In February, the ABA House of Delegates adopted a resolution urging all governments to “adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an in-person opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.”\(^1\) The ABA recognized that the use of restraints is contrary to the U.S. Supreme Court’s law on the dangers of shackling, that restraints make it difficult for children to participate in court and in rehabilitation, and that restraints hurt children’s self-perception.\(^2\) In most Michigan courts, however, children routinely appear in front of judges and referees in restraints, without consideration of their past courtroom behavior, their risk of physical danger, or their likelihood of flight.

**Shackling is harmful to the judicial process.** In Deck, the Supreme Court recognized that shackling undermines the right to counsel and the right to participate in one’s own defense, the presumption of innocence, and the dignity of the judicial process.\(^3\) In light of the serious harms of shackling, the Court concluded that judges must sometimes make case-specific determinations before shackling even outside the guilt phase of a trial.\(^4\)

**Routine shackling is particularly harmful to children.** Although Deck dealt with shackling adults, the harms it identifies also apply to juvenile proceedings. In fact, the developmental differences between children and adults\(^5\) cause shackled children to suffer additional, serious harms beyond those discussed in Deck. First, shackling may make a child feel unfairly treated. Many children do not have the cognitive or emotional maturity to recognize the difference between a blanket policy and personal punishment. Instead, children perceive shackling as being punished and presumed guilty before they have had a chance to speak to the court.\(^6\) As one advocate wrote, “Our client has a difficult time believing the presumption of innocence still cloaks him when all he can feel are chains.”\(^7\)

The perception of being prejudged causes children to resent and mistrust adults involved in the juvenile justice system, including their own attorney, and to believe that the system does not care about their well-being. One child recounted that shackles “just made my attorney not like me …. I felt like everybody was looking at me like I was a monster. I was so worried about how everyone was seeing me in shackles that I couldn’t

[Continued on Page 2]
concentrate because it made me feel like a monster. I felt unfairly treated.”

The issue of mistrust is even greater for children of color, who may associate being degraded in public with racism.

Ultimately, a shackled child who does not believe the juvenile justice system wants to help him will not want to participate in court or in rehabilitative programs. The U.S. Supreme Court observed that “[t]he objectives” of juvenile courts “are to provide measures of guidance and rehabilitation for the child and protection for society,” but shackling interferes with those important goals.

Restraints are physically painful, distracting, and an impairment to court participation. Restraints make it difficult, if not impossible, for a child to hold or read papers, write notes to counsel, or even lean over to speak to counsel without causing a clanking commotion during a hearing. Shackles make the everyday task of walking up to the podium feel like running a gauntlet, as a child shuffles awkwardly between seemingly-hostile attorneys and court personnel. Children in the most severe four-point shackles cannot even lift their hands high enough to discreetly wipe their eyes.

Shackling affects long-term mental health. Shackling is so traumatizing and “unnecessarily demeaning, humiliating, and stigmatizing” that the American Academy of Child & Adolescent Psychiatry recently adopted a policy statement condemning mandatory juvenile shackling. Children have a fragile sense of identity compared to adults, and are very vulnerable to lasting harm from feelings of humiliation and shame. The humiliation and stigmatization of shackling, especially in front of peers and family members, affects a child’s self-esteem in the moment and in the long run. Shackling also teaches a child that adults view her as dangerous. When a child thinks that adults perceive her as dangerous, it makes her believe that she may actually be a bad or dangerous person, and encourage her to participate in more delinquent activity. Shackling may negatively interact with pre-existing mental health issues or prior abuse. When children who have faced trauma in the past are shackled, they may feel that they are once again in a situation where they cannot control the hurtful things which happen to them, making it more difficult for a child to recover from the earlier trauma. Because children charged with delinquency suffer from mental health issues and child abuse at much higher rates than the general population, juvenile courts should be careful to foster feelings of self-efficacy and positive self-esteem among participants.

A presumption against shackling does not undermine court safety or increase costs. Thirteen states have adopted a presumption against shackling. Even in states which have not adopted a statewide ban, judges have employed their authority to control their own courtrooms to adopt a local presumption against shackling. These courtrooms have not experienced increased security problems. For example, in Miami-Dade County, Florida, 20,000 children appeared in court during the first five year period after the court adopted a presumption against shackling, and no one was harmed or escaped. Additionally, courts can adopt this measure without increased costs. In many Michigan courts, a sheriff already accompanies detained children into court, and could unshackle children and provide security. In other courts, a bailiff could serve the same function. Finally, the presumption against shackling is just that – a presumption. Judges and referees who adopt the ABA’s recommended presumption against shackling would still be free to shackles an individual child when he or she finds that a particular child presents a safety or flight risk.

Bringing reform to Michigan. The University of Michigan Law School’s Juvenile Justice Clinic would greatly appreciate your input on this national shift in juvenile court procedure. In particular, we are interested in hearing about
whether juveniles routinely appear in shackles in your jurisdiction and about who provides security in your courtrooms and courthouses. We believe that Michigan courts can and should join the wave of states which have already adopted a presumption against shackling, and we hope to use your input to create a model shackling policy which effectively protects both the constitutional rights of Michigan youth and the security needs of Michigan courts. Our email address is jjc-admin@umich.edu.

Emily Rose is a recent JD graduate from the University of Michigan Law School. She worked as a student attorney for the school’s Juvenile Justice Clinic from 2014 to 2015.

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

4 Id. at 631.
6 Id.; Felman & Orr, supra note 2, at 4.
7 Mary Berkheiser, Unchain the Children, NEV. LAW. MAG. 30 (June 2012), available at http://nvbar.org/articles/content/deans-column-unchain-children.
8 Felman & Orr, supra note 2, at 5 (quoting Letter from C.O. to Washington State Supreme Court, Re: Proposed JuCR 1.6 – Physical Restraints in the Courtroom (on file with the Campaign Against Indiscriminate Juvenile Shackling)).
9 Jeffrey Fagan & Tom Tyler, Legal Socialization of Children and Adolescents, SOC. JUST. RES. 217, 236 (2005).
11 Felman & Orr, supra note 2, at 5.
14 Felman & Orr, supra note 2, at note 57.
15 Id. Trial courts have discretion to control the proceedings of their courtrooms, and to take account of circumstances which may call for shackling. E.g., Deck v Missouri, supra note 4, at 633 (2005).
17 The ABA resolution does not call for unshackling during transportation.
The Revocation of Paternity Act (RPA) continues to generate published Family Law cases. In *Demski v Petlick,* __ Mich App __ (2015) #322193 3/5/15, Defendant Patrick Petlick resumed his prior relationship with Defendant, Cassidie Petlick, while being aware that Cassidie was pregnant with Plaintiff’s child. The Defendants were later married at the hospital on the afternoon before the birth of the minor child MP. Defendants rebuffed Plaintiff’s attempts to establish a parental relationship with MP and Plaintiff filed a motion under the RPA to establish his paternity of MP. After genetic testing confirmed that Plaintiff was MP’s biological father, the court conducted a bench trial in May 2013 taking testimony from the parties and Defendant’s expert, a child psychotherapist. Two months later, the court issued its opinion addressing a number of the RPA best interest factors and found by clear and convincing evidence that Plaintiff was MP’s father and that MP was born out of wedlock. The court entered an order of filiation, ordering Defendant’s psychotherapist to meet with Plaintiff for a “concluding evaluation,” and reserved the issues of custody and parenting time. After receiving the psychotherapist’s report, the court awarded joint legal custody to

On Friday, April 10, 2015, Midland County FOC Director and fellow referee Ken Randall held the spotlight at the grand opening of his first juried gallery show at Buckham Gallery in Flint, Michigan. RAM friends Kathy Oemke, Traci Rink, Ron Foon, and Lorie Savin came to check out the photos and support RAM’s resident photographer at the exciting event. The well-attended opening also featured youth art and poetry from the Arts in Detention Buckham/GVRC Share Art Project, which is spearheaded by another fellow referee, Shelley Spivack of Genesee County. It was a great opportunity to see the amazing things Ken and Shelley accomplish outside of work hours, and how much their efforts are appreciated by others.

**KEN RANDALL’S BIG OPENING**

*Contributed by Lorie N. Savin, Oakland County*

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To access legal updates, both included and not included in this newsletter, visit the Michigan Court of Appeals—Court Opinions website at [http://courts.mi.gov/opinions_orders/opinions_orders/pages/default.aspx](http://courts.mi.gov/opinions_orders/opinions_orders/pages/default.aspx)

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**DOMESTIC RELATIONS**

*Contributed by Ed Messing, St. Clair County*

The Revocation of Paternity Act (RPA) continues to generate published Family Law cases. In *Demski v Petlick,* __ Mich App __ (2015) #322193 3/5/15, Defendant Patrick Petlick resumed his prior relationship with Defendant, Cassidie Petlick, while being aware that Cassidie was pregnant with Plaintiff’s child. The Defendants were later married at the hospital on the afternoon before the birth of the minor child MP. Defendants rebuffed Plaintiff’s attempts to establish a parental relationship with MP and Plaintiff filed a motion under the RPA to establish his paternity of MP. After genetic testing confirmed that Plaintiff was MP’s biological father, the court conducted a bench trial in May 2013 taking testimony from the parties and Defendant’s expert, a child psychotherapist. Two months later, the court issued its opinion addressing a number of the RPA best interest factors and found by clear and convincing evidence that Plaintiff was MP’s father and that MP was born out of wedlock. The court entered an order of filiation, ordering Defendant’s psychotherapist to meet with Plaintiff for a “concluding evaluation,” and reserved the issues of custody and parenting time. After receiving the psychotherapist’s report, the court awarded joint legal custody to [Continued on Page 5]
Cassidie and Plaintiff, sole physical custody to Cassidie, and supervised parenting time in a therapeutic setting to Plain-
tiff.

The Court of Appeals affirmed. The RPA does not require clear and convincing evidence that it is in the child’s
best interests when disestablishing the parental rights of a presumed father, but even if this was the appropriate standard,
the court specifically stated it used the clear and convincing evidence standard. The court did not commit clear error
when it failed to address three of the best interest factors under the RPA which were not argued by Defendants before the
trial court. The court had the authority under the Custody Act to address custody and parenting time once Plaintiff’s pa-
ternity was established, as Plaintiff submitted the custody dispute to the court in his pleadings. The court was not re-
quired to conduct a separate evidentiary hearing before issuing its custody decision, and it was not reversible error for
the court to consider the psychotherapist’s report submitted after trial without allowing Defendants to cross examine the
witnesses as this was their witness.

An affiliated father can bring a motion to vacate a six year old default order of
filiation as well as subsequent support enforcement orders under the RPA according to
Adler v Dormio __ Mich __ (2015) #319608 3/19/15. In January 2007, the court en-
tered a default order of filiation after Defendant failed to respond to the paternity com-
plaint, served by alternate service, or to an order for genetic testing. Defendant claims
that he first learned of the paternity case in 2009 when his wages were garnished to
collect support, and filed a motion to set aside the default judgment of filiation under
the new RPA in 2013. After genetic tests excluded Defendant as the father and a best
interests hearing was conducted, the court set aside the judgment of filiation and termi-
nated Defendant’s support order effective the date he filed his complaint.

The trial court later denied Defendant’s subsequent motion to vacate the support
order and support enforcement orders and eliminate the $45,000 arrearage, stating
that Defendant failed to meet his burden under MCR 2.612(C)(1)(f). The Court of Ap-
peals reversed, holding that while a judgment under the RPA does not automatically
excuse a parent from compliance with existing support orders, it also does not bar a
motion to have the judgment vacated or set aside by court rule. “The RPA allows a
person who has obtained a judgment under the RPA to seek relief from prior support orders under MCR 2.612(C)(1)”.
The matter was remanded to the trial court for an articulation of its reasoning.

In Eickelberg v Eickelberg __ Mich App __ (2015) #318840 1/27/15 pub. 3/19/15, the parties were awarded
joint legal custody, Plaintiff was granted physical custody, Defendant was granted parenting time, and later the court ap-
pointed a parenting time coordinator. While both parties lived in Clinton Township when the divorce was filed, Defen-
dant moved 86 miles away to Perry during the pendency of the divorce, then moved 126 miles away from Plaintiff to
Marshall two and one-half years after the divorce. Plaintiff moved to terminate the parenting time coordinator and con-
tended that Defendant’s move violated MCL 722.31. Defendant responded by requesting to move the parenting time
exchange closer to his new home and to increase his summer parenting time as he could no longer exercise his Wednes-
day evening mid-week parenting time. The trial court ruled that Defendant was not required to seek permission to move
because he only moved 40 miles from his last residence and granted Defendant’s request to move the parenting time ex-
change and to increase his summer parenting time.
The Court of Appeals reversed. MCL 722.31 prohibits a party with joint legal custody from moving more than 100 miles from the child’s legal residence at the time the divorce was filed unless the parties agree or the court approves of the move. The trial court was required but failed to address the factors under 722.31(4). The court further noted that if the court approves a party’s move under the statute, it must further consider whether the change in the parenting time results in a change of an established custodial environment, and if so, then the court must determine whether there is clear and convincing evidence that the new parenting time schedule is in the best interests of the child.

The Court of Appeals addressed the burden of proof required to change a condition in a parenting time order in Kaeb v Kaeb __ Mich App __ (2015) #319574 3/12/15. In February 2012, the court granted Plaintiff sole custody, Defendant limited supervised parenting time, required him to continue alcohol treatment and therapy, and provided that he could petition for modification after three months of compliance. The court granted unsupervised parenting time in July 2012, and expanded parenting time in June 2013, requiring Defendant to continue with counseling and AA. Two months later Defendant moved to terminate counseling, supported by testimony from a psychologist and a letter from his counselor. The court found no change in circumstances, that the motion was frivolous, and awarded attorney fees as sanctions; however, the court found that Defendant would not benefit from AA and counseling and canceled the requirement to attend them.

The Court of Appeals affirmed, holding that “a party requesting a change to an existing condition on the exercise of parenting time must demonstrate proper cause or a change in circumstances that would justify a trial court’s determination that the condition in its current form no longer serves the child’s best interests.” The award of attorney fees was reversed, however, as the evidence presented by Defendant would have supported a finding that there was a change in circumstances warranting a modification of the conditions on Defendant’s parenting time and therefore the motion was not frivolous.

The Court of Appeals previously reversed and remanded the case to the trial court in Loutts v Loutts __ Mich App __ (2015) #318468 2/10/15, finding that there is no absolute prohibition against considering the value of a business in both the property and spousal support awards, but the court must consider the equities of the case when determining whether to “double dip.” The Court also remanded to consider a lower imputed income for Defendant and to address her request for attorney fees.

On remand, the court properly weighed the equities and decided not to utilize the income from the business when calculating spousal support. The value of the business, which was divided equally between the parties in the property settlement, had been determined using the present value of future income and profits of the business. The court determined that utilizing the business profits to also calculate spousal support could result in awarding Defendant the same dollars twice. The court properly declined Defendant’s motion to extend spousal support as she failed to provide evidence that she was unable to find employment. The court properly declined to award attorney fees as Defendant had engaged in “fishing expeditions” during the proceedings and received sufficient liquid assets to pay her own fees. The court also properly rendered its decision based on prior proceedings and written submissions in lieu of an evidentiary hearing.
In **Hoffenblum v Hoffenblum** __ Mich App __ (2014) #317027 11/18/14, Plaintiffs sued their father for conversion alleging he wrongfully removed over $18,000 from their trust accounts, which had been established pursuant to their parent’s Divorce Judgment in compliance with the Uniform Transfer to Minors Act (UTMA). Defendant had been ordered in the Divorce to pay 52% of uninsured health care expenses incurred through in-network providers and claimed that he had withdrawn the funds to reimburse himself for payment of the Plaintiffs’ out of network health care expenses.

The Court of Appeals held that Defendant had wrongfully exerted dominion over Plaintiffs’ money under the UTMA and Defendant must reimburse the accounts. Transfers under the UTMA are irrevocable, and expenditures from the account must be in addition to, and not a substitution for, obligations of a person to support the minor. As all of Plaintiffs’ uninsured health care expenses were allocated in the Divorce Judgment, the use of funds from the UTMA account to pay for the children’s health care expenses was improper. Plaintiffs were not required to make a prior demand to Defendant to return the funds to the accounts, but denial of treble damages was appropriate as Defendant acted on his financial planner’s advice.

**JUVENILE: NEGLECT** Contributed by Jen Kitzmiller, Berrien County

**ICWA**

*In re KMN, __ Mich App __; __ NW2d __ (2015) (Court of Appeals #322329 and #322883), February 26, 2015*

The Court of Appeals **affirmed in part and vacated and reversed in part** the trial court’s order of placement and finalization of a direct placement adoption, finding that the trial court failed to comply with the mandates of MIFPA.

In October, 2013, a petition was filed in a neglect proceeding. KMN was removed from her mother’s home immediately after birth due to the mother’s lengthy history of abuse and neglect of her other children. The petition sought termination of the mother’s parental rights at the initial disposition. The petition sought termination of the mother’s parental rights at the initial disposition. The biological father, who was in prison when the child was born, was a member of the Gun Lake Tribe of the Potawatomi Indians and the child was identified as an Indian child throughout the neglect proceeding.

In February, 2014, the Arbutantes (who were not Indian and had no prior connection to KMN) filed a petition for a direct placement adoption under the Adoption Code. The petition alleged that KMN was an Indian child, her father’s parental rights were previously terminated and the mother consented to the adoption. The Arbutantes further alleged that, under *Adoptive Couple v Baby Girl*, __ US __; 133 S Ct 2552; 186 L Ed2d 729 (2013), the preferences of placement under ICWA or MIFPA did not apply because the father abandoned the child, the father never lived with the tribe or adopted its culture and no other party formally filed a petition to adopt.

Later that month, KMN was placed through the neglect case by the Department of Human Services with a relative of the father, a first cousin once removed, who was also a member of the Gun Lake Tribe. The cousin expressed an interest in adopting KMN. The mother did not approve of this placement.

At the hearing on the Arbutantes’ adoption petition in June, 2014, the tribe argued that the child was an Indian child and there was an Indian relative ready and willing to adopt KMN. The only reason the cousin did not file a petition to adopt was that the mother’s parental rights were still intact and the neglect case was still pending. Further,
the tribe argued that because the neglect case was still pending, the mother did not have the authority to agree to a direct placement adoption as she did not have legal or physical custody of the child.

At the conclusion of the hearing on the adoption petition, the trial court terminated jurisdiction of the neglect case and ordered the child returned to the mother for immediate custody. The trial court then took testimony from the mother, who indicated her consent to the direct placement adoption of KMN with the Arbutantes. The court ordered termination of the mother’s parental rights, made KMN a ward of the court for purposes of adoption and ordered the immediate placement of KMN with the Arbutantes. Even though the trial court expressed on the record that it disagreed with whether the child was Indian, the written order after the hearing did state that the child was an Indian child.

The tribe appealed the trial court’s order of placement (#322329) and both the tribe and the Department of Human Services filed motions for reconsideration with the trial court. The tribe argued that the trial court failed to adhere to the placement preferences of ICWA and MIFPA and did not make findings that good cause existed to deviate from the placement preferences. The Department of Human Services argued that the trial court violated the placement preference of MIFPA and erred in releasing KMN to the mother without considering on the record whether her rights should be terminated according to MCL 712A.19b. The Arbutantes and the mother filed answers to the motions and requested attorney fees and costs pursuant to MCR 3.206(C)(1).

At the hearing on the motions for reconsideration in July, 2014, the trial court denied both motions and ordered the tribe and its attorneys to pay reasonable attorney fees. On the same day, the trial court entered the order of adoption and discharged KMN as a ward of the court. The tribe also appealed that order (#322883).

The tribe argued on appeal that the trial court violated ICWA and MIFPA by finding that KMN was not an Indian child, and by not applying the placement preference or finding good cause for disregarding the placement preferences. The Court held that, even though the trial court made inconsistent statements regarding the child being an Indian child, the trial court’s written orders indicated that the child was an Indian child. The trial court speaks through its written orders and found that KMN was an Indian child, therefore, the trial court did not violate ICWA or MIFPA on that issue.

With regard to the placement preferences of ICWA, the Court also found that the trial court did not violate the statute. The U. S. Supreme Court held in Baby Girl, that ICWA’s “preferences are inapplicable in cases where no alternative party has formally sought to adopt the child.” Since the tribe did not request an adjournment of the June, 2014 hearing to allow the cousin to file a competing petition to adopt, there was no preference to apply. As a result, that portion of the trial court’s order is affirmed.

The tribe’s argument that the trial court failed to place KMN under MIPFA’s placement preferences or find good cause for disregarding that placement prevailed. MIFPA differs from ICWA as it does not give a preference to eligible parties over ineligible parties and requires that, absent good cause, the adoptive placement MUST be either with a member of the child’s family, a member of the child’s tribe or an Indian family. Since the Arbutantes do not meet this criterion, absent a good cause finding, MIFPA precluded the trial court from placing the child with the Arbutantes. The mother’s preference does not amount to good cause. Good cause is specifically defined by MIFPA as a request made by a child of sufficient age and/or where the extraordinary physical or emotional needs of the child could only be met through a person outside the preference list. MIFPA also requires that good cause to deviate from the placement preference cannot be found “without first ensuring that all possible placements...have been thoroughly investigated and eliminated,” which was not done by the trial court. The fact that no alternate petition for adoption was filed is irrelevant under MIFPA.

The Arbutantes’ then argued that ICWA preempts MIFPA as MIFPA is an obstacle to the “accomplishment and
execution of the full purposes and objectives of Congress” when it enacted ICWA. The Court disagreed with that argument and held that MIFPA further protects the Indian child’s culture by defining “good cause,” which is consistent with the purposes of ICWA.

With regard to the attorney fees, the Court held that MCR 3.206(C) is for domestic relations actions, not adoption. The mother and the Arbutantes improperly requested the fees and costs under this rule and the trial court abused its discretion by ordering the attorney fees.

In summary, the Court affirmed the trial court’s order that the child is an Indian child and that the placement preferences of ICWA did not apply to the adoption proceeding. The Court vacated the order of the mother consenting to adoption, terminating her parental rights, making KMN a court ward for the purposes of adoption, placing KMN with the Abutantes, the final adoption order and the order for attorney fees. Since no claim of appeal was filed on the trial court’s order terminating jurisdiction in the neglect matter, vacating or reversing that order was not properly before the Court.


The Court reversed the trial court’s order denying the request of the Indian tribe to transfer a case to tribal court for purposes of adoption.

In 2010, a neglect petition was submitted to the court and the Grand Traverse Band of Ottawa and Chippewa Indians were notified. The tribe responded that the children were not members, nor were they eligible for membership in the tribe. The neglect case proceeded. Over a year later, a supplemental petition seeking to terminate the mother’s parental rights was filed. Shortly thereafter, the tribe filed a notice of intervention indicating that the children were members of or were eligible for membership in the tribe. The mother requested removal to tribal court. The trial court granted the mother’s motion to transfer, but the tribe declined to accept the transfer. The mother then voluntarily released her parental rights. A subsequent hearing terminated the father’s parental rights and the children were committed to MCI.

The foster parents (who had placement of the children for several years) and the paternal grandparents from Missouri both filed an intent to adopt. The tribe favored adoption with the paternal grandparents, but MCI recommended adoptive placement with the foster parents. The foster parents then filed a petition to adopt. Shortly thereafter, the tribe filed a motion to transfer the case to tribal court.

At the hearing on the transfer motion, the trial court addressed the “good cause” requirement of MIFPA. The trial court is required to transfer a case to tribal court unless good cause is shown. Good cause “exists only if the person opposing the transfer shows by clear and convincing evidence that either of the following applies: (a) the Indian tribe does not have a tribal court. (b) the requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the Indian tribe is unable to mitigate.” MCL 712B.7(5). The trial court denied the motion to transfer, stating that the transfer was not in the children’s best interests, the children were in need of permanency as they had been out of the home for nearly 5 years, and the tribal court previously denied accepting the transfer and nothing changed since that denial, except the recommendation by MCI.

The sole issue before the Court on appeal is whether the timeliness of the request to transfer to tribal court or the effect the transfer would have on the children is something the trial court can consider to determine “good cause” under MIFPA. In holding that neither is appropriate to consider in determining good cause, the Court found that there are three components the trial court must use to analyze MCL 712B.7(5)(b):

1. Is there an undue hardship on the parties or witnesses that will be required to present evidence in tribal court?
2. Does the undue hardship stem from the requirement to present evidence in the tribal court?
3. Can the Indian tribe mitigate the undue hardships caused by the requirement of the parties or witnesses to present evidence in the tribal court?

The trial court did not address any of these components. In reading the plain language of the statute, the best interests of the children and timeliness of the motion to transfer are not considered in determining good cause to deny the transfer. As a result, the Court reversed the trial court’s order denying the transfer.

LEGISLATIVE UPDATE

Contributed by Shelley R. Spivack, Genesee County

NEGLECT/JUVENILE:

HB 4139: INTERSTATE COMPACT

This bill would create a new Interstate Compact Act for the Placement of Children and would repeal the current statute, MCL 3.711-3.717.

STATUS: This bill has been referred to the Committee on Families, Children, and Seniors.

HB: 4188, 4189, 4190: OBJECTIONS TO CHILD PLACEMENT BASED ON RELIGIOUS OR MORAL CONVICTIONS

These bills would permit (to the fullest extent permitted by state and federal law) a child placing agency (for adoption or foster care) to refuse to provide services if those services conflicted with the agency's "sincerely held religious beliefs" contained in a written policy, statement of faith, or other document adhered to by the agency. This would apply also to referrals made by the Department of Human Services for foster care management or adoption services under a contract with the department. An agency could decline such referrals. The bills would also prohibit the state or a local unit of government from taking an "adverse action" against a child placing agency on the basis that the agency has declined or will decline to provide services, or declined referrals, that conflict with, or provide services under circumstances that conflict with, those sincerely held beliefs. A placing agency could assert a defense in an administrative or judicial proceeding based on the provisions in the bills.

STATUS: These bills have been referred to the Committee on Families, Children, and Seniors.

SB 251: CONSENT CALENDAR

This bill would amend the Probate Code so as to include a statutory provision for Consent Calendar Probation. Placement on Consent Calendar would require the consent of the juvenile, parent or guardian, and the prosecutor and allows a case to be transferred at any time prior to disposition. Cases subject to the Crime Victim’s Act must adhere to the procedure in MCL 780.786B. If accepted for Consent Calendar, the Court would issue a written Consent Calendar case plan. Such plans would not be an Order of the Court and could not contain a provision removing the juvenile from the custody of the parent or guardian. Upon successful completion of the case plan, the court would close the case and destroy all records of the proceeding. If the
court finds that it is not in the best interest of either the juvenile or the public to continue the juvenile on the Consent Calendar the case may be transferred to the formal calendar after a hearing. (If the original petition had not been authorized, the case may be transferred without a hearing and a hearing would then be held to determine if the petition should be authorized.) Any statements made by a juvenile during the consent calendar proceedings could not be used against the juvenile at a trial on the formal calendar of the same charge.

STATUS: This bill has been referred to the Senate Judiciary Committee.

DOMESTIC RELATIONS:

SB 009: MILITARY DUTY CHANGE OF CUSTODY FILING

This bill would amend the Child Custody Act to do the following, if a motion for change of custody or change of parenting time were filed during the time a parent was deployed:

- Allow a parent to file an application for a stay of the proceedings, require the court to entertain the application, and allow a parent to apply for an extension of a stay.
- Prohibit the court from modifying a previous judgment or order, or issuing a new order, that changed the child's placement or the parenting time that existed when the parent was called to deployment.
- Allow the court to enter a temporary custody or parenting time order if there were clear and convincing evidence that it was in the best interest of the child.
- Require a parent to inform the court of the deployment end date before or within 30 days after that date.

Further, in a motion for change of custody, the parent's duration of deployment could not be considered in a best interest of the child determination and upon notification of a parent's deployment end date, the court would have to reinstate the custody order in effect immediately before the deployment. If a subsequent motion for change of custody were filed, the court could not consider a parent's absence due to that deployment, or future deployments, in making a best interest of the child determination.

STATUS: This bill has been referred to the Committee on Judiciary.

SB 0253: LIMITS ON MEDIATION IN CERTAIN DOMESTIC RELATIONS ACTIONS

This bill would prevent the court from ordering mediation in a domestic relations matter unless both parties agree in cases in which there has been domestic violence, child abuse or neglect, where mediation would endanger the health or safety of one of the parties, or other instances in which a party cannot negotiate for him/herself. The bill would prohibit mediation in cases involving a personal protection order, even if the parties agree to mediation.

STATUS: This bill has been referred to the Committee on Judiciary.

SB 0258: BEST INTERESTS FACTORS IN DV CASES

This bill would amend subsection (j) of the “best interests” factors as follows: (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A COURT SHALL NOT CONSIDER NEGATIVELY FOR THE PUR-
POSES OF THIS FACTOR ANY ACTION TAKEN BY A PARENT TO PROTECT A CHILD OR THAT PARENT FROM THE CHILD'S ABUSIVE PARENT.

STATUS: This bill has been referred to the Committee on Families, Seniors, and Human Services.

**HB 4028: RESPONSIBLE FATHER REGISTRY**

This bill would amend the Public Health Code to create a Responsible Father Registry requiring putative fathers to register with the Registry either before the birth or within 5 days of the birth of a child in order to receive notice regarding adoption or termination of parental rights.

STATUS: This bill has been referred to the Committee on Families, Seniors, and Human Services.

**HB 4132: RIGHT TO FIRST REFUSAL OF CHILD CARE**

This bill would amend the Child Custody Act to state that if the court awards Joint Custody or Parenting Time the court, consistent with the best interests of the child, could award one or both parties the right of first refusal to provide child care.

STATUS: This bill has been referred to the Committee on Families, Seniors, and Human Services.

**HB 4133: SECOND PARENT ADOPTION**

This bill would amend the Probate Code to allow two unmarried people to adopt a child.

STATUS: This bill has been referred to the Committee on Families, Seniors, and Human Services.

**HB 4141: PRESUMPTION OF JOINT CUSTODY**

This bill would amend the Child Custody Act to require courts to order joint custody unless the court finds by clear and convincing evidence that one of the parents is unfit, unwilling, or unable to exercise joint custody. If the court awards joint custody, the court must issue a parenting time order that grants the parties substantially equal amounts of time.

STATUS: This bill has been referred to the Committee on Families, Seniors, and Human Services.

**HB 4170: EXCLUSION OF VETERAN’S DISABILITY PAY**

This bill would exempt Veteran’s Disability Compensation from inclusion within a marital estate and/or from consideration when determining a support obligation, unless the award was awarded to the veteran specifically for the support of the spouse or child/ren.

STATUS: This bill has been referred to the Committee on Judiciary.

All of the above legislation can be accessed at:

UPCOMING EVENTS

- **Wednesday, May 20 - Friday, May 22, 2015.**
  RAM Annual Training Conference and
  RAM Annual Membership Meeting
  Mission Point Resort on Mackinac Island

- **Thursday, June 4, 2015.**
  SCAO-CWS Program: Domestic Violence in Child Welfare: An Overview of the Safe & Together Model
  Kellogg Hotel & Conference Center
  East Lansing, Michigan

- **Wednesday, July 15, 2015.**
  SCAO-CWS Program: Exploring Mental Health Issues in Child Welfare
  Lansing Community College West Campus

- **Thursday, July 23, 2015. 10:00 a.m.**
  RAM Board Meeting
  State Bar of Michigan in Lansing, Michigan

- **Thursday, August 6, 2015.**
  SCAO-CWS Program: Child Development Issues
  DoubleTree in Bay City, Michigan

- **Tuesday, August 11, 2015.**
  SCAO-CWS Program: Child Sexual Abuse and Exploitation Issues
  Hilton Airport Hotel in Grand Rapids, Michigan

For information about attending scheduled SCAO-CWS Programming, contact: Kate McPherson, Administrative Assistant, by e-mail at mcphersonk@courts.mi.gov or by phone at (517) 272-5322.

The President’s Corner

*Contributed by Amanda Kole, Macomb County*

It is finally spring time and the weather is starting to catch up with the calendar. I am writing this Quarterly column with excitement and anticipation for our next Annual Conference being held at Mission Point on beautiful Mackinac Island this May.

As always, the conference committee has done a fabulous job of securing excellent speakers and accommodations at the lowest cost possible. I look forward to seeing many of you at the conference. Great job Conference Committee!!! Also, we are currently seeking nominations for our annual awards. So please submit your nomination(s) no later than April 30th, to either myself (amanda.kole@macombgov.org) or Pat Leary (pleary@shiawassee.net) and we will happily consider your nomination.

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With the retirement of our Treasurer, Michelle Barry (Oakland County), and with David Bilson accepting an administrative position also in Oakland County, we have two new board members, Kate Weaver from Oakland County and Nicholas Wood from Isabella County. Additionally, Kristi Drake has been appointed as our new Treasurer, Susan Murphy will step in as co-Chair of the Membership and Finance Committees (serving with Kristi Drake), Kate Weaver will continue to serve on the Conference Committee and will join the Membership Committee, and Nick Wood will join the Finance Committee.

Although there is not a lot to report at this time, at our recent Board meeting we met with Emily Rose, a recent graduate from the University of Michigan - Juvenile Justice Clinic, and Professor Frank Vandervort, co-founder of the clinic, to discuss the issue of indiscriminate juvenile shackling during juvenile court proceedings. As you have already read in this issue, they have concerns about routine shackling of juveniles, and are seeking referee input and advice regarding how to best discuss and address the issue with juvenile referees across the state. This may be an excellent topic to add to the juvenile day of the MJI referee seminar.

As I write this column I find myself looking forward to the year ahead. I am hopeful that we will continue to work together on our strategic plans and goals, with emphasis on tightening up our priorities and helping RAM improve and expand our membership. With that in mind, I welcome ideas and suggestions from our members, as many brains are better than a few. All members of RAM are welcome and free to attend any of the Board meetings. For your convenience, our next meeting will be at the Annual Conference in May and our summer meeting will be held on July 23rd at the State Bar of Michigan office.

Furthermore, if there are any issues or concerns that you believe the Board should address please forward your concerns to me directly or any other board member, and we’ll be happy to bring them to Board’s attention.

Last, if you haven’t done so already, please send in your registration for the conference as soon as possible. I look forward to talking to all of you at the conference.
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.

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Christine Fatzkowski

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SCAO, Child Welfare Services:
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