NO MORE SAME-SEX MARRIAGE – MARRIAGE IS MARRIAGE, PERIOD.

THE IMPACT OF OBERGEFELL ON MARRIAGE AND DISSOLUTION

By: Richard A. Roane

I. THE END OF SAME-SEX MARRIAGE

On June 26, 2015, the US Supreme Court ruled in Obergefell v. Hodges, 576 U.S. __; 135 S.Ct. 2584; 192 L.Ed.2d 609 (2015) that the US Constitution requires all states to recognize a marriage between two people of the same sex, and further, that all states must issue marriage licenses for same-sex couples who apply for such licenses. Associate Justice Anthony Kennedy wrote the Opinion for the majority in a 5 to 4 ruling, finding that same-sex couples have a fundamental right to marry as guaranteed by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

For same-sex couples who were married in a jurisdiction that recognized and allowed same-sex marriage but were living in one of the thirteen remaining Prohibition States as of June 26, 2015, their marriages are now recognized under state law. Such marriages were already recognized for most federal purposes after the decision in U.S. v. Windsor, 570 U.S. 133 S.Ct. 2675 (2013) in which portions of the 1996 Congress-enacted Defense of Marriage Act (DOMA) were held to be unconstitutional.

For unmarried same-sex couples living in one of the 13 Prohibition States as of June 26, 2015, county clerks or other relevant marriage license issuers are required to immediately issue marriage licenses allowing same-sex couples to marry. This new recognition means the following:

*These marriages will be recognized in all States, Territories, Possessions and Washington, D.C. and the twenty other countries recognizing same sex marriage.
*Children born during these marriages should have two legally-recognized parents, regardless of gender or biological connection.

*Family Law Courts should be available to same-sex married couples for dissolution (divorce), custody, child support, spousal support, property division – literally all issues available to heterosexual couples through the Courts.

Because same-sex marriages have been recognized at the federal level since U.S. v Windsor in June 2013, married same-sex couples have been required to file “married-joint” or “married-separate” federal income tax returns. However, in many states that did not recognize same-sex marriage, couples were required to file separate income tax returns for state purposes. This created an onerous burden on married same-sex couples who had to prepare multiple tax returns, some of which would never be filed but were necessary to properly calculate their income, deductions and tax due based upon the inconsistency of their marriage recognition or non-recognition between the states and the Internal Revenue Service. After Obergefell, all same-sex married couples should be able to file state income tax returns as married filing jointly or married filing separately, which may have an impact on their state income tax burden, either positively or negatively.

Marriage is not available throughout the United States. Because of Native American tribal sovereignty laws, the Obergefell decision does not extend to Native American reservations in “Indian Country” because the tribes are not parties to the US Constitution. Only one of the 566 recognized Native American Tribes in the U.S. recognize or allow same-sex marriage. (“Same Sex Marriage Isn’t Law of the Land From Sea To Shining Sea”, NPR August 5, 2015). For example, Navajo lawmakers enacted the Dine Marriage Act, a law prohibiting same-sex marriage and refusing its recognition.

II. PUSH-BACK

Shortly after the ruling, many counties in Kansas, Idaho, Alabama and Texas, to name a few, refused to issue marriage licenses to same-sex couples applying for them. Some elected officials and politicians took the opportunity to try to fight back, including the following quotes:

Mike Huckabee, Governor of Arkansas and current Republican Presidential Candidate: “This flawed, failed decision is an out-of-control act of unconstitutional judicial tyranny.” (“U.S. Gay Marriage: Reaction to ruling” BBC 6/26/15)

Ken Paxton, Texas Attorney General, offered free legal defense for state workers who refuse to marry couples on religious grounds, calling the decision “a lawless ruling.” (“US Gay Marriage: Texas pushes back against ruling” BBC 6/29/15)

It should be noted that most, if not all, state workers such as county clerks and other marriage license issuers, as well as judges and others authorized to perform marriages, swear an oath to uphold the Constitution of the United States and the Constitution of the state in which they work. Such refusal to perform their duties, in spite of Texas AG Ken Paxton’s encouragement to refuse to issue licenses to or to marry same-sex couples, could subject such state workers or officials to loss of their jobs for violation of their oath. It is likely that litigation will ensue around the country as officials and governmental workers refuse to issue licenses or perform marriages.

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III. OTHER CHALLENGES: LACK OF CIVIL RIGHTS PROTECTIONS

One problem that comes with the freedom to marry is the lack of protections for the LGBT community under the various state and federal civil rights acts. Only 22 states plus Washington D.C. prohibit discrimination on the basis of sexual orientation, while 19 states prohibit discrimination on the basis of gender identity. The irony is that a same-sex couple could get married on Saturday, apply for spousal health or other employee benefits on Monday, and be fired on the spot in 28 states. Without civil rights protections, LGBT individuals could be fired, evicted, or denied services at will.

Equality Act: On July 23, 2015, the Equality Act was introduced as a bill in Congress to expand the Civil Rights Act of 1964 to include protections for LGBT individuals in:

- employment
- housing
- public accommodation
- public education
- federal funding
- credit
- juries

The proposed Equality Act received immediate and widespread support from American businesses including Levi Strauss, Dow Chemical, Apple, IBM, Oracle, Orbitz, American Airlines, Facebook, Google, Microsoft and General Mills. Religious exemptions are still allowed in limited circumstances to allow a religious organization to make hiring and other decisions based upon religious identity. However, the religious exemptions available under the Restoration of Religious Freedom Act cannot be used for carte blanche discrimination.

IV. SAME-SEX DISSOLUTION?

The short and easy answer is that with marriage equality and the universal recognition of same-sex marriages, same-sex couples whose marriages fail should have the same access to the Family Law/Domestic Relations Court as all heterosexual couples have. However, many courts and judges may be unfamiliar with addressing the somewhat unique family creation and relationship nuances of same-sex families. Judicial bias may prevent true access to justice and equity for these families seeking dissolution. Same-sex couples could face insensitivity at best and outright hostility at worst. Recognizing that most judges work hard every single day to know the law, keep up with new legal developments, and maintain judicial neutrality while they render unbiased decisions, same-sex marriage and the inevitable dissolutions of these marriages that will follow already present challenges to the courts.

V. SOME QUESTIONS WITHOUT IMMEDIATE ANSWERS

- How long is a marriage for spousal support calculation purposes? From the date of the beginning of the relationship, which could be many years or decades, or just from the date of marriage itself?
- How is the answer equitable for a long-term relationship where marriage was not available and the actual marriage is of very short duration?

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• In a dissolution action, how will the courts exercise their equitable power when measuring the length of the marriage vs. the length of the relationship?

• Will the courts recognize both parents who had a role in raising the children even though there was not a long-term marriage?

• What parentage presumptions are available for children born prior to marriage?

• Will COBRA benefits be available to a same-sex recently-divorced spouse?

• Must employers offer health care coverage and other benefits to same-sex families?

• How will the Social Security Administration treat long-term relationships vs. short term marriages (less than the 10 year threshold in the event of divorce, or less than 9 months if there is a death while the spouses are still married) when looking at retirement or survivor benefits?

• How will the duration of the relationship for Title 2 and Medicare Claims be determined? The Social Security Administration’s Program Operations Manual System (POMS) released on April 30, 2015, stated: An applicant for spouse’s benefits must meet a one-year duration of the marriage requirement, see RS 00202.001. An applicant for surviving spouse benefits must meet nine-month duration of marriage, see GN 00305.100. However, some alternatives and exceptions to the duration requirement exist. If the claimant alleges that the relationship began as a non-marital legal relationship (i.e.: registered domestic partnership, civil union) that later converted to a marriage; or he or she had more than one non-marital legal relationship with the NH; or he or she had a combination of one or more non-marital legal relationships and marriages to the NH, which may, in total, meet the duration of marriage requirement; then refer the claim for a legal opinion on the duration of the relationship requirement.

NOTE: In other words, the manner in which relationships are measured for qualification for governmental benefits purposes is a developing issue as various agencies transition from heterosexual marriages only to universal marriage equality and the various different ways in determining relationship length.

The answers to these challenging questions can drive creative lawyering to thinking outside the box, and should lead to a decision to use ADR to address and resolve these same-sex dissolutions.

VI. ALTERNATE DISPUTE RESOLUTION

Probably the best way to try to ensure an approach to same-sex marriage dissolution is to maintain control of the process. This is best accomplished through ADR – Facilitative Mediation or other Mediation processes, Collaborative Law, Arbitration or Private Judge Services – in other words, anything but court.

For decades and probably centuries, and before same-sex marriage developed in the U.S. between 2004 and 2015, same-sex couples came together and created their lives and families together. They purchased homes, bore or adopted and raised children, acquired assets and built savings and retirement plans. They divided up duties, some spouses staying at home to raise children while others went into the workforce to support the family. And when they broke up, there was very little legal structure to help with the dissolution process.
Often, the one with more money had more power, and the other spouse ended up with an inequitable result. Lack of money and power lends to lack of access to legal counsel and ultimately, lack of access to justice. At best, a real estate partition action might help divide real estate that was jointly titled. Without joint title, the non-titled spouse would likely be evicted, treated as no more than a tenant with few rights. The non-earning spouse had no ERISA protections to retirement plans and financial security in the future. A claim and delivery action or other civil suit might address personal property division, and a breach of contract action could possibly address other broken promises. Many states do not recognize “palimony” claims. Spouses who raised children but had no biological or legal connection to their children were and are routinely cut off from their important parent-child relationships.

With the availability of access to the legal system, same-sex couples seeking dissolution should have the same rights as other divorcing couples.

**VII. A HISTORICAL PERSPECTIVE WORTH NOTING**

**June 28, 1969:** The “Stonewall Riots” took place in Greenwich Village, New York City – this represented the first time in history where members of the LGBT community fought back against the police repression, bar busts, ensuing arrests and potential job loss due to the public shaming and news publication of names, addresses and occupations of those arrested. This is commonly known as the flashpoint in the modern LGBT movement. A year later, the first “Gay Pride Parade” took place in New York City commemorating the Stonewall Riots of the previous summer. This is why Gay Pride is celebrated toward the end of June around the world.

**June 12, 1967:** “Loving Day” – The date upon which the US Supreme Court issued its landmark civil rights ruling that Virginia’s anti-miscegenation statute “The Racial Integrity Act of 1924" was unconstitutional. Richard Loving, a white man, married Mildred Loving, an African American woman, and they were charged with violating the statute and sentenced to one year in prison. As a result of the SCOTUS decision, the remaining anti-miscegenation laws in other states were removed from the law books. *Loving v. Virginia* was cited over and over again in subsequent LGBT-related cases in the appellate courts as precedence, primarily in the *U.S. v. Windsor* briefs as well as the *Obergefell v. Hodges, DeBoer v. Snyder* and other 6th Circuit cases.

**June 26, 2003:** SCOTUS decision in *Lawrence v. Texas*, holding as unconstitutional the laws that criminalized consensual sexual relations between gay men in the privacy of their homes.

**June 26, 2013:** SCOTUS decided *U.S. v. Windsor*, which resulted in the repeal of a majority of the provisions of the Defense of Marriage Act (DOMA) opening up over 1,138 federal benefits to same-sex married couples and setting off a firestorm of over 80 lawsuits around the country challenging the remaining same-sex marriage bans in the Prohibition States.

**June 26, 2015:** SCOTUS decision in *Obergefell v. Hodges, et al*

Will June 26 become a national LGBT holiday?

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VIII. CUSTODY, PARENTING TIME, ADOPTION AND EQUITABLE PARENT DOCTRINE

STEPPARENT OR OTHER ADOPTION

Who Can Adopt:

- In Michigan, only single or married couples can adopt
- Pre Obergefell: Precluded same-sex spouses from adopting children together
- Post Obergefell: Same sex spouses can adopt (DeBoer v. Snyder, 772 F.3d 388 (6th Cir. 2014))

“Stepparent” Adoption:

- Heterosexual spouses: A husband presumed to be a legal father if married at the time of conception or birth (in Michigan and many jurisdictions)
- In some jurisdictions, such as Virginia, where the couple is married and gave birth in Virginia, and both spouses names are placed on the birth certificate, both partners are deemed to be a legal parent regardless of who gave birth
- Same-sex spouses: Post Obergefell, the same rationale should apply, but this is unclear and untested
- Safest bet: “Stepparent” adoption may be wise in your jurisdiction
- Insurance policy for legal rights to children
- Must be married one year before filing for stepparent adoption

EQUITABLE PARENT DOCTRINE

Michigan courts first recognized the equitable parent doctrine in 1987 in Atkinson v. Atkinson, 160 Mich App 601; 408 N.W.2d 516 (1987). A child was born to the wife in this marriage, and during divorce proceedings, Mrs. Atkinson first raised the claim that her husband was not the biological father of the child they have been raising together. A blood test proved that Mr. Atkinson was biologically excluded. The Court of Appeals held that a married husband, who acts like a father, establishes a relationship with the child and supports the child, is an equitable parent even though not biologically connected.

The Equitable Parent Doctrine was revisited 12 years later in 1999 in Van v. Zahorik, 460 Mich. 320, 331; 597 N.W.2d 15 (1999). In this case, a child was born in this non-marital relationship between opposite sex adults. Ms. Zahorik claimed that the child Mr. Van thought was his was the result of her relationship with another man. Mr. Van claimed that he was an equitable parent. The Michigan Supreme Court, in a 4-3 decision, held that in order to be considered an equitable parent, the claimant must have been married to the mother, must have held out to be a parent, supported the child, established a relationship with the child, or have a legal guardianship over the child. Since Mr. Van was not married to Ms. Zahorik, his equitable parent claim failed. As of the preparation of this article, Van is still good law in Michigan and requires a party claiming Equitable Parent status to be married to the mother of the children. This presents significant challenges for same sex couples who established their families and bore children pre-Obergefell.

On September 11, 2015, the Michigan Supreme Court vacated a Court of Appeals ruling holding that a non-married spouse in a lesbian relationship was not an equitable parent, and remanded the case back to the Court of Appeals for a new decision in light of Obergefell. In Stankevich v. Milliron, No. 310710 (Mich. Ct. CONTINUED ON NEXT PAGE
App, Oct. 17, 2013) which was vacated and remanded by the Michigan Supreme Court on Sept. 11, 2015, a lesbian couple had married in Canada and after their marriage, Ms. Milliron bore a child where she is unquestionably recognized as the child’s legal parent. However, since the U.S. Supreme Court’s decision in *Obergefell* holds all same-sex marriage bans unconstitutional to their inception, the marriage in *Stankevich* is now legally recognized in Michigan (and every other state in the U.S.) and the child born during the now recognized marriage is presumed to be of the marriage.

How is this result different from same-sex couples living in Michigan who did not marry when they might have, albeit inconveniently, in any number of other marriage recognition states or countries pre-*Obergefell* but chose not to for whatever reason? I pose the same question for the couples who chose not to or otherwise failed to seek legal protections for their children through stepparent adoption for same-sex couples which was available in other US states (and in Shiawassee County for a limited period of time during the Michigan Marriage Amendment same-sex marriage ban years). How are the married couples distinguished from the unmarried couples who claim they could not have married to protect their children’s rights and interests? Watch for a ruling from the Court of Appeals in *Stankevich*.

**IX. MORE PUSHBACK**

**NEW ADOPTION AGENCY LAW IN MICHIGAN**

- “The department shall not take an adverse action against a child placing agency on the basis that the child placing agency has declined or will decline to provide services that conflict with, or provide services under circumstances that conflict with, the child placing agency’s *sincerely held religious beliefs* contained in a written policy, statement of faith, or other document adhered to by the child placing agency.” MCL 400.5a. See also MCL 710.23g-e
- Sincerely held religious beliefs
- Faith and non-faith based adoption agencies receive government funding
- Timing of passage – 2015, right around the time of the *Obergefell* decision.

**REFUSAL TO ISSUE MARRIAGE LICENSES**

Thankfully, Michigan’s county clerks began issuing marriage licenses to same-sex couples seeking them virtually immediately post-*Obergefell* without the spectacle created in Kentucky by Kim Davis. An elected county clerk, Davis refused to issue marriage licenses to same-sex couples pre and post *Obergefell* on her assertion that the ruling violates her religious beliefs regarding marriage, and in spite of a Federal Court ruling post *Obergefell* requiring her to do so. Davis, who herself has been married four times, has never been a widow, and married one of her many husbands twice, spent five days in jail for her firmly held religious beliefs regarding the sanctity of marriage. She refused to issue any marriage licenses whatsoever in Eastern Kentucky before she was released upon a promise not to disobey the law. She has now had her name removed as County Clerk from licenses issued by her office, and her half dozen deputy clerks issue and sign the licenses, while she makes the media circuit. And she has claimed that without her name on the licenses which her deputies are issuing, all the marriages are invalid. We probably have not heard the last from Ms. Davis.

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X. WHY IS MARRIAGE IMPORTANT IN RELATION TO ESTATE PLANNING?

If married, there are 1,138 federal benefits available under the US Code:

- Unlimited gift and estate tax exemption for transfers to spouse
- Ability to “port” spouse’s unused estate tax exemption at first death
- Ability to roll-over IRA or 401k inherited from deceased spouse
- Priority to inherit 401(k)s, 403(b)s and other ERISA plans from spouse
- Ability to file joint income tax returns (may or may not be financially beneficial)
- Ability to receive Social Security survivor benefits, disability and retirement income
- Ability to receive spousal military and other veterans benefits
- Ability to apply for a fiancée or spousal green card if immigrating to U.S.

Under Michigan law, the benefits of a marriage include:

- Michigan real property owned by spouses jointly by the entireties is super-protected from creditors
- Spouses have an insurable interest in each other
- Spouses have priority to:
  - serve as personal representative of each other's estate
  - inherit your estate if there is no Will
  - make funeral and burial arrangements
  - serve as guardian or conservator upon incapacity
  - visit each other in the hospital

XI. ART – ASSISTED REPRODUCTIVE TECHNOLOGY

Assisted reproductive technology (ART) is the technology used to achieve pregnancy in procedures such as fertility medication, artificial insemination, in vitro fertilization and surrogacy.

Given the fact that same-sex couples cannot biologically produce offspring between themselves, ART is a path to parenthood that many same-sex couples seek. In this overview article focusing on the impact of the Obergefell decision on same-sex families, it is impossible to address and analyze ART issues in any in depth fashion. Therefore this topic is touched on primarily on an issue raising basis – for a more thorough treatment of ART, readers are encouraged to review online materials and resources, and seek out additional articles, publications and seminars that are available and which address this topic as a primary focus.

For further resources in this area, consider reviewing the following websites:

- American Academy of Assisted Reproductive Technology [www.aaarta.org](http://www.aaarta.org)
- Centers for Disease Control and Prevention [www.cdc.gov/art/patientResources/preparing.html](http://www.cdc.gov/art/patientResources/preparing.html)
- Society for Assisted Reproductive Technology [www.sart.org](http://www.sart.org)

XII. TRANSGENDER AND GENDER NON-CONFORMING LEGAL ISSUES

A rapidly developing area of the LGBT equality and civil rights movement involves emerging and developing issues surrounding transgender and gender non-conforming issues. Popular culture including
the Netflix television series “Orange Is The New Black” about a bi-sexual preppy in a woman’s prison, and the Golden Globes winning Amazon television series “Transparent” about a father of three adult children coming out as a transgender individual, are raising awareness, providing education and changing hearts concerning transgender issues. Caitlyn Jenner’s gender transition and public coming out has brought transgender issues to the daily media output.

Post-Obergefell, the issue of dissolution of a marriage involving a transgender individual is less challenging since all marriages pre-Obergefell now must be recognized and thereby, couples have access to the Family Courts to dissolve such marriages. For example, a gay male couple who married in California on or after June 26, 2013 (the date that Hollingsworth v. Perry was decided in the US Supreme Court resulting in marriage equality in California again post-Proposition 8) has a legally recognized marriage in all states post-Obergefell. If one party to that relationship went through a transgender transition between June 26, 2013 and June 26, 2015 and the couple is now an opposite sex couple, they still have a legally recognized marriage to dissolve.

Similarly, if a heterosexual couple married pre-Obergefell and resided in a Prohibition State, and one spouse then went through a transgender transition and sought divorce BEFORE Obergefell, they could access the courts for divorce because their marriage was recognized as a legal marriage at the time of marriage. And finally, if a lesbian couple married in Canada, lived in Michigan pre-Obergefell, one spouse transitioned from female to male, and they then sought dissolution pre Obergefell, they could not divorce because their same sex marriage was not recognized in Michigan pre-Obergefell even though they presented as an opposite sex couple. If they sought dissolution in Michigan post Obergefell, they should have access to divorce because their same sex marriage must be recognized retroactive to the marriage date.

Transgender issues impact family law matters, whether it is a couple who is dissolving a marriage in connection with a coming out, or parents dealing with a transgender child, or similar legal challenges involving a transgender individual. Education, therapy, patience, open-minded judges, parents, attorneys are all necessary to address emerging transgender matters as they impact the families we serve.

Additional resources for further information include:

- National Center for Transgender Equality [www.transequality.org](http://www.transequality.org)
- Transgender Resources/GLAAD [www.glaad.org/transgender/resources](http://www.glaad.org/transgender/resources)
- Trans Advocacy Network: TAN [www.transadvocacynetwork.org](http://www.transadvocacynetwork.org)
- Family Equality Council [www.familyequality.org](http://www.familyequality.org)

### ABOUT THE AUTHOR

Richard Roane is a partner at Warner Norcross & Judd LLP. He specializes in domestic relations matters, domestic and international custody matters, complex business valuation, paternity, non-traditional relationships, LGBT and same sex family issues and related matters. He is a frequent lecturer for many family law organizations providing continuing legal education at the local, state and national level. He has authored several articles on family law matters, and is a co-editor of Michigan Family Law 7th Edition (ICLE 2012). Mr. Roane gratefully acknowledges the research and writing assistance of Warner Norcross and Judd associate attorney Patrick Tully who contributed to this article.
GENESEE COUNTY GIRLS COURT

By: Shelley R. Spivack, Genesee County

The commercial sexual exploitation of children (CSEC) and teens is a growing problem within the State of Michigan. In 2013, the Michigan Commission on Human Trafficking found that 40% of federally funded sex trafficking investigations involved the sexual exploitation of a child. Of the 105 children ages 13-17 rescued nationally in a July 2013 sweep, the second largest number of victims was found in Southeast Michigan.

How should the Juvenile Justice System respond? What can we do as referees to help combat this growing problem? While legislative changes effective January 14, 2015 shift the focus from punishment to treatment by creating a presumption in prostitution cases that a person under eighteen was coerced into commercial sexual activity and by expanding the definition of neglect to include children who have been commercially sexually exploited,¹ many girls within Michigan remain at risk for CSEC.

The girls at greatest risk are those within the juvenile justice system because an overwhelming number of these girls report histories of multiple forms of trauma, including physical and sexual abuse. Studies conducted in several other states bear this out. For example, a study of girls in Oregon’s juvenile justice system found that 93% had been victims of prior physical or sexual abuse, while a study in South Carolina found that 81% of delinquent girls had been victims of sexual abuse.²

Studies have also shown that girls’ problem behaviors often stem from victimization and abusive and traumatizing home lives. The survival strategies used by these girls, such as running away, truancy, drug use, and petty theft, often lead them to further victimization and involvement with the juvenile justice system. When girls fight back against their abusers they are often arrested and detained. When they run from an abusive home environment they are at increased risk for sexual victimization. It has been estimated that three out of four teens that run away from their home will be sexually exploited in the first 48 hours of their experience.

In order to address this growing problem the Honorable David J. Newblatt, Presiding Judge of the Genesee County Family Court, and Referee Shelley Spivack established the Genesee County “Girls Court” in January 2015. The first of its kind within the State of Michigan, Girls Court offers a specialized prevention docket designed to meet the unique and complex needs of adolescent females within the juvenile justice system who have either been trafficked or are at risk for sexual and other forms of exploitation.

Girls Court differs from other specialty courts in that it is designed to be gender responsive, trauma informed, culturally sensitive, and individually tailored. In creating a gender responsive courtroom model, Judge Newblatt and his team looked to the research conducted by feminist criminologists over the last twenty years.

¹See: MCL 750.451; MCL 712A.2 (b) (3) (A)- (D)
and sought to integrate these theories into actual courtroom practice.

An understanding that socialization, psychological development, and responses to traditional treatment have been shaped by gender and that gender should guide all aspects of a program’s design, processes, and services is a basic tenet of gender responsive programming. Services for girls need to be gender specific because girls and boys are socialized differently and many aspects of society (i.e. culture, media, and family) differentially influence their socialization and perceptions of self.

Safety, connection, and empowerment have been identified as the three key components of gender responsive programming. A holistic approach, which addresses the whole girl within the context of her life, her relationships, the systems she encounters, and the society in which she lives, forms the basis of gender responsive programs. A multi-disciplinary team approach where the contributions each team member makes in creating an emotionally and physically safe environment and fostering positive identity development for the girls served is stressed.

Girls Court seeks to emulate this model and incorporate these principles both in the courtroom and in the treatment plan designated for each participant. A multi-disciplinary team, consisting of Judge Newblatt, Referee Spivack, Attorney Karen Bunker of the Child Advocacy Team, a specifically designated and trained female probation officer, an educational specialist, a mental health treatment provider, a coordinator, and a criminal justice researcher from California State University, was formed. Court reviews are held monthly, with the team meeting prior to the hearings to conduct a comprehensive review and discussion of each girl’s progress and to formulate an agreed upon plan for the following month.

Wedgewood Christian Services, which operates the Manasseh Project for victims of sexual trafficking, provides individual, group, and family therapy for Girls Court participants in space donated by the local YWCA. The educational specialist monitors school progress and assures that participants receive appropriate educational services.

A mentoring program created in partnership with the Women’s Educational Center at UM-Flint meets monthly and provides Girls Court participants with social, recreational, and educational activities, as well as an opportunity to interact with positive female role models. Other community groups and organizations such as the Junior League, the National Organization for Women, and the Genesee County Human Trafficking Task Force have sponsored field trips to cultural institutions such as the Charles Wright Museum of African American History and the DIA.

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Girls Court also works with university researchers to develop and implement evidence-based screening and evaluation methods, with the FBI and local law enforcement in the apprehension and prosecution of traffickers, and with legal and community organizations to provide education and training on issues related to child sex trafficking.

If you would like to observe Girls Court or would like more information, contact Shelley Spivack at sspivack@co.genesee.mi.us.
Member Voir Dire: Peter K. Dever
by Susan Murphy, Jackson County

This issue’s highlighted RAM Member has a distinguished legal career in our military, practiced law in three states, and manages to find time to enjoy a hobby that requires mechanical skill. Let’s introduce you to Peter Dever.

Pete really enjoys being a member of RAM. The leadership and general membership have always made him feel welcome and included. He believes the annual conferences provide useful information and are great opportunities to network. He was not able to join us at this year’s conference, but looks forward to seeing all of us in October for the MJ program and, of course, in attending our future RAM conferences in the years to come.

Pete has worked in child support enforcement in several states, and it has shown him that the attitude needed to be effective in enforcement is universal. He is currently the Oakland County Chief Assistant Friend of the Court - Legal Services. He has been in this position since 2004. Before joining Oakland County, he worked in various child support enforcement capacities in California, Michigan, and Colorado. In fact, he served as an attorney/referee in Van Buren and Branch counties between May of 1998 and March 2001. But before entering the world of child support enforcement, Pete started his legal career as a Judge Advocate General with the U.S. Navy serving in both San Diego and the Philippines.

During his military career, Pete and his wife, Beth, were able to enjoy a seven day train trip through Southeast Asia in 1987. They stopped in Singapore, Penang, and Bangkok. Pete found Singapore to be amazingly modern, clean, and well-maintained. They enjoyed a Singapore Sling at the Raffles Hotel and toasted the novelist Somerset Maugham. Their next stop, Penang, allowed them to enjoy its beach and rich multicultural history and food. The trip ended in Bangkok, visiting its many Buddha statues and temples. Pete explains the city is also aptly described in Murray Head’s famous 1985 hit song, “One Night in Bangkok.”

On the more personal side, Beth works as a real estate agent. Together, they have four children. Katherine is currently Executive Assistant to the President of Pace/MacGill Photography Gallery in NYC. Forbes recently attained the rank of Lieutenant Junior Grade in the United States Navy, Special Warfare Unit, based in San Diego, California. Lauren just completed her senior year at Albion College and is now at The College of William and Mary earning a Master’s Degree in Accounting. His youngest, Andrew, just graduated from Clarkston High School and is attending Albion College to major in mathematics. Pete is very proud of his children and found 2014 to be the best year for the family because each family member had exceptional successes in their respective work, education, or athletic competitions.

For fun, Pete restores old 10 and 12 speed bicycles. This hobby ends up paying for itself while giving him a great sense of satisfaction because of the tangible nature of the end result. Restoring bikes is just part of his bicycle hobby. He enjoys riding his Specialized Epic Carbon Fiber Full-Suspension Mountain Bike. The

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bike virtually floats over rocks and roots, and its performance is only limited by its rider. This hobby is also supported by his favorite piece of today’s technology, his heartrate monitor. The monitor helps him gauge when he is burning calories and building endurance or whether it’s time to back off and rest.

While an observer might find Pete to be oh-so-serious, his responses during the interview process exposed his lighter side. At first, he shared that he’d love to have the superpower of mind control like Obi-Wan Kenobi in Star Wars. But then, on second thought, he might prefer superhuman strength. Interestingly enough, he later explained that he wished someone would invent a pill that would make people smarter. Wait, isn’t that the premise of the 2011 movie and new series *Limitless*? Sounds like Pete could turn his superpower wish into a Hollywood writing career!

Pete says he would choose to be a real estate developer or urban planner designing people- and environmentally-friendly communities as an alternate career, like his inspiration, Edmund Bacon. But again, another side of Pete is revealed when I asked him what advice he would give to his 16 year old self:

“Forget about high school and college, get a job, earn as much money as possible over the next ten years, and buy all the stock you can in a company called “Microsoft” when it goes public on March 13, 1986. Then sell everything on December 30, 1999 just when the stock market will peak at its all-time high.”

We all know what happens next in that real life scenario. Given Pete’s strong drive to succeed in reality, it seems unlikely that his 16 year old alter ego would settle with just living off the Microsoft windfall. But ah, to be independently wealthy, the unending battle of our conscious being — illusion in its stark contrast to reality. And so, it’s back to work for all of us. See you in the next Quarterly!
The Michigan Supreme Court affirmed the denial of Plaintiff’s motion to revoke Defendant’s Acknowledgment of Parentage under the Revocation of Paternity Act (RPA) in Helton v Beaman, _Mich_ (2015) #148927 4/17/15, affirming by order 304 Mich App 97 (2014). The mother had a brief sexual relationship with Plaintiff in 2002, the defendants later reunited and both signed the Acknowledgment of Paternity at the hospital when the child was born. Plaintiff failed to pay for a DNA test for three years, and brought his action to revoke paternity six years later. The court dismissed the action to set aside the Acknowledgment of Parentage as it was not in the best interest of the child.

The Supreme Court’s order adopted the Court of Appeals’ concurring opinion, holding that an Acknowledgment of Paternity is a paternity determination under MCL 772.1443(4) and the court properly refused to set aside the paternity determination by finding evidence that such an order would not be in the best interests of the child as defined in the RPA. Because Defendants have raised the child, who is now eleven years old, and the plaintiff has had little to no meaningful interaction with the child during that time, it was not in the child’s best interests to revoke the Acknowledgment of Parentage.

In Graham v Foster, _Mich App_ (2015) #318487 6/16/15, Defendant and her husband had been married since 2004. Plaintiff’s complaint against Defendant under the Revocation of Paternity Act (RPA) alleged that he and Defendant conceived a child in January 2009, who was born in September 2009. Defendant responded with a Motion for Summary Disposition, stating that Plaintiff knew Defendant was married at all times, that Defendant’s husband was a necessary party and was not included in the action, and that because the statute of limitations had expired Plaintiff could no longer add Defendant’s husband as a party. The trial court denied the motion, finding that Defendant’s husband was not a necessary party to the action under the RPA, and there were genuine issues of fact regarding the required elements under the RPA. The Court of Appeals determined that Defendant’s husband was a necessary party to the action, as the court would adjudicate his rights as the presumed father. However, Plaintiff was allowed to amend his complaint to add a necessary party after the expiration of the statute of limitations, and therefore the Court affirmed the denial of summary disposition but remanded for the addition of Defendant’s husband as a Defendant.

Unchallenged DNA evidence that Defendant was not the child’s biological father, together with his belief that he was the father, was sufficient to establish a mistake in fact supporting a Motion to Revoke an Acknowledgement of Parentage in Rogers v Wcisel, _Mich App_ (2015) #318395 8/25/15. Plaintiff testified that she had believed Defendant was the father but informed him that he might not be the child’s father before the child was born. Defendant testified he did not know someone else could be the child’s father until after signing the Acknowledgement. Although Defendant may have been aware that there was a question regarding paternity, both parties mistakenly believed he was the father, which was sufficient to proceed on the motion.
Jurisdiction under the UCCJEA was addressed in Chessman v Williams, Mich App (2015) #320446 6/18/15. In this case the child lived in Michigan from 2003 until 2011, at which time Defendant moved with the child to Ohio. Defendant and the child moved to Georgia, then back to Ohio, sometime between 2011 and 2013. The child visited Plaintiff in Michigan during summer and school breaks. The parties disputed the length of time the child lived in Ohio and Georgia, as well as the state in which the most evidence regarding the child custody matter was located. The trial court dismissed Plaintiff’s custody motion which was filed when the child was visiting Plaintiff in Michigan. The Court of Appeals reversed and remanded. Michigan was not the child’s home state because the child did not live there for six consecutive months at the time the motion was filed, MCL 722.1201(1)(a). Ohio was not the home state either as the child did not live there during the six consecutive months prior to filing the custody action, and neither party nor the child now resides in Georgia. Therefore, the court was required to determine under MCL 722.1201 (1)(b) whether Plaintiff and the child had a significant connection with Michigan other than the child’s presence and whether more evidence relating to the child’s custody is available in Michigan as opposed to Georgia or Ohio, or whether Michigan can assume jurisdiction under MCL 722.1201(1)(d) because neither Ohio nor Georgia could have proper jurisdiction under MCL 722.1201(1)(a)-(c).

Custody was properly granted to a third party who was not a guardian in Howard v Howard, Mich App (2015) #323124 5/19/15. Plaintiff mother was granted physical custody of the children in 2013, became seriously ill and moved in with the maternal uncle in April 2013, then died in August 2013. In September 2013, Defendant’s sister filed a custody motion on behalf of Defendant. The Court of Appeals affirmed the trial court’s award of custody to the maternal uncle. The uncle was not required to have standing as Defendant father filed the custody motion requesting the children be returned to him. Additionally, there was clear and convincing evidence to rebut the presumption that a parent be awarded custody where Defendant had brain tumors, multiple sclerosis, lived in a one-bedroom assisted living apartment and was clearly unable to care for the children.

The requirement to conduct an in camera interview of a child was clarified in Maier v Maier, Mich App (2015) #322109 6/25/15. The parties separated one year after the child was born, but did not divorce until the child was six years old. Plaintiff made several unsubstantiated CPS complaints and the court heard multiple show cause hearings regarding custody. A year after the divorce, the court conducted a seven day custody hearing and granted legal and physical custody to Plaintiff. After the initial visit, the court ordered that Plaintiff’s parenting time be supervised unless a psychological evaluation recommended otherwise.

The Court of Appeals found that the court was not required to conduct an in camera interview in this case. The trial court made an implicit finding that the child could not formulate or express a reasonable preference as the child was diagnosed with depressive disorder and ADHD, and had been subjected to coaching and emotional distress. Further, the court was not required to consider Plaintiff’s psychological evaluation when making the custody decision. Finally, while the court erred when considering Plaintiff’s repeated failure to obtain a court-ordered psychological evaluation when changing custody, this was not reversible error.
**Riemer v Johnson, Mich App (2015) #321057 8/18/15.** The trial court properly determined that both parents had an established custodial environment and awarded joint legal and joint physical custody of the child. Plaintiff was awarded gradually increased parenting time for a smooth transition towards accomplishing a goal of equal parenting time. While there was sufficient evidence to support the court’s finding that four factors weighed in Plaintiff’s favor and only one factor weighed in Defendant’s favor, Plaintiff did not establish that the award of shared custody was an abuse of discretion. Testimony at trial supported the court’s finding that a smooth and gradually increase of Plaintiff’s parenting time to eventually equal time was easier on the child emotionally and cognitively, and it was not necessary to conduct another hearing and determine proper cause or a change in circumstances at each stage that parenting time was gradually increased as anticipated in the court’s decision.

The trial court did not err when it deducted the entire depreciation expense claimed by Plaintiff’s LLCs from his income, as the claimed depreciation was consistent with the nature of his business. The court was not required to deviate based on Plaintiff’s claim that the support calculated under the MCSF exceeded the amount necessary for the child’s care and maintenance because the formula does not provide for deviation on that basis. The court properly retroactively amended the temporary change in support after determining Plaintiff’s actual income, because the court made clear when the temporary order was entered that it was intended to be retroactively modifiable. The Court also affirmed the trial court’s creation of a “war chest” for reimbursement of Defendant’s attorney and expert fees, based upon a determination of the reasonable amount of such fees, with each parent to contribute a percentage of the total fees in proportion to their annual incomes.

In **Lee v Smith, Mich App (2015) #320123 5/19/15,** the Court of Appeals determined that MCL 552.605b subsection 5 does not affect the authority granted in subsection 2, which allows continued support after age 18 so long as a child complies with the provisions contained in MCL 552.605b (2). Subsection 5 merely requires agreement of the parties to extend support when it would otherwise be terminated, such as post-majority support when the child is in college.

Plaintiff in **Denhoff v Chella, Mich App (2015) #321862 7/28/15,** was in prison for first degree criminal sexual conduct for sexually abusing his minor daughter. There was an order entered in his divorce action suspending his support obligation, but he was submitted for tax refund offset because of his support arrearage. Much of the arrearage was paid through the tax offset. An amended child support order was then entered on the basis that Plaintiff’s obligation should have been abated earlier. This retroactive modification led to Plaintiff being overpaid to his ex-wife by $558, yet owing service and processing fees of $218.

Plaintiff filed a grievance alleging that the Friend of the Court provided false information to the court and made various errors when calculating his support obligation, which was rejected, but the Friend of the Court agreed to attempt to collect the overpayment from Plaintiff’s ex-wife and remit the funds, less the fees due, to Plaintiff. The Friend of the Court then sought to reinstate support claiming that support should not be suspended when Plaintiff was incarcerated for sexually assaulting the child in the divorce action. The trial court continued suspension of the support obligation but also ruled that his ex-wife’s obligation to repay Plaintiff was eliminated.

CONTINUED ON NEXT PAGE
Plaintiff then filed a civil action alleging multiple counts of fraud and a single count of obstruction of justice against the Director of the Friend of the Court for statements made relative to suspension of his support obligation. The action was dismissed by the trial court. The Court of Appeals first noted that Pierce v Pierce 370 Mich App 370 (1987) did not provide for support to charge when a support payer is incarcerated for a crime against a child in the case. However, summary disposition was properly granted on the counts alleging fraud. The Friend of the Court Director was determined to have quasi-judicial immunity because she was acting pursuant to her court appointment as an arm of the court performing a function integral to the judicial process. Further, immunity extends to statements made by judges, attorneys, and witnesses during judicial proceedings. Also, the court properly dismissed Plaintiff's obstruction of justice claim as MCL 750.483a(5) does not provide for a civil action for damages, and in any event Plaintiff failed to allege facts establishing a causal connection between the alleged destruction of an FOC document and actual damages to Plaintiff.

Absent an agreement, the court cannot limit the length of spousal support according to Richards v Richards, _Mich App_ (2015) #319753 6/2/15. Plaintiff stopped working 13 years prior to the divorce to raise the parties’ children, and returned to school in order to re-enter the job market. Defendant was a successful urologist and partial owner of three medical practices, but was unable to work due to having Parkinson’s Disease. Defendant received $22,000 in monthly disability insurance, in addition to receiving SSD and distributions from his medical practices. Defendant’s affair led to the divorce, and he failed to comply with interim spousal support orders. The court awarded Plaintiff 55% of the marital assets, 50% of Defendant’s disability payments for six years, and denied Plaintiff’s request for attorney fees.

The Court of Appeals reversed. The court could not limit payment of spousal support to six years as MCL 552.28 allows either party to petition to modify spousal support. Also, Plaintiff’s receipt of property and spousal support enabling her to pay attorney fees was not relevant to Plaintiff’s request for attorney fees where they were requested due to Defendant’s refusal to comply with the court’s previous orders pursuant to MCR 3.206(C)(2)(b).
JUVENILE CASE LAW UPDATE
By Jen Kitzmiller, Berrien County

NEGLECT CASES

Clear and Convincing Evidence


The mother appealed the trial court’s order terminating her parental rights. The children were removed from the mother after it was discovered that the mother’s boyfriend sexually abused both children and, when the children revealed the sexual abuse to the mother, the mother slapped one child and called the other child a liar. The mother kept in contact with the boyfriend, missed several drug screens, and tested positive for cocaine, so the petitioner filed a petition to terminate the mother’s parental rights. Testimony revealed that the mother was hospitalized twice for overdosing, inconsistent in her mental health treatment, living (and having a relationship) with an 83-year old man who provided her with pills, and continuing to test positive for cocaine. The trial court found clear and convincing evidence that supported termination on three grounds, MCL section 712A.19b(3)(b)(ii) (opportunity to prevent physical or sexual abuse and failed to do so and the child would suffer abuse in the foreseeable future if placed with the parent), MCL section 712A.19b(3)(g) (failing to provide proper care and custody), and MCL section 712A.19b(3)(j) (child would be harmed if returned to the home).

The mother argued on appeal that the trial court erred in finding clear and convincing evidence under section 19b(3)(b)(ii) since the children’s abuser was in jail and was going to be deported. The Court held that the legislative intent was not to protect the children from the same abuser, but to protect the children from a parent who is unwilling or unable to protect the child from abuse. Because the mother placed her desire to be with the boyfriend over the needs of her children, she would likely continue to place her own needs over her children’s needs. The trial courts findings were upheld.

With regard to best interests, the Court found although the trial court considered a guardianship with relatives, that permanency plan was understandably rejected as an option due to that permanency resource’s fear of the mother. The trial court considered the relative placement’s concerns, among other facts, and found that termination was in the children’s best interests. As a result, the Court affirmed the trial court’s order of termination.

ICWA/MIFPA


This is the second appeal of this case. The Court previously reversed the trial court’s order terminating the parental rights of the parents and remanded to the trial court in an unpublished decision on September 18, 2014. (In Court of Appeals #318105 and 318163 the trial court did not apply the correct evidentiary standard of
“beyond a reasonable doubt” under ICWA for the two Indian children, the Indian witness was never qualified as an expert and the representative from the children’s Indian tribe never testified that the continued custody of the Indian children with the parent was likely to result in their serious emotional or physical injury. In addition, a best interest finding was not made regarding the termination of the other two non-Indian children.)

The trial court held a hearing after remand. The foster care specialist testified that, taking into account the lack of benefit from services offered to the mother over several years, the children’s ages and the length of time the children had been in care, returning the children to the mother’s custody would present a serious risk of harm to the children. The Indian expert, who was a social worker with the tribe, testified that active efforts were made and there were no other services that could have been provided to the mother. The Indian expert further testified that it is generally against the tribe’s practices to support the termination of parental rights and the continued custody of the children by the parent would not result in serious emotional or physical damage to either child. The expert testified that the mother has completed the services and “continues to pursue her children, would like to visit with them more often and move toward reunification….and the Department has not allowed her an opportunity.” After that hearing, the trial court again entered an order terminating the mother’s parental rights finding that, even though the only Indian expert did not state that placement of the children with the mother would result in serious emotional or physical harm, there was enough other evidence to prove, beyond a reasonable doubt, that the return of the children would be likely to result in serious emotional or physical damage.

ICWA and MIFPA require that, before a termination order can enter against an Indian child’s parent, evidence beyond a reasonable doubt, including testimony of a qualified expert witness, must establish that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. The mother argued that the trial court erred because the only expert witness opined that returning the children would not result in emotional or physical damage. The Court looked at the definition of “including”. The dictionary defines “include” as “to contain or encompass as part of a whole” and Black’s Law Dictionary defines it as “to contain as part of something”. As a result, the Court held that the beyond a reasonable doubt finding must contain the “testimony of a qualified expert witness who opines that continued custody of the Indian child by the parent will likely result in serious physical or emotional harm to the child”. Since the trial court disregarded the expert’s testimony in its findings, it failed to adhere to the mandates of ICWA and MIFPA. As a result, the Court reversed the trial court’s order terminating the mother’s parental rights to her two Indian children and remanded the case to the trial court. The Court affirmed the termination order regarding the other two children.

Adoption/arbitrary and capricious/§45 hearing

Two children, ASF age 9 months and SF age 11, were initially removed from their parents. The children were placed with their grandparents who, by all accounts, provided excellent care. Once the trial court terminated the parental rights of the parents, the agency sought adoption with the grandparents. ASF was now 4 years old. The grandfather requested that his son and his wife adopt the younger child. He cited his age and uncertainty about his ability to care for the child long term as well as his son having a child 6 months older that ASF. At an FTM shortly after this request, the grandfather changed his mind and wanted to pursue the adoption of the younger child, as well. The agency then viewed this turn of events as a competing party adoption. After completing the assessments, the agency recommended that the son and his wife be approved for adoption of ASF, which the superintendent of MCI approved. The grandparents then filed a motion in the trial court challenging the decision of the superintendent.
The trial court held a hearing and the LGAL was permitted to participate and call witnesses. After the petitioners rested, the LGAL called one witness, and then MCI moved for involuntary dismissal under MCR 2.504. The trial court granted the motion concluding that the petitioners failed to show by clear and convincing evidence that the superintendent’s decision was arbitrary and capricious. The LGAL appealed; then the grandparents filed a cross-appeal. Both argued that the superintendent’s denial of consent was arbitrary and capricious because there were no good reasons to withhold consent, the superintendent failed to consider solely on their age.

The grandparents argued that the superintendent’s consideration of their age was a violation of the Michigan Civil Rights Act and MCL 722.957(1), which prevents the sole use of age, race, religious affiliation, disability or income level in services to a potential adoptive parent or in placement decisions. The Court held that the superintendent did not violate the statute or the CRA as the age of the grandparents was not the sole purpose or reason for denial and the superintendent considered several factors in determining the best interests of the adoptee.

The Court went on to hold that the trial court reviewed the reasons given by the superintendent for the denial and determined that clear and convincing evidence had not been shown that the denial of consent was arbitrary and capricious. Because there was underlying factual support for the superintendent’s decision, the trial court’s granting the involuntary dismissal motion was appropriate. The trial court cannot decide on a de novo basis whether the superintendent’s decision to withhold consent to adopt a state ward by an adoptive resource should be upheld.

The LGAL also argued that the motion to dismiss was premature as she had not presented her case in its entirety. Since the LGAL did not commence the action, was not the petitioner, and was not an “interested party” to the adoption proceeding, the LGAL or the child did not have the burden of proof and the motion to dismiss was appropriately heard. (As a side note, there are two footnotes in this opinion that discuss an LGAL’s role in an adoption proceeding.)

The trial court’s dismissal of the petition is affirmed.
LEGISLATIVE UPDATE
Contributed by Shelley R. Spivack, Genesee County

ADOPTION

SB 458: STEP-PARENT ADOPTION

This bill would amend the Adoption Code to change the phrase “the parent having legal custody” to “a parent having custody of the child according to a court order.” The bill further states that a $0.00 child support order or a reservation of child support “shall be treated in the same manner as if no support order has been entered.”

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

SB 0463: RESTORATION OF TAX CREDIT FOR ADOPTION

This bill would restore the tax credit for adoption expenses.

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

NEGLECT/JUVENILE

SB 0482-0483: SIBLINGS RIGHTS IN FOSTER CARE

These bills would create rights for siblings in foster care. The bills would define “siblings” as children who have one or more parents in common. The relationship could be either biological or through adoption and includes “siblings” as defined by American Indian or Alaskan Native child’s tribal code or custom. The bills would require courts and agencies to make reasonable efforts to do the following:

• Place siblings removed from their home in the same placement, unless the supervising agency or the State documents that joint placement would be contrary to the safety or well-being of any of the siblings;

• Provide for frequent visitation or other ongoing interaction for siblings who are not jointly placed, unless the supervising agency or the State documents that visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;

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• If all siblings are not placed together, the Court shall determine whether sibling visitation or contact would be beneficial to the siblings, and if so, order visitation or contact to the extent reasonable. The supervising agency would be required to facilitate such visitation and/or contact.

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

**SB 0484: REINSTATEMENT OF PARENTAL RIGHTS**

This bill would create a process by which parental rights could be reinstated in cases where a court has determined that adoption or guardianship is no longer the child’s permanency goal; that three years have elapsed since the date of the termination of parental rights; and one of the following is true:

• The child is at least 14 years old; or
• The child is the younger sibling of a child who is at least 14 years old for whom reinstatement of parental rights is being sought.

A petition for reinstatement of rights could be filed by the MCI, or the L-GAL. If after an investigation it appears that the former parent may be fit to have parental rights reinstated and the best interests of the child may be promoted by such a reinstatement, the court would be required to hold a hearing. At a hearing the court would be required to consider all of the following:

• Whether the parent is fit and has remedied the grounds for termination;
• The age and maturity of the child and the child’s preference;
• Whether reinstatement would present a risk to the child’s health, welfare, or safety;
• Information from a criminal records check; and
• Other material changes in circumstances that may have occurred since the date of termination.

If the court finds by clear and convincing evidence that reinstatement of parental rights is in the child’s best interests, the court shall remove the child from commitment to the MCI and reinstate parental rights. Courts would have the discretion to order a trial period of reinstatement not to exceed 180 days.

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

**SB 0485: REGULAR AND FREQUENT PARENTING TIME FOR FOSTER CHILDREN**

This bill would provide for regular and frequent parenting time (not less than once every seven days) unless the court finds that parenting time, even if supervised, may be harmful to the child’s life, physical health or mental well-being.

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

**DOMESTIC RELATIONS**

**SB 0351: PROHIBITION ON CONTACTING PARTY TO DIVORCE**

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This bill would amend the Revised Judicature Act to prohibit a person from intentionally contacting an
individual whom the person knew to be a party to a divorce action filed with a court, or an immediate family
member of that individual, with a direct solicitation to provide a legal service until the expiration of 21 days af-
after the date the summons was issued. A knowing violation of the bill would be a misdemeanor punishable by a
maximum fine of $1,000 for a first offense. A second or subsequent violation would be a misdemeanor pun-
ishable by up to one year's imprisonment and/or a maximum fine of $5,000. The bill would take effect 90 days
after it was enacted.

STATUS: This bill has been passed by the Senate and referred to the House Committee on Judiciary.

HB 4845: CHANGE OF LEGAL RESIDENCE

This bill would amend MCL 722.31 by stating that a parent shall not change a legal residence of the
child to a location that is more than 50 miles from the child's legal residence at the time of the commencement
of the action in which the order is issued, as measured by a vehicle's odometer.

STATUS: This bill referred to the House Committee on Judiciary.

All of the above legislation can be accessed at:
http://www.legislature.mi.gov/(S(gw41t0asyldke545yfbmwhra))/mileg.aspx?page=home

UPCOMING EVENTS

• SCAO-CWS Program: MIFPA: Legal Stan-
dards, Qualified Expert Witness Testimony, and Adoptions
  Tuesday, December 15, 2015
  Weber’s Inn, Ann Arbor, Michigan
  Contact Kate McPherson, SCAO-CWS Adminis-
  trative Assistant for more information by email at
  mcphersonk@courts.mi.gov or by phone at
  (517) 272-5322.

• RAM Board Meeting and Holiday Lunch, Thursday, December 17, 2015 at the Redwood Steakhouse and
  Brewery, 5304 Gateway Center, Flint, Michigan 48507. Board Meeting begins at 11 a.m. and the Holiday
  Lunch immediately follows. All RAM members are invited to attend both the meeting and the lunch.
• RAM Board Meeting, Thursday, February 4, 2016
• RAM Board Meeting, Thursday, April 21, 2016
• RAM Annual Training Conference, May 25-27, 2016, The H Hotel, Midland, Michigan
President’s Corner

Amanda Kole, Macomb County

Welcome to the Fall Edition of our fabulous Quarterly. In my opening thoughts, I would like to thank our marvelous Conference Committee team; Sahera Housey, Kate Weaver, Lorie Savin, Pat Leary and Libby Blanchard, for all their hard work in planning and assuring that our conference at Mission Point was such a great success. I would also like to thank Nancy Parshall and Kathy Oemke for assisting in obtaining the speaker gifts and the Board Awards, including milestone certificates. There were 55 current members, two honorary members and two retired members in attendance this year! What a beautiful location for the conference and I am sure you would all agree that the lecture facility where our training sessions and presentations were held was outstanding. I believe this year’s speakers were well-prepared and offered many suggestions and training tips for us to use. In addition, two of our speakers, Katie Strickfaden and Rebecca Decoster, are not only Referees now, but also members of RAM.

Due to the legal and practical ramifications of the U.S. Supreme Court case Obergefell v. Hodges decided with DeBoer v. Snyder (Opinion issued on June 26, 2015), the forthcoming focus for referees will be in dealing with the complex topics and emotional issues that go along with them. Just some of these changes include rewriting the Record of Divorce and the possible redrafting of the Affidavit of Parentage to accommodate same sex parents, along with some interesting proposed legislation, including a parental equity presumption (HB 4141) that is being debated right now.

Currently, Ron Foon, Ken Randall and I are members of the Michigan Child Support Formula Quadrennial committee. Following numerous meetings over a two month period, a consensus was reached at the September 22nd meeting. We hope to have our recommendations in a formal format in the next few months, at which time we will share the overall package to the numerous groups (FOC Bureau, OCS, FOCA and RAM), to garner support in approving the changes. It is anticipated that the new formula would become effective January 2017, once administratively approved.

Additionally, Susan Murphy and I are working in conjunction with an event coordinator, Brandon, from the Detroit Pistons in hopes of scheduling a time for RAM members to attend a Pistons game. Please look for an email from Susan regarding the tentative dates and the cost to attend this occasion.

Please keep in mind that all members of RAM are welcome to attend any of the Board meetings. For your convenience, our next meeting will be held immediately prior to our RAM Holiday Luncheon on December 17, 2015 at 11:00 a.m. at the Redwood Steakhouse and Brewery. Please feel free to join us for the meeting at 11:00, or arrive in time for lunch around 11:30-11:45. The remaining future meeting dates will be posted on the website once the Board has reviewed the schedule.

I hope everyone has a wonderful Fall and is able to enjoy what remaining warm weather we may have!

Amanda
This year the Mission Point Resort welcomed more than sixty RAM members, guests, and speakers to Mackinac Island for RAM’s Annual Training Conference. A wide range of topics provided great information to attendees to bring back to their communities, and we were honored to have Justice Brian Zahra join us to learn more about our memberships’ thoughts and concerns. The group dinner was delightful and we were pleased to see even retired referees return to break bread with their colleagues.

The conference opened with a dynamic presentation by Katie Strickfaden. Katie, who has since joined our ranks as a referee in Wayne County, shared her knowledge as part of the Third Circuit’s Solution Oriented Domestic Violence Prevention Court to explain the dynamics of domestic violence and discuss effective intervention possible through the courts. Private practitioner Natalie Alane helped shed light on a topic we all struggle with, that of the Medical Marijuana Act and how it relates to decisions we face on a regular basis so we can be more prepared the next time a litigant tells us they “have their card” and can grow and smoke marijuana.

We also benefited from Rebecca Decoster and Jude Periera’s in-depth presentation about parents with serious mental illness and its impact on the parenting relationship. These two attorneys were able to really help us understand what these mental illnesses look like, and provided great pointers to craft safe parenting time situations. Oakland County is lucky to have snapped up Rebecca as one of its newest referees, just before the presentation.

For an overview of the Social Security benefits program, we welcomed Lars Framness, the District Manager for the Social Security Administration’s Sault Ste Marie office. Lars’ presentation exceeded expectations in addressing details about things we did not even know existed. For example, we learned that a child’s representative payee for SSI benefits must complete an accountability form annually, and the money can be spent on basic expenses like housing and clothing, or that child support actually reduces a child’s SSI benefit at a rate of 66 cents for every $1 of child support received.

Last, the conference would not be the same without Ed Messing’s summary of the case law that has developed in the past year, and our annual meeting reviewing RAM’s activities and the presentation of awards. Congratulations go to this year’s award recipients.

- The Presidential Award was given to Michelle Barry for her dedication, integrity and loyalty as a referee for twenty-five years and many years of service as RAM’s Treasurer.
- Jen Sikora, our former Referees Quarterly designer, webmaster, and all around techie, received the Service to the Board Award.
- Deborah McNabb was recognized for her years of service to RAM, most recently of which included consolidating and archiving RAM’s corporate and historical records, by receiving the Valuable Member Award.
- Former Referee David Bilson, who has moved on to a court administrative position was honored with the Outstanding Recognition Award for his contributions to RAM, especially with respect to his work on behalf of juvenile referees.
- The Active Member Award was given to Susan Murphy who has stepped up in the past year by developing and writing our new Member Voir Dire column in the Referees Quarterly and who assumed the role of RAM’s Membership Committee Chair.

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Special thanks in putting on this fabulous conference go to Sahera Housey and Kate Weaver for all of the time and effort put into making this conference enjoyable and informative. Additional thanks go to fellow conference committee members Libby Blanchard and Pat Leary, and our fabulous President, Amanda Kole, who were involved in many details people don’t even know have to get done. On behalf of the Conference Committee, I want to extend a welcome to new members, long-term members, and former member retirees to join us at the H Hotel in Midland next May. Planning is already under way for our increasingly large group of attendees to try out this new location with some new activities and great speakers!
Participants in a domestic violence exercise
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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