Since 1984

justice in any individual case – especially complicated family law cases – is a difficult task, but you are all courageously stepping up to the plate. You are achieving the highest ideals of the legal profession by making a real difference in the world through service to others. I salute you.

This article gives me an opportunity to elaborate on some of the initiatives that my administration has undertaken that impact the work you do. The Michigan Department of Human Services (DHS) is fundamentally changing the way it supports families in crisis through its Family to Family approach to child welfare. This approach focuses on keeping kids safe and minimizing the disruption that comes from out-of-home placement. When children can remain safely in the home, services are provided to the family there, without removing the children. If children cannot be kept safely in the home, the Family to Family approach engages the family, extended family, the community, and the children themselves to identify a placement for the child that is the most family-like and least restrictive needed to meet the unique needs of the child. Outcomes for children improve when they have continuity and connections with things that are familiar to them - schools, friends, neighbors, and most importantly, siblings and family members. The Family to Family approach will result in more stability for children if they must be in out-of-home placement, and move them as quickly as possible to safe, permanent

Issues that impact the child welfare system are critically important to all of us as citizens and as parents - there's no question that protecting our children is one of government's most important roles. I have been fighting to protect kids since my days as Attorney General, and I am proud of the work we are doing in Michigan, in partnership with the courts, to help children grow and prosper, keep children safely in families, and help families avoid the difficult circumstances that might lead them to family court.

First and most importantly, I want to thank you for the thankless and incredibly important public service you all perform as referees. Making decisions in family court is one of the most emotionally and intellectually demanding tasks a lawyer can undertake. You're certainly not doing it for the money. I'm willing to bet that you entered this calling because you wanted to serve others and serve justice – justice both for children and for parents. Justice is a word that is sometimes brushed under the rug in our conversations as lawyers. Some of my law school instructors thought it was too mushy of a concept to have real intellectual importance. But for me, justice was the concept that turned legalese into poetry and made it something to cling to – professionally and personally. Divining
and loving homes through reunification with birth families or through adoption. I’m excited about how this approach has been working in the counties that have adopted it already, and look forward to seeing every Michigan county use the approach.

The impact of early childhood experiences is lasting, continuing to show results into adulthood. We know, for example, that 90 percent of a child’s brain develops in the first five years of life. We also know that children attending strong pre-school programs are less likely to live in poverty as adults. That’s why I created **Project Great Start** to give parents the tools they need to be their child’s first and most important teacher. To ensure the availability of high quality early childhood development and care statewide, we established Early Childhood Investment Corporation (ECIC). The ECIC operates in both the public and private sectors, funding and supporting local Great Start collaboratives that coordinate efforts and focus resources on providing a great start for children from birth to age five. In January 2006, the ECIC awarded fourteen grants for local collaboratives across the state, with more to come in the very near future.

To improve education and ensure human services delivery in priority neighborhoods we established **Family Resource Centers** at 39 Michigan elementary and middle schools. These centers channel child and family services provided by state and local agencies and offer them on-site in local schools. Family Resource Centers help schools focus on education by delivering the services families need to ensure the success of their children. Each center pools the community resources of local agencies so families can more efficiently access services. The collaboration helps families and students get the important services they need while allowing teachers and school officials to concentrate on their most important duty – educating our children. The early data on educational outcomes in schools with family resource centers is very encouraging, and there is strong demand from school districts across the state to increase the number of family resources centers.

In January 2005, I signed **Ariana’s Law** to improve Michigan’s ability to investigate and prevent future deaths of children under the supervision of Michigan’s child protection system. Ariana’s Law gives the Office of Children’s Ombudsman expanded access to information about child welfare cases handled by the DHS. This expanded access enhances the Ombudsman’s ability to investigate complaints, advocate for children, and recommend changes to law, policy, and practice that will strengthen the welfare of our children across the state.

Last October, I signed legislation that will once again allow citizens to help support the **Children’s Trust Fund**, a nonprofit independent part of state government dedicated to the prevention of child abuse and neglect. The legislation reinstated the income tax check-off that allows taxpayers to donate to the fund, which was discontinued during the previous administration. I hope you all exercised your option to donate!

Just recently, I signed **Jessica’s Law**, which institutes tough penalties for sexual predators who prey on our children. This law is named for nine-year-old Jessica Lunsford – who was kidnapped, raped, and murdered by a convicted sex offender in Florida in 2005. The legislation creates a new 25-year mandatory minimum sentence for adults convicted of criminal sexual conduct where the victim is under the age of 13. Any offender with a previous CSC conviction will receive an automatic life sentence. In addition, offenders convicted of first- or second-degree CSC with a victim under the age of 13 will be required to wear electronic monitoring devices if paroled.

Finally, I am especially proud of my husband Dan Mulhern’s efforts in creating and expanding the **Mentor Michigan** program to recruit mentors and match them with children. A mentor can transform the life of a child who has little other adult attention. I want to ensure that every kid in Michigan has an ongoing relationship with a stable, caring individual. I encourage all of you to sign up to be a mentor by going to http://www.michigan.gov/mentormichigan. You’ll be surprised how much you get out of the experience yourself. I’ve been a mentor to a wonderful little girl throughout my tenure as Governor – if I can find the time, you can as well!

We are always working to improve the ways that we protect Michigan’s children. I need your help and input as we continue our commitment to
make the system better and keep children safer. The significant federal funding cuts in this year’s budget will be another challenge for our system, but we need to roll up our sleeves and get to work on solutions. If you see things that state government can be doing better or more efficiently – please let my office or the Department of Human Services know. You are in the trenches, and the feedback we receive from you is invaluable.

Thank you once again for your tireless service to Michigan families. I look forward to continuing our work together -- ensuring that every child in Michigan has a real chance to succeed in life.

CHANGING OF THE GUARD ON RAM BOARD

In May of every even numbered year RAM holds elections for the executive board. This year several positions needed to be filled because three long-standing board members, all past presidents, have decided to "retire." RAM patriarch Jon Ferrier, Mark Sherbow and Deb McNabb collectively served on the board for nearly 40 years! Their exemplary service cannot be overstated. Simply put, there would be no RAM (certainly, not as we know it) without the service of these individuals. Thank you Deb, Mark and Jon for your decades of exemplary service to the organization!

The new board, who will take office on July 1, 2006, will look as follows: President – Kathy Oemke, Vice President – Art Spears, Executive Secretary – Erin Magley, Treasurer – Paul Jacokes, Recording Secretary – Nancy Thane, Past President – Ken Randall, and members at large: Helen Hartford, Ron Foon (also a past president), Karen Transit, Carolyn Jackson and Linda Weiss. Congratulations to the new board!

~Ken Randall
June 13, 2006

2005-2006 RAM Annual Report

The year 2005 – 2006 has been a wonderful year for the Referees’ Association of Michigan. Many long-term projects reached fruition, and the year was capped with an unusually successful conference. All along the way there seemed to be a certain serendipity to our accomplishments. Most of our good fortune is directly due to the good work of the RAM executive board. They did a wonderful job and had a good time working together.

Perhaps the most notable accomplishment was the creation of our guest author series in our newly established Referees’ Quarterly. Dignitaries across Michigan drafted articles for our publication, including submissions from: Governor Jennifer Granholm, U.S. Senator Debbie Stabenow, Chief Justice Cliff Taylor, Michigan Attorney General Mike Cox, U.S. Congressman Dave Camp and State Bar President Nancy Diehl. There were many other submissions, but the above list illustrates the caliber and policy-making power of our authors. In the summer of 2006, the Quarterly will be published as an annual periodical, and copies will be donated to various law libraries throughout the state as well as the Library of Congress.

Another less tangible accomplishment in 2005 – 2006 was the maturation of our web site, www.referees-association.org. The site went live on St Patrick Day 2005. In its first twelve months it received over 5,200 hits. Now, a year after its creation, our referee cyber community has reached critical mass, and referees from across the state routinely use the listserv to communicate with fellow referees, and view the bulletin board for current information. Postings include, for the first time, conference handouts and the speakers’ power point presentations.

2005 – 2006 witnessed two moments of which all RAM members can be proud. In September 2005, RAM’s executive board voted unanimously to donate $500 to the American
Red Cross in response to the devastation caused by Hurricane Katrina. The sum of $500 is a significant donation for our small non-profit organization. But more to the point, it represents RAM's first such donation in our organization’s history.

A second proud moment was announced in the spring 2006 edition of Wayne State University Law School’s alumni magazine. Melissa Gollob became the first recipient of RAM’s Philip Ingraham Memorial Scholarship. Ms. Gollob won the scholarship after having received the book award in an introductory family law class.

Another successful project in 2005–2006 was public relations. RAM received much positive publicity in dozens of newspapers and magazines. An aggressive PR campaign has boosted our image, and helped make RAM a known organization. (Please forward any RAM newspaper/magazine clippings you see to the PR chairperson for posting in our “news” section of our web site. We only post what we receive.)

The good work and great team chemistry of our executive board in 2005–2006 manifested in a highly successful, and just plain fun, 2006 conference. We had our highest turnout in years (54 referees) and the location (the Perry Hotel in Petoskey) and weather (sunny and low 80s) couldn’t have been more agreeable. We even hit the peak of the lilacs. Mark Sherbow did his usual banner job in securing excellent speakers. New conference chair Helen Hartford did a spectacular job with the details of the conference (meals, registration, gifts, etc.). Art Spears continued his fine tradition of conference hospitality as well as a golf scramble, this time in Harbor Springs. Finally, president-elect Kathy Oemke did a wonderful job with her awards ceremony and by recognizing referees for their years of service with anniversary certificates.

Though the official tally will not be known for some time, RAM treasurer-extraordinaire Paul Jacokes predicts that we made money on this conference due in part to our high attendance. It will be the first time in a few years that we have made a profit. RAM membership chair, Erin Magley, had some influence on this year’s attendance as she continues her good work and recruitment effort.

The only potential negative of the year 2006, the SCAO “Beatty memo”, turned out to be a huge positive. RAM now has strong dialogue with Dan Wright, the Director of the FOC Bureau. Now we hope to work in partnership as a referee division at SCAO is contemplated, and as we face massive budget cuts in October 2007. Our friendship with Dan is an alliance made just in time. And the Beatty memo? It may never be published.

My last act as president is drafting this annual report. I’d like to conclude by expressing my heartfelt thanks to RAM’s executive board for all their great work. I’d also like to express my gratitude to Nancy Thane for her willingness to step up and fill the vacant recording secretary position (previously held by Jean Dohoynos). And my biggest thanks goes to our three retiring past presidents – Jon Ferrier, Deb McNabb and Mark Sherbow. Thank you for your forty+ years of service to our organization!

All referees should consider joining the board, or at least attending board meetings. You’ll get as much out of the organization as you put into it. I can honestly say that RAM 2005–2006 has been the most professional board I’ve ever had the pleasure of working with. Good work was done, friendships were made. Can one ask for any more?

~Ken Randall, RAM President
June 27, 2006

If you are not already a member, please consider joining the RAM Listserv. Its purpose is to provide a confidential forum for our members to discuss issues relevant to Michigan referees. This listserv is private and limited to member referees. It is secure from the eyes of non-referees (except, of course, the IT department of your County!). Only those persons who are current members of RAM and who have been approved by the list moderator may participate in the listserv. I encourage you to take advantage of this valuable resource today! Just send an email to pjacokessr@yahoo.com for instructions on how to join!
Juvenile Court Referees see a wide breadth of juvenile offenders during the course of their work. In our Court, it is not uncommon in a single day to have hearings spanning the delinquency spectrum: from status offenses such as truancy and incorrigibility, to misdemeanors of retail fraud or simple assault, to felonies such as assault with a dangerous weapon or criminal sexual conduct. Toss in a few child protection cases, and you’ve got the “typical day” of many juvenile referees.

One of the most challenging tasks in our profession is determining the best combination of services, placements, and consequences to cause a youth to modify behavior. Disposition may be as simple as a short term of non-reporting probation, with a bit of community service or short-term counseling added. For more serious or persistent offenders, we are forced to dig deeper into our “bag of tricks” – analyzing what services have already been used, their effectiveness, and viable alternatives which promise the best chance of rehabilitation. All this reflection, analysis, and planning occurs against the backdrop of finite financial resources, particularly now, when funding for many federal and state programs is being reduced or eliminated. It’s one thing to identify a youth’s rehabilitative needs, but quite another to implement a cost-effective, evidence-based program to successfully meet those needs.

In Midland County, as part of our recent Jurisdictional Planning process, the Family Division (Juvenile) identified juvenile sex offender treatment as a key issue requiring study, planning, and action. Treatment of juvenile sex offenders (“JSOs”) is often the most lengthy and expensive service offered through a juvenile court, due to the serious nature of the offense, the risk posed to the community, and the limited number of established JSO treatment programs in the state. In the past, our county has utilized several residential programs for rehabilitating JSOs, none of which are located near our community. Not only has the distance from family been a concern to the court, but also the financial burden on the local funding unit.

From January, 2000 until December, 2004, Midland County spent $6,714,945 on residential placements for juvenile offenders. The placement costs for JSOs alone totaled $3,277,524, or 49% of the total residential placement budget for the five-year period. Residential sex-offender placement for a single youth can easily approach or exceed $100,000 per year, and often treatment and placement must continue for multiple years. My conversations with other juvenile court referees and judges have supported my presumption that other courts face a similar financial burden when dealing with JSO treatment.

Midland County is now implementing a community-based JSO treatment program, under the supervision of the Court and with the involvement and support of many community members, agencies, and services, as part of a larger initiative, “Midland Kids First.” The goal of the program is to eliminate the cycle of sexual abuse by identification, prevention, and treatment of juvenile sex offenders and victims in Midland County. We are in the early stages of providing a locally-based, all-inclusive system to treat JSOs, which is targeted to reduce recidivism, fully integrate the family into treatment, ensure community safety, and maintain youths in the community.

The Midland County Juvenile Care Center (“JCC”) is being utilized as the “hub” for provision of services to JSOs, and youths in the program have all begun their treatment while housed in detention at the JCC. As the youths progress in treatment, less-restrictive placements are identified within the community – e.g., parents’ home, licensed foster care, relative placements – for use
when the youth is ready to safely transition back into a homelike setting. By utilizing the JCC as the “residential” component of the program, youths can remain in the local area, facilitating family involvement in treatment and maximizing the cost-benefit relationship of the placement. At all times, the focus is on successful treatment, reduced recidivism, and safe reintegration back into the community.

From a cost perspective, use of the local JCC is significantly more affordable than outside placement. Rather than paying an average of $263 per day to an outside institution for placement of one child, we are able to house the child locally for an effective cost of $150 per day (i.e., foregone per diem bed rental to other counties). As an illustration, the average cost of JSO placement in a residential facility is $263/day, or $95,995 per year. The revenue generated from JCC bed rental is $150 per day per bed, or $54,750 per year. Even taking into consideration the lost bed rental revenue, the County comes out ahead $41,245 annually by housing a JSO locally and providing community based services, rather than sending the youth to an institution or agency placement outside the community. The savings can then be used to maximize service provision, targeting the individual needs of the JSO, rather than paying for room and board. Clearly, if JSOs can be treated effectively in a local setting, the cost savings is significant to the funding unit.

The benefit for local placement and treatment of female JSOs is even more striking. The closest residential placement for females needing sex offender treatment is in Wisconsin. Although male JSOs are more numerous and garner more attention, females are also potential offenders, and the lack of facilities or treatment for female JSOs makes recidivism and community safety an even greater concern.

Midland County is excited to be part of this community collaboration which includes the courts, Community Mental Health, the Department of Human Services, private counseling agencies, and Central Michigan University’s Psychological Training and Consultation Center, not to mention numerous members of the general community. Currently, three juvenile court wards are engaged in the local JSO program, and we are already seeing the fruits of the planning, effort, and study which have gone into creation of a local JSO treatment program.

Coming in the next RAM Quarterly: Part 2: The “nuts and bolts” of Midland’s JSO program, and what we have learned so far.

For more information about the JSO treatment program in Midland County, please feel free to contact me at lweiss@co.midland.mi.us.
Recently a program was held in the Family Court for the public, titled, “10 Myths About Family Law – Busted!” This article is a partial recap of that program, for those interested, but who were unable to attend.

There are a lot of things in Family Law (domestic relations cases like divorce and paternity, involving issues of child support, child custody, parenting time, spousal support and property division) that people “know,” but turn out are not true. The following are a few of the legal and procedural myths about this area of law, which affects tens of thousands of people in our community.

1. ‘Joint custody’ means the children live equal time in each parent’s home. This is inaccurate; ‘joint custody’ relates to parents sharing decisions about their kids, and does not determine who has the kids with them during what times, and does not require ‘equal time’ for parents.

2. ‘Joint custody’ means ‘no child support.’ Again, untrue; child support is determined by the number of children, the parents’ incomes, and how much time the kids spend in each home. It does not mean that child support won’t be ordered by the Court.

3. “Overtime and second-job income don’t count toward child support, if they’re not guaranteed.” As long as a person earns overtime or works a second job, the income from these is used to set child support.

4. “If I can’t see the kids, I don’t have to pay,” or “if she doesn’t pay, I don’t have to let her see the kids.” Both incorrect; child support and parenting time are separate issues, enforced separately by the courts; the law does not recognize the “self-help” remedy.

5. A debt is not marital unless in both names: simply untrue.

6. Unless property is in both names, it can’t be divided at divorce: as untrue as number 5 – separately titled property may be divided in certain circumstances at divorce, it depends on the facts.

7. “My pension is mine, since I worked for it, and the other side can’t get any of it.” Not so! Pensions earned during a marriage are considered marital property and are divided at divorce between the spouses.

8. “There’s no such thing as ‘alimony’ any more.” That’s only true in the sense that it’s now called “spousal support,” but it’s alive and well in the Family Courts of this state!

9. “There won’t be any alimony following a marriage of less than 20 years.” While true that the longer the marriage, the more likely an award of spousal support, there is no magic number of years required for a marriage before alimony can be ordered; length of the marriage is only one of several factors the Court must consider in determining whether to award alimony.

10. “When a child is 12 years old, they can decide with which parent to live.” Wrong! There is no “magic age” at which a child can determine where to live, except 18, the same age we all become adults, capable of making that choice.

These are just some of the myths about Family Law that folks believe, and that they get into trouble for trusting, when they’re not true. Don’t get tripped up by ignorance, old wives’ tales or “common sense,” when it comes to Family Law issues. Always seek the advice of a trained attorney in the field when you have a question about Family Law, and do not rely on what “everybody knows.”

Jon Ferrier has been a Family Court Referee in Kent County since 1981. He is the creator of the Domestic Relations Education Program in the Family Court, which presented the program that formed the basis for this article, on June 13, 2006.

Comments can be mailed to Referee Ferrier at Suite 4200 Courthouse, 180 Ottawa, NW, Grand Rapids, MI 49503, or telephone (616) 632-5150.
In a perfect world, every referee would be able to attend RAM’s annual conference. Though we may never reach that lofty goal, we are at least headed in the right direction. A record 54 referees attended this year’s conference, an increase of 23% over last year.

Our new conference chair, Helen Hartford, and her committee (Mark Sherbow and Art Spears) deserve the credit for the success of the 2006 conference. Helen suggested Petoskey and the Perry Hotel – both of which are new locations for RAM. The 1899 hotel, with sunset views of Lake Michigan, seemed to agree with everyone. And the group was enthusiastic over the town of Petoskey, which has everything you need (shops, restaurants and parks) within walking distance of the hotel. In fact, the group voted by a show of hands to return to this locale in 2007.

Mark Sherbow for years has been a guru at finding great speakers. This year he outdid even himself – which is saying something! The most fascinating, cutting-edge speakers were Dr. Mark Sloan, James Henry, MSW and Frank Vandervort, JD who collectively spoke on child traumatic stress disorders and fetal alcohol spectrum disorders. There was quite a buzz from conference attendees who were wowed with a power point presentation showing photographs of deformed brains and children. The startling conclusion is that we may have to consider a legal paradigm shift in the way we see childhood behavior and even criminal intent. Some criminal behavior can be attributed to deformities and can best be categorized as reactive behavior without intent. Referee Dan Loomis has even suggested that a committee be formed to educate the legislature.

Other speakers included Dr. Carl Taylor, a professor at Michigan State University, who scared attendees with a doom and gloom scenario over urban youth, culture and gangs. Lannie McRill, Michigan’s premier substance abuse tester, spoke on various testing methods – and even put a drug patch on Vince Welicka in exchange for a weekend getaway to Mackinac Island. Finally, Karol Ross, M.A., J.D., the head of the psychodiagnostic clinic in Macomb County, spoke on psychiatric evaluations and how to interpret the results.

Awards were handed out to several referees on Friday. Paul Jacokes (Macomb County) received the Presidential Service Award as the president’s choice for the individual who has assisted the organization and president in the most exemplary way. Deborah McNabb (Kent County) received the RAM Contribution Award for the design and publication of Referees’ Quarterly as well as her continuing service as a board member. Jon Ferrier (Kent County) received the Outstanding Recognition Award for his service and dedication to the profession and professionalism of the Referees’ Association. Shelley Spivack (Genesee County) received the Active Member Award in recognition of her service as guest speaker at the University of Michigan (Flint) and Mott Community College. Kathryn O’Grady, a former referee, received the Dedicated Service Award in recognition of her planning and training as director of Child Welfare Services at SCAO as well as her contributions to Referees’ Quarterly. Finally, Ken Randall (Midland County) won the 2006 Presidential Vision Award for (as is stated on the plaque) “his persis-
tent vision for improvement of communications and visibility for the Referees’ Association of Michigan and service as its president.”

Much of what makes a good conference great are the intangibles. “Mr. Good Time” Art Spears hosted the hospitality suite, where there was a euchre tournament run by Vicki Pinckney. The card players took a break to watch a spectacular sunset over Lake Michigan. Later, there was a trivial pursuit game. Art also hosted the annual Phil Ingraham Memorial Golf Scramble – won again this year (it’s becoming a tradition) by Vince “Patches” Welicka’s team – at the Harbor Point Golf Club in Harbor Springs. The group dined together twice, a dinner on Wednesday evening in the Perry’s Ho dining room, overlooking Lake Michigan. Art gave an eloquent toast. The second time was a breakfast buffet on Friday morning.

The conference was enhanced by phenomenal weather: sunny blue skies at the peak of spring. We happened to visit Petoskey when they enjoyed their first string of consecutive 80 degree days. It was perfect! Spring flowers were at their peak, and the air was filled with the sweet aroma of lilacs. Finally, in the evening after the sessions were over, many referees enjoyed watching their Pistons beat Miami 92-88 in the NBA playoffs! Does it get any better?

Though I have a bias as president, I really believe 2006 rates up there as one of our better conferences. Kudos to Helen, Mark and Art, for your great work putting this conference together! Thanks also to our RAM board as well as those who attended the conference who made it happen. It was great seeing you all. Finally, if you could not attend this year, don’t despair! Our goal is to post the power point presentations on our web site’s (www.referees-association.org) bulletin board. This service is for RAM members only, a perk of membership. I hope to see everyone in 2007!
The Family Counseling Act, 1980 created the Circuit Court Family Counseling Service and mandated the performance of two primary functions, evaluations and counseling. This act was tie-barred to an act that raised marriage license fees from $5.00 to $20.00 with $15.00 placed in an escrow account to utilize for family counseling. These fees could be used “in house” or parties could be referred to outside psychologists. Wayne, Oakland, and Macomb County have “in house” Family Counseling Services.

The Family Counseling Act, Section 551.339 states:

Privileged communications; exemptions; reports

Sec. 9. (1) Except as provided in subsection (2), a communication between a counselor in the family counseling service and a person who is counseled is confidential. The secrecy of the communication shall be preserved inviolate as a privileged communication which privilege cannot be waived. The communication shall not be admitted in evidence in any proceedings. The same protection shall be given to communications between spouses and counselors to whom they have been referred by the court or the court’s family counseling service.

(2) A family referred by the court with custody or visitation problems whose adult members sign an agreement indicating the purpose of the referral shall be exempt from subsection (1). A report of an evaluation of those families shall be submitted to the court with indicated recommendations.

Custody/Parenting Time Evaluations

The Court refers parties for custody and/or parenting time evaluations by court order when information and/or feedback is needed concerning what is occurring in a particular family situation. This is particularly true when there are mental health issues, allegations of substance abuse, allegations of domestic violence, allegations of sex abuse, or when the parties have appeared multiple times before the court.

The parties are seen limited times for diagnostic interviews and they sign a release of confidentiality. A detailed report is generated which contains an explanation of the brief background and history of the case situation to gain an understanding of the context, the psychodiagnostic interpretation, confidential interviews of the minor child(ren), and finally a summary and recommendation pertaining to custody, parenting time, or other types of family issues. The report is submitted to the referring Judge, the Friend of the Court, and attorneys for the parties.

The process itself involves conducting clinical interviews and assessing primarily how individuals have behaved or responded to situations and events rather than how they are trying to present or what they say. The gestalt or whole picture pattern and the underlying interpersonal and psychological patterns of behavior are investigated and assessed in order to provide feedback to the court.

What referees need to be skeptical of

Beware of “bad” reports forwarded by outside psychologists, therapists, school counselors, etc. Many therapists write letters to the court or court evaluator recommending termination of parenting time or custody to one parent over the other without ever having met the other party.

1. Ignore reports/letters when both parties have not been seen by the professional.
American Psychological Association 2002 Ethical Code
9.01 (a-c) states the following:

9.01 Bases for Assessments

“(a) Psychologists base their opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings.”

(b) Except as noted in 9.01 c, psychologists provide opinions of the psychological characteristics of an individual only after they have conducted an examination of the individual adequate to support their statements or conclusions....”

2. Ignore reports from “therapists” who then change their roles to become “evaluators.”

Many professionals function as a “therapist” and then change roles and become an “evaluator.” These are two very differing processes. The American Psychological Association’s 1994 Guidelines for Child Custody Evaluations in Divorce Proceedings, advises:

“A psychologist asked to testify regarding a therapy client who is involved in a child custody case is aware of the limitations and possible biases inherent in such a role and the possible impact on the ongoing therapeutic relationship.”

“If the therapist has not interacted with the therapy uninvolved parent but has made statements about the parent’s relationship with the child, the therapist may be brought before a licensing board or ethics committee on charges of unethical practice. At a minimum, the therapist may discover that he or she has unwittingly colluded with the therapy-involved parent to violate a court order that required both parents’ involvement in health care decisions.”

3. Beware of reports made to Child Protective Services. Parties have become knowledgeable in terms of reporting matters to CPS and frequently use that agency as a tool in their ongoing conflict.

4. Be suspect of professionals who ask to speak to the court-appointed evaluator. Parents frequently shop for professionals who will act as their “soldiers.”

5. Be suspect of parents who say their child wants to talk to the judge. Parents often use their children to act as their soldiers to forward their own agendas.

Counseling

This service involves the psychologist meeting with the parties individually and conjointly for six sessions or more. Information is not available to the Court because counseling is considered confidential and cannot be waived by the parties by virtue of the statute. Clinicians see everyone and therefore avoid becoming involved in a type of “tribal warfare” or polarization process. No report or recommendations are generated other than if the parties themselves reach an agreement. This agreement is then memorialized in a document entitled “Memorandum of Agreement.”

This is an appropriate referral when the Court does not need information or a recommendation on what is occurring within the family behaviorally, but observes the parties to be in high conflict. This service is provided when the court believes the parties need to learn more effective ways of communicating and problem solving with each other in the best interest of the children. Clinicians assist families with problems adjusting to custody or parenting time arrangements by providing family, marital, and individual counseling as the situation warrants.

Parties and children are initially interviewed individually. Then the parents are seen together. They are tutored/coached on how not to respond to each other emotionally, how to use “I” messages as opposed to “you” messages, and how to remain focused on the problem at hand. No arguing or yelling is allowed. Children are then seen individually or conjointly with a parent as the situation determines.

Parental Coordination Evaluation

This is an additional court ordered service that professionals provide which allows them the ability to monitor parenting time pre or post decree, in high-conflict
situations but with the ability to report back to the court pertaining to the overall behavioral patterns of the parties. This allows the professional the ability to use the authority of the bench to monitor and influence the parent’s behavior and allows the bench to use court sanctions if negative behaviors such as denial of parenting time or parental alienation occurs. These sanctions might include some type of financial “fine,” make up parenting time, incarceration, or in extreme cases, a change in custodial environments. Parties sign a release of confidentiality. This service then differs from counseling which is absolutely confidential.

The parental coordinator’s task is to supervise and assist high-conflict couples develop conflict management skills through tutoring, coaching, mediation, and counseling to avoid having to return to the courtroom. The parental coordinator meets with the couples together and the children either individually or with a parent on a regular basis, documents the families progress, reviews the custody and parenting time arrangements and child-care issues and reports to the judge. This process involves a great deal of telephone work and constant monitoring and intervention.

If the parties can agree to something specific during these sessions, they may sign a consent agreement that can then be signed by the judge.

With high-conflict families it is important to anticipate a variety of tactics employed to undermine orders, ranging from exploiting the ambiguity and gray areas in court orders to flagrant violation of orders to prevent parenting time. Reporting information about who is sabotaging parenting time, or which new spouse is exacerbating the conflict, or who is enmeshing the children in his/her ongoing battle, etc. allows judges and referees to have important and valuable information.

In a disturbing sign of our times, recent studies have indicated that American children are getting too fat to fit into car safety seats. In April 2006, the journal Pediatrics reported 282,000 children under the age of seven do not fit into child safety or booster seats.

Motor vehicle crashes are the leading cause of death for U.S. children. Over 1.5 million children are involved in crashes every year. Properly restraining children in car seats has been found to reduce the risk of injury or death.

Endemic in America’s car seat situation is, of course, the public health problem of childhood obesity – a condition that will manifest later in life as an increased risk of heart problems, disease and premature death. Alarmingly, the Pediatrics study indicates that rates of childhood obesity have nearly tripled over the last 30 years.

Referees are used to considering weight as an issue in abuse and neglect cases, and now even custody cases. In a recent case in Midland County, a mother argued that she should have custody because the father only served their child processed food. The inference was that poor nutrition would lead to childhood obesity.

At the risk of stating the obvious, obesity is a “big” problem. It is important to consider that our children are not to blame. Parents are responsible for seeing that their children eat a proper diet and exercise regularly. So the real “cure” for childhood obesity necessarily lies in the hands of proper parenting. A cure also requires the cultural support from the “village” --
balanced school lunches, no school pop vending machines, smaller restaurant portions, etc. So let’s take a look at our village (no sugar coating here).

In a world where 24,000 people starve to death every day, and one billion people go to bed hungry every night, Americans spend $40 billion annually on diet products to lose weight. Pound for pound, we are the fattest nation of people who have ever walked the earth. Across the planet, millions of people – right now – don’t know where their next meal will come from. Yet most Americans go through the day with snacks within arm’s reach. (Is this true as you read this?)

Tonight many of us will go home, sit on the couch, and watch television. Inevitably, our shows will be interrupted by diet commercials. Will it be Jenny Craig or Subway Jared? My favorite is the cable channel beauty queen who stares into the camera and says being overweight isn’t my fault. (It is nice to think that I’m a “victim” of weight. Heaven forbid my excess baggage is due to my own lethargy or a 25 year diet of pizza and Krispy Kreme doughnuts! That would be hard to swallow!) She tells me, with a twinkle of sincerity in her eyes, that there is an expensive elixir for me if I need to lose more than just a few vanity pounds. SOLD!

Here is some food for thought: Our children are fat, and getting fatter, because we as adult Americans are fat and getting fatter. Our whole “village” is obese. When the Detroit Tigers recently built Comerica Park, seats had to be enlarged because American butts have increased in girth – by a lot -- since the original Tiger Stadium was constructed. So, if you’re into cheeky statistics, our adult-to-child butt proportions are probably growing in unison. All I can say is kudos to the Tiger organization for supporting their fanny base! But more to the point, perhaps we shouldn’t be so surprised that our children can’t fit into their car seats when we have trouble fitting into stadium chairs.

Childhood obesity is a symptom of something much greater: national lethargy. Simply put, we are the richest, fattest, most pampered culture the world has ever seen. Good parenting can be a cure for childhood obesity, but our ever-growing population of obese parents also needs to be “parented,” or at least pointed in the right direction, if we are to change our culture. It’s hard to tell how far our increasing weight trend will go. Perhaps it will end when we face true economic hardship as a nation? Or maybe excessive medial costs due to obesity? Or, perhaps, only when the coils spring out of our collective bathroom scales, will we finally have reached our tipping point.

I, for one, can’t weight!

Speaking of food, the gelato in Petosky was a favorite of RAM Conference attendees...

and the desserts at the group dinner were spectacular!
TRIBAL COURT AND
MICHIGAN FAMILY LAW
by
Charlotte L. Allen

You’ve heard about tribal court. Maybe you’ve run across a case or two where tribal court was involved. Or maybe you find yourself talking with someone who just got served with custody papers for a tribal court case. It’s time to learn something about what goes on there.

Each of the tribes in Michigan and most of the recognized tribes across the country has a tribal court. The system in many ways reflects what most attorneys are used to, including an appellate division. This said, profound differences exist and the novice tribal court practitioner cannot assume that their state or federal court experience will translate to tribal court. This article will discuss Michigan tribal courts. The author is admitted to practice on in the Saginaw Chippewa Tribal Court only. The author recommends that attorneys facing their first tribal court case co-counsel with an experienced practitioner in that tribal court.

Tribal court has limited jurisdiction, but does address matters arising out of tribal business, situations that occur on tribal land, and matters, including divorce, child abuse and neglect and adoptions, where one of the parties is a tribal member. In most family law cases, jurisdiction is permissive, not mandatory. Especially in child custody and child welfare cases, the litigant’s status is important. Is one of the parties a member of a recognized tribe? If so, which one? Is she eligible for membership but hasn’t yet applied? Does he believe he is of Indian heritage? Which tribe?

Does she have documents establishing Indian heritage or a family member who is a member of a tribe? The membership requirements vary greatly from tribe to tribe, as does the process for enrolling. In some types of actions, including abuse/neglect cases, tribal membership may be an advantage and the party is not enrolled, establishing membership may be the necessary first step. The advantage in child abuse/neglect cases is the increased burden of proof: clear and convincing as opposed to preponderance.

Tribal court may be a less expensive and less time consuming option for parties as well. Tribal court dockets are less crowded than many state courts and hearings can be scheduled much more quickly. Fees are usually lower. The filing fee for a divorce in the Saginaw Chippewa Tribal Court is $100.00. Fee waivers may be obtained as in state court.

Tribal court jurisdiction varies from tribe to tribe and from federal circuit to federal circuit. In general, the tribal court probably has jurisdiction over crimes committed on tribal lands. For most family law cases, the tribal court has concurrent jurisdiction with state court in matters where one of the litigants is a member of the tribe. For adoptions, the tribal court has jurisdiction if the child is Indian but not where the adopting parent is Indian but the child is not. Always check the tribal code for the tribe at issue in your situation. No one rule applies to all tribes.

Each of the tribes has its own tribal code. Some borrow heavily from Michigan law and others are more individualized. The first step to researching tribal law is to obtain a copy of the correct code. Some of the tribal codes are available on line and others are available for purchase from the tribal court. The Saginaw-Chippewa Tribal Court makes the code available either by section or in its entirety. The tribes have their own court rules as well. Again, some use the
Michigan court rules, and some developed their own. Unwritten traditions and customs also affect the code. State and federal court opinions are persuasive authority but are not precedential. Not all tribal judges are attorneys.

Each of the Michigan tribes has a procedure for admitting lawyers to practice in their tribal court. In addition to lawyers, the tribe may admit lay advocates who are admitted on the same criteria as attorneys and who have the same authority and role as attorneys in that court. The lay advocates must be well versed in the tribal code and tribal tradition but may have no formal legal training. The Oath of Admission for the Saginaw Chippewa Indian Tribe, and the Pokagon Band of Potawatami Indians, among others, is the same for lawyers and lay advocates. Fees for admission and requirements vary widely by tribe. Many require a Certificate of Good Standing from the State Bar of Michigan. Some of the tribes require an annual renewal fee. See sidebar, An Overview of Michigan Tribal Courts, for admission requirements at a glance.

Tribal courts tend to follow their own precedents, however, no official reporter for tribal cases exists, and finding out just what that precedent is can be tricky. A tribal court may also apply precedent from another tribe. The Tribal Law and Policy Institute has published a report entitled Tribal Domestic Violence Case Law that contains a number of cases from the western states on various aspects of domestic violence. Included are civil case annotations regarding child custody, the definition of domestic abuse, jurisdiction, termination of parental rights and violation of a protection order. A number of criminal cases are included as well. Many of the cases are available from versuslaw.com. The cases cited also help the novice tribal court attorney gain an understanding of the practical application of the Indian Child Welfare Act, 25 USC 1903 et seq., and the limits of tribal jurisdiction. The report may be found on the Tribal Law and Policy website at tribal-institute.org. In Arneach v Reed, 2000.NACE.0000003, the tribal court held that an order of custody from a state court was temporary in nature. Because two of the children had lived on the reservation, tribal court had jurisdiction to determine custody of them. However, one child was neither an enrolled members nor had ever lived on the reservation, so the tribal court did not have jurisdiction over her.

Having reviewed the applicable tribal code and court rules, the next step is to review federal law. Indian law has a federal dimension, like child support and pension division. The Indian Child Welfare Act (ICWA) is the one that is most likely to impact family division referees. ICWA only applies to federally recognized tribes and their members. A list may be found in the Federal Register under "Indian Entities Recognized and Eligible to Receive Services for the United States Bureau of Indian Affairs." No Canadian tribes are covered. The Indian Civil Rights Act and the Violence Against Women Act also have impact. Because of its limited impact in family law cases, this article will not address the Indian Civil Rights Act.

ICWA has broad application in cases involving children. For example, tribal courts have exclusive jurisdiction to decide custody in any proceeding involving an Indian child who lives on or is domiciled on a reservation. 25 USC 1911(a). Tribal court has preference over state court in termination of parental rights proceedings and foster care placement decisions for Indian children who do not live on a reservation. 25 USC 1911(b). The tribal court has the right to intervene in any state court termination of parental rights proceeding or foster care placement proceeding involving an Indian child. 25 USC 1911(c). ICWA delineates placement preferences for adoptive placements of Indian
children. 25 USC 1915(a). Specific procedures for voluntary termination of parental rights are delineated. 25 USC 1913. Under ICWA, foster care placements include guardianships and third party custody. ICWA must be applied regardless of whether or not the tribe intervenes. See In re NEGP, 245 Mich App 126 (2001); 25 USC 1911(a) and (b); 25 USC 1912. ICWA has very specific notice requirements. Michigan is not known for following the requirements exactly, resulting in reversals and remands at the appellate level.

ICWA does NOT apply to divorce cases. 25 USC 1903. Custody determinations between biological parents, even if one is a tribal member, are exempt from ICWA. Since the tribal court also has jurisdiction over divorce matters, if one parent is a tribal member and one is not, the attorney for the non-member spouse may want to file quickly in state court to prevent a filing in tribal court to avoid any perceived bias towards a grant of custody to the Indian spouse by the tribal court. If third party custody is considered, then ICWA applies and the appropriate notices must be given.

Great care must be taken in correctly providing notice to the tribe under ICWA. The procedure must be followed exactly. Many Michigan parental rights termination cases have been remanded to correct notice errors. The court also must understand the impact of ICWA. For example, in termination of parental rights cases, the burden of proof is raised from preponderance to clear and convincing. This standard applies to both the member spouse and the non-member spouse if the child is an enrolled member of a recognized tribe or eligible to become an enrolled member. 25 USC 1903 et seq.

Tribal resources exist that may benefit the parties. These vary from tribe to tribe. The Saginaw Chippewa Tribe, for example, has its own social services agency that offers a range of services including counseling, alcohol and drug services and support groups. One of my clients, a tribal member, adopted a non-Indian child through state court, and the tribal agency did the preliminary home study at no cost to her. A word of caution: In my experience, tribal agencies work at a different and slower pace.

The Violence Against Women Act has interesting implications for Michigan. VAWA grants concurrent federal jurisdiction in cases where the perpetrator has transported the victim over state lines or into or out of Indian country. A drive from Midland to Mt. Pleasant goes through the reservation, and triggers the possibility of federal prosecution. Tribal courts will also recognize a personal protection order or restraining order issued by another jurisdiction.

Sending a subpoena for information from a tribe requires a different procedure. The tribes are sovereign nations, and have intergovernmental procedures for processing subpoenas. Obtaining verification of employment, wage information, insurance information and retirement benefit information can sometimes be a challenge. The best starting point is to call the tribal court and inquire about their intergovernmental procedure. For the Saginaw-Chippewa Tribe, for example, the tribal court will send a simple form for completion. Your subpoena is attached to the form and returned to the court. The tribal judge then issues an order allowing the subpoena to be served. Only the Saginaw-Chippewa Tribal Police may serve the documents on the employer. Their fee currently is $25.00. I do not know if the fee is waived for other governmental units, although it is certainly worth asking. I have found the process to be very quick, although the rules for the tribe must be followed exactly or all of your paperwork will be returned.

The internet has become a major source of information on Indian law. FindLaw (findlaw.com) and
MegaLaw (megalaw.com) both have a variety of resources on Indian law. The Bureau of Indian Affairs, the Native American Rights Fund, and the Tribal Law and Policy Institute all have websites with a lot of information and links to yet more sites. The Cornell Legal Information Institute has a page devoted to Indian law topics available at www.law.cornell.edu/topics/Indian.html. The National Indian Law Library, a part of the Native American Rights Fund, also has a wealth of federal and state specific information and resources. For a map of federally recognized tribes in Michigan, go to www.kstrom.net/isk/mainmenu.html. Many other sites exist. For a more complete listing, check out American-Indian Legal Resources on the Web in the July 2004 issue of the Michigan Bar Journal.

Signing the Attorney Oath was a strange experience. Swearing to uphold the laws of an entity other than the United States felt very odd. The Oath for the Sault Ste. Marie Tribal Court is typical:

I do solemnly swear (or affirm) that if admitted to practice I will uphold the Constitution of the Sault Ste. Marie Tribe of Chippewa Indians, maintain due respect for the Tribal Court, and employ standards in my conduct and duties the highest degree of ethical and moral standards with which my profession is charged.

Tribal court is a different place, with different traditions. The physical layout of the courtroom at the Saginaw Chippewa Tribal Court shows some of these differences. The courtroom is in a circle. The judge’s bench and counsel tables from a circle, with the bench slightly raised. The gallery is formed of concentric circles around the ring of the bench and tables. The center is an open circle. The feel of the courtroom is profoundly different as a result.

Tribal Court is an interesting adjunct to the remedies available in state court. Familiarity with Indian law, especially ICWA, is essential for referees in the family division. Concurrent jurisdiction raises issues in the administration of the courts as well. Awareness of the extra steps necessary to obtain information from the tribes in their roles as employers is also important. For domestic violence cases, an understanding of intersection of the Violence Against Women Act and tribal lands is essential in a state where tribal lands coexist with non-tribal.

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A Short-List of Michigan Tribal Courts

Bay Mills Indian Community
12140 W. Lakeshore Drive
Brimley, MI 49715
906-248-5817

Grand Traverse Band of Ottawa and Chippewa Indians
2605 N. West Bayshore Drive
Pashawbeston, MI 49682
231-271-3538

Hannahville Indian Community
N14911 Hannahville B-1 Road
Wilson, MI 49896
906-466-2342

Keweenaw Bay Indian Community
107 Beartown Road
Baraga, MI 49908
906-353-6623

Lac Vieux Desert Band of Lake Superior Chippewa Indians
PO Box 249
Watersmeet, MI 49969
906-358-4577

Little River Band of Ottawa Indians
3031 Domres Road
Manistee, MI 49660
231-398-3406

Little Traverse Bay Band of Odawa Indians
7500 Odawa Circle
Harbor Springs, MI 49740
231-242-1470
Pokagon Band of Potawatomi Indians
58620 Sink Road
PO Box 180
Dowagiac, MI 49047
269-783-0505

Saginaw Chippewa Indian Tribe
7070 E. Broadway
Mount Pleasant, MI 48858
989-775-4000

Sault Ste. Marie Tribe of Chippewa Indians
2175 Shunk
Sault Ste. Marie, MI 49783
906-635-4963

ADDITIONAL RESOURCES

Michigan Bar Journal, July 2004, featured several articles on the tribal courts and family law, including:

American-Indian Legal Resources on the Web
by Lance M. Wener and Jane M. Edwards; this article offers basic internet resource information, both governmental and non-governmental.

The Indian Child Welfare Act: Myths and Mistaken Application by Thomas R. Myers and Jonathon J. Seibers; this article provides an overview of ICWA and its application in tribal court.

Gabriel S. Galanda, an Indian law attorney in Seattle, Washington, has a website that provides basic insight into this area of the law. It may be found at: http://academic.udayton.edu/race/03justice/nalaw02.htm


Michigan Indian Legal Services
814 A S. Garfield Ave.
Traverse City, MI 49686-3430
800-968-6877
http://www.mils.org

Kathleen Oemke presents Kathyne O’Grady with the Dedicated Service Award

Paul Jacokes and the Presidential Service Award

Shelley Spivack and the Active Member Award
Frequent Questions

1. What are the procedures in a comprehensive substance abuse assessment?

A comprehensive substance abuse assessment integrates client interviews, written questionnaires, standardized written tests, collateral interviews/questionnaires, medical/legal record review and toxicology drug testing. This type of assessment does not rely primarily on client self report, but on the integration of all the procedures to write a final comprehensive report and summary findings.

2. What types of concerns does a comprehensive assessment address?

A comprehensive substance abuse assessment assists in determining if substance abuse is a risk factor which warrants concern in the parenting time, visitation and monitoring of the minor child. Also, this type of assessment can assist in clarifying treatment compliance, recovery/abstinence profiles and the parents’ motivation to protect the child from the consequences of substance abuse. The toxicology testing procedures help corroborate or challenge allegations, verify client self report and client credibility.

3. How long does a comprehensive assessment take to complete?

A comprehensive assessment takes six to eight hours to complete, corroborating procedures and laboratory testing.

4. What does a typical substance abuse assessment consist of?

A typical substance abuse assessment takes forty five to sixty minutes to complete, which is based primarily on client self report, without corroborating procedures or laboratory testing.

5. What drugs can be tested for in hair?

Potentially, hair can be tested for any drug for which a screening and confirmatory assay was developed. The most common drugs for which hair is tested are cocaine, opiates, methamphetamine, carboxy-tetrahydrocannabinol (a marijuana derivative), and phencyclidine (PCP).

6. How long do drugs stay in hair?

Testing hair for drugs of abuse provides a window of detection of approximately three months, with the exception of carboxy-terahydrocannabinol, which is shorter. Hair testing only detects chronic users of marijuana.

7. If a person is bald, can you collect body hairs?

Yes. In the absence of head hair, other hair sources can be used, such as arm, underarm, leg and groin hair. Use of body hair for drug testing does confound the detection window.

8. Does hair test for alcohol and cocaine being used simultaneously?

The simultaneous ingestion of cocaine and alcohol results in the formation of cocaethylene by the liver. Cocaethylene can be detected in the hair.

9. Can you tell the time, day and amount of drug used?

No. If a hair sample tests positive for a drug, you can only surmise that the drug was used sometime in the last three months.

10. Is hair the best drug testing for family law?

The type of drug testing done depends on the fact or facts you are trying to determine. If you are trying to
determine whether someone is “under the influence”, saliva testing would be the method of choice. This will cover the period from the time of ingestion up to two days, depending on the drug used. If you are trying to ascertain whether someone has used drugs in the past few days, urine testing would be chosen. Finally, if you were trying to determine if someone had used drugs in the past three months or had been physically exposed to drugs but hadn’t used them, hair testing would be the appropriate way to go.

11. Can hair testing be positive from being around others using drugs?

Yes. If an individual touches a surface where drugs had been and then runs his or her hands through their hair, passive transference will occur and that person’s hair will test positive for the parent drug. The parent drug, if ingested, is metabolized by the liver and gives rise to metabolites which, if detected, indicates usage of the drug. If only the parent drug is found, one can only infer that the person has been exposed to the drug and not that they used it.

12. Has hair testing been admitted as evidence in court?

Yes. Hair testing has been admitted as evidence of drug abuse by the courts since 1986. The Frye standard, which states that “the thing from which the deduction is made must be sufficiently established to have gained acceptance in the particular field in which it belongs”, has determined the admissibility of evidence in courts since 1923. The availability of drug-specific screening assays and the use of the highly specific technique of gas chromatography/mass spectrometry to confirm screen-positive hair samples provide a solid scientific base to support hair-testing results.

13. Can hair testing identify young children who are exposed to drugs?

Yes. Testing of young children for parent drugs, not the metabolites, will indicate whether or not they have been passively exposed to drugs.

14. Are the hair testing procedures the same as those for urine, oral fluids and sweat patches?

Yes, in the sense that all involve screening with immunoassays, with screening positive samples being confirmed with gas chromatography/mass spectrometry.

15. Have there been studies on difference in positivity rates in hair and other testing procedures?

Yes, and hair gives higher positivity rates for many drugs than either urine or oral fluid. This is because many drugs reside in hair for substantially longer periods than they do in either urine or oral fluid. One exception to this is marijuana, which is better detected in urine than in hair.

16. Can you have a hair test and urine or oral fluids produce different results?

Yes. If someone is “under the influence”, their oral fluid would test positive while their urine or hair might test negative. Depending on when they started using the drug, the drug, or its metabolites, might not have entered the urine or hair at the time of testing. Conversely, if someone used a drug two months previous to testing, their oral fluid and urine would test negative while the drug would still be detected in their hair.

Hair testing can detect cocaine, cannabis, cocaethylene, ecstasy, amphetamines, phencyclidine, opiates and prescription medications. There is currently no commercial hair test for alcohol. There is a hair test for cocaethylene, a substance that results from the simultaneous ingestion of cocaine and alcohol.

The average rate of hair growth is about 1.3 centimeters per month, which represents approximately the past thirty days. For family law concerns, hair collected for drug testing is approximately 3.9 centimeters in length, which provides a window of detection of approximately ninety (90) days. Should the person not have adequate head hair, other body hairs can be collected and tested. However, due to the slower growth rate of body hair, the window of detection is different than head hair.

Studies that have been conducted indicate that hair drug testing is significantly more likely than urine testing to detect cocaine, PCP and opiates, due to the longer window of detection.

While testing urine and oral fluids has the advantages of determining drug use in recent days, it is the longer window of detection provided by hair testing which can be more telling of an individual’s actual drug dosage history for family law professionals. A brief one to four day window of detection has limited meaning in family law courts.
Recently, hair testing services have been expanded to include the testing of young children who are in the environments of alleged substance abusers. This specialized hair testing is designed to test young children who are being exposed to drug use.

Hair testing is defensible in the court if the testing results are confirmed by GC/MS confirmation testing procedure. Court cases consistently indicate that hair testing, when utilized in conjunction with confirming procedures, is defensible because hair drug analysis is generally accepted by the scientific field as a reliable and accurate method of identifying the use of certain drugs. Urine and hair testing have been challenged in the courts. However, with the proper collection procedures, chain of custody and scientific confirmation, the challenges have been unsuccessful.

Hair testing works within the same acceptable procedures of chain of custody, collection, identification and testing that occurs in other types of drug testing. There are no different standards for hair testing. The admissibility into evidence of drug test results is determined by the level of forensic acceptability of the testing procedures and whether the specific test is recognized by the scientific community as accurate and reliable.

An integrated approach of comprehensive assessment and appropriate drug testing in managing substance allegations within the context of family law provides corroborating procedures to the family law professional, while addressing the parent’s concerns and protecting the minor child from the consequences of substance abuse. Clinical experience reflects that the combined effort of a thorough assessment and appropriate toxicology laboratory testing services are the best practice to manage and resolve substance abuse allegations.

Finally, it is important to work with a drug testing laboratory which will work jointly with family law professionals. Several of the laboratories advertise that they accept only pre-employment hair testing and will not knowingly accept family law referrals.

Drug abuse issues and alleged concerns which arise in the family law courts are well suited to be addressed by a comprehensive substance abuse evaluation, which includes hair drug abuse testing. Hair testing can provide an extended window of detection over drug testing procedures using urine and oral fluids, and is better suited to address issues of substance abuse within the context of family law.

A comprehensive substance abuse assessment includes client interviews, written testing, collateral interviews, record review and toxicology testing, which provides a broader client history of their prospective and current drug use. Evidence based practice in family law substance abuse allegations reflects that it is the integrated approach of client evaluation and testing together which provides the most accurate profile and highest level of resolution for these types of allegations for the court and family law professionals.

Judges, attorneys and family law professionals are requested to address and appropriately respond to alleged concerns of substance abuse in the process of determining custody, visitation and parenting time. The court is asked to determine if substance abuse is a risk factor regarding parenting and to protect the child from consequences of substance abuse and affecting parenting time, and the parent who has the allegations made about them is generally motivated to distort their substance abuse history and provide an overly favorable history to the family law professional.

Drug abuse allegations within a family law context are typically the following concerns:

- Individual uses/abuses drugs around the children
- Uses drugs all the time
- Does cocaine and gets drunk
- Lost their job due to a positive drug test
- Knows how to pass drug test
- We did drugs together, but I quit
- Went to treatment before, but relapsed
- They will start using as soon as this is over
- Has stopped before, but always goes back to it
- Gets high every weekend
- Has stopped using just to pass a test
- They are abusing medications

Within the context of family courts, it takes time to schedule a hearing, obtain a court order, schedule the testing, and actually complete the specimen collection. This is well beyond the window of detection for urine and oral fluids. Clients who briefly abstain from drugs and are stalling for additional time, are able to provide a negative urine and oral fluids, which misrepresents their substance use profile and is very frustrating to the other parent.
When only urine drug testing was available, it was much easier for a court to order: “Go and get a drug test”. Now with expanded drug testing procedures, family courts must be versed in drug testing services, proper collection, chain of custody procedures and be able to order the most appropriate testing procedure for the specific alleged concern. Additionally, with the utilization of the internet and marketing of drug testing products, individuals are more knowledgeable about drug testing issues and are sometimes misinformed by non-scientific web sites and ill prepared collection programs.

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Lannie McRill prepares to place “the patch” on volunteer Vince Welicka’s arm to demonstrate the skin patch substance abuse test.

Referees enjoy the evening breeze on the front porch of the Stafford’s Perry Hotel.

Mr. Petosky surveys his domain with the Stafford’s Perry Hotel in the background.
The opinions expressed in this publication do not necessarily represent those of the Board of Directors of the Referees Association of Michigan.