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New Friends of the Court

On February 1, 2009, **David Thompson** became the director of the **Manistee and Benzie County Friend of the Court (FOC) office**. David has been with the Manistee County Prosecuting Attorney's Office for 13 years, and served as the chief assistant prosecuting attorney for the last eight years. He earned his law degree at Thomas M. Cooley Law School and his Bachelor of Science degree in Psychology with a minor in Counseling from Lake Superior State University. David and his wife Kris have two daughters, Emily and Sara.

Manistee and Benzie Counties are located in the western portion of Northern Michigan. Together, the counties have a total population of approximately 42,500. The average family income is \$42,116.

David believes that the most satisfying aspect of being a friend of the court director is serving the community by protecting the best interests of the children. In his opinion, the best things about the Michigan child support program are the people working within it. The employees must constantly learn and adapt to new regulations, but they consistently do so while carrying out their duties. David believes that Michigan's economy is the most critical challenge facing the Michigan child support program, and that getting people back to work is the fastest way to improve the program.

The Manistee/Benzie County FOC has an open door policy, which allows parties direct access to the caseworkers without having to wait for an office appointment. David views this as a great way to keep the lines of communication open and one of the keys to a successful child support program.

Jessica Wierckz became the director of the **Ionia County FOC office** in December 2008. Jessica earned her law degree from Thomas M. Cooley Law School, and a bachelor of science degree from Aquinas College. Before becoming the Ionia County FOC, Jessica was an assistant prosecuting attorney for nine years, prosecuting adult felonies and managing the family court docket. She and her husband have one child.

Underground Economy Task Force Survey

In 2008, Michigan Supreme Court Justice Maura D. Corrigan created a special **Underground Economy Task Force** to help the child support system collect support from parents who work “underground” so that their income will go unreported and thus avoid both taxation and efforts to collect child support. The term “underground economy” refers to the exchange of goods or services in return for unreported and untaxed income, usually received in cash. Enforcing child support obligations when the obligors work underground is especially hard because those obligors either don’t report any income or they significantly underreport it.

During its organizational meetings, the task force agreed to search for ways to achieve the following goals:

- Prevent people from entering the underground economy.
- Increase collaboration between governmental entities to find people in the underground economy.
- Enforce those individuals’ support obligations.

The final report from the task force will offer recommendations for addressing the underground economy.

To help the task force better understand how this problem affects child support enforcement and then find ways to solve it, many of you soon will receive a survey from the State Court Administrative Office. The short survey will be sent to those providing services related to child support establishment or enforcement, including judges, referees, attorneys, and IV-D workers. The task force members hope that the survey responses will provide information about the realities of Michigan’s underground economy as confronted by child support enforcement personnel.

The task force thanks you in advance for your feedback on this survey! If you have any questions regarding the survey, please contact the Friend of the Court Bureau at (517) 373-5975.

Ingham County's "Catch 33" Local Partnership

by Shauna Dunnings, Ingham County Friend of the Court Director

In Ingham County, a few child support and enforcement professionals determined in 2006 that they could serve their clients better if everyone involved in establishing and enforcing child support communicated more effectively. To that end, they formed the "Catch 33" partnership, whose members include representatives from the DHS Office of Child Support (both "child support specialists" and "lead workers"), the Family Support Unit in the county Prosecutor's Office, and the county Friend of the Court office.

Back before DHS assigned support specialists to specific counties, representatives from all three of those Catch 33 partner entities met regularly in Ingham County for many years. The group stopped meeting for a period of time, but in 2006 the group started meeting again. At the first 2006 meeting, the group agreed to call itself "Catch 33," a name derived from the book titled "Catch 22." No one I spoke to could now recall why the founders chose the number 33 instead of 30 (our judicial circuit's number) or 22 (from the book's title), but that doesn't really matter. What does matter is that the group works effectively to address many issues that arise when establishing and enforcing child support orders.

With the arrival and subsequent evolution of the Michigan Child Support Enforcement System (MiCSES), and the widespread changes in America's family dynamics, child support partners have a greater-than-ever need to communicate effectively with each other. The conversations that occur during Catch 33 meetings help everyone understand why tasks are done certain ways at the Office of Child Support, the Prosecutors Office, or the Friend of the Court office.

For example, we often share information about a MiCSES application that one person has already used, but others have not yet attempted. We talk about the ongoing changes to MiCSES and programs like Bridges, and exactly how those changes affect our day-to-day operations. We also frequently discuss "court action referrals," and what to do in different CAR scenarios. In other words, the group meetings allow us to share and exchange information so we all stay on the same page — or at least in the same book, and hopefully a book whose characters act more sensibly than those in "Catch 22."

I have participated in the Catch 33 meetings since 2007, when I became the Friend of the Court in Ingham County. The meetings provide a positive, productive forum in which to share information with other child support professionals. I strongly recommend that other counties consider forming similar partnerships if they have not already done so.

The Interstate Child: Exclusive Modification Jurisdiction

by Barry Brooks, Assistant Attorney General, Texas Office of the Attorney General

Child Support— Continuing Exclusive Jurisdiction (CEJ)

In 1993, the National Conference of Commissioners on Uniform State Laws (NCCUSL), now the Uniform Law Commission (ULC), promulgated the Uniform Interstate Family Support Act (UIFSA). One of UIFSA's main purposes is to assure that only one tribunal at a time has the exclusive subject matter jurisdiction to modify a prospective support obligation. In Michigan, this key provision appears in MCL 552.1224; it defines the concept of continuing, exclusive jurisdiction, often referred to as CEJ. Basically, the court that issued a support order retains the exclusive jurisdiction to modify it, so long as the obligor, the obligee, or the child remains in the issuing state. However, the obligor and individual obligee can agree to allow another state to assume this exclusive jurisdiction by filing a written agreement in the issuing court, which then will lose jurisdiction.

To solidify this concept, Congress passed the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA, 28 USC 1738B), which took effect October 20, 1994.

Child Custody – Exclusive Continuing Jurisdiction (ECJ)

Following the example of the 1993 UIFSA, the ULC commissioners in 1997 promulgated the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). It, too, had the purpose of fostering the concept of one tribunal at a time having the exclusive jurisdiction to modify the custody and/or visitation provisions of an existing order. In the Michigan version, MCL 722.1202 defines the concept of exclusive, continuing jurisdiction (ECJ) as applied this time to custody and visitation orders. Again, the court that issued the initial custody order retains exclusive jurisdiction to modify it so long as the child, the parents, or any person acting as a parent remains in the issuing state.

The UCCJEA conforms to the federal Full Faith And Credit Given to Child Custody Determination statute, better known as the Parental Kidnapping Prevention Act (PKPA, 28 USC 1738A), which has been in effect since 1980.

Assuming Modification Jurisdiction

UIFSA and UCCJEA provide that when all the relevant individuals leave the original order-issuing state, the exclusive jurisdiction for modification can be “assumed” by another court or tribunal without any involvement or “permission” from the original court. This process is unlike an intrastate transfer, which usually requires action by the original court.

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Office of Child Support to Convert from Action Transmittal to a New Manual

by Shari Martin, Program Development Division, Office of Child Support

The Office of Child Support's (OCS) Program Development Division (PDD) is redesigning its child support manual and its basic approach to releasing IV-D policy information. The new *Michigan IV-D Child Support Manual* will be available on **mi-support** (the internal website for Michigan's child support program) and on the Department of Human Services (DHS) external website. It will be searchable and printable, and it will be updated as new policies are released. This comprehensive new manual will contain all OCS IV-D policies for all child support professionals.

The Manual Structure

The structure of the new *Michigan IV-D Child Support Manual* is based on the Topic Index in the Program Library on mi-support. The same topics that appear in alphabetical order in the Topic Index will be shown in the manual's table of contents, but they will appear in case-flow order instead of alphabetically.

The manual will have nine chapters (previously known as "topic groups" on mi-support), and each chapter will consist of many "sections" (previously known as "topics" on **mi-support**). Chapters and sections will be logically numbered for ease of use. Users may click internal hyperlinks to open manual sections.

The Manual Sections

Within each section of the new manual, revised outline standards will ensure consistency in the organization of the manual's content. Each manual section will be a PDF file containing all the policy information for that section's topic. It will include all the policy content of the existing child support manuals, as well as policy now found only in Action Transmittals (ATs). Eventually, the new manual will completely replace the existing child support manuals and ATs.

Releasing and Publishing the Manual

The *Michigan IV-D Child Support Manual* will be updated whenever new policy is released. PDD staff will simply update the appropriate manual section instead of writing and distributing an Action Transmittal (AT). All IV-D staff will receive a notice of the policy change through a new "OCS IV-D Memorandum."

Each OCS IV-D Memorandum will give an overview of the policy change, and usually some background information. It will serve as a "cover sheet" to the actual new policy, which then will appear in the revised manual section. The OCS IV-D Memorandum will recommend that users go to the *Michigan IV-D Child Support Manual* to view the details of the changed policy. IV-D staff who maintain paper copies of the manual may access the appropriate manual section online to print an updated copy.

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The Michigan Family Support Council “A Quarter Century of Training Excellence”

by Ward Staffeld, Court Administrator/Friend of the Court, Newaygo County, Vice President, MFSC

Back in October 1981, the National Reciprocal and Family Support Enforcement Association (NRFSEA) brought their 30th Annual Training Conference to the Hyatt Regency Hotel in Dearborn. This well-attended national child-support training program provided an impetus for Michigan child support professionals to begin creating a statewide organization to develop similar training programs within Michigan. By the end of October 1981, discussions began to formalize the process. The Michigan organizers held their first meeting to establish the statewide organization in Lansing on March 11, 1982.

“... the Michigan Family Support Council has remained the premiere training organization in Michigan for employees of the Friend of the Court”

The originating members’ goals were noble. They wanted to create an organization to “assist, educate and improve the efforts of the individual members to carry out their obligations to enforce duly enacted laws and regulations relating to family support; [and] to ensure effective implementation of family support laws.” Additionally, they sought “to further a good working relationship between the various states and counties, federal, state, and local agencies, public officers, attorneys, legislators, and judges who work in the field of family support, and to afford participants an opportunity to discuss problems and propose solutions of common interest.”

The organization also proposed revising laws where applicable and providing regular training workshops, seminars, and conferences. Their purpose was to identify, discuss and seek, at both the local and national levels, the resolution of common problems and the promotion of common policies.

This fledgling group of innovators proposed that this new organization should continue studying problems related to enforcement duties and the improvement and standardization of enforcement procedures. They also felt that they should act as a liaison among Michigan counties and other jurisdictions.

By April 12, 1983, officers were selected and the organization’s name was chosen: Michigan Family Support Council (MFSC). The 1983 inaugural MFSC conference was held at the Sheraton Hotel in Lansing on October 5-7, with 200 people in attendance.

Since that promising beginning, the Michigan Family Support Council has remained the premiere training organization in Michigan for employees of the Friend of the Court (FOC), Prosecuting Attorney (PA) offices, and the Office of Child Support (OCS). Annually, MFSC hosts a fall training conference that features keynote speakers from all over the United States, training by nationally recognized experts, and breakout sessions covering a myriad of topics related to child support, children, or families.

This year’s MFSC fall conference will be held at Boyne Highlands Resort in Harbor Springs on October 14-16. The conference will provide an opportunity for Michigan’s

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New Legislator Training

On February 23, 2009, the Friend of the Court Bureau (FOCB) hosted new members of the Michigan Legislature for an intensive training session on the Friend of the Court system, with a special emphasis on questions and complaints that the new legislators can expect to receive from their constituents. The FOCB offers this **New Legislator Training** approximately every four years. Over the years, this training has proven to be a great opportunity for the judicial and legislative branches to collaborate in an effort to better serve Michigan citizens.

This year's program included multiple presentations on the FOC system and other domestic relations topics. Trial Court Services Director Steven D. Capps welcomed the participants and gave a general overview of the State Court Administrative Office (SCAO), the FOCB, local FOC offices, and their respective roles in the child support system. Senior Management Analyst Bill Bartels followed up with a presentation on special enforcement issues.

The new legislators then discussed the legislature's role in responding to constituents' concerns about the FOC system. Topics of that discussion included the economy's effect on the ability of many obligors to pay support, and how to effectively communicate with constituents who understandably become emotional about support and custody issues.

Elizabeth Stomski, a FOCB management analyst, provided information about the FOC grievance procedure. Her presentation included some history of the grievance process, how that process works today, the role of local citizen advisory committees, and the FOCB's role in reviewing the outcomes of grievances filed initially with local FOC offices or chief judges. Finally, FOCB Management Analyst Daniel Bauer talked about finances. He identified the FOC system's funding sources and explained how funding levels ultimately impact FOC services.

When the training ended, the participants completed a survey to rate the session's effectiveness. Everyone believed that the new information would help them significantly to deal with FOC legislative issues and responding to constituent inquiries. After the training, the Friend of the Court Bureau sent more than 20 packets of resource information to the new legislators and their staff personnel.

“... the new information would help (the legislators) significantly to deal with FOC legislative issues and responding to constituent inquiries.”

Grandparent Roles

The February 2009 *Pundit* contained an article on grandparent rights that was based in part on research that included the 2008 editions of the ABA Family Law Journal. Due to several conflicts with Michigan law and policies regarding child support, SCAO later retracted the article. The editorial staff now suggests replacing any printed copies of that earlier article with this updated version.

Over the past decade, increasing numbers of grandparents have continued to assume the role of primary caregiver for their grandchildren. In 2008, the U.S. Census Bureau reported that nearly 2.5 million grandparents serve as primary caregivers for their grandchildren. Grandparents' legal rights, roles, and associations have been at the forefront of recent discussion. Under Michigan law, several legal determinations may involve grandparents: (1) guardianship, (2) grandparenting time, (3) legal custody, and (4) child support.

Guardianship

A minor most often becomes subject to a guardianship when the child's parents can no longer provide care because of death, incapacity, or for other reasons. The courts then often choose to appoint a grandparent as a child's guardian because the law requires that a "responsible adult" be appointed to protect the child's best interests. The grandparent's principal responsibility as guardian is the daily supervision and welfare of the child, which usually includes overseeing the child's finances.

A guardian exercises powers and responsibilities toward a child similar to those of a custodial parent, except that guardians do not have a legal obligation to support the child from the guardian's personal funds and a guardian is not liable to third parties for the child's acts. MCL 700.5215.

Guardians do have some very specific responsibilities, which include the following:

- Take reasonable care of the minor's personal effects and start protective proceedings if necessary to protect the minor's property.
- Receive money for the minor child's support; spend it on the child's current needs for support, care, and education; and exercise due care to conserve the excess.
- Facilitate the minor's education and social activities and authorize medical or other professional care.

Also, MCL 722.26b(1) allows guardians to bring an action for custody of the child.

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The Ionia County FOC office has 13 employees. Ionia County is home to approximately 65,000 residents with an average annual household income of about \$45,000.

As a prosecutor, Jessica always viewed the family law docket as the most important duty of the prosecutor's office. She has brought that dedication to families to her new responsibilities as the Ionia County FOC.

Jessica feels that the most satisfying aspect of being a friend of the court director is getting parents to set aside their hard feelings toward each other and to focus instead on the best interests of their children.

Jessica believes that one of the best things about the Michigan child support program is that it provides good access to information and resources that facilitate the enforcement of child support orders. She believes the most critical challenges now facing the program stem from the uncertainty caused by the economic and political climate in the state. Jessica believes that we must continue to assign the highest priority to protecting children even while, unfortunately, problems such as the housing crisis, economic uncertainty, and homeland security have diverted both focus and funding away from children.

Jessica takes pride in how quickly her staff of 13 employees responds to enforcement and parenting time issues raised by parties. She feels that retaining skilled and dedicated employees is the key to a successful program.

The Pundit staff would like to thank David and Jessica for taking the time to be interviewed. We wish them the best in their new positions as Friend of the Court.

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While both UIFSA and UCCJEA have the same fundamental concept of exclusive jurisdiction to modify, they differ somewhat when it comes to their rules for how and when another court or tribunal may assume that jurisdiction. For example, under UIFSA, when the relevant individuals have left the original issuing state, a "play away" provision requires the party seeking the modification to file in the state where the other party resides. See MCL 552.1635(1)(a). But the UCCJEA presumes that the child's new "home state" will assume jurisdiction. These differing provisions can lead to a bifurcation of jurisdiction.

Example 1: The parties are divorced in California with mom getting primary custody and dad paying support. Mom and child reside in Texas; dad resides in Michigan. If mom wants modification of the support obligation, she would file the action in Michigan. If either party seeks to modify the custody or visitation provisions, that would be done in Texas.

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Example 2: The parties are divorced in California with mom getting primary custody and dad paying support. Mom resides in Texas; but dad and child reside together in Michigan. Michigan becomes the forum most suited to assume jurisdiction over custody and visitation issues. However, if dad seeks to modify the respective support obligations to terminate his obligation and impose an obligation for mom to pay, that action would be filed in Texas.

To overcome some of the problems with splitting jurisdiction, both acts have provisions for alternative resolutions. UIFSA provides that the parties may file a written agreement (in the original issuing court) stipulating that a specified new tribunal may assume support jurisdiction. [NOTE: In UIFSA 2001 — not currently adopted in Michigan — the parties can agree to return to the original forum even when all relevant individuals have left the state.] Missing from UIFSA is any authorization for the court that has CEJ to “transfer” the case. Nor does the act allow either court to raise any inconvenient forum issue. On the other hand, UCCJEA allows the court that has ECJ to transfer the case, and it also includes an inconvenient forum provision. Missing from UCCJEA is any provision allowing for the assumption of jurisdiction based upon an agreement of the relevant individuals.

Modification Limitations

The ability of the court assuming custody jurisdiction under UCCJEA is unrestricted. The court can modify all the custody and visitation provisions to reflect the best interests of the child.

The ability of the court assuming support jurisdiction under UIFSA does come with some restrictions. The assuming court “shall not modify an aspect of a child support order that cannot be modified under the issuing state’s law.” See MCL 552.1635(2). The official comments to UIFSA and the case law around the United States mention the duration of the support obligation as the main aspect not subject to modification. (NOTE: UIFSA 2001 states this explicitly.) Another aspect that is not modifiable under the current Michigan version of UIFSA is the interest rate charged on the arrears prior to Michigan assuming modification jurisdiction. (NOTE: Under UIFSA 2001, the interest law of the assuming state applies to both arrears at the time of assumption and any missed payments of prospective support.)

Conclusion

When one court has entered a family dissolution order that provides for custody, visitation, and support, it is not uncommon for one or more of the affected individuals to move from the issuing state. Later, because not all the relevant individuals live in the same state, special statutory provisions govern which state’s courts have, or might assume, the exclusive jurisdiction to modify those aspects. Knowing the provisions and understanding the interplay of UIFSA and UCCJEA assures that only the proper court will make those decisions.

Office of Chld Support New Manual, continued from page 5

IV-D staff will receive notice via an OCS IV-D Memorandum even when a policy notification does **not** require a change to the manual itself. All OCS IV-D Memoranda will be available in a chronological list on mi-support, similar to the way ATs are organized now.

Transitioning to the New Michigan IV-D Child Support Manual

The transition to the new comprehensive manual from the several existing manuals and innumerable ATs will take years to complete; during the transition, links to the existing manuals and ATs will remain available on mi-support and the DHS external website.

The core superstructure for the new manual is tentatively scheduled for installation on **mi-support** by June 2009. By mid-June, at least one manual section will be available online. A description of all the planned changes will become available to mi-support users as June approaches.

Although the transition to the new manual will be a long-term project, it will significantly enhance OCS's ability to maintain and release new and revised OCS IV-D policy.

A Quarter Century of Training Excellence, continued from page 6

child support professionals to receive training from child support experts. In addition to outstanding keynote presenters, the program will offer training on the following topics: parenting time disputes, custody investigations, case transfer, bankruptcy, change of domicile, interstate cases, the underground economy, specialty courts, insurance intercepts, the Bridges computer system, mandatory reporting, setting realistic support orders, and personal and office safety. In short, this year's conference offers something for nearly everyone.

The MFSC board invites you to attend and hopes to see you at this year's fall training conference. Please reserve October 14-16 on your calendars. For more information regarding the **MFSC and the Annual Training Conference**, visit the MFSC website at <http://mifsc.org>.

“Grandparenting time works best when the court includes the details in the custody order entered in the parents’ court case.”

Grandparenting Time

The law does not provide grandparents with a fundamental right to visit with their grandchildren without parental consent unless special circumstances require state intervention. Parents have the right to make important decisions concerning the child’s welfare, which includes contact with grandparents. *Brinkley v. Brinkley*, 277 Mich. App. 23 (2007). But MCL 722.27b permits a grandparent to seek a grandparenting time order under any of the following circumstances:

- An action for divorce or annulment involving the parents of the child is before the court.
- The parents previously divorced.
- The child’s parent who is the grandparents’ child is deceased.
- The child’s parents were never married, do not reside together, and paternity has been established.
- The child’s legal custody has been given to a third party and no longer resides with either parent.
- In the past year, the requesting grandparent has established a custodial environment for the child, regardless of who has legal custody.

The law creates a presumption that a fit parent’s decision to deny grandparenting time does not create a substantial risk of harming the child’s mental, physical, or emotional health. But a grandparent may rebut that presumption by showing otherwise applying a preponderance of the evidence standard. Once the grandparent rebuts the presumption, the court must additionally consider whether an order for grandparenting time serves the child’s best interests. If so, the court may enter an order permitting “grandparenting time.”

Grandparenting time works best when the court includes the details in the custody order entered in the parents’ court case. The court may refer the request for grandparenting time to domestic relations mediation pursuant to MCR 3.216. Domestic relations mediation is voluntary. If the matter is referred to the Friend of the Court for mediation, but the Friend of the Court cannot mediate a voluntary resolution, the court must hold a hearing. MCL 722.27b(7). A grandparent to whom the court awards grandparenting time rights will have a limited schedule of visitation.

Legal Custody

A custody order affords the grandparent nearly all decision-making, parenting, and caretaking responsibilities for a child, to the exclusion of other adults. When determining custody, the court must presume that the child’s best interests are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence. MCL 722.25(1). Before being

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given custody, grandparents, like any third party, need to have standing to file the case and need to prove by clear and convincing evidence that the Child Custody Act factors demonstrate that protection of the child’s best interests requires placement with a third person. *Heltzel v. Heltzel*, 248 Mich App 1 (2001).

Any third person (including grandparents) may file an original action seeking custody of a child only if the third person is a prospective adoptive parent or if the child’s parents were never married, or if the third person establishes *all* of the following facts:

- The child’s biological parents were never married to one another.
- The child’s parent who currently has legal custody of the child has died or is missing, and the other parent has not been granted legal custody by court order.
- The third person is related to the child within the fifth degree by marriage, blood, or adoption. MCL 722.26c(1)(b).

In addition, a current guardian may bring an action for custody under MCL 722.26b.

Child Support

A grandparent may receive child support funds by redirection or by applying through the general IV-D process. After receiving the proper pleadings and giving notice to the parents, the court may order that a parent pay child support to a grandparent even if the grandparent does not have legal custody or an established guardianship. The Friend of the Court may administratively redirect child support to a grandparent if the grandparent meets the “legally responsible” requirement of MCL 552.605d.

The Michigan Child Support Formula considers a grandparent who has court-ordered custody to be a “Third Party Custodian.” In setting a support amount, the court must determine each parent’s individual base support obligation, according to that parent’s individual income. Grandparents can play a very important role in a child’s life, and there are various legal avenues for grandparents to take when necessary to continue a relationship with their grandchildren.

“The Michigan Child Support Formula considers a grandparent who has court-ordered custody to be a “Third Party Custodian.”