MICHIGAN FAMILY LAW JOURNAL

A Publication of the State Bar of Michigan Family Law Section • Robert Treat, Chair

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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, June 8
Weber's Inn, Ann Arbor

2019-2020 Schedule

Saturday, September 21
Crowne Plaza, Lansing
Annual Meeting and Council Meeting

Saturday, October 5
DoubleTree, Novi

Saturday, November 2
Amway Grand, Grand Rapids

Saturday, December 7
Weber's, Ann Arbor

Saturday, January 25
DoubleTree, Grand Rapids

Saturday, March 7
Weber's, Ann Arbor

Saturday, April 4
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Saturday, May 2
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Saturday, June 6
TBD, Battle Creek

* Breakfast at 9:00 a.m. and meeting commences at 9:30 a.m., unless otherwise noted

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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, Robert Treat, c/o State Bar of Michigan, Michael Franck Building, 306 Townsend Street, Lansing, MI 48933, soudsema@mail.michbar.org

The *Michigan Family Law Journal* Endeavors to Establish and Maintain Excellence in Our Service to the Family Law Bench and Bar and Those Persons They Serve.

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To All Prospective Family Law Journal Authors:

On behalf of the Family Law Council, we are 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 Anthea Papista (aep@papistalaw.com) and Amy Spilman (spilman@eisenbergspilman.com) and write "Article for the Family Law Journal" in the subject line when you submit your article.

Article Due Date is One Month in Advance: Please submit your articles to Sue Oudsema at her email address above no later than the 15th day of the month preceding the next publication. In other words, if you wish to have your article considered for publication in February, please have your article to us by January 15th. 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 *State 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 Anthea Papista or Amy Spilman. Please include a detailed description of your topic.

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Very Truly Yours,

Anthea E. Papista and Amy M. Spilman
Journal Committee Co-Chairs

From the Chair—Of Pensions, Lifetimes and QDROs

By Robert Treat, Family Law Section Chair 2018-2019

You, as family law attorneys, judges, referees and mediators, are not expected to know all the intricate details of defined benefit plans. Fortunately, MCL 552.101(4) relieved much of the stress of capturing a share of all the various ancillary benefits of pension plans for alternate payees in QDROs, but § 552.101(4) does not cover certain things. In my experience, the settlement agreements and judgments with regard to pensions have improved drastically in the last twenty years. The family law community deserves a ton of credit. Kudos to you! Today it is very rare that a particular pension or ancillary benefit is left out of the judgment; however, you can still save yourself from the angst of additional post-judgment negotiations.

There are items that regularly need to be figured out post-judgment because the judgment was unclear about them. For defined benefit plans, examples include not specifying upon whose lifetime the alternate payee's benefit should be based (and time of commencement of the alternate payee's benefit), and not defining the marital portion.

This article deals with the question of whose lifetime to use. Defining the marital portion will follow in a separate article in a later issue.

Upon whose lifetime the alternate payee's benefit should be based, and how this affects survivor benefits

This issue is central to the issue of survivor benefits, and also to the issue of the timing of the alternate payee's commencement of benefits.

Benefit based on the Alternate Payee's lifetime (separate interest method of division):

A benefit based on the lifetime of the alternate payee will *not* need a post-retirement survivor annuity [qualified joint survivor annuity ("QJSA")] to protect the alternate payee's benefit. This means the substantial cost of such survivor annuity will not be charged and both parties will receive a larger benefit than if a QJSA were necessary.

If the alternate payee's benefit is based on the lifetime of the alternate payee, the benefit will generally not revert to the participant if the alternate payee predeceases the participant after the alternate payee's benefits commence. *When the benefit is based on the lifetime of the alternate payee, the alternate payee generally may commence receipt of benefits any time after the participant's earliest eligibility for retirement*. The alternate payee's benefit will be adjusted to the alternate payee's mortality or life expectancy.

Alternate payee's benefit based on the lifetime of the participant (shared payment method of division):

If the alternate payee's benefit is based on the lifetime of the participant, the QJSA *is* necessary if the intent is to ensure a lifetime income for the alternate payee, because when the participant dies, the alternate payee's benefit stops. Pensions by nature are designed to pay for life, and when part or all of a pension is marital, each spouse deserves this treatment.

If the alternate payee's benefit is based on the lifetime of the participant, the alternate payee's benefit will generally revert to the participant if the alternate payee predeceases the participant after the alternate payee commences benefits.[1] If the benefit is based on the lifetime of the participant, the alternate payee must generally wait to commence benefits until the participant commences benefits.

Benefits in pay status: If the participant has already begun receipt of benefits, the benefit generally must be based on the lifetime of the participant.

Commonly, the benefit will be based on the lifetime of the alternate payee if the pension is not yet in pay status and the Plan allows sharing of all ancillary benefits even though the alternate payee's lifetime is used. Again, generally, if the benefit is in pay status, the alternate payee's benefit must be based on the lifetime of the participant. **Judgment Language –** This issue should not be left open in the judgment. An understanding of how the particular plan works is important. Plan provisions such as commencement of benefits at the earliest eligibility, cost-of-living adjustments, and early retirement benefits will sometimes be allowed only under a certain method of division (shared payment method, or separate interest method) for a particular plan. *To indicate whose lifetime the alternate payee's benefit will be based upon can usually be done simply by*

stating when the alternate payee may commence benefits. Specifying that the alternate payee may commence benefits any time after the participant's earliest eligibility under the plan generally means you are using the separate interest method and basing the alternate payee's benefit on the alternate payee's own lifetime. Specifying that the alternate payee will commence benefits when the participant commences generally means you are using the shared payment method and are basing the alternate payee's benefit on the participant's lifetime.

Survivor Benefits

Whether the post-retirement survivor annuity ("QJSA"), should be awarded was discussed above. A pre-retirement survivor annuity (Qualified Pre-retirement Survivor Annuity, or "QPSA") is almost always necessary if you want to protect the alternate payee's right to receive any benefit from the plan in the event the participant predeceases the alternate payee before the alternate payee commences benefits.[2, 3]

Common Practice

Normally, the intent is for the alternate payee to receive his or her share of the marital portion of the pension, and for the alternate payee to receive a benefit for life; therefore, language designating the alternate payee as surviving spouse for the survivor benefits attributable to the period of the marriage will be adequate. The Judgment may specify a larger or smaller survivor benefit. Other common levels of survivor benefits are the "…[e]ntire survivor annuity…" or "…[a]n amount equal to the amount of the participant's accrued benefit the alternate payee would have received had the participant lived and retired voluntarily." This latter amount is the amount that would provide the same dollar amount to the alternate payee that the alternate payee would have received had the participant lived. Note that after the death of the participant, the alternate payee will not receive a share of post-retirement increases or early retirement benefits, which are only payable while the participant is living. **Judgment Language -** "Plaintiff shall be treated as the surviving spouse for all pre-retirement survivor benefits attributable to the period of the marriage, and also all post-retirement survivor benefits attributable to the period of the marriage unless Plaintiff's benefit is based on Plaintiff's lifetime." An awareness of these defined benefit pension nuances during the pendency of the divorce action will help avoid additional post-judgment work and negotiations for counsel and the parties.

Endnotes

1 No matter whose lifetime the benefit is based upon, the alternate payee's benefit generally reverts to the participant if the alternate payee predeceases the participant *before* the alternate payee's benefit commences.

2 Technically, the correct date is the "annuity starting date" defined in 29 U.S.C. 1055 (h). The annuity starting date is the date the participant is first eligible for retirement under the Plan. The term commencement date is the more common, and much more widely used, term in the industry. Care should be taken to avoid a gap in coverage or a double benefit.

3 Some plans use a "totally segregated approach" if the alternate payee's benefit is based on the alternate payee's lifetime. Under the totally segregated approach, no QPSA language is necessary in the QDRO because the plan pays the benefit to the alternate payee irrespective of when the participant dies. There is also what I call the quasi-totally segregated approach in which the alternate payee's benefit is deemed to be the QPSA. The other instance in which QPSA language is not necessary in the QDRO is when the pension is already in pay status.

FAMILY LAW SECTION

Mid-Summer Conference
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"WHEN THE ROMANCE FADES....." PROMOTING PROFESSIONALISM, CIVILITY AND COURTEOUSNESS IN FAMILY COURT
Judge Yokich and Judge Switalski

Photos courtesy Crystal Mountain Resort

What's H🔥t!

Ghostwriter

There are many circumstances in which a party to a family law matter may want *some* asssitance from an attorney but not require representation from start to finish. Some litigants prefer to navigate their legal matters on their own but would prefer to have an experienced eye review various legal documents. Others simply do not have the funds for traditional representation.

Since the Limited Scope Representation rules came to family law in January 2018, a greater number of attorneys and litigants are taking advantage of a la carte legal services. Still, many practioners are unsure of how to proceed when a client asks them to draft legal documents but not appear in court. Specifically, many lawyers are concerned that in helping a client to draft a legal pleading, he/she will somehow be deemed to have filed an appearance with the Court.

First, MCR 2.117(D) specifically states that an attorney who does *not* sign a pleading shall not be deemed to have filed an appearance. This goes hand in hand with the Michigan Rules of Professional Conduct, specifically MRPC 1.2(b)(1) which states that an attorney is *not* obligated to sign a pleading he drafts on behalf of a client pursuant to limited scope representation.

Instead, the pleading should include the following two (2) provisions:

- This document was drafted or partially drafted with the assistance of a lawyer licensed to practice in the State of Michigan, pursuant to MRPC 1.2(b)
- The filing of such documents is not and shall not be deemed an appearance by the lawyer in the case

Additional resources can be found on the State Bar of Michigan's website here: *https://www.michbar.org/news/newsdetail/nid/5507*

Special thank you to John Mertz who brought this issue to light and provided much of this information on the Family Law Listserv.

Sahera G. Housey *is currently a Referee at the Oakland County Friend of the Court. Prior to becoming a Referee, Sahera specialized in Family Law, Estate Planning, and Probate Law. She obtained her undergraduate degree from the University of Detroit and her Juris Doctor from the University of Detroit Mercy School of Law.*

Sahera is a council member of the State Bar of Michigan Family Law Section; a member of the Oakland County Bar Association Family Court Committee and former chair of the committee; an Oakland County Bar Foundation member; State Bar of Michigan foundation member; co-editor of the State Bar of Michigan Family Law Journal*; immediate past President of the Referees Association of Michigan (RAM); past President of the Michigan Inter-Professional Association on Marriage, Divorce, and the Family, Inc.(MIPA); and a member of the Chaldean American Bar Association.*

Ryan M. O'Neil *is a 2005 graduate of the University of Michigan where he earned a B.A. in English and American History. Mr. O'Neil earned his Juris Doctor from the Western Michigan University Cooley Law School and was admitted to the State Bar of Michigan in 2008. He is also licensed to practice law in the United States District Court - Eastern District of Michigan.*

Mr. O'Neil currently serves as a Friend of the Court Referee in Oakland County. He is a former chairperson of the Oakland County Bar Association Family Court Committee. He has served as a district court case evaluator for Oakland County. He is a member of the Family Law Section of the State Bar of Michigan, the Oakland County Bar Association, the Macomb County Bar Association, and the incorporated Society of Irish American Lawyers. Mr. O'Neil co-authored several articles in the Oakland County Bar Association publication Laches. *He is an adjunct professor of Business Law at Oakland Community College.*

Submit your Hot Tip to Sahera Housey (houseys@oakgov.com) and Ryan O'Neil (oneilr@oakgov.com).

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Is there a Risk of Homicide in your Family Law Case?

By Emily A. Calabrese

In 1988, Jacquelyn C. Campbell, Ph.D., R.N., released her revised Danger Assessment Tool to assist in determining homicide risk to women in abusive relationships.[1] The purpose of the assessment tool is to alert us that when certain acts of abuse occur in a relationship, the risk of homicide to women[2] is elevated. Despite the existence of that tool, women are still being killed by their partners. Almost thirty years later, the Michigan State Police reported 116 fatalities due to domestic violence.[3] The Center for Disease Control reports that 40% of female homicide victims are killed by intimate partners.[4] Even though studies support the findings that when certain acts of abuse or lethality factors are present there is an increased risk for homicide, Michigan courts are not required to complete a lethality assessment at the onset of family court cases.[5]

In the upcoming months, a series of articles here will explore some of the lethality factors present in the Danger Assessment Tool and in other studies to shed light on how we as practitioners can recognize these factors and use them to ensure our clients' (and our own) safety where high lethality factors are involved. Specifically, the articles will address strangulation, access to weapons, sexual assault, animal abuse, unemployment, and substance abuse.

What we know is that leaving an abusive relationship is the most dangerous time for a survivor.[6] This is also the point at which attorneys most likely encounter a survivor as this is when she is accessing the court systems. We also know that a man who strangles a woman once is 800% more likely to later kill her.[7] Gun presence in a domestic violence relationship increases the risk of homicide for women by 500%.[8] The data also suggests to us that the presence of various other lethality factors occur in homicides committed by intimate partners.

As lawyers, we are expected to recognize domestic abuse[9] in family law matters so that we can argue what is in the best interests of the children or opt out of mediation. However, lethality factors are not present in all cases where domestic abuse exists. Lethality factors occur in cases where men are more likely to kill women than in cases where they do not occur.

As family law attorneys, we have likely encountered some type of training on how to recognize domestic abuse, but it may not have included any discussion on lethality factor considerations. These lethality factors are neither generally taught to us in law school, nor are we educated about these factors in our normal course of business. There is no statute or court rule that directs us how to perform a lethality assessment. Despite this, we cannot ignore the factors' existence- it is not in the best interests of our client's safety, our safety, or public safety.

While the ramifications of the presence of these factors is quite grave, the changes we can make in our practice is quite simple–we must ask the right questions. Is there domestic or sexual abuse in your relationship? Is the abuse escalating? Has your partner ever strangled you? Does your partner have access to a weapon? Is your partner drunk every day? Has there been abuse to animals? Is your partner currently unemployed?[10] When the answers to these questions are yes, we can then inform our clients that there is an increased risk for homicide so that she can take the extra precautions necessary to maintain her safety during property exchanges, parenting time exchanges, and throughout the course of the pending litigation. Safety planning is usually offered by your local domestic and sexual assault shelter or community advocacy agency.

The preamble to the Michigan Rules of Professional Conduct states, "A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." As attorneys, we work closely with the public, whether we work in the criminal justice system or the civil justice system, and we are expected to deliver quality legal services. Being aware of the lethality factors in domestic abuse relationships is one more way we can contribute to the quality of justice delivered to our communities. It is also a way we can attempt to decrease lethality in relationships with domestic abuse.

Find a local domestic violence agency that provides counseling or support groups by calling The National Domestic Violence Hotline at 1-800-799-SAFE.

About the Author

Emily A. Calabrese *is the Litigation Director at Lakeshore Legal Aid. She has been advocating for domestic violence survivors in some capacity for ten years. She is a member of the Macomb County Bar Association and the SBM Family Law section.*

Endnotes

1 Jacquelyn C. Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, 250 NIJ Journal 14 (2003). *https://www.ncjrs.gov/pdffiles1/jr000250e.pdf*

2 Because the Danger Assessment Tool specifically addressed the risk of homicide for women in relationships with men, and because statistically, a majority of domestic abuse survivors are women, throughout this article women are referred to as the survivors and men as the batterers; not because domestic abuse does not happen to men or people in same-sex relationships.

3 Michigan State Police Criminal Justice Information Center Annual Domestic Violence Summary (2016). *https://www.michigan.gov/documents/msp/l_Domestic_Violence_598825_7.pdf*.

4 Cooper, A., & Smith, E. L. (2011). Homicide trends in the United States, 1980–2008. Washington, D.C.: Bureau of Justice Statistics. NCJ 236018.

5 It should be noted that in some Michigan communities, there is a localized effort to organize collaborative teams to identify and effectively respond to cases where lethality factors are present.

6 *Why do Victims Stay?* Nat'l Coal. Against Domestic Violence. (Last visited May 9, 2019), *https://ncadv.org/why-do-victims-stay.*

7 Nancy Glass et al., "Non-Fatal Strangulation Is an Important Risk Factor for Homicide of Women, 35 J. Emergency Med. 329 (2008).

8 The National Domestic Violence Hotline, citing J.C. Campbell, D.W. Webster, J. Koziol-McLain, et al., "Risk factors for femicide within physically abusive intimate relationships: results from a multi-site case control study," 93 Amer. J. of Public Health 1089-1097 (2003).

9 Domestic abuse is a pattern of abusive and sometimes physically violent behavior exhibited to maintain power and control over a partner.

10 See Danger Assessment Tool (2003; update 2018), *available at https://www.dangerassessment.org.*

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Professor Lex

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

Dear Professor Lex:

I have been retained in a pending child custody case. My client represented herself at a recent Friend of the Court Referee Hearing. At the hearing, my client gave numerous documents to the Referee. The Referee retained the documents. My client does not have copies of them.

My client recently received a copy of the Referee's Recommendation, and she wants to contest it.

Before filing an objection, I want to review the history of the case including the Friend of the Court records and the notes that were taken by the Referee during the hearing. Am I entitled to all of this information, and if so, how do I obtain it?

Dear Practitioner:

Citations that could prove helpful to you include:

MCR 3.218(A), which provides, in part:

> Friend of the court records are not subject to a subpoena issued under these Michigan Court Rules. Unless another rule specifically provides for the protection or release of friend of the court records, this rule governs. When used in this subrule, unless the context indicates otherwise,
>
> (1) "records" means any case-specific information the friend of the court office maintains in any media;
>
> (2) "access" means inspection of records, obtaining copies of records upon receipt of payment for costs of reproduction, and oral transmission by staff of information contained in friend of the court records[]

MCR 3.218(B), which provides, in part:

> A friend of the court office must provide access to nonconfidential records to the following:
>
> (1) …an attorney of record….

MCR 2.318(F), which provides "[a]ny person who is denied access to friend of the court records or confidential information may file a motion for an order of access with the judge assigned to the case or, if none, the chief judge."

MCR 2.318(E), which provides:

> A friend of the court office may refuse to provide access to a record in the friend of the court file if the friend of the court did not create or author the record. On those occasions, the requestor may request access from the person or entity that created the record.

MCR 3.218(A)(3)(a), which provides that "staff notes" are "confidential information".

MCR 3.218(C), which provides:

> Unless the release is otherwise prohibited by law, a friend of the court office must provide access to all nonconfidential and confidential records to the following:
>
> (1) Other agencies and individuals as necessary for the friend of the court to implement the state's plan under Title IV, Part D of the Social Security Act, 42 USC 651 et seq. or as required by the court, state law, or regulation that is consistent with this state's IV-D plan.
>
> (2) The Department of Human Services, as necessary to report suspected abuse or neglect or to allow the Department of Human Services to investigate or provide services to a party or child in the case.
>
> (3) Other agencies that provide services under Title IV, part D of the Social Security Act, 42 USC 651 et seq.
>
> (4) Auditors from state and federal agencies, as required to perform their audit functions with respect to a friend of the court matter.

(5) Corrections, parole, or probation officers, when, in the opinion of the friend of the court, access would assist the office in enforcing a provision of a custody, parenting time, or support order.

(6) Michigan law enforcement personnel who are conducting a civil or criminal investigation related directly to a friend of the court matter, and to federal law enforcement officers pursuant to a federal subpoena in a criminal or civil investigation.

MCR 3.215(D), which provides:

Conduct of Referee Hearings.

(1) The Michigan Rules of Evidence apply to referee hearings.

(2) A referee must provide the parties with notice of the right to request a judicial hearing by giving

(a) oral notice during the hearing, and

(b) written notice in the recommendation for an order.

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(3) Testimony must be taken in person, except that a referee may allow testimony to be taken by telephone for good cause, or under MCR 2.407.

(4) An electronic or stenographic record must be kept of all hearings.

(a) The parties must be allowed to make contemporaneous copies of the record if the referee's recording equipment can make multiple copies simultaneously and if the parties supply the recording media. A recording made under this rule may be used solely to assist the parties during the proceeding recorded or, at the discretion of the trial judge, in any judicial hearing following an objection to the referee's recommended order; it may not be used publicly.

(b) If ordered by the court, or if stipulated by the parties, the referee must provide a transcript, verified by oath, of each hearing held. The cost of preparing a transcript must be apportioned equally between the parties, unless otherwise ordered by the court.

(c) At least 7 days before the judicial hearing, a party who intends to offer evidence from the record of the referee hearing must provide notice to the court and each other party. If a stenographic transcript is necessary, except as provided in subrule (4)(b), the party offering the evidence must pay for the transcript.

(d) If the court on its own motion uses the record of the referee hearing to limit the judicial hearing under subrule (F), the court must make the record available to the parties and must allow the parties to file supplemental objections within 7 days of the date the record is provided to the parties. Following the judicial hearing, the court may assess the costs of preparing a transcript of the referee hearing to one or more of the parties. This subrule does not apply when a party requests the court to limit the judicial hearing under subrule (F) or when the court orders a transcript to resolve a dispute concerning what occurred at the referee hearing.

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 or Msnover@hauersnover.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.*

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The Case of the Issue

Natassia T. Sims, also known as Natassia T. Bennett, Plaintiff-Appellee, v. Danny Darney Verbrugge, Defendant-Appellant

For Publication: December 5, 2017

By Henry S. Gornbein and Lori K. Smith

The Issue

The effect of an affidavit of parentage on legal custody.

Statement of Facts

The parties had a child out of wedlock on October 15, 2012. On the day of the child's birth, an affidavit of parentage was signed indicating that Defendant was the biological father.

In April 2013, the prosecutor filed a complaint for support and a default judgment was entered regarding child support that also stated that Plaintiff had physical custody of the child.

A parenting time order was entered in the case. In November 2016, Plaintiff mother notified Defendant father that she intended to move to Colorado with the child. Father then filed a motion for joint legal custody and primary or joint physical custody.

The lower court ruled that, under the affidavit of parentage, mother had sole legal custody.

The Court of Appeals

Father appealed the ruling of sole legal custody of the child arguing that the affidavit of parentage (AOP) gave joint legal custody.

The Court of Appeals held that there was not joint legal custody but that the father is entitled to a hearing upon remand for a determination as to legal custody.

In a discussion of MCL 722.1004, the Court of Appeals held that this statute gives the child the rights of a child born in wedlock but does not grant a putative father who acknowledges paternity the same legal rights as a father whose child is born in wedlock.

The Court of Appeals went on to say that the initial grant of custody to the mother does not by itself affect the rights of either parent in a proceeding to seek a court order for custody or parenting time. MCL 722.1006.

While the Acknowledgment of Parentage Act establishes paternity, establishes the rights of the child, and supplies a basis for court ordered child support, custody, or parenting time without further adjudication under the paternity act, the only means of pursuing child custody rights is through the Child Custody Act, MCL 722.21 et seq.

In this case, the trial court had entered an order as to physical custody but nothing was ruled on or ordered regarding legal custody. The original granting of legal custody was by operation of law but not by a court order.

There is no requirement that father demonstrate by a preponderance of the evidence proper cause or a change in circumstances. The trial court was reversed on this issue.

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The issue of legal custody is to be treated as an initial evaluation for custody without a prior existing order.

On the issue of physical custody, a prior order existed, and the trial court was correct in requiring father to show proper cause or a change in circumstances to challenge the order.

Mother had sought a move to Colorado on contingent future events. During this process, the mother filed a motion seeking to change her domicile meaning that this was no longer contingent and provided a basis for a hearing on custody by the trial court.

Ruling

The issue of legal custody was reversed for a hearing and the issue of physical custody became relevant because of the move to Colorado that was sought by the mother.

Comments

The key to this case is the fact that an acknowledgement of paternity is not a judicial determination and, until there is a judicial determination or court order, the issue of joint legal custody is to be treated as an initial matter without the need to show a change in circumstances. This case is worth reading in its entirety.

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.*

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CHILDREN'S PROTECTIVE SERVICES CASES

When in Contact with CPS, Don't Be Your Own Worst Enemy (that goes for both client AND attorney)!

By Brandy J. Thompson
The Kronzek Firm

As you are reading this article and considering your options, I want to be clear that I am in no way suggesting that you give Children's Protective Services (CPS) "full access" to your client or any information. Any recommendations I make with regard to clients cooperating with CPS are done on a case-by-case basis after careful consideration of all of the facts and circumstances of each case.

That being said, I can't help but remember something my grandmother used to say which I have heard repeated many times, "you catch more flies with honey than vinegar." Throughout my years of practice in the arena of CPS defense, I've learned that a client's attitude, and even my own attitude as the attorney (whether or not we choose to cooperate), with the CPS investigator can make a difference in the case. CPS workers have a great deal of discretion when making decisions regarding whether to dismiss their investigation into your client's family, and whether or not they will pursue the allegations either in or out of court. As a result, it should come as no surprise that in many cases where the families and the CPS worker have very tense communication or even heated arguments, these cases remain open within the system. I've spent a great deal of time coaching clients on how to deal with CPS workers. What I've learned over the years is that many of the tips I give my clients apply to me, as their attorney, as well.

My first contact with a CPS worker is often tense. CPS workers are naturally defensive of their position, and they automatically assume you are going to come after them aggressively. Let's face it, due to the high turnover rate, caseworkers are often young and inexperienced. They are immediately threatened by a seasoned attorney, and they may have even had a bad experience with other attorneys that they've dealt with. As a result, my first contact is as much about getting information as it is about getting the caseworker to trust me and understand that I am there to help resolve the concerns, not personally or professionally attack them. I let them know that I understand that they have policies and procedures that they are required to follow and that I will do the best I can (while zealously advocating for my client, of course) to help them get the information they need.

As an attorney, I often see or hear CPS workers misstating the law to their own benefit. It's natural to want to immediately go into aggressive advocacy mode on behalf of your client, but sometimes that is not the best choice. Misstatement of the law by a CPS worker does not, in and of itself, necessarily mean your client's case is dismissed, so rudely or aggressively correcting the casework, may only cause a further rift between the opposing sides. I understand that in many cases the investigation is unwarranted. Perhaps the CPS worker is accusatory, rude, and pushy. None of this means that your reaction has to be similar in nature. CPS workers clearly have a difficult job to do. They often deal with combative, argumentative people on a daily basis. If you can establish yourself as a calm, rational, and cooperative attorney, it will likely be far more beneficial to your client. You can politely and respectfully correct errors in law and decline to provide information to CPS. Establishing a good rapport with a CPS worker is conducive for good communication and flow of information in both directions and, while the rare occasion does exist where you may need to take a more aggressive approach, I've found that honey does, in fact, catch more flies than vinegar.

About the Author

Brandy J. Thompson *is a Child Protective Services Defense Attorney and has been defending parental rights for over a decade. She has successfully represented parents against Child Protective Services in well over two dozen counties in the lower peninsula of Michigan. She enjoys working with parents to ensure that their most fundamental rights are protected. Brandy is a partner with the Kronzek Firm which houses multiple attorneys dedicated to this area of practice. Her email is thompson@kronzek.law.*

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Friday, July 12

8:00–9:00 a.m.	Breakfast for conference registrants
9:00 a.m.–Noon	Friday's seminar
6:00–8:00 p.m.	Cocktail networking reception for conference registrants and registered guests
7:00–9:00 p.m.	Alpine Slide for conference registrants and registered guests

Saturday, July 13

8:00–9:00 a.m.	Breakfast for conference registrants
9:00 a.m.–Noon	Saturday's seminar

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TAX TRENDS AND DEVELOPMENTS

Food for Thought on Treatment of Appreciation in Value of a "Separate" Business During Marriage

By Joseph W. Cunningham, JD, CPA

Background

This article considers the treatment of appreciation in value during marriage of a business enterprise that was owned by one party at the time of marriage

Many seem to consider appreciation during marriage of value of a "separate" business as either 100% active – thereby marital – or 100% passive – thereby separate (assuming no commingling, etc.).

This "either/or" characterization seems overbroad and generally based on little or no analysis of the factors driving the increase in value. It is also out of sync with the equitable nature of divorce and the corresponding objective of addressing the unique circumstances of each case as they are versus a "one size fits all" basis.

In previously writing on this issue, I presented an example similar to the following;

- A and B own identical rental property management companies – with one exception – which they operate as LLCs.
- The exception - A manages his company and draws a $50,000 salary. B has always used a full-time manager who is paid $50,000 a year by the company. B works at a machine shop earning $50,000 annually.
- At the time of A's and B's respective marriages, their companies were each worth $100,000; and, at the time of their divorces each was valued at $250,000. The growth of both is attributable to (1) pay down of debt, (2) inflation, and (3) increase in market values exceeding inflation.
- Both companies have always been owned separately by A and B, respectively. Company income was always deposited in their separate accounts from which funds were drawn solely to pay taxes on company income.
- Though A and B had essentially the same earnings, business values, and appreciation during the marriage, arbitrary application of "either/or" active/passive characterization results in the $150,000 appreciation treated as marital in A's divorce but separate in B's divorce.
- Why this anomalous result? Because 100% of the appreciation of A's company is attributed to her activity as the rental property manager notwithstanding that she brings no particular "value-adding" skills to the job. As noted, the appreciation in value is due to other factors, which are "passive" (except arguably income used to pay down debt).

This example does not address whether the income from the separate property is separate or marital or, correspondingly, as noted, whether the reduction of debt by use of such income is separate or marital. Rather, the purpose is to illustrate the fiction that, if the owner is actively involved, 100% of the appreciation in value is attributable to his/her efforts and thereby marital.

Michigan Case Law on the Issue

The following discussion focuses on pertinent decisions of Michigan Court of Appeals (Court) regarding the subject issue.

Hanaway, 208 Mich App 278 (1995)

The principal issue regarding the family business (Company) was whether Ms. Hanaway (W) contributed to its "acquisition, improvement, or accumulation." The trial court ruled that she had not, apparently focusing on "direct" contribution. The Court ruled, essentially, that W, did in fact, contribute by tending to the household and the parties' four children thereby enabling Mr. Hanaway (H), "the company president," to devote "himself to the business, working long work weeks." This case established the principle that "contribution" could be indirect as well as direct in the family partnership.

The Court stated that although H received the business as a gift from his father, "… the increased value of that interest necessarily reflected defendant's investment of time and effort in maintaining and increasing the business, an investment that was facilitated by plaintiff's long-term commitment to remain home to run the household and care for the children."

The Court ruled that the appreciation was marital.

Observations

- The Court made no attempt to identify factors for the increase in value other than H's intensive efforts as the Company's CEO who worked long hours in this capacity.
- Also, the apparent demanding role served diligently by W - which was front and center as the prime issue of the case – likely had some effect on the ruling on appreciation in value.

Reeves, 206 Mich. App. 490 (1997)

In this case, Mr. Reeves (H) owned a minority interest in a shopping center before his marriage to Ms. Reeves (W). H also owned a condominium that he and W lived in and two rental properties that he purchased in both parties' names while they co-habited before marriage.

The Court ruled that appreciation in value of the shopping center was separate because H's interest was "wholly passive." In so ruling, the Court noted – "[i]t cannot be stated, as was done in *Hanaway, supra* at 294, that the property appreciated because of defendant's efforts, facilitated by plaintiff's activities at home."

Observations

- In *Reeves,* the Court did not need to parse reasons for the increase in value because H had no involvement whatsoever. All appreciation was obviously due to passive factors.
- The Court's use of the term "wholly passive" described H's relationship to the shopping center investment which supported its ruling.
- Thus, because H had no involvement whatsoever in the asset at issue, this case sheds no light on a situation where there may be some involvement by the owner, however minimal.
- The Court included as marital the appreciation during marriage of the value of the jointly owned rental properties.

Dart, 460 Mich. 573 (1999)

The principal issue in this Michigan Supreme Court case was jurisdiction involving enforceability of an English judgment.

The Court also addressed a claim by W that she was entitled to share in the appreciation in value during marriage of a large family company, Dart Container Corporation (Dart), at which H was employed. H also had a beneficial interest in a trust to which substantial gifts of Dart stock had been made.

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The English court had rejected W's claim.

The Court noted that it was possible "that plaintiff might have shown a nexus between defendant's work at the company and the underlying trust assets." ... "However, we conclude that the possibility of prevailing was remote."

The Court also noted that, apparently under general separate property principles, "[t]he trust income from the Dart Container Corporation was never marital property."

Observations

- Though the Court did not need to decide whether H's active involvement at Dart was sufficient to include appreciation during marriage, the fact that it stated that there needs to be a "nexus" between the two is significant. Though not an express statement to this effect, it indicates that it may take more than active involvement to result in active appreciation.
- The Court's statement regarding trust income from Dart is noteworthy since there is little definitive law on the status of separate property income that is not commingled.

Uygur, Mich. App. No. 258207 (6/8/2006)

H was an executive at Giffels, a large company. He owned Giffels stock before his marriage to W. The Court ruled that, despite H's active, high level involvement, appreciation in value during the marriage of his pre-marital Giffels stock was passive, hence, his separate property.

In supporting its decision, the Court stated:

"The value of defendant's stock rose and fell based on the net worth of Giffels. The success of the company, and thus its stock value, rested on all of the company's employees, of which defendant was only one. **Because defendant worked for the company, his performance necessarily affected the company's success to *some* degree.** However, we cannot conclude that defendant's employment caused the stock values to appreciate. Because the defendant's ability to affect the company's stock value was limited, the nexus between defendant's employment and the company's success was necessarily attenuated." (Emphasis added.)

Observations

- The Court ruled that the appreciation was passive notwithstanding that H actively worked at the Company at a high level and, further, that his work "necessarily affected the company's success to some degree."
- Also, the Court indicated that there must be a nexus between the owner's activity and the success – that is, increase in value – of the company.
- Thus, according to this court, simply being actively involved does not automatically result in "active" appreciation.
- This case is significant for the acknowledgement that factors other than the owner spouse's active involvement may be responsible for increase in value.

Henderson, Mich. App. No. 295765 (6/9/11).

H was actively involved on a day-to-day basis in a management capacity at a family company founded by his father. In this regard the Court stated:

> "Plaintiff worked a regular schedule and maintained an office at the company. He oversaw multiple departments and performed necessary functions."

H's counsel relied on *Uygur* in support of his claim that the appreciation was passive. The Court did not consider *Uygur,* in large part, apparently, because it is an unpublished opinion.

The Court noted that, unlike with the shopping center in *Reeves,* H's position at the company was not "wholly passive at all times." And, further, that he "was not merely one of several employees at BNP. As co-CEO, the record demonstrates that plaintiff bore responsibility for many of the company's major functions."

Thus, the Court reversed the trial court decision saying that the "trial court clearly erred in finding that the appreciation was passive and could not be classified as marital property." The case was remanded for further proceedings.

Observations

- This appears to be an excellent case for allocating increase in value to various factors, one of which is H's active involvement. The Court did not expressly rule that all of the appreciation was marital.
- The Court's reference to "wholly passive" from *Reeves* is unfortunate since it is not at all clear that the court in *Reeves* intended anything more by that phrase than to describe the undisputed lack of any involvement of Mr. Reeves in the shopping center.

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.*

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Beware the Consequences of Failing to Provide Form 8322: *Cook v Commissioner*

By Sandra D. Glazier, Esq.

On May 7, 2019, the U.S. Tax Court confirmed the harsh consequences that can result when a child doesn't reside with a parent for more than half the year, that parent provides the majority of a minor child's support claims child as a dependent, but that parent does not obtain and attach a Form 8322 to his return. In *Cook v. Commissioner,* decided May 7, 2019, the Tax Court upheld an IRS deficiency assessment against Jason Cook resulting from disallowance of his daughter as a qualified dependent for income tax purposes.

Jason Cook and Tara Taylor had a child out of wedlock. That child primarily resided with Tara and did not reside with Jason for more than ½ the calendar year. After the child was born, Tara married another and while she had no income, it is likely that she filed a joint return with her spouse and they claimed the child as a dependent.

Pursuant to a court order, Jason was required to pay child support for the minor child until she attained the age of 18, but if she was a full-time high school student, was not self-supporting and was living in Tara's home, support was to continue until she attained the age of 19 or graduated from high school, whichever first occurred. Jason was also responsible for 100% of the child's reasonable and necessary unreimbursed medical and dental expenses to the extent they exceeded $250 in a calendar year. The order did not reference who could claim the child as a dependent, but Jason and Tara had a verbal agreement that Jason could claim her, which he did. The IRS rejected Jason's claim that the child was his dependent and disallowed his claims for head of household status, child tax credit and earned income tax credits with regard to the child. While this case related to the adjustment of a 2012 return (before the changes in the Internal Revenue Code (IRC) took effect on December 22, 2017 which eliminated certain dependency exemptions for federal income tax purposes), the issues addressed are still pertinent to whether a taxpayer will qualify for "Head of Household" status and/or be entitled to claim certain credits and Michigan dependency exemptions which remain dependent upon definitions contained within IRC §152(c)(1).

To be a taxpayer's qualifying child, the child must generally (A) bear a specified relationship to the taxpayer, (B) have the same principal place of abode as the taxpayer for more than ½ the taxable year, (C) not have attained the age of 19 during or before the taxable year in issue, (D) not have provided the majority of his or her own support during that year, and (E) the child must not file a joint return for that year.[1] While the requirements of (A)(C)(D) and (E) were met, the child did not reside with Jason for more than ½ the taxable year. The failure of the child to reside the requisite time with Jason would not have been fatal to Jason's position had he obtained and attached a Form 8322 to his return (or a reasonable substitute)[2]. An oral agreement between Jason and Tara that Jason could claim the child (and Tara would not) was insufficient. Citing *George v. Commissioner,* 139 T.C. 508, 516 (2012) and *Miller v. Commissioner,* 114 T.C. 184, 189 (2000), the Tax Court found that the lack of the form barred Jason's ability to claim his child as a dependent under the facts presented. Because "Head of Household" status, the Child Tax Credit under IRC §151, and Earned Income Tax Credit under IRC §32(c)(1)(A)(i) are all dependent upon the child being deemed a "qualifying child" within the meaning of IRC §152(c)(1), Jason was unable to receive these benefits to reduce his taxable income because he failed to obtain and attach the requisite form.

The moral of this case – it remains important to consider the implications of and address whether a child will be treated as the dependent of a parent when the child does not reside more than ½ the time with that parent and address whether a Form 8322 will be provided.

About the Author

Sandra D. Glazier, Esq., is an equity partner at Lipson Neilson, P.C., in its Bloomfield Hills, MI office. She is also the recent recipient of Bloomberg Tax's Estates, Gifts and Trusts Tax Contributor of the Year Award and Trusts & Estates Magazines Authors Thought Leadership Award. Sandra concentrates her practice in the areas of estate planning and administration, probate litigation and family law.

Endnotes

1 See Internal Revenue Code (IRC) §152(c)(1).

2 IRC §152(e)(2)(B).

Garnishment of VA Disability Compensation

By Mark E. Sullivan

There's a lot of confusion in the area of garnishment of VA disability benefits for support. This article is about IWO's (income withholding orders) and the garnishment of VA disability compensation of military retirees for family support. The text below may help clear up the confusion.

Garnishment – Outline of Requirements

Here are the rules about mandatory withholding of support payments (pursuant to a court order) from VA disability compensation:

- Retired pay is disbursed to retirees from the Army (10 U.S.C. §1401), Navy/Marine Corps (10 U.S.C. §6333), and Air Force (10 U.S.C. §8991), as well as the Coast Guard and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration.
- Disability compensation is paid by the Department of Veterans Affairs (VA) for injuries, illnesses, wounds or other conditions that are service-connected (38 U.S.C. §1110 for wartime disabilities, and §1131 for peacetime disabilities).
- VA disability compensation is not subject to seizure or attachment (38 U.S.C. § 5301).
- A military retiree must waive an equivalent amount of military retired pay to receive disability compensation through the VA (38 U.S.C. § 5304-5305).
- The waived retired pay is restored when the retiree has a VA disability rating of 50% or more and is receiving CRDP (Concurrent Retirement and Disability Pay) (10 U.S.C. § 1414) unless the military retiree has elected to receive CRSC (Combat-Related Special Compensation) (10 U.S.C. § 1413a).
- When the servicemember is approved for receipt of CRSC, the restoration of retired pay is rescinded and the dollar-for-dollar waiver rule remains in place.
- To ensure the payment of court-ordered support, the federal government will allow the garnishment of VA disability compensation for family support when the recipient has waived uniformed services retired pay to obtain this disability pay (42 U.S.C. § 659).

Statute Allowing Garnishment

The text of the statute which lets courts garnish military pay and retired pay is shown here:

> 42 U.S.C. § 659. Consent by United States to income withholding, garnishment, and similar proceedings for enforcement of child support and alimony obligations
>
> (a) Consent to support enforcement
>
> Notwithstanding any other provision of law (including section 407 of this title and section 5301 of title 38), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law enacted pursuant to subsections (a)(1) and (b) of section 666 of this title and regulations of the Secretary under such subsections, and to any other legal process brought, by a State agency administering a program under a State plan approved under this part or by an individual obligee, to enforce the legal obligation of the individual to provide child support or alimony.

Rules about Garnishment

The Code of Federal Regulations (C.F.R.) sets out what moneys are subject to income withholding (i.e., garnishment). Here is what it says:

> 5 C.F.R. 581.103 Moneys which are subject to garnishment

(c)(7) Any payment by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived either the entire amount or a portion of the retired or retainer pay in order to receive such compensation. In such cases, only that part of the Department of Veterans Affairs payment that is in lieu of the waived retired pay or waived retainer pay is subject to garnishment.

Examples – Garnishment of VA Disability Pay

Here are some illustrations of how to determine what is subject to garnishment from military retired pay (using approximate 2018 numbers corresponding to the VA percentage rating):

Payment or debit	Amount
Monthly military retired pay	$4,000
Debit for VA waiver (40% rating)	$600
Net military retired pay	$3,400

Since $600 of retired pay was waived for VA payment, $600 is "subject to garnishment" (with limitations on the maximum garnishment amount set forth in 5 C.F.R. § 581.402) from the retiree's VA disability compensation.

Payment or debit	Amount
Monthly military retired pay	$4,000
Debit for VA waiver (100% rating)	$3,000
Net military retired pay	$800

Since $3,000 of retired pay was waived for VA payment, $3,200 is subject to garnishment (as limited by 5 C.F.R. § 581.402) from the retiree's VA disability compensation, in spite of the fact that the $3,000 is restored to the retiree due to CRDP.

Payment or debit	Amount
Monthly military retired pay	$1,400
Debit for VA waiver (100% rating)	$3,200
Net military retired pay	$0

Since the retired pay is less than VA disability compensation, the retiree has waived the entire $1,400 of monthly retired pay, taking VA disability compensation in its place. Thus $1,400 of the the VA disability compensation is subject to garnishment (as limited by 5 C.F.R. § 581.402).

For more information on garnishment, see 5 C.F.R. § 581.301 (requiring "proper service of legal process") and 5 C.F.R. § 581.305 (requiring an agency that receives legal process for garnishment for alimony and/or child support to comply with such process unless it is facially invalid).

Maximum Amount of Earnings

The maximum amount of disposable earnings which is subject to garnishment is found here:

5 C.F.R. §581.402 Maximum garnishment limitations.

(a) Except as provided in paragraph (b) of this section, pursuant to section 1673(b)(2) (A) and (B) of title 15 of the United States Code (the Consumer Credit Protection Act, as amended), unless a lower maximum garnishment limitation is provided by applicable State or local law, the maximum part of the aggregate disposable earnings subject to garnishment to enforce any support order(s) shall not exceed:

(1) Fifty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor asserts by affidavit, or by other acceptable evidence, that he or she is supporting a spouse, a dependent child, or both, other than the former spouse, child, or both, for whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with §581.202(d), that such earnings are to enforce a support order for a period which is 12 weeks prior to that workweek. An obligor shall be considered to be supporting a spouse, dependent child, or both, only if the obligor provides over half of the support for a spouse, dependent child or both.

(2) Sixty percent of the obligor's aggregate disposable earnings for any workweek, where the obligor fails to assert by affidavit or establishes by other acceptable evidence, that he or she is supporting a spouse, dependent child, or both, other than a former spouse, child, or both, with respect to whose support such order is issued, except that an additional five percent will apply if it appears on the face of the legal process, or from other evidence submitted in accordance with §581.202(d), that such earnings are to enforce a support order for a period which is 12 weeks prior to that workweek.

(3) Where, under §581.302(a)(2), an obligor submits evidence that he or she is supporting a second spouse, child, or both a second spouse and dependent child, copies of the evidence shall be sent by the governmental entity to the garnishor, or the garnishor's representative, as well as to the court, or other authority as specified in §581.102(f)(1), together with notification that the obligor's support claim will be honored. If the garnishor disagrees with

the obligor's support claim, the garnishor should immediately refer the matter to the court, or other authority, for resolution.

(b) In instances where an obligor is receiving remuneration from more than one governmental entity, an authority described in §581.102(f)(1) may apply the limitations described in paragraph (a) of this section to the total remuneration, i.e., to the combined aggregate disposable earnings received by the obligor.

Guidance from the Department of Veterans Affairs

While the VA does not provide advice on the preparation of handouts and training materials; one official at the agency – after review of the above information – stated that this caveat should be added for attorneys who wish to understand fully the issue of garnishment and income withholding orders when applied to VA disability compensation:

> Only the amount of VA disability compensation paid in lieu of military retired pay can be garnished to satisfy child support or alimony obligations. See 42 U.S.C. §§ 659(a) & (h)(1)(A)(ii(V). Under 5 C.F.R. § 581.305(a)(2) & (3), VA must comply with the legal process (usually a court order) seeking garnishment for alimony or child support unless the garnishment order "would require the withholding of funds not deemed moneys due from, or payable by, the United States as remuneration for employment". 42 U.S.C. § 659(h)(1)(A)(ii(V) confirms that VA compensation paid in lieu of military retired pay qualifies as remuneration for employment. As long as a garnishment order for either child support or alimony also satisfies the definition of "legal process" in 5 C.F.R. § 581.102(f), and is a valid "legal process" under 5 C.F.R. §§ 581.303 and 581.305, VA is required to comply with it unless another exception applies in 5 C.F.R. § 581.305(a).
>
> The U.S. Supreme Court has held that state courts are free to consider the availability of VA benefits in determining the amount of a veteran's child support obligation and, in fact, may set a support award in an amount that would necessarily require that part of the award be paid out of those benefits once they are received by the veteran. *Rose v. Rose*, 481 U.S. 619 (1987). In *Rose*, the Court held that a state court can enforce a child support order against a disabled veteran through contempt proceedings even though the only funds available to the veteran for payment are VA compensation. The Court did not expressly state that VA benefits are subject to garnishment for child support purposes after they have been paid to the beneficiary, but it appeared to carve out an exception to the exemption of VA benefits from creditors' claims under 38 U.S.C. § 5301(a) for purposes of child-support payments.

* * *

About the Author

Mark Sullivan *is a retired Army Reserve JAG colonel who practices family law in Raleigh, North Carolina. He is the author of* The Military Divorce Handbook *(Am. Bar Assn., 2nd Ed. 2011) and many internet resources on military family law issues; most of these are at the website of the N.C. State Bar's military committee, www.nclamp.gov and the ABA Family Law Section's military committee, www.abanet.org/family/military. 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 nationwide as a consultant on military divorce issues and in drafting military pension division orders. He can be reached at (919) 832-8507 and mark.sullivan@ncfamilylaw.com.*

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Recent Published and Unpublished Cases

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

Summaries for this issue written by Sean A. Blume

Published Decisions

Judgment of Divorce: Contract

Seifeddine v Jabar, ___ Mich App ___ (2019),
Docket No. 343411, decided April 19, 2019

Plaintiff appealed the trial court's enforcement of an Islamic marriage certificate (Mahr) requiring Plaintiff to pay $50,000 to Defendant, as well as other provisions of the property distribution. Plaintiff argued that enforcement of the Mahr was a religious issue and that the Court could not rule on it. The trial court determined that it was a contract issue and that the court could apply general issues of common law regarding contracts to resolve the dispute without applying religious principles or doctrines. The trial court also determined that it could consider the award of the Mahr as part of the division of marital assets, negating Defendant's for Spousal Support. The Court of Appeals affirmed the trial court's analysis and decision.

Unpublished Decisions

Judgment of Divorce: Arbitration Award

Hyman v Hyman, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 346222, decided April 18, 2019

The trial court modified a final arbitration award after denying Defendant's motion to vacate the award under MCR 3.602(J)(3) as untimely. Plaintiff appealed. Despite Plaintiff's waiver of the issues at the trial court level, the Court of Appeals overlooked the preservation requirement in order to ensure that clear Michigan law was followed by the trial court. The Court of Appeals stated that judicial review of arbitration awards is extremely limited, and that while a trial court has the ability to modify or vacate an award that is not in the children's interests, it is not authorized to review an arbitrator's findings of fact. The trial court modified the arbitrator's award while also finding that the award was in the children's best interests, which the Court of Appeals found to be error. The Court of Appeals also stated that per MCR 3.602(J)(5) the trial court erred in not confirming the arbitration award after denying Defendant's motion to vacate. Reversed and Remanded.

Judgment of Divorce: Property Settlement

Rainwater v Rainwater, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket nos. 341989; 342418, Decided April 18, 2019

The parties divorced in 2015 with language in the Consent Judgment of Divorce that they would agree to a division of personal property or the items would be sold with net proceeds divided. Plaintiff filed a motion in 2017 to either enforce the property settlement or to set it aside, per MCR 2.612, and to reach a new agreement. The trial court denied the motion to enforce and the motion for reconsideration, claiming that they were untimely per MCR 2.603 and MCR 2.612, and that the court lacked authority to consider the request. Citing this ruling, Defendant then motioned for costs and attorney fees based on a deposition which was held after the trial court's ruling on the motions. The trial court granted sanctions and fees, which became the subject of the second appeal. The Court of Appeals ruled that Plaintiff's motions were timely and that the trial court did in fact have the authority to hear the motions, and therefore the initial motion was not frivolous. Regarding attorney fees, the COA reversed the award to the extent that any part was based on a determination that the motion was frivolous. Remanded for further proceedings consistent with the opinion.

Child Support: Imputation of Income

Urka v Urka, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 343302, decided April 23, 2019

The parties initially reached agreement at mediation, in pro per. At a hearing to enter a Consent Judgment of Divorce, Defendant claimed that the custody, parenting, and support provisions were not in the children's best interests, nor in accordance with his ability to pay. The parties retained counsel and proceeded to conduct a four-day custody trial, reaching a custody and parenting time agreement on the last day of trial. The issue of Child Support was again referred to the Friend of the Court who recommended Defendant be imputed $66,000 income per 2017 MCSF 2.01(G)(1) for the unpaid work he performed at the family farm. Defendant objected, a hearing was held, and the trial court ultimately imputed $66,000 a year income to Defendant as a farm manager, citing the MCSF

and the Bureau of Labor Statistics Occupational Handbook as support. Defendant appealed the imputation as well as the custody and parenting time provisions, claiming he was pressured into settlement by his attorney. The Court of Appeals examined the factors in imputing income and determined that the trial court's calculations were well supported and not made in error. Additionally, Defendant stated on the record that he was satisfied with his attorney's advice. Therefore, the Court of Appeals determined, the trial court's decision to deny reconsideration on the issues of custody and parenting time did not fall outside the range of reasonable and principled outcomes. Affirmed.

Custody: Sole Legal

Sturos v Sturos, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 344449, decided April 23, 2019

The trial court awarded, after hearing, sole physical and sole legal custody to Plaintiff, mother. Defendant appealed entry of the Judgment of Divorce which included the trial court's earlier custody determination, claiming the trial court erred in failing to award him joint legal custody of the children. The trial court found overwhelming evidence that the established custodial environment was with Plaintiff, and also that it was an absolute impossibility to have joint legal custody based on what was heard at trial. The trial court then awarded sole legal and sole physical custody to Plaintiff, with Defendant having access to the children's records pursuant to MC: 722.30, which allows access to medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education. Defendant did not challenge any of the trial court's findings regarding the best-interest factors under MCL 722.23, or the finding that the children had an established custodial environment with Plaintiff. The Court of Appeals cited Dailey v Kloenhamer, 291 Mich App 660, 664; 811 NW2d 501 (2011), quoting MCL 722.28, in stating that "in all child-custody disputes, 'all orders and judgments of the Circuit Court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of the evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.'" Applying this standard, the Court of Appeals determined that the trial court did not err by finding that the parties were not going to be able to agree on

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decision-making, therefore determining that an award of Joint Legal Custody was not practical in this instance. Affirmed.

Change of Custody: Change of Domicile

Grayer v Grayer, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 345322, Decided April 11, 2019

Defendant moved from Michigan to Indiana and sought sole legal custody, a change of domicile, and increased parenting time. After an evidentiary hearing and interviews with the children, the trial court determined Defendant had not met his clear and convincing burden and that a change of domicile was not in the children's best interests. Instead, the trial court granted Plaintiff full physical custody. Defendant's appeal claimed that the trial court erred in not providing a full analysis of all of the D'Onofrio factors in MCL 722.31(4), and instead focused only on the sub-factor "c," which looked at preserving and fostering the parental relationship with the non-moving party. The Court of Appeals agreed, stating that the trial court's analysis of factor "c" only as a threshold factor was clear error and improperly influenced its decision. Remanded for further proceedings consistent with the opinion.

Change of Custody: Best Interest Factors

Swinson (n/k/a Bogue) v Swinson, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 346301, decided April 16, 2019

The parties divorce in 2017 with Plaintiff-mother being awarded physical custody and Defendant-father having liberal visitation. Plaintiff moved from Midland to Gladwin and Defendant filed a custody modification, requesting full physical custody and a "51%/49%" legal-custody arrangement in his favor. A referee hearing was held and Defendant's motion was granted. Plaintiff objected and a de novo hearing was held, the result of which was that Plaintiff's motion was denied. The trial court found that there existed sufficient change of circumstances to examine the custody order and that the established custodial environment existed with both parties. However, the court declined to find by clear and convincing evidence that a chance of custody was in the child's best interests after measuring the best interests factors of MCL 722.23(a)-(l). Defendant appealed, claiming that the trial court's findings on several of the best-interest factors were against the great weight of the evidence. The Court of Appeals examined the trial court's analysis of the best-interest factors and failed to find an abuse of discretion, stating that the best interests of the child is the sum total of the factors, that the Court of Appeals generally defers to the trial court's credibility determinations, and that the trial court can accord differing weight to the factors. Affirmed.

Change of Custody: Threshold Analysis

Wagner v Rebbie, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 346754, decided April 30, 2019

Defendant-father was awarded sole legal custody in August 2017, while the parties shared equal parenting time. Plaintiff filed a motion to modify legal custody which was denied due to lack of sufficient grounds to establish either a proper cause or a change of circumstances necessary to even conduct an evidentiary hearing on the issues. Plaintiff appealed claiming that the court abused its discretion in denying her the opportunity to present evidence at a hearing, and that in general the court erred in holding that she had not alleged sufficient facts to establish the necessary change of circumstances. The Court of Appeals applied the great weight of the evidence standard and fully analyzed the trial court's analysis of the threshold question in light of *Vodvarka*, 259 Mich App at 512. The Court of Appeals stated that it is not always necessary to hold an evidentiary hearing to determine the existence of proper cause or a change of circumstances, as the facts to support the finding may be undisputed or the trial court might even just accept as true the allegations in petitioner's motion. Ruling was for Defendant with a finding that the trial court did not abuse its discretion in failing to hold a hearing for additional proofs. Affirmed.

Custody and Parenting Time: Best Interests Findings

Sloan v Sala, unpublished opinion Per Curiam of the Michigan Court of Appeals,
Docket no. 345275, decided April 18, 2019

The trial court entered an order for custody and parenting time on a paternity case, after hearing, which granted joint legal custody and awarded Defendant-mother primary physical custody. While the parties had initially agreed to a similar arrangement early in the case, Plaintiff-father wanted additional specific parenting time which was the subject of the hearing. Plaintiff appealed the trial court's decision, claiming that the court failed to identify the established custodial environment, failed to make best interests findings when awarding Plaintiff primary physical custody, failed to establish the child's best interests regarding parenting time, and failed to identify the child's best interests regarding a dispute over daycare. The Court of Appeals agreed with the all of Plaintiff's arguments except for daycare. The Court stated that it was clear error to fail to address whether there existed an Established Custodial Environment, the trial court committed clear error, by failing to address the Established Custodial Environment, the best interest factors under the child custody act and the parenting time factors. Remanded for a new custody hearing for findings consistent with the Order.

Guidelines for Requesting Appearance of the Family Law Section of the State Bar of Michigan as Amicus Curiae

1. Requests from litigants should be directed to the Amicus Committee and may be submitted to any Council member.
2. The amicus request must clearly indicate whether leave to appeal has been requested and/or granted. If leave has been requested but not yet granted, the requesting attorney must indicate whether an amicus is requested to support granting leave or on the substantive issues. Absent exceptional circumstances, no amicus request will be considered until the Court has granted leave to appeal.
3. Amicus requests must be in writing, accompanied by five copies of each of the following:
   a. A short and concise memorandum setting out the legal issue(s) addressed by the appeal;
   b. Previously submitted briefs (from both parties) and opinions in the case, together with the order granting leave to appeal, if appropriate, and a list of the filing deadlines, including the deadlines for the amicus curiae brief;
   c. A list of significant cases that an amicus brief should consider, together with copies of any cases outside of Michigan;
   d. A brief statement explaining why the Family Law Council should grant the request. This statement should specifically reference the Case Selection Criteria and the impact of the case on the domestic relations bar as a whole. The statement should also address the potential expenditure of Council time and resources;
   e. For amicus requests prior to the Court granting leave to appeal, a statement setting out "exceptional circumstances" to justify Family Law Council involvement;
   f. A proof of service indicating that all materials submitted to the Amicus Committee have been concurrently served on all other counsel in the matter.
4. The requesting party may be required to meet with the Amicus Committee to discuss Family Law Council involvement. In this event, the Amicus Committee shall notify the opposing attorney of the date, time, and location of the meeting and invite them to be present and participate in the meeting. A meeting of the Amicus Committee will be convened for this purpose at which the requesting party should be prepared to discuss the importance of the issue(s) presented; how Council support will benefit the party, the bench, and the Bar at the present state of litigation; the likelihood of the case eventually progressing to the Supreme Court (for cases on which the Supreme Court has not yet granted leave); and practical considerations, such as the level of commitment of the requesting attorney and his/her client to pursuing the case.
5. The requesting party shall furnish any additional material or information required by the Amicus Committee.

Case Selection Criteria for Requests for Appearance of the Family Law Section of the State Bar of Michigan as Amicus Curiae

In passing on a request for appearance as Amicus Curiae, the Amicus Committee of the Family Law Section shall consider the following criteria:

l. Whether the legal issue involved is of substantial interest to the domestic relations bar.
2. Whether the legal issue involves a conflict in case law, or a case of first impression, or a novel or previously unresolved question, or whether there is a need for clarification of a legal issue, the disposition of which is likely to have broad range effects beyond the particular case.
3. Whether the legal issue involved affects fundamental rights of individuals or involves a constitutional question.
4 . Whether the case presents an opportunity to ameliorate or reverse prior judicial decisions or legislative enactments which adversely impact domestic relations law.
5. Whether the issue or case impacts the practice of family law from the view of practitioners.
6. Whether the briefs of the parties before the court, or briefs of other amicus curiae, adequately address the legal issues presented.
7. Whether the facts presented are strong enough, and the record sufficiently developed, to support the position to be asserted.
8. Whether the position to be asserted is appropriate in view of the recent pronouncements of the appellate courts and consistent with the Family Law Council's principles and philosophy.
9. Whether there exists sufficient time to request amicus status and properly prepare a brief.
10. Whether sufficient resources are available, given the Council's amicus caseload, to grant the particular request.
11. Whether the Court has requested the submission of briefs.
12. Whether the case should be referred to another Section of the State Bar.

Legislative Update

By Stephanie Johnson, Lobbyist
Kandler Reed Khoury and Muchmore

Auto No-Fault Reform Measures on Way to Governor

On Tuesday, May 7, the Michigan Senate passed SB 1, a comprehensive overall to Michigan's system that requires Michigan residents to purchase unlimited medical benefits with auto insurance to address the state's highest in the nation auto insurance premiums. The following day, May 8th, the Michigan House passed their own version of no-fault reform, HB 4397, after a marathon session into the early hours of the morning. Both bills passed their respective chamber with full Republican support and Democratic Senators Adam Hollier (district 2-Detroit) and Sylvia Santana (district 3-Detroit) joining them in approving SB 1 and Democratic Representatives Sara Cambensy (district 109-Marquette), Leslie Love (district 10-Detroit), and Karen Whitsett (district 9-Detroit) supporting HB 4397 in the House.

SB 1, as passed by the Senate, modifies the Personal Injury Protection (PIP) levels of auto insurance to either a flat $250,000, or a combination of $50,000 plus $200,000 for acute trauma care immediately following an accident. Drivers may also opt out of PIP entirely if they have a coordinating health insurance policy to cover medical expenses. It also allows for an insurance company to offer an unlimited PIP benefit, but this would likely not be an option as the legislation also requires the Michigan Catastrophic Claims Association (MCCA) which currently handles medical claims in excess of approximately $550,000 to close and eventually dissolve. The closure of the MCCA and the associated fee is the only guaranteed premium reduction included in SB 1, approximately $150. Medical providers would also be reimbursed for services at the same fee schedule as workers compensation, place restrictions on attendant care policies for accident victims, and create a Fraud Task Force within the Michigan State Police.

HB 4397 is based on many of the same tenants as SB 1 such as a worker's compensation fee schedule, restrictions on attendant care, a fraud task force within the State Police, PIP choice, and coordinating benefits with a separate health insurance. The House version goes further by offering more PIP choice levels to include unlimited benefits, $500,000, $250,000 and $50,000 caps, as well as opting out of PIP entirely. With these levels comes guaranteed rate roll backs for 5 years for the PIP portion of insurance premiums ranging from 10% for unlimited PIP to 100% if an individual opts out entirely. HB 4397 would maintain the MCCA with the idea that the fee would drop over time as more individuals opted out of unlimited PIP coverage. Additionally, the legislation after the 5-year rate roll back window expires, would require the Department of Insurance and Financial Services (DIFS) to approve auto insurance rates rather than the current "file and use" procedure that happens today. DIFS would also be allowed to require insurance companies to exclude non-driving factors if could not demonstrate a correlation between those factors and insurance risk or losses.

Currently, HB 4397 sits on the Senate floor awaiting a vote. SB 1 is also on the House floor awaiting House action.

Governor Whitmer quickly stated that without specific protections for consumers she will veto either bill that makes it to her desk, stating that the current bills do not go far enough to guarantee lower auto insurance rates, do not address non-driving factors such as redlining, and leaves Michigan drivers with a poor medical benefit. She also stated that her first priority remains to pass a budget that includes $2.5 billion dollars in road funding.

Since initial passage of the bills by both chambers, the Governor and legislative leadership have been in negotiations to find a compromise. At the time of this report, those discussion were still on-going.

Federal Court Issues Redistricting Order To State

On April 25, 2019 a federal three-judge panel unanimously declared that the 2011 maps used for redistricting for the Michigan House, Senate, and U.S. Congress were illegally gerrymandered to give a Republican advantage. The case stemmed from a lawsuit lead by The League of Women Voters that 34 districts were in violation of the 1st and 14th amendment to Constitution that deliberately minimized Democratic voters and minorities to favor Republican candidates. The court ordered that the affected districts, and subsequent adjoining districts, need to be redrawn for a special election in 2020. The legislature has until August 1st to redraw those districts otherwise the court may order a special independent master to oversee the process to do so.

Republicans, who are defending the maps and the process by which they were drawn, have filed a subsequent appeal to the U.S. Supreme Court. The Court has already heard oral arguments in gerrymandering cases in Maryland and North Carolina on appeal after lower courts determined certain Congressional districts in those states were drawn with expressed partisan intent. A ruling on those cases is expected in June and would likely impact what ultimately happens in Michigan.

Moving forward, there are several possible outcomes. Legislative leaders have said they will comply with the August 1st date to have new maps of those districts be approved by both chambers and the Governor. For U.S. Congressional and Michigan House members who have two-year terms, candidates would have to deal with new political boundaries, incumbents may no longer live in their districts, or potentially must run against another current legislator. For the Michigan Senate, affected Senators may have to run in a special election in 2020 which raises a constitutional issue as Michigan Senators 'may only be elected twice,' unless it's to fulfill a term that's less than two years. Additionally, its unknown how many Senators, or even perhaps the entire Senate, would be required to participate in a special election.

These implications may have downstream effects on the state budget and other policy goals. First, if the legislature is to draw reapportionment maps there would need to be a formal Redistricting Committee, formed with members in both chambers. Currently, there is no additional funding available, nor is there any in the FY2020 budget process, to increase staffing levels for this purpose or to utilize sophisticated software programs that aide in drawing political maps. Additionally, due to term limits, few legislators that are currently serving experienced the redistricting process back in 2012.

The 2018 elections also brought in an abundance of female candidates and marked significant political shifts in Detroit and surrounding metropolitan areas. Oakland County, once a Republican stronghold, saw many seats flip as female Democratic candidates prevailed. The 39th House District was the lone exception for Republicans winning as the Democratic Candidate was indicted and later convicted of embezzlement. In Detroit, Mayor Mike Duggan successfully recruited and supported candidates specifically to achieve his goal to reform auto-no fault laws. Similarly, Brooks Patterson has kept a tight hold on the remaining Oakland County Republicans to oppose such reforms. The legislative districts in Southeast Michigan are very tightly packed and any modifications may end up marginalizing incumbents, pit current legislators against one another, or give new demographic or geographic advantages to previously unsuccessful candidates. Combined with shifting political tides and the specter of President Donald Trump seeking reelection in 2020, the power of either party may shift dramatically depending on how the lines are drawn.

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In the meantime, both parties will continue to file their respective legal arguments: The League of Women Voters and their fellow plaintiffs claiming that the maps drawn by a Republican controlled legislature and Governor were illegally gerrymandered and need to be redrawn for 2020; Republicans appealing that the current districts meet strict criteria set in federal law and that redrawing maps would be a misuse of tax payer dollars and using 2010 census data would not provide an accurate depiction of current voter populations. Regardless, this may be the last time elected officials draw political boundaries in the state. For the 2022 election, district maps will be drawn by a 13-member multi-partisan committee that was overwhelmingly approved by voters as part of Proposal 2 on last November's ballot. Redrawing the political boundaries for two straight election cycles would only add to the chaos and churn of those seeking office.

Foreclosure Avoidance Bill Moves Through Legislature

The House passed HB 4121 sponsored by Representative Wendell Byrd (D-Detroit), that would continue a law to allow counties to create tax payment plans to help homeowners avoid tax foreclosure. The Senate Finance Committee chaired by Senator Jim Runestad (R-White Lake) has had one hearing on the bill with the chair expressing his appreciation to the bill sponsor for bringing the issue forward. Currently, the law will sunset on June 30th of this year. Senator Runestad has indicated that he would like to add another sunset provision to the bill.

If passed, the bill would allow county treasurers to voluntarily enter into a payment plan for a maximum of 5 years with a delinquent property owner, so long as the owner pays an initial payment of 10 percent of the delinquent taxes owed on the property.

Supreme Court Seeks Comments on Electronic Court Rules and Low-Income Access to Justice Proposal

Proposed Rule on Cellphones and Portable Electronics

The Michigan Supreme Court is considering an amendment to Rule 8.115 of the Michigan Court Rules to allow for the partial use of cellphones and other portable electronic devices in state courthouses. The proposed rules would strike

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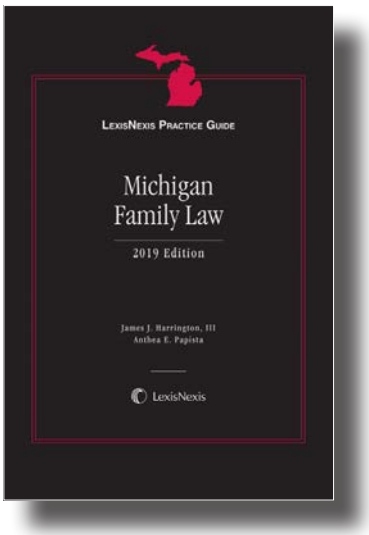

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current rules that allow a local court's chief judge to create a policy using cellphones, laptops, tablets and other portable electronic devices.

Under the proposed rules litigants, their attorneys, witnesses (specifically those called to testify), onlookers and jurors will be governed by the rules on using cellphones and other electronics. Lawyers as well as members of the public will be permitted to use electronic devices in a courtroom to retrieve information, store information, access the Internet and send texts or emails. However, they must silence those devices and cannot use them to make calls or other engage in audible functions.

The following is a link to the proposed rule: *https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2018-30_2019-05-15_FormattedOrder_PropAmendtofMCR8.115.pdf*

The proposed rule change is open for public comment and the Supreme Court will take comments on them through Sunday, September 1.

Proposed Rule for Low Income Access to Justice

The Supreme Court has proposed an amendment to MCR 3.501 that would require fifty percent of unclaimed class action funds be disbursed to the Michigan State Bar Foundation or other distribution as deemed appropriate by the court. This proposal is a slightly modified version of a proposal submitted to the Court by the Michigan State Planning Body and Legal Services Association of Michigan.

The proposed rule, first issued on May 10th, 2019, would also allow the Supreme Court to order any funds left over in a class action settlement be paid to a foundation or other purpose that "has a direct or indirect relationship to the underlying litigation or otherwise promotes the interests of the members of the certified class."

The public has until September 1, 2019 to comment on the proposed rule either electronically or in writing.

The rule makes it clear that allocating funds to assist the poor and low income could only occur when the claims process has been exhausted and there are residual funds. It would give the Supreme Court the option to put left over funds into some program that benefits the certified class. It also would call for at least fifty percent of the undisbursed funds to go to the bar foundation to support and promote activities helping "low income residents on Michigan" to get access to the civil justice system.

Within the Order, Justice Markman invited comment on some very specific questions such as is it an appropriate use of the court's judicial power to determine which public and charitable funds will become recipients of such funds; if the process could become politicized, "one in which the personal perspectives, loyalties, and interests of the judge or attorney become determinative and in which various forms of lobbying activities come to be undertaken by interested groups and organizations; and would it "disincentivize" judges and lawyers from the more difficult task of tracking down members of an affected class?

Comments may be sent to the Supreme Court Clerk at P.O. Box 30052, Lansing, MI 48909, or ADMcomment@courts.mi.gov. Your comments and the comments of others will be posted under the chapter affected by this proposal at Proposed & Recently Adopted Orders on Admin Matters page.

Bi-Partisan Bills to Prohibit Domestic Violence Offenders from Gun Possession

Republican Representative Daire Rendon (Lake City) has introduced HB's 4497 and 4498 that would prohibit a person convicted of certain domestic violence offenses from possessing, selling, transporting and purchasing firearms. Similar bills have been introduced by some Democrats to provide a broader process to prohibit the possession of firearms for those who could potentially be dangerous. HB 4497 is different because they would require a conviction before the prohibition of owning or purchasing a firearm.

HB 4498 would extend this same prohibition to an individual that has a PPO against them.

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. The PAC lobbyist has contact with, and access to, legislators involved with family law issues. Contributions to the PAC are the one way for you to help influence legislation that directly affects your practice as a family law 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 the House of Representatives.

Please help the PAC by making a contribution today!

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