

RAMBLIN' On...

REFEREES ASSOCIATION OF MICHIGAN

Since 1984



UPCOMING BOARD MEETINGS:

To be held at the State Bar Building, Lansing, unless otherwise noted.

- 12/11/03, Noon, Common Grill in Chelsea, MI
- 2/12/04, 10:45 a.m.
- 4/15/04, 10:45 a.m.
- 5/21/04, 9 a.m., Chippewa Hotel, Mackinac Island, MI

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PRESIDENT'S MESSAGE

As we approach much as upon the fact that some of our the shortest day of the atmosphere of the brothers and sisters of the year I have noticed that courtroom, and that in the bar have the manners and my four children have end depends primarily on professionalism of a l r e a d y b e g u n the judge.' *Brown v Walter*, warthogs. However, it is experiencing symptoms of 62 F2d 798, 800 (CA 2, our responsibility to cabin fever (and it's not 1933)." *People v Williams* ensure that the even officially winter yet!). 162 Mich App 542 proceedings in front of us One of the most obvious (1987). occur in a dignified and and irritating of those As referees we professional manner. In symptoms is a diminished have a special role in addition to setting good ability to get along with guaranteeing a civil examples ourselves, this one another. So...my profession. Litigants often may mean that we are husband Chuck and I take their cues from us. required to take lawyers to recently imposed a It's as simple as the task by imposing refresher course on sibling Golden Rule. We must sanctions or even by civility on our little model the behavior that lodging a complaint with darlings. This exercise has we want to see the Attorney Grievance led me to ponder the oft-exemplified in our hearing Commission. discussed but still rooms. Eyeroiling, heavy It is too easy to problematic issue of sighs or sarcasm on our permit standards of civility in our profession as part conveys a lack of behavior to sink to lowest well as in the broader respect for the process common denominator. public. and for those who appear We must expect more of

"In all of these before us and it's never ourselves and others. aspects of the justified...no matter how C o u r t e s y a n d administration of justice much disrespect we're professionalism are not we would do well to keep confronted with or how assured by robes or in mind Judge Learned smart we think we are. majestic hearing rooms. Hand's admonition: This extends to our Civility starts with the "Justice does not depend dealings with attorneys as person holding the gavel. on legal dialectics so well. It is an unfortunate

~ Deborah L. McNabb

Past Presidents of the Referees Association of Michigan

Wayne Kristal, Jon Ferrier, Ronald Foon, Marie Johnson, Hon. Linda Hallmark, Wendlyn Machnik, Karen Liwienski, Vincent Welicka, Philip Ingraham, Zaira Maio, Mark D. Sherbow

MEMBER NOTES



Congratulations to Board Member Kathryne O'Grady who has left our ranks to become SCAO's Director of Child Welfare Services!

A hearty welcome to Kathryn's replacement—our newest Board Member, Erin Magley!

Congrats also go to Traci Rink who was recently elected to the State Bar of Michigan Family Law Council!

Welcome to our new members!

Rebekah M. Visconti, Wayne County

Barbara Doerr-Le, Washtenaw County

Shauna Dunnings, Eaton County

Dawn LaCasse, Alpena and Montmorency Counties

New Lifetime Honorary Members (Former Referees)

Judah Garber, Washtenaw County, now Washtenaw Friend of the Court

Kathryne O'Grady, Wayne County, now SCAO Director of Child Welfare Services



SHARE YOUR TRIUMPHS!

Please e-mail personal and professional announcements to:

deborah.mcnabb@kentcounty.org



PRANCING IN LANSING

*I*t's been some time since last we pranced, and it's time to catch up with what's emanating from our Capital's family law factories.

Legislatively, the Association will consider House Bill 4776 and Senate Bill 485 at the November Board meeting.

HB 4776 was passed 72-37 by the House on July 2, 2003, and referred to the Senate Committee on Families and Human Services. Among other things, this bill would amend section 2 of the Friend of the Court Act to define *de novo* hearing as "...a judicial consideration of a matter based on the record of a previous hearing, including any memoranda, recommendations, or proposed orders by the referee, but may at the court's discretion be based in whole or in part on evidence that was not introduced at a previous hearing." The bill would also amend section 7 of the Act to provide: "Pending a *de novo* hearing, the referee's recommended order may be presented to the court for entry of an interim order as provided by supreme court rules. The interim order shall be served on the parties within 3 days and shall be subject to review as provided under this subsection."

SB 485 would amend section 3a of the Support and Parenting Time Enforcement Act to provide that the "surcharge shall be calculated at a rate equal to the adjusted prime rate determined by the department of treasury under section 23 of 1941 PA 122, MCL 205.23, at the time the surcharge is calculated."

The Michigan Judicial Institute conducted training for Referees in the Family Division, on October 15, 2003,

with 45 Referees signed up for that day, planned for the Domestic Relations Division, and 58 Referees signed up for October 16, 2003, devoted to the Juvenile Division. Some 14 Referees attended both sessions. Participants received case law, statutory and court rule updates related to both divisions, together with sessions on interstate support, custody/parenting time and domestic violence/protection orders issues, evidentiary issues, domestic relations arbitration, restitution – frequently asked questions, protective proceedings and adoption, and a roundtable discussion was held. Thanks and congratulations once again to MJI for a valuable training experience for Referees.

Our Supreme Court has been active in Family Law these past few months. In *In Re C.A.W. (FIA v Heier & Rivard)*, the Court reversed a 2-1 Court of Appeals decision, ruling that a putative father has no standing to intervene in a child protective proceeding under the Juvenile Code, but remanded the case to the Court of Appeals to address the putative father's constitutional claims.

In *DeRose v. DeRose*, the Court affirmed a 2-1 Court of Appeals holding that Michigan's grandparenting time statute is unconstitutional. The Legislature has pending before it a number of bills which would attempt to craft a grandparenting time statute that would pass constitutional muster, based the 5-Justice majority opinion, the Justice Weaver concurrence, where she

(Continued on page 5)

(Continued from page 4)

offers the Legislature guidance in passing a constitutional statute, and on other considerations. This looks to be an issue that will be some time working itself out through Michigan's statutory formulations and further litigation.

And in *In Re J.K., Minor (FIA v. Kucharski)*, the Court voided an adoption ordered by the trial court while an appeal to the Supreme Court was pending, and reversed the decision terminating a mother's parental rights.

In addition, leave is pending in important cases relating to a putative father's standing in an action brought under the Child Custody Act, and in a case involving whether the parties may stipulate to a binding Domestic Relations Referee's decision in a case, such that appeal is directly to the Court of Appeals, without complying with the provisions of the Domestic Relations Arbitration Act.

On top of all this, the Executive Department has been making its presence felt in Domestic Relations cases through the Attorney General's felony non-support initiative.

How will it all turn out? That's the beauty part. We never know until...

~Referee Jon T. Ferrier
17th Judicial Circuit
Kent County

CALLING ALL REFEREES!

Would you be willing to lead an early morning yoga or mildly exer-tional class each day at this year's Conference? Members have expressed interest in having this available at the Conference, but we need a volunteer to lead the class.



If this opportunity is calling your name, contact Jean Dohanyos at dohanyosj@co.oakland.mi.us or 248-858-0037



The Holiday Luncheon Board Meeting will be held on Thursday, December 11 at Noon at the Common Grill, 112 S. Main Street in Chelsea, Michigan (NE of Ann Arbor).

If you plan to attend, R.S.V.P to Barbara Kelly at kellyb@ewashtenaw.org or by telephone to Deb McNabb at 616-632-5144 by December 10.

Check out the restaurant's website at www.commongrill.com

For directions, go to www.mapquest.com or call the restaurant at 734-475-0470.



ATTENTION DOMESTIC RELATIONS REFEREES!

A Call to Arms!

As Jon Ferrier reported in “Prancing in Lansing”, HB 4776 has passed the House. **Now** is the time to exert pressure on the Senate to pass this bill. RAM has sent a letter to Senator Hardiman, the Chair of the Senate Committee on Families and Human Services urging passage of HB 4776. In addition, the Judges of the Family Division in Kent County have also sent a letter indicating their unanimous support. With their permission, I include an excerpt from their letter to Senator Hardiman below. **I implore all domestic relations referees to approach the presiding judge of their family division and request that he/she send a similar letter.** The legislature might pay attention if they receive letters unanimously endorsed by all of the family division judges in each circuit or, at least by the presiding judge. This bill is opposed by the Family Law Section, however, it serves the interests of justice by reducing the unfair aspects of the current “second bite of the apple” without compromising due process. Unfortunately, these kinds of changes do not easily become law. No vocal natural constituency has existed...until now. Now is the time for referees to speak up and make a difference not only in our jobs, but also for families entangled in our court system. RAM’s influence is growing and we can individually assist in that effort by becoming vigorous advocates with our local judges. We and the judges have common interests in this battle and they will likely support us if we but ask. Please inform us of your success in this endeavor.

~ Deborah L. McNabb, RAM President

Dear Senator Hardiman:

...With respect to House Bill 4776, we wholeheartedly support the Legislature’s efforts to more specifically define the scope of “de novo” hearings when parties challenge a circuit court referee’s recommended order. We also strongly support the inclusion of language in Section 7 stating that the referee’s recommended order should become the interim order pending a de novo hearing on one party’s objection to the referee order. This provision gives out referees’ orders some much needed statutory support, as many litigants and attorneys view our family court referees’ hearings as merely the first bite of the apple. Without the assistance of our hard-working referees, our dockets would be even more congested than they currently are, and our divorce motion practice would last twice as long as the current four to six hour shifts that we currently serve on “motion Fridays.”

Here is an example. In a divorce case, one parent wishes to exercise parenting time or to clarify the exercise of parenting time. Parenting time motions are typically heard by the domestic relations referees. If the referee orders from the bench that one parent is permitted to take the child to a wedding that weekend or for spring break that weekend, the other party may immediately file an objection to the referee’s recommendation and order. The prevailing parent is now in limbo because he or she has no order reflecting the referee’s ruling, and the objecting party can merely prohibit the child from attending the events. The proposed bill addresses that scenario by permitting the referee’s order to be entered as an interim order pending de novo review on the record. This would then end the gamesmanship that currently occurs both in front of the referees during motions and after the referees have entered their orders.

Kent County’s Circuit Court Family Division is one of the busiest benches in the state. Because of our caseload, it is crucial for our bench that circuit court referees¹ function in the most efficient manner possible. House Bill 4776 would improve our Court’s efficiency while achieving greater fairness in family law cases without negating the litigants’ due process rights. We urge you to support the enactment of this bill as soon as possible...

¹Notably, like district court magistrates, referees in the circuit court are bound by the same ethical and legal rules that bind Judges. But unlike the magistrates, referees in the circuit court do not derive their authority and responsibility from the Revised Judicature Act. However, there are good reasons to locate referees in the same law that governs all our other judicial officers in the judicial branch of government, and to rename them “magistrates.” This discussion can be continued at a later date, however.

~The Family Division Judges of Kent County

CONFERENCE CORNER

Mark your calendars now !
Join us for RAM's 20th Anniversary
Celebration/Annual Conference at
the historic CHIPPEWA HOTEL on
MACKINAC ISLAND
Wednesday May 18– Friday May 21

Get away to beautiful Mackinac Island in May 2004! SAVE THE DATES, DO

NOT SCHEDULE HEARINGS, AND SET ASIDE A LITTLE SPENDING MONEY to enjoy our spectacular three-day training seminar!

Our featured speakers will be Chief Justice Maura Corrigan from the Michigan Supreme Court, Frank Vandervort - Program Manager of the Michigan Child Welfare Law Resource Center at the University of Michigan Law School and Dr. Phillip Stahl from the National Council of Juvenile and Family Court Judges. The Chief Justice and Mr. Vandervort will be our guests at dinner on Wednesday night.

Finally, pull out the indoor putting equipment and practice up – Art Spears is counting on a great turn-out for the 2nd Annual Phil Ingraham Memorial Golf Scramble on May 20th! No golf experience required (or need be admitted to); in fact, that might turn out to be an advantage!

Come join your referee colleagues for an inspirational, educational, and entertaining get-away on Mackinac Island – see you there!



Our Victorious Immediate Past President, Mark Sherbow
Is this guy proud, or what?



The Winning Team 2003



RAM Golf Scramblers 2003

Photos courtesy of Ken Randall

RAM 20th Anniversary Conference 2004

Tuesday, May 18, 2004

Overnight if needed at Days Inn, Gaylord (\$49.00 rate)

Wednesday, May 19, 2004

Early arrival	Carriage tour if so inclined (\$14.75 adult/\$7.50 child)
11:30 or 12:30	Depart from Mackinaw City or from St. Ignace via Arnold Ferry
12:15 or 1:15	Arrive at the Chippewa Hotel (\$95.51/night) , deposit luggage Early check-in if available; guaranteed room check-in by 3 pm Complementary box of fudge in each room
12:00 to 1:45	Registration at the Chippewa Hotel lobby Conference packets distributed to RAM members Scavenger hunt begins (if we have at least 15-20 kids coming)
2:00 to 5:00	Frank Vandervort, Program Manager of the Michigan Child Welfare Law Resource Center at the University of Michigan Law School Lilac Tree conference room
5:00 to 7:00	Rest, refresh, revitalize at the Hospitality Suite facing the harbor
7:00 to 8:30	Group dinner at the Chippewa Hotel Harborview Dining Room Buffet (carved prime rib/fresh whitefish/chicken salta bucca with salad served tableside, fresh vegetables, garlic mashed potatoes, dessert such as a key lime pie)
After 8:30	Hospitality suite, Pink Pony, hot tub, strolling/shopping

Thursday, May 20, 2004

8:00	Breakfast on your own
9:00 to 10:15	Roundtable Discussion—Issues for the Chief Justice
10:00ish	Fort tour for significant others/kids (\$7.75 adult/\$4.50 child)
10:30 to 11:30	Chief Justice Maura Corrigan, Michigan Supreme Court Lilac Tree Conference Room
11:30 to 1:00	Lunch on your own Complimentary magic show at the Chippewa for kids
1:15	Announcements at the Lilac Tree conference room
1:30 to 3:00	Dr. Philip Stahl, National Council of Juvenile and Family Court Judges, “Techniques for Effectively Interviewing Children” Lilac Tree Conference Room
3:30 to 6:00	Roundtable Discussion Putt-Putt at Mission Point for kids (\$3.00) Bike rides (\$7.00/hour for mountain bike rental) Scavenger Hunt continues
6:00	Complimentary hay ride provided by the Chippewa Hotel
After 6:00	Dinner on your own
8:00 pm	Scavenger Hunt ends with brief program at the Hospitality Suite
After 8:00	Pink Pony with live entertainment, suite, shopping/strolling

Friday, May 21, 2004

9:00 to 10:00	Breakfast Board Meeting at the Chippewa Harbor View
10:00 to 10:30	Check-out? We are currently negotiating a possible late check-out
10:00ish	Butterfly House tour for significant others/kids
10:30 to 12 noon	Dr. Philip Stahl, National Council of Juvenile and Family Court Judges Lilac Tree Conference Room
12 noon	Conference concludes

*****Special room rates will continue for the weekend following the conference*****

WAR STORIES

The Parents

She is the greatest mother...He is the greatest father. These words spoken by parents are not heard often enough. This sentiment is even more rare in a custody dispute. Those familiar with family court know, that it is not unusual to have parties fighting over children due to difficulties in parental relations. They can fight over the place and time of parent exchanges, what clothing the children take or did not return and many other things that at that moment are very important to them, and yet inconsequential in the big picture. Their small dispute is a microcosm of the big differences in parenting styles and personalities. The type of thinking that in order to prove oneself a better parent, the other person must be proven to be the worse parent. For example, parties who were to meet at a designated time and place, where each was on the line with their attorney to report the other for not showing up at the location that they both professed to be, at the appointed time. Preferring to engage their attorneys before looking for the other party.

Recently, a most miraculous and heart warming exchange that ex-spouses have had was experienced in my hearing room. The petition was for a change of custody of a fourteen year old boy. The father stated that the boy wanted to live with him. He would be willing to transport the child to school to maintain the child's school district. The mother wondered in her pleadings what had happened after fourteen years to make a change in custody necessary. She had questions about father's ability to keep track of the young man, she was worried about father's previous alcoholic history, and concerned about the son's adjustment to the transfer he was requesting. She knew in her heart that to fight the change would not enhance her relationship with her son, but could not understand why it was happening.

The parties upon entering the hearing room briefly touched hands, sat next to each other and calmly told of their agreement. Their son would go live with his dad, no school change would occur, and dad would be responsible for discipline, doctors appointments and

done previously for her. They thanked the court for being there to provide a forum where they could address their issues, discuss them, and come to common ground without which their agreement was not possible nor was this type of communication to be achieved.

Father stated that he did not want to take the child away, he wanted to shoulder more of the responsibility. This adolescent time in the child's life was critical for the parents to work together and honor each other's concerns. Both parents shared the expectations for their son and his behavior. She would still wear the mantle of motherhood, but the day to day chores of child rearing would be borne by dad for a while. She had treated him kindly and he would reciprocate.

When queried about how they were able to come to this agreement, they stated that they have had their differences over the years, but they each addressed each others concerns and worries. They had talked in an open and frank discussion and legitimately answered the other's questions.

They talked about each other in respectful terms. He is a recovering alcoholic. He had been in recovery since the child's birth. He said that she was a kind and loving mother. She said that he was a wonderful example as a father. They praised each other for the job they had done, and for the fine son they had to show for it. Both of them smiled.

**~Kathleen M. Omeke
Family Court Referee
44th Judicial Circuit**



“Brevity” is a weekly newsletter about juvenile justice from the National Council of Juvenile and Family Court Judges. “Brevity” brings you news and information from around the country and on the internet. To find out more, visit Brevity’s website: <http://training.ncjfcj.org/brevity.htm>

On September 30, 2000, 547,415 children were in publicly supported foster care in the United States. The majority of those children were ages 11-15 (29%), followed closely by children ages 6-60 (25%) and ages 1-5 (29%). To find out more about the Demographics of Children in Foster Care, visit www.pewfostercare.org

The nonpartisan [Pew Commission on Children in Foster Care](#) was launched on May 7, 2003 under the leadership of former Congressmen Bill Frenzel and Bill Gray. This expert panel of experienced legislators, child welfare administrators and providers, judges, parents, and youth is committed to improving outcomes for some of the nation's most vulnerable children by developing practical, bipartisan recommendations related to federal financing and court oversight of child welfare. It will report those recommendations in 2004. The Commission is supported through a grant by The Pew Charitable Trusts to the Georgetown University Public Policy Institute. The nonpartisan [Pew Commission on Children in Foster Care](#) was launched on May 7, 2003 under the leadership of former Congressmen Bill Frenzel and Bill Gray. This expert panel of experienced legislators, child welfare administrators and providers, judges, parents, and youth is committed to improving outcomes for some of the nation's most vulnerable children by developing practical, bipartisan recommendations related to federal financing and court oversight of child welfare. It will report those recommendations in 2004. The Commission is supported through a grant by The Pew Charitable Trusts to the Georgetown University Public Policy Institute.

NEW ETHICS HOTLINE FOR REFEREES

The State Bar of Michigan has expanded its Ethics Hotline to assist judges, magistrates and referees in getting advice regarding their ethical questions. Now, separate lines have been established for lawyers and judges. The Judges Ethics Hotline will be answered exclusively by Thomas Byerley, the Director of Professional Standards at the State Bar of Michigan, who will provide prompt and confidential ethics advice for Michigan Judges, including questions regarding judicial campaigns.

The number is 517-346-6334.

ETHICS SPOTLIGHT

ETHICS SPOTLIGHT

Lawyer Guardian Ad Litem

The following [question](#) was recently posed on the Children's Law Listserv:

I am involved in a case of child neglect. Aunt would like to adopt son of her brother, father agrees, mother abandoned child in Michigan. All parties were born in India, father is still there. Guardian for child seems intent on determining if child is here legally and to have him deported. Isn't this a blatant conflict of interest?

Guardian recently stated, in open court, conversation with child that his picture was pasted over another child's passport. Guardian claims this info is not privileged since it was spoken in front of foster mother. Again, is this ethical?

The following [answer](#) was given and is being reprinted with the permission of the author:

I think that the L-GAL has a dual obligation to determine first if the Hague Convention on the Civil Aspects of International Child Abduction as enforced by the federal International Child Abduction Remedies Act (ICARA) 42 USC11601 et seq applies to this client. The L-GAL can not fully make an independent investigation under 712A.17d(c) until it is determined that this is not an international child abduction victim. I would not accept the Aunts statement that "the father agrees" at face value. As a minimum the L-GAL should request proof by contacting the U.S. State Department as United States Central Authority under the Convention that the child has not been reported as an abductee. The L-Gal might also want to obtain information about the father from the Parent Locator Service in accordance with the act. The L-GAL might then want to directly contact the father. If the child is a victim of international child abduction, he has legal rights and procedures for the prompt return to his home country. Congress has declared that children who have been wrongfully removed or retained, within the meaning of the Convention are to be promptly returned. Second, the L-GAL needs to determine if the notice provisions of Article 37(b) of the Vienna Convention on Consular Relations (VCCR) have been met. Article 5(h) of the VCCR specifically provides that consular functions include, "safeguarding... the interests of minors and other persons lacking full capacity who are nationals of the sending state, particularly where any guardianship or trusteeship is required with respect to such persons." Article 37(b) of the VCCR generally requires the "competent authorities of the receiving state" (i.e., the country in which a foreign national is found) "to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending state. A foreign child has a right to have and the state has a duty to give notice to the child Consul when a foreign child is taken into protective custody.

It is the duty of the L-GAL to see that this has been done and if necessary, give notice to the Consul on behalf of the child. See the ABA Child Law Practice Feb. 2001 for specifics and a sample notice form letter. See also http://travel.state.gov/child_protection.html, or <http://travel.state.gov/abduct.html>. As to the passport photo, I cannot see how the L-GAL is acting in the child's best interest if what appears to be facial evidence of INS fraud is ignored. Is this really the child who is shown on the passport? Or is this an identity theft situation? This identity issue needs to be addressed and resolved. It would be a tremendous wrong to the child to set him up for future deportation action. If the child is now an innocent victim of a passport fraud committed by others, this is surely something that both the L-GAL and the Court needs to take into consideration and deal with so that the child's status in the U.S. can be normalized.

~R. William Schooley
Assistant Public Defender
Washtenaw County, schoolew@ewashtenaw.org

What do you think?

NOTICE REQUIREMENTS IN CHILD PROTECTION CASES INVOLVING INDIAN CHILDREN

Frank E. Vandervort
Michigan Child Welfare Law Resource Center
University of Michigan Law School

The Indian Child Welfare Act (ICWA), 25 USC 1901 et seq., is a federal statute that governs how individual state courts handle child custody cases involving any Native American child who qualifies as an “Indian child.” ICWA covers child protective proceedings as well as status offenses. See MCR 3.980. While such cases do not arise all that often, when Native American heritage is an issue it is critically important for everyone involved that they be handled correctly. A particularly troublesome area of practice within ICWA cases relates to providing proper notice to Indian tribes and/or the Secretary of the Interior. Before setting out the current state of Michigan law regarding ICWA’s notice requirements, this article will briefly describe the history of the ICWA and the unique status of Indian tribes in child protective proceedings.

History and Status of Tribes

The ICWA was enacted by Congress in 1978 as a response to the long-standing concern expressed by Native American tribes about the century old practice of removing Indian children to boarding schools run by whites, often in affiliation with religious organizations. At these boarding schools, native children were poorly cared for, prohibited from dressing or wearing their hair consistent with cultural practice and severely punished for speaking their native tongue. The practice of removing Indian children from their homes continued in the second half of the twentieth century as states passed and implemented child protection laws.

In enacting the ICWA, Congress found that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by non-tribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes.”

To protect the interests of the tribes, the ICWA contains provisions either for removal of cases involving the custody of Indian children from state courts to tribal courts or for the tribe to be made a party to the state court proceeding. Generally under Michigan law there are three parties to a child protective proceeding, the petitioner (in Michigan any person or agency may petition the court to take jurisdiction over an allegedly abused or neglected child, but the vast majority of such petitions are filed by Children’s Protective Services), the parent(s) and the child(ren). To make sure that the tribes are aware when one of their children may be the subject of a child protective proceeding, and thereby take action to protect their interests in the child, the ICWA requires that notification of state court child protection proceedings be provided.

Notice Requirements

The notice requirements of the statute are found in 25 USC 1912(a). A comparable provision is contained in Michigan’s Court Rules, MCR 3.980. The first requirement is that the notice must be provided by the petitioner. *In re IEM*, 233 Mich App 438 (1999). NOTE THAT IT IS NEVER SUFFICIENT NOTICE TO MERELY CALL OR WRITE THE MICHIGAN INDIAN CHILD WELFARE AGENCY. Proper legal notice means that a Notice of Hearing, a copy of the petition and a statement that the legal proceedings may result in the termination of parental rights must be sent by registered mail, return receipt requested.

Organization To Notify

The ICWA requires that *both* the child's parents and the child's tribe be notified of child protective proceedings. See 25 USC 1912(a). Some parents will know what the tribal affiliation is, some will have some idea of possible affiliation while others will have no idea what tribal affiliation may be. If the parent is clear as to what the tribal affiliation is, that tribe must be provided notice. So, for example, if the parent indicates that he or she is a member of the Grand Traverse Band of Ottawa and Chippewa Indians, that tribe must be provided legal notice.

But the notice requirement is triggered when there is *any* hint that a child *may* be an Indian child. See *In re IEM*. In the *IEM* case the mother basically said at the preliminary hearing, "I think I may have some Indian blood." This ill-defined reference to Native American heritage, the Michigan Court of Appeals later ruled, was enough to trigger the ICWA's notice requirements. But the practical problem arises, what tribe to notify? If the parent is unsure whether he or she has Native American affiliation or if the parent does not suggest a particular tribe, the petitioner must notify the Secretary of the Interior. See *In re IEM*.

If the parent suggests a possible tribal affiliation (e.g., "I think I may be Cherokee"), that tribe must be notified. *In re NEGP*, 245 Mich App 126 (2001). When a parent is not certain as to possible tribal affiliation, it is the best practice to also notify the Secretary of the Interior.

Filing

It is important, both to permit the trial court to make findings regarding the notice requirements and in order to create a record for an appeals court to review, that copies of any documents sent to a tribe or to the Secretary of the Interior be filed with the court. Similarly, copies of any correspondence received from the tribe or the Secretary of the Interior should be filed with the trial court. Before proceeding further with the case, the parties should ask the court to make findings of fact and conclusions of law on the record—either orally or in writing—as to the following three issues: 1) whether the ICWA's notice requirements were complied with; 2) whether the child is an "Indian child" within the meaning of the ICWA [NOTE: the tribe—and only the tribe—may decide if the child is a member. See *In re Shawboose*, 175 Mich App 637 (1989)]; and 3) whether the ICWA's provisions apply to the proceedings at hand. *In re Yeary*, (Unpublished No. 224475, February 9, 2001).

If at any point in a termination of parental rights proceedings it comes to light that the child whose welfare is at issue may be an "Indian child," the proceedings must stop until the notice requirements of the ICWA have been complied with. *In re NEGP*. If the proceeding is for temporary jurisdiction, the court may issue orders for the protection of the child until such time as the notice has been provided and the court has made findings regarding the notice requirements.

Conclusion

It is critically important that the notice provisions of the ICWA be complied with. Failure to do so may have dire consequences for the child(ren) involved in a case. This article suggests a checklist (see next page) for complying with the notice requirements of the statute as currently interpreted by the Michigan courts.



ICWA NOTICE REQUIREMENT CHECKLIST

Special Notice Requirements [See 25 USC 1912(a); MCR 5.980]:

- If any hint that child is Indian child, the PETITIONER must provide notice. *In re IEM*, 233 Mich App 438 (1999).
- Must notify BOTH the parents (or Indian custodian) AND the Tribe. 42 USC 1912(a).

If there is any indication as to specific tribal affiliation, must notify that tribe. *In re NEGP*, 245 Mich App 126 (2001). If any uncertainty, also notify the Secretary of the Interior. (e.g., “I think I may be Cherokee.” Should provide notice to both the Cherokee tribe and the Secretary of the Interior).

If no specific tribal affiliation is identified or if the parent says there may be Native American heritage but is unsure, then notify Secretary of the Interior. *In re IEM*.

All notice to Secretary of the Interior or tribe must be: 1) in writing; 2) sent registered mail return receipt requested; and 3) include a copy of the petition, a summons, and a statement that the proceedings may result in termination of parental rights.

Copies of any documents sent to tribe/Secretary should be filed with the court.

Copies of any response from the tribe/Secretary should be filed with the court.

Substantial compliance with notice requirements is sufficient to meet ICWA’s requirements. *In re TM*, 245 Mich App 181 (2001).

Counsel should ask the court to make findings on the record as to whether the ICWA’s notice requirements have been complied with, whether the tribe has determined that the child is an “Indian child” within the meaning of the ICWA [the tribe makes this decision, see *In re Shawboose*, 175 Mich App 637 (1989)] and whether the ICWA’s provisions apply to the proceeding. *In re Yeary* (Unpublished No. 224475, February 9, 2001).

Termination proceedings must stop while the notification is provided and the time requirements of 25 USC 1912 are met. *In re NEGP*.

Once the notice requirement is fulfilled, if the tribe does not respond, the burden shifts to the parent to demonstrate that the ICWA applies to the case. *In re TM* (after remand).

**Agenda for December 11, 2003
Board Meeting**



- I. Minutes**
- II. Correspondence - Randall**
- III. Financial**
 - A. Treasurers Report—Elias
- IV. Standing Committee Reports**
 - A. Annual Conference Committee - Dohanyos, Sherbow, Spears
 - B. Membership Committee—Randall, Oemke
 - C. By-laws Committee—Randall
 - D. Law and Court Rule Revision and Advancement Committee - Sherbow
 - E. Legislative Committee - Ferrier
- V. Special Committee Reports**
 - A. Technology Committee—Jacokes
 - B. Scholarship Committee - Sherbow
 - C. SCAO Liaison—O’Grady
 - D. State Bar Family Law Section Liaison - Ferrier, Kelly
 - D. State Bar Subcommittee on Judicial Ethics - Ferrier
- VII. Unfinished Business**
- VIII. New Business**
- IX. Adjourn**

REFEREES ASSOCIATION OF MICHIGAN

Minutes of the October 9, 2003 Executive Board Meeting

In our corner conference room in the State Bar Building

Lansing, Michigan

Call to order: 10:47 am by President Deb McNabb.

Board members present: Dohanyos, Elias, Ferrier, Jacokes, McNabb, Oemke, O'Grady, Randall, and Spears (at 11:02).

Board members absent: Doetsch, and Sherbow (both excused absences).

Other member present: Helen T. Hartford, Ingham Co.

Guest present: Shawn L. Perry, Ingham County FOC.

Corrections to prior minutes: Announced and incorporated into the meeting discussion. Mr. Ferrier moved to adopt as corrected, seconded by Ms. O'Grady, passed unanimously.

Announcements: As of November 3, 2003, Kathryn O'Grady has been appointed by the Chief Justice to the position of Director of Child Welfare Services, SCAO. She will be in charge of the court improvement plans as well as a number of other areas of great interest to family division referees. Her work week will be split between Lansing and Detroit, and everyone present was most sincere in their hearty congratulations for this career development. Best wishes, Kathryn! This means that as of November 3, our organization will have a vacancy on the Executive Board which may be filled by presidential appointment. Please contact Deb McNabb if you are interested in serving in this capacity. Further, it will be necessary for a November meeting to be scheduled; our president will set the date, probably for the second week in the month. Lastly, Mark Sherbow recently suffered a mild heart attack but is doing well and is expected to fully recover ... IF he will co-operate with doctor's orders.

Upcoming board meetings: Please mark these important dates in your calendars -

12-11-03	Noon-ish	Common Grill, Chelsea
02-12-04	10:45 am	State Bar Building, Lansing
04-15-04	10:45 am	State Bar Building, Lansing
05-21-04	In the am	Chippewa Waterfront Hotel, Mackinac Island

Every member is welcome to attend – we value your input!

Correspondence: Ken Randall reported that Representative Scott Hummell had written to thank RAM for our feedback on HB 4075 which impacts upon fees charged for PPO's. Apparently, increasing state filing fees could result in a loss of approximately \$4 million in federal funds, so the issue is somewhat problematical. The representative indicated he is willing to open a dialogue and asked for suggestions regarding how to deal with the proliferation of PPO's requested and issued.

Financial report: David Elias indicated that RAM has \$12,871.49 as a paid-up balance, all bills currently paid and all receipts kept by Mr.E. President McNabb requested a current list of all RAM members so that she might explore with the Membership Committee the reason(s) for any decline in membership over the past year.

Standing committee reports:

Annual Conference – Jean Dohanyos had no news to report regarding the 2004 conference on Mackinac Island. Ms. O'Grady had spoken to Frank Vandervort of the Michigan Child Welfare Law Resource Center at the U of M, and he will be our Thursday morning speaker; we are to indicate to him which topic we would like him to address. Materials from Mr. Vandervort - including his biographical sketch, a three-page article regarding notice requirements

in child protection cases regarding Indian children, and a case summary hand-out regarding In re CAW, Deschaine v St. Germain and Deschaine, and In re JK – were made available at the meeting.

Membership – The members of this sub-committee will meet prior to the next meeting, per presidential arrangement.

Wage & Benefits – Kathryn O’Grady will no longer be available to serve on this sub-committee; therefore, President McNabb needs at least one other referee to assist with the compilation of the annual survey. Kathleen Oemke volunteered to help make telephone calls, beginning in January, to the various counties to compile this information. (*Note: Subsequent to the meeting, Mr. Randall e-mailed the recording secretary with the following good news: Midland County has approved a pay raise for both FOC and Juvenile Court referees, effective 1-1-04, from \$52,698 to \$75,222.*)

Law & Court Rule Advancement – Jon Ferrier provided a handout entitled “The Type of Our Lives” and indicated that changes to MCR 1.109 and 2.113 will take effect January 1st regarding pleadings to be submitted on good quality paper, legible, written in the English language, and when typed done so in 12-point type. Holographic pleadings are still permitted and are no longer required to be printed in ink. Clerks are supposed to reject non-conforming pleadings. In regard to developments on the juvenile front, Kathryn O’Grady drew everyone’s attention first to HB 4096 which has been referred to as “Arianna’s Law” (referring to Arianna Swinson, the child who died and was the subject of the expose articles by Jack Kresnak of the Detroit Free Press) and would expand the authority of the Children’s Ombudsman. Hotly contested points include the subpoena power, release of information to a complainant (who could be a grandparent or a disgruntled boyfriend of the parent), and the creation of authority independent of the Governor. The bill has raised levels of concern in FIA, and the deadline for comment is November 1st. Ms. O’Grady will try to prepare a blurb which can be circulated via the RAM e-mail list to our membership; in the meantime, however, all readers are urged to visit the Legislature’s website and make our voices heard. Second, HB 4586 will limit confidentiality of FIA documents in cases where a child has died; as might be expected, FIA is strongly opposed to certain provisions of this bill. Finally, Ms. O’G provided copies of a legislative proposal being advanced by Kevin Cronin, Esq. of Hopkins, MI which would restore parents to the status of “party” in juvenile delinquency cases. Wayne County referees do not favor this proposal, and Ms. O’G does not believe the parent needs to have standing in order to be heard in a case involving his/her child – the hearing officer can ask for parental input at the time of the hearing. Voicing the countering viewpoint was Jean Dohan-yos, who spoke in favor of “re-party-ation” for parents. All members are encouraged to contact board members to provide further input on this issue.

Legislative – Jon Ferrier provided copies of SB 485 which would change the surcharge on FOC support payments from 8% to a floating rate, based upon the current prime rate. No position is recommended at this time. Shawn Perry said that with the new conversion system, poor people cannot afford the surcharge which is now being assessed against arrearages – the court no longer has the ability to separate pre-judgment arrearages into an account which could be diminished by minimal weekly payments. David Elias asked that the rate be reduced to zero, since there are people who due to illness or other persistent unfortunate circumstance will *never* be able to pay an arrearage amount. The comment was made that felony warrants work in a case where, for example, an orthopedic surgeon father earning \$350,000 per year vamoosed to Idaho to escape various financial responsibilities to his children. Another comment was that a better direction to take would be to give the court the ability to *cancel* surcharges when appropriate. The FOC contingent around the table had many things to say on this subject, and it was agreed to table the matter for further discussion at the next board meeting. Mr. F then mentioned that HB 4776, changing the definition of “de novo” hearing, passed in the House and was before the Senate committee now; this, too, should be a topic for discussion at the next board meeting. Finally, a number of differing proposals have surfaced to overrule the DeRose case and restore constitutional grandparenting time in Michigan; Mr. F speculated that the concept will probably pass in some form or another, and attorney Richard Victor has drafted one such proposal virtually on the eve of the release of the case holding, based upon Justice Weaver’s concurring opinion. This matter bespeaks further consideration at the next board meeting, as you might have concluded by the end of this series of comments.

Special committee reports:

Scholarship – A committee created after Past President Phil Ingraham’s death to memorialize him by perpetual scholarship, progress has been somewhat slow. Art Spears volunteered to assist Mark Sherbow, and Helen Hartford expressed

an interest in joining, too.

Technology – Paul Jacokes has spoken to Lynn Liberato and Karen Liwienski. Unfortunately, the committee has no budget, but the State Bar will offer a website for our use. RAM had a listserv created on Yahoo which is now defunct, as no one was taking advantage of the opportunity to “talk” to each other in such a forum. Mr. J requested a copy of an updated RAM roster to facilitate his efforts.

By laws – Ken Randall agreed to chair this committee and will look for further direction from our President.

Bar Leadership Forum – Jean Dohanyos reported on the latest meeting of the forum which took place on October 1, 2003 at the Sommers Schwartz board room in Southfield. Invitations to the November 13 Diversity Dinner at the Somerset Inn, Troy were distributed. Ms. D provided a brief outline of the announced purpose/function of the forum, per its current President, Jay Cunningham. It is an association of about 27 associations designed to increase networking, membership, and political influence. A master calendar has already been created by the OCBA and includes RAM executive board meetings/conference dates/times. A steering committee of twelve associations is envisioned to draft by-laws, plan quarterly meetings and organize social schedules. It was noted that the proposed steering committee does not include RAM, and Ms. D argued that our organization should also have a seat at the planning committee for the “one grand table.” Because the forum was conceived and initiated by Betty Lowenthal, it was the recommendation of Jean that our President consider appointing a RAM member such as Betty who would have the time and influence to contribute meaningfully to the forum. Comments around the RAM rectangle included the observation that it seemed unlikely that there would be many common issues uniting all of the organizations listed as forum members, and the concern was expressed that we not affiliate our group with a potentially problematical political issue.

State Bar Family Law Section liaison – Jon Ferrier had certain things to say but nothing of such significance as to detail notation at this point in the meeting.

State Bar Judicial & Professional Ethics Committee/Sub-committee on Judicial Ethics – Jon Ferrier reported that the next meeting would take place on October 31, 2003 (Halloween).

Unfinished business: The President indicated that Barb Kelly of Washtenaw County had arranged for our December holiday meeting to take place at the Common Grill in Chelsea on the 11th at 12 noon. For anyone interested in visiting their website, go to www.commongrill.com. Shawn Perry described it as the “best restaurant” in Michigan – Barb must have a FINAL COUNT of attendees no later than December 10th.

Ms. Perry inquired if anyone had any authority regarding the issue of a referee being subpoenaed to the judge’s de novo hearing on that referee’s case; Mr. Ferrier referred Shawn to his article which was published in a prior RAMblin’ On, and the recording secretary made a copy of that available at the end of the meeting. Mr. Spears also had information which he pledged to send to Shawn.

New business: Helen Hartford would like to be added to a referees’ listserv, if/when one is available.

Ms. Oemke moved to adjourn, seconded by Mr. Spears, and the meeting concluded at 11:47 am.

Respectfully submitted by,

Jean L. Dohanyos

Recording Secretary

Parting thought: “The most common way people give up their power is by thinking they don’t have any.” *Alice Walker*

**ENCOURAGE YOUR COLLEAGUES TO
JOIN RAM TODAY !**



REFEREES ASSOCIATION OF MICHIGAN

Dues Statement and Membership Application

Mail your check for **\$25.00** payable to **Referees Association of Michigan** to:

David T. Elias
Macomb County Friend of the Court
40 N. Main Street
Mt. Clemens, MI 48043-5661

*** Dues are due and payable annually on March 1 ***

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I AM A _____ DOMESTIC RELATIONS REFEREE _____ JUVENILE REFEREE
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I AM ALSO A _____ FOC STAFF ATTORNEY _____ FOC _____ DEPUTY FOC

_____ OTHER (please specify)

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Mark D. Sherbow
Barbara Kelly
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Legislative Committee

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Kathryne O'Grady
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