SCAO’s CHILD WELFARE SERVICES DIVISION
Michigan Court Improvement Program

By Casey M. Anbender, Management Analyst
SCAO-Child Welfare Services Division

Our Mission: Child Welfare Services provides assistance to juvenile courts and child welfare professionals to ensure the safety, expedite the permanency, and enhance the well-being of children in foster care. CWS expertise covers child protective proceedings including foster care, adoption, and termination of parental rights, coordination with Indian tribes, permanency outcomes, and data collection and analysis.

Child protection cases present complex legal and social issues to the juvenile court. Every day, jurists are faced with difficult decisions affecting abused and neglected children; from removing a child from home to termination of parental rights. Jurists and court personnel are continually challenged to find the best solutions for children and families, to collaborate with community partners, and to advocate for increased resources and programs to help families succeed.

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In 1993, the federal government emphasized the importance of child welfare law and enacted the State Court Improvement Program as part of the Omnibus Budget Reconciliation Act, Public Law 103-66, which among other things, designates federal funds for grants to state court systems to improve child welfare laws and judicial functions. In Michigan, federal Court Improvement Program (CIP) grants are used to fund CWS as a specialty division within the State Court Administrative Office with a focus on improving the ability of state court systems to manage and timely resolve child protection cases (child abuse/neglect, foster care, and adoption). Federal CIP grants are available to each state’s highest court. CWS also receives an annual grant from the Governor’s Task Force on Child Abuse and Neglect to provide multi-disciplinary child welfare training programs statewide. CWS collaborates with courts, the Department of Health and Human Services (MDHHS), private agencies, Indian Tribes, attorneys, universities, community health, education, and child welfare advocates to identify barriers and develop solutions to optimize Michigan’s success in achieving timely permanency for foster youth.

CWS also houses the statutorily-created Foster Care Review Board (FCRB), which provides third-party review of cases in the state foster care system. The FCRB utilizes citizen volunteers (approximately 180 statewide) to review and evaluate permanency planning processes and outcomes for children and families in the foster care system. Based on data collected through case reviews, the FCRB advocates for systemic improvements in areas of child safety, timely permanency, and family and child well-being.

The scope of CWS activities includes, but is not limited to, the following:

- Increasing the quality of legal representation in child protective proceedings through court-requested Court Observation projects and training programs.
- Providing resources and training programs for jurists, attorneys, court staff, MDHHS, private agencies, and other child welfare stakeholders. We offer a new jurist training annually for judges and referees assigned to a child abuse/neglect docket. The training includes an interactive case scenario, SCAO court forms, Title IV-E funding rules, and multiple resources. We also offer testifying in court and petition drafting training for non-lawyers, Lawyer Guardian Ad Litem boot camp trainings, and several multi-disciplinary conferences.
- Improving the timeliness, quality, and thoroughness of child protective proceedings.
- Providing training on federal Title IV-E funding requirements to courts.
- Developing data-driven, outcome-focused best practices that courts can implement to ensure the safe and timely permanency for children in foster care.
- Consultation with jurists on best practices for child protective proceedings.

2016 Initiatives:

1. **Court Observation Project:** This new CWS initiative measures the quality of child protective proceedings, and was implemented after other state CIP’s proved it to be a successful concept. The CWS court observation team developed and uses an observation tool designed to capture whether significant issues are addressed at court hearings. The tool uses a set of Due Process and Well-Being indicators to track the frequency and detail with which critical issues are discussed in the hearing. The project is conducted by request only. The team will observe all hearing phases conducted by the jurist or jurists responsible for the abuse/neglect docket. The team then develops and presents a report with recommendations after the first round of court observation. The court will have the

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opportunity to implement recommendations from the report, and the CWS observation team will return approximately 6-9 months later to observe whether any changes in practice have resulted. This project is a good opportunity for jurists to receive constructive feedback on the quality of court hearings in lieu of the general focus on timeliness and data measurements.

2. **New Michigan Child Welfare Training Clearinghouse:** In coordination with the Governor’s Task Force on Child Abuse & Neglect, CWS created the first central web location for child welfare training opportunities across the state. The clearinghouse is designed to offer a common web space for all child welfare training providers to share training events, as well as to promote coordinated efforts between the various training providers. By creating a central location, child welfare professionals are now able to easily access all statewide child welfare training opportunities. The training providers include: Children’s Trust Fund, DHHS Office of Workforce Developing and Training, DHHS University In-Service, Michigan Federation for Children and Families, Prosecuting Attorneys Association of Michigan, Child Abuse Training Services, and State Court Administrative Office. The training programs are listed and grouped by profession. Registration links to each training event are also included in the clearinghouse. You can access the clearinghouse at the following url: [http://courts.mi.gov/cwtraining](http://courts.mi.gov/cwtraining).

CWS staff is available to assist you and your court in a variety of ways. We welcome your input, ideas for training topics, and innovative initiatives. Please visit our website for access to training videos, publications, the CWS toolkit, and more: [http://courts.mi.gov/cws](http://courts.mi.gov/cws).

The next CWS New Jurist Training is scheduled for November 30, 2016 at the Hall of Justice in Lansing. Registration for the training can be accessed at: [https://newjuristraining113016.eventbrite.com](https://newjuristraining113016.eventbrite.com).
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, by Order on leave granted, affirmed in part, vacated in part, and reversed in part the Court of Appeals decision in Allard v Allard 308 Mich App 536 (2014), aff’d in part, vac in part, rev in part Sup Ct #150891 5/25/16. The parties’ antenuptial agreement provided that certain property acquired by the parties during their marriage was to remain the separate property of each party, including any property acquired in either party’s individual capacity or name. The agreement provided that it was in full satisfaction of, and waived and released, any and all rights or claims for alimony, support, property settlement, or any other rights or claims incident to marriage and divorce under present or future statute or common law. The Supreme Court remanded the case to the Court of Appeals to consider whether the parties may waive the trial court’s discretion to invade a party’s separate property through an antenuptial agreement and if so, whether the parties validly waived MCL 552.23(1) and MCL 552.401 in this case. The Supreme Court further held that Plaintiff’s 100% membership interest in LLC’s acquired in his name during the marriage was his sole and separate personal property, reversing the Court of Appeals’ opinion in this regard. Finally, the Supreme Court affirmed the Court of Appeals’ conclusion that the antenuptial agreement does not treat income earned by the parties during the marriage as separate property, but vacated the findings as to what income was marital income, remanding that issue to the trial court.

The Court of Appeals declined to apply the Equitable Parent doctrine in a case involving an unmarried same-sex couple in Lake v Putman _Mich App_(2016) #330955 7/5/16. Defendant conceived a child through artificial insemination and gave birth to the child during the parties’ 13 year unmarried relationship. The trial court granted summary disposition in favor of Plaintiff and awarded parenting time. The Court of Appeals reversed, finding Plaintiff lacked standing under the Child Custody Act as she was not a parent or guardian of the child. Further, the equitable parent doctrine only applies to a child born or conceived during a marriage. The court reversed the order denying Defendant’s motion for summary disposition, vacated the parenting time award to Plaintiff, and remanded the matter for entry of an order for summary disposition to Defendant. Note that application for leave to the Supreme Court is pending in a similar case, Kolailat v McKennett Unpub Ct App #328333 12/17/15 app for lv pending.

The Plaintiff in a divorce action is required to allege that although no children were born during the parties current marriage, the parties had children together, according to Tyler v Tyler _Mich_(2016) #326766 6/30/16. The Plaintiff’s complaint for divorce alleged that there were no minor children from their current marriage, and acknowledged that that a prior action between the parties was no longer pending. A default entered against Defendant for failure to respond. Defendant filed her separate divorce complaint for divorce, alleging that the parties had minor children, and the court sua sponte set aside the default and dismissed Plaintiff’s divorce action for failure to allege that the parties had minor children together. The Court of Appeals affirmed, as MCR 3.206(A)(5)(b) requires that a divorce complaint state whether there are minor children of the parties or minor children born during the marriage. As the Plaintiff failed to state that there were minor children of the parties, even though not born of the marriage, the Court had the authority under MCR 2.504(B)(1) to dismiss the complaint for failure to comply with the court rules.

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In *Hudson v Hudson* _Mich App_ (2016), #322257 1/7/16, the divorce judgment awarded Defendant an EDRO for 39.5% of Plaintiff’s MSERS retirement benefits as of April 23, 2013. Defendant then submitted an EDRO selecting an option of receiving his share as a single life annuity payable during Defendant’s lifetime. Plaintiff objected to the EDRO, as she was not given the option under Defendant’s federal pension to choose a single life annuity payable during Plaintiff’s lifetime, and therefore would be precluded from receiving payments after Defendant’s death. The Court of Appeals held that the trial court properly entered Defendant’s proposed EDRO under MCR 3.211(B), as the parties were bound by the divorce judgment which did not preclude Defendant’s election.

In *In re Estate of Lett* _Mich App_ (2016), #326657 3/17/16, decedent, John Lett, had named his then wife, Nancy Henson, as the beneficiary of his life insurance policy during their marriage. When John and Nancy divorced in 2009, their divorce judgment cancelled their interests in each other’s life insurance policies and also required John to obtain and maintain a life insurance policy naming Nancy as the beneficiary to secure payment of his share of a marital debt. When Nancy sought to enforce the Judgment in 2010, John re-named Nancy as 100% beneficiary of his pre-judgment life insurance policy. John paid off the marital debt in 2012, but failed to change his beneficiary designation before his death in 2014. After John’s death, the probate court ordered that Nancy pay the proceeds from John’s life insurance policy into John’s estate. The Court of Appeals reversed. While the divorce judgment had cancelled Nancy’s interest in John’s life insurance, the judgment did not prohibit John from re-designating Nancy as a beneficiary after the judgement was entered.

Two unpublished opinions of note were also issued. The trial judge in *Solomon v Smith Unpub Ct App* #327979 2/9/16 had previously presided over a jury adjudication trial in child protective proceeding. The trial judge then presided over a subsequent hearing in the parties’ paternity action regarding Plaintiff’s motion to modify the existing custody order and Defendant’s motion for declaratory relief based on collateral estoppel. During the later hearing the judge explained that she would have found Defendant’s testimony incredible during the prior adjudication trial and would have acted differently if she were the trier of fact. The trial court granted Plaintiff’s motion to modify the custody order and denied Defendant’s motion for declaratory relief.

The Court of Appeals affirmed. Defendant did not show that the court improperly took judicial notice of the record of the prior child protective proceeding. The trial judge’s comments did not demonstrate a constitutionally intolerable probability of bias or prejudice against Defendant, as the court found Defendant could become a safe and appropriate part of the child’s life if he was provided with appropriate services. As the issues in the adjudication trial were different than in the later custody hearing, and as Plaintiff did not have control of the the adjudication trial because she was not the petitioner, the Court was not bound, under the doctrine of collateral estoppel, by the jury’s decision in the prior adjudication trial.

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The Defendant, in Richardson v Kennedy Unpub Ct App # 327771 3/10/16, claimed that the trial court’s award of sole legal and physical custody to Plaintiff violated her Second Amendment rights by considering her use of firearms. The Court of Appeals affirmed the lower court. The court did not penalize Defendant for her lawful possession of a firearm, but had properly, under factor (l), expressed its’ concerns about her dangerous and reckless use of firearms. The trial court’s findings under factor (l) were supported by evidence that Defendant had left her weapon in her purse on the floor where the child was crawling, had worn the gun under her shirt to the child’s first birthday party, and had pointed her gun at Plaintiff when he was holding the child. In addition, the court properly determined the established custodial environment and determined that the threshold had been met to review the custody issue, and the trial court’s findings regarding each best interest factor were not against the great weight of evidence.

UPCOMING EVENTS

• RAM Executive Board Meeting - noon, September 22, 2016, Grand Rapids, MI
• RAM Executive Board Meeting - 3 p.m. October 21, 2016, via conference call
• MJI Domestic Relations Referee Training November 29, 2016, Michigan Hall of Justice Lansing, MI
• MJI Juvenile Referee Training November 30, 2016, Michigan Hall of Justice Lansing, MI
• RAM Executive Board Meeting and Annual Holiday Lunch, December 9, 2016, 11:30 a.m., Redwood Steakhouse and Brewery, Flint, MI. Executive Board Meeting starts at 11 a.m.
• RAM Executive Board Meeting - 10 a.m., February 2, 2017, State Bar of Michigan, Lansing, MI
• RAM Executive Board Meeting - 10 a.m., April 13, 2017, State Bar of Michigan, Lansing, MI
• RAM Annual Training Conference and Annual Membership Meeting, May 24-May 26, 2017

ART WORKS FOR FLINT’S DETAINED YOUTH

Shelley Spivack, a RAM member and contributor to the Referees Quarterly, recently had an article published in the ABA Children’s Rights Litigation Journal. The article focuses on the Buckham/GVRC Share Art Project, an arts program she co-founded at Genesee County’s juvenile detention facility, GVRC.

The Journal can be accessed at:
http://www.americanbar.org/content/dam/aba/publications/litigation_committees/childrights/summer2016.authcheckdam.pdf
MEMBER VOIR DIRE:
2016 CIRCUIT COURT RUN
Three Referees Seek Election to Circuit Court Bench

By Susan Murphy, Jackson County

Did you know that our organization has three members seeking election to their local bench? Here’s a little bit about each of them for this quarter’s Member Voir Dire.

**Michelle Letourneau-McAvoy**

Michelle Letourneau-McAvoy sits as a Referee in Wayne County. She was appointed in 2011 after 12 years in private practice. Michelle believes becoming a Wayne County Circuit Court Judge is the next step in her legal career that began early on as a legal aid lawyer fighting for the underdog. There are four non-incumbent openings for circuit court judge which came about from retirements, and quite a few attorneys are running for the open seats.

Michelle was the primary author of the current Wayne County Co-Parenting Time Plans. This plan takes into consideration that there is no "one size fits all" approach to parenting time and allows for a variety of parenting time schedules to meet the needs of the children first and then those of their parents.

In addition to presiding over cases, Michelle has assisted in making meaningful changes to the Wayne County Friend of the Court. These changes are designed to make the court process more “user-friendly” and efficient for attorneys and litigants. If elected to the bench, she would like to continue her commitment to making the court more user-friendly and accessible to pro se litigants. Michelle and her husband, Christopher McAvoy, live in Plymouth along with their two school age children. Christopher is a practicing lawyer with an office in Taylor, MI. Michelle grew up in Livonia and graduated from the University of Michigan-Dearborn where she majored in political science and philosophy. Afterwards, while working full time, Michelle attained her law degree from Wayne State University.

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During her free time, Michelle volunteers in the Plymouth – Canton school district, having been part of the Student Transition Advisory Committee in connection with school closures and consolidations. She also has volunteered for First Step, a domestic violence resource agency, and Gleaners Community Food Bank. In May, Michelle was elected to the RAM Board and serves on the membership committee.

Deborah McNabb

Deb McNabb hopes to win election to the Kent County Circuit Court. Deb has been a Circuit Court Referee in Kent County, hearing thousands of domestic relations, child protective and juvenile delinquency cases, since 1991; she has been Chief Referee since 2012. As a Referee, she wishes the public knew how deeply she cares about every child and family who comes before her and that the “best interests of the child” are not always obvious. She finds the most enjoyment from her work in being able to make a real difference in a child's life, regardless of the type of case before her. To improve the Court, she would provide better limited English proficiency services, not just in the courtroom, but in the victim witness program and other court services.

Deb supports the Court Appointed Special Advocates (CASA) because she finds they are an invaluable resource in providing an “agenda-free” perspective on what's best for children in child protective matters. She also supports Youth for Understanding and has hosted two foreign exchange students, one from Germany and one from Turkey, in her home. Deb says "I strongly believe that open communication and cultivating personal connections and understanding is the key to peace in our world."

Deb has been married to Charles for almost 30 years. They are empty nesters with children ranging in age between 20 and 25: Lauren (her husband Todd), Ian, Devan, and Erin. The family also has multiple pets: Buffy the dog, and her cat siblings Lily, Lucy, Salem, and Hissy.

Originally from Florida, Deb moved to Michigan to attend Alma College. She graduated from Alma in 1984 where she double majored in Political Science and Spanish. She went on to attend DePaul University College of Law, graduating in 1987.

In addition to her work as Referee, Deb is a Past President of RAM and has served on its Board from for many years, up until 2016. She currently serves on the State Bar of Michigan's Children's Law Section Council.

Lorie Savin

Lorie Savin is running for Circuit Court Judge in Oakland County. She has more than 20 years of experience in family law and is a life-long Oakland County resident with strong ties to public education. She attended public schools in Oak Park and Southfield; the University of Michigan where she earned a Bachelor of Arts in Political Science and Sociology; and Wayne State University Law School.

Lorie, her husband Adam Larky, and their two daughters currently live in West Bloomfield. She is active in her community, including volunteer work for her local schools.

Many of us know that Lorie has been a key member of RAM where she has served on the Board for four years. She also serves as the editor of RAM's quarterly newsletter (with the exception of this particular article). She is very modest, but we all know that if RAM needs something done, she will help make it happen. Lorie also serves as an appointee to the State Bar of Michigan’s Judicial Ethics Committee and is a great resource to us whenever we need help comprehending the complexities of the Judicial Ethics Opinions.

What we might not know is that Lorie is also a published author on family law, and public speaker on issues facing families. In addition to her active involvement with RAM, Lorie has just completed a two-year term as Treasurer for the Michigan Inter-Professional Association on Marriage, Divorce and the Family.

When I asked her what she was most looking forward to if elected to the bench, Lorie said that she wants to “deliver the best quality services in the most efficient manner possible because being a judge is a public service. It is important to me to have a seamless transition on January 1st so litigants and attorneys don’t have to worry about delays or problems in their case because they have a new judge.”
LEGISLATIVE UPDATE
By Kate Weaver, Oakland County

Governor Snyder submitted his Fiscal Year 2017 budget proposal on February 10th to a joint meeting of the House and Senate Appropriation Committees. Those committees are now tasked with review of the proposal and passing a comprehensive set of appropriations. This seems to be the number one focus in the legislature at this time but there has been some movement on certain bills below, while other relevant bills have been introduced but no progress made.

ADOPTION

SB 0458: ADOPTION CODE AMENDMENT

This bill would authorize a court to terminate a person’s parental rights of a child if the parent having custody of the child according to a court order then married and his or her spouse petitioned to adopt the child and the Code’s other requirements are met (distinction: court order is proposed vs. requiring legal custody). Further, the bill specifies, for the purposes of termination of parental rights, a child support order stating that support was $0.00 or was reserved would have to be treated as if no support order had been entered.

STATUS: This bill was signed by the Governor on June 6, 2016 with immediate effect.

NEGLECT/JUVENILE

SB 0503: AMEND THE MICHIGAN INDIAN CHILD FAMILY PRESERVATION ACT

This bill would require, in a proceeding for removal of an Indian child from a parent or Indian custodian, an expert witness who would have to testify that the continued custody of the Indian child by the parent or Indian custodian would likely result in serious emotional or physical damage to the child. Further it would require a court that discovered a child could be an Indian child after a guardianship was ordered, to notify the tribe, the parents or Indian custodian, and the current guardian that the Act could potentially apply. Also, the amendment refers to “Indian Child” throughout the Act instead of “child.”

STATUS: This bill was signed by the Governor on March 9, 2016 with immediate effect.

HB 4547/4548/4549: VARIOUS AMENDMENTS AND ADDITIONS TO CHILD PROTECTION LAW

Taken together the bills would amend various acts to require electronic recording (video recording of a witness statement) of an interview of a child in a child abuse or neglect investigation. Further, the bills allow that statement to be considered in a probation hearing or hearing to expunge irrelevant or inaccurate evidence from the Central Registry. Requirements are to specify who may view a video recorded statement, how long a court must retain it and to increase the penalty for unauthorized disclosure of a statement.

STATUS: These bills are tie-barred to each other, meaning no bill could become law unless they are all enacted. They have been referred for a second reading with the House Committee on Judiciary.

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SB 0251: AMEND JUVENILE CODE (consent calendar)

This bill would amend the juvenile code to allow the family court to proceed informally on a consent calendar if the court determined the juvenile should not be under the court's formal jurisdiction (can switch back to formal calendar if appeared proceedings were not in juvenile's best interests). See bill for requirements regarding consent calendar.

STATUS: This bill was signed by the Governor on June 20, 2016 with effect 90 days after signing.

DOMESTIC RELATIONS

SB 0334: AMEND THE CHILD PROTECTION LAW

ATTENTION ALL MANDATORY REPORTERS (all of us)...this bill requires a mandated report of suspected child abuse or neglect to make an immediate report to centralized intake by phone or through the online reporting system established by Department of Health and Human Services (DHHS). This essentially eliminates the old requirement of calling in the suspected abuse or neglect and following up with a written report. Unfortunately, the online system is not up and running and the start date is unclear.

STATUS: This bill was signed into law on March 8, 2016 start date unclear.

HB 4480: AMEND THE CHILD CUSTODY ACT (Section 3 - best interest factors (j) re: domestic violence)

This bill would amend the Child Custody Act best interest of the child factor (j) to read, “The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court shall not consider negatively for the purposes of this factor any action taken by a parent to protect a child or that parent from the child’s abusive parent.” Amendment in bold.

STATUS: This bill was signed into law on May 3, 2016 with immediate effect.

HB 4476: AMEND THE REVISED JUDICATURE ACT (mandatory domestic violence screening in mediation)

This bill would amend the Revised Judicature Act to prohibit a court from submitting for mediation a contested issue in a domestic relations action if a personal protection order (PPO) had been entered protecting one party and restraining the other, or if one or both parties were involved in a child abuse or neglect proceeding, unless the court first conducted a hearing under court rules to determine whether mediation was appropriate (reaffirming MCR 3.216(C). The court, however, could order mediation if the party protected by a PPO requested mediation. The bill also would require the mediator in a domestic relations mediation to screen for the history or presence of coercion or violence.

STATUS: This bill was signed into law on May 3, 2016 with immediate effect.

All of the above legislation can be accessed at: http://www.legislature.mi.gov/(S(gw41t0asyldke545yfbmwhra))/mileg.aspx?page=home
JUVENILE CASE LAW UPDATE
By Jen Kitzmiller, Berrien County

Adjudication

(Court of Appeals #328172, March 15, 2016)

The father appealed the trial court’s order terminating his parental rights. The Court vacated the orders of adjudication and termination and remanded the case back to the trial court holding that the trial court “effectively deprived” the father of an adjudication hearing.

Initially, due to the mother’s significant substance abuse issues, the child was removed from the mother and placed with the father. The mother pled no contest to the original petition, an adjudication order was entered and the mother was ordered to have no contact with the child outside of visitation arranged by DHHS. About 9 months later, the child was removed from the father as the department alleged that he continually allowed the mother to have unsupervised and unauthorized contact with the child despite knowledge of the mother’s drug problems. The father requested an attorney and the attorney for the mother indicated that she would represent the father at the adjudication on the supplemental petition. The father did not appear for the bench trial and the attorney verbally requested to be released from representing the father as he had not contacted her since the appointment a month prior. The trial court excused the attorney from representing the father and the attorney left. The trial court then entered a “default.” The petitioner presented two witnesses, which resulted only in seven pages of transcript. Some of the testimony included inadmissible hearsay.

The trial court entered an order after the hearing indicating that the referee “entered a default against the father and proceeded in a default manner” and ordered that the minor child shall remain under the jurisdiction of the court. The father attended subsequent review/PPH hearings and was unrepresented. The mother later released her parental rights and the father was ordered to not allow contact between the mother and the child. An Order to Show Cause was then filed against the father due to the father violating the no-contact order. This hearing was approximately a year after the adjudication hearing on the father. Counsel was appointed for the OSC. The father pled guilty to violating the no-contact order and stated that no such contact would happen again as it was an error in judgment. The petitioner filed a supplemental petition seeking to terminate his parental rights as a result of the contact. The trial court then appointed an attorney to represent the father at the termination hearing.

On appeal, the Court found that there was no authority for the referee to “enter a default.” The court rules are clear that, unless specifically provided, other court rules do not apply in child protective proceedings. The court rule pertaining to defaults is not among the rules “specifically provided” to apply in juvenile cases. As a result, a default cannot be entered in a child protective proceeding. In addition, Sanders requires a trial on a parent’s fitness and a default does not determine whether or not a parent is “fit.”

The petitioner argued that the evidence presented after the trial court entered the default constituted an adjudication trial. The Court disagreed, finding that the trial court released the father’s attorney prior to the
presentation of any evidence and, what was presented cannot be considered to be an adjudication trial. The father requested an attorney a month prior to the trial, and one was appointed. Even though the father did not appear, he is entitled to assume that counsel would be present to represent him. The father did not “waive” his right to be represented by an attorney and a short one month long failure to communicate with the attorney cannot be construed as a termination of the attorney/client relationship. The trial court effectively proceeded on an ex-parte basis and this process “offends due process by any stretch of the imagination.” If the attorney had been present, inadmissible hearsay may not have been entered and the speculative evidence may have been argued away.

The Court also found that the father’s challenge to the adjudication was not an impermissible collateral attack. The father never received an adjudication as to his fitness as a parent, like in *Kanjia*. The father is directly challenging the trial court’s decision to terminate his parental rights without having afforded him sufficient due process, such as a proper adjudication hearing.

Because the father was effectively unadjudicated, the adjudication order and the termination order were vacated.

**Tender years/admission of DVD of forensic interview**

*In re Martin*, __ Mich App __: __ NW2d __ (2016) (Court of Appeals #330231; 330232, June 23, 2016)

The parent’s parental rights were terminated at an initial dispositional hearing for sexual abuse. Both parents appealed. The evidence presented at the trial regarding the father consisted of a DVD of the child’s forensic interview. During the forensic interview, the child stated the father performed an act of anal penetration. The parents argued on appeal that the trial court erred in admitting the DVD into evidence. The Court agreed.

The Court analyzed MCR 3.972(C)(2)(a) and MCL 712A.17b. MCR 3.972(C)(2)(a) states that a statement by a child under ten involving sexual abuse performed by a person may be admitted into evidence through the testimony of a person who heard the child make the statement, but only after the court determines, at a hearing, that the statement has the indicia of trustworthiness. MCL 712A.17b states that video recorded statements made by a witness under 16 years of age shall be admitted at all proceedings except the adjudication.

In this case, the trial court held the tender years hearing prior to the adjudication and viewed the DVD. The trial court found that the statements had the indicia of trustworthiness and found that the DVD was admissible under the above statute and court rule.

The Court held that the statute and the court rule work together. MCR 3.972(C)(2)(a) expressly applies to adjudication trials and MCL 712A.17b expressly does not apply to the adjudication stage. The video recording is admissible at the tender years hearing, but not at the adjudication hearing. Requiring the person who heard the statement to testify at the adjudication hearing allows the accused parent to cross-examine that witness.

The Court held that the proper procedure would “entail having the forensic interviewer testify in regard to the adjudication stage, assuming compliance with MCR 3.972(C)(2)(a), followed by substantive consideration of the forensic interview displayed on the DVD with respect to the termination stage, assuming compliance with MCL 712A.17b.” As a result, the trial court erred in admitting and relying solely upon the video recorded statement in assuming jurisdiction of the child through the father. The adjudication order and the termination order for the father were reversed and the case was remanded to the trial court for a new adjudication hearing for the father only. The Court affirmed the orders regarding the mother.

**Court Orders: Vaccinations**

*In re Deng*, __ Mich App __: __ NW2d __ (2016) (Court of Appeals #328826, March 22, 2016) *lv to app pend’g* (Supreme Court #153514)

The mother appealed by leave granted a dispositional order entered by the trial court ordering her CONTINUED ON NEXT PAGE
children to be vaccinated. The Court affirmed the trial court’s order holding that vaccination was appropriate, despite the parent’s objection on religious grounds, for the welfare of the children and society.

The children were removed from the parents due to homelessness, improper supervision and mental health issues. Both parents were adjudicated unfit. At a PPH, the foster care worker requested an order requiring the children to be immunized. The mother objected on the basis of religious grounds. A hearing was held and the trial court found that, even though the religious objections were sincere, the parent forfeited the right to make vaccination decisions for the children as she had been adjudicated unfit. The trial court further found that the statutes (MCL 712A.18(1)(f) and 722.124a) give the court authority to direct the medical care of children within the court’s jurisdiction and medical care includes immunization decisions.

The mother appealed and argued that she has a right to object to the vaccination of her children on religious grounds by statute and a protected liberty interest in religious freedom and those rights survive even after she has been adjudicated unfit. The Court disagreed and found that, if a parent is found “unfit” at an adjudication hearing, the parent relinquishes the right to object to the inoculation of her children on religious grounds and the parent must “yield to the trial court’s orders regarding the child’s welfare.” The Juvenile Code does not contain any immunization limitations on the trial court’s broad authority to enter dispositional orders. As a result, during the dispositional phase of a child protective proceeding, the trial court has the authority to order the vaccination of a child when it is determined that immunization is appropriate for the welfare of the child and of society.

ICWA/MIFPA

In re England, __ Mich App __, __ NW2d __ (2016) (Court of Appeals #327240, January 28, 2016)

The father appeals the trial court’s order terminating his parental rights at the initial dispositional hearing. The two month old child was taken to the hospital and it was discovered that he had numerous rib fractures and a fracture of his tibia, all at different stages of healing, as well as a bruise on his chest. Through the investigation, the father was criminally charged with two counts of child abuse. He pled guilty to one count and was sentenced to probation. The trial court received a petition, which included a request to terminate the father’s parental rights at the initial dispositional hearing, and authorized the same using the preliminary inquiry process. There was no request for removal of the child from the mother and the child remained with the mother throughout the entire proceeding.

The child is an Indian child. As such, the Court held that in all Indian child termination proceedings, the specific findings required by law (including ICWA and MIFPA) are proof by clear and convincing evidence that at least one statutory ground for termination is met; proof that active efforts were made to reunify the family; proof beyond a reasonable doubt that the continued custody of the child with the parent would likely result in serious emotional or physical damage to the child; and proof that by a preponderance of evidence it is in the child’s best interests to terminate the parental rights.

In this case, the father did not challenge the trial court’s findings that a statutory ground existed or that the termination was in the child’s best interest. The father, instead, challenged the constitutionality of MCL 712B. 15(3), specifically that the petitioner must demonstrate, to the court’s satisfaction, that active efforts were made.

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The father argued that this provision does not provide a standard of proof, and, therefore, is unconstitutionally vague.

The Court reviewed prior cases involving ICWA and the standard used to show active efforts to prevent removal. The case law indicated that it became the “default” standard of clear and convincing evidence. The Court held that the same would apply to the termination and MCL 712B.15(3). As a result, the statute is not vague.

In addition, the father argued that the trial court erred in concluding at the preliminary inquiry that active efforts were made and the child was subject to future harm. The Court held that, since the child was not removed from a parent, or placed into foster care, the trial court was not required to make those findings at the preliminary inquiry, only at the termination hearing. The termination order is affirmed.

In re Jones/Lehmann, __ Mich App __; __ NW2d __ (2016) (Court of Appeals #330945, June 28, 2016)

The mother appeals the trial court’s order terminating her parental rights to her two children. One child, SL, is not Indian and there is no indication of any Indian heritage. Regarding CJ, the caseworker indicated that the father “might have a little Indian in him.” The father said that he might be Cherokee, but he was not sure. The trial court ordered further investigation into CJ’s possible Indian heritage. DHHS sent a notice to the BIA (Bureau of Indian Affairs through the Department of the Interior) with just the child and parent’s name. A response received indicated that it was not enough information to determine tribal affiliation. On appeal, the mother argues that the trial court and DHHS did not make sufficient efforts to determine if CJ was an Indian child to determine if ICWA and MIFPA applied. The Court agreed.

Based upon the information provided by the mother and father, there was sufficiently reliable information that CJ had Indian heritage and may have been eligible for membership in an Indian band or tribe. Because the notice was only sent to the BIA, and not to the Cherokee Nation, the notice was insufficient. Notice needs to be sent to the Indian tribe, if determinable. Here, the father indicated that he “might be Cherokee.” Absent any mention of other potential tribal affiliations, notice should have been sent to the Cherokee tribe. In addition, MCL 712B.9(3) requires that if the department is unable to make an initial determination as to which tribe a child belongs, “the department shall, at a minimum, contact in writing the tribe or tribes located in the county where the child is located and the secretary.” This notice was also not completed.

The Court conditionally reversed the termination order regarding CJ only and, since the Court rejected the mother’s argument concerning the child’s best interests, remanded the case to the trial court for compliance with the notification requirements. The notice is required to also include notice to any tribe or tribes in Kalamazoo County, if any exist, pursuant to MCL 712B.9(3). The orders regarding SL were affirmed.

Foster Care Payments

In re CM and AM, __ Mich App __; __ NW2d __ (2016) (Court of Appeals #322913, April 7, 2016) lv to app pend’g (Supreme Court #322913)

The trial court previously terminated the parental rights of the parents and the Court previously affirmed the terminations in 2015. Prior to the termination, the trial court, on its own volition, entered an order finding that “the Mackinac County Child Care Fund shall not pay any further administrative rates charged over and above out-of-home placement costs.” Since that date, the petitioner absorbed all those costs. The petitioner sought interlocutory relief, which the Court denied in November of 2014. The petitioner then sought leave to appeal to the Supreme Court. The Supreme Court remanded to the Court to determine if the Mackinac County Child Care Fund was or was not responsible for the payment of any cost or administrative rate connected with supervision of the foster care placements of the children pursuant to the trial court’s order.

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The parties agree that the responsibility for the costs of the children’s foster care placement was properly shared 50/50 by the petitioner and the county. The question is whether the county bears any responsibility for half of the supervision costs related to the foster care placements.

The Court analyzed several statutes. Until 2013, the legislature did not state specifically that the petitioner was responsible for paying administrative rates in question. In 2013, MCL 400.117a(4)(c) made the petitioner solely responsible for the $3.00 increase in the administrative rate, but was quiet on the “split” for the amount up to the $3.00 rate hike. Then, in 2014, the legislature determined that the “department bore sole responsibility for administrative rates in connection with foster care cases established after October 1, 2013” and up through the fiscal years ending September 2014 and September 2015. MCL 400.117a(4)(d).

As a result, the trial court erred in ordering that the child care fund was not responsible for paying 50% of the administrative rates. The trial court’s order only pertaining to this issue was reversed and remanded.

Prior Termination as a statutory basis unconstitutional

*In re Gach, ___ Mich App ___, ___ NW2d ___ (2016) (Court of Appeals #328714. April 19, 2016)*

The mother appeals the trial court’s order terminating parental rights to a child at the initial dispositional hearing. The three year old child in this case was found wandering outdoors unsupervised in only a t-shirt and an extremely dirty diaper. The mother had three prior terminations and a half sibling of the child had died from suspicious causes in 2001. The mother and the father (Jose Baker) were charged in the child’s death. The mother was not convicted, but the father was and was in prison. The mother had not seen Baker since before she was pregnant with this current child. The mother believed the child died from pneumonia and not at the hands of Mr. Baker, but the mother knew that he posed a risk to her current children. Mr. Baker was now released from prison and had made attempts to contact the mother, but she did not respond.

The child was removed from the mother as, upon a well check a few days after the incident, the mother was evasive, would not let the police or DHHS into the home or allow them to view the child and believed that the home environment was unsafe. The DHHS caseworker testified during the hearing that, had it not been for the prior terminations, services would have been provided and that she believed that the mother would benefit from services if given the chance, but policy did not allow that stance.

The trial court terminated the mother’s parental rights under MCL 712A.19b(3)(g) (parent without regard to intent, fails to provide proper care and custody), (i) (parent’s rights to 1 or more siblings have been terminated due to serious and chronic neglect and prior attempts to rehabilitate were unsuccessful), (j) (there is a reasonable likelihood, based on the conduct or capacity of the parent, that the child will be harmed) and (l) (parent’s rights to another child were terminated as a result to a neglect proceeding). The Court held that there was no clear and convincing evidence that (g), (i) or (j) was met. The mother had no contact with Mr. Baker in years, recognizing that he was a risk to her children, and there was no evidence to indicate that she had any sort of a relationship with him. As a result, the trial court erred in concluding that the mother was in a relationship with, or would resume a relationship with, Baker. In addition, there was ample evidence to show that the child was well supervised and clean and had not left the home unsupervised previously.

In addition, the mother argued on appeal that, to terminate her parental rights under (l) violated her due process. The Court agreed. The Court held that if (i), which requires efforts to rehabilitate, has not been met, then the application of (l) “‘disdains present realities in deference to past formalities’ and simply ‘forecloses the determinative issues of competence and care’…and thus fails to comport with due process in light of the fundamental liberty interest at stake.” As a result, **MCL 712A.19b(3)(l) is unconstitutional**
as it violates due process. Any “savings clause” would need to be imposed by the legislature.

The termination was reversed and remanded to the trial court.

Reasonable Efforts

*In re Hicks/Brown, ___ Mich App __; ___ NW2d ___ (2016)* (Court of Appeals #328870, April 26, 2016) *Lv to app pend’g* (Supreme Court #153786)

The mother appealed the trial court’s termination of her parental rights to her two young children. The mother is cognitively impaired, with a full scale IQ of 70 and a verbal comprehension index of 66. When her family support system fell apart, she turned over her two month old daughter to DHHS. Subsequently, DHHS took custody of her son. Throughout the over three years that the children remained in care, DHHS did not make the any accommodations to provide the mother with services. Everyone involved in the case recognized that the mother was cognitively deficient, but services were not provided that were geared toward that deficiency. Although it took some time for the mother’s attorney to raise the lack of appropriate services being offered, it was still over a year before the termination hearing. “DHHS did not fulfill its duties in this case, and the circuit court failed to adequately recognize that shortcoming.” The mother’s disability and intellectual abilities were readily apparent. Evaluations were not secured until 13 months after the child was placed with DHHS. For at least 8 months, no parenting time was offered. After the psychological was completed, the service plan was not re-evaluated and adjusted. As a result, “DHHS ordered respondent to climb mountains that she could never possibly surmount”, and ultimately provided “a service plan that ignored these realities was simply unreasonable and not individually tailored to the parent’s needs.” There were several agencies that could provide services for cognitively impaired persons, including wrap around services, but DHHS did not seek to have the mother placed in any of these programs until several months after the mother’s attorney objected to the nature and type of services expected in the services plan. Just telling the regular service providers that the mother was cognitively impaired and required explicit and simple instructions was not enough when more intensive services offered from specialized agencies were available. The Court found that the mother may not be able to overcome the conditions that brought her children into care, and even with appropriate services, she may never be able to adequately and safely parent her children, but that decision is premature given that the right services were not put into place when readily available.

The termination order is vacated and the case is remanded to the trial court.

Criminal charges and neglect trials

*In re Schadler, ___ Mich App __; ___ NW2d ___ (2016)* (Court of Appeals #327977, May 24, 2016)

The father appealed the trial court’s orders terminating his parental rights at the initial dispositional hearing. The father was accused of criminal sexual conduct with his young child. The child repeatedly asserted that the father had digitally penetrated her. At the hearing, the trial court found that the medical findings corroborated the child’s statements and the father’s explanation was not consistent. The father argues, however, that because he was not criminally charged with the offense(s), that refutes the allegations and supports his innocence. MCL 712A.19b(3)(k)(ii) does not require a conviction. In addition, the trial court did not err in determining that termination of the father’s parental rights was in the children’s best interests.

The trial court’s termination order is affirmed.

Proper care and custody/incarcerated parent

*In re Pops, ___ Mich App __; ___ NW2d ___ (2016)* (Court of Appeals #328818, April 28, 2016, approved for publication June 7, 2016)

The father appeals the trial court’s order terminating his parental rights. The father was arrested for fleeing and eluding after driving 14 blocks while the child was in his vehicle in an attempt to flee the police. The police found marijuana and a scale in his vehicle. The father placed the child with his mother, who had provided care for the child since his birth. While the matter was pending, the child was removed from the
grandmother’s home as the grandmother, due to her criminal history, would not be able to receive a foster care license. Her criminal history included two misdemeanor assaultive charges in 2005 and 2006, a DWLS in 2007, a felony retail fraud in 2010 and a misdemeanor retail fraud in 2011.

The father ultimately pled guilty to R & O and was sentenced to 18 months of probation. The father later landed in prison as a result of a CCW conviction occurring while he was on probation. Throughout the case, the grandmother twice petitioned the trial court for a guardianship over the child and was denied both times.

On appeal, the father argues that the trial court erred in its determination that a statutory basis existed. The Court agreed, finding that the father could and did attempt to provide proper care and custody for the child by placing the child with his mother. The Court held that DHHS did not follow its own procedures when determining that the grandmother was ineligible to be a foster parent. Even if the grandmother committed a good moral character offense, the caseworker has the discretion to place the child with the relative, but must evaluate whether there are safety issues with the relative and seek approval for the placement. The record did not indicate whether there were safety issues in the grandmother’s home, but at one of the guardianship hearings, the caseworker doing the guardianship study stated that there were no safety concerns. The assumption is, then, that there were no safety concerns in the grandmother’s home at the time the child was removed. The grandmother may, as a result, have been eligible for placement had the caseworker followed procedure.

The Court held that there was a firm and definite conviction that the trial court clearly erred by determining that the termination was proper on the remaining grounds. As a result, the Court reversed the termination order.

Use of support animals

*People v Johnson, __ Mich App __; __ NW2d __* (2016) (Court of Appeals #325857, April 19, 2016) * lv to app pend ‘g*

The defendant appeals his jury trial convictions of four counts of CSC 1st degree and one count of CSC 2nd degree. Among other arguments, the defendant challenges the use at the trial of a black Labrador retriever (Mr. Weeber) to accompany two young witnesses, including the six year old victim. Prior to the trial, the prosecutor filed a notice of intent to use a support person and listed Mr. Weeber as a canine advocate.

The defendant did not object at the pre-trial hearings to the use of Mr. Weeber, but he argued on appeal that he was denied effective assistance of counsel by his trial counsel’s failure to object to the notice of use of a support person. His argument is that statute only allows for a support person, not a support animal. The Court agreed that the dog is not a person as defined by statute and the statute did not give the trial court the authority to allow Mr. Weeber to accompany the children while they testified. However, the trial court has the inherent authority to utilize courtroom procedure. The statute does not preclude the trial court from using alternative procedures to protect and assist witnesses while testifying. “(T)he use of a support animal allows the trial court to ease the situation for a young traumatized or fearful witness, while at the same time allowing the jury and the defendant to view the witness while testifying.” Furthermore, the use of a support animal is more neutral and less prejudicial than the use of a support person.

The defendant’s conviction is *affirmed.*
Hello everyone. Our new President, Sahera Housey, graciously offered to allow me to publish my last President’s Corner because the last Quarterly was not published before the conclusion of my Presidency.

It was with great pride and excitement that I handed over the wonderful honor of being RAM’s President to Sahera during our Annual Membership Meeting this past May at the beautiful H Hotel in Midland, Michigan. I must admit that this was one of my favorite conferences as the hotel was amazing, the speakers were well-informed and they gave us great insight into their various areas of expertise. We also lucked out with nice weather. Congratulations to the Conference Committee for providing our members with such an outstanding conference once again. I don’t know how they do it each year!

As I reflect over the last two years, I am amazed how quickly the time went. I feel extremely grateful to have had this experience and the distinction of being your President; so THANK YOU!

In preparing for the Annual Conference, I reviewed the descriptions of the various awards that we present. In conjunction with this, I have attempted to detail these awards so that members can consider each when nominating someone for one of these distinctions. Below are the current awards that we present to deserving members with this year’s awardees:

- **Presidential Award** - the President chooses someone in recognition of a service, dedication or contribution to RAM (Sahera Housey);

- **Service to the Board Award** - usually given to someone who has shown outstanding service to the Board for that year (Kate Weaver);

- **Valuable Member Award** - usually given to someone who has been a member for a fairly long time, still continues to provide assistance and is always ready to take on new responsibilities (Nancy Parshall);

- **Outstanding Recognition Award** - usually given to someone who has gone over and above the call of duty in their responsibilities on a given task or committee or can be given to someone who has supported RAM ex: judge or attorney (Kathy Oemke); and

- **Active Member Award** - usually given to someone who has provided service on various committees, assists with ongoing areas that need to be addressed and who is reliable in his or her dedication to RAM (Nicholas Wood).

Please consider these descriptions for future nomination suggestions. In addition, we added a new award this year, entitled “Public Service Award” which Shelley Spivack received due to her dedication and invaluable contribution to RAM and for her active participation in her community. Among the many things Shelley has done, she established and organized the Buckham/Genesee Valley Regional Center (GVRC) Share Art Project and is involved with the Genesee County Girls Court. If there is an award you feel we could add,
please let President Housey or one of the other Executive Board Members know and we will be happy to consider your suggestion.

As a fun note, on Saturday, March 26th, 2016, five of us (and our families) attended the Pistons game against the Atlanta Hawks. It was a fun evening of socializing and watching a great team; even though we lost. We were able to take advantage of the VIP Club Access dinner package which included dinner, draft beer, house wine and an assortment of desserts at half time.

The opportunity to attend this event was set up in an unusual way with a funny story that I’d like to share. I received a phone call in the fall of 2015 from the Pistons Group Sales and Service Manager, Brandon, who wanted to offer our group a discount to attend a game. However, Brandon was under the belief that we are sporting referees and had no idea what a domestic or juvenile referee was or did. After I explained to him our duties and our status as quasi-judicial attorneys we had a nice laugh and he graciously offered to extend the same opportunity to us.

I am hoping that these types of opportunities will arise again in the future, and that we will have the ability to network while receiving a nice discount for a great function at the same time. Brandon has already contacted me about another event after the 2016 holidays, so watch out for the announcement!

As a reminder, all RAM members are welcome to attend any of the Executive Board meetings. For your convenience, our next meeting will be on Thursday, September 22nd, 2016 at the SBM Annual Meeting being held in Grand Rapids, Michigan. Emails regarding the exact place and time will be forthcoming.

Well folks, that is all for now. I will remain on the Executive Board for the next two years as your Past President and I hope to continue to be involved with RAM for many years to come. I truly appreciate your support and confidence over the last two years as it was my pleasure to serve as your President.

Take Care,

Amanda
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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