MICHIGAN FAMILY LAW JOURNAL

A Publication of the State Bar of Michigan Family Law Section • Carol F. Breitmeyer, Chair

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State Bar of Michigan
Family Law Section

Mission

The Family Law Section of the State Bar of Michigan provides education, information, and analysis about issues of concern through meetings, seminars, its website, public service programs, and publication of a newsletter. Membership in the Section is open to all members of the State Bar of Michigan.

List of Council Meetings*

Saturday, February 6, 2016
University Club, Lansing

Saturday, March 5, 2016
Double Tree, Novi

Saturday, April 9, 2016
Weber's Inn, Ann Arbor

Saturday, May 7, 2016
University Club, Lansing

Saturday, June 4, 2016
Weber's Inn, Ann Arbor

***All regular, monthly Council meetings start at 9:30 a.m. on Saturdays** and are preceded by a breakfast buffet starting at 9:00 a.m. The Annual Meeting customarily starts at 9:00 a.m. with breakfast buffet at 8:30 a.m. Family Law Section members who are not Council members are welcome at all Council meetings. However, if you know you are going to attend a meeting, kindly send an e-mail in advance so we are sure to have plenty of space and food. If a presenter or member wishes access to audio-video equipment, please let us know 7 days in advance.

—Carol Breitmeyer; breitmeyer@bcfamlaw.com

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The *Michigan Family Law Journal* welcomes letters to the Editor. Typed letters are preferred; all may be edited. Each letter must include name, home address and daytime phone number. Please submit your letters, in Word format, to the Chair of the Family Law Section, Carol F. Breitmeyer, c/o State Bar of Michigan, Michael Franck Building, 306 Townsend Street, Lansing, MI 48933, soudsema@mail.michbar.org

FAMILY LAW SECTION "LISTSERV"

(E-mail Discussion Group)

The Family Law Section sponsors a "listserv," which is "geek-speak" for an e-mail discussion group. To be eligible to join, you must be a member of the Family Law Section or be a Michigan judge. If you are eligible and wish to participate (it is a wonderful opportunity to share ideas and solve problems, not to mention communicating with many fine colleagues), you may initiate your subscription to the Familylaw listserv by going to http://groups.michbar.org/ and click on FamilyLaw. Once there, fill out the form under "Subscribing to FamilyLaw" and follow the instructions. If you have questions, contact Elizabeth A. Sadowski at sadowski@mindspring.com, or call her at (248) 652-4000.

To All Prospective Family Law Journal Authors:

On behalf of the Family Law Council, I am encouraging our membership and readers to consider submitting an article to the *Family Law Journal*.

Article Contact Person: The primary contact person at the State Bar for *Journal* articles is Sue Oudsema (517) 367-6423 and soudsema@mail.michbar.org. Article submissions should be e-mailed to Sue in Word format. Please carbon copy me (aep@papistalaw.com) and Sahera Housey (houseys@oakgov.com) and write "Article for the Family Law Journal" in the subject line when you submit your article.

Article Deadlines: Please submit your articles to Sue Oudsema at her email address above no later than the last day of the month preceding the publication month. There are ten (10) published *Family Law Journal* issues each year. June/July and August/September are combined issues.

Formatting and Links: Consistent with the *Bar Journal's* practice, our formatting resource guide is *The Chicago Manual of Style* (see www.chicagomanualofstyle.org). Please use endnotes for citations. Feel free to include links in your endnotes, which will permit the reader to click — and then be directed to the original source or reference.

Peer Reviewed: Authors are expected to have engaged another attorney to carefully review, critique, and edit articles before sending to the Family Law Journal for consideration.

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Please Notify: If you are a first time author and wish to submit an article for possible publication, please advise Sahera Housey or Anthea Papista. Please include a detailed description of your topic.

Editorial Board Discretion: The Editorial Board reserves the right to accept, reject, and edit all submitted articles. We shall endeavor to communicate any necessary substantive changes to the author in advance of publication.

Very Truly Yours,

Anthea E. Papista
Journal Committee Chair

Chair Message

By Carol F. Breitmeyer - Family Law Section Chair 2015-2016

Greetings and salutations in this New Year!

A new year gives us all, symbolic or not, a chance to improve ourselves and our practices. Make good on your promises to yourself this year. Avail yourself of this fresh start. A rested and reinvigorated perspective at the beginning of January can translate into new protocol(s) in your practice which will improve your office procedures, your professionalism and ultimately the services you deliver to the client. Here are some ideas to get you started:

1. Give back. Commit and participate in the pro bono clinic opportunities, even if just once per year. Consider representation when the potential pro bono client phones in extremis. Make time for that person. A few hours from each of our members will make a world of difference for those in need. We can easily forget how overwhelming the system is to those who struggle educationally and financially. Illiteracy or incarceration related to poverty create huge barriers for individuals in clearing up Friend of the Court log jams and the like.
2. Make a resolution to read the *Journal* regularly! Attend Family Law Section meetings! Sign up for at least one ICLE or other CLE course this year. It is not only a great way to stay on top of changes in the law but also an opportunity to get to know other attorneys. Consider participating in your local family law bar association or committee. If your county/ bailiwick does not have one, consider starting an association. This will improve your practice and can be very fun.
3. Prepare those QDROs and EDROs during the pendency of the action, don't wait until after the Judgment is entered. Make it your new practice to enter the QDRO/EDRO/ DRO simultaneous with the entry of the Judgment of Divorce.
4. Create a memo after a client intake interview noting all details of the interview. This makes crafting an effective mediation summary or brief during the action far simpler. It also makes the inclusion of important details far easier. An intake memo eliminates re-ask-

FAMILY LAW SECTION

Lifetime Achievement Award Winners

1988–**Norman H. Robbins**	1988–**Maxine Board Virtue**	1991–**Hanley M. Gurwin**
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The Family Law Section expresses its gratitude and appreciation for those extraordinary family law attorneys whose dedication, contributions, and leadership earned them the highest honor in Family Law: the Family Law Section Lifetime Achievement Award.

ing the frantic client for those specific small details that can make all the difference. A quick re-read of the memo just prior to meeting the client or appearing in court is a great way to refresh your memory.

5. Consider using a parenting coordinator or psychologist for "limited sessions." A couple of visits pre-judgment "sans" lawyers by mom and dad and voila, parenting time done! Eliminate the posturing of lawyers and eliminate the influence of the MCSF; focus on the development of the child, and mom and dad's realistic abilities, time constraints and more often than not a good schedule is produced. A prep session with your client beforehand should put them in good stead. As well intended as 4-ways may be, lawyers have a very hard time resisting the urge to look "good" or "one-upping" the other. This does not benefit children.

6. Commit to the "closing letter." While clearly best practice, it is very easy to skip this crucial step, especially in the less complex estates. The guidance and closure provided with this missive is invaluable to the client. It also serves as a reminder to the attorney should issues arise post-judgment.

7. Sometimes we forget how painful the process of breaking up is. Recommit to bring your most compassionate tough-love self to your clients. They certainly need guidance and advice, but don't forget to be nice! Clients also profit from a few visits to a capable therapist, not open ended, just to help them learn some strategies for coping. Be sure and encourage them in this direction.

8. Update your list of professional resources. Be sure to have at the ready names of competent therapists and other professionals for your clients' use. Remember to talk to other attorneys about who they like to use and who has worked for them. Reach out in this new year to professionals in complementary fields – take someone out to lunch, get to know them. Your phone call will then be returned promptly in this new year.

9. Civil behavior in our practice is not a hint or suggestion as a New Year's resolution. It must be the bedrock of our practice(s). Fairness, appropriate advocacy and the capacity and knowledge to understand the "big picture" are the underpinning to civil practice. Intractable and unreasonable positions taken simply because the client "insists" might not really be appropriate. Setting up a client with unrealistic expectations always backfires. Be the kind of lawyer who you wish all others were.

I hope I have provided at least one small "nugget" for you to consider utilizing in this new year. Happy New Year.

Best Practice Tips From The Experts

Curated by Ryan M. O'Neil

The *Family Law Journal* is looking for monthly submissions from our readers to contribute to a new column which will focus on practice tips and new developments in the area of family law.

Each month, the *Family Law Journal* will publish a new practice tip designed to enhance and improve the practice of our readers. Please send your practice tips to Ryan M. O'Neil via electronic mail at *rmo@markcranelaw.com* along with your name and contact information.

Thanks to former Family Law Council chair James J. Harrington, III for proposing and shaping this new column.

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MEDIATION MATTERS

Recent Changes To Social Security Affect Mediation Strategies!!

By Sandy K Derby, CFP®, ChFC™

Congress recently agreed on some changes to Social Security benefits, in an attempt to reduce the deficit, and avoid a shut-down. These changes are expected to save billions of dollars for the government over time. Two Social Security filing strategies used by married couples to enhance their joint benefit amount are being phased out. This will also affect divorcees.

If you are not at least age 62 by the end of 2015 you cannot "file-and-restrict." This had allowed an individual who is at least full retirement age to limit or "restrict" the benefit they wish to receive to just their spousal amount, and delay the start of their own benefit. At age 70, they then switch to their own benefit.

The other disappearing strategy is called "file-and-suspend." Under file-and-suspend, your partner can qualify for a spousal benefit based upon your record even though it is in "suspension," i.e., Social Security is not sending you a monthly check. If your benefit remains suspended from full retirement age until you turn 70, it can be as much as 32% larger.

Important Deadline: The last day to file-and-suspend and enable a dependent to receive a benefit based on your record is April 30, 2016. However, *what's not clear yet, is whether* BOTH *partners have to meet this filing deadline.*

Also, the ability to "suspend" your benefit at full retirement age will still be available after April 30th. However, if someone else–a spouse, child, or parent–is receiving a Social Security benefit based upon your record, their checks will also be suspended, until you begin to collect.

Not Changed: Any couples who are currently using either file-and-suspend or file-and-restrict may continue to do so.

DIVORCEES TAKE A BIG HIT!

While the above two claiming strategies are being *phased out,* the budget act is going to have a serious and more immediate impact on anyone who is divorced. Starting January 1, 2016, a divorced spouse is no longer eligible for a benefit based upon her/his "ex", unless and until, their former partner has filed for Social Security.

This has not been the case since 1983 when Congress specifically changed the existing law! That year, Congress specifically stated that, assuming a divorced spouse meets the requirements, she/he is eligible for a benefit based upon their former partner's record, whether or not that individual has started receiving Social Security. "Independent entitlement" of divorced spouses had allowed a divorced spouse, who is age 62 or over, and who has been divorced for at least 2 years, to receive benefits based on the earnings of a former spouse who is eligible for retirement benefits, regardless of whether the former spouse has applied for benefits or has benefits withheld under the earnings test. NOT ANY MORE!!

Divorced women will be especially hard-hit by this. Together, lower wages and more time out of the paid workforce result in a lower Social Security benefit based upon a woman's own earnings. According to the Social Security Administration, in 2013, the most recent year available, "the average Social Security income received by women 65 years and older was $12,857 compared to $16,590 for men." If a divorced woman can receive a higher benefit based upon her ex-spouse's earnings, it can make a big different in the lifestyle she can afford.

Unfortunately, based upon the budget act, if a 62-year old divorced woman was planning to file for Social Security benefits next year, she might have to wait *8 years* – if her ex waits until age 70, before she qualifies for her spousal amount.

Mediators should plan to work with a financial advisor about these changes, as it can have a significant impact on the cash flow your clients will have available, and when they plan their filing dates. If they are nearing retirement, you may need to make some significant changes to their calculations.

About the Author

Sandy K. Derby, CFP®, ChFC has been in the financial services industry since 1989. She has been selected as one of America's Top Financial Planners by Consumers Research Council of America. Sandy is also a member of Collaborative Divorce Practitioners of SW Mi. She is President of Derby Financial & Assoc. LLC, where our goal is to help clients become financially secure and independent, through comprehensive financial planning. Sandy can be reached at sandykderby@derbyfinancial.net or 269-321-5047.

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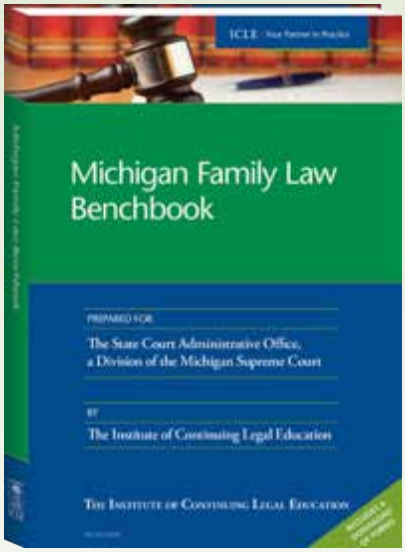

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6GY

Solutions for Domestic Violence: The State of Batterer Intervention Programs in Michigan

By Daniel J. Ferency

What is Domestic Violence?

There is no single or all-inclusive definition of domestic violence. Under Michigan law, domestic violence is conduct directed toward an intimate partner and "means the occurrence of any of the following acts by a person that is not an act of self-defense:

- Causing or attempting to cause physical or mental harm to a family or household member.
- Placing a family or household member in fear of physical or mental harm.
- Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested."[1]

For purposes of this article, the Batterer Intervention Standards for the State of Michigan define "domestic violence" as "a pattern of controlling behaviors, some of which are criminal, that includes but is not limited to physical assaults, sexual assaults, emotional abuse, isolation, economic coercion, threats, stalking, and intimidation. These behaviors are used by the batterer in an effort to control the intimate partner. The behavior may be directed at others with the effect of controlling the intimate partner."[2]

The predominant model of domestic violence usually consists of physical assaults or emotional abuse committed against women by men.[3] It is true that most of the violence committed against women occurs within an intimate relationship.[4] Statistical studies examining the frequency of violence against women are indeed shocking. Approximately 1.5 million women are physically assaulted and/or raped in the United States each year by their intimate partners.[5] Given the prevalence of domestic abuse, many methods have been developed over the years to address the impact of abuse on the victims, their families and society as a whole. Batterer Intervention Programs have been one such response. Although BIPs are most frequently used as part of sentencing in criminal domestic violence cases, referrals to the programs may also be used in family law cases where domestic abuse has been identified. The parenting time statute authorizes a court to order "any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent" including any condition appropriate in a particular case.[6] A court may order a parent to attend a Batterer Intervention Program concurrent with, or as a condition to, the exercise of parenting time. Thus, this article will describe Batterer Intervention Programs, discuss program standards in Michigan and assess the efficacy of programs nationwide.

What are Batterer Intervention Programs?

Batterer Intervention Programs were first established in the late 1970s and early 1980s in order to aid in the elimination of domestic violence, though most programs in existence today have been developed since 1990.[7] While a few programs address female or same-sex batterers, the vast majority are geared toward heterosexual men who abuse their female partners.[8] In the 1980s, as many states began enacting domestic violence legislation and mandatory or pro-arrest policies, the demand for Batterer Intervention Programs began to increase.[9] Batterer Intervention Programs have been generally described as "court-mandated alternatives to incarceration."[10] Enrollment in a program may "defer trial, conviction or sentencing of a criminal defendant pending his (or her) voluntary participation in a treatment program designed to prevent further violence."[11] In certain cases, courts may utilize Batterer Intervention Programs as a condition of sentence in addition to jail time, rather than solely as an alternative.

Since the inception of Batterer Intervention Programs, a move has been made toward an integrated "multidimensional" model of batterer intervention to better address the complexity of the problem. In 1981, the Domestic Abuse Intervention Project (DAIP) in Duluth, Minnesota created a structured approach to batterer treatment, known as the "Duluth Model."[12] The Duluth Model is currently the most common state-mandated model of intervention, and in many states is the only statutorily-authorized model.[13] It takes a psychoeducational approach, promoting awareness of the vulnerability of women politically, economically, and socially. As the Duluth Model took shape in the 1980s, cognitive-behavioral

treatment (CBT) methods also emerged. CBT programs approach domestic violence through a combination of using "the role of thoughts and attitudes influencing motivations and . . . behavioral emphasis on changing performance through modification of reinforcement contingencies."[14] CBT models are popular with other genres of treatment programs, such as substance abuse and sex-offender treatment because they provide participants with tools to recognize and change their behavior.[15] Today, many batterer treatment programs utilize a combination of two approaches.[16]

Due to the wide variety of types of Batterer Intervention Programs, not all BIPs share a common curriculum or content pattern. Many, though, have basic similarities. Most programs consist of a classroom-type forum that focuses on reprogramming the batterer's ideology on power and control.[17] Although different programs vary in duration, "most are relatively short-term, ranging from 6 to 32 weeks," with "two or three sessions . . . spent on each theme."[18] The programs are generally structured around classes "that emphasize the development of critical thinking skills around several themes, including nonviolence, respect, support, trust, partnership, and negotiation."[19] Other kinds of techniques utilized to confront abusive behavior may include didactic education, group participatory exercises, structured feedback, self-evaluation, role-plays, skills training and practice, homework assignments, positive reinforcement, and cognitive behavioral techniques.[20] The curriculum is almost always offered in groups because it helps to counter the common perception among batterers that their violent behavior is a private matter that should be of no concern to others. Group interventions are also thought to promote social accountability, as well as provide opportunities for social reinforcement and peer support of non-violence.[21] Program goals can generally be summarized by the following cycle: (1) Overcoming Denial; (2) Taking Responsibility for Abuse; (3) Refraining from Abuse; and (4) Learning Alternatives to Abuse.[22]

Are Batterer Intervention Programs Effective in Stopping Violence?

The goal of Batterer Intervention Programs is to stop and/or reduce the prevalence of domestic violence.[23] Most Batterer Intervention Programs, including those in the State of Michigan, are meant to be utilized in conjunction with a coordinated community response.[24] Fortunately, a considerable amount of scientific research has been conducted regarding the effectiveness of Batterer Intervention Programs as a mechanism for curbing domestic violence since their inception decades ago. Unfortunately, after a review of these studies, we are left with unclear answers to the very important question: Do Batterer Intervention Programs work?

According to one recent review of the past two decades of scientific research in this area, overall, the evaluations of Batterer Intervention Programs are limited in scope and tend toward using recidivism as the sole indicator of effectiveness.[25] Another limitation of BIP studies, according to one observer, is that there is very little research on the victim's perception of safety, the behavioral and attitude change in men who batter, or the continued use of non-physical coercive behaviors by program participants.[26] Two reviews of the empirical literature[27] and two additional meta-analyses of selected studies[28] have all drawn positive but cautious conclusions about the success of these programs. With dozens of published scientific evaluations now available, one scholar has drawn the following conclusions about the key findings of the effectiveness of Batterer Intervention Programs: (1) Across studies, BIPs have a modest, but positive impact on ending violence; (2) Group BIPs help a majority of men end their physical violence over a period of time; (3) It is not yet clear what components of group BIPs help create these changes; (4) It appears that group BIPs incorporating motivational enhancement components help more men change; (5) Personality type does not appear to predict different outcomes; (6) Programs designed for men of color achieve similar outcomes to other BIPs; and (7) Group BIPs that are part of coordinated responses with the criminal justice system achieve better outcomes.[29]

In sum, the published evidence about the effectiveness of Batterer Intervention Programs is not dispositive of the question of whether or not BIPs work. Success in reforming offender behavior has proven more frequent when abusers participate in batterer intervention programs operating in conjunction with a comprehensive community response and strict judicial monitoring.[30] Despite these findings, contradictory studies exist.[31] Faced with conflicting evidence, some advocates, including the National Academy of Sciences, conclude that the urgency and magnitude of domestic violence has prompted policy makers and the like to act without specific scientific support.[32] There is simply no other viable alternative available at this time.

Batterer Intervention Standards In Michigan and Across the United States

By the 1990s, it had become clear to many professionals working with batterers and survivors of domestic violence that Batterer Intervention Programs were growing at a far greater rate than expected.[33] Due to the increased need for Batterer Intervention Programs following nationwide legislation strengthening criminal domestic violence statutes, many states began implementing guidelines or standards. This occurred partly out of a well-founded fear that some programs were being created in order to take advantage of the growing number of referrals from courts by enrolling as many batterers as possible solely for profit, not with the goal of reforming batterers or ending violence.[34] As of 2013, there are forty-four states that

have standards for Batterer Intervention Programs.[35] The six states that do not have Batterer Intervention Program Standards of any kind include Arkansas, Connecticut, Mississippi, New York, Oklahoma, and South Dakota.[36]

Michigan is among the twenty states that have developed Batterer Intervention Standards, but whose standards have not been made mandatory by state statute, court rules, or enforcement agencies.[37] An Administrative Policy Memorandum sent to all judges in the State of Michigan, describing the standards shortly after their creation and endorsement by Governor Engler in 1999 is indicative of how these standards are treated in Michigan and these states.[38] According to the memorandum, "[i]n an effort to provide judges with information on all recommended and appropriate options with which to address issues associated with domestic violence, enclosed please find….Batterer Intervention Standards. To facilitate use of the standards, we are also providing a checklist that courts *can and should* provide to any program desiring to qualify to provide court ordered batterer treatment."[39] In states like Michigan, while there appears to be some consensus that Batterer Intervention Program Standards should be used, there is no enforceable law or rule mandating their use and no formal certifying agency with the power to affect or punish those programs that do not comply with the standards.

In Michigan, Batterer Intervention Standards are "enforced" by an organization known as the Batterer Intervention Provider Standards Compliance Council (BIPSCC). BIPSCC seeks to identify the batterer intervention service providers operating in this state and determine which providers meet Michigan standards.[40] According to BIPSCC, Batterer Intervention Programs that meet or exceed state standards exist in only 21 of Michigan's 83 total counties.[41] BIPSCC does not provide on site assessment and evaluation, and it does not vouch for the quality of the programs that BIPSCC has identified as meeting state standards.[42]

In contrast with Michigan, Minnesota is one of twenty-four states that have mandatory Batterer Intervention Standards implemented through either laws passed by the state legislature or via state court rules.[43] The Minnesota Domestic Abuse Act was enacted by the state legislature in 1979, and when first passed, it was described as "... providing a more efficient and practical remedy for some kinds of domestic abuse than the traditional alternatives."[44] At the time, the new law was thought to be an important development in which Minnesota joined a number of other states in providing previously unavailable remedies for victims of domestic violence and abuse.[45] Not only are the standards mandatory in the sense that a court must send a batterer to a Batterer Intervention Program if the court is considering putting the offender on probation instead of imposing jail time under the Act, but Batterer Intervention Programs in Minnesota must, under state law, meet the state standards outlined later in the Act[46] and provide proof to the referring agency that they do in fact comply with those standards.

Illinois, like Minnesota, currently has mandatory Batterer Intervention Program Standards which have been incorporated into state law.[47] In 1994, the Illinois Department of Human Services published the *Illinois Protocol for Partner Abuse Intervention Programs, Section I-Male Perpetrators of Woman Abuse*.[48] What makes Illinois remarkable is that the state has developed separate standards for different kinds of batterers, men and women. Partly in response to evidence that women may be batterers, but also in response to the fact that many female victims of domestic violence were being arrested and charged with battering due to pro-arrest policies in Illinois, the authors of the original protocols were called upon to develop additional guidelines for "those few women who are legitimately female perpetrators of male partner abuse."[49] Illinois has taken a position on female perpetration of domestic violence and has recognized that many of the women that were being required to attend BIPs under Illinois State Law were actually victims, and not perpetrators, of domestic violence. As such, the *Illinois Protocol for Partner Abuse Intervention Programs, Section II-Female Perpetrators of Male Partner Abuse* calls for stricter screening procedures. "Two people should conduct the screening, one whose primary responsibilities lie in victim services and one whose primary responsibilities lie in abuser services… Women who have acted in self-defense or whose arrest was based on a control tactic of the partner must be referred to victim services."[50] Similarly, recognizing that "[w]omen who use force may do so in response to the abuse they have suffered," the RENEW program in Washtenaw County offers an intervention program to women referred through the criminal courts.[51]

Although Michigan strongly encourages the voluntary use of its standards for Batterer Intervention Programs, it does not yet mandate any standards. A move toward approaches taken by Illinois or Minnesota would ensure the safety of more victims and the potential rehabilitation of more batterers in Michigan. While increased education of the judiciary is vital, only an act of the Michigan Legislature or the Michigan Supreme Court can make Michigan's Batterer Intervention Standards mandatory, available, and attenuated to the needs of the diverse kind of batterers that exist in this state.

About the Author

Daniel J. Ferency, Esq. *graduated from Western Michigan University in 2009 with a B.A. in English and Philosophy, and later earned a Juris Doctor degree from Wayne State University Law School in 2013. He has previously worked for the Solution Oriented Domestic Violence Prevention Court in the Third Judicial Circuit Court in Detroit, MI, and was employed as a Judicial Attorney to the Hon. Richard B. Halloran, a Circuit Court Judge in the Family Division of the Third Judicial Circuit Court in Detroit, MI. Mr. Ferency is currently serving as a Judicial Attorney to the Hon. Kathleen M. McCarthy, Presiding Judge of the Family Court in the Third Judicial Circuit Court.*

Endnotes

1 MCL 400.1501(d).

2 Batterer Intervention Standards for the State of Michigan (June, 1998), p. 7. Retrieved from *http://www.biscmi.org/aboutus/michigan_standards.html* on 4/4/2013.

3 Bancroft, Lundy. *Why Does He Do That? Inside the Minds of Angry and Controlling Men*. (2002).

4 Arias, Ileana & Dankwort, Juergen, et al. *Violence Against Women: The State of Batterer Prevention Programs*, 30 J.L. Med. & Ethics 157, 157 (2002).

5 *Id.*

6 MCL 722.27a(8).

7 Adams, David. *Certified Batterer Intervention Programs: History, Philosophies, Techniques, Collaborations, Innovations, and Challenges. Clinics in Family Practice*, Vol. 5(1), May 2003.

8 *Id.*

9 *Id.* at p. 2.

10 Dekki, Amanda. *Punishment or Rehabilitation? The Case for State-Mandated Guidelines for Batterer Intervention Programs in Domestic Violence Cases*, 18 St. John's J. Legal Comment 549 (2004).

11 *Id.*

12 Rizza, Johnna, *Beyond Duluth: A Broad Spectrum of Treatment for A Broad Spectrum of Domestic Violence*, 70 Mont. L. Rev. 125, 127 (2009).

13 *Id.* at 128.

14 *Id.* at 129.

15 *Id.*

16 *Id.*

17 Dekki, Amanda at 568, *supra*.

18 Dekki, Amanda at 569, *supra*.

19 *Id.*

20 *See* Adams, *supra.*

21 *Id.*

22 *See* Adams at 7-11, *supra*.

23 *See* Dekki at 572, *supra*.

24 Batterer Intervention Standards for the State of Michigan, June 1998, p. 6.

25 Edleson, J. L. (2012, February). *Groupwork with Men Who Batter: What the Research Literature Indicates*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence. Retrieved from *http://www.vawnet.org*.

26 *Id.*

27 *See* Bennett, L., & Williams, O. (2001). *Controversies and Recent Studies of Batterer Intervention Programs*. Harrisburg, PA: VAWnet: The National Online Resource Center on Violence Against Women (*http://www.vawnet.org*); *See also,* Gondolf, E.W. (2004). *Evaluating Batterer Counseling Programs*. Aggression and Violent Behavior, 9, 605-631.

28 *See* Babcock, J.C., Green, C.E., & Robie, C. (2004). *Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment*. Clinical\Psychology Review, *23,* 1023-1053; *See also,* Feder, L., & Wilson, D.B. (2005). *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers' Behavior?* Journal of Experimental Criminology, *1,* 239-262.

29 *See* Edleson, *supra* at 3-6.

30 *See* Dekki, *supra*, at 583-84. (Noting that "[i]t has been proven that the best way to combat domestic violence is through a Coordinated Community Response, which stresses the severity of the problem."); *see also* Tsai, Betsy. *The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation, 68 Forham L. Rev. 1285, 1289-90 (2000).* ("One study documented that of those batterers under court supervision, the treated batterers showed a decrease in psychological abuse, as opposed to physical abuse, when compared with untreated batterers .... Some suggest that one reason for the initial success of court-mandated counseling may relate to the additional influence of the court intervention itself. This suggests that batterer intervention programs may be more effective when coordinated with other community interventions and further emphasizes the need for a coordinated community response.").

31 *See* Rizza at 131, *supra*. (Recognizing inconsistent and contradictory studies regarding the effectiveness of batterer intervention programs).

32 *See* Rizza at 126.

33 Schmidt, Linda. *Monitoring Compliance with Batterer Intervention Standards: A Survey of Leaders of Statewide Domestic Violence Coaltions.* Saginaw Valley State University, 2002.

34 *Id.*

35 *www.biscmi.org*

36 Parker, Heather. *Batterer Intervention Programs: State Standards for Service Providers.* National Judicial Education Program, Appendix A. (2007).

37 Parker, Heather. *Batterer Intervention Programs: State Standards for Service Providers.* National Judicial Education Program, Appendix A. (2007).

38 Michigan Administrative Policy Memorandum 1999-01; Batterer Intervention Standards. January 11, 1999.

39 *Id.* (emphasis added).

40 *http://www.biscmi.org/bipscc/*

41 *http://www.biscmi.org/what-is-bipscc/bipscc-approved-programs/*

42 *Batterer Intervention Provider Standards Compliance Council BIPSCC Fact Sheet*. Retrieved from *http://www.biscmi.org/wp-content/uploads/2014/06/BIPSCC_Fact_Sheet1.pdf* on 11/23/2015.

43 Parker, Heather, *supra*.

44 Arnott, Stephen R., *Screening for Domestic Abuse: What You Don't See, May Be What You Get*, Bench & B. Minn., October 2009, at 25.

45 *Id.*

46 *See* M.S.A. § 518B.02(2)(b)-(l).

47 Parker, Heather, *supra.*

48 *Illinois Protocol for Partner Abuse Intervention Programs, Section II-Female Perpetrators of Male Partner Abuse*. Illinois Department of Human Services: Domestic Violence Advisory Council.

49 *Id.*

50 *Illinois Protocol for Partner Abuse Intervention Programs, Section II-Female Perpetrators of Male Partner Abuse*, *Position on Women Arrested for Domestic Violence,* p. iv. Illinois Department of Human Services: Domestic Violence Advisory Council.

51 *http://csswashtenaw.org/renew/*

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The Case of the Issue

By Henry S. Gornbein

Tyronna Howard (Deceased) and Antonio Blackburn -vs- Mark Howard
For Publication May 19, 2015

The Issue

The issue is the rights of a third party with regard to custody.

Statement Of Facts

The parties were divorced on November 13, 2006, with the mother having primary custody. She passed away on August 31, 2013. Before she died, she and the children moved in with Antonio Blackburn (Blackburn), who is the Appellee. On September 24, 2013, the former husband filed an emergency ex parte motion to enforce the judgment of divorce and return the children to him. He alleged that he attempted to bring his children home after his former wife died but Mr. Blackburn refused to return them.

The response was that the former husband suffered from brain tumors, multiple sclerosis and lived in a one-bedroom apartment in an assisted living facility. For these reasons, the former wife had entrusted the children with her brother, Blackburn. Blackburn filed Petitions for Guardianship and Conservatorship over each of the children and requested the trial court maintain the status quo and allow the minor children to remain with him until the probate court makes a decision on the petitions.

On October 4, 2013, the trial court held a hearing on Blackburn's motion. Defendant's sister had power of attorney for Defendant and she was the one who requested the ex parte motion. She stated that the Defendant wants his custodial rights restored and the children returned to his home. When the court questioned Defendant's sister as to why he was not addressing the court himself, she indicated that he cannot cognitively speak due to his multiple sclerosis. She also stated that he is not deemed unfit but is deemed disabled, which is a big difference. He wants his children to live with him. Even though he is living in a one-bedroom assisted living facility and could not answer but instead looked to his sister for help. The matter was adjourned for her to retain an attorney.

A Guardian Ad Litem was appointed by the court. She explained that the children love the Defendant but they do not want to live with him as they felt that, due to his medical conditions, they would be taking care of the Defendant rather than the Defendant-father taking care of them. When the Guardian Ad Litem questioned the Defendant, he was unable to tell her where the children went to school or where they lived. When asked how he would care for the children, he told her that the children were "big [and] that they could care for themselves."

The trial court noted that it was authorized by the Child Custody Act to grant custody of the children to a third-party, even one without standing, so long as it found that this was in the children's best interest.

There was an evidentiary hearing on the best interest factors and Defendant-father refused to put on witnesses, arguing that the parental presumption was in his favor, and there was no third party with standing who could rebut the presumption by clear and convincing evidence. The trial court allowed Blackburn to testify in the proceedings and he was subject to cross-examination by Defendant's counsel. No other witnesses were presented in the matter and the Defendant did not testify on his own behalf.

The trial court went through the Child Custody Act and found that factors (a), (b), (c), (d), (e), (g), (h), (j) and (l) favored Blackburn. It found that factors (f) and (k) favored neither party and found zero factors favored the father. On factor (l), the catch-all factor, the trial court detailed that the most influential factor considered by the court to be relevant to this matter is fitness. The trial court was left with its observations, which included that Defendant was in a wheelchair, Defendant raised his hand when his name was mentioned in court, and that Defendant did not know his own address. The court concluded that the Petitioner established by clear and convincing evidence that awarding him custody was in the best interests of the minor children.

The Court Of Appeals

The first argument was that the trial court impermissibly allowed the third party, Blackburn, to participate in the proceedings and rebut the parental presumption owed to natural parents under MCL 722.25(1) because he did not have standing. The Court of Appeals disagreed relying on *Heltzel v Heltzel*, 248 Mich App 1, 29 (2001). It also cited *Ruppel v Lesner*, 421 Mich 559 (1984), noting that nothing in the

Child Custody Act, nor in any other authority, authorizes a non-parent to create a child custody "dispute" by simply filing a complaint in circuit court alleging that giving custody to the third party is in the "best interests of the children." The difference here is that the case was initiated by Defendant-father. Thus, it is a situation where the Defendant filed this action seeking judicial intervention after his ex-wife died, requesting that the court return his children who had been living at Blackburn's house. There is a presumption in favor of an established custodial environment set forth in MCL 722.27(1)(c) that yields to the parental presumption set forth in MCL 722.25(1); however, there is nothing that precludes the third party in this case from contesting the return of the children to the Defendant. In other words, the parental presumption may be rebutted.

Under MCL 722.25(1), if a custody dispute is between a parent and a third party, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents unless the contrary is established by clear and convincing evidence. Clearly, a third party can present evidence in support of his or her claim that a child's best interests are served by the continued placement of the child with a third party.

The next argument was that the trial court erred when it ignored the parental presumption and conducted a best interest hearing. The Court of Appeals disagreed and found that the trial court gave proper weight to the presumption favoring Defendant as the preferred custodian of the children; however, that presumption may be rebutted by clear and convincing evidence that custody with Defendant was not in the best interests of the children.

Defendant also argued that the trial court erred when it failed to apply the parental presumption and forced him to carry the burden of persuasion throughout the proceedings. The Court of Appeals disagreed based on the fact that the best interest hearing was properly conducted and Blackburn, the third party uncle, was properly permitted to present evidence in an attempt to rebut the presumption that the children's best interests required physical custody with Defendant-father.

Conclusion

The trial court's consideration of this and other evidence bearing on Defendant's fitness was a properly focused inquiry on the best interests of the children for all of the reasons already stated. The trial court was affirmed.

Comments

This is an interesting opinion that is worth reading in its entirety. Clearly, this is a case where the natural parent could not take care of the children and the proper placement was with the uncle.

About the Author

Henry S. Gornbein *is a partner with the law firm of Lippitt O'Keefe Gornbein PLLC in Birmingham, Michigan. His practice is exclusively devoted to Family Law. He is a former chairperson of the Family Law Section of the State Bar of Michigan; a former president of the Michigan Chapter of the American Academy of Matrimonial Lawyers; former Chair of the Long Range Planning Committee for the national American Academy of Matrimonial Lawyers; member of the Oakland County Friend of the Court Citizens Advisory Committee; winner of the Professionalism Award from the Oakland County Bar Association in 2004; author of the "Spousal Support" Chapter of* Michigan Family Law*; author of "Case of the Issue" for the* Michigan Family Law Journal*, State Bar of Michigan; blogger for the* Huffington Post*; creator and host of the award-winning cable television show,* Practical Law*, now entering its 17th year; and Podcaster for DivorceSourceRadio.com. His new book,* Divorce Demystified, Everything You Need to Know Before Filing for Divorce*, is available on Amazon as a softcover or eBook.*

The Family Law Section
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Special thanks to the members of the Great Lakes Honor Roll for their support of the Family Law Section and Family Law Journal in 2015


Professor Lex

By Harvey I. Hauer and Mark A. Snover
Hauer & Snover

Dear Professor Lex,

My client and her ex-spouse are divorced. They have one minor child together. The ex-spouse, pursuant to the terms of the Judgment of Divorce and Uniform Child Support Order, was ordered to pay child support to my client. The child support obligation was based in part on my client's ex-spouse's annual gross income of $75,000.00.

My client has just been served with a Motion that was filed by her ex-spouse requesting a reduction in his child support obligation. In the Motion, he alleges that prior to the entry of the judgment and the support order; he had been terminated from his employment. Subsequent to the entry of the judgment, the ex-spouse obtained new employment, but his earnings are substantially less than his prior employment.

Upon receiving the Motion, I scheduled the father's deposition. I have been advised that he has no intention of appearing at the deposition. Opposing counsel states that there is no discovery in post-judgment matters.

Please give me your thoughts regarding the Motion and whether I am entitled to take the father's deposition.

Dear Practitioner,

Pursuant to MCL 552.17(1), the court may modify a judgment concerning the support and maintenance of the child *"as the circumstances of the parents and the benefits of the child[] require."*

We are not aware of all of the circumstances that the father is relying upon. However, you should read *Zammitt v Zammitt*, 106 Mich App 593, 596, 308 NW2d 294 (1981). Therein, the court held that before modification of child support is warranted, the record must reflect a change in circumstances, and this change must be supported by *"proven evidence."*

In *Zammitt*, the Plaintiff filed a motion to modify his child support obligation. When the motion was heard, the Plaintiff was not present. However, the Plaintiff's attorney, at the motion hearing, provided to the court that:

> …[the] plaintiff had remarried, lost his job and had moved to Nevada. In addition, the attorney advised the court that since his client's employment in a family-owned business had been terminated, an arrearage of $2,400 had accrued in the plaintiff's support payments. Finally, the attorney requested an evidentiary hearing by the Friend of the Court. [Nonetheless, the trial court] denied the motion to modify." *Id.*

The Court of Appeals upheld the trial court's ruling and concluded, in part, that:

> The court is not obliged to reduce child support payments solely for the reason that there has been a reduction in plaintiff's income. All relevant factors must be considered. Without the plaintiff present to provide this information, the court could do no more than decide the motion on the information supplied by the petitioner.
>
> While it is clear that the court did state that it would not grant an evidentiary hearing unless the plaintiff appeared to testify and the arrearage was paid, this was not the basis for the denial of the motion to modify. The motion failed because of the absence of sufficient proof and the failure of the plaintiff to provide an evidentiary record that would support altering the support provisions. *Id*. at 596-597.

As to your second inquiry with regard to post-judgment discovery, MCR 2.302(A)(4) states:

> *Availability of Discovery.*
>
> After a postjudgment motion is filed pursuant to a domestic relations action as defined by subchapter 3.200 of these rules, parties may obtain discovery by any means provided in subchapter 2.300 of these rules.

MCR 3.201(A)(1) states: *"[s]ubchapter 3.200 applies to actions for divorce…."*

Since the opposing party has filed a post-judgment motion in the divorce action, it is not necessary for you to seek leave from the court as the ex-spouse has "opened the door" providing you the ability to commence discovery.

The above response is not meant to serve as a solution to a case. That would require complete disclosure of all facts in the case, including client consultation. Rather, the intent is to provide informal guidance based upon the facts that have been presented. The inquiring lawyer bears full legal responsibility for determining the validity and use of the advice provided herein.

Please send questions for Professor Lex to *Hhauer@hauer-snover.com*. Include "Professor Lex" in the e-mails subject line.

About the Authors

Harvey I. Hauer, *Hauer & Snover, PC, is a Fellow of the American Academy of Matrimonial Lawyers and the former president of the Michigan Chapter. He has also served as chairperson of the State Bar of Michigan Family Law Section, the Michigan Supreme Court Domestic Relations Court Rule Committee and the Oakland County Bar Association Family Law Committee. He has been named by his peers to Best Lawyers in America, Super Lawyers and Leading Lawyers. He is a co-author of Michigan Family Law.*

Mark A. Snover, *Hauer & Snover, PC, has been named by his peers to Best Lawyers in America and Leading Lawyers in Family Law. He was named to the National Advocates, top 100 Lawyers. Mr. Snover is listed in Martindale Hubbell's Bar Register of Preeminent Lawyers. He was also selected to the American Society of Legal Advocates, Top 100 Lawyers, and the National Association of Distinguished Counsels, Top 1 Percent. Mark served on the State Bar of Michigan Family Law Council. He is a frequent author in the family law arena.*

Finding A Military Divorce Attorney – For The Servicemember Or Retiree

By Mark Sullivan

Introduction: Why A Special Attorney?

The subject of military pension division, including the allocation of payments under the Survivor Benefit Plan, is complex and often illogical. The rules are difficult to understand, hard to find and sometimes make no sense. When your client asks about hiring co-counsel to deal with the unique problems of military divorce, you should keep in mind the issues and answers in this article. Assume that YOU are the client when you ask these questions to the lawyer who says he or she can provide specialized military divorce services. An honest and competent lawyer should have no problem in agreeing to a "test flight" on this difficult subject, and you'll usually figure out after four or five questions whether the lawyer is knowledgeable.

Questions To Ask

Can the court here divide my military pension?

The federal rules for jurisdiction over pension division lay out three tests. If any one of them is met, the court will have the power to divide the pension. *First test*–is the other party domiciled in the state where the court is located? *Second test*–did the other party consent to the court's jurisdiction to hear the pension case? *Third test*–does the other party live in the state where the court is located, but not due to military assignment? These three jurisdictional rules should be memorized by the lawyer! They are essential elements in getting pension division.

Can I save part of my SBP for my new spouse?

Sorry, Charlie—no deal. The Survivor Benefit Plan is a unitary benefit. It cannot be split between spouses. You can, however, save the whole thing for your future spouse if it's not allocated in your divorce to your former spouse. "Your EX…. or your NEXT,"–those are the options.

Can I object and stop military pension division?

*If the lawsuit is in your state of legal residence or "domicile," the general rule is that you cannot object; this state always has jurisdiction over the division of your pension. The same result probably applies if you're sued in a state where you're living but not due to military orders; there's nothing in federal law which says your objection matters. If you are sued in any other state, you may object since USFSPA (the Uniformed Services Former Spouses' Protection Act, found at 10 U.S.C. 1408) allows your pension to be divided in a state court *where you consent to the division*.

Does the non-military spouse get half of the pension?

As a general rule, this happens only if the marriage was for the entire military career. Otherwise, the spouse or former spouse gets half of the marital share (that is, the share acquired during the marriage) or half of the community portion, in community property states.

What are the deadlines for getting a military pension division order sent to the retired pay center?

A trick question–unlike the deadlines for SBP, there are NO deadlines for sending a military pension division order to the pay center.

What about Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI) for death benefits instead of SBP?

A 1981 U.S. Supreme Court decision, *Ridgway v. Ridgway*, states that it's always up to the servicemember to choose an SGLI beneficiary, and no state court or agreement will be upheld which provide anything else.

What does Former Spouses' Protection Act (FSPA) say about life insurance?

Nothing.

What are the four methods for military pension division allowed by the retired pay center?

These are:

1. *Percentage:* "Mary gets 34% of John's disposable retired pay." [Used when John is already retired]
2. *Set dollar amount:* "Mary gets $450 a month from John's military pension."
3. *Formula:* "Mary gets half of the marital share of John's

retired pay, consisting of 120 months of military service during their marriage divided by the total number of months of John's creditable military service." [Used when John is still serving]

4. *Hypothetical:* "Mary gets 41.23% of the retired pay of a sergeant first class (E-7) with 22 years of creditable service and a retired pay base of $_____."

Would a "set dollar amount" for military pension division be a good idea in my case?

Probably so, since it would freeze the amount to your spouse or former spouse, with all COLA's (cost-of-living adjustments) going to you.

Can I stop this case dead in the water for a while, since my military duties are keeping me too busy to pay attention to the case?

It's possible if you use the Servicemembers Civil Relief Act (called "The Soldiers' and Sailors' Civil Relief Act" until December 2003). This federal law allows the delay of a civil case for 90 days or longer if certain conditions in the statute are met.

About the Author

Mr. Sullivan *is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina and is the author of* The Military Divorce Handbook *(ABA, 2nd Ed, 2011) and many internet resources on military family law issues. A Fellow of the American Academy of Matrimonial Lawyers, Mr. Sullivan has been a board-certified specialist in family law since 1989. He works with attorneys and judges nationwide as a consultant and an expert witness on military divorce issues in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.*

TAX TRENDS AND DEVELOPMENTS

2015 Federal Income Tax Rates & Brackets, Etc., and Selected IRS Publications

By Joseph W. Cunningham, JD, CPA

2015 Federal Income Tax Rates & Brackets and Related Information

The following presents the 2015 tax rates applicable to *taxable income* of taxpayers filing tax returns as single, married filing jointly, or head of household.

Tax Rates	Single	Filing Jointly	Head of Household
10%	$0 to $9,225	$0 to $18,450	$0 to $13,150
15%	$9,226 to $37,450	$18,451 to $74,900	$13,151 to $50,200
25%	$37,451 to $90,750	$74,901 to $151,200	$50,201 to $129,600
28%	$90,751 to $189,300	$151,201 to $230,450	$129,601 to $209,850
33%	$189,301 to $411,500	$230,451 to $411,500	$209,851 to $411,500
35%	$411,500 to $413,200	$411,51 to $464,850	$411,501 to $439,000
39.6%	$413,201 and Over	$464,851 and Over	$439,001 and Over

Standard Deduction

- Single..... $6,200 - $7,850 if 65 Years Old
- Married Filing Jointly ..... $12,600 - $13,850 if One Spouse is 65, $15,100 if Both Are
- Head of Household ..... $9,250 - $10,800 if 65

Personal Exemption

The personal exemption for 2014 is $4,000. However, 2% of the personal exemption is "phased out" – or reduced – for each $2,500 – or part of $2,500 – a taxpayer's adjusted gross income (AGI) exceeds the statutory threshold for subject filing status, as follows:

Filing Status	Phase-Out Begins at AGI of:	Phase-Out Complete at AGI of:
Single	$258,250	$380,750
Married Filing Jointly	$309,900	$432,400
Head of Household	$284,050	$406,550

Long-Term Capital Gain Rates

- 0% for taxpayers in the 10% or 15% brackets.
- 15% for:
  - Single filers with taxable income between $37,450 and $413,200
  - Married Filing Jointly with taxable income between $74,900 and $464,850
  - Head of Household with taxable income between $50,2000 and $439,000
- 20% for taxpayers with taxable incomes exceeding the high end of the above ranges

Selected IRS Publications

Many IRS publications are available for download at no cost at *www.irs.gov*. Most notable for family law practitioners is Publication 504 – "Divorced or Separated Individuals", an excellent 25 page summary of divorce taxation updated in October 2013,

Also of note are the following:

- Publication 17 – Your Federal Income Tax for Individuals (very comprehensive - over 200 pages)
- Publication 501 – Exemptions, Standard Deduction, and Filing Information
- Publication 503 – Child and Dependent Care Expenses
- Publication 554 – Tax Guide for Seniors
- Publication 575 – Pension and Annuity Income
- Publication 590 – IRAs
- Publication 596 – Earned Income Credit
- Publication 971 – Innocent Spouse Relief

In addition, all 2014 federal income tax forms are accessible at *www.irs.gov*.

Note on Michigan Income Tax

For 2015, the flat tax rate is 4.25%. The personal exemption amount had not been released as this article went to press. It was $4,000 for 2014.

About the Author

Joe Cunningham *has over 25 years of experience specializing in financial and tax aspects of divorce, including business valuation, valuing and dividing retirement benefits, and developing settlement proposals. He has lectured extensively for ICLE, the Family Law Section, and the MACPA. Joe is also the author of numerous journal articles and chapters in family law treatises. His office is in Troy though his practice is statewide.*

Family Law Political Action Committee

In 1997, a voluntary Political Action Committee (PAC) was formed known as the Family Law Political Action Committee. The PAC advocates for and against legislation that directly affects family law practitioners, and the PAC lobbyist has contact with, and access to, legislators involved with family law issues. Contributions to the PAC are one way for you to help influence legislation that directly affects your practice as a family lawyer. The Family Law PAC is the most important PAC, since it affects the lives of so many people, adults and children alike. Your assistance and contribution is needed to ensure that this PAC's voice will continue to be heard and valued by the legislators in both the State Senate and House of Representatives.

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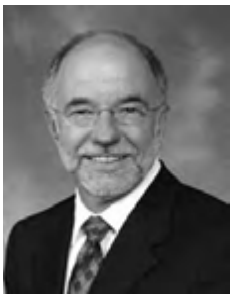

Legislative Update

By William Kandler, Lobbyist
Kandler Reed Khoury and Muchmore

The legislature will return for the 2016 session of the 98th legislature on January 13, 2016 as specified in Article IV, Section 13 of the Constitution of the State of Michigan of 1963. This being the second year of the 98th legislature, all bills introduced in 2015 continue into 2016. And, of course, several new bills will be added to the 2015 crop during 2016.

Because 2016 is an election year, it is hard to predict what issues the legislature will actually tackle. In a typical election year, the legislature attempts to avoid controversial issues. Issues that have political ramifications may be advanced in order to stake out positions with any voters who may pay attention to what the legislature is doing. Election year politics can make it tricky for those who are advocating the passage of legislation. It is hard to predict what political currents may blow through the capitol and how those currents may impact any particular piece of legislation. For anyone pursuing legislative goals, an election year adds additional complexity to the task of shepherding bills through the process.

In recent years, the Family Law Section has fared well in its efforts to enact its legislative priorities. However, the Section has one initiative left over from last year. In 2014, Senator Rick Jones introduced, and the Senate passed, SB 981, known as the "anti-trolling" bill. However, because the bill did not get to the House of Representatives until late in the 97th legislature, it died in the House Judiciary Committee in December of 2014. The bill was reintroduced by Senator Jones in 2015 and passed the Senate in June. It has again been assigned to the House Judiciary Committee. Passage of that bill during 2016 will be a priority of the Family Law Section.

Legislation That The Family Law Section Is Following:

HJR L	SAME-SEX MARRIAGE (Moss) Repeals constitutional prohibition of same-sex marriage and civil unions. Bill Text Introduced (3/24/2015; To Families, Children and Seniors)
SJR I	SAME-SEX MARRIAGE (Warren) Repeals constitutional prohibition of same-sex marriage and civil unions. Repeals section 25 of article I of the state constitution of 1963 to allow the recognition of marriage or similar unions of two people Bill Text Introduced (3/24/2015; To Judiciary) Position: Support
HB 4023	CHILD CARE (Kosowski) Limits hours children can be left in child care. Am. 1973 PA 116 (CL 722.111 to 722.128) by adding Sec. 1b. Bill Text Introduced (1/15/2015; To Families, Children and Seniors) Position: Oppose
HB 4024	NEWBORN LEAVE TIME (Kosowski) Creates Birth of Adoption Leave Act to give new parents certain time off work. Bill Text Introduced (1/15/2015) Position: No Position
HB 4028	RESPONSIBLE FATHERS (Kosowski) Creates Responsible Father Registry to provide putative fathers with notice of certain proceedings. Am. Sec. 2805, 1978 PA 368 (CL 333.2805) as amended by 1996 PA 307; adds Secs. 2893, 2893a, 2893b, 2893c, 2893d and 2893e. Bill Text Introduced (1/15/2015; To Families, Children and Seniors) Position: Support

HB 4071 (PA 50)	CHILD CUSTODY (Barrett) Modifies requirement to file motion for change of custody or parenting time order when parent is called to active military duty. Amends 1970 PA 91 by amending section 7a (MCL 722.27a), as amended by 2012 PA 600. Bill Text Signed by the Governor (6/10/2015; Signed: June 8, 2015; Effective: September 7, 2015) Position: Support
HB 4132	FAMILY LAW (Geiss) Provides for right to first refusal of child care for children during other parent's normal parenting time. Amends 1970 PA 91 (MCL 722.21 to 722.31) by adding section 7c. Bill Text Introduced (2/3/2015; To Families, Children and Seniors) Position: Oppose
HB 4133	SECOND PARENT ADOPTION (Irwin) Provides for second parent adoption. Amends 1939 PA 288 by amending sections 24, 41 and 51 of chapter X (MCL 710.24, 710.41 and 710.51), section 24 as amended by 2012 PA 614, section 41 as amended by 1994 PA 222 and section 51 as amended by 1996 PA 409. Bill Text Introduced (2/3/2015; To Families, Children and Seniors) Position: Support
HB 4141	FAMILY LAW (Runestad) Mandate joint custody in every custody dispute between parents except in certain circumstances. Amends 1970 PA 91 by amending sections 5 and 6a (MCL 722.25 and 722.26a), section 5 as amended by 1993 PA 259 and section 6a as added by 1980 PA 434. Bill Text Introduced (2/5/2015; To Families, Children and Seniors) Position: Oppose
HB 4170	VETERAN COMPENSATION (Franz) Excludes veteran disability compensation from marital estate. Amends 1846 RS 84 by amending section 18 (MCL 552.18), as amended by 1991 PA 86. Bill Text Committee Hearing in House (10/13/2015) Position: Oppose
HB 4188 (PA 53)	RELIGIOUS CONVICTIONS (LaFontaine) Allows objection to placements by child placing agency based on religious or moral convictions. Amends 1973 PA 116 (MCL 722.111 to 722.128) by adding sections 14e and 14f. Bill Text Signed by the Governor (6/11/2015, Presented 6/10/2015; Signed: June 11, 2015; Effective: September 9, 2015; earlier Presented) Position: Oppose
HB 4189 (PA 54)	RELIGIOUS CONVICTIONS (Santana) Allows objection to placements by child placing agency based on religious or moral convictions. Amends 1999 PA 288 (MCL 710.21 to 712B.41) by adding section 23g to chapter X. Bill Text Signed by the Governor (6/11/2015, Presented 6/10/2015; Signed: June 11, 2015; Effective: September 9, 2015; earlier Presented) Position: Oppose
HB 4190 (PA 55)	RELIGIOUS CONVICTIONS (Leutheuser) Allows licensure of child placing agency that objects to placements on religious or moral grounds. Amends 1939 PA 280 (MCL 400.1 to 400.119b) by adding section 5a. Bill Text Signed by the Governor (6/11/2015, Presented 6/10/2015; Signed: June 11, 2015; Effective: September 9, 2015; earlier Presented) Position: Oppose
HB 4374	SAME-SEX MARRIAGE (Irwin) Removes prohibition on same-sex marriage. Amends 1846 RS 83 by amending sections 2, 3 and 9 (MCL 551.2,551.3 and 551.9), sections 2 and 3 as amended by 1996 PA 324 and to repeal acts and parts of acts. Bill Text Introduced (3/24/2015; To Families, Children and Seniors) Position: Support

HB 4375	SAME-SEX MARRIAGE (Zemke) Removes prohibition of same-sex marriage from foreign marriage act. Amends 1939 PA 168 by amending section 1 (MCL 551.271), as amended by 1996 PA 334 and to repeal acts and parts of acts. Bill Text Introduced (3/24/2015; To Families, Children and Seniors) Position: Support
HB 4376	SAME-SEX MARRIAGE (Wittenberg) Allows issuance of marriage license to same-sex couples without publicity. Amends 1897 PA 180 by amending section 1 (MCL 551.201) as amended by 1983 PA 199. Bill Text Introduced (3/24/2015; To Families, Children and Seniors) Position: Support
HB 4411	DOMESTIC VIOLENCE VICTIMS (Singh) Prohibits housing discrimination for domestic violence victims. Amends 1976 PA 453 by amending the title and section 502 (MCL 37.2502), the title as amended by 1992 PA 258 and section 502 as amended by 1992 PA 124. Bill Text Introduced (3/26/2015; To Judiciary) Position: Support
HB 4412	DOMESTIC VIOLENCE VICTIMS (Irwin) Creates exception from disqualification from receiving benefits when leaving employment for domestic violence victim. Amends 1936 (Ex Sess) PA 1 by amending sections 17 and 29 (MCL 427.17 and 421.29), section 17 as amended by 2011 PA 269 and section 29 as amended by 2013 PA 146 and by adding section 29a. Bill Text Introduced (3/26/2015; To Commerce and Trade) Position: Support
HB 4413	DOMESTIC VIOLENCE VICTIMS (Hovey-Wright) Creates address confidentiality program for victims of domestic violence crimes. Bill Text Referred in House (11/10/2015; To Criminal Justice) Position: Support
HB 4414	SICK LEAVE (Brinks) Expands criteria use of sick leave. Bill Text Introduced (3/26/2015; To Commerce and Trade) Position: Support
HB 4477	APPEALS (Kesto) Provides for alternative service of papers if party is protected by protected order. Amends 1961 PA 236 by amending sections 227 and 316 (MCL 600.227 and 600.316). Bill Text Committee Hearing in Senate (12/8/2015) Position: Oppose
HB 4478	PERSONAL PROTECTION ORDERS (Kosowski) Includes harming animals owned by the petitioner in acts that may be enjoined. Amends 1961 PA 236 by amending section 2950 (MCL 600.2950), as amended by 2001 PA 200. Bill Text Committee Hearing in Senate (12/8/2015) Position: Support
HB 4479	PREGNANT WOMEN (Price) Increases penalties for assault of a pregnant woman. Amends 1931 PA 328 by amending section 81 (MCL 750.81), as amended by 2012 PA 366. Bill Text Committee Hearing in Senate (12/8/2015) Position: No Position
HB 4480	DOMESTIC VIOLENCE (Heise) Modifies factors determining best interest of child in cases of domestic violence. Amends 1970 PA 91 by amending section 3 (MCL 722.23), as amended by 1993 PA 259. Bill Text Committee Hearing in Senate (12/8/2015) Position: Support

HB 4481	DOMESTIC VIOLENCE (Lyons) Prohibits custody or parenting time for certain parents of a child conceived through sexual assault or sexual abuse. Amends 1970 PA 91 by amending sections 5 and 7a (MCL 722.25 and 722.27a), section 5 as amended by 1993 PA 259 and section 7a as amended by 2012 PA 600. Bill Text Substitute/Amendment Adopted in Senate (12/8/2015; Judiciary) Position: Oppose
HB 4482 (PA 51)	CUSTODY (Kesto) Modifies requirement to file motion for change of custody or parenting time order when parent is called to active military duty. Amends 1970 PA 91 by amending section 2 (MCL 722.22), as amended by 2005 PA 327. Bill Text Signed by the Governor (6/10/2015; Signed: June 8, 2015; Effective: September 7, 2015) Position: Support
HB 4563 (PA 248)	DOMESTIC VIOLENCE (Leutheuser) Authorizes contracting for services to assist victims of domestic violence. Amends 1846 RS 16 by amending section 110c (MCL 41.110c), as added by 1989 PA 77. Bill Text Signed by the Governor (12/22/2015; Signed: December 22, 2015; Effective: March 21, 2016) Position: TBD
HB 4622	HUMAN TRAFFICKING (Hovey-Wright) Provides for personal protection orders for victims of human trafficking. Amends 1961 PA 236 by amending section 2950a (MCL 600.2950a), as amended by 2010 PA 19. Bill Text Introduced (5/19/2015; To Judiciary) Position: Support
HB 4658 (PA 257)	CIVIL PROCEDURE (McCready) Allows collection of court-ordered financial obligations from judgements against the state. Amends 1961 PA 236 (MCL 600.101 to 600.9947) by adding section 6096. Bill Text Signed by the Governor (12/23/2015; Signed: December 23, 2015; Effective: March 22, 2016) Position: TBD
HB 4731	MARRIAGE AND DIVORCE (Courser) Eliminate requirement for issuance of marriage license. Amends 1987 PA 180 by amending the title and sections 1, 2, 3 and 4 (MCL 551.201, 551.202, 551.203 and 551.204), the title and sections 1 and 2 as amended by 1983 PA 199 and by adding section 1a. Bill Text Introduced (6/17/2015; To Government Operations) Position: TBD
HB 4732	MARRIAGE AND DIVORCE (Courser) Eliminates requirement of marriage license and allows only clergy to solemnize marriage. Amends 1846 RS 83 by amending sections 2, 7 and 16 (MLC 551.2, 551.7 and 551.16), section 2 as amended by 1996 PA 324, section 7 as amended by 2014 PA 278 and section 16 as amended by 2006 PA 419. Bill Text Introduced (6/17/2015; To Government Operations) Position: TBD
HB 4733	MARRIAGE AND DIVORCE (Courser) Eliminate government facilitated marriage licenses, restores common law marriage and only allows clergy to solemnize marriages. Amends 1887 PA 128 by amending the title and sections 1, 2, 3, 4, 5, 6 and 8 (MCL 551.101, 551.102, 551.103, 551.104, 551.106 and 551.108) the title as amended by 1998 PA 333 and sections 2 and 3 as amended by 2006 PA 578 and by adding section 1a and to repeal acts and parts of acts. Bill Text Introduced (6/17/2015; To Government Operations) Position: TBD
HB 4742 (PA 255)	FAMILY LAW (Kosowski) Repeals uniform interstate family support act and recreates. Repeals 1996 PA 310 (MCL 552.1101 to 552.1901). Bill Text Signed by the Governor (12/23/2015; Signed: December 23, 2015; Effective: January 1, 2016) Position: TBD

HB 4743	FAMILY LAW (Kosowski) Updates reference to the uniform interstate family support act. Amends 1971 PA 174 by amending section 3 (MCL 400.233), as amended by 2014 PA 381. Bill Text Reported in Senate (12/2/2015; By Families, Seniors and Human Services) Position: TBD
HB 4744 (PA 256)	FAMILY LAW (Kesto) Updates references to uniform interstate family support act. Amends 1982 PA 295 by amending section 2 (MCL 552.602), as amended by 2014 PA 373. Bill Text Signed by the Governor (12/23/2015; Signed: December 23, 2015; Effective: January 1, 2016) Position: TBD
HB 4745	FAMILY LAW (Heise) Updates reference to the uniform interstate family support act. Amends 1982 PA 294 by amending section 2 (MCL 552.502), as amended by 2009 PA 233. Bill Text Reported in Senate (12/2/2015; By Families, Seniors and Human Services) Position: TBD
HB 4840	ADOPTION LICENSEES (Wittenberg) Requires adoption licensees to provide services to all applicants. Amends 1939 PA 288 by amending section 23g of chapter X (CL 710.23g) as added by 2015 PA 54. Bill Text Introduced (8/20/2015; To Families, Children and Seniors)
HB 4841	ADOPTION LICENSEES (Hoadley) Requires adoption licensees to provide services to all applicants. Amends 1973 PA 116 by amending sections 14e and 14f (CL 722.124e and 722.124f) as added by 2015 PA 53. Bill Text Introduced (8/20/2015; To Families, Children and Seniors)
HB 4842	ADOPTION/FOSTER CARE LICENSEES (Tinsley-Talabi) Requires adoption and foster care licensees to provide service to all applicants. Amends 1939 PA 280 by amending section 5a (CL 400.5a) as added by 2015 PA 55. Bill Text Introduced (8/20/2015; To Families, Children and Seniors)
HB 4845	CHILD RESIDENCE (Runestad) Reduces distance parents can move under custody orders; changes how distance is measured. Amends 1970 PA 91 by amending section 11 (CL 722.31) as added by 2000 PA 422. Bill Text Introduced (8/20/2015; To Judiciary)
HB 4855	FAMILY LAW (Glenn) Provides immunity for religious officials' refusal to solemnize a marriage based on violation of conscience or religious beliefs under certain circumstances. Amends 1846 RS 83 (MCL 551.1 to 551.18) by adding section 8. Bill Text Introduced (9/9/2015; To Government Operations)
HB 4858	FAMILY LAW (Gamrat) Provides for immunity for religious official refusing to solemnize a marriage based on conscience or religious beliefs under certain circumstances. Amends 1846 RS 83 (MCL 551.1 to 551.18) by adding section 8. Bill Text Introduced (9/9/2015; To Government Operations)
HB 4911	PATERNITY (Crawford) Allows option to disclose identity of paternity in a private adoption. Amends 1939 PA 288 by amending sections 36 and 56 of chapter X (MCL 710.36 and 710.56), section 36 as amended by 1996 PA 409 and section 56 as amended by 2014 PA 118. Bill Text Introduced (9/29/2015; To Judiciary)
HB 5028 (PA 230)	COURT ACCESS (Kesto) Allows electronic access to courts. Amends 1961 PA 236 (MCL 600.101 to 600.9947) by adding chapter 19A. Bill Text Signed by the Governor (12/22/2015; Signed: December 22, 2015; Effective: January 1, 2016)
HB 5029 (PA 231)	COURT ACCESS (Heise) Allows electronic access to courts. Amends 1961 PA 236 (MCL 600.101 to 600.9947) by adding sections 1986 and 1987. Bill Text Signed by the Governor (12/22/2015; Signed: December 22, 2015; Effective: January 1, 2016)

HB 5030 (PA 232)	COURT ACCESS (Price) Allows electronic access to courts. Amends 1961 PA 236 (MCL 600.101 to 600.9947) by adding chapter 1989. Bill Text Signed by the Governor (12/22/2015; Signed: December 22, 2015; Effective: January 1, 2016)
SB 9 (PA 52)	PARENTING TIME (Jones) Modify requirement to file motion for change of custody or parenting time order when parent is called to active military duty. A bill to amend 1970 PA 91 by amending section 7 (MCL 722.27), as amended by 2005 PA 328. Bill Text Signed by the Governor (6/10/2015; Signed: June 8, 2015; Effective: September 7, 2015)
SB 227	SAME-SEX MARRIAGE (Hertel) Removes prohibition on same-sex marriage from family law. Amends 1846 RS 83 by amending sections 2, 3, and 9 (MCL 551.2, 551.3, and 551.9), sections 2 and 3 as amended by 1996 PA 324; and to repeal acts and parts of acts. Bill Text Introduced (3/24/2015; To Judiciary) Position: Support
SB 228	MARRIAGE LICENSES (Knezek) Allows issuance of marriage license to same-sex couple without publicity. Amends 1897 PA 180 by amending section 1 (MCL 551.201), as amended by 1983 PA 199. Bill Text Introduced (3/24/2015; To Judiciary) Position: Support
SB 229	SAME-SEX MARRIAGE (Smith) Removes prohibition on same-sex marriage from foreign marriage act. Amends 1939 PA 168 by amending section 1 (MCL 551.271), as amended by 1996 PA 334; and to repeal acts and parts of acts. Bill Text Introduced (3/24/2015; To Judiciary) Position: Support
SB 249	NO-FAULT INSURANCE (Hune) Amends cross-reference to no-fault act in the support and parenting time enforcement act to reflect amendments to the no-fault act. Amends 1982 PA 295 by amending section 25a (MCL 552.625a), as amended by 2009 PA 193. Bill Text Reported in House (4/23/2015; By Insurance) Position: Support
SB 252	UNEMPLOYMENT BENEFITS (Hertel) Creates exception from disqualification from receiving benefits when leaving employment for domestic violence victim. Amends 1936 (Ex Sess) PA 1 by amending sections 17 and 29 (MCL 421.17 and 421.29), section 17 as amended by 2011 PA 269 and section 29 as amended by 2013 PA 146, and by adding section 29a. Bill Text Introduced (4/14/2015; To Commerce) Position : Support
SB 253	MEDIATION (Bieda) Limits mediation in certain domestic relations actions. Amends 1961 PA 236 (MCL 600.101 to 600.9947) by adding section 1035. Bill Text Introduced (4/14/2015; To Judiciary) Position: No Position
SB 254	PROTECTIVE ORDERS (Bieda) Provides for alternate service of papers if party is protected by a protective order. Amends 1961 PA 236 by amending sections 227 and 316 (MCL 600.227 and 600.316). Bill Text Introduced (4/14/2015; To Judiciary) Position: Oppose
SB 255	DOMESTIC VIOLENCE VICTIMS (Warren) Prohibits housing discrimination for domestic violence victims. Amends 1976 PA 453 by amending the title and section 502 (MCL 37.2502), the title as amended by 1992 PA 258 and section 502 as amended by 1992 PA 124. Bill Text Committee Hearing in Senate (5/26/2015) Position: Support

SB 256	SICK LEAVE (Ananich) Expands criteria for use of sick leave. Requires employers to permit use of sick leave to address issues arising from sexual assault, domestic violence, or stalking. Bill Text Introduced (4/14/2015; To Commerce) Position: Support
SB 257	DOMESTIC VIOLENCE VICTIMS (Emmons) Creates address confidentiality program for victims of domestic violence crime. Creates the address confidentiality program; provides certain protections for victims of domestic abuse, sexual assault, stalking, or human trafficking; and prescribes duties and responsibilities of certain state departments and agencies. Bill Text Introduced (4/14/2015; To Judiciary) Position: Support
SB 258	CHILD'S BEST INTEREST (Warren) Modifies factors determining best interest of child in cases of domestic violence. Amends 1970 PA 91 by amending section 3 (MCL 722.23), as amended by 1993 PA 259. Bill Text Introduced (4/14/2015; To Families, Seniors and Human Services)
SB 351	DIVORCE (Jones) Prohibits contacting a party to a divorce action for a certain time period. Amends 1961 PA 236 (MCL 600.101 to 600.9947) by adding section 914. Bill Text Received in House (6/11/2015; To Judiciary) Position: Support
SB 458	PARENTAL RIGHTS (Schuitmaker) Clarify grounds for termination of parental rights under certain circumstances. Amends 1939 PA 288 by amending section 51 of chapter X (MCL 710.51), as amended by 1996 PA 409. Bill Text Received in House (10/1/2015; To Judiciary) Passed in Senate (10/1/2015; 34-1)
SB 517	UNIFORM INTERSTATE FAMILY SUPPORT ACT (MacGregor) Repeals and recreates uniform interstate family support act (UIFSA). Makes uniform the laws relating to support enforcement; and repeals acts and parts of acts. Bill Text Received in House (12/1/2015; To Judiciary)
SB 518 (PA 253)	FRIEND OF THE COURT (MacGregor) Updates friend of the court reference to the uniform interstate family support act. Amends 1982 PA 294 by amending section 2 (MCL 552.502), as amended by 2009 PA 233. Bill Text Signed by the Governor (12/23/2015; Signed: December 23, 2015; Effective: January 1, 2016)
SB 519 (PA 254)	CHILD SUPPORT (Emmons) Updates child support reference to the uniform interstate family support act. Amends 1971 PA 174 by amending section 3 (MCL 400.233), as amended by 2014 PA 381. Bill Text Signed by the Governor (12/23/2015; Signed: December 23, 2015; Effective: January 1, 2016)
SB 520	PARENTING TIME (Emmons) Updates parenting time reference to the uniform interstate family support act. Amends 1982 PA 295 by amending section 2 (MCL 552.602), as amended by 2014 PA 373. Bill Text Received in House (12/1/2015; To Judiciary)
SB 558	DOWER RIGHTS (Jones) Repeals dower rights. Amends 1846 RS 66 (MCL 558.1 to 558.29) by adding section 30; and to repeal acts and parts of acts. Bill Text Passed in Senate (11/5/2015; 34-4)
SB 559	DOWER RIGHTS (Jones) Eliminates requirement that judgment of divorce contain provisions regarding wife's dower rights. Amends 1909 PA 259 by amending section 1 (MCL 552.101) as amended by 2006 PA 288. Bill Text Received in House (11/5/2015; To Judiciary) Passed in Senate (11/5/2015; 34-4)

SB 560	WILLS AND ESTATES (Jones) Revises reference to dower in estates and protected individuals code to reflect abolition of dower. Amends 1998 PA 386 by amending sections 1303, 2202, 2205, and 3807 (MCL 700.1303, 700.2202, 700.2205, and 700.3807), sections 1303, 2202, and 2205 as amended by 2000 PA 54 and section 3807 as amended by 2000 PA 177. Bill Text Received in House (11/5/2015; To Judiciary) Passed in Senate (11/5/2015; 34-4)
SB 629	PARENTAL RIGHTS (Jones) Expands termination of parental rights to a child to include forcible rape where child results. Amends 1939 PA 288 by amending section 19b of chapter XIIA (MCL 712A.19b), as amended by 2012 PA 386. Bill Text Received in House (12/16/2015; To Judiciary)
SB 646	SECOND PARENT ADOPTION (Warren) Provides for second parent adoption. Amends 1939 PA 288 by amending sections 24, 41, and 51 of chapter X (MCL 710.24, 710.41, and 710.51), section 24 as amended by 2014 PA 531, section 41 as amended by 1994 PA 222, and section 51 as amended by 1996 PA 409. Bill Text Introduced (12/9/2015; To Families, Seniors and Human Services)
HR 149	DOMESTIC VIOLENCE AWARENESS (Cox) A resolution to declare October 2015 as Domestic Violence Awareness Month in the state of Michigan. Bill Text Passed in House (9/24/2015; Voice vote, With substitute H-1)

Recent Published and Unpublished Cases

(Summarized by the State Bar Family Law Council Amicus Committee Members)

Third Party Custody/Grandparenting Time/Child Interview

Falconer v Stamps and Weddington _____ *Mich App*_____, *Docket No. 323392*, (December 22, 2015).

In an analysis of the best interest factors, under MCL 722.23(3) and MCL 722.27b(6), the Court of Appeals held that a court is not required to interview a minor child as to preference, regardless of age, where the evidence clearly reveals that the child has been coached, or there will be little value in interviewing the child.

The case leading up to the court's decision had a long procedural history. Intervener Weddington was the paternal grandmother and guardian of the minor child in this matter. She was granted full guardianship over the minor child in November 2010 when the child was two years old. In April of 2013, plaintiff mother petitioned in probate court to terminate the guardianship. The matter was very contentious. The probate court set forth a court-structured plan and on December 18, 2013, ordered that the "best interests of the minor would be served by continuing the guardianship until 1-16-14 pending completion of a modified court-structured plan which will allow for unsupervised parenting time as specified in this plan and will allow for counselor(s)/therapist(s) of the minor to address with her the scheduled 1-16-14 permanent reunification with her mother."

On December 23, 2013, before the order terminating the guardianship was entered, the plaintiff filed her complaint for custody against defendant. The complaint sought sole physical and legal custody, suspension of defendant's parenting time, and exclusion of intervener from any visits. Defendant filed a motion for temporary custody on January 8, 2014. On January 13, 2014, citing its authority under MCL 722.21 to place a child with a third party, the trial court concluded that the child would remain with the intervener during the pendency of the custody proceedings and granted her temporary custody. Intervener filed her motion to intervene and for custody on January 15, 2014, one day before the guardianship was terminated by the probate court, citing MCL 722.26b(1) (action for custody by a guardian).

After an additional seven months of hearings, the trial court found that the intervener failed to meet her burden and granted custody to the plaintiff. The trial court then went on to find that "there are other issues the Court has to decide" and went on to address grandparent visitation under MCL 722.27b(6)(a)-(j). There was testimony during the matter from the child's therapist that the child had a strong bond with the intervener and that it would be traumatic for the child to lose all contact with her. The therapist testified that visitations might "lessen the impact." The trial court entered a final order granting the plaintiff (mother) sole custody, suspending the defendant (father's) parenting time, and granting standard parenting time for a noncustodial parent to the intervener (grandmother).

The Court of Appeals held that the trial court committed several errors and vacated the order for grandparenting time. "Contrary to the trial court's approach, a request for grandparenting time is not automatically included in a third-party request for custody." An action for grandparenting time is a different cause of action from an action for custody. A trial court may not consider granting grandparenting time unless the issue is properly before the court by filing a motion, accompanied by an affidavit as set forth under MCL 722.27b(3)(a). To do so is a violation of due process.

The Court of Appeals expanded its decision to include issues that should be addressed should the intervener bring a proper motion. It held that despite the earlier motion of plaintiff that requested that the intervener be excluded from visits, that plaintiff had just received custody of the child and therefore had not "denied" the intervener grandparenting time as required by MCL 722.27b(6). The Court held that the trial court may not "jump the gun and presume" that the plaintiff would unreasonably deny grandparenting time.

It went on to discuss that by granting the plaintiff (mother) custody, the trial court determined that she was a fit parent and thus, deference must be made to her decision to deny grandparenting time. There is a presumption that her denial does not create a substantial risk of harm to the minor child. The State may not infringe on her decision simply because it believes a better decision could be made. A grandparenting time order overrides a fit parent's decision to make choices concerning their child. Thus, before the parent's decision can be overridden, the grandparent must show by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. The Court of Appeals held that the testimony of the child's therapist failed to meet the requirement to show that the child was at a substantial

risk of harm unless grandparenting time was granted and the record was void of other supporting evidence. Further, the Court found that standard parenting time for a noncustodial parent is excessive for a grandparent, absent expert testimony to support that such parenting time is needed to reduce the substantial risk of harm. "The amount of grandparenting time should have been whatever amount would have eliminated the risk of harm to the child."

Custody-Established Custodial Environment

Guggilla v Polu, unpublished, Docket No. 328318
(December 22, 2015)

The Court of Appeals held that an established custodial environment existed with both parents even when the child had been living with the mother exclusively since the parties separated when the father had exercised most of his parenting time, the child looked to the him when she had problems or concerns, he took the child to and from school, arranged for schooling and extracurricular activities, did paperwork, paid for everything, researched programs for her to enjoy, had the child sleep on his shoulder when she was sick, and was primarily responsible for the child's discipline.

Custody and Parenting Time

McNutt v. McNutt, unpublished, Docket No. 328214
(December 15, 2015)

The Court of Appeals restated its finding in *Maier v. Maier*__ Mich App ____ (2015) that regardless of age, a court does not have to interview a child as to preference in a best interests hearing under MCL 722.23(i) if it is not reasonable due to the child's lack of capacity. The children in this matter were of sufficient age to express a preference; however, the Court noted that their preference would be insignificant based on the upheaval in their lives and based on their mental and emotional instability. The defendant in this matter was actively attempting to alienate the minor children from the plaintiff. The children had been part of several years of unsubstantiated CPS investigations. Thus, the children were unable to express a reasonable preference because of circumstances that were peculiar to their lives. *Id at 4.*

The Court of Appeals further found that when analyzing a parenting time dispute, consideration of the parenting time factors of MCL 722.27a are discretionary, not mandatory. Thus, it is not error to fail to discuss the parenting time factors on the record.

Change of Domicile

Reis v. Koss, unpublished, Docket No. 326850
(December 10, 2015)

The Court of Appeals, citing *Mogel v. Scriver*, 241 Mich App 192, 199-200 (2000), upheld a grant of a change of domicile to the Plaintiff. In discussing the analysis, the Court stated that in considering a change of domicile, it is error to ignore that a denial may divide the Plaintiff's family and that it may be difficult for the Plaintiff and her husband, who was in the military, to maintain households in two different states. The evidence was clear that the children were bonded to their stepsiblings and stepfather. The Court stated that it may be preferable, in terms of stability for children to grow up in a traditional nuclear family environment, as opposed to a single parent environment. While the Defendant presented evidence that the move would impede the children's opportunity to grow their relationship with their extended family, the Court found that this alone was not sufficient to defeat the evidence that the children's and the plaintiff's quality of life would improve if allowed to move.

The Court also held that changing parenting time from 182 to 77 days could still preserve and foster the relationship between the nonmoving parent and the children, as required by Factor (c) of MCL 722.31(4)(c). Citing *Brown v.Loveman,* 260 Mich App 576, the Court stated that "this factor takes into consideration that weekly visitation is not possible when parents are separated by state borders." The modified parenting time need not be equal to the former parenting plan; rather, it needs to provide a realistic opportunity to foster and preserve the parent child relationship. *McKimmy v. Melling* 291 Mich App 583. It is not about which plan is the best plan, but whether the proposed parenting plan allows for a realistic opportunity to preserve and foster the parent child relationship.

Jurisdiction

Van v. Van, unpublished, Docket No. 323294
(December 8, 2015)

The Court of Appeals held that the plaintiff met the 180 day state residency requirement of MCL 552.9(1) and, thus, the court had jurisdiction when the plaintiff moved to Michigan in September of 2011 with the intent of "starting over" and filed for divorce on August 23, 2012. This is true, even when the plaintiff returned to Arizona in October of 2011 to the parties' home, and remained there until late June or early July of 2012. A "residence" is a place of abode accompanied with the intention to remain." *Leader v. Leader*, 73 Mich App 276. The Court also found that the term *reside* does not require an intent to remain permanently or indefinitely, but does require an intent to remain. *Kar v. Nada,* 291 Mich App 284. The Plaintiff testified that she needed to leave her home to get away from the Defendant in Michigan, so she went to Arizona to have her baby with the intent to return to Michigan after the baby was born. Despite evidence that Plaintiff was physically present in Arizona, had an Arizona driver's license, filed her taxes in Arizona, voted in Arizona, and filed her taxes in Arizona, the court found that her intent was to reside in Michigan, and, thus, Michigan had jurisdiction.

Adoption

In re AMG, Minor, unpublished, Docket No. 327345
(December 8, 2015)

The Court of Appeals held that failure of a father's action to establish a relationship with and provide for his minor child, after he learns of the mother's pregnancy, may be used to later terminate his parental rights. The father knew of the mother's pregnancy, had met to discuss the minor child with the mother prior to the mother's birth, and was aware that the mother was considering adoption. Upon receiving a notice regarding the adoption, defendant hired an attorney to file a paternity action. The trial court refused to stay the adoption proceedings in favor of his pending paternity action. In doing so, the Court cited *In Re MKK*, 286 Mich App 546 and indicated that there may be circumstances where a father could show good cause to adjourn, however, that is not the case where the father delayed filing a paternity action or an adoption petition had already been filed. Analyzing the best interest factors under MCL 710.22, the respondent father knew of the pregnancy, yet delayed filing a case until two months after the child was born and after the adoption was filed. The only financial support received by the mother was for pregnancy tests. The Court also found that the father attempted file the paternity action to thwart the adoption proceeding. Respondent had also never met the minor child and lived with family in what the court determined was an unstable environment. The moral fitness factor also weighed against respondent. Respondent claims that the factors are unfair because he was prevented from having contact with the minor child. This claim was dismissed by the court. In doing so, the court stated that the respondent was not denied access to the mother's medical appointments, but he chose not to go. "The respondent could have protected his rights by supporting the mother during her pregnancy or supporting the mother or child after birth. He did not do so."

Tina Yost wrote the summaries for this issue

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306 Townsend Street
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