The Unaddressed Legal Needs Of Poor Families Affects a Child’s Safety in the Home.

Children unnecessarily enter foster care because their parents are unable to resolve legal issues that affect their safety and well-being in their home. Take Travis P., a seven-year old child whose six siblings and mother became homeless after their landlord illegally evicted them and kept both their security deposit and first month’s rent. As a result, Travis and his family bounced between the homes of relatives. When the frequent moves caused Travis to miss school, he came to the attention of Child Protective Services (“CPS”), which became concerned that Travis’ educational needs were being neglected. What Travis and his siblings needed more than anything else was a stable home. And to get that, their mother needed a lawyer to help her recover the security deposit from her former landlord and a social worker to help them find housing. Without this help, Travis and his siblings could have been removed from their mother and placed in foster care.

Yet, these kinds of legal needs for poor families are rarely met. On average, poor families experience at least one civil legal need per year, but only a small portion of those needs are satisfied. For every thirteen thousand people in poverty, there exists only one legal aid lawyer. So legal aid programs in Michigan are forced to reject thousands of cases each year. This lack of legal services threatens the well-being of children like Travis, who may enter foster care if legal issues are left unresolved.

The Detroit Center for Family Advocacy Gives Families the Tools to Address Their Legal and Social Work Needs.

To address this problem, the University of Michigan Law School created the Detroit Center for Family Advocacy, which provides preventive legal and social work advocacy to families at risk of losing children to foster care. Child welfare agencies, courts,
community-based organizations and others refer families at risk of losing children to foster care because of unresolved legal issues. Once a case is accepted, the program provides families with the assistance of an attorney, a social worker and a parent advocate to help resolve legal issues which affect the safety of the child in the home. Lawyers may file for a restraining order, draft a power of attorney, file for a guardianship, apply for public benefits or help with special education entitlements.

The social worker on the team assesses the family’s strengths and weaknesses and provides case management. She works with existing community partners to help the parent or caregiver access a network of services, such as transitional housing, counseling, and substance abuse treatment, and works cooperatively with the child welfare agency case-worker to create a mutually agreeable safety plan for the parent to meet his or her child’s needs.

And the parent advocate – a parent who, herself, has experienced the child welfare system – provides clients with a unique perspective of how to navigate the system and helps parents stay focused and motivated in the face of adversity. Through this multidisciplinary team approach, these programs work collaboratively with child welfare agencies and others in the community to resolve legal issues and keep children in their homes.

In addition to resolving legal issues affecting the families, the multidisciplinary advocacy teams serve two other important purposes. First, they educate child welfare case workers about the ways in which the law can be used as a preventive tool to resolve problems that affect a child’s safety. The knowledge gained by case workers increases the likelihood they may pursue creative strategies to keep children with their families. Second, by forming trusting relationships with their clients, the multidisciplinary advocacy teams are well suited to help parents learn how to make the changes necessary for their children to remain in their home. Many of these parents have an adversarial relationship with CPS workers due to the investigative nature of the child welfare process. Far too often, a parent’s distrust towards the child welfare system makes them unwilling to engage with the system to work towards keeping children in their care. The teams, by having complete loyalty to the client, may be better-suited to persuade parents to access needed services like public benefits, counseling, or substance abuse treatment that will help prevent children from being removed from their homes.

**Initial Data Demonstrates That This Model Can Keep Children Safe with Their Families While Saving Public Dollars**

Although only initial evaluations of the Center have been conducted, data shows how effective it can be to keep children safe with their families while saving public dollars. During the three-year pilot period, CFA staff served fifty-five families who were caring for 110 children. Due to funding restrictions, the CFA only serves children who have already been found by the child welfare agency to have been abused or neglected. Seventy percent of the children served by the CFA lived with their birth parents; thirty percent resided with relatives through an arrangement made by their parents.

CFA staff achieved its legal objectives in 98.2% of cases, resolving collateral legal issues in a wide range of
matters include housing, custody, guardianships, public benefits and domestic violence. Most importantly, none of the children served by the CFA entered foster care.

The ability of this model to prevent children from entering foster care presents a significant opportunity for child welfare systems to save scarce public dollars while achieving good outcomes for children. For example, over a three year period, the CFA spent $833,000 and kept 110 children, all of whom had been found by the State to be victims of child abuse or neglect, from entering foster care. Typically, when children enter foster care, they remain there for an average of 21.1 months. The average annual cost for a child to remain in foster care is over $45,000. Thus, if the model prevented a quarter of the children served by the CFA from entering foster care, the cost avoided by the child welfare agency would be over $1.3 million, providing a net savings to the system of over $500,000 once the costs for funding the model are included. Although the potential cost savings of this model need to be more fully developed, this initial data suggests an enormous potential for the model to save child welfare systems thousands of dollars.

Conclusion

Although the multidisciplinary advocacy model implemented by the Detroit Center is new, it has the potential of preventing significant numbers of children from entering foster care while saving scarce public dollars. Undoubtedly, more research must be done to evaluate the effectiveness of the model. But the preliminary data demonstrates that providing families with a multidisciplinary team can help keep children safe with their families by resolving those legal issues that are destabilizing the family unit. More information about the Center can be found at www.law.umich.edu/cfa.
In late May, more than fifty attendees enjoyed this year’s annual training conference at the historic Stafford Perry Hotel, located in scenic Petoskey, Michigan. We were honored to have Michigan Supreme Court Justice Bridget McCormack share her impressions as the newest member of the Court, and inform us of its administrative priorities. She was also gracious enough to address our questions and listen to our concerns, including those related to the use of public satisfaction surveys in highly charged domestic relations cases and the ever-increasing cost to run for a judicial office.

Members were also given insight into new research related to effective forensic interviewing techniques by Debra Poole, a professor of child psychology at Central Michigan University. Therapist Michael Freytag’s presentation provided a thorough understanding of how ADHD is assessed, impacts an individual, and is treated. This year, breakout sessions were also conducted by two well-informed presenters. Erin Frisch, the Director of the Office of Child Support, discussed with domestic relations referees two new pilot programs intended to determine how to obtain better child support payment compliance, while Christine Piatkowski, the Chair-Elect for the Children’s Law Section, updated juvenile referees of pilot programs and trends within Michigan and throughout the country.

As is custom, we also received the annual case law update from our colleague Ed Messing, held our annual membership meeting, and ended the conference with an awards ceremony. This year’s honorees were:

- Kristi Drake, Service to the Board Award
- Jen Sikora, Outstanding Recognition Award
- Ed Messing, Active Member Award
- Sahera Housey, Active Member Award
- Mark Sherbow, Outstanding Executive Award
- Lorie Savin, President’s Award for Service
- Hon. Nancy Thane, RAM Award

And to add a twist, (now) retired referee Kathy Oemke was surprised during the conference dinner by being presented with a beautiful award recognizing her many years of service to this organization and her local community in so many different ways we could write an entire article just about that. Congratulations to these members, and the numerous members recognized for their many years of dedicated service and participation in the organization. We hope to see you next year at our 30th Annual Training Conference!
In *The Grange Ins Co v Lawrence* _Mich_(2013) #145206 7/29/13 The Michigan Supreme Court determined that a child’s domicile is not synonymous with the child’s legal residence, and held “that a child of divorced parents has only one domicile at any given point in time.” The court further held “…consistent with the common law of domicile as it pertains to minors and the legally binding nature of custody orders, that the child’s domicile is established by operation of law and that the custody order is thus determinative of the child’s domicile for all purposes, including the no-fault act.” (Emphasis added).

The concurring opinion notes that while a custody order may provide a presumption regarding a child’s domicile, parents in some cases have their children live in a different custodial environment and domicile than that which is provided in the order, and would have held that the child’s domicile should be defined by the child’s established custodial environment. The concurrence also disagrees with the majority’s statement that a joint physical custody order can establish alternating domiciles for a child, noting that many joint physical custody orders provide that one parent has the primary domicile for the child. It remains to be seen if future court decisions will deem the holdings regarding a child’s domicile applicable in domestic relations cases, or limit the application to the context of no-fault insurance cases.

The Court of Appeals clarified the proper procedure and sequence for the court to address change of domicile or legal residence and change of custody when both issues are raised during the same proceeding in *Rains v Rains* _Mich App_(2013) #312243 6/14/13. First, the court must determine whether a preponderance of evidence supports a change in domicile using the factors in MCL 722.31(4). Then, if the statutory factors support a change in domicile, the court must determine whether an established custodial environment exists. Next, if there is an established custodial environment, the court must determine whether the change in domicile would modify or alter the established custodial environment. Finally, if, and only if, the change in domicile modifies or alters the established custodial environment, the court then must determine whether the change would be in the best interest of the child applying the best interest factors in MCL 722.23. The Court further found that a Motion to Change Domicile affects the custody of a minor, and therefore is appealable by right.

Although the trial court in this case erred when it did not follow the above legal sequence, reversal was not required as it was clear that the court would have reached the same result had it used the proper legal format. Even if there was a preponderance of evidence supporting Plaintiff’s motion to change domicile or legal residence from the metropolitan Detroit area to the Traverse City area, she failed to demonstrate proof by clear and convincing evidence that a change in the shared established custodial environment was in the child’s best interest. The trial court also properly changed parenting time, adopting essentially an alternating week to week schedule, decreasing Plaintiff’s overnights by 27 per year, as Plaintiff was now commuting on weekends and the new schedule was not a change in the established custodial environment.
Three published cases defined the term “natural parent” in various statutes and situations. In *People v Wambar _Mich App_(2013) #304118 3/26/13*, the court held that a biological parent whose parental rights to a child were terminated based on abuse, and who attempted to wrongfully take that child may be charged, convicted, and sentenced under the general child-taking statute, which has a much greater sentence than the parental kidnapping statute. The general statute prohibits the conviction of a “natural” or adoptive parent. The court held that the term “natural parent” is not synonymous with “biological parent,” and termination of parental rights terminates the Defendant’s relationship as a “natural” parent.

The court addressed the term “natural parent” in a grandparenting time context in *Porter v Hill _Mich App_(2013) #306562 6/11/13*. The parental rights of the biological father of Defendant’s child had been involuntarily terminated as a result of physical abuse, leaving Defendant as her son’s sole legal parent. When the child’s biological father died, the biological paternal grandparents filed a complaint for grandparenting time. The motion was dismissed by the trial court for lack of standing. The Court of Appeals affirmed. The grandparents argued that they were still the biological grandparents of the child, regardless of the termination of their son’s parental rights. Although the statute defines a parent as a “natural” or adoptive parent of a child, and a grandparent as the “natural” or adoptive parent of a child’s natural or adoptive parent, the term “natural parent” is not the equivalent of a “biological parent.” While the statute provides that a grandparent may file for grandparenting time of a child of their deceased child, termination of the biological parent’s parental rights also terminates the grandparental relationship.

The court further discussed the concept of a “natural parent” in *In re Estate of Daniels _Mich App_(2013) #311310 6/25/13*. Respondent, Leonard, was born while his mother and the Decedent, Daniels, were cohabitating prior to the marriage of Leonard’s mother to Daniels. Daniels had raised and referred to Leonard as his son, and Leonard believed that Daniels was his father from the time Leonard was a child until Daniels’ death. After Daniels’ death, Leonard sought to replace Daniels’ daughter, Asbury, as personal representative of Daniels’ estate. Asbury and her mother contend that Leonard was not Daniels’ biological child, and a DNA test was conducted but results were pending at the time of the hearing. The trial court found that there was a parent-child relationship between Daniels and Leonard under MCL 700.2114(1)(b)(iii), even though there was no finding by the court that Daniels was Leonard’s biological father. The Court of Appeals affirmed. The statute provides, *for purpose of intestate succession*, that a man is considered to be the natural father of a child born out of wedlock, or born or conceived during a marriage but not the issue of that marriage, when the man and child have established a mutually acknowledged relationship of parent and child that begins before that child is age 18 and continues until the death of either. As the legislature did not insert the word “biological” before the word “child” in the statute, the court cannot add that requirement to the statute. The court notes that paternity can also be established when born or conceived during a marriage, by an Acknowledgement of Parentage, or a Default order of filiation without a requirement that the father actually be the child’s biological father.
Contributed by Ed Messing

Domestic Relations: Case Law Continued

The consent property settlement in the divorce judgment Kaftan v Kaftan _Mich App_(2013) #301075 4/25/13 awarded Plaintiff certain real estate holdings and Defendant $7,704,000 in a series of payments over time. The real estate had been separately appraised at $14,517,000, but the property settlement did not recite the value of the properties, nor was there an expressed intent to equally divide the property. The settlement provided that it was final and could only be modified upon showing that either party concealed assets or liabilities, or a party committed fraud or misrepresentation on the other. Each party filed suit against the other after Plaintiff stopped making payments. Plaintiff sought modification or rescission of the property settlement on the basis that the real estate holdings he received had a lower value, due in part to pre-divorce fraud perpetrated on him by a business partner. The lower court properly granted Defendant’s Motion for Summary Disposition, as the property settlement only allowed modification based on fraud or misrepresentation committed by a party, and not a third party, and did not allow modification based on a mutual mistake as to the value of the real estate.

The unpublished case of Hoskins v Hoskins Unpub Ct App #309237 5/28/13, rejected Plaintiff’s argument that there was insufficient evidence that the child’s needs required that he pay $4,534.35 per month in child support as required under the formula. The formula takes into consideration both the child’s needs and the parties’ incomes. The Plaintiff did not distinguish his situation from other high income parents, and income disparity does not make the formula unjust or inappropriate. The court was allowed to consider Plaintiff’s bonuses, stock options, and stock grants as income when calculating child support as required by the support formula and also consider his bonuses, stock options and stock grants as marital property.

The court did not err when it only imputed $50,000 annual income to Defendant, even though she had earned $130,000 annually prior to staying home to care for the parties’ first child. Defendant was not licensed to practice law in Michigan, had never worked in Michigan, and she would not be able to take a position with long hours as a single parent with two young children at home. The court did not err in awarding 48 overnights in parenting time per year to Plaintiff as he was unlikely to see them more than once a month.

In Schneider-Penning v Adams Unpub Ct App # 307034 7/30/13, Defendant moved to reduce child support on the basis that his weekly salary as CEO of R. L. Adams Plastics Inc. had been reduced from $10,647 to $4,807. Defendant testified that his mother, who is chairman of the board and the majority shareholder of the corporation, had reduced his salary because he had guaranteed loans for a failed development project resulting in a $19 million judgment against him. The trial court found the reasons given for the reduction of Defendant’s salary credible, but that there was no evidence the company suffered a financial loss because of his investment loss, and that the family corporation could easily restore Defendant’s income. The trial court set support at $3,148 per month based on Defendant’s average annual income over the last three years. The Court of Appeals held that 2008 MCSF 2.02(B) only allows the use of the average of the last three years of a parent’s income where income varies considerably year to year due to the nature of the parent’s work. The Court of Appeals reversed the trial court for inappropriately using
In re Moss, ___ Mich App ___; ___ NW2d ___ (2013) (Court of Appeals #311610, May 9, 2013)

The trial court terminated the mother’s parental rights. The mother appealed arguing, among other things, that the petitioner did not prove by clear and convincing evidence that it was in the children’s best interests to terminate her parental rights. The Court found that the statute does not provide a standard of proof for the best interest determination. Prior to 2008, the statute read “[if] the court finds that there are grounds for termination of parental rights, the court shall order termination…unless the court finds that termination…is clearly not in the child’s best interests.” (emphasis added). The Court held that the preponderance of the evidence standard is the evidentiary standard that applies to a best interest determination in a termination hearing, and affirmed the termination in this case.

In re Harper, ___ Mich App ___; ___ NW2d ___ (2013) (Court of Appeals #309478, August 29, 2013)

The minor mother and her child were placed under the trial court’s jurisdiction after the child was admitted to the hospital for failing to thrive. The minor mother was placed on the central registry. The Court of Appeals held that under the Paternity Act, “only the mother and the presumed legal father may challenge the presumption of legitimacy.”

The Court also rejected Plaintiff’s argument that the judgment of divorce should be vacated as a fraud upon the court because Defendant did not advise the court that she was pregnant at the time the divorce was granted. The Court distinguished this case from cases decided prior to the enactment of Michigan’s No-Fault statute, as under the prior statute a party’s marital misconduct (infidelity) “was an absolute bar to that party’s ability to obtain a divorce.” As no such bar exists under Michigan’s current statute, Defendant’s failure to advise the court that she was pregnant was not a bar to the granting of the judgment.

The Court noted in its opinion that the lower court dismissed this case just weeks before the effective date of the Revocation of Paternity Act and that Plaintiff subsequently filed a separate lawsuit under the new law. The Court specifically stated that it was not making any findings in that case as the issue was not before them.

Contributed by Ed Messing
Domestic Relations: Case Law Continued

Defendant’s three year average income because there was no evidence that Defendant’s base salary had varied considerably from year to year, and the only evidence presented for the reduction of his income was his poor work performance.

In an appeal from Benzie County, the Court of Appeals in a 2-1 decision, upheld the trial court’s dismissal of Plaintiff’s complaint under the Paternity Act for lack of standing in Sprenger v Bickle, _Mich App_ (2013) # 310599 9/10/13. Plaintiff alleged that he was the biological father of a minor child born to Defendant in November 2011 while Defendant was lawfully married to someone else. The case was filed in December 2011, six months prior to the effective date of the Revocation of Paternity Act. The Court of Appeals held that under the Paternity Act, “only the mother and the presumed legal father may challenge the presumption of legitimacy.”

The Court also rejected Plaintiff’s argument that the judgment of divorce should be vacated as a fraud upon the court because Defendant did not advise the court that she was pregnant at the time the divorce was granted. The Court distinguished this case from cases decided prior to the enactment of Michigan’s No-Fault statute, as under the prior statute a party’s marital misconduct (infidelity) “was an absolute bar to that party’s ability to obtain a divorce.” As no such bar exists under Michigan’s current statute, Defendant’s failure to advise the court that she was pregnant was not a bar to the granting of the judgment.

The Court noted in its opinion that the lower court dismissed this case just weeks before the effective date of the Revocation of Paternity Act and that Plaintiff subsequently filed a separate lawsuit under the new law. The Court specifically stated that it was not making any findings in that case as the issue was not before them.

Juvenile: Neglect

Contributed by Jen Kitzmiller, Berrien County

In re Moss, ___ Mich App ___; ___ NW2d ___ (2013) (Court of Appeals #311610, May 9, 2013)

The trial court terminated the mother’s parental rights. The mother appealed arguing, among other things, that the petitioner did not prove by clear and convincing evidence that it was in the children’s best interests to terminate her parental rights. The Court found that the statute does not provide a standard of proof for the best interest determination. Prior to 2008, the statute read “[if] the court finds that there are grounds for termination of parental rights, the court shall order termination…unless the court finds that termination…is clearly not in the child’s best interests.” (emphasis added). When the statute was amended in 2008, the legislature removed the word “clearly” from the best interest provision and the clear evidence standard no longer applies. The Court held that the preponderance of the evidence standard is the evidentiary standard that applies to a best interest determination in a termination hearing, and affirmed the termination in this case.

In re Harper, ___ Mich App ___; ___ NW2d ___ (2013) (Court of Appeals #309478, August 29, 2013)

The minor mother and her child were placed under the trial court’s jurisdiction after the child was admitted to the hospital for failing to thrive. The minor mother was placed on the central registry. The minor mother benefited from services and jurisdiction of the trial court was terminated. In the order terminating jurisdiction, the trial
People v Prominski, ___ Mich App ____; ____ NW2d_____ (2013) (Court of Appeals #309682, August 22, 2013)

In this case a clergyman was charged with failing to report child abuse in accordance with MCL 722.623(1)(a), after a parishioner sought advice from the pastor because the parishioner was unsure whether her husband’s actions were abusive to their daughters. The district court dismissed the charges, and the circuit court affirmed the decision. In its reasoning agreeing with dismissal of the charges, the Court of Appeals vacated the trial court’s order and remanded the case to the trial court after a thorough discussion of statutory interpretation. The statute that pertains to the central registry (MCL 722.627) grants the Department of Human Services exclusive jurisdiction in maintaining and removing persons from the central registry and, because the minor mother did not exhaust her administrative remedies through the statute, the trial court did not have jurisdiction to enter an order removing her name from the central registry.

Juvenile: Case of Interest

People v Prominski, ___ Mich App ____; ____ NW2d_____ (2013) (Court of Appeals #309682, August 22, 2013)

In this case a clergyman was charged with failing to report child abuse in accordance with MCL 722.623(1)(a), after a parishioner sought advice from the pastor because the parishioner was unsure whether her husband’s actions were abusive to their daughters. The district court dismissed the charges, and the circuit court affirmed the decision. In its reasoning agreeing with dismissal of the charges, the Court of Appeals cited MCL 722.631, which abrogates all privileges with respect to the reporting statute except attorney-client and clergy-parishioner privileges made “in a confession or similarly confidential communication.” It agreed with the lower courts that the communication was a “similarly confidential communication” because the parishioner went to the pastor in his professional capacity to seek guidance and had an expectation that the communication would be kept private.

LEGISLATIVE UPDATE

SB 254: AMENDMENT TO PARENTAL RIGHTS RESTORATION ACT

This bill would substantially amend the legislation governing parental consent for minors seeking abortions. Specifically the bill would:

- prevent a minor who was denied a waiver from seeking a waiver for the same pregnancy in any family court throughout the state;
- allow a rehearing only if there is a change of circumstances in her pregnancy or family situation; and
- set forth specific factors the court is to consider when determining if the minor is sufficiently mature and informed to make an abortion decision or if the abortion is in the minor’s best interests.

This bill can be accessed at: http://www.legislature.mi.gov/(S(wj5kqa55ip2nb3453r2hg355))/mileg.aspx?page=getobject&objectname=2013-SB-0254&query=on

Status: Favorably reported to Committee on Whole from Judiciary Committee.
SB 325: UNIFORM CHILD ABDUCTION PREVENTION ACT

This bill would create the “Uniform Child Abduction Prevention Act.” Specifically the bill would:

- allow a court on its own motion to order abduction prevention measures in a child custody proceeding;
- allow a party to a child custody determination, or a person with standing to seek child custody, to petition for abduction prevention measures in a court with jurisdiction under the UCCJEA;
- allow a prosecutor or the attorney general to seek a warrant to take physical custody of a child;
- set forth factors for the court to consider in determining if there is a credible risk of abduction;
- prohibit the court from issuing such an order if the respondent’s conduct was intended to avoid domestic violence or imminent harm to the child or respondent;
- require the court to enter an abduction prevention order if the court finds there is a credible risk of abduction of the child;
- allow the court to specify restrictions, requirements, and prohibitions, (such as travel restrictions, supervised parenting time, posting of a bond); and
- allow a court to issue an ex-parte warrant to take physical custody of a child if the court finds there is a credible risk that the child is imminently likely to be wrongfully removed.

This bill can be accessed at: [http://www.legislature.mi.gov/](http://www.legislature.mi.gov/)(S(t1pbsbvrreuvrm45o4olln45))/mileg.aspx?page=getobject&objectname=2013-SB-0325&query=on

Status: Favorably reported to Committee on Whole from Judiciary Committee.

SB 457: AMENDMENT TO PROBATE CODE RE: ADOPTION

This bill would amend the Probate Code so as to allow two unmarried persons to adopt a child.


Status: The bill has been referred to the Committee on Families, Seniors, and Human Services.
LEGISLATIVE UPDATE

[Continued from Page 10]

HB 4659, 4660, 4661, 4662: RESPONSIBLE FATHER REGISTRY

HB 4659 would amend the Public Health Code to require the Department of Community Health to administer and maintain a “Responsible Father Registry.” It would require a man who desires to be notified of an adoption or termination of parental rights of a child he may have fathered to register with the registry no later than 5 days after the child’s birth. (This requirement would be waived if paternity has been established under the Paternity Act or Acknowledgment of Parentage Act.) It would require a child placing agency or an attorney in an adoption to give notice to a man who has timely registered. Registration could be used against the man in a proceeding to establish paternity.

HB 4660-4662 are tie barred to HB4659 and would make related amendments to the Adoption Code concerning notification and termination of parental rights.

These bills can be accessed at: http://www.legislature.mi.gov/(S(t1pbsbvrreurvrm45o4olln45))/mileg.aspx?page=CategorySearch

Status: These bills have been passed by the House and introduced in the Senate.

HJR V of 2013, SJR W of 2013: RESOLUTIONS TO REPEAL MICHIGAN MINI-DOMA

These resolutions would submit to the voters a proposal to repeal section 25 of Article I to allow the recognition of marriage or similar unions of two people, thereby removing the requirement that the people are of different sexes.

These joint resolutions can be accessed at: http://www.legislature.mi.gov/(S(t1pbsbvrreurvrm45o4olln45))/mileg.aspx?page=CategorySearch

Status: Both Joint Resolutions have been introduced and referred to respective committees.

SB 406: FULL FAITH AND CREDIT OF SAME-SEX MARRIAGES

This bill would amend MCL 551.271 so as to allow the state to delete the prohibition of recognition of same-sex marriages from other states.


Status: This bill has been referred to the Committee on Government Operations.
July 29, 2013

LARRY ROYSTER
CLERK OF THE COURT
MICHIGAN SUPREME COURT
PO BOX 30052
LANSING MI 48909

RE: 2012-06-Proposed Amendment of MCR 9.221

Dear Clerk and members of the Court:

On May 1, 2013 the Court published notice that it was considering amendment of MCR 9.221. This new provision would amend the current confidentiality and disclosure rules in disciplinary proceedings as applied to magistrates or referees by providing notice to the Chief Judge of a court when a referee or magistrate was subject to a corrective action that did not rise to the level of a formal complaint.

The Referees Association of Michigan Executive Board voted on 7/25/13 unanimously to oppose this amendment. In support of our opposition we would state the following:

1. Most of the grievances filed against referees are result oriented complaints which seek to use the JTC as a form of appellate relief.
2. Referees and magistrates are the only judicial officers being subjected to this new requirement.
3. The imposition of additional disclosure requirements on Referees and magistrates is unnecessary since there are already several disciplinary safeguards in place to take corrective action against a Referee or magistrate.
4. Referees work under the supervision of either the Friend of the Court or Chief Judge in their respective counties and are also subject to the FOC grievance procedure available to the public pursuant to statute.

We respectfully request and recommend that the Court not adopt this amendment.

Respectfully submitted,

Shelley Spivack, President
Arthur R. Spears Jr., Executive Board Member
Referees Association of Michigan
ARS/pjc

Cc: Anne Boomer, Administrative Counsel, Michigan Supreme Court
RAM’S POSITION ON HOUSE BILL 4583

At its Annual Meeting on May 24, 2103, the Referees Association of Michigan (RAM) discussed House Bill 4583 and voted unanimously to oppose the proposed legislation.

House Bill 4583 would allow a sentencing judge to enter an order terminating a criminal defendant’s parental rights to a child if that parent committed a certain criminal sexual act upon the child. The sentencing judge would have to find grounds for termination and that termination of parental rights is in the child’s best interest before entering the order.

While the Referees Association of Michigan believes parents who sexually abuse children should be prosecuted to the fullest, the proposed legislation raises many significant concerns which prevent us from supporting the Bill.

Child Welfare law is a specialized field of law requiring a Judge, prosecutor or defense attorney to have expertise in that area. The vast majority of criminal defense attorneys and prosecutors have little or no experience in this area of the law. This could create numerous appellate issues where parents could claim ineffective assistance of counsel or prosecutor error.

One defect in the bill is that it does not consider an appointment of a guardian ad litem. A guardian ad litem is extremely important as the guardian ad litem looks out for the best interest of the child and is required in all neglect proceedings. The guardian ad litem is a neutral party who is required to see and visit with the child. If a guardian ad litem is not appointed, it would severely compromise the termination process.

The bill also does not include siblings of the child. For example, the bill could create a scenario where parental rights to one child would be terminated, but not the child’s siblings. This scenario would obviously create a logistical nightmare for the family.

Another scenario not contemplated in the Bill is the situation in which two separate Judges could be deciding if parental rights should be terminated. If the Department of Human Services files a petition, a Family Judge or Referee would be hearing the matter. At that same time, the Criminal Judge could be deciding the same issue. You could have one Judge who orders termination, and a different Judge finding just the opposite.

Finally, RAM does not see the necessity of the bill. The Department of Human Services is already required to file a petition if a parent has sexually abused a child. The matter would then be heard before a Family Court Judge which would eliminate the necessity of the bill.

For the numerous reasons stated above, RAM believes that the bill would cause a logistical nightmare and should not be passed.

UPCOMING EVENTS

- **Tuesday. October 15, 2013.**
  MJI Training Seminar (Domestic)
  Hall of Justice in Lansing, Michigan

- **Wednesday. October 16, 2013.**
  MJI Training Seminar (Juvenile)
  Hall of Justice in Lansing, Michigan

- **Thursday. November 21, 2013.**
  RAM Board Meeting
  State Bar Building (Hudson Room) in Lansing, Michigan

- **Thursday. December 12, 2013. 11:30 a.m.**
  RAM Holiday Luncheon at the Wrought Iron Grill
  317 S. Elm Street in Owosso, Michigan
The President’s Corner

Contributed by Shelley R. Spivack

“VICTIM OR CRIMINAL?”

While many of us spent the last weekend in July enjoying the delights of a “Pure Michigan” summer, the FBI, along with state and local partners and the National Center for Missing and Exploited Children, spent the weekend rescuing over a hundred sexually exploited children nationwide. As part of its “Operation Cross Country VII,” a three-day enforcement action to address commercial child sex trafficking throughout the country, law enforcement targeted cities such as Detroit, where the largest number of traffickers were arrested (18) and the second largest number of children rescued (10).

“Operation Cross Country VII,” a part of the Innocence Lost National Initiative established in 2003 to address the growing issue of child prostitution, has rescued over 2,700 children from the streets and secured 1,350 convictions. The prominence of Detroit in the latest sting reminds us that Michigan’s children remain extremely vulnerable to sexual exploitation due to our location as an international border state, as well as the economic devastation found in many of our cities.

What happens to these children after they are rescued? Where are they placed? What services are they offered? Can they be charged as delinquents? These are questions that may come before us as Family and Juvenile Court Referees.

While the federal Trafficking Victims Protection Act (TVPA) treats sexually exploited children under the age of 18 as victims of a crime, state laws treat many of these same children as criminals. Only 18 states have enacted statutes providing some measure of “safe harbor” protection to minor victims of human trafficking and commercial sexual exploitation. Three states, Illinois, Nebraska, and Tennessee, have the most expansive legislation providing complete prosecutorial immunity to anyone under 18 who has engaged in prostitution related offenses. In addition, Illinois requires that police make a referral to Child Protective Services, while in Tennessee the officer must provide the minor with the phone number of the National Human Trafficking Resource Center Hotline and then release the victim into the custody of his/her parent or legal guardian. In Kansas, when an officer reasonably believes a victim is under the age of 18, the child cannot be detained and instead must be taken into protective custody. Louisiana and Arkansas have laws recognizing that victims under the age of 18 are in need of appropriate care and services, not detention, and are diverted for proper services.

Several states have “conditional diversion” statutes that provide some measure of protection to minors if certain conditions are met. For example, Ohio and Massachusetts will dismiss the underlying criminal charge if the minor participates in a treatment program. Louisiana and New York allow diversion if it is the minor’s first offense.

The law in Michigan does not directly address the issue of prosecuting sexually exploited children and instead sets forth a minimum age, 16, (the same as the age of consent in the Criminal Sexual Conduct statutes) for a person to be charged with the crime of prostitution. MCL 750.448. Thus, a 16 year old rescued in a sweep such as the one that occurred in July, could be prosecuted for prostitution and detained in a secure juvenile detention facility. While juveniles under the age of 16 could not be charged with prostitution, they could be charged as status offenders (“incorrigibility” or “runaway”) under state law or for violation of local curfew ordinances. In addition, juveniles

[Continued on Page 15]
both under and over the age of 16 could face prosecution for acts that may have been committed while working for a pimp or trafficker. It is not uncommon for these youth to face charges involving the possession or sale of narcotics, shoplifting, and other types of larceny offenses. They may also face assault and/or domestic violence charges if they have been in an altercation with the trafficker.

What should we as Juvenile and Family Court Referees do if such a case comes before us? The first thing to remember is that our duty is to act in the best interest of the child. While our statutes may not provide a “Safe Harbor” we have the ability to scrutinize the cases that come before us and determine whether or not authorizing a petition is in the best interest of the juvenile and the public (MCR 3.932 D). If it appears the child is a victim of sexual exploitation or trafficking, a referral to Protective Services or an agency that can provide the child with the proper assistance and treatment could avoid turning the victim into a criminal.

For more information on this issue and listings of resources you can contact the following organizations:

- the University of Michigan Human Trafficking Law Clinic, http://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/humantraffickingclinic.aspx; and

Image from Michigan Human Trafficking Task Force Website (http://www.humantrafficking.msu.edu/)
WHO WE ARE

The Referees Association of Michigan (RAM) is recognized by the State Bar of Michigan as a special purpose organization. The Association consists of both Juvenile Court and Friend of the Court (collectively referred to as "Family Court") referees throughout the State of Michigan. RAM's primary function is to educate its members by providing a forum for communication, by holding an annual training conference, and by providing a quarterly publication, Referees' Quarterly. RAM also offers guidance to both the State Legislature and Michigan Supreme Court regarding proposed amendments to statutes and court rules. Collectively, the referees who comprise RAM's membership preside over 100,000 family law hearings every year.

MISSION STATEMENT

Founded in 1984, the Referees Association of Michigan (RAM) is a special purpose bar organization recognized by the State Bar of Michigan that consists of attorneys who serve as juvenile and domestic relations referees throughout the State. RAM’s primary focus is to educate its members through an annual training conference, its publication, Referees Quarterly, and a listserv. RAM’s mission is also to contribute to the improvement of the legal system by appointing members to serve on numerous State Bar and State Court Administrative Office committees, and by offering comments to proposed legislation and court rules.

2012-2014 Board of Directors & Committees

Officers:

President
Shelley R. Spivack
Genesee County
sspivack@co.genesee.mi.us

Vice President
Amanda Kole
Macomb County
amanda.kole@macombgov.org

Executive Secretary
Sahera Housey
Oakland County
houseys@oakgov.com

Recording Secretary
Deborah McNabb
Kent County
deborah.mcnabb@kentcountymi.gov

Treasurer
Michelle S. Barry
Oakland County
barrym@oakgov.com

Immediate Past President
Paul Jacokes
Macomb County
pjacokessr@yahoo.com

Board Members:

Sandra Aspinal
Livingston County

Dave Bilson
Oakland County

Kristi Drake
Lenawee County

Nancy Parshall
Isabella County

Lorie Savin
Oakland County

Art Spears
Oakland County

Committees/Liaisons:

Awards:
Amanda Kole

By-Law Revision:
Amanda Kole

Conference:
Sahera Housey

Ethics:
Lorie Savin

Family Law Section Liaison:
Traci Rink & Sahera Housey

Law & Court Rules:
Ron Foon & Dave Bilson

Membership:
Kristi Drake & Nancy Parshall

Publications:
Ken Randall & Lorie Savin

SCAO Liaison:
Dan Bauer & Noah Bradow

Technology:
Deb McNabb & Ken Randall

Since 1984
“Compassionate justice helping children.”

www.referees-association.org