Hello again, everyone in the Referee community and beyond. I want to begin by thanking our most excellent Vice President Paul Jacokes for taking care of things while I was “under the weather,” particularly his work at the May Conference in Traverse City. Thanks again to Mark Sherbow, Libby Blanchard, and Sahera Housey for their hard work at making what was, by all accounts, a very successful conference.

Recently, the Program Leadership Group (part of OCS) conducted their 2009 Michigan Child Support Program Partner Forum at the Hall of Justice in Lansing, to assess strengths and weaknesses of the child support programs in the State. The conference looked at improving establishment by more “right sized” orders and better education of the public and the parents; improving enforcement and collection by analyzing comparative benefits of local and centralized remedies, payment and forgiveness plans, and early intervention; reviewed the best and worst features of MiSDU and MiCSES (essentially a love/hate relationship); and analyzed customer service issues such as improving communication tools with the members of the public we serve. Chief Justice Marilyn Kelly made preliminary remarks and had a great observation, along the lines of “it is easier to build a strong child than it is to repair a broken man.”

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This last observation goes hand in glove with many efforts now afoot such as early intervention conferences (which have been extended to DC and DS cases in Oakland County) to get the cases off on good footing, to make sure that the orders are the right size for the particular needs and circumstances of the parties and in the simplest terms, to get the participants in the room at the same time to measure and address common interests, potential conflicts, and dispute resolution before they have the chance to go down the long road of litigation and the frequently endless disputes which result.

Our organization can, and should, use this same analysis and make it part of our annual training conferences in May. More discussions and informative exchanges between our members about best practices and improving productivity might also convince our local government funding agencies to agree to send more of our members to these conferences, thinking of them as an opportunity to make their local government work better.

As with our many other issues raised in these pages and on our listserv, I welcome and encourage additional thoughts and comments on these matters.

- - Submitted by Art Spears, RAM President

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**Next RAM Board Meetings:**

November 5, 2009 – 10:00 am – State Bar of Michigan Building, Lansing

December 10, 2009 – 11:00 am - Redwood Lodge, 5304 Gateway Ctr, Flint

The December 10 meeting will be followed immediately after (est. 30-40 min) by our Holiday Luncheon.

All members are invited and encouraged to attend.

Remember to check the RAM Listserv Webpage regularly for updates on your fellow Referees and other news related to domestic and juvenile law issues! The URL is:

What is ICWA? When does it apply? Who is responsible for ensuring compliance with its terms? Why was it enacted?

The answers to these questions and many more can be found in the State Court Administrative Office’s new publication: “Indian Child Welfare Act of 1978: A Court Resource Guide.” The Resource Guide, which is an interactive publication that can be accessed online at:


was written by a special committee formed by the Michigan Supreme Court to assist Michigan judges and referees in understanding and correctly applying the Indian Child Welfare Act of 1978 (ICWA). Spurred by an increase in the number of questions SCAO Child Welfare Services staff were receiving concerning ICWA, the Supreme Court invited representatives from Michigan’s 12 federally recognized tribes, as well as representatives from organizations such as RAM, the Michigan Judges Association, the Prosecuting Attorneys Coordinating Council, and DHS to serve on the committee. This unique collaborative committee chaired by SCAO staff attorney Angel Sorrells, conducted four day long meetings in order to produce the Guide. In addition to the committee as a whole, a separate sub-committee was formed to address Michigan’s Court Rules compliance with ICWA. The work of this sub-committee resulted in the creation of a proposed major revision to the Michigan Court Rules addressing neglect and abuse, guardianships and adoptions. (These proposed court rules were recently published and can be found at: http://courts.michigan.gov/supremecourt/Resources/Administrative/index.htm).

Congress passed ICWA in 1978 to redress the devastating impact child welfare policies had upon Indian tribes, family and children since the 1800’s. From the creation of the Indian boarding schools removing Indian children from their homes, language and cultures, to the misguided social welfare policies of the 1950’s and 60’s placing Indian children in non-Indian foster care and adoptive homes, this country’s policies towards Indian children caused lasting damage to Indian children, culture and tribes. ICWA, by establishing minimum federal standards that protect both the right of an Indian child to live with an Indian family and the right of the tribe to ensure its integrity and existence, aims to ensure that Indian children are removed from their parents only after carefully crafted efforts have been made to maintain the Indian family. By creating this Resource Guide, the Michigan Supreme Court seeks to ensure that the federal requirements found in ICWA are uniformly followed and applied throughout the state.

(Con’t on page 4)
The Resource Guide is organized in a sequential manner that allows a Judge or Referee to quickly reference an answer to a specific question concerning an Indian child. The Guide includes state and federal statutory authority, state and federal case law as well as citations to the Bureau of Indian Affairs federal regulations. Also included within each chapter are Best Practices Tips that set forth specific procedures recommended by SCAO and the Committee in order to ensure compliance with ICWA. The Appendix to the Resource Guide includes the ICWA text, the BIA Guidelines for State Courts as well as contact information and judicial checklists. The Appendix also includes a list of questions that can be used by judges and referees to make an “active efforts” determination as required by ICWA as well as a series of flow charts that were created by the Native American Rights Fund. In conjunction with the publication of the Resource Guide, SCAO plans to conduct 4-5 regional trainings over the course of the next year.

Having served as the RAM representative to both the committee as a whole and the Court Rules committee, I would like to commend the efforts of the SCAO staff as well as the members of the committee, who each brought to the table the concerns of his/her constituency and worked collaboratively to ensure that the Resource Guide would ultimately serve the best interests of Indian children, families and tribes.

*Contributed by Shelley R. Spivack, J.D., M.A. Genesee County Family Court Referee*
SEPTEMBER, 2009 RAM BOARD MEETING (AT SBM ANNUAL MEETING)

Art Spears, Ron Foon, & Tom Doetsch participating in the discussion.

Our President, Art Spears, leading the discussion. (It’s good to have you back, Art!)

Art Spears, Ron Foon, Tom Doetsch & Lisa Wenger.
Kent Weichmann & Art Spears

Sahera Housey & Libby Blanchard

Traci Rink & Paul Jacokes checking out the dining options at the SBM meeting.
ADOPTION

Guardians do not have the authority to consent to termination of the parents’ rights when petitioning for their own adoption of their ward, according to In Re Handorf __Mich App__(2009) #290101 8/18/09. The guardians had been appointed days after the child was born and the mother failed to fulfill the court’s requirements for drug testing, stable housing, employment, counseling, and regular contact with the children. The guardians filed for adoption when DHS did not investigate termination as requested to do so by the court, but the court below properly held that unless the parents consent to adoption, there must be a release by each parent or termination of parental rights by a court.

JUVENILE LAW

The Michigan Supreme Court in In re J.L. __Mich__(2009) # 137653 7/14/09 addressed the “active efforts” requirement in the Indian Child Welfare Act (ICWA), 25 USC 1901 et seq.. Respondent was diagnosed with fetal alcohol syndrome and in foster care and receiving services from DHS prior to this child’s birth. Both the Family Division and the Sault Ste. Marie Tribe of Chippewa Indians Tribal Court were involved at various times with respondent and her four children, and respondent received numerous wraparound services from DHS, Anishinabek Community Services, and other agencies over the course of 6 years. Testimony also showed respondent had been provided all the services (including culturally relevant services) that could be offered with no significant improvement. Respondent continued to have drinking bouts, her home was unsafe, she never sought employment and couldn’t handle finances, and the children were unsupervised and found on the road on several occasions. Much of the testimony involved services provided during substantial time periods when J.L, the oldest child, was placed outside of respondent’s home.

Respondent was originally granted visitation in the underling action. Three younger children have been subject to termination proceedings in Tribal Court, DHS filed a termination petition regarding J.L. in Family Division, and both of J. L.’s parent’s rights were terminated. The Court determined that the “active efforts” requirement of the ICWA does not require petitioner to offer of services each time a new petition is filed. When the proceedings involve an Indian child, as defined under the ICWA, the petitioner (DHS) must “undertake a thorough, contemporaneous assessment of the services provided to the parent in the past and the parent’s response to those services before seeking to terminate parental rights without having offered additional services”. This included services provided when J.L. was not in the home.

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The court found that the petitioner proved by clear and convincing evidence that “active efforts” had been made to prevent the breakup of an Indian family. The court declined to adopt the test the additional services are not required when they would be “futile”, In re Roe, 281 Mich App 88 (2008). The court further found that the court had not presumed her unfitness and that DHS had proved beyond a reasonable doubt that leaving the child in respondent’s custody would likely result in serious emotional or physical damage to the child.

Justice Weaver concurred; Justice Cavanaugh, joined by Chief Justice Kelly, concurred in part and dissented in part.

The Court of Appeals found that the Family Court properly terminated respondent father’s parental rights under MCL 712A.19b(3)(c)(i) and (h) as he will be continuously incarcerated from prior to the child’s birth until the child is at least 13 years old in In re Hansen __Mich App__ (2009) #289903 7/12/09. Respondent’s imprisonment would continue for at least 12 more years as of the time of the adjudication, and therefore there was no reasonable likelihood he would rectify his inability to provide proper care and custody of the child within a reasonable time under subsection (i). Further, respondent did not show the he provided proper care and custody under subsection (h) by the mere fact that petitioner placed the child (at the child’s mother’s suggestion) with respondent’s sister and brother-in-law, or by the payment of nominal support from prison.

DOMESTIC RELATIONS

Mason v Simmons 267 Mich App 188 (2005), which had held that the presumption favoring parents applied to “fit parents”, was overruled by Hunter v Hunter __Mich__ (2009) #136310 7/31/09. The Court held that the parental presumption always prevails over the presumption in favor of the established custodial environment and can only be rebutted by clear and convincing evidence that custody with a parent is not in the best interests of the child. The Court found that this was mandated by the Custody Act, MCL 722.21 et seq, and that the Act complies with the constitutional presumption that fit parents act in the best interests of their children under Troxel v Granville, 530 US 57 (2000).

The Court held that non-parents must prove that “all relevant factors, including the existence of an established custodial environment and all legislatively mandated best interest concerns within (MCL 722.23), taken together clearly and convincingly demonstrate that the child’s best interests require placement with the third person.” There has been some commentary that this wording mandates that a non-parent establish superiority by clear and convincing evidence on each and every custody factor. However a reading of the entire case and the Custody Act indicates that the clear and convincing evidence standard is applied after the court weighs all of the best interest factors, as would be the case when considering a change in the established custodial setting between two parents.

Justice Corrigan and Justice Weaver concurred in part and dissented in part in separate opinions.  

(Con’t on next page)
The Supreme Court granted leave in *Pierron v Pierron* 282 Mich App 222 (2008) #282673 2/3/09 leave granted 7/17/09 S Ct #138824. The Court of Appeals had held that the party requesting the change in schools need only show by a preponderance of evidence that the change is in the children’s best interests as a change “educational environment” is not a change in the custodial environment, and that the court must narrowly focus its consideration of each best-interest factor on the decision of the children’s school enrollment. The Supreme Court ordered that the child remain in the previous school district pending appeal, and that the parties brief the issues of whether mother’s unilateral enrollment of the children in a school 60 miles away was a change in the custodial environment, the appropriate standard of proof, whether the change to the new school was in the children’s best interests, and whether the children’s preference was reasonable.

Contempt to enforce parenting time is civil contempt and not criminal contempt, as the court is exercising its contempt power to force compliance with its orders, rather than punish the contemnor, *Porter v Porter* __Mich App__(2009) #284086 9/1/09. The failure to support the motion with an affidavit was not reversible error as the petition cited sufficient facts to give notice of the alleged contempt, and the court has inherent independent authority to address contempt.

*Haas v Hatz* Unpub Ct App #279648 11/13/08 The court changed the status of this case from “Published” to “Unpublished”, correcting an administrative error.

**STATUTES, COURT RULES, AND ADMINISTRATIVE MEMORANDUM**

**MCR 3.936(D)** Effective 1/1/10 eliminates the option to return fingerprints, and requires the destruction of fingerprints taken of a juvenile when no petition was filed with or authorized by the court, or the court did not take jurisdiction of the juvenile.

**MRE 611 (b)** Effective 9/1/09 The court shall exercise reasonable control over the appearance of parties so as to (1) ensure that the demeanor of such persons may be observed and (2) ensure the accurate identification of such persons. The rule was modified to clarify the ability of a court to require a party or witness to remove veils and other facial covers.

**ADM File 2009-09 4/14/09** The Court has under consideration an Administrative Order requiring local courts to issue LAO when appointing referees (as well as magistrates), identifying the individual referee, the scope of their authority, and the specific types of hearings and proceedings they are authorized to heard by the referee.
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