As part of its Civility Month, the American Inns of Court hosted a National Conversation on Civility on Saturday, October 21st, in Washington, DC, to address the importance and role of civility in the legal profession. I had the opportunity to attend this conference and speak about civility with judges and attorneys from across the nation.

The morning began with a panel discussion moderated by Kannon Shanmugam, Esq. The panelists included Hon. Benes Aldana, President of the National Judicial College; Hon. Patricia Millett, U.S. Court of Appeals District of Columbia Circuit; Hon. William Koch Jr, Dean of Nashville School of Law; and Kim Askew, Esq, partner at K&L Gates. It was a lively discussion and the panelists had strong opinions about civility in the courtroom, between attorneys on cases during discovery, and on the bench. There was also discussion about the lack of civility in politics and its impact on the practice of law.

The highlight was the next panel presentation that featured the newly appointed Supreme Court Justice Neil M. Gorsuch and retired Judge Deanell Reece. The discussion was fascinating, with many stories and laughs because they had served on the 10th Circuit Court of Appeals together. However, Justice Gorsuch emphasized that civility does not mean being polite at the expense of withholding an opposing point of view. In fact, Justice Gorsuch stated that suppressing disagreement in the name of civility is wrong.

As I returned to Genesee County, I thought, what does civility really mean? More importantly, is it alive and well in the legal profession in my county and in the State of Michigan?
Civility comes from the word civilis, which is Latin for ‘relating to citizens.’ Early use of the term meant the state of being a citizen and hence good citizenship or orderly behavior. In the 16th century, civility began to be defined as ‘politeness,’ signifying the added importance of acting with respect, courtesy and graciousness as a citizen.

When I watch the news or listen to the radio, I wonder where civility has gone. People can now anonymously lash out on social media without considering the impact of their words. Cell phones allow instant streaming of videos and photos of injustices. And tweets seem to be setting our nation’s political agenda.

Granted, social media and current technologies may be revealing raw views and emotional truths that we did not have access to in the past. In my view, what we seem to end up with is information overload and uncensored reactions.

As lawyers, our profession requires us to set a higher standard for our behavior. As referees, our judicial position requires even more. The panel discussion at the Washington, DC conference highlighted the need for civility on the bench. Several of the panelists expounded on how the bench should set an example of civility, especially when they are critical of uncivil behavior by attorneys. While I was surprised that the discussion included civility on the bench, I can certainly see how the need for civility applies to all of us.

As referees, we hear conflict on a regular basis, especially in family court. We also see a higher percentage of self-represented litigants who do not necessarily understand the legal system, the court rules, or the rules of professional conduct. Parents come before us ready for their “day of reckoning,” looking for the court to give that blow of justice to the evil, guilty party . . . the other parent. Emotions are high as parties often want to argue with each other, rather than present their facts to the court in an orderly and timely fashion. It is important for us to remember that our job is to simply rule on the case before us and not react in-kind to the unreasonable or unruly behavior that may be before us.

Pursuant to MCR 9.201, referees are defined as judges and, thus, the Michigan Code of Judicial Conduct applies. Canon 1 states:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary.

In addition, when we are admitted to the bar, we take an Oath of Office. That Oath requires us to “in all other respects conduct [ourselves] personally and professionally in conformity with the high standards of conduct imposed on members of the bar as conditions for the privilege to practice law in this State.” The American Inns of Court also has a Professional Creed that addresses practicing law with dignity and respect.

Today, there are many resources available that show how to defuse volatile situations and deal with conflict. Indeed, airline personnel are trained on ways to handle frustrated, angry or unruly cus-
tomers. Implementing these skills in the courtroom may be an effective way to handle hostile litigants. This requires us to remain calm, listen to the parties, and repeat what the legal issues are that the parties want us to decide.

The cost of incivility at any level is high. But today, more than ever, our courts, our counties and our country need attorneys, referees and judges to commit to the Code of Judicial Conduct and the oath that we took and conduct ourselves accordingly.

As Mary W. Montagu, an 18th century poet, so eloquently stated, “Civility costs nothing and buys everything.” Civility begins with us.

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LJAP OFFERS ASSISTANCE ON A BROAD RANGE OF CONCERNS

by Tish Vincent, MSW, JD, LMSW, ACSW, CAADC, LJAP Program Administrator

Proactive, expansive, confidential, and free are all words that describe a very important State Bar member service. The Lawyers and Judges Assistance Program (LJAP), one of the oldest lawyers’ assistance programs in the country, employs a total wellness approach in assisting individuals who are faced with issues related to depression, gambling, substance use disorders, stress, marriage and family issues, career transition, life stage adjustment, and other general wellness issues. Since 1979, the program has been a confidential source of guidance and support to attorneys, judges, and law students throughout the State of Michigan.

Through LJAP’s confidential toll-free phone line lawyers, or those concerned about them, can receive information about ways to address substance abuse and other mental health issues impacting a lawyer’s ability to ethically practice law – including referral information and the opportunity to schedule an in-person conversation that may lead to assessment and treatment recommendations.

In recent years LJAP has shifted its focus from merely reactive to preventative. By providing education and support for individuals, families, law schools, and employers, LJAP can assist in circumventing trouble, and/or begin to assist program participants toward health through difficult times, minimizing harm to individuals, families, and the community.

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Highly skilled professionals, experienced in dealing with substance use and mental health disorders as well as general wellness issues, are working to ensure that bar members and students are supported, and the public is protected. The LJAP staff of Program Administrator Tish Vincent, Clinical/Administrative Assistant Jennifer Clark, and Case Monitors Molly Ranns, Kristy Blackmer, and Jeff Zapor are devoted to helping individuals get back on track before they begin to experience formal consequences related to difficulties that they face. Where formal consequences have come to fruition, LJAP is ready to provide assistance via its Attorney Monitoring Program.

MCR 9.114 (B) allows a lawyer who has been investigated for professional misconduct relative to a mental health and/or substance use disorder to enter into “contractual probation”, which is an agreement with the attorney in question that is implemented by the Attorney Grievance Commission and facilitated in cooperation with LJAP. Under MCR 9.114 (B) a lawyer may consent to a period of probation not to exceed three years. Every attorney referred by the Attorney Grievance Commission to LJAP has an opportunity to address what may be the underlying cause of misconduct. For many, the probationary/monitoring experience results in lasting and positive transformation.

Similarly, law students sometimes incur legal infractions that may be related to substance use and/or mental health disorders. Some students get referred to LJAP as a result of reporting these infractions to their law schools. Others may be referred once they have begun the bar application process and learned that those offenses will impact their character and fitness evaluation. Because law students are the future of the legal profession, LJAP has sought to extend its preventative education to this population. By continuing to develop and deliver preventative educational programming for students, LJAP seeks to support the students’ strengths and help them to eliminate any budding difficulties before they can impact their abilities as lawyers representing clients.

LJAP is a service for State Bar members that is supported by member dues. The LJAP staff recognizes that the issues that bring lawyers, judges, and students to the program are deeply personal and must be handled with the utmost discretion. All inquiries and services are handled in accordance with applicable federal and state privacy guidelines. For more information about the LJAP program and its services, view our website at www.michbar.org/generalinfo/ljap/home or call our confidential help line: 1-(800) 996-5522.
JUVENILE CASE LAW UPDATE

By Jen Kitzmiller, Retired, and Ariana Heath, Genesee County

ICWA/MIFPA

_in re Detmer/Beaudry_, __ Mich App __: __ NW2d __ (2017) (Court of Appeals #336348, August 22, 2017); _lv to app denied 11/1/17, Supreme Court #156506._

The respondent/mother appeals the trial court’s dispositional order arguing that the trial court did not follow the procedures required by MIFPA. The Court partially agreed and vacated the trial court’s order of adjudication regarding one child (AB) and affirmed the trial court’s adjudication regarding the other child (KD) and remanded to the trial court for further proceedings.

AB, KD and the respondent/mother are eligible for membership in the Sault Ste. Marie tribe of the Chippewa Indians. DHHS filed a petition in the trial court seeking to remove the children from the mother’s care. The petition alleged extensive history with CPS and inappropriate sexual contact between the two children and their siblings.

The mother voluntarily placed KD with her non-respondent legal father at the preliminary hearing and AB was left placed with the mother. The trial court did not make active efforts findings at the preliminary hearing consistent with MIFPA or hold an Indian child removal hearing.

At the adjudication, the trial court ordered that AB be placed with his non-respondent legal father due to concerns in the mother’s home and KD’s voluntary placement was continued. The trial court did not make active efforts findings or hold an Indian child removal hearing when it placed AB with his father indicating that such findings were unnecessary as the child was placed with, and in the care of, a parent. KD’s voluntary placement remained, and no one objected.

During the appeal, there was no stay and, as the case progressed, both children were returned to the mother, jurisdiction was terminated and the lower case closed. Although this case was now moot, the attorneys requested that the Court address this issue. The Court determined that an exception applied as the issue involves one of public significance, is likely to occur again and likely to evade appellate review.

The Court held that nothing in _In re Sanders_ negates or otherwise undermines the requirements that the court must follow before removing an Indian child from an adjudicated parent. Since AB was not placed in foster care or put into protective custody, the Court inquired on whether he was “removed” from a parent, and thereby would trigger MIFPA.

The Court found that the definition of “removed” in relation to MIFPA means when a court ORDERS that a “child be physically transferred or moved from the care and residence of a parent or custodian to the care and residence of some other person or institution.” The mother in this case objected to AB being placed with his non-responsive father. As a result, the trial court removed AB from his mother’s care and erred in not making the requisite findings required by MIFPA.
With regards to KD, her placement with her non-respondent legal father was not court ordered, but voluntarily placed with the father by the mother. The mother was not giving up any legal right or relinquishing her parental rights to KD. This “is an example of respondent-mother exercising her fundamental right ‘to make decisions concerning the care, custody and control’ of her children.”

GUARDIANSHIP VS TERMINATION

The parents appealed the trial court’s order of termination regarding their youngest child. The Court of Appeals affirmed the trial court, but the Supreme Court vacated, by Order, the part of the Court of Appeals Judgment addressing the best interests determination and remanded to the trial court for reconsideration. "The trial court judge failed to articulate whether her generalized concerns regarding the lack of permanency and stability for younger children placed with a guardian are present for this child."

Initially, there were 3 children in this action. At a PPH, the permanency plan was changed: the two older children were to be placed in a guardianship with the maternal grandmother; and the trial court ordered the petitioner to file a termination petition for the youngest child because of his age. All of the children were placed with the maternal grandmother. One of the mother’s arguments on appeal was that it was in the child’s best interests for a guardianship to be ordered as opposed to termination. The Court of Appeals held that a trial court is not required to consider guardianship during its best interest analysis at the termination hearing.

The Supreme Court disagreed and ordered the trial court to “make an individualized determination as to whether terminating the respondents’ parental rights is in the best interest of the respondents’ youngest child without regard to a generalized policy disfavoring guardianship for children under the age of 14”.

ADOPTION/SAFE DELIVERY OF NEWBORNS

In August 2016, mother delivered twins and surrendered them at the hospital in Jackson County under the Safe Delivery of Newborns Law. She did not provide an address or any information regarding her
marital status, and declined to identify the father. The adoption agency filed a petition to terminate parental rights of both the surrendering parent and the non-surrendering parent. In October 2016, the Vital Records Office learned that the mother was married and produced birth certificates in December 2016 naming mother’s husband as the father. (Note that effective January 18, 2018, birth certificates issued for a newborn surrendered under the act must list the parents as “unknown” and the child as “Baby Doe.”)

The trial court concluded the Safe Delivery law only applied to mother, and not the legal father. The appellate court concluded the Safe Delivery law applied to the husband of this surrendering mother and stated that the trial court’s decision relied on the fallacy that the children of a married mother could have two legal fathers. The Court of Appeals noted that the law requires a party claiming paternity to submit to DNA testing so the parental rights at issue only concern the biological father. If a presumed father later challenged the adoption, he would be precluded from asserting paternity because he was either the biological father whose rights were terminated or he would have to demonstrate he was not the biological father whose rights were already terminated, thereby defeating the presumption of legitimacy. The appellate court then found that there were no circumstances in which a party would later be able to challenge the adoption by claiming paternity and asserting his parental rights. Safe Delivery of Newborns Law does apply to the legal father in termination proceedings. Reversed and remanded.

CONTEMPT OF COURT IN ABUSE/NEGLECT PROCEEDINGS
Department of Health and Human Services v Mary Williams, Court of Appeals # 334460 (unpublished) December 28, 2017.

At a permanency planning hearing Respondent, a foster care worker for DHHS, requested the court dismiss a neglect case and give permission to place the child with her father in Hawaii. The trial court noted it could not do so because the child was still a minor and the custody orders gave custody to the mother so if the case was dismissed, the child would be in the mother’s custody. When asked if a request for Interstate Compact had been done, Respondent said it had not. The following exchange was then made between the court and Respondent:

  Court : Well, I met with you and your supervisor and told you it had to be done.
  Respondent: I was following the directions of my supervisor.
  Court: Instead of following the directions of the Court?
  Respondent: Sorry, yes, you’re right.

Respondent’s supervisor then filed an affidavit with the court indicating she had a conversation with Respondent after the hearing where Respondent said she had thrown the supervisor “under the bus” at the hearing by telling the court her supervisor instructed her not to do the Interstate Compact. The affidavit stated that she told Respondent to check to see if a social worker on the military base could do a home study in lieu of Interstate Compact. On the basis of the affidavit, the court entered an order

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directing Respondent to show cause as to why she should not be held in criminal contempt for providing a false answer to a direct question from the court. The supervisor and three DHHS workers testified they overheard Respondent tell the supervisor some variation of the story that her supervisor had told her to not do something the court had ordered to be done and she had thrown the supervisor “under the bus”. Respondent testified she had never told the court her supervisor told her not to work on the Interstate Compact but that by saying she had followed the instructions of her supervisor, she meant she had begun looking into the military home study which turned her attention away from the Interstate Compact. The trial court found Respondent guilty beyond a reasonable doubt of criminal contempt of court. Respondent appealed.

The Court of Appeals ruled the trial court properly used its criminal contempt powers to sanction Respondent for past behavior that “affronted the court’s dignity.” It found that civil contempt would not have been appropriate because the court was not seeking to coerce compliance. It also ruled sufficient evidence existed for the court to find, beyond a reasonable doubt, that Respondent willfully disregarded the order of the court by misrepresenting the status of the Interstate Compact and implying she had not completed it at her supervisor’s direction. The appellate court also noted it cannot judge credibility and had to accept trial court’s determination that Respondent’s testimony was not credible. Affirmed.

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 Michigan Supreme Court reversed the Court of Appeal decision dismissing the appeal in Marik v Marik, _Mich_ (2017) #15459 11/16/27, in that the trial court order denying Defendant’s motion to change school enrollment and change parenting time is subject to an appeal of right.

A motion to change domicile is not stayed by a pending motion regarding attorney fees according to Safdar v Aziz, _Mich App_ (2017) #337985 9/7/2017. Defendant filed a motion to change domicile and legal residence of the children to Pakistan while her appeal regarding attorney fees in the judgment was pending, alleging that Pakistan had had become a party to the Hague convention after the judgment was entered. The trial court dismissed Defendant’s motion on that basis that

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it lacked jurisdiction to hear the motion due to the pending appeal, but the Court of Appeals reversed finding that a motion affecting custody, including domicile, may be heard pending an appeal of an unrelated issue.

The basis for an extension of the statute of limitations to file a revocation of paternity was addressed in *Kalin v Fleming, _Mich App_ (2017) #336724 11/21/17*. The parties executed an affidavit of parentage the day of the child’s birth. Defendant informed Plaintiff that he might not be the child’s biological father after their separation three years later. Plaintiff filed for custody and Defendant moved for an extension to file a motion to revoke the affidavit of parentage after the three year statute of limitations had run on the basis of Plaintiff’s mistake of fact that he was the child’s biological father and Plaintiff motioned for summary disposition. The trial court granted the motion for extension and the Court of Appeals reversed as Defendant did not show that she was prevented from filing a timely motion to revoke the affidavit of parentage because she was mistaken as to the fact of Plaintiff’s paternity of the child.

Defendant was not required to establish proper cause or a change in circumstances to support his motion for joint legal custody as legal custody was not addressed in the prior default support order in *Sims v Verbrugge, _Mich App_ (2017) #337747 10/19/17, published 12/5/17*. The Court entered a default judgment under the Status of Minors Act based on the parties’ prior Acknowledgment of Parentage awarding Plaintiff physical custody and ordering Defendant to pay support. Defendant was later awarded parenting time. When Defendant learned that Plaintiff was moving out of state he motioned for joint legal custody and either joint or full physical custody. The court determined that Plaintiff had sole legal custody and denied the motion on the basis that Defendant failed to meet his statutory burden required to seek an amendment or modification of a custody order. Although Plaintiff had the initial legal custody by virtue of the executed Acknowledgment of Parentage, this is without prejudice until otherwise determined by the court and the prior order did not determine legal custody of the child. As the court had previously determined physical custody, Defendant was required to demonstrate proper cause or a change in circumstances to modify physical custody, but not to establish a legal custody order as there was no prior legal custody order to modify.

Plaintiff’s continued interference with Defendant’s relationship with their child can constitute proper cause to warrant a review of the current custody order under *McRoberts v Ferguson, _Mich App_ (2017) #337665 (2017)*. Defendant joined the Navy following the child’s birth, and the parties had little communication for two years after the child was born. The parties were awarded joint legal custody with Plaintiff being granted physical custody after Plaintiff sought child support. Defendant was awarded increasing parenting time over time, but Plaintiff encouraged the child to refer to Defendant by his first name while referring to her boyfriend as the child’s father and repeatedly violated the parenting time orders. Plaintiff was found in contempt for violating parenting time on three occasions, and the child was placed with Defendant in Suffolk, Virginia, where he was stationed while Plaintiff served her one month contempt sentence.

The Court of Appeals affirmed the trial court’s finding that there was proper cause to reevaluate the custody order because Plaintiff’s ongoing parenting time violations and interference with Defendant’s relationship with their child had a significant effect on the child’s life. Further, Defendant’s long-term “land based"
stationing allowed him to provide full time custody, and he had obtained counseling and medical care for the child during the time the child had stayed with him, demonstrating a change in circumstances to support a review of the custody order. The court’s best interest factor findings were supported by the evidence and the order changing custody was affirmed.

In *Ludwig v Ludwig _Mich App_(2017) #336938 12/12/17*, the parties’ divorce judgment ordered Defendant to undergo a psychological evaluation and afforded him supervised parenting time. After Defendant’s military deployment, he settled in Texas and motioned for parenting time. Following a court-ordered psychological evaluation, Defendant completed twelve sessions of court-ordered therapy with a treating psychologist, Dr. Cotter, who recommended that Defendant begin the reunification process with his children. In the meantime, Plaintiff was granted a change of domicile to California. She objected to Dr. Cotter’s recommendation and requested that a different psychologist perform a reevaluation. Following a hearing, the court ordered that the children participate with a therapist in California. The court also ordered that after the children’s therapy, a reunification video conference would be held between the Defendant, the children, the California therapist, and Dr. Cotter. The California therapist would then determine the frequency, duration, and method of continued contact for the following six months, and the FOC would then review the matter to determine if a motion to change parenting time should be considered. Plaintiff appealed, arguing that the order changed parenting time without a full evidentiary hearing. The Court of Appeals affirmed the trial court’s order because the required video reunification conference and therapeutic contact is not a change in parenting time, and a possible change in parenting time would only be addressed after an FOC recommendation and evidentiary hearing.

In *Taglieri v Monasky _F3d_(6th Cir 2017) #16-4128 11/30/17*, the Circuit Court of Appeals affirmed the District Court’s order that the parties’ child be returned to Italy. The child had lived exclusively in Italy for the first 18 weeks of the child’s life, which established the child’s habitual residence, and Respondent had not shown by clear and convincing evidence that Petitioner posed a grave risk of harm to the child.

The statute of limitations to enforce a property provision in a divorce judgement was addressed in *O’Leary v O’Leary _Mich App_(2017) #333519 10/10/17*. The parties’ July 24, 2003 Judgment of Divorce provided that the parties would own the marital trailer home as tenants in common until it was sold, at which time the indebtedness or profit would be shared equally, and that Defendant would make the house and lot payments as long as she resided in the home. In October 2009, Defendant obtained an order for Plaintiff to pay his share of the mobile home and lot rent incurred after Defendant moved out of the home in September 2007, which was $5,544.06. The home sold on October 21, 2009, resulting in a deficiency of $37,998.35. Plaintiff testified that he paid $24,543.24 toward the deficiency between the sale of the home and January 2015. On May 4, 2015, Plaintiff moved for an order requiring Defendant to pay to him her share of the deficiency less the $5,544 he was ordered to pay to Defendant. But the trial court granted summary disposition to Defendant, finding that the 10-year statute of limitations to enforce the judgement began to run when the
July 24, 2003 Judgment of Divorce was entered, and therefore expired on July 24, 2013. The Court of Appeals reversed. As Plaintiff could not bring his claim until the action accrued on October 21, 2009, when the action accrued due to the sale resulting in the deficiency, the statute of limitations would not expire until ten years after the sale of the home.

A Divorce Judgment that substantially complies with the requirements under ERISA, 29 USC section 1056, was deemed to be qualified as a QDRO enforceable against an employee-sponsored life insurance policy in Sun Life Assurance Company of Canada v Jackson et al F3rd_(6th Cir 2017)#17-3120 12/13/17. The decedent’s, Mr. Jackson, divorce judgment required that he maintain any employer-related life insurance for the benefit of his daughter, Sierra, until she turned eighteen years old or graduated from high school. The decedent failed to change the beneficiary of his life insurance policy from his brother, Richard Jackson, to Sierra. When Bruce Jackson died, Sierra’s attorney submitted a copy of the divorce judgment and a claim for policy benefits to Sun Life, but the insurance company paid the benefits to Richard Jackson instead. The U.S. Court of Appeals affirmed the District Court’s decision that the divorce judgment substantially complied with the requirements under ERISA, thereby it constituted a QDRO, and Sun Life must pay the insurance proceeds, with interest, to Sierra because the insurance company received a copy of the divorce judgment prior to disbursing the life insurance policy benefits.
LEGISLATIVE UPDATE
Contributed by Kate Weaver, Oakland County

The legislature returned January 10, 2018, after being on recess since December 14, 2017. Because we left an odd numbered year, all bills carry over to 2018. Bills currently are “alive” until the legislature adjourns in December 2018.

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 4691. Rep. Jim Runestad (R-White Lake), chair of the House Judiciary Committee, introduced House Bill 4691 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.

Rep. Jim Runestad continues to host town hall meetings across the state promoting ‘shared parenting.’ The discussions with the Family Law Section continue in an effort to reach a solution.

Status: This bill has been referred for a second reading with the House Judiciary Committee.

HB 4751: PRENUPTIAL AGREEMENTS

This bill would legislatively overturn Allard. Again, the Family Law Section contributed their position with suggestions (most amendments ignored those suggestions including requiring the prenuptial agreement to be presented prior to thirty days before the wedding date). The Act specifies that a contract relating to property made between individuals in contemplation of marriage remains in full force after the marriage takes place.

Under the bill, a prenuptial agreement would be unenforceable if a party against whom enforcement was sought proved either of the following:

• The party's consent to the contract was the result of fraud, duress, or mistake.
• Before signing the contract, the party did not receive adequate financial disclosure, including disclosure of assets in a domestic asset protection trust.

The court could refuse to enforce a term of the contract or the entire contract if, in the context of the contract taken as a whole, either of the following applied:

• The term was unconscionable at the time the contract was signed.
• Enforcement of the term could be unconscionable for a party at the time of the enforcement because of a material change in circumstances arising after the contract was signed that was not reasonably

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foreseeable at the time it was signed. The court would be required to decide the question of unconscionability as a matter of law.

Status: This bill is on the House floor for consideration by the full House.

SB 0650 AMEND SOCIAL WELFARE ACT

This bill would amend the Social Welfare Act to include a good cause exception to the identifying of a father (and ultimate establishment of paternity) of a child that is a product of criminal sexual conduct.

Status: This bill is on the Senate floor for the consideration of the full Senate.

NEGLECT/JUVENILE

HB 4716: AMEND JUVENILE CODE

This bill would amend the Juvenile Code to add, as a circumstance that constitutes grounds for termination of a parent's parental rights to a child, that the parent is convicted under a state or federal law of knowingly performing female genital mutilation (FGM) on a child or knowingly transporting a child, or facilitating the transport of a child, for that purpose.

Status: This bill has been signed into law by the Governor on December 14, 2017 with immediate effect.

SB 0419/0420/0421: AMEND JUVENILE CODE, AMEND CHILD PROTECTION LAW AND AMEND CHILD ABUSE AND PROTECTION ACT

This package of bills would amend the Juvenile Code, the Child Protection Law and the Child Abuse and Protection Act to expand the definition of neglect given recent the Michigan Supreme Court decision In re Hicks/Brown and the Michigan Court of Appeals decision, In re Gach. Under the bill, neglect would be expanded to include if the person responsible for a child's health or welfare failed to provide adequate food, clothing, shelter, or medical care though financially able to do so or when offered financial or other reasonable means to do so.

Status: This package of bills was passed by the Senate and has been referred to the House Committee on Judiciary.

All of the above legislation can be accessed at:
http://www.legislature.mi.gov/(S(0s4odek5b4d5uiopwt2zizzg))/mileg.aspx?page=LegBasicSearch
MEMBER VOIR DIRE
By Susan Murphy, Jackson County

For this newsletter, we journey to Livingston County to meet Tyler Martinez. Tyler graduated from Cooley Law School in 2012. Following law school, he worked for a Genesee County Probate Court judge for three years, and then for a Livingston County Circuit Court judge before being appointed as a domestic relations referee in 2016. Occasionally he fills in for the juvenile referee.

Before law school, Tyler attended Alma College where he pursued a dual major in economics and philosophy. While an undergraduate, he lived in Argentina for a month as part of an economics course. During this time he was able to take an inflatable boat tour of Iguazu Falls. Tyler mentioned that while touring this area students were told not to enter Brazil, but all the residents would go to Brazil for the best gas prices.

Tyler currently resides in Howell with his partner, Aaron, who is a Zookeeper at the Detroit Zoo. They are thinking about buying a house in Novi so they can settle down “a bit.” Consistent with Aaron’s zoological expertise, they have two betta fish named Baxter and Jack. Aaron is also experimenting with raising shrimp in their home; Tyler is considering stir-fry.

To get away from the hustle and bustle of a referee’s life, Tyler spends most of his weekends in Mount Pleasant with his mother and fur-brother, Wadeson, a nine-year-old beagle. He has four nephews who play hockey and lacrosse which puts Mom and Tyler on one road trip after another. His nephews are the children of his only sibling, Chevon, who lost her battle with cancer in 2009. This is why Tyler wishes he had the power to cure people and why he supports research to cure cancer.

Tyler admits that he is a shameless Facebook “scroller” and addicted to Amazon.com. His most treasured possessions are his iPhone and MacBook. When he is looking for a good laugh, he turns to YouTube fail videos. If he had to be in an alternative career, he would do something in IT because he enjoys working with and learning about all things technological.

He plays the piano and likes Top 40, ska, and rock music. He also enjoys hanging out around the house, and sitting on the couch watching shows like Homeland, Big Brother, Shameless, and House of Cards. Considering the success of President Underwood, Tyler wouldn’t mind changing places with Donald Trump for the day. When asked why, he said that everyone would have the best day if he stood in for “the Donald.”

Tyler also shared some of his thoughts about our career choice. He is excited about helping families by focusing on the children’s best interest. He laughs at himself as he admits that when he is done hearing lengthy custody and parenting time testimony, he rather enjoys focusing on complex child support calculations. With his combined interests and skills, maybe Tyler should be on the committee that reviews the algorithm?
UPCOMING EVENTS

• RAM Board Meeting
  Thursday, February 15, 2018
  10 a.m.
  State Bar of Michigan
  Lansing, MI

• RAM Board Meeting
  Thursday, April 19, 2018
  10 a.m.
  State Bar of Michigan
  Lansing, MI

• 34th Annual RAM Training Conference
  May 23, 2018 through May 25, 2018
  The H Hotel
  Midland, MI
President’s Corner
Saheara Housey, Oakland County

There is a lot of discussion at the state level about the Federal Office of Child Support Enforcement’s “Final Rule.” I wanted more information, as I am sure all of you do, too. I found their overview extremely helpful so in place of my regular column, I am sharing their informative summary. The Final Rule Summary found below was published by the Office of Child Support Enforcement, Division of Policy and Training which explains the Flexibility, Efficiency, and Modernization in Child Support Programs Final Rule on December 20, 2016, and can be found at: https://www.acf.hhs.gov/sites/default/files/programs/css/overview_child_support_final_rule.pdf.

To get additional more detailed information, please see the federal OCSE Final Rule Resources’ website at https://www.acf.hhs.gov/css/resource/final-rule-resources.

FINAL RULE SUMMARY

OVERVIEW

This final rule strengthens and updates the child support program by amending existing rules, some of which are 35 years old, to:

• set accurate child support obligations based on the noncustodial parents’ ability to pay;
• increase consistent, on-time payments to families;
• move nonpaying cases to paying status;
• increase the number of noncustodial parents supporting their children;
• improve child support collection rates;
• reduce the accumulation of unpaid and uncollectible child support arrearages; and
• incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.

WHAT IS NEW

Research finds that setting an accurate order based on the noncustodial parent’s ability to pay improves the chances that the parent will comply with the support order and continue to pay over time. The final rule incorporates the longstanding federal requirement that child support orders reflect the noncustodial parents’ ability to pay established under income-based guidelines adopted by each state. The rule increases public participation and transparency in state guidelines review processes. The rule also requires child support agencies to increase their case investigative efforts to improve the accuracy of child support orders. The rule includes language for states to consider the noncustodial parent’s specific circumstances in imputing income when evidence of income is limited. Because three-fourths of child support payments are collected through payroll withholding, the rule
standardizes and streamlines payment processing to ensure that this highly effective support enforcement tool does not unduly burden employers. The regulations clarify that health care coverage includes public and private insurance to increase state flexibility in ensuring that parents meet their medical support obligations by providing health care coverage or payments for medical expenses that are reasonable in cost and best meet the health care needs of the child.

The rule incorporates civil contempt due process requirements to implement the 2011 Supreme Court decision in Turner v. Rogers. The final rule establishes criteria that child support agencies must use to determine which cases to refer to court for a civil contempt action and how they prepare cases for a civil contempt proceeding. Under the rule, state child support agencies must maintain and use an effective system for enforcing the support obligation by establishing criteria for filing civil contempt petitions in child support cases funded under title IV-D. The criteria must include requirements that the child support agency: (i) screen the case for information regarding the noncustodial parent’s ability to pay or otherwise comply with the order; (ii) provide the court with such information regarding the noncustodial parent’s ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent’s ability to pay the purge amount or comply with the purge conditions; and (iii) provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

Federal law requires states to review, and if appropriate, adjust support orders when either parent has experienced a substantial change in circumstances. The rule provides that a state may not exclude incarceration from consideration as a “substantial change in circumstances.” In addition, after learning that a parent who owes support will be incarcerated for more than 180 calendar days, the state must either send a notice to both parents of their right to request a review and adjustment or automatically initiate a review and adjustment with notice to the parents. When modifying orders, states may consider an incarcerated parent’s income and assets in setting the order amount.

To better meet the needs of unmarried parents, this rule also gives states the flexibility to allow applicants for child support services to request help with establishing paternity only in cases in which both parents reside in the state. In an effort to direct resources for cases where collections are possible and ensure that families have more control over whether to receive child support services, the rule expands the circumstances in which a state may close cases. The revised regulation also strengthens notice provisions to ensure that safeguards are in place to keep recipients informed about case closure actions.

The rule also removes outdated barriers to electronic communication and document management, updating existing child support regulations, which frequently limit methods of storing or communicating information to a written or paper format. Finally, the rule incorporates several technical changes to update, clarify, revise, or delete former regulations to ensure that the child support regulations are accurate, aligned with current state practice, and up-to-date.

HOW THIS AFFECTS STATES

This final rule draws on research and successful state practices to recognize and incorporate standards designed to improve the effectiveness and efficiency of the child support program. The final rule will make child support program operations and enforcement procedures more
effective for families and more flexible and efficient for states and employers. The rule also recognizes advancements in technology that can enable improved collection rates and the move toward electronic communication and document management. This final rule will improve and simplify program operations and remove outmoded limitations to program innovations to serve families better. The rule makes significant changes to the regulations on case closure, child support guidelines, civil contempt, and medical support enforcement. The rule is intended to increase child support collection rates.

HOW THIS AFFECTS FAMILIES

The rule is evidence-based and is expected to result in families receiving more consistent payment of child support. The rule is intended to improve the accuracy of and compliance with child support orders by requiring state child support agencies to increase case investigation efforts and develop a sufficient evidentiary basis for child support orders. The final rule also ensures that the quadrennial state guidelines review process is more transparent by making the review results available to the public and allowing citizens an opportunity to provide meaningful input into the review process. States may not preclude incarcerated parents from seeking a review and adjustment of their orders, helping to reduce uncollectible debt, participation in illegal income-generating activities, and recidivism. Electing to offer paternity-only limited services will allow parents who are living together to legally establish paternity of their children, will better meet the needs of the modern family, and will result in a more flexible and family-friendly child support program.
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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