre-disability arrearages. However, the payer is not entitled to reimbursement of "overpayment" of support due to either direct Social Security Disability payments or income withholdings from payer's Social Security payments.

There were no published **Juvenile Division** decisions, but there were a number of unpublished cases which, while not binding, indicate situations where Referees should be cautious. The need to document notice was addressed in **In re Branch**, Unpub Ct App # 274738 8/16/07. The court found that while the trial court's decision was supported by clear and convincing evidence, there was no proof that respondent was notified of the termination hearing, which rendered the judgment void and required reversal.

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CASE LAW, STATUTE, AND COURT RULE UPDATE

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The court reached a similar result in **In re Lemond Unpub Ct App # 274978 7/26/07**, reversing termination of the father's parental rights after mother had voluntarily released her parental rights as there was no record of any attempt to serve the father; although the petition listed the respondent as a "putative father" and living out of state, he had been adjudged to be the father in a support action and was entitled to either personal service, or upon order alternate service in his state.

Although Respondent's motion to withdraw his guilty plea did not raise procedural errors in the taking of the plea, the court in **In re Barnes Unpub Ct App # 269384 8/28/07** reversed denial of the motion and remanded for an evidentiary hearing to address the ineffective assistance of counsel claim. Respondent and his mother claimed their attorney did not discuss potential defenses and told them to accept the plea bargain because there was no available defense, and the court held that Counsel's testimony was essential to determine respondent's claim of ineffective assistance of counsel for alleged failure to explain the nature of the charges or to discuss potential defenses. There was a strong dissent, however.

The court also reversed 2 cases on the basis of the facts. In **In re Engle Unpub Ct App # 275064 8/9/07**, while there was clear evidence the respondent feared and was dominated by her husband and she had not protected her daughters from the father's sexual abuse, the court reversed termination of her parental rights. Respondent had divorced her husband who had been incarcerated throughout the proceedings, and petitioner had not assessed mother's ability to parent the children in the absence her ex-husband's abuse and control. The Court found that Respondent was, in fact, not resistant to treatment for her passive-dependant disorder, petitioner did not prove likely result in future harm, neglect, or abuse of the children, and termination of her parental rights was clearly contrary to the children's best interests.

The court reversed the termination of both parents' parental rights to their special needs minor child in **In re Yeager Unpub Ct App # 274904 6/19/07**. While there was a history of substance abuse, concerns as to whether the parties had properly bonded with the child, and some delay in obtaining housing and services, both parents had passed their drug screens given for over a year, completed drug counseling, obtained housing, regularly visited, complied with their PAAs and made considerable progress. In addition, the mother had an open and honest relationship with her therapist while the father attended couple's therapy and individual therapy and was employed.

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CASE LAW, STATUTE, AND COURT RULE UPDATE

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RECENT STATUTES AND COURT RULES

2007 PA 9 amends MCL 400.57 et seq., to provide that public benefits for family of a public assistance recipient shall be terminated for at least 1 month if the recipient fails, without good cause, to cooperate with the establishment of paternity or child support, and that benefits may be restored after 1 month if the recipient cooperates with child support requirements.

2007 PA 20 effective 6/21/07, among other changes to MCL 761.1, et seq, corrects a statutory cross-reference in the definition of "magistrate" and provides that a defendant or respondent's "presence" before a judge or magistrate may be by 2-way interactive video technology (replacing the term *closed circuit television*).

2007 PA 23 amends MCL 393.504, et. seq. effective 7/17/07 and requires courts to give reasonable notice to a known deaf or deaf-blind person of the right to provide a qualified interpreter, requires minimum standards for qualified interpreters, establishes testing fees and credentialing for qualified interpreters and, effective 10/1/07, establish criminal, administrative, and civil penalties for violations of the Act.

2007 PA 24 amends MCL 393.502 et seq. effective 6/28/07 defines a "deaf person" and "deaf-blind person". The statute further defines "intermediary interpreter", "qualified interpreter", "qualified oral interpreter", and qualified sign language interpreter" and requires that court shall appoint a qualified interpreter for a deaf or deaf blind plaintiff, defendant, or witness.

MCR 3.216 was corrected to reflect re-lettering of MCL 552.502.

MCR 3.972 & 3.973 are amended reflecting renumbering in MCL 330.1100a & MCL 722.622.

MCR 7.202 was amended effective to include termination of parental rights cases within the definition of Custody case for appeal purposes.



We need you! If you have news, events, legal updates, or just great "war stories" to share with your fellow RAM members, please send them to us for publication in the next Quarterly! Material can be sent to Ken Randall at kdrandall@aol.com, or to Linda Weiss at lweiss@co.midland.mi.us.



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The opinions expressed in this publication do not necessarily represent those of the Board of Directors of the Referees' Association of Michigan.



Any omissions or errors?
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