Greetings, Referees, friends, and other interested parties. Our organization has been called upon in recent months to participate in several task force committees, organized through the State Court Administrators Office, looking into the improvement and functioning of our courts. Some of the areas we have been involved with include the structure of a child support specialty court (somewhat analogous to a Drug Court in bringing multiple disciplines to focus on particularly difficult support situations) and the underground economy.

Justice Maura Corrigan has been a driving force on the underground economy issue - her Michigan Underground Economy (“U.E.”) Task Force was put together, at least in part, to follow efforts from the federal government on solving these barriers to tax and support collection. Our last RAM board meeting featured a guest presentation by Jackson County Circuit Judge Chad Schmucker and Assistant U.S. Attorney Michael Liebson, both of whom are members of this task force. We heard more specifics on the effects of this U.E. problem, namely, millions of dollars of lost tax revenue to the State of Michigan and the federal government. This problem also seriously impacts our efforts to collect child support in a timely fashion.

We have, through the years, acquired the increasingly efficient ability to collect on wages, seize bank accounts, probate assets, tax refunds, all of which only occur if an individual is acting like “a citizen”. Solving the U.E. problem is seen as one of the last major hurdles to overcome in our efforts to properly take care of the families on our caseload. (con’t on page 2...)

**Next RAM Board Meeting:**
May 22nd, 9:00 am – at the RAM Annual Conference
The Park Place Hotel, Traverse City
May 20-22, 2009

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Some of the issues that have been frequently raised in these sessions, and which we should continue to examine ourselves, include our role in reporting non-taxpaying litigants, and/or their employers. Many employers treat their workers as “independent contractors,” do not withhold taxes, do not pay unemployment taxes, etc., when all the while they control their workers’ duties as closely as if they were regular employees. What is our duty to further investigate and report (to various enforcement agencies) these “non-citizens” in an effort to force them to become more fully part of the citizenry? Do we only care if our support cases are getting paid, and so we’ll take the cash and ask no further?

Some of these same issues can be found in another subset of the underground economy, namely, illegal or undocumented aliens. They are almost all working in the U.E. because of obvious difficulties in obtaining social security numbers and other accoutrements of citizenship. Do we have a duty to report those individuals to the U.S. Citizenship and Immigration Services (formerly “I.N.S.”)?

These and other similar issues should be fully explored, both in our involvements in committee work and during our interaction at our Conferences and on our listserv. I am anxious to hear from all of you.

-- Arthur R. Spears, RAM President, submitted April 2, 2009

As of its fourth “anniversary” on April 1, 2009, our Association website had been visited 16,088 times. That’s a lot of clicks! We appreciate the help of our webmaster, Dan Kirkland, who posts information for us and maintains the site.
I assume I have your attention. The excitement I am speaking of is in regards to how the Courts are changing in regards to technology. I know that sounds dull. However, just think how the picture of the courtroom has changed in the last 20 years.

When I started practicing law, all the courts could only be reached by walking 10 miles in two feet of snow walking up hill both ways. Oh wait, that’s what I tell my kids about school. Dealing with reality, I began practicing in 1976. There were no computers in the courtrooms. The closest thing to technology was a court reporter with an electric stenographic transcriber. Some court reporters were still taking everything down by hand.

Think about movies. Does the courtroom in *A Few Good Men* look significantly different than the one in *Inherit the Wind*? The courtroom didn’t change in a couple of hundred years. Then, electronics appeared. Now every courtroom has computers and various recording devices. Attorneys come to court with laptops and cell phones. I dare say the majority of lawyers don’t carry organizers any more. They either have their schedule on their laptop or their phone. If not, they call their office and have their secretary check it on the office computer.

I checked a few counties and found that Oakland has e-filing, Genesee and Macomb use OnBase, a paperless filing system, Oakland has its own paperless filing system and Isabella is adopting one soon. In Oakland, parties can pay $30 and appear by phone rather than in person. Isabella is set up to run without court clerks. The referees record their own hearings, prepare their own orders and print them in the courtroom.

*(con’t on page 4…)*
Excitement in the Courts, *con’t from page 3…*

In Genesee, they are using OnBase to compose recommendations using templates. Eventually, they will have the Court file, as well as the Friend of the Court file, available to them. Isabella does arraignments by a video connection with the jail. On occasion, they use this to domestic relations parties appear as well. Genesee uses the MICSES system to issue recommendations as it includes findings and can be used as a USO. On a different note, Isabella uses a key pass system to limit access to non-public areas.

In Macomb, the Referee hearing rooms are set up for video recording. I have, on occasion, conducted hearings without a clerk. On one occasion, I took testimony from a witness in Austria on a cell phone that sat on my bench next to my microphone. That was a little strange. However, that may be my point.

It’s all a little strange. I did solicit other referees about the technology in their offices. I would ask that any of you who read this e-mail me as to what you are doing. Maybe we could get ahead of this game and create the courtroom of the future. If you are a technophobe or just don’t like change, I would be interesting in hearing from you as to how this transition can be made easier for you.

About 20 years ago, I participated in a futuring project for my community. The futurist that was brought in to assist us kept telling us to change our paradigm. You have to put aside your current practices. **We have to answer some interesting questions.**

- How can we change how we operate to make the courts more accessible to the public?
- What tools are out there or should be out there to make our jobs easier and, therefore, us more productive?
- Especially considering our economic times, what can we do to save our counties money?

I would like to start a dialogue on this subject. I encourage all of you to e-mail me with what your county and court is doing now. If you have heard of something or are aware of a program, let me know. In the next issue, I will share what I have learned.

I wish to thank Nancy Parshall of Isabella County, Shelley Spivak of Genesee County and Sahera Housey of Oakland County for the information they provided.

See -- technology **can** be exciting!

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*Submitted by Paul Jacokes, March 22, 2009*
Wednesday, May 20, 2009:

12:00 p.m. to 1:45 p.m.  Conference Registration

2:00 p.m. to 4:00 p.m.  Presentation: Kimberly Alyn - How to Effectively Deal with Annoying People. Ms. Alyn is a best-selling author and an international speaker. She delivers progressive self-improvement concepts with laughter and insight. Her presentation will address topics that include rising to real leadership, client service, dealing with annoying people, doing the right thing, and loving what you do in life. Her books include: How to Deal with Annoying People (with Bob Phillips, Ph.D.), Discover your Inner Self and Men are Slobs, Women are Not....and other gender lies that damage relationships.

4:00 p.m. to 6:30 p.m.  Hospitality Suite: Meet and greet fellow Referees.

6:30 p.m. to 8:00 p.m.  Group Dinner - Park Place Hotel.

7:30 p.m. to ????  Hospitality Suite will be open. Come and enjoy some rest and relaxation!

Thursday, May 21, 2009:

7:30 a.m. to 9:00 a.m.  Continental Breakfast: (at your leisure).

9:15 a.m. to 11:00 a.m.  Presentation: Paul J. Fischer, Executive Director and General Counsel Michigan Judicial Tenure Commission. Mr. Fischer will discuss the operation of the judicial tenure commission, the constitutional and statutory position of the referee/magistrate in the Michigan judicial system, and he will lead an interactive session discussing specific references and examples applicable to referees.

11:00 a.m. to 11:15 a.m.  Break

11:15 a.m. to 12:00 p.m.  Presentation: Hon. Tracey A. Yokich, Macomb County Circuit Court. Judge Yokich’s presentation will address the statutory and practical effects of existing military related law both as to child custody/parenting time and financial issues.

12:00 a.m. to 1:30 p.m.  Lunch

(con’t on page 4…)
1:30 p.m. to 3:30 p.m.  Presentation: C. Dennis Simpson, Director of Special Programs Alcohol/Drug Abuse, Western Michigan University. Dr. Simpson’s presentation will encompass key issues related to adolescent substance use and abuse. The cognitive and social effects of alcohol and drug abuse will be discussed, as well as methods of screening and assessment. Interventions, therapy, and treatment will be explored.

3:30 p.m. to 5:00 p.m.  Joint Roundtable Discussions.  Topics: To be Announced.

6:00 p.m.  Dinner: On your own.

5:00 p.m. to ???  Hospitality Suite will be open.

Friday, May 22, 2009:

8:00 a.m. to 10:00 a.m.  Group Breakfast Buffet.  (Board meeting at 9:00 a.m.)

9:00 a.m. to 10:00 a.m.  Executive Board Meeting.

10:00 a.m. to 11:30 a.m.  Presentation: Hon. John A. Gadola, Genesee County Circuit Court. Judge Gadola will address the referees with regard to the Genesee County Family Court Drug Court, including operations, resources, and application to juvenile and domestic relations cases.

11:30 a.m. to 12:00 p.m.  Awards Ceremony and Conclusion of Conference.  (Please turn in your evaluation forms).
Referees Association of Michigan
25th Annual Conference – Traverse City, Michigan
May 20, 21, 22, 2009

CONFERENCE REGISTRATION FORM

NAME: ____________________________________________

TITLE: __________________________________________

COURT & COUNTY: __________________________________________

ADDRESS: ____________________________________________

________________________________

TELEPHONE: ___________________________ E-MAIL: ____________________________


CONFERENCE FEE: Conference Fees include registration, materials, group dinner, and
RAM membership for non-member Referees. Please CHECK the option(s) selected
below.

RAM Members: _____ Registration Fee $150.00 if paid on or before April 1, 2009,
$200.00 if paid after.
Non-Members: _____ Registration Fee $175.00 if paid on or before April 1, 2009,
$225.00 if paid after.

Per Diem Rate: _____ $75.00 per day for RAM Members (Circle Day(s) Selected:
Wednesday, Thursday, Friday)

Non-Members: _____ $85.00 per day for Non-Members (Circle Day(s) Selected:
Wednesday, Thursday, Friday)

Guest Meal Rate: Wednesday Group Dinner(s): $33.00 each _____ (# of
additional persons)

REGISTRATION FEE ENCLOSED: $ ____________
TOTAL GUEST MEAL(S): $ ____________
TOTAL AMOUNT ENCLOSED: $ ____________
GROUP DINNER ENTRÉE SELECTION: If you are planning to attend the group dinner, please select one entrée from the following list. If you are paying for guest(s) to attend, please indicate their selection, as well:

- Grilled New York Strip Steak with wild mushroom jus.
- Broiled White Fish Fillet with a cherry butter sauce.
- Sautéed Chicken Breast with wild mushroom Boursin cream.
- Vegetarian Ravioli with wild mushroom cream.

Please send this Registration Form, along with a check made payable to “R.A.M.” to the following:
RAM c/o Referee Michelle Barry
Oakland County Friend of the Court
230 Elizabeth Lake Road
Pontiac, Michigan 48341

Park Hotel – Traverse City, is offering a special room rate of $120 per night, plus tax. Contact the Park Place Hotel for room reservations:
(231) 946-5000 or fax: (231) 946-2772 or www.park-place-hotel.com The Cut-off date for the block of rooms is April 1, 2009.

** DO NOT SEND YOUR CONFERENCE REGISTRATION FORM AND FEE TO THE HOTEL **

See you on May 20th!
JUVENILE LAW

The Court of Appeals addressed notice requirements prerequisite to transferring a juvenile delinquency case to the consent calendar, in the consolidated appeals of In re Lee and In re Ivos __Mich App__ (2009) (#282848 1/15/09). In Lee, the intake probation officer had informed the parties that the court would consider diverting the case to the consent calendar. The Crime Victim’s Rights Act, MCL 780.786b and MCR 3.932(B) require written notice of the court’s intent to remove a case from the adjudicative process and a notice of hearing when the petitioned offenses would constitute a felony if the juvenile was charged as an adult. Although no written notice of the court’s intent to divert the case was given, the prosecutor was previously aware of the possibility of diversion, the victim had filed a statement, and the prosecutor was able to argue the issue, and therefore reversal was not required under MCR 2.613(A) as it was not in the interests of the public or juvenile.

In Ivos, although the minor’s plea had been accepted, the court stated its inclination to remove the case to the consent calendar at the dispositional hearing, which was then adjourned. The court had a later conference in chambers with the attorneys again stating it preferred to remove the matter to the consent calendar, re-noticed the dispositional hearing and sent a letter to the attorneys that it was appropriate to place the parties concerns and objection on the record. The Court of Appeals held that the court had substantially complied with the notice requirement considering the previous proceedings, the notice of hearing, and the judge’s letter, and further that the court properly removed the matter to the consent calendar after the plea as the court can remove the matter at any time prior to disposition.

Although People v Rider __Mich App__ (2009) #281525 3/17/09 is unpublished criminal case, it involves an issue that will likely be raised in some juvenile division proceedings. The court properly excluded testimony of Defendant’s expert that the 13 year old CSC II victim suffered from Reactive Attachment Disorder (RAD), a symptom of which is lying. The court determined that the expert testimony would essentially opine that the victim was lying about the criminal sexual contacts committed by her adopted father, and therefore was more prejudicial than probative and further usurped the jury’s role of assessing credibility of witnesses.

The Interstate Compact For Juveniles MCL 3.691 et seq takes effect as it has been adopted by the 35th state, and the Interstate Compact on Juveniles, MCL 3.701 et seq is repealed.

2008 PA 374 Amends MCL 722.627j effective 12/23/08 to expands access to Central Registry clearance by allowing DHS to give an individual, an authorized employer or volunteer organization, or whomever is appropriate documentation that the individual is not named in the central registry as the perpetrator of abuse or neglect.
**CASELAW, STATUTE AND COURT RULE UPDATE, con’t**

**2008 PA 511** Adds MCL 722.628e effective 4/1/09 requiring that a Protective Service investigation shall not be closed until a checklist developed by DHS, is completed and reviewed by a supervisor. The investigation may be closed upon completion of the checklist compliance with state law and policy, i.e. face-to-face contact with child victims, compliance with sections 8d, 17, and 18, a petition filed when needed to ensure child safety, and any other items outlined in DHS policy affecting child safety and well-being. If the investigation does not comply with the check list and state law or DHS policy requirements, the supervisor must determine why, and the investigation will not be closed until after local director review.

**2008 PA 519** Adds MCL 750.135a effective 4/1/09 providing that a person responsible for the care or welfare of child under 6 years old who leaves the child unattended in a vehicle for a period of time that poses an unreasonable risk of harm or injury to the child is guilty of a 93 day misdemeanor, or a 1 year misdemeanor if physical harm results, or a 10 year felony if serious harm results, or a 15 year felony if death results.

**2008 PA 577** Amends MCL 750.136b effective 4/1/09 makes 3rd degree child abuse a felony; provides that a knowing or intentional act which under the circumstances poses an unreasonable risk of harm or injury to a child is 3rd degree child abuse if it results in harm to the child or 4th degree child abuse if it does not harm the child; includes a reckless act causing serious mental harm to the definition of 2nd degree child abuse, and provides an affirmative defense for a reasonable response to domestic violence.

**ADM 2009-08** Proposes amendment of MCR 3.936 provide for destruction of fingerprints of a minor when a petition is not submitted or authorized, or when the court doesn’t take jurisdiction of the minor.

**DOMESTIC RELATIONS**

A minor decline in the child’s grades and mother’s financial difficulties in paying her rent and for airfare to send the child to father for parenting time did not constitute proper cause or a change in circumstance to warrant consideration of father’s motion to change custody in *Corporan v Henton —Mich App—(2009) #285778 3/5/09*. The court noted that these issues would be more appropriately addressed in reconsidering the amount of child support that the father was paying. The Court in *McIntosh v McIntosh —Mich App—(2009) #2/17/09* reiterated that the court must make its own custody decision considering the best interests of the child and does not commit error when awarding custody contrary to the recommendation in a Friend of the Court psychological evaluation to continue joint physical custody. While the parties had stipulated that the court consider the report, it was only one piece of evidence, and the Plaintiff’s alcohol and domestic abuse, controlling behavior, and attempts to hinder Defendant’s relationship with the child supported the court’s decision to grant sole physical custody to Defendant.
CASELAW, STATUTE AND COURT RULE UPDATE, con’t

Plaintiff temporary guardians in Unthank v Wolfe __Mich App__(2008) #284182 12/23/08, lacked standing to file for custody as they were not related to the child and Defendant had revoked her consent to their proposed adoption of the child. Further, although many of the custody factors weighed in favor of Plaintiffs, they did not overcome the presumption in favor of a fit parent by clear and convincing evidence. However, in In Re Anjoski __Mich App__(2009) #283426 3/19/09, while the father’s widow was not related to and did not have guardianship of the child, the court permitted the child to remain in the established custodial environment with the widow pending an evidentiary hearing on mother’s motion to change custody. The statute allows the court to award custody to a third party who lacks standing when the motion was filed by a party with standing; the court must determine whether the moving parent is unfit based on “legitimate and compelling indicia” before determining the burden of proof and conducting an evidentiary hearing.

Motions to change the children’s schools were addressed in two cases. In Parent v Parent __Mich App__(2009) #287543 1/22/09 the court was not required to determine established custodial setting or require the non-custodial parent to show clear and convincing evidence before granting his motion to enroll the child in public school. The motion effected the educational environment, not custodial environment, and the court must address all of the custody factors (including irrelevant factors) before deciding the school enrollment issue. Pursuant to Pierron v Pierron __Mich App__(2008) #282673 2/3/09, “The court must narrowly focus its consideration of each best-interest factor” on the decision of the children’s school enrollment. A change in school districts is a change in the educational environment only, and the party requesting the change need only show by a preponderance of evidence that the change in schools is in the children’s best interests.

It was appropriate for a child support receiver to file a criminal contempt petition against defendant’s attorney’s “intentionally frustrating and failing to comply” with court orders to turn over Defendant’s funds held in an IOLTA account, In re Contempt of Henry __Mich App__(2009) #280372 3/17/09. The court found nothing unethical with the receiver’s actions and proper notice and procedure was provided, but the court improperly sentenced the attorney under the recent general contempt amendments for acts that occurred prior to the amendments, contrary to the constitutional ex post facto prohibition. The court in Tkachik v Mandeville __Mich App__(2009) # 280879 2/5/09, properly denied the action by the deceased wife’s estate to award the estate her contributions towards entireties property, based on the estate’s theory that the surviving husband’s extended absences from the home constituted a de facto divorce that converted the tenancy by the entireties to a tenancy in common with the decedent.

2008 PA 348 Amends MCL 38.1702 to provide that the Social Security Numbers of the participant and alternate payee no longer be included in the EDRO that is filed with the court, but be instead included on an attachment that is attached to the EDRO when it is served on the public employee retirement system.

2008 PA 405 Amends MCL 552.520 effective 1/6/09 to require that when DHS notifies FOC of a Protective Service investigation, FOC shall notify DHS of any procedural developments of an open FOC case regarding pending custody or parenting time proceedings until the final order regarding the dispute is entered.

2008 PA 510 Amends MCL 722.623 effective 1/12/09 to include as mandated reporters Professional Friend of the Court employees, as provided in 2008 PA 300.
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