I would like to start my first article with a big thank you to our membership. I am honored to be the President of RAM. For those of you who do not know me well, I have been a referee in Lenawee County for over 20 years. Since we are a small county, I have also worn a variety of other hats during that time. I was a district court magistrate, and am currently the Director of the FOC and the Circuit Court Administrator in addition to still having referee duties.

At home, I am a farm wife and mother of a teenage boy who plays hockey. Many days, I am amazed that I can remember my own name with the busy schedule I have. That coupled with a recent prison visit got me thinking about the challenges we and our clients face just to get through the day.

Lenawee County has a prison and a juvenile detention facility. Now I don’t think that is anything to brag about, but it creates unique challenges to the clients we serve. I was recently asked to partner with the Michigan Department of Corrections and the Office of Child Support to go to our local prison and present information regarding services provided by the FOC. The goal is to get inmates who are nearing release engaged in the child support aspect of our offices. While I understand the Office of Child Support’s focus on child support, as a referee I recognize that custody and parenting time issues are also critical to this population.

This was my first visit to the prison. It was intimidating. The whole process was so foreign to me that I found myself struggling. That must be how many of our clients feel when they are released from incarceration. They have parole conditions that they must comply with which typically include finding a suitable
place to live and employment. They may also have program requirements like participation in drug/alcohol programs or mental health counseling. Most of them also have financial obligations as part of the parole process. In addition to that, we expect them to successfully navigate the foreign Friend of the Court Office and court system. That must be overwhelming.

Our visit was coincidently planned on release day. I watched as an inmate was released and he was greeted by his wife and their adorable children. I caught myself smiling at their happiness. Unfortunately, that was not the case for all of them. One man walked out alone with no one there to pick him up. I wondered if he had children. How long had it been since he saw them? Does he even know where they live? As a parent, I can’t even fathom how that would feel.

During the presentation I was really impressed by the thoughtful questions that were asked. It was obvious that my explanation of the process and how to access services available to them was well received. It’s amazing how much better you feel when you have an idea of what to expect in a situation. Many of the inmates had concerns about not being able to pay child support upon their release but many of them also had concerns about how to have contact with their children. One inmate was even so prepared he brought his court order with him for a specific question he had about his child support order.

Going to the prison was a good reminder of the public that we serve and the reason that most of us signed up for this job. We are tasked with making decisions that affect two very important things in most people’s lives—their children and their money. You can’t get much more personal than that. We see people trying to navigate an unfamiliar system every day with varying degrees of success and frustration. What keeps us coming back? My answer is that referees are a rare breed of lawyers who really are inspired to serve the families in their community. I think it is a good reminder for all of us, that the work we do is meaningful and impacts the daily lives of the families that we serve.

I look forward to the next two years as President of RAM. I am blessed to have hard-working members on the Board. Their passion and dedication are inspiring to me. If you haven’t been to a meeting, please join us. We are always looking for input, encouragement and help.

Kristi
20-YEAR CELEBRATION OF THE FAMILY DIVISION: A JUVENILE DIVISION RETROSPECTIVE

by Hon. Deborah McNabb, Presiding Judge
Kent County Family Division

The articles in the Summer 2018 Referees Quarterly did a comprehensive job of chronicling the long struggle to create a family division of the circuit court in Michigan, so I refer you to that issue for a summary of the history leading up to implementation. The focus of this article is to review the family division’s impact on what was formerly the juvenile division of the probate court, historically encompassing the areas of delinquency, name changes, abortion waivers of parental consent, emancipation of minors, adoption and child protective matters. The juvenile division already had a proud history of prioritizing children and families in its docket because of its natural specialization and the mandatory time requirements for those cases. In contrast, the domestic relations docket in circuit court was often given short shrift in favor of criminal and civil matters. Many families had matters pending in circuit court’s domestic relations docket and the probate court’s juvenile docket at the same time, with two or more different judges and often in two or more different courthouse locations.

While the initial dream of a unified family court ultimately did not come to fruition, a compromise was made in creating a family division in our highest trial level court to address these concerns. The concept of “One Judge, One Family” is codified in MCL 600.1023, which provides: “When 2 or more matters within the jurisdiction of the family division of the circuit court involving members of the same family are pending in the same judicial circuit, those matters, whenever practicable, shall be assigned to the judge to whom the first such case was assigned.” The extent to which this mandate has been achieved varies across the state.

In 1997, in Kent County, domestic hearings were heard at the courthouse downtown and juvenile hearings were heard in a courthouse/detention facility miles away. At the inception of the family division, circuit judges rotated in and out and heard only delinquency matters in addition to their regular domestic docket. However, from the beginning, the probate judges newly assigned to the family division heard it all, including the full menu of domestic relations matters. There was also a significant cultural divide between the circuit judges and staff and the probate judges and staff. But amongst judicial officers locally in both courts,
there was near unanimity in dissatisfaction and resistance to the changing roles. I was one of the exceptions. I have always believed that a unified family court would best serve the citizens of our state, so although disappointed in the compromise, I was excited to embrace the full panoply of law that comprised the new family division docket.

In 2001, the new Kent County Courthouse opened, and the physical separation problem was cured. Judges, referees and families no longer had to travel between courthouses. Except for the Friend of the Court, the family division is now all housed in one building downtown, including probation officers, judges, referees and staff. Former domestic relations and juvenile referees were cross-assigned in 2001 and remain “circuit court referees” assigned the full range of cases to this day, each teamed with one family division judge. In 2003, two new circuit judgeships were added, and the assignment of circuit judges to the family division became longer lasting assignments involving the full complement of case types.

From my longitudinal perspective as a judicial officer who was first a domestic relations referee for many years under the old system, then a circuit court referee handling both juvenile and domestic cases, and finally, a circuit judge in the family division, the benefits of the family division to juvenile cases are clear. As noted above, prior to the creation of the family division, the juvenile division of probate court was already doing a great job of serving children and families, but it was doing so in isolation from the families’ often co-occurring legal problems in the domestic relations arena. The circuit and probate courts were strong silos and rarely did the twain meet.

One-stop shopping with the same referee/judge team has led to more efficient use of court services and more holistic treatment of the families involved, at least in Kent County. For example, the judicial officer can reach a deeper understanding of the trauma a delinquent may be experiencing because of his or her parents’ pending divorce, domestic violence or personal protection case. Likewise, a child protective matter may be resolved more quickly because the same judge has the custody case and is able to schedule hearings in both matters sequentially on the same day. Coordination of orders and services prevents unnecessary duplication, confusion and delay. In the past, families largely viewed the various courts and judicial officers as a single entity. The creation of the family division has made that perception a reality. The families know what to expect, and perhaps more importantly, who to expect. I look forward to the improvements the next 20 years will bring to the family division and the administration of justice for our children and families.
LEGISLATIVE UPDATE
Contributed by Kate Weaver, Oakland County

We left off in spring after Governor Snyder had submitted a proposed budget. On June 12, 2018 the Michigan legislature passed the Fiscal Year 2019 budget. Some have said the growing Michigan economy helped make the passing of the budget easier with great support from both sides. Legislators are on the campaign trail with elections right around the corner. More activity for the bills remaining on the floor may occur in Governor Snyder’s lame duck period. Bills are currently “alive” until the legislature adjourns in December 2018.

GENERAL

SB 897: AMENDS SOCIAL WELFARE ACT

This bill would enact Medicaid work requirements. The requirements would be 80 hours per month for those ages 19-62 years of age. Recipients must comply nine out of the twelve months each year. There are exceptions including but not limited to those receiving disability, full time students, pregnancy, etc. DHHS must implement this requirement with advanced notice to recipients by January 1, 2020.

Status: This bill was signed into law on September 5, 2018 and took effect September 25, 2018.

HB 5254: ENACT THE “PUBLIC EMPLOYEE FINGERPRINT-BASED CRIMINAL HISTORY CHECK ACT”

This bill would enact the "Public Employee Fingerprint-Based Criminal History Check Act."

The Act would require each agency in the State that determined it would have to do so, to develop a written policy that ensured that its current and prospective employees who could have access to federal information databases during his or her employment underwent a fingerprint-based criminal history check.

Status: This bill has passed the Senate and has been referred to the House Judiciary Committee who reported it favorable and referred it to the Committee of the Whole. This bill has a great likelihood of passing by the end of the year and would require many of us and our offices to be fingerprinted.

DOMESTIC RELATIONS

HB 4691: AMEND CHILD CUSTODY ACT TO MICHIGAN SHARED PARENTING ACT

The family law community has been abuzz about the introduction of House Bill 4961. Rep. Jim Runestad (R-White Lake), chair of the House Judiciary Committee introduced House Bill 4961 which would amend the Child Custody Act to the Michigan Shared Parenting Act.
The bill would require mandatory joint custody absent limited circumstances. This bill was referred to the Committee on Judiciary and is now referred for a second reading. The Referees Association of Michigan has submitted a letter opposing the bill to the committee.

**Status:** This bill has been referred for a second reading with the House Judiciary Committee (no movement since June of 2017).

**SB 1082/1083/1084 ENACT GESTATIONAL SURROGATE PARENTAGE ACT**

This tie bar group of bills was recently introduced to enact the Gestational Surrogate Parentage Act. This would establish gestational surrogate parentage contracts; to allow gestational surrogate parentage contracts for compensation; to provide for a child conceived, gestated, and born according to a gestational surrogate parentage contract; to prescribe the duties of certain state departments; to provide for penalties and remedies. Further it would ensure birth certificates provided to intended parents of a child born under a gestational surrogate parentage contract.

**Status:** This bill was introduced on September 5, 2018 in the Senate and referred to the Senate Committee on Families, Seniors and Health Services.

**NEGLECT/JUVENILE**

**HB 5750/5751/5953/5954 AMEND THE SAFE DELIVERY OF NEWBORNS LAW**

This tie bar group of bills would amend the Safe Delivery of Newborns Law. The amendments would include the following:

- Allow a parent to voluntarily deliver his or her newborn to a newborn safety device provided by an emergency service provider.
- Require a device to meet the requirements provided in rules promulgated under the bill.
- Require the Department of Health and Human Services (DHHS) to promulgate rules governing newborn safety devices.
- Require an emergency service provider or a physician to perform the same functions for a newborn surrendered to a newborn safety device as is required currently for a newborn surrendered to an emergency service provider.
- Require a pamphlet that provides information to the public concerning the Safe Delivery Program to include information regarding newborn safety devices.
- Provide that the Family Division of Circuit Court would have jurisdiction over a newborn who was surrendered to a newborn safety device.
- Define “newborn safety device” as a device provided by an emergency service provider that conformed to the rules promulgated under the Code.
- House Bill 5953 would amend the Public Health Code to require that the death of an infant who
was born alive following an attempted abortion, was surrendered to a newborn safety device, and then died to be reported in the same manner as for any death.

- Specify that it would be an affirmative defense to a prosecution for exposing a child with intent to injure or abandon that the child who was not more than 30 days, instead of 72 hours, old and was surrendered to an emergency service provider or a newborn safety device.
- Specify that a criminal investigation could not be initiated solely on the basis of a newborn being surrendered to an emergency service provider or a newborn safety device.

House Bill 5750 and House Bill 5751 are tie-barred to each other. House Bills 5953 and 5954 are also tie-barred to 5750.

**Status:** This bill has passed the House in May of 2018 and has been referred to the Senate Committee on Families, Seniors and Health Services

**HB 6396 RAISE THE AGE**

There have been multiple bills introduced to allow 17 year old offenders to be adjudicated through the juvenile court's jurisdiction. This bill is the latest offered to address the problem related to funding services for the 17 year old offender. An analysis of the bill from the House Fiscal Agency can be found at: [http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6396-F1B7A652.pdf](http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6396-F1B7A652.pdf).

All of the above legislation can be accessed at: [http://www.legislature.mi.gov/(S(gw41t0asyldke545yfbmwhra))/mileg.aspx?page=home](http://www.legislature.mi.gov/(S(gw41t0asyldke545yfbmwhra))/mileg.aspx?page=home)
DOMESTIC RELATIONS CASE LAW UPDATE

Cases can be accessed by docket number at the Court’s website at http://courts.mi.gov/opinions_orders/opinions_orders/pages/default.aspx

By Ed Messing, St. Clair County

The Supreme Court vacated the Court of Appeals’ decision in a unique case under the Revocation of Paternity Act, MCL 722.1431, et seq (ROPA) in Burnett v Ahola, 501 Mich 1055 (2018) #157049 4/26/18. Plaintiff filed a motion under ROPA to revoke Defendant Derek Ahola’s presumed paternity of the minor child born during the defendants’ marriage. After hearing and genetic testing, the trial court determined that Defendant Derek Ahola was not the child’s father, but that Plaintiff was the child’s biological father and entered an order of filiation. Defendants alleged that after entry of the order of filiation, Plaintiff admitted knowing that Defendants were married at the time the child was conceived despite his verified motion stating otherwise. After the alleged statement, Defendants agreed to expansion of Plaintiff’s parenting time and consented to an order granting Plaintiff shared custody with equal parenting time.

Thereafter Defendants filed a motion for relief from the order of filiation based upon Plaintiff’s alleged fraud in his pleadings which alleged that he did not know the parties were married when the child was conceived. The trial court denied Defendants’ motion on the basis that their agreements to expand parenting time and to the shared equal parenting time order waived their ability to seek relief from the order of filiation. The Court of Appeals affirmed the result. The Supreme Court vacated the lower court’s decision and remanded the matter to the trial court to: determine whether the Defendants should be estopped from arguing that Plaintiff committed intrinsic fraud on the court during the ROPA proceedings because of their failure to object to custody and parenting time orders with knowledge that the ROPA judgment was obtained through fraud; conduct an evidentiary hearing as to whether Plaintiff committed fraud during the proceedings; and if so, determine what, if any, remedy the Defendants were entitled.

The Court of Appeals addressed the applicability of Obergefell v Hodges, _US_; 135 S St 2584; 192 L Ed 2d 609 (2015) on Michigan custody actions involving children from unmarried same sex relationships in Sheardown v Guastella, _Mich App_ (2018) #338089 5/15/18. The parties were in a romantic same-sex relationship when Defendant entered into an agreement with Plaintiff and a sperm donor, indicating their intent for Plaintiff and Defendant to both become the legal parents, and for Plaintiff to adopt any child born as a result of insemination. Defendant gave birth to a child as a result of the agreement, but the parties never married and Plaintiff never filed a petition for adoption. The parties separated some time no later than February 2014 which was prior to the date of the Obergefell decision.

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Plaintiff filed a custody action in 2016. The trial court dismissed the action because Plaintiff lacked standing as she was not the legal or biological parent of the child. The Court of Appeals held that the Custody Act was not unconstitutional as applied to these parties. It found that MCL 722.22(i) did not violate the equal protection or due process clauses as it only distinguishes between a person that has a biological or legal link to a child and a person that does not have such a link, and therefore applies equally to same-sex and opposite sex non-married couples. Additionally, it found that because the parties never married, Obergefell's principles did not apply. The dissenting opinion relied on the fact that the parties could not have married or obtained an adoption in Michigan pre-Obergefell in coming to the opposite conclusion that there was a violation of the equal protection clause and Plaintiff's substantive due process rights.

Where the trial court's denial of Defendant's motion for expanded parenting time and a reunification plan affects physical custody, the matter is subject to appeal of right, pursuant to Dubin v Fincher, _Mich_ (2018) S Ct #157369 6/20/18.

After remand, the Court of Appeals addressed the procedure to change children's school enrollment in Marik v Marik, _Mich App_ (2018) #333687 7/24/18. The parties shared joint legal and physical custody, with Plaintiff's home being the children's primary residence and Plaintiff having 55% of the children's parenting time. Defendant moved to change the minor children's school enrollment from a public school near Plaintiff's home to a parochial school. Defendant did not claim any deficiency in the children's current school or academic performance but asserted that the parochial school was “better” and that the children would benefit from attending a different school system. In addition, Defendant requested to increase his parenting time to include an additional 18 overnights per year with the minor children. If Defendant's parenting time request was granted, it would result in a 50/50 schedule. The court conducted a de novo hearing, during which both parties gave brief sworn testimony and presented their arguments. The court then denied Defendant's motion on the basis that the motion was brought to benefit himself and not the children.

The Court of Appeals reversed because the trial court did not determine whether there was an established custodial environment, whether the requests would change that environment, the applicable burden of proof, or whether the requests weighed in favor of the individual best interest factors under MCL 722.23 as required by case law. The appellate court indicated that if the proposed school change would alter the established custodial environment, the party seeking the change must demonstrate by clear and convincing evidence that the change would be in the children’s best interests, otherwise, the movant must show a preponderance of the evidence that the requested school change is in the children's best interests.

*** Note that following the Marik decision the Michigan Supreme Court amended MCR 7.202(6)(a)(iii) to define a “final judgment” or “final order” in a post-judgment domestic relations case as one relating to changes in legal custody, physical custody or domicile only.

In *Parks v Niemiec*, _Mich App_ _ (2018) #337823 9/18/18, the Court of Appeals addressed tolling the statute of limitations where the payor filed a motion to discharge his past-due support. The parties to this case had children who turned eighteen years old on December 25, 2005 and May 21, 2007. The trial court denied the motion. The appellate court found that the trial court erred in failing to recognize that the applicable statute of limitations for a child support obligation is found in MCL 600.5809(4), which reflects that it is ten years “from the date that the last support payment is due under the support order regardless of whether or not the last payment is made.” The trial court’s error led to the correct result, though, because the trial court’s continued efforts by issuing orders to show cause, multiple bench warrants and enforcement orders and the temporary suspension of support when the payor became incarcerated in 2007, demonstrated the court’s continuous exercise of jurisdiction which tolled the statute of limitations. The court explained that the “statute of limitations is tolled when a complaint is properly filed or “[a]t the time jurisdiction over the defendant is otherwise acquired”” citing MCL 600.5856(a) and (b), and the court has continuing jurisdiction under the Paternity Act to change the child support obligation or enforce a support order under MCL 722.720(a) and (b). The trial court’s decision was affirmed for this reason and the payor remained liable for the past-due support.

In the unpublished case of *Pieper v Pieper*, Unpub Ct App #338206 6/19/18, the trial court was found to have erred by adopting the FOC recommendation to modify support without finding that a change in circumstances warranted a support modification. The Court of Appeals held that the trial court improperly imputed income to Plaintiff based on the court’s own observations of Plaintiff during the hearing. Both parties acknowledged Plaintiff received SSI and was unable to work. Plaintiff’s failure to produce documentation of her disability did not waive her objection to imputation or forfeit her claim that she was disabled where Defendant did not contest the fact that she was disabled. Additionally, the trial court was found to have failed to address the imputation factors or deviation factors under the formula.
JUVENILE CASE LAW UPDATE

By Ariana Heath, Genesee County

Abuse/Neglect

Published

In re Ferranti, SC 157907, July 5, 2018, consolidates appellate cases 340117 and 340118, which was a termination case from Otsego County Circuit Court. The Michigan Supreme Court scheduled oral arguments on whether to grant application for leave to appeal or take other action and ordered appellants to file a supplemental brief addressing:

(1) Was In re Hatcher, 443 Mich 426 (1993), (which held respondent parents cannot collaterally attack jurisdiction after termination) correctly decided?

(2) If not, by what standard should the court review respondent’s challenge to initial adjudication, in light of their failure to appeal the first dispositional order?

(3) If Hatcher was correctly decided, whether due process concerns may override the collateral bar rule.

(4) Whether a trial court may interview a minor child subject to protective proceedings in chambers.

In re Keillor, COA 340395, June 28, 2018 is a termination case from Wayne County Circuit Court. Respondent adopted the children in 2011. An initial investigation concerned allegations of physical abuse by Respondent. Respondent pled no contest; the court took jurisdiction. A supplemental petition was filed later to terminate parental rights after one of the children made allegations of sexual abuse against Respondent’s live-in boyfriend. The child testified at trial. After trial, the court adjudicated the new allegations, finding a preponderance of the evidence supported the existence of sexual abuse by a non-parent adult. The trial court then terminated parental rights. Respondent argues sexual abuse was not established because the child never testified that he actually touched her private parts. The court said “intimate parts” also includes the groin. The court noted the child said the non-parent adult also touched her below the waist and repeatedly said she had “to take his hand out,” leading the court to say it was reasonable to infer that her use of the word “out” meant his hand was in her pants. The court further concluded her testimony established the touching was for sexual arousal or gratification. The court found respondent did not and does not believe the non-parent adult sexually abused the child and at the time of trial, the non-parent adult was still living

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with respondent, making termination proper pursuant to MCL 712A.19b(3)(b)(iii). The court upheld the best interest analysis as well. The concurring opinion, which was not convinced the testimony adequately established evidence of sexual abuse said there was overwhelming evidence of physical abuse and affirmed on those grounds, and agreed with the lead opinion’s assessment of the best interests of the children. The Court of Appeals thereby affirmed the trial court’s decision.

Notably, the dissent did not agree with the interpretation of intimate areas. Although the dissent found the child credible, it found the testimony failed to establish sexual abuse. Additionally, it stated that the findings of the concurrence were erroneous because the trial court only relied on the alleged sexual abuse for termination.

In re CMR Kaczkowski, COA 341138, June 28, 2018 is an appeal from termination of parental rights from the Macomb County Circuit Court. Respondent’s husband murdered her child prior to the birth of the child in this case. The initial petition recited the prior CPS history and that Respondent had never filed for divorce. The petition also alleged Respondent was in a relationship with JK, the biological father of the current child, despite that he was prohibited from having contact with minor children due to a prior conviction in Oklahoma for child molestation. There were further concerns about poor housing conditions and Respondent’s mental stability. The Court of Appeals noted concern that they could not find any order explicitly directing Respondent to refrain from contact with JK by name and was “deeply concerned” that JK’s violation of orders was held against Respondent. There were numerous references to Respondent having been told multiple times by the court, the agency, and the GAL that she and the child could not have contact with JK. There were also concerns that Respondent did not benefit from services. Affirmed.

In re Beers/Lebeau-Beers, COA 341100 & 341101, September 11, 2018. Mother was a member of Cheyenne River Sioux Tribe of South Dakota. The Eaton County Circuit Court applied the heightened ICWA/MIFPA standard to her termination, but not to the father’s, reasoning the Native American heritage was solely through the mother. The appellate court reversed and remanded, saying the heightened burden applies because the minor child is an Indian child. The COA raised the issue sua sponte of whether the heightened standards apply when a father never had legal or physical custody of the child. The court distinguished this case from Adoptive Couple v Baby Girl, 570 US 637; 133 S Ct 2552; 186 L Ed 2s 729 (2013), and said that although father did not have legal or physical custody in the terms of the legal definition (the parties only executed an Affidavit of Parentage), father, mother, and the child resided together as a family unit wherein father was providing some care and custody before DHHS petitioned to remove the child. Thus, ICWA applies as there was an existing, intact Native American family before the child’s removal. It also further distinguished this case from In re SD, 236 Mich App 240; 599 NW2d 772 (1999), where the court had terminated father’s rights but mother was not subject to the petition. In that case, mother was the one with Native American heritage and the father was not involved. The panel in that case reasoned an “Indian family” was not being broken up and therefore ICWA active efforts did not apply. The court said this case is factually distinguishable because an “Indian family” was being broken up. Finally, the appellate court addressed petitioner’s argument that the court should use a plain error standard. It declined, ruling that if they used the plain error standard, it would require the COA to find that active efforts were made and the

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reasonable doubt standard was met, which would be improper appellate fact finding as the trial court did not employ those standards. The court found the appropriate remedy was to conditionally reverse father’s termination and remand to the trial court to address the termination under the appropriate legal standard applicable to ICWA/MIFPA. The court upheld mother’s termination as meeting the appropriate standards under ICWA/MIFPA and no errors were made by the trial court in her case. Reversed and remanded as to father’s termination only.

Unpublished Cases of Interest

In re Phillips, COA 340675 & 340676, June 26, 2018, involved both parents appealing a termination out of Kent County Circuit Court. The appellate court affirmed termination of father’s rights due to harm to the children caused by his emotional volatility/aggression. However, the court overturned the mother’s termination. The trial court’s opinion made it clear mother’s rights were terminated because she and father were a team and she refused to part from him. The appellate court said if mother refused to keep father out of the children’s lives, termination would be appropriate. However, the evidence showed mother was never made aware she had a choice. She was told she “could” separate from him and have a separate treatment plan, but it was not made clear in plain terms. The COA said “It is simply unacceptable to terminate one parent’s parental rights purely on the basis of the other parent’s unacceptability unless the parent was explicitly and expressly advised in no uncertain terms that such an outcome was possible.” Reversed and remanded as to mother’s termination only.

In re B.N. Lee-McCray, I.M. Pribyl, and J.J. McCray-Reed, COA 340901, June 7, 2018. Respondent’s first attorney withdrew. He had not filed a formal motion and there was no indication on the record that Respondent was notified. A new attorney was appointed to represent Respondent. The second attorney later moved to withdraw and made no effort to serve the motion on Respondent. The DHHS worker also admitted they had not served Respondent with a summons for the new trial date. The Monroe County Circuit Court found Respondent was adequately served because he had been notified of the previous trial date. At trial, the court allowed the second attorney to withdraw, conducted the trial in Respondent’s absence and terminated his rights. The COA reversed because Respondent was not properly notified of the motion for withdrawal or trial date. Respondents must be served with actual notice of a trial date. Reversed and remanded for a new trial.

In re Eberhardt/Welch, COA 341365, June 7, 2018 addressed a Macomb County Circuit Court case where the Petitioner was attempting to terminate parental rights in the initial petition. During a bench trial Respondents moved for summary judgment at the close of petitioner’s proofs. The COA reversed the trial court’s dismissal pursuant to MCR 2.504(B)(2). It found that MCR 2.504(B)(2) is not a court rule specifically incorporated by MCR 3.901 into child protective proceedings. Additionally, the trial court’s application of the court rule violated the rights of the children. The children are interested parties and the court’s dismissal of the petition deprived them of their opportunity to participate through the LGAL. Reversed and remanded.
MEMBER VOIR Dire
by Susan G. Murphy, Jackson County

In this edition of the newsletter, we visit Mark Sherbow, Referee Extraordinaire in Oakland County. Mark is a home town boy, a born and bred Detroiter. He graduated from Wayne State University Law School in 1971 and maintained a general practice, concentrating in family law, until 1995. At that time, he joined the Oakland County Friend of the Court and has maintained involvement with RAM for many years.

As a referee, Mark wishes that the public knew how hard it is to protect children from the conduct of their own parents. As referees, we all know how hard it is when parents get bogged down with the minutia and miss the big picture of their conduct. Mark wishes he could learn another method of communicating or had a superpower to infuse people with common sense.

One of Mark’s endearing qualities is his commitment to his family. He and Susan have been married for 38 years. They enjoy spending time with their two daughters and their daughters’ significant others, Alexandra and her beau, Chris, and Rachel, who just married Alexander in June. While their family had many pets over the years, Mark and Susan are true empty nesters now.

In keeping with his family-man characteristics, Mark’s most prized possessions are the loose leaf notebooks he has compiled over 30 years containing pictures and cards from his children and others, adages and advice, and wit and humor. His focus on family continues as he reflects on the future. Mark looks forward to the days when he will enjoy his grandchildren, travel, and play more golf.

It was no surprise to learn that Mark likes many things typical of his generation. He loves film noir and action/western movies, with Casablanca being his favorite film. He loves classical music, as well as the big band, blues, 40’s, 50’s, and 60’s, eras; he even likes a bit of country music mixed in. Mark enjoys traveling and recommends three of the most peaceful places he’s ever been for our future travel plans: beautiful northern Ontario, Normandy on the coast of France, and central Italy.

Mark doesn’t have any words of wisdom for his 16-year-old self because “16-year-olds truly don’t take advice,” but he would discourage anyone looking to attend law school from attending, unless the student intends to put the law degree to an alternative use. Had he pursued a different career track, Mark would have either owned a book store or a wine/coffee shop. He could also see himself teaching at a university. Anything, except doing lawn maintenance and gardening.

Susan would tell us that Mark is technologically challenged, and she relegates him to the television and radio. He can be found watching documentaries, histories, cleverly written mysteries, and golf. During the holiday season, he enjoys watching the Hallmark movies that take on the typical Scrooge story. As this year draws to its end, Mark bids each of us a healthy, prosperous new year with “God Bless Us, Everyone!”
UPCOMING EVENTS

- RAM Board Meeting
  Thursday, **October 25, 2018**
  10 a.m.
  State Bar of Michigan
  Lansing, MI

- RAM Board Meeting/Holiday Lunch
  Friday, **December 14, 2018**
  11 a.m. meeting/11:30 a.m. luncheon
  Location TBD

- RAM Board Meeting
  Thursday, **February 7, 2019**
  10 a.m.
  State Bar of Michigan
  Lansing, MI

- RAM Board Meeting
  Thursday, **April 11, 2019**
  10 a.m.
  State Bar of Michigan
  Lansing, MI

Special thanks to Shelley and Ken for putting many hours into helping with the Quarterly over many years!
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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