BUDGETS ARE BORING, RIGHT?

Contributed by Suzanne Hollyer, FOCA President

Budgets are boring, right? I could tell that others in the office – even the referees - did not share my interest in the complicated funding stream for Friends of the Court by the glazed eyes and the fidgeting when I launched into a lecture about maximizing the five incentive factors.

Then in January 2005, I received a call that changed everything. Soon everyone from the County Board of Commissioners to the Citizen Advisory Committee to the referees wanted to know how we are funded; and they listened to my lengthy explanation. The call was from the director of the Michigan Office of Child Support, Marilyn Stephen, who asked Susan Thorman and me to accompany her on a trip to Washington DC. Susan was the president of the Friend of the Court Association at the time and I was the vice president. Marilyn asked us to join her in an effort to help educate our members of Congress regarding the importance of leaving our funding structure unchanged.

A proposal had recently been considered by the House Ways and Means Committee that would have reduced our federal funding match from 66 percent to 50 percent and, even more damaging, change how we account for our incentives. The change in how incentives are handled was a bit complicated. I see eyes glazing over; stay with me, this is important! Under the plan proposed in 2005, we would no longer be able to use our incentive payment to cover a portion of the 34 percent covered at the local level. We also could no longer use the incentive money to draw down or match the federal funding. That makes our incentive payment far less valuable to us than in prior years. The bottom line was a nearly $60 million reduction in funding for Michigan.

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When Marilyn called to ask me to join her in Washington DC, I asked how this could have happened. “I thought Congress liked us,” I said. I was referring to a widely-reported 90 percent score given to the child support program by the federal Office of Management and Budget when it assessed our program. This was the highest rating given to all social services and block grant/formula programs. We reportedly were so highly ranked because the program is run like a business, rewarding performance in five areas identified by the federal government. Those rewards – our incentive payment – were suddenly on the chopping block.

Even with our high rating, the federal budget needed balancing in early 2005 and someone found a way to do it, in part, by making cuts in the federally-funded child support program. Child support workers from around the country arrived in Washington DC in 2005 arguing that 90 percent of what we collect goes to the support of families. Cuts will have a direct impact on the most vulnerable members of our society. Nationally, we collect almost $5 for every dollar that we cost to operate.

Due to the immediate, strong reaction by the nationwide child support program, the federal funding match was not reduced to 50 percent. However, the larger, more complicated cut that results from changes in how incentives are applied was passed into law in the Deficit Reduction Act of 2005. The DRA passed the senate on a vote of 51 to 50 with the tie-breaking vote cast by the Vice President.

Because the cut was not scheduled to take effect for nearly 18 months, the child support community rallied together to support reversing the cuts. Two resolutions have been introduced that will restore the funding. Senate Resolution 803 was initially sponsored by Senator John D. Rockefeller. Both Michigan Senators – Carl Levin and Debbie Stabenow, along with 27 other Senators, have signed on as co-sponsors. House Resolution 1386 is co-sponsored by Michigan’s Representative Sander Levin. A total of 67 co-sponsors have signed on in support.

The cut took effect on October 1, 2007 and would have resulted in nearly $60 million in lost funding to the Michigan child support program except that the legislature approved funding to make the program whole. Yes – you read that right. The governor proposed and the legislature approved of additional funding out of the state general fund during the current budget cycle – the same budget cycle that was so contentious that state government shut down for four hours before a budget agreement was reached.

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BUDGETS ARE BORING, RIGHT?

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It is unknown whether the state will continue to supply “make whole” funding for counties in future years. FOCA continues to support restoring the funding at the federal level. We are not alone. A recent initiative of the National Women’s Law Center was able to obtain the official support of 527 organizations in support of the federal resolutions.

As the year comes to a close, timing is now critical. In order to receive federal reimbursement at the same rate as in prior years, these resolutions must be passed into law by the end of the calendar year. I am writing this on December 11. The resolutions must be attached to another bill in order to be funded.

Unfortunately, our resolutions have more support than most of the bills that are out there. We may wake up on January 1 with nothing new to report. However, our hope is that sometime between now and the end of the year the resolutions will find a way into law. With a little luck, by the time you read this, the budget mess of the past two years will be behind us. We know that the momentum is truly building. Five new bill sponsors were added just last week.

The Congressional Budget Office estimates that $11 billion in support owed to families will go uncollected over the next ten years even if half of the lost federal funding is backfilled by states. In Michigan, we are covered this year, but we don’t know what the future will look like if we are forced to face a cut amounting to a quarter of our budget. Now that you are motivated to respond to this crisis, you want to do something to help. Right?

You can still become involved. Go to www.savechildsupport.org. By completing the grid on the right side of the screen, an email will be sent to your members of Congress supporting the House and Senate resolutions. Michigan is second only to Wisconsin in sending letters through this website. We know that although each letter is not read, they are counted by members of Congress and they have an impact.

So, is the budget process boring? After experiencing an exciting budget process, I can only say that I hope to someday return to my boring budget work.

Suzanne K. Hollyer is the director of the Oakland County Friend of the Court and the administrator of all Friend of the Court operations. Ms. Hollyer is a member of the Friend of the Court Association and chairperson of its legislative committee. She is also a member of the State Court Administrative Office forms committee, the Supervised Parenting Time Advisory Board of HAVEN, the Oakland County Coordinating Council Against Domestic Violence (council member and Direct Service Providers Committee member), and the Michigan Inter-Professional Association on Marriage, Divorce, and the Family, Inc.
Thank you to all you dedicated referees. During this holiday season as well as the rest of the year, we get asked to settle disputes two mostly reasonable people cannot resolve due to the overlay of emotions that have overtaken their common sense. Many times referees are the voice of reason in an unreasonable dilemma. Referees take their time to put the children first, be thoughtful about the law, and apply the law to the facts before them and come up with a sensible order or sometimes what appears to be the magic answer.

The emotional, mental, and situational dynamics of our family law cases take their toll on the litigants that come before us. Sometimes we deal with the most unpleasant aspects of human behavior. As referees, we provide the even playing field for those who come before us. Our work can be demanding on our own emotional health. At times in the community, I have run into folks which have been in my hearing room; and many times they will tell me how they have listened to advice given during the hearing and applied it to their family, and were surprised to see that things did improve. I am sure there are many folks that we do hear from that have been helped by each referee. There are even more children that have never been near a hearing room, whose lives have been improved due to the thoughtful and knowledgeable referee.

Other dedicated professionals appreciate your work also. It improves the system. They are much more likely to set their own performance achievement at a higher level when they know another professional will appreciate their work.

Take a minute and appreciate yourself for your thoughtfulness and dedication. Know that you have done your job well; that you have taken the time to sort out details that matter, and that you have been thoughtful and caring in your decision making. You have been conscientious about getting your orders and recommendations complete. Take satisfaction that even if no one says thank you, that there are many thanks for your hard work.

Take a look at what you are doing and how you are doing it. See if there are improvements within your control. Implement them. Use the expertise of other referees. Become involved in RAM. I once received this message in a fortune cookie: “Every truly great accomplishment is at first impossible.” On that note, dream about how ideally you would change the world, if you were in charge; and keep it in the back of your mind. Who knows perhaps someday…

Have a great holiday season and a happy new year!

Kathleen M. Oemke
Dec. 17, 2007
HOLLYWOOD AND THE HAGUE
Contributed by Ken Randall

I first learned of the Hague Convention from, of all places, Hollywood. In January 1991, the movie “Not Without My Daughter” was released. The film, with Michigan roots, stars academy award winner Sally Field and Alfred Molina (who you may know from Raiders of the Lost Ark, Boogie Nights, and Spiderman 2). It is a xenophobic “true” story of a mother’s escape, with her daughter, from an abusive husband in Iran. What makes the story intriguing to me is that I know the central character of the movie – the daughter, Mahtob (Iranian for “moonbeam”).

The movie Not Without My Daughter is based on a 1987 book by the same title by mother-turned-author, Betty Mahmoody, a resident of Owosso, Michigan. At the time of the movie’s release, that was hush-hush information because it was feared that Mahtob may be abducted and taken back to Iran by her father. (Though even in the movie, the small town of Owosso is mentioned; and the film premiered in Owosso – something, one would think, that would give Mr. Mahmoody a pretty good idea of Mahtob’s location.) Whether parental abduction was small town Midwestern paranoia, or a very real possibility, did not matter. The whole town of Owosso felt obligated to conceal Mahtob’s presence for a remarkably long time.

At the time of the movie’s premiere, I was an assistant prosecutor in Owosso (Shiawassee County) and a friend to Mahtob’s former nanny, Lori Zimmerman (who was the person who actually typed the original manuscript of Ms. Mahmoody’s book). When I lived in Owosso, Lori and Mahtob maintained a close friendship. On occasion, the three of us would get together – usually at Lori’s house, but at least once at my place. Many years passed, and I have since taken a job as referee and moved to Midland County. The last time I saw Mahtob was in her dorm room at Michigan State University, the day she saw her first MSU football game. It always amazed me how someone so famous – who had so much international attention at such a young age – could be so, well…, normal. Mahtob is truly a bright and engaging person. The one time I asked her about her ordeal, the basis for the movie, she responded that she was too young to remember. Whether that was true, or just a polite way of saying she didn’t want to talk about it, I certainly didn’t press the issue. I’m sure there are scars somewhere, but it was up to Mahtob to reveal them.

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Referees are accustomed to nasty public custody fights. But can you imagine a fight that turns into an international incident? Worse, a fight that is so bad that Hollywood is willing to make a move? Actually, there were TWO movies made about it. Not to be outdone, in 2002, Mr. Mahmoody’s side of the story was chronicled in yet another “true” story movie (a 90 minute Finnish documentary) entitled “Without My Daughter.” (After all, didn’t Ms. Mahmoody actually take the child from him?) As we all know, there are always two sides to every custody battle. Mr. Mahmoody describes his movie as a “letter” to his daughter, Mahtob, whom he has not seen for 16+ years. From Mr. Mahmoody’s standpoint, he has been vilified and victimized by an international case of parental alienation, if not abduction in reverse.

During her twenty+ minutes of fame, Betty Mahmoody became a favorite of the lecture circuit and television talk shows, including an appearance on Oprah. Though her book and movie may have been lacking in artistic quality, they did energize debate and awareness of The Hague Convention and international child abduction.

As I first learned of The Hague Convention through Hollywood, it was only fitting that California was the location of my first formal Hague training. In early June 1997, I was lucky enough to attend the Second World Congress on Family Law and Rights of Children in San Francisco. The Congress was held at the Embarcadero Center Hyatt Regency in conjunction with a conference held by the Association of Family and Conciliation Courts. (This was, hands down, the best conference I have ever attended. Speakers and attendees included judges throughout the world, members of the Senate and Congress, Judith Wallerstein (after her 20 year longitudinal study on the effects of divorce), “America’s pediatrician” Dr. Terry Brazelton, and two Nobel Prize winners. If RAM conference chair Mark Sherbow could have been there, no doubt his bow tie would have been twirling with excitement. And though Mark was not there, I did bump into a familiar RAM face in the hotel lobby – RAM patriarch and future Champion of Justice, Jon Ferrier also attended this impressive conference.)

As explained by a deputy of the U.S. Department of State, the Hague Convention on the Civil Aspects of International Child Abduction is a treaty between member nations that “insure(s) the prompt return of children who have been abducted from their country of habitual residence or wrongfully retained in a contracting state not their country of habitual residence.” (From the Hague Convention Preamble).

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The concept arose in 1976, when 23 nations agreed to draft a treaty to deter international abduction. Prior to the treaty, there was very little recourse for a parent to regain custody or enforce visitation rights unless they consented to a foreign jurisdiction’s laws. The Convention became law in the United States on July 1, 1988. Today, over 50 nations have signed the Convention. The treaty does not require a custody order, but rather it seeks to enforce the status quo prior to abduction or retention. Children under 16 are required to be sent to their habitual residence if application is made within one year from the date of the wrongful removal or retention. Jurisdiction is discretionary if application is made more than a year after the removal. Even if application is timely made, there are certain exceptions that may allow a court to refuse return of a child. Those exceptions include: (1) a grave risk of physical or psychological harm to the child would occur if the child were allowed to return to his/her habitual residence; (2) if the child objects and the judge deems the child is of proper maturity to decide (no age is given); or (3) if the return would result in violations of basic human rights and freedoms where the child is being held. Today, nearly two thirds of all internationally abducted or retained children are returned because of the Hague Convention.

There are, of course, many nuances to the Hague Convention. If a parent (or referee) is faced with the issue of international child abduction/retention, there are a host of web sites that adequately explain various applicable procedures. I would recommend starting by reading the provisions of the Convention, as well as the procedures outlined at the U.S. State Department web site. One must also check the list of signatory countries and the dates that they ratified (there is no retroactivity prior to signing).

To me, Hollywood and the Hague will forever be linked because of my real life friendship with Mahtob. Most lawyers, including myself, learn their craft through reading law books and practicing in courtrooms. But in this instance I learned from the outside looking in. It was an education.

Ken Randall

November 25, 2007

The Hague, Netherlands
FOC PRIVATIZATION: WHY SHOULD WE CARE?
Contributed by Carolyn J. Jackson
Oakland County FOC Referee

This Fall there was an attempt by Wayne County Circuit Court’s Chief Judge, Mary Beth Kelly, to privatize the Friend of the Court. The basis cited for this effort was that the Wayne County FOC was ineffective, understaffed and thus inoperable in its day to day operations due to inadequate funding. The effort was opposed by many Judges on the Wayne County Bench both publicly and privately, FOC employees, and the general public. Despite this opposition the Chief Judge went forward and began accepting Requests for Proposals (RFPs).

The RFP required bidders to increase staffing by 33% and also retain the current FOC employees.

The effort was vehemently opposed by AFSCME, the union which represents Wayne County court personnel which includes all the Friend of the Court employees. The union sued the Chief Judge and the entire Wayne County Circuit Court. The union was successful in getting a temporary restraining order which prohibited the Chief Judge and the Court from executing any contract to perform work currently being performed by union employees. However, restraining order did not prohibit the Chief Judge from continuing to accept bids and move forward with the process.

The plan was subsequently halted in total after the Wayne County Board of Commissioners voted to reject the plan and as part of a settle agreement with the union, the Chief Judge and the Court agreed not to proceed.

Aside from the labor dispute, that was ignited by this effort, any plan to privatize the FOC raises many obvious questions of legislative authority, privacy, profiteering, and adequate judicial oversight. The primary questions for Referees should be how does privatization affect us. Referees are appointed by the Chief Judge pursuant to statutory authority. The effort by Wayne County purportedly would not impact Referees. But, is that really accurate. Even though the authority for Referees is legislative and we are part of the Judiciary. The funding for Friend of the Court Referees comes primarily from the IV-D portion of the FOC budget. Therefore, if the Friend of the Court is privatized, what happens to the Referees that are assigned to the Friend of the Court?

The question posed is relevant and pertinent to every Friend of the Court Referee in this state.

The effort in Wayne County was defeated, for now. It was only done so after litigation and public outcry. However, we have not seen the end of the issue.

Many FOCs across the state are not unionized. Therefore, it is unlikely that the move to privatization would encounter the same type of organized opposition.

Referees need to be prepared for if and when that day comes, because we will be potentially caught in a no man’s land.

This issue is not dead and is truly dark territory for Referees.
JUVENILE LAW

The court in Palmer v Buscemi US District Court, Eastern District of Michigan, #05-10094 9/30/07 held that the federal claims by an incarcerated father against a Family Court Judge and Referee regarding his daughter’s delinquency proceedings were barred by judicial immunity, and the claims against Children’s Village officials (where the juvenile was placed) and a counselor were barred by quasi-judicial immunity. The court further dismissed Plaintiff’s federal complaint on the basis that he must exhaust his appeals through the state appellate courts before seeking review by the U.S. Supreme Court, and dismissed Plaintiff’s conspiracy claim against his ex-wife and her current husband for lack of jurisdiction as no state action was involved.

The Supreme Court reinstated the Family Court’s termination of parental rights in In re Engle Sup Ct # 134801 11/2/07. The Court of Appeals (#275064, 8/9/07) had found clear evidence that the mother feared and was dominated by her husband and had not protected her daughters from the father’s sexual abuse, but that DHS should assess mother’s ability to parent the children as the husband was now incarcerated and divorced from the mother. The Supreme Court determined that the Court of Appeals had misapplied the clear error standard and that the Family Court was not required to attempt reunification of the family or provide services given the circumstances.

DOMESTIC RELATIONS

Hague Convention issues were addressed in Robert v Tesson US Ct of Appeals 6th Cir # 06-3889 11/14/07. The parties children were born and lived in the U.S. for 17 months, then spent 7 months in France, then 26 months in the U.S., then 15 months in France, back to the U.S. for 10 months, then back to France for 1 month before returning to the U.S.. Both parties filed domestic relations actions, and mother was convicted of parental abduction in absentia in France. The court held that the United States was the children’s “habitual residence”, which was where the children had “been physically present for an amount of time sufficient for acclimatization and which has a degree of settled purpose from the child’s perspective” and denied the father’s request to return the children to France.

The court in Dubay v. Wells U.S. Court of Appeals Sixth Circuit 06-2107 11/6/07 rejected a challenge to the Paternity act based on the claim that men should have a right to disclaim fatherhood because mothers have the right to “disclaim” parenthood by having an abortion or placing the child for adoption. Parents do not have a fundamental right to end their responsibilities to the child after birth, and the government has a legitimate interest in ensuring the support of children born out of wedlock.
The Michigan Supreme Court denied application for leave to appeal Spires v Bergman __Mich App__ (2007) #276722 8/21/07, leave denied Sup Ct # # 134977 11/27/07. MCL 722.31 has replaced the common law and the D’Onofrio factors, and the court no longer addresses the factors when a motion to change the domicile of the minor child(ren) is brought by a custodial parent with sole legal and physical custody.

While the court should avoid taking a child’s testimony in a custody hearing, Surman v. Surman __Mich App__ #276615 12/7/07 held the court may call a 12 year old child to testify regarding allegations of abuse. It is necessary to determine the best interests of the child and hearing evidence of abuse in camera would violate due process. The court also properly qualified as an expert a limited licensed psychologist to testify regarding family and child counseling and child abuse and neglect. The requirement in MCL 722.27b(5) that a petition for grand-parenting time must be dismissed if the both of the child(ren)’s parents are fit parents and both oppose the petition is constitutional according to Brinkley v Brinkley __Mich App__ (2007) after remand #269725 10/16/07. There is no fundamental right of grandparents to have a relationship with their grandchild(ren).

People v Herrick __Mich App__ (2007) #271882 11/27/07 held that the Prosecutor has the burden of proving that a felony nonsupport defendant either appeared in the case where support was ordered, or received notice by personal service of that action, in addition to showing that an order for support was entered and the defendant failed to pay the required support at the time or in the amount ordered.

In Valentine v Valentine __Mich App__ (2007) #270793 10/16/07 Court denied husband’s request to hold the arbitration award void ab initio under MCR 3.602(J)(2) as he waited more then 21 days after the award before objecting to arbitration. The wife had alleged during arbitration that she was a domestic violence victim.

Mark Your Calendars for Next Year’s Spring Conference!
May 21st—23rd, 2008
Perry Hotel, Petoskey
CASELAW, STATUTE AND COURT RULE UPDATE

RECENT STATUTES AND COURT RULES

2007 PA 53-58 Effective 9/6/07 Documents, including judgments, filed with register of deeds must not contain the 1st 5 digits of a social security number unless otherwise required by law.

2007 PA 139 Effective 11/13/07 A county or circuit court may adopt a “JAIL MANAGEMENT PLAN” approved by the Sheriff, Prosecutor, Chief Circuit and District Judges. Each judge may suspend or reduce prior sentences, or delegate authority to the Chief Judge to suspend or reduce prior sentences. Each judge may modify, or delegate authority to the Chief Judge to modify bonds for un-sentenced prisoners.

2007 PA 140 Effective 2/11/08 In the absence of a Jail Management Plan, when county jail is at 95% capacity for 5 consecutive days, bonds may be reduced to PR bonds, non-violent prisoners who have served 85% of sentence shall be released, and Child Support Contempt prisoners with no other charges shall be released. When the county jail is certified at or over 100% capacity for 7 consecutive days, Judges and county officials must be notified; Judges and county officials must review bonds/bail, speed up proceedings and transfers to D.O.C, use probation/parole, jail alternatives, mental health, and substance abuse treatment; jails must review agreements to house out of county prisoners. If overcrowding continues for 42 days, the sheriff shall defer sentences unless release of a prisoner is a threat to public safety.

MCR 3.602 Effective 1/1/08 Arbitration rule amended using motion or complaint rather than application, requiring filing of a complaint to stay or compel arbitration, or to vacate, modify, or correct an award followed by a motion for the same relief filed within 21 days for domestic relations cases, or claims of corruption, fraud, or other undue means; all other motions to vacate an arbitration award must be filed within 91 days.

ADM FILE NO 2006-04 Proposed Amendment of MCR 3.204 and MCR 3.212.
2007 RAM HOLIDAY LUNCHEON
REDWOOD LODGE
DECEMBER 13, 2007
Referees' Association of Michigan

2008 Membership Application - **Deadline for Dues: January 1, 2008**

Name: ___________________________________________
Title: ___________________ Court:___________________
Address: ____________________________________________
Phone:_______________________Fax:_________________
e-mail:____________________________________________

DUES: $25.00
Send to:
Erin Magley
Referee, Ottawa County 414
Washington St.
Room 206
Grand Haven, MI 49417

Please check here for permission to send notices, nomination forms and ballots to you via
electronic mail rather than via postal mail: ___
Please check here if you would like to receive listserv communications: ___
Law School: _____________________ Date of Admission to the Bar:______
Number of Years as Referee:______ Juvenile or Domestic:__________

Please list names of the other Referees (Juvenile and Domestic Relations) in your County:
________________________________________________________________________

*The following information is optional:*
RAM activities in which you have participated:
________________________________________________________________________

Other professional organizations in which you are a member:
________________________________________________________________________

Juvenile/family law activities you have completed this year:
________________________________________________________________________

Books/articles/materials you have published this year:
________________________________________________________________________

Seminar/guest speaker presentations you have made or special projects you have worked
on this year:
________________________________________________________________________

How can RAM better serve and represent Referees?
________________________________________________________________________

Personal news you would like to share with your colleagues:
________________________________________________________________________

*Please print & complete form, and send to Erin with your payment at the address above.*
# Referees’ Association of Michigan — Contacts

## Officers—2006-2007

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<thead>
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<td>Treasurer</td>
<td>Paul Jakubes</td>
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## Board Members

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## Committees and Liaisons

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<td>Public Relations</td>
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The opinions expressed in this publication do not necessarily represent those of the Board of Directors of the Referees’ Association of Michigan.