Historical Overview and Holding

The case In re Sanders has recently captured the attention of the Michigan child welfare community as the vigorously debated and controversial Michigan Supreme Court decision overruling In re CR, the case that established the long-standing so-called “one parent doctrine.” In doing so, the Michigan Supreme Court abolished this doctrine as unconstitutional under the 14th Amendment Due Process Clause because it failed to provide “a specific adjudication of a parent’s unfitness before [permitting the state to] infringe the Constitutionally protected parent-child relationship.” Essentially, while limiting its decision to the court’s exercise of its post-adjudication dispositional authority, Sanders held that where the court has properly asserted jurisdiction over a child based upon adjudicated findings regarding only one parent, it may not enter dispositional orders that restrict the other parent’s right to “direct the care, custody, and control” of his child (ren) before finding during the adjudication phase that he or she is unfit. It also held that, with respect to incarcerated parents, “[a]s long as the children are provided adequate care, state interference with such decisions is not warranted.” As the “one parent doctrine” allowed such dispositional orders to be imposed against unadjudicated parents, it infringed upon those parents’ fundamental rights under the US Constitution without adequate process.

Now, the Michigan Supreme Court has spoken and the debate has been emphatically resolved — the so-called “one parent doctrine” is unconstitutional. Some contend, however, that the decision goes too far, while others decry not far enough. Still, a lot remains unsettled regarding application in the wake of the Sanders decision. Of course, the Court required remand of the Sanders case to the trial court for “further proceedings consistent with [its] opinion,” but it provided no further direction, no charted course. Yet, metaphorically speaking, just how wide is Sanders’ wake, and what lies ahead on the journey?

Perhaps this article will provide jurists a compass for Sanders’ implementation, to utilize while venturing off into the deep.

[Continued on Page 2]
NA VIGATING MURKY WATERS:
Handling Unadjudicated Parent Cases Post-Sanders

[Continued from Page 1]

By Tracy E. Green

Sanders’ Unchartered Waters: Five Key Navigational Points

Though there is already much disagreement on what course should be taken in a case involving an unadjudicated parent post-Sanders, the following discussion delves into the five major areas of immediate legal interest and importance relating to these matters.8

A. How Wide is Sanders’ Wake?

There has been much discussion among child welfare lawyers on all sides as to whether Sanders has retroactive effect (can be applied to cases that were ongoing in the dispositional or appellate phases at the time of the decision). Of all of the questions that remain unanswered by Sanders, this one is probably the easiest to answer. Because the Sanders decision was based upon Constitutional analysis, it is clear that it must have retroactive effect, no matter the current procedural posture of the case.9 That is, for any case that is still pending in the trial court or for which appellate time frames have not yet lapsed, Sanders is applicable. Trial courts should immediately enter orders consistent with the ruling of Sanders, either upon motion of a party or sua sponte, in all cases in which a dispositional order infringing upon the unadjudicated parent’s right to “direct the care, custody, and control of his [or her] children” has been entered.10 But what does it mean to “infringe” upon the unadjudicated parent’s fundamental right to parent? This topic will be explored in more depth later in this article.

B. Procedure: Petition Type, Preliminary Hearing, Nature of Allegations, and Evidence

The Sanders Court observed that “[t]he trial is the only fact-finding phase regarding parental fitness, and the procedures afforded respondent parents are tied to the allegations of unfitness contained in the petition.”11 This point raises three issues: 1) what type of petition against the previously unadjudicated parent is necessary, 2) what must the nature of the allegations be, and 3) at what point in the proceedings must a hearing on this petition occur?

(1) Original vs. Supplemental or Amended Petition

As the Sanders decision was issued in early June 2014, there has certainly already been a number of cases grappling with the question of what type of petition alleging unfitness must be filed against an unadjudicated parent — original or supplemental.

The answer is: Original.

Even prior to Sanders, in many counties the agency routinely filed postadjudication petitions against a previously unadjudicated parent as “supplemental” petitions. In a recent case that was ongoing at the time of the Sanders decision, the agency reportedly filed a “motion to authorize” the new petition against the then unadjudicated parent. Each of these procedures, however, are invalid.

In Michigan child protective proceedings, MCL 712A.19(1) exclusively governs supplemental petitions. It is clear by the terms of this statute that it is intended to apply to new or “additional” allegations against a previously unadjudicated parent.12 Therefore, there is no authority to file a supplemental petition against an additional, previously unadjudicated, parent under this statute. Moreover, Sanders requires that an unadjudicated parent receive an adjudication or trial prior to imposition on him or her of a dispositional order. Nowhere in MCL 712A.19(1) is an adjudication on a supplemental petition allowed.13

[Continued on Page 3]
Nevertheless, if the trial court allows a supplemental petition to be filed, the court cannot entertain it unless a DHS child protective services (CPS) worker, not a foster care worker, has substantiated the allegations of abuse or neglect.  

Having established that the proper petition is an original petition, the question now becomes whether that original petition must be a new and separate petition from the one alleging facts against the first parent, or may that petition be amended to include allegations against the new respondent parent?  

The answer is: It depends.

If the first respondent parent’s petition has not yet been adjudicated, then most will agree that that petition may be amended to include allegations against the second respondent parent. If the first respondent parent’s petition has already been adjudicated, however, then an original petition must be filed in relation to the second parent. Employing this analysis is the only way to ensure that the second respondent parent is afforded all the procedural protections and rights attendant to trial (in Michigan, i.e., heightened burden of proof, application of rules of evidence, and judicial hearing, with or without a jury) that Sanders requires.

(2) Preliminary Hearing on Petition Requirement

Does it matter, though, if the first respondent parent’s petition has already been authorized but not yet adjudicated? Should the second parent get a preliminary hearing, too?  

The answer is: No, and yes!  

The second respondent parent must be afforded a preliminary hearing. Here’s why:

The Michigan Supreme Court noted that the Sanders appellant did not challenge the assumption of jurisdiction, and it did not address the Constitutionality of the court’s asserting jurisdiction where only one parent has been found unfit. A reasonable inference may be drawn from the Sanders opinion, however, that the Court would have upheld jurisdiction on the basis of an unfitness finding against only one parent. Yet, the Court expressly declared that “[b]ecause [its] holding only reaches the court’s exercise of its post-adjudication dispositional authority, it should not be interpreted as preventing courts from ordering temporary foster-care placement pursuant to MCR 3.965(B)(12)(b) and (C), relating to preliminary hearing procedure.”

The same reasoning would apply to preliminary hearing in this context: the Court’s holding should not be interpreted to deny general applicability of the preliminary hearing rules to the second respondent parent’s petition. Given that the Court has mandated adjudication for accused parents before dispositional orders against them may be entered, it seems basic that the preliminary hearing would be afforded this parent as well. After all, although the standard for proving the allegations at a preliminary hearing is merely probable cause (contrasted to preponderance of evidence at a trial proceeding), it is at the preliminary hearing where a parent’s custodial rights to his or her child are first implicated, and where she is given the first opportunity to be heard on emergency removal or placement of her child.

The fact that Sanders extends the right of a trial, with all of its advantages and protections, to this second adjudicated parent before imposing upon her any dispositional order does not excuse the state of its initial burden to meet a minimum threshold of unfitness under MCL 712A.2(b) before depriving her of placement or custody of her child (ren). After all, it is the physical custody of the child that is the parent’s paramount concern — regardless of the child’s legal custody status or other aspects of the court’s dispositional order — a point clearly acknowledged by the Sanders decision.

Moreover, relying upon Stanley v Illinois, Sanders clarified, “[T]he argument that the state is relieved of its ini-
NA VIGATING MURKY WATERS: Handling Unadjudicated Parent Cases Post-Sanders

By Tracy E. Green

[Continued from Page 3]

Having discussed the type of petition against an unadjudicated parent required in post-Sanders proceedings, and the procedure for hearing that petition, let us now explore the next point—the nature of the petition allegations.

(3) Nature of Petition Allegations

Sanders has declared that an unadjudicated parent is entitled to a trial on his fitness before dispositional orders affecting him may be entered. The petition allegations post-Sanders, therefore, must pertain to MCL 712A.2(b) because this is the only trial standard under the juvenile code. Although jurisdiction may still be established through the adjudication of one parent, the petition allegations against the other, non-adjudicated parent must meet statutory jurisdictional muster.\(^{27}\) Hence, not just any allegations against the second parent will do. For example, although failure of a parent to pay child support is a reason to harshly criticize a non-custodial parent, it would never be a basis for CPS investigation alone and, thus ultimately, jurisdiction under 2(b) for the initial respondent parent. There is no difference between the statutory adjudication standard for the second respondent parent and that for the first respondent parent. There is only one adjudication standard—MCL 712A.2(b). The state must allege in its petition that each parent, for whom it seeks a dispositional order, has been abusive or neglectful, within the meaning of MCL 712A.2(b), before the family court could enter a dispositional order that would control or affect his conduct. Sanders makes crystal clear that allegations unrelated to child abuse and neglect under MCL 712A.2(b)—like the child’s objection to placement with, or the child’s lack of bonding to, a particular parent—are illegitimate factual bases for adjudication of that parent.\(^{28}\)

So what are valid factual bases for adjudication under MCL712A.2(b)? Only facts which constitute offenses against the child(ren) at issue are legally cognizable under 2(b), and therefore, Sanders.\(^{29}\) “A petition must contain … [t]he essential facts that constitute an offense against the child under the juvenile code.”\(^{30}\) Under the juvenile code an “offense against a child” is defined as “an act or omission by a parent… asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the juvenile code.”\(^{31}\) “Child protective proceeding” means a proceeding concerning an offense against a child.\(^{32}\)

(4) Evidence Supporting Petition Allegations

So, under Sanders, what evidence against a second respondent parent can be used against that parent in her adjudication under MCL 712A.2(b)? Because a trial is the hearing that Sanders mandates to determine an unadjudicated
parent’s fitness prior to entry of dispositional orders requiring her compliance, only legally admissible evidence is allowed. Yet, even some otherwise admissible evidence would not be permissible under Sanders at trial.

No doubt in the days since the issuance of the Sanders decision, parents’ attorneys have been scrambling to file motions for immediate placement with their clients, and the agency has been scrambling to file petitions against previously unadjudicated parents to get them under the authority of the court. For pending cases where the agency is taking such action, however, the unadjudicated parent may have been ordered to comply with services. Compliance with these services, (e.g., drug screens) may have resulted in negative information revealed to the agency about the parent that they otherwise may not have discovered without the unlawful imposition of a dispositional order upon the unadjudicated parent.

(a) Relevant Evidence

Although such evidence would be admissible against the parent in the dispositional phase where the rules of evidence do not apply, it would not be admissible in a post-Sanders adjudication. Remember, the rules of evidence apply at trial, including the rule regarding relevance. Taking an allegation of a positive drug screen, for example, the allegation alone, if proved, would not constitute an offense against a child. Therefore, the evidence supporting it is not relevant under MCL 712A.2(b) and is inadmissible at trial. MCL 712A.2(b)’s present tense language looks to the child’s current care by the legal caregiver and his present home environment. Using the drug screen example, an allegation of a positive drug screen, alone, without an alleged connection of harm to the child, is not a relevant consideration. It would be a rare case where such a nexus between harm to the child and a positive drug screen from a non-custodial, unadjudicated parent (or even his ongoing drug use) could exist because the child is not in his care at the time of the allegation.

(b) “Fruit from the Poisonous Tree” Evidence

Another argument against admission of evidence obtained pursuant to a parent’s compliance with an unconstitutional dispositional order is that of suppression. Some parents’ attorneys across the state have been arguing that this unlawfully obtained evidence must be suppressed under the exclusionary rule as it would be under Fourth Amendment (illegal search and seizure) or Fifth Amendment (right against self-incrimination) analyses. An additional argument is that requiring a non-adjudicated parent to comply with dispositional orders is a violation of that parent’s substantive Due Process rights, specifically, the fundamental right to parent recognized under the 14th Amendment. Of course, his 14th Amendment procedural Due Process rights, the focus of the Sanders decision, are also implicated.

In a recent case, a judge reportedly suppressed evidence obtained as a result of compliance with an unlawfully imposed dispositional order. He limited the exclusion of the evidence to that obtained post-disposition; however, reasoning that because parents do not have to comply with services prior to the dispositional order, any evidence that was obtained prior to disposition is admissible.

Some might argue, however, that the “good faith” exception to the exclusionary rule might apply in circumstances where the agency obtained evidence in reliance on a presumptively valid court order. Though, it is uncertain whether this argument would prevail. There may be critical legal distinctions between Fourth and 14th Amendment constitutional rights and violations of those rights. It is likely that the suppression issue that has come to light in the aftermath of Sanders will ultimately be decided in the appellate courts.
C. Powers of the Court: What Does “Infringe” Upon the Parent’s Due Process Rights Mean?

A non-adjudicated parent is presumptively fit, so what can the court order her to do in a dispositional order without infringing on her fundamental, constitutional rights to parent?

(1) The Court’s Pre-Adjudication Authority

The Michigan Supreme Court stated that its holding in Sanders “only reaches the court’s exercise of its postadjudication dispositional authority.” So, Sanders is technically silent on pre-jurisdictional matters. Even so, there are some conclusions that must necessarily be drawn from the Sanders decision which impact pre-adjudication matters. (The previous discussion of the need for a preliminary hearing is an example.)

If the legal non-custodial parent is not a respondent in the petition and she demands custody of her child(ren), arguably the agency must immediately relinquish custody of the child to that parent upon her request. Whether this parent chooses to assume physical custody in her own home and care, or to delegate the responsibility to a person of her choosing, neither the state nor the court may interfere with that decision. The essence of a parent’s fundamental rights to “care, custody, and management” of her children under the 14th Amendment is the ability to engage in meaningful decision-making concerning the child. Illustrating this point, Sanders declared that even incarcerated parents maintain this right, holding with respect to their decision-making regarding care for their children during their imprisonment that “[a]s long as the children are provided adequate care, state interference with such decision is not warranted.” Therefore, “an incarcerated parent can choose who will care for his children while he is imprisoned.”

The issue, then, is about control of the child, not mere physical custody or placement of the child.

A parent is presumed “fit” before adjudicated otherwise; therefore, the agency and the court must afford deference, without delay, to a fit parent’s placement choice. Failure to immediately uphold that parent’s choice would infringe upon that parent’s constitutionally protected liberty interests under the 14th Amendment’s Due Process Clause. This might mean that the state may not interfere with the presumptively fit parent’s decision-making, even if it is only long enough to “assess or investigate” the presumptively fit parent’s home, or the home of the person whom she designates for placement. To insist that a fit parent’s decision-making be respected and upheld only after the state or court has had an opportunity to evaluate it arguably “results in the unadjudicated parent’s rights being subordinated to the court’s best interest determination.” It is possible, however, that the courts will ultimately decide that a reasonable period of time for investigation (perhaps 24 hours) meets constitutional requirements.

In other words, if the agency has any concerns regarding the decision-making of the unadjudicated parent, it must file a petition against that parent or include allegations against that parent in the already-pending petition against the other parent, and hold a pre-preliminary hearing (as discussed earlier). While the petition is pending, however, unless removal has been ordered, DHS must relinquish custody of the child to the unadjudicated parent. In fact, in the absence of a removal order, the agency’s or court’s failure to release the child upon demand or request to the care and custody of the presumptively fit parent is tantamount to an illegal removal in violation of the “new” removal standard of MCL 712A.14b(1)(a) or MCL 712A.13a(9), whichever is applicable to the case.

(2) The Court’s Post-Adjudication Dispositional Authority

The question of what constitutes unlawful infringement upon the presumptively fit parent’s 14th Amendment...
Due Process rights becomes less clear in the post-adjudication scenario, where the court has jurisdiction concerning the child. The juvenile section of the family court is a court of limited jurisdiction, but it has “broad authority” with respect to child safety and well-being. While Sanders makes clear that a presumptively fit parent may not be ordered to comply with a dispositional order, what may the court order pertaining to the child without infringing upon the parent’s rights? After all, the court has jurisdiction over the child, pursuant to MCL 712A.2(b); so, pursuant to MCL 712A.6, it may “make orders affecting [parents who have been adjudicated unfit and other] adults as in the opinion of the court are necessary for the physical, mental, or moral well-being” of the child. Moreover, “[a] juvenile court must be afforded the flexibility to assume jurisdiction over a child based on findings of maltreatment against one parent. This authority is essential to ensuring that the court has the ability to issue orders “to remedy the abuse or neglect by the offending parent.”

Let’s assume that the assumption of jurisdiction over the child is valid and the goal of remedying the offending parent’s abuse or neglect of the child is a legitimate goal for the state under a 14th Amendment Due Process analysis. What may the court order consistent with its jurisdictional dispositional authority in furtherance of this goal? May the court order the presumptively fit parent to transport the child to services or visitation? What about to doctor or dentist appointments? May the court order the presumptively fit parent to allow DHS to enter his home to assess its continuing suitability for the child or to visit the child? May the court order the fit parent to take the child to parenting time with the offending parent or permit that her parenting time be in the fit parent’s home, under his supervision? Under Sanders, the answer to each of these questions seems to be “no.” Without the ability of the court to enter these key dispositional order terms, one might argue that the court’s jurisdiction over the child is rather meaningless. Nonetheless, accepting that the only legitimate objective of the court where the child is under the care of a fit parent is “to remedy the abuse or neglect of the offending parent,” none of the dispositional order provisions identified above could even arguably be in furtherance of that interest.

It seems clear, therefore, that in this new post-Sanders paradigm, the most that the court may be allowed under the 14th Amendment to require of the presumptively fit parent is that he make the child available for the agency to transport the child to a location other than his home to fulfill the requirements of the court’s dispositional orders. Of course, the presumptively fit parent may always volunteer or consent to allow more, but he may withdraw such consent at any time without penalty. The court’s order for the fit parent to cooperate by making the child available for services may also be considered to meet the narrow tailoring required for a state’s imposition upon a fundamentally protected interest liberty under the constitution.

D. Juvenile Code vs. Child Custody Act Jurisdiction

The previous section raises the question of whether the court’s assertion of jurisdiction of a child under the juvenile code is proper at all where there is a presumptively fit parent involved. Assuming for argument’s sake that it is, under what circumstances should the trial court forgo or dismiss juvenile code jurisdiction in favor of awarding a custody order to the presumptively fit parent under the Michigan Child Custody Act?

 Sanders has seemingly adopted the argument that the court’s only constitutionally cognizable goal in a case with a non-offending parent is to remedy the abuse and neglect of the offending parent. The court is extremely limited, however, in realizing this goal because of its restriction against imposing dispositional orders upon the presumptively fit, non-offending parent. Without this ability, the objective of rehabilitating the offending parent, if achievable, would best be
left to family court’s domestic relations section where orders may be entered under the CCA which confers much broader authority to the family court to issue orders over *both* parents that would ensure the best interests of the child.  

Moreover, the family court domestic relations section is able to maintain jurisdiction over the child(ren) until they reach majority, so there is more time to achieve the success of the identified goals for the betterment of the child(ren). Furthermore, because child safety and parental fitness are inherent considerations in a best interests determination under the CCA, these central objectives could never be overlooked in a custody dispute between parents; the court’s determinations pertaining to these factors are included in the court’s required findings.

For the foregoing reasons, where a presumptively fit parent is involved, the family court should usually opt to resolve child safety concerns involving the other parent through the court’s CCA jurisdiction. This practice would leave the child welfare system’s limited resources to those children who are most in need of them.

If, however, in the case of a presumptively fit, unadjudicated parent, the juvenile section elects to handle a child safety concern under the juvenile code, then the procedure explained previously, in section B above, should be observed and utilized.

Perhaps the Michigan Supreme Court will eventually decide that the juvenile code is inapplicable, and therefore the circuit court lacks jurisdiction under it, where there is a presumptively fit and willing parent to care for the child.

E. The Right To Counsel Problem

The last, but perhaps the most immediately crucial, point to consider post-*Sanders* is the need for unadjudicated parents to have a meaningful ability to exercise their rights under *Sanders*. Because only respondents are entitled to appointment of an attorney in Michigan child welfare proceedings, many unadjudicated, non-respondent parents' Due Process rights may be violated simply because they lack counsel to assert them. Immediate changes in MCL 712A.17c(5) and the corresponding court rule, MCR 3.915, are necessary to ensure these rights. Until that occurs, however, jurists should be diligent in advising each unadjudicated parent of her right to counsel, and make an appointment of counsel in circumstances where the court determines that she is unable to afford counsel.

Some may argue that the juvenile section of the circuit court family division lacks the authority to appoint counsel to a non-respondent, but I vehemently disagree. Although MCR 3.901 would seem to prohibit application of any procedural rules not expressly included in section 3.900, *et seq.*, the negative implications associated with the deprivation of competent counsel for an unadjudicated parent in this situation are constitutionally intolerable. As court officers sworn to uphold the US Constitution, each jurist is duty-bound to ensure that the non-respondent parent's constitutional rights are upheld. This is best achieved by the appointment of counsel.
In any event, the court should at least advise (either in a summons, on the record, or both) the non-respondent parent, who is a party to the proceedings, of the possible outcome and consequences of the proceedings, and perhaps, of not obtaining attorney representation, as well.

What Lies Beyond the Fog?

Like it or not, In re Sanders has struck down the once formidable “one-parent doctrine.” How far the Sanders decision reaches and its practical implications will undoubtedly be topics of considerable debate among child welfare stakeholders and commentators for some time to come. Surely, however, DHS policy revisions, 58 new court rules, and, perhaps, statutory amendments lie ahead which may help to significantly de-mystify the procedure for applying Sanders’ holding in a variety of contexts.

The decision’s consistent and reliable application across Michigan is crucial now. Jurists’ collective commitment to uniformity in handling pending and future cases implicating the constitutional rights of unadjudicated parents will help ensure fairness of process for all citizens, predictability of outcome for Michigan families, and preservation of the sanctity of the family for the most vulnerable children who are in greatest need of the court’s protection.

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1 In Re Sanders, No. 146680, slip op. (Mich. June 2, 2014).
3 Sanders, supra at 23.
4 Id. at 17, n.12.
5 Id. at 2.
6 Id. at 22.
7 Id. at 24.
8 These topics are by no means exhaustive, as the fullest extent of the parameters of the Sanders decision may only be known over the passage of more time following the decision.
9 “[A] parent’s right to [direct] the care, custody, and control of his own children applies to everyone, which is the very nature of constitutional rights.” Sanders, supra at 23. Therefore, as long as the case remains open, even on appeal, the protections of the constitution are applicable to each parent in a child protective proceeding, no matter in what stage the case may currently be.
10 Id at 2.
11 Id at 18.
12 “If the agency becomes aware of additional abuse or neglect of a child who is under the court's jurisdiction and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency shall file a
supplemental petition with the court.” MCL 712A.19(1). The language of the statute refers to additional allegations against a previously adjudicated parent or respondent, not additional parent respondents.

It is important here to distinguish between an order of disposition under MCL 712A.19(1) which “may be amended or supplemented, within the authority granted to the court in section 18 of this chapter, at any time as the court considers necessary and proper,” … and a petition regarding “additional [allegations of] abuse or neglect of a child.” A petition under MCL 712A.19(1) may only be a supplemental petition. Id. Section 18 only applies to dispositional orders, so any order issued after a petition under MCL 712A.19(1) obviously does not pertain to an adjudication.

MCL 712A.19(1) states that “[i]f the agency becomes aware of additional abuse or neglect of a child who is under the court's jurisdiction and if that abuse or neglect is substantiated as provided in the child protection law, 1975 PA 238, MCL 722.621 to 722.638, the agency shall file a supplemental petition with the court.” (emphasis added). The child protection law only allows for “substantiation” by CPS. MCL 722.628(1)(d).

Sanders does not hold that a jury trial is constitutionally required in child welfare proceedings, but MCR 3.911 confers the right to a jury attendant to trial.

“Rather than challenge the assumption of jurisdiction, [the appellant] argues that the court’s exercise of jurisdiction affecting his constitutional parental rights—that is, the one-parent doctrine at work—is an unconstitutional interference with those rights.” Sanders, supra at 14 (emphasis in original).

The court stated that “the one-parent doctrine is not concerned with the assumption of jurisdiction,” and that the trial court “properly assumed jurisdiction on the basis of [the other parent’s] plea.” Id. at 13 (emphasis in original).

Id. at 17-18 n.12.

Some may argue that a preliminary hearing is not required process under the 14th for the second unadjudicated parent because she or he will ultimately be granted a trial pursuant to Sanders, which has even greater procedural protections than those associated with preliminary hearing.

Of course, the court’s preliminary hearing determination is two-pronged—authorization of the petition based upon probable cause the .2(b) allegations are true AND whether the child should be removed from the parent’s care and custody. MCR 3.965(B)(11); MCL 712A.13a(2), (9).

Sanders, supra at 20.

Id. at 20-21.

Save possibly the little-utilized preliminary inquiry.

Sanders, supra at 21 (emphasis added).

The Sanders Court applied the Eldridge cost-risk analysis, weighing all relevant interests and considerations against each other to determine what process is due the unadjudicated parent in child protection dispositional proceedings. Id. at 12 (citing Matthew v. Eldridge, 424 US 319; S Ct 893; 471 L Ed 2d 18 (1976)).

The state’s or court’s failure to place a child with an unadjudicated parent upon his or her demand is arguably tantamount to a removal under MCL 712A.14b(1)(a) or MCL 712A.13a(9).

When the petition contains allegations of abuse or neglect against a parent, MCL 712A.2(b)(1), and those allegations are proved by a plea or at the trial, the adjudicated parent is unfit. Sanders, supra at 7. The state must allege abusive or neglectful conduct for a parent within the meaning of MCL 712A.2(b) before the family court may enter a dispositional order that would control or affect that parent’s conduct.

If the state alleges that the lack of bonding was caused by the parent’s unreasonable absence forms the child’s life, perhaps a case can be made for abandonment under MCL 712A.2(b)(1), however.

“To initiate a child protective proceeding, the state must file in the family division of the circuit court a petition containing facts that constitute an offense against the child under the juvenile code (i.e., MCL 712A.2(b)). MCL 712A.13a(2); MCR 3.961.” Sanders, supra at 6.

MCR 3.961(B)(3) makes very clear that the content of the petition must include essential facts that constitute an offense.

MCR 3.903(C)(7).

MCR 3.903(A)(2).

MCR 3.972(C)(1), except where the rules otherwise specify.

MCR 3.901(A)(3) (“The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under this subchapter, except where a rule in this subchapter specifically so provides.”)

MCL 722.622; MCR 3.972(C)(1); MRE 401.

MCL 712A.2(B)(1).
NAVIGATING MURKY WATERS: Handling Unadjudicated Parent Cases Post-Sanders

By Tracy E. Green

37 MCL 712A.2(B)(2).
38 Michigan follows the minority rule that the exclusionary rule applies in civil proceedings. See McNitt v. Citeco Drilling Company, 397 Mich 384; 230 NW2d 18 (1976).
39 The Michigan Supreme Court held that the state must provide roughly equivalent constitutional protections to a respondent in a child welfare adjudication as in a criminal case. DSS v Brock, 443 Mich 101; 499 NW2d 752 (1993).
41 The Sanders decision, itself, makes numerous references to this right, describing it as the right to “direct the care, custody, and control” or to “direct the care, custody, and management,” interchangeably, of the child(ren). Sanders, supra at 1-2, 12, 15, 16, 19, 22 and 23.
42 Id. at 22.
43 “A parent’s right to control the custody and care of her children is not absolute, as the state has a legitimate interest in protecting ‘the moral, emotional, mental, and physical welfare of the minor’ and in some circumstances ‘neglectful parents may be separated from their children.‘” Id. at 11 (referencing Stanley v. Illinois, 405 US 645, 652; 92 S Ct 1208 (1972)) (emphasis added).
44 This contention is not remarkable. Even DHS policy allows for protective custody or foster care placement with a relative for up to 30 calendar days pending a home assessment, and for up to seven days pending a central registry and criminal history clearance. FOM 722. Fit parents are entitled to even more deference than relatives.
45 Sanders at 18-19, n.14; See also Sanders at 21-22, n.18 (citing In re Curry, 113 Mich App 821, 826-827; 318 NW2d 567 (1982)) (“Until there is a determination that the person entrusted with the care of the child is unwilling or incapable of providing for the health, maintenance, and well-being of the child, the state should be unwilling to intervene.”).
46 Of course, nothing prevents the agency from filing a petition seeking an emergency ex parte removal order, prior to preliminary hearing, or a removal to protective custody order pending trial, after preliminary hearing, under the recently amended removal standards pursuant to MCL 712A.14b(1)(a) and MCL 712A.13a(9), respectively.
47 “The court has broad authority in effectuating dispositional orders once a child is within its jurisdiction.” Sanders, supra at 7 (citing In re Macomber, 436 Mich 386, 393-399; 461 NW2d 671 (1990)).
48 See also MCR 3.973(A). “Statutes are presumed to be constitutional, and we have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent.” Sanders, supra at 5 (citing Taylor v Gate Pharm, 468 Mich 1, 6; 658 NW2d 127 (2003)). It is clear from Sanders, then, that, MCL 712A.6, like its procedural counterpart MCR 3.973(A), must be construed to preserve the statute’s constitutionality. MCL 712A.6, therefore, “can reasonably—and constitutionally—be interpreted to mean that when the person meeting the definition of “any adult” is a presumptively fit parent, the court’s authority during the dispositional phase is limited by the fact that the state must overcome the presumption of parent fitness by proving the allegations in the petition.” Sanders, supra at 15.
50 Although perhaps properly the subject for another article, Prof. Sankaran’s analysis begs several questions: If the child is safe in the care and custody of a presumptively fit parent, does the court’s assumption of jurisdiction over that child unconstitutionally infringe upon the decision-making of that fit parent? Would such assumption of jurisdiction meet either the Eldridge cost-risk balancing test or the strict scrutiny concerning infringement upon a fundamental right under the 14th Amendment? When a child is in a fit parent’s care, what is the state’s compelling interest in intrusion into the realm of the family absent concern for the safety of the child?
51 The state’s interest in caring for a presumptively fit parent’s children is de minimis. Sanders, supra at 13 (citing Stanley v. Illinois, 405 US 645, 656-658; 92 S Ct 1208 (1972)). When a presumptively fit parent is involved, is a goal to “remedy the abuse and neglect by the offending parent” a truly compelling interest where the safety of the child is ensured under the presumptively fit parent’s care and decision-making? If so, is reunification with the offending parent the court’s true goal in assuming jurisdiction where a fit parent is involved --- requiring removing the child from the non-offending parent’s custody at some point in the future in order to attain the goal? If not, what is the actual purpose in “remedy[ing] the abuse and neglect of the offending parent”? Would the court’s assumption of jurisdiction in a case where a fit parent is available to assume responsibility for the safety and care of the child be an unlawful subordination of that parent’s fundamental rights to the court’s best interest determination that Sanders described? Sanders, supra at 19.
52 It is also seems apparent that MCR 3.923(B) would no longer be constitutionally applied to at least a non-respondent, non-offending (and arguably to a respondent, offending parent) in the pre-adjudication context. Because the court lacks authority to
order compliance for a non-adjudicated parent after it has assumed jurisdiction over the child, it follows that the court has no authority, consistent with the Constitution, to order a presumptively fit parent to comply with a pre-adjudication/jurisdiction order.

Yet, what if the presumptively fit parent does not agree that the child needs the services, including visitation with the offending parent. Would the court’s order usurp his decision-making, and therefore infringe upon his fundamental liberty interests under the constitution, if he is ordered to make the child available? If the fit parent refuses to cooperate, may a petition to remove the child and adjudicate him as unfit stand under such circumstances?

MCL 722.26(1) states, “This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved.” (Emphasis provided). Additionally, MCL 722.27a(1) states, “Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents.” Finally, the preamble to the Child Custody Act of 1970 states, “[A]ct to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions . . . .”

MCL 722.23(c),(d),(k), and (l). See also Hunter v Hunter, 484 Mich 247, 270; 771 NW2d 694, 708 (2009) (“Finally, we note that a natural parent's fitness is an intrinsic component of a trial court's evaluation of the best interest factors in MCL 722.23.45. . . . [W]e observe that fitness is an inextricable component of the court's inquiry.”).

Each Michigan county should already be set up to do this according to its own “family court plan,” a protocol pursuant to MCL 600.1011. The procedure for the juvenile court to handle custody matters is outlined in In re AP, 283 Mich App 574; 770 NW2d 403 (2009).

MCL 712A.2(b)(1)(B) states, "Without proper custody or guardianship" does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance.” See In re Mason, 486 Mich 142 at 161, n.11; Sanders, supra at 22.

Sanders will likely prompt DHS to enforce its existing policy requiring CPS to make reasonable efforts to identify and locate non-custodial parents and to evaluate potential for placement of the child(ren) with these parents within 24 hours of their identification. FOM 722-6. Additionally, DHS policy revisions should address the need to include jurisdictionally relevant allegations in the original petition against all legal parents at the outset of the case.

Editor’s note: All legal and personal opinions expressed in this article are those of the author.

MEMBER VOIR DIRE: Ariana Hemerline
Contributed by Susan Murphy, Jackson County

Ariana became the Tuscola County Family Court Referee in February 2014. Before that, she was an assistant prosecutor for Tuscola County for five years, focusing primarily in abuse/neglect and juvenile delinquency. Ariana attended college at the University of Florida and law school at the University of Michigan.

Ariana grew up in Michigan, but went to high school in Florida. She returned home for law school and hasn’t left since. She jests that she took a job in Tuscola County because “well, it was a job.” Little did she know that six months later she would meet the man that would become her husband, Bryan, who is a lifelong Tuscola County resident. Now she says, “I’m not going anywhere!” The happy couple has a one-year-old daughter, Amelia, and a boxer, Brutus.

When asked what advice she would give to someone considering law school, she readily responds in her noticeably jesting tone, “Don’t do it! Just kidding. Mostly…” Ariana recommends that budding lawyers intern at a legal office...
or several different types of legal professions to get a feel for it and make sure it’s something the person really wants to do given the expense of law school. That being said, Ariana confidently says she loves the work she has done as a lawyer and can’t imagine doing anything else with her career.

As for her career, Ariana wishes that people knew how difficult the decisions can be and how much Referees work on them and struggle over them. She has a whole new respect for the judiciary branch. As for her most significant moment as a lawyer, she reflects on one of her last trials as a prosecutor. In that case, she obtained a guilty verdict on a 20 count CSC case. She felt great relief for the victim and her family.

In our discussion of some of the more comical aspects of life, Ariana shares that her favorite websites are Buzzfeed.com and Allrecipes.com; while her guilty pleasure is People.com. If someone would just invent a teleporter, or a time turner from Harry Potter, she could get more sleep. But having the ability to tell when someone was lying would be a great super power!

Ariana believes that 2013-14 has been her best year to date. During that year, she gave birth to their daughter, and she started a job that she loves with Tuscola County. Because of that, she wouldn’t trade places with anyone. To sum it up nicely, Ariana concludes, “I love my life and have been very blessed. “ That perspective of life is echoed by her personal motto as Ariana reflects, “I try to remember that God won’t give me a burden he didn’t build my back to handle.”

**Editor’s Note:** Ms. Murphy will be interviewing fellow RAM members for this new column as a way to get to know each other better. If you have interviewee suggestions for future issues, please contact her by e-mail at smurphy@co.jackson.mi.us.

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**Summer 2014 Referee Legal Update**

**Domestic Relations**

Contributed by Ed Messing, St. Clair County

The Supreme Court reversed the Court of Appeals in *Porter v Hill _Mich_(2014) SCT # 147333 4/23/14 reversing 301 Mich App 925 (2013) #306562*. The biological father of Defendant’s child had his parental rights involuntarily terminated as a result of physical abuse, leaving Defendant as her son’s sole legal parent. After the biological father’s death, his surviving parents filed a complaint for grand-parenting time. The Court of Appeals affirmed the trial court dismissal of the complaint, finding that the termination of the biological father’s parental rights severed the grandparental relationship with the child. The Supreme Court reversed, in lieu of granting leave to appeal. The statute provides that a grandparent may file for grandparenting time with the child of their deceased child, defines a grandparent as the natural or adoptive parent of a child’s natural or adoptive parent, and a biological parent is encompassed by the term “natural parent”.

The application of the Revocation of Paternity Act was addressed in the context of a default divorce judgment in *Glaubius v Glaubius _Mich App_(2014) #318750 7/15/14*. The parties were married in 2008. Plaintiff
gave birth to a daughter in 2011, and filed for divorce in 2012 after Defendant moved to Nebraska. The parties con- 
sented to a February 2013 default judgment granting Plaintiff custody, Defendant parenting time and waiving child 
support in return for payment of transportation costs. In June 2013, Plaintiff filed a motion to revoke Defendant’s 
paternity as a “presumed father” and vacate the custody, parenting time and support provisions. She alleged that Mr. 
Witt was the biological father, which was confirmed by a DNA test, and that Defendant had acknowledged Mr. Witt 
as the father in an e-mail.

Defendant opposed the motion, claiming that the judgment constituted a determination that he was the fa-
ther, and thus was an “affiliated father” under the Revocation of Paternity Act, and the motion was barred by judg-
ment under res judicata and equitable estoppel. The trial court denied the motion. The Court of Appeals reversed 
because Defendant must be treated as a “presumed father” under the Act as his paternity was not contested in the 
divorce and the judgment did not make a specific finding of paternity. Further, the motion was not barred by res ju-
dicata as the Act allows a motion to revoke paternity at any stage of the proceedings, which therefore allows post-
judgment motions.

The Court of Appeals held that DHS is entitled to a default custody and 
parenting time order in a Family Support Action even though neither parent ap-
peared in Macomb County DHS & Glambin v Anderson Mich App (2014) 
#313951 4/15/14. The trial court dismissed DHS’ complaint under the Family 
Support Act when neither party appeared at the hearing on DHS’ motion for def-
ault judgment of support. The court later denied DHS’ motion for reconsidera-
tion, stating that the statute did not mandate a default judgment, and that the court 
was unable to determine whether there was a child custody dispute.

The Court of Appeals reversed. The Family Support Act allows DHS to file a complaint for support when 
the child receives public assistance, the obligation of support is owed to the child, and the affidavit of parentage by 
law establishes a presumption that the mother has initial custody of the child unless otherwise determined by the 
court. As the complaint stated that Defendant was the acknowledged father, did not live with the child and was able 
to pay support, and the Defendant failed to appear or file a responsive pleading contesting the allegations in the com-
plaint, Plaintiff’s custody of the child and Defendant’s ability to pay support were established and DHS was entitled 
to a default judgment.

Juvenile: Neglect

In re COH, __ Mich __; __ NW2d __ (2014) (Supreme Court #147515, April 22, 2014)

The Supreme Court reversed the Court of Appeals' decision in this permanency dispute. The trial court 
removed the children from their mother’s home and placed them in foster care. A biological grandmother indicated 
an interest in becoming the children’s guardian if the children were not returned to the mother at the dispositional 
hearing, but the children were not placed with her. The children’s fathers’ rights were terminated. After termination 
of the mother’s parental rights, the grandmother petitioned the court for juvenile guardianship. The trial court denied 
the petition after considering the best interest factors under the Child Custody Act, comparing the foster parent to the
grandmother. The grandmother appealed and the Court of Appeals reversed the trial court’s decision, holding that the trial court erred in comparing the foster parent with the grandmother under the best interest factors and by failing to recognize the preference of placing children with relatives. (unpublished Court of Appeals #309161, June 25, 2013)

The Michigan Supreme Court held that the preference of placement of the children with relatives is at the INITIAL removal and placement decision and does not apply to a court’s decision to appoint a guardian. Further, the trial court has the discretion to consider the best interest factors from the Child Custody Act, as well as any other factors that may be relevant under the circumstances of the case. The trial court did not err by considering the Child Custody Act to determine the children’s best interests.

_In re Johnson_, __Mich App __; __NW2d __(2014) (Court of Appeals #318715, May 20, 2014)

The mother appeals the trial court’s order terminating her parental rights. At the preliminary hearing, the child’s legal father indicated that both of his grandmothers were full-blooded American Indian. The preliminary hearing order required the caseworker to further investigate the child’s Native American heritage. The initial case services plan indicates that the child is not Indian and there is no applicable tribal affiliation. In the trial court’s order of termination, the box indicating that the child was Indian was not checked. The mother argues on appeal that the trial court erred by not determining on the record that the child was Indian and further erred by not complying with ICWA. The record does not reflect any indication that notice was served as provided by ICWA, nor does it reflect how the caseworker came to the conclusion that the child was not Indian. As a result, the mother’s termination order was conditionally reversed and remanded to the trial court for the sole purpose of ensuring compliance with ICWA.

_In re Wangler/Paschke_, __Mich App __; __NW2d __(2014) (Court of Appeals #318186, May 27, 2014)

The mother was ordered to participate in a new pilot mediation program after the preliminary hearing. The mediation resulted in an agreement that the mother would enter a plea to some of the allegations in the petition and the actual adjudication would be held in abeyance for a period of six months to allow her to participate in services. The trial court adopted the mediation agreement and entered an order consistent with the agreement. Review hearings happened every three months for the next fifteen months. The mother failed to appear at any of the review hearings; however the trial court never formally accepted the mother’s plea and never took jurisdiction of the children until the last review hearing. The judge finally accepted the mother’s plea as stated in the mediation agreement, with her attorney’s assent that the mediation agreement permitted this, and authorized the petitioner to file a supplemental petition seeking to terminate the mother’s parental rights. The dispositional review hearing’s order was entered, and attached to it was an order formally taking jurisdiction of the children and accepting the mother’s plea. A termination petition was filed and the termination order was entered six months later.

On appeal of the termination order, the mother argues that the trial court lacked authority to accept her written plea which was incorporated into the mediation agreement, her plea was invalid and the exercise of jurisdiction over the children was invalid as she was not present at the hearing. She further argued that her jurisdictional challenge is not a collateral attack of the adjudication; because the trial court entered the adjudication and authorized the petitioner to file a termination petition in the same order, this was a termination at the initial disposition.
The question on appeal, then, is whether the order accepting the mother’s plea and placing the children under the jurisdiction of the court was a “disposition” requiring the mother to appeal the adjudication at that time or was it a termination at the initial disposition.

The Court held that the mediation agreement authorized the review hearings to begin before the formal adjudication. The dispositional review hearing order constituted the formal order of adjudication because it was the first order wherein the court exercised its jurisdiction. That same order also constituted an order of disposition as the court placed the child under the supervision of the Department of Human Services. As a result, the mother was required to raise her jurisdictional challenges in an appeal of that order, not the termination order, so the Court would not consider the merits of her argument.

Affirmed in a 2-1 decision. Judge Gleicher dissented.

In re Sanders, __ Mich __; __ NW2d __ (2014) (Supreme Court #146680, June 2, 2014)

A child was removed from the mother after the child tested positive to drugs. At the first preliminary hearing, the trial court placed the child with his legal father (who had custody of the older sibling). A few weeks later, the Department of Human Services filed an amended petition alleging that the father allowed unsupervised contact with the mother and used drugs with the mother in violation of the court’s orders. The children were removed from the father and placed with Department of Human Services. At the adjudication, the mother entered a plea of no contest to the allegations. The father declined to enter a plea, demanded a trial and requested placement of the children be moved to his mother (with whom he resided). The trial court held a placement hearing. The trial court took the placement motion under advisement and scheduled the trial for the father on the allegations in the petition. The petitioner then dismissed the allegations against the father. The father was ordered to participate in services and his parenting time was restricted to supervised parenting time. The father again requested placement of the children and argued that the court had no legal authority to condition placement of the children. The trial court denied his motion, relying on the One Parent Doctrine. The father applied for an interlocutory appeal to the Court of Appeals. His application was denied. The Michigan Supreme Court then granted his leave to appeal.

The Michigan Supreme Court held that the One Parent Doctrine is unconstitutional under the Due Process Clause of the Fourteenth Amendment. Due process requires a specific adjudication of a parent’s unfitness before a state infringe on the protected parent/child relationship. The One Parent Doctrine eliminates the obligation of a petitioner to prove the unadjudicated parent is unfit before that parent becomes subject to a dispositional order. Due process requires that every parent receive an adjudication hearing prior to the state interfering with their parental rights.

In a 5-2 decision, the trial court’s order was vacated and the case was remanded to the trial court.

In re Brown, __ Mich App __; __ NW2d __ (2014) (Court of Appeals #318357, June 12, 2014)

The mother appeals the trial court’s order terminating her parental rights. The original petition alleged, among other things, that the children were being sexually abused, the mother was aware of the abuse and the mother continued to allow the perpetrator to visit with the children. Several people testified at the “tender years” hearing regarding the children’s statements, including the forensic interviewers at the Children’s Advocacy Center. The
children’s interviews at the CAC were video-taped. The mother requested that the trial court admit into evidence the videotape of the interview to determine the indicia of trustworthiness instead of having the CAC interviewers testify. The trial court denied the request, relying on the court rule regarding the tender year’s exception to hearsay, and allowed the CAC interviewers to testify. On appeal, the mother argued that the refusal to admit the videotape was an abuse of discretion as the videotape would show the inconsistencies in the children’s statements, thereby showing that the statements did not provide the indicia of trustworthiness and should not have been admissible. The Court agreed.

MCL 712A.17b governs the admissibility of a video-taped statement made by a child. If the videotaping meets the requirements set forth in the statute, the trial court is required to admit the videotape instead of having the interviewers testify. This hearing was a “tender years” hearing, not an adjudication. “The video recordings were the best evidence….not the forensic interviewers’ interpretation of those statements” to determine the indicia of trustworthiness.

Even though the trial court erred, reversal was not deemed necessary. The witnesses’ testimony may have differed from the video-tape, and that testimony was fully explored on cross-examination. The trial court judge also acknowledged some of the inconsistencies in his ruling.

Affirmed.

In re ARJ, ___ Mich __; ___ NW2d ___ (2014) (Supreme Court #147522, June 25, 2014)

The Supreme Court affirmed the Court of Appeals’ decision, holding that only a parent with sole legal custody of a child can pursue a step-parent adoption under the Adoption Code. The Court held that the remedy available to the parent would be to seek modification of the custody arrangement under the Child Custody Act, then pursue a step-parent adoption.

ADDITIONAL CASES OF INTEREST:

People v Carp, (Supreme Court #146478, July 8, 2014), and People v Davis, (Supreme Court #146819, July 8, 2014), determined that the US Supreme Court decision Miller v Alabama does not apply retroactively to juvenile lifers in the State of Michigan for cases on collateral review. While the Court determined that Miller v Alabama does retroactively apply to juvenile lifers’ whose case is on direct review in People v Eliason, (Supreme Court #147428, July 8, 2014).

People v Douglas, (Supreme Court #145646, July 11, 2014), addressed the out-of-court statements made by a child victim and their admissibility in her father’s criminal trial.
LEGISLATIVE UPDATE
Contributed by Shelley R. Spivack, Genesee County

NEGLECT/JUVENILE

SB 0973; 0974; 0975: CHILD WELFARE PARTNERSHIP ACT

These bills would create a performance based funding model in the child welfare system and a child welfare partnership council to provide administrative oversight for the system.

Status: Referred to Committee on Families, Seniors and Human Services

SB 0994: REINSTATEMENT OF PARENTAL RIGHTS

This bill would allow a court to reinstate parental rights in cases where at least three years have passed since the termination of rights, where adoption or guardianship is no longer the permanency goal, and one of the children is at least 14 years old.

Status: Referred to Committee on Families, Seniors and Human Services

SB 0996; 0997: SIBLING PLACEMENT AND VISITATION

These bills would expand the definition of siblings and require DHS to make reasonable efforts to place siblings together (unless contrary to their safety or well-being). If siblings are not placed together, the court would be required to determine if sibling visitation would be beneficial, and, if so, to order such visitation.

Status: Referred to Committee on Families, Seniors and Human Services

SB 0997: PARENTING TIME FOR CHILDREN IN FOSTER CARE

This bill would require the court to order frequent parenting time (not less than one time every seven days) between parents and children in foster care unless the court finds it would be contrary to the juvenile’s life, physical health or mental well-being.

Status: Referred to Committee on Families, Seniors and Human Services

HB 5239: REPORTS OF HUMAN TRAFFICKING VIOLATIONS

This bill would amend the Child Protection Law to require an allegation or report of suspected child abuse involving certain human trafficking violations to be transmitted to a local law enforcement agency.

Status: This bill has been passed by the House and referred to the Senate Committee on Families, Seniors and Human Services

HB 5270-5272: VIDEOTAPED RECORDINGS IN CHILD ABUSE INVESTIGATIONS

Taken together, the bills would amend various acts to:

- Require an electronic recording of an interview of a child in a child abuse or neglect investigation. "Electronic recording" refers to a video recording of a witness statement.
- Allow that statement to be considered in a probation violation hearing or hearing to expunge irrelevant or
inaccurate evidence from the Central Registry.
- Specify who may view a video recorded statement.
- Increase the penalty for unauthorized disclosure of a statement.
- Specify how long a court must retain a video recorded statement.

Status: These bills have been passed by the House and referred to the Senate Committee on the Judiciary

**SB 0987; 0988; 0989: RESTITUTION/REIMBURSMENT BY PARENT/VICTIM**

This bill would prohibit the court from ordering a parent (or a parent’s spouse with whom the parent resides) to pay restitution or reimbursement for the juvenile’s care or confinement if the parent was the victim of the juvenile offense.

Status: These bills have been referred to the Senate Committee on the Judiciary

**DOMESTIC RELATIONS**

**PA 159 of 2014: UNIFORM COLLABORATIVE LAW ACT**

In passing this bill, Michigan has joined eight other states in adopting the Uniform Law Commission’s Uniform Collaborative Law Act. The Act regulates collaborative law participation agreements and processes for cases arising under Michigan’s family or domestic relations law. Collaborative law process is defined as a procedure intended to resolve a family or domestic relations issue without intervention by a court tribunal and where the parties sign a collaborate law participation agreement and are represented by collaborative lawyers.

Status: Signed by the Governor on 6/12/14 and given immediate effect

**HB 5463: PATERNITY ESTABLISHED BY GENETIC TESTING**

This bill would amend the Paternity Act in two ways: if blood tissue typing or DNA testing indicates a 99% or higher probability of paternity, paternity would be “established” instead of “presumed”; the court would be required to enter an order of filiation and order for support where paternity is “established” by genetic testing.

Status: Referred to House Committee on Families, Children, and Seniors and referred to a second reading

**HB 5464: GENETIC PARENTAGE ACT**

This bill would create a new act establishing paternity through genetic testing and without a court order in cases where:

- The alleged father or mother is receiving services from a Title IV-D agency;
- The child is born out of wedlock and no prior Acknowledgement of Paternity has been filed;
- The mother, child, and alleged father submitted to blood or tissue typing determinations, or DNA identification profiling conducted by a person accredited for paternity determinations by a nationally recognized scientific organization;
The probability of paternity is 99% or higher;
The parties sign an informed consent form agreeing to submit to the test.

If the genetic testing determines paternity, the mother would be granted initial custody of the child.

Status: Referred to House Committee on Families, Children, and Seniors and referred to a second reading

**HB 5465: SUMMARY SUPPORT AND PATERNITY ACT**

This bill would create a new act allowing IV-D agencies to establish paternity and support through the filing of a statement with the court indicating the names of the parties, the date of the child’s birth and the approximate date and place of the child’s conception. The alleged father would have 21 days after service of the statement and notice of intent to establish paternity to either: admit paternity; submit a written request for genetic testing; or provide proof that he had been excluded as father. If a request for genetic testing or proof of exclusion is not submitted, the alleged father is established as the child’s legal father. If genetic testing is requested, paternity would be established if there is a probability of paternity of 99% or higher.

In addition to establishing paternity and support, the court may provide for custody and parenting time and grant any other relief available under the Child Custody Act, the Friend of the Court Act, or the Support and Parenting Time Enforcement Act.

Status: Referred to House Committee on Families, Children, and Seniors and referred to a second reading

**HB 5466-5471: TRANSFER OF PROSECUTOR RESPONSIBILITY**

These bills would amend the Paternity Act, ROPA, Family Support Act, UIFSA, RURES, and the Emancipation of Minors Act to allow the prosecutor’s responsibilities to be transferred to either the FOC or an attorney employed or contracted by either a county or DHS.

Status: Referred to House Committee on Families, Children, and Seniors and referred to a second reading

**HB 5472: ALTERNATIVE CONTEMPT TRACK**

This bill would amend the Support and Parenting Time Enforcement Act to create an Alternative Contempt Track Docket for payers who are found to have difficulty making support payments due to any of the following: a documented medical condition; a documented psychological disorder; substance use disorder; illiteracy; homelessness; a temporary curable condition that the payer has difficulty controlling without assistance; or chronic unemployment lasting longer than 27 weeks. Payers would be subject to probation for a period of up to one year.

The bill would require the court approve a plan addressing the conditions determined to be the reason for difficulty in making support payments. The court could enter a temporary support order or stay the current order based on the person's ability during the period a payer is under an alternative contempt track plan and would be required to enter a final support order upon completion or termination of the plan. Either party could object to a proposed final support order. If an objection is made, the court would be required to hold a separate hearing on the entry of a final support order.

The payer would be required to appear for review hearings and would be subject to arrest for failure to appear. A payer who fails to comply with the plan could be taken into custody for no longer than 45 days for any single
plan violation. A payer who willfully fails to comply with the terms of the plan would be guilty of a civil infraction, and could be punished by the court by commitment to jail for a period not to exceed 10 days. The court could discharge arrears owed to the state with the state's approval and could also discharge arrears owed to a payee with the payee's consent upon successful completion of the alternative contempt track.

Status: Referred to House Committee on Families, Children, and Seniors and referred to a second reading

The above bills can be accessed through the Michigan Legislative Website Homepage:
http://www.legislature.mi.gov/(S(eg2mdpy2bx5s4o55n2n3zk55))/mileg.aspx?page=home

30th ANNUAL RAM TRAINING CONFERENCE HIGHLIGHTS

With record-setting attendance, this year’s annual RAM training conference was busting out at the seams at the historic Stafford Perry Hotel in Petoskey. We heard from the impassioned and well-informed dynamic duo Hon. Allie Greenleaf Maldonado and Kathryn Fort on the Baby Veronica case, the Michigan Indian Family Preservation Act, and the federal Indian Child Welfare Act. Judge Maldonado serves as the Chief Judge of the Little Traverse Bay Bands of Odawa Indians. Ms. Fort hails from the Michigan State College of Law’s Indigenous Law & Policy Center, as its Interim Co-Director.

Therapist Michael Freytag wasn’t scared away last year and energetically presented the second part of his two-part series of insights into children with difficulties due to autism, bi-polar disorder and ADHD. Robin Eagleson took a quick trip up from her SCAO-Trial Court Services desk in Lansing to bring attendees up to speed on what we need to know about the new Limited English Proficiency court rules and administrative order. And our final speaker was the always-reliable Ed Messing providing his colleagues with his annual case law update.

This year our annual membership meeting included elections, where our new President, Amanda Kole, was presented a gift by Judge Tracey Yokich from her local legal community recognizing Amanda’s commitment to our organization. After many hours of work by the outgoing board, a proposed amended Constitution and By-Laws were presented to the membership and voted on. Check them out under the Members Only tab on our website.

Last, but not least, we should mention those who received awards at this year’s awards presentation:

- Ken Randall, President’s Award
- Shelley Spivack, Outgoing President’s Award
- Bruce Himrod, Service to the Board Award
- Adrian Spinks, Outstanding Recognition Award
- Lorie Savin, Active Member Award

Many members received certificates recognizing their years of service, including Ron Foon and Mike Krellwitz, who have each served more than thirty years as referees! New members were also welcomed with certificates. We hope to see all of you, and more fresh, new faces next year.
UPCOMING EVENTS

- **Thursday, August 21, 2014. 8:30 - 4:30 p.m.**
  Child Development and Responses to Child Sexual Abuse: Exploring Perspectives and Approaches for Planning, Placement, and Advocacy.
  (The two-track program is sponsored by SCAO CWS, Michigan Court Improvement Program, and the Governor’s Task Force on Child Abuse and Neglect.)
  Adoba Hotel in Dearborn, Michigan
  Inquiries contact: Kate McPherson at 517-373-5322 or mcphersonk@courts.mi.gov

- **Monday, September 8, 2014. 9:00 - 4:00 p.m.**
  Michigan Hall of Justice in Lansing, Michigan.
  Inquiries contact: Kate McPherson at 517-373-5322 or mcphersonk@courts.mi.gov

- **Thursday, September 18, 2014. 11:30 a.m.**
  RAM Board Meeting
  Exact Location TBD in Grand Rapids, Michigan

- **Thursday, September 25, 2014. 9:00 - 5:00 p.m.**
  SCAO CWS Training: The MIFPA Changes the Game: Turning ICWA from Chess to Checkers.
  Ramada Plaza in Grand Rapids, Michigan
  Inquiries contact: Kate McPherson at 517-373-5322 or mcphersonk@courts.mi.gov

- **Wednesday, October 15, 2014.**
  MJII Family Division Training for Juvenile Referees
  Michigan Hall of Justice in Lansing, Michigan

- **Thursday, October 16, 2014.**
  MJII Family Division Training for Domestic Referees
  Michigan Hall of Justice in Lansing, Michigan

- **Thursday, December 11, 2014.**
  RAM Board Meeting, followed by Holiday Lunch
  Redwood Lodge in Flint, Michigan
Well fellow RAM members, here we are at the beginning of what I hope to be another successful and productive board term. First, I would like to thank everyone that attended the 30th Annual Conference in Petoskey, and of course I would like to thank you all for the support and confidence you have shown by electing me as your President for the next two years.

I want to thank our marvelous conference committee team, Sahera Housey, Lorie Savin, Mark Sherbow, and Libby Blanchard, for all their hard work in planning and assuring that the conference was such a great success.

Last, but certainly not least, I want to offer a special thank you to Shelley Spivack for her outstanding leadership as our President over the last two years. I hope to be able to draw upon her skills and experience as I attempt to strive through the next two years.

In writing my first President’s corner, I thought I should share a little about myself to the members that don’t know me very well. I began my career at the Macomb County Friend of the Court office in April of 2000, and was promoted from a Judicial Service Officer (enforcement attorney) to Referee in 2005. Prior to this employment, I worked in a small general practice firm in Shelby Township, Michigan.

I was introduced to RAM in 2005 by former Referee Paul Jacokes and joined the Board in May of 2009. Thus, I hope to use our prior Presidents’ knowledge and expertise to expand and help our Association continue to flourish.

Under Shelley’s guidance RAM has remained on task with our strategic planning goals and I hope to be able to expand these goals and strengthen awareness of RAM across the State. Some of the areas that still need to be addressed are: develop a broader representation of both domestic and juvenile referees; increase the general membership’s involvement on our various committees; improve communication between the Board and the membership; increase effectiveness of our Association; and enhance our visibility throughout the State.

I look forward to working with each of you to reach these goals and to improve our Association as a whole.

- Amanda
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.

2014-2016 Board of Directors & Committees

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