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### 2009 Legislative Amendments Bring Major Changes to Friend of the Court Office Operations

*by Jeffrey Albaugh, Calhoun County Friend of the Court and Co-Chairperson of the Friend of the Court Legislative Committee*

At the end of 2009, the Legislature passed many bills<sup>1</sup> that will greatly affect Friend of the Court (FOC) operations. In upcoming months the FOCs will see changes in forms, investigation procedures for both custody/parenting time and support, as well a change in the surcharge policy.

These nine new public acts resulted from a bipartisan and bicameral package of legislation that had two broad goals. First, the legislation sought to provide the FOC and the Family Division of Circuit Court with additional tools to assist litigants who strive to comply with court orders relating to child support, custody and parenting time, but who are also adversely affected by Michigan's continuing economic struggles. Second, the legislation sought to make cost-effective procedural reforms that allow the FOC to more efficiently use significantly reduced state and federal resources that are provided for operations while, at the same time, preserving the fundamental due process rights of litigants.

The new laws evolved from an October 2006 report that the Friend of the Court Association (FOCA) provided to the Governor, Chief Justice, and legislative leaders concerning mandated services and funding issues. After reading the report, Senators Bill Hardiman and Mark Jansen indicated that they would promote legislation to implement recommendations for which a consensus could be developed within the FOC and service user community. Despite many intervening events and setbacks, the proposals ultimately gained bipartisan support and unanimous Senate passage on two different occasions. During 2009, efforts to win House approval capped nearly a year of working with new House Committee Chair Representative Mary Valentine and Minority Vice-Chair Representative Ken Kurtz, as well as other key House members.

<sup>1</sup> 2009 PA 193 and 194, effective December 28, 2009, and 2009 PA 233, 234, 235, 236, 237, 238, and 239, effective January 8, 2010.

## New Friend of the Court Bureau Customer Service Clerks

**Dana Graham** is a third-year law student attending Thomas M. Cooley Law School, and specializing in Environmental Law. Dana received her Bachelor's Degree in Social Relations from Michigan State University's James Madison College in 2002. Before beginning law school, Dana worked for the Departments of Community Health and Information Technology. She is a die-hard Michigan State sports fan and loves the Detroit Tigers. In her spare time, Dana enjoys knitting and scrapbooking, and volunteers for Meals on Wheels through the Tri-County Office on Aging. When she completes law school, Dana is eager to begin work as an attorney, most likely in the public sector.

**Amy Rebideaux** is a third-year law student at Thomas M. Cooley Law School. She was born and raised in Sparks, Nevada, which is near Reno. Amy graduated from the University of Nevada, Reno in 2006, with a Bachelor's Degree in Criminal Justice and a minor in English Literature. Before attending law school, Amy was a guest services manager in a hotel in Reno. During spare time, Amy likes to read, crochet blankets, and hike. She hopes to specialize in Death Penalty Defense and Family Law upon graduation from law school.

**Jessica Kolongowski** is a second-year law student at Michigan State University College of Law. After growing up in Allen Park, Michigan, Jessica attended Central Michigan University and majored in Political Science and Philosophy, graduating with a Bachelor's Degree in 2008. In the summer of 2009, Jessica worked as a legal clerk intern for the Honorable Richard Page at the 24<sup>th</sup> District Court. Jessica also works part-time as a swing dance instructor for various organizations, including Michigan State University and the University of Michigan. In addition to swing dancing, she enjoys reading, and traveling in her spare time.

**Matthew Reinhardt** is a second-year law student at Michigan State University College of Law. Matt is a Managing Editor of the MSU Journal of International Law and is also a Clinician at the MSU Chance at Childhood Program. Matt graduated from Western Michigan University with a Bachelor's Degree in Business Management in 2008. In the summer of 2009, Matt worked as a law clerk for the Honorable Curtis J. Bell at the Ninth Circuit Judicial Court Family Division in Kalamazoo, Michigan. In his spare time, Matt enjoys fishing, biking, reading, and live music. After completing his law degree, Matt hopes to practice Family Law with a particular focus on child welfare issues.

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## **Interview with Zenell Brown, New Director at Wayne County Friend of the Court Office**

Zenell Brown is the new Director of Wayne County's Friend of the Court (FOC) office. Zenell has worked in that office since 1997. She holds a BA degree from the University of Detroit and a JD degree from the Wayne State University Law School. Zenell has also earned a certificate in Judicial Administration from Michigan State University as well as a graduate certificate in Leadership from Central Michigan University.

*The Pundit* recently interviewed Zenell about her interests and the Michigan Child Support Program.

### **What made you choose a career in child support?**

I started working as a paralegal with the Oakland County Prosecutor's Office in the child support division. It was my first real job and I enjoyed it. After graduating from law school, I applied for a position in the Wayne County FOC office.

### **What is the most satisfying aspect of being an FOC?**

To witness the work of many child-support professionals who go the extra mile to ensure the work gets done.

### **In your opinion, what is the best thing about the Michigan Child Support Program?**

The creative partners who ensure that we have a program to serve both the emotional and financial needs of families and that the energy of the program extends beyond just the collection of dollars. In the Third Circuit Court Mediation Project, the court trains mediators who donate their time to help parents resolve custody and parenting-time issues.

### **What is your favorite thing about your FOC office?**

The people. They are dedicated to the program and, because of this loyalty, they are steadfast with the resources allotted.

### **What do you think is the most critical challenge facing the Michigan Child Support Program today?**

Economics and a continuing need for more realistic policies. The recent legislation that modified the surcharge rules is an indication that we can always reexamine the program and make changes.

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*“Friend of the court personnel are allowed to access LEIN for investigative purposes when a county sheriff has deputized the FOC employee for such an inquiry.”*

## Grant Expands Problem-Solving Child Support Court

The Michigan Department of Human Services - Office of Child Support recently received a Section 1115 grant from the Federal Office of Child Support Enforcement (OCSE) under a program designed to promote innovative responses to the economic downturn. Michigan will use this grant money to expand Genesee County’s Parents and Children Together (PACT) problem-solving court. The grant project is a collaborative effort of the Michigan Office of Child Support, the State Court Administrative Office, and the Genesee County Circuit Court.

The OCSE awards Section 1115 grants to state IV-D agencies that seek funding for programs that are intended to promote objectives of the Child Support Enforcement Program. The Genesee County project plans to identify financially at-risk families in an effort to provide them help before their financial difficulties cause problems with their Friend of the Court cases.

**The Genesee County PACT** program was implemented in mid-2007 to assist child support payers who cannot meet their court-ordered support obligations. **PACT** refers noncustodial parents to community services that are offered to help these parents with issues such as unemployment, mental health concerns, and education. “Graduation” from the **PACT** program means that regular child support payments have been made and successful parenting time has been achieved. Family Division Judge Michael Theile handles the **PACT** cases.

The new grant project will expand **PACT** to address issues that arise during difficult economic times, and will provide direct services to *all* family members, not just the support payers. The 17-month program began in fall 2009 and will continue through February 2011. The pilot project will test expanded **PACT** services in 600 domestic relations cases that involve “at-risk” families. Three hundred of the cases are new-establishment cases. The other 300 are called “job-loss” cases. Of those, 150 are cases where a parent has exhausted unemployment benefits, and the remaining 150 cases involve a parent who has recently begun using unemployment benefits to pay child support.

The 600 families participating in the **PACT** expansion project will be offered holistic services tailored to prevent or solve problems that are traditionally encountered in domestic relations cases. Special emphasis will be placed on securing consistent child support payments and providing services with regard to custody and parenting time issues. The groups collaborating behind this project recognize that there is a relationship between parenting time and incentive to pay child support and the expanded **PACT** program will work to establish reasonable parenting time orders. The program also intends to provide intervention services at an earlier stage (as soon as families enter the system or as soon as families encounter a financial stressor such as job loss) and to treat the multiple issues that arise from economic stress or the family breakdown. The program will focus on the whole family, rather than just a delinquent child support payer. An array of family support services will be available, including job placement, job training, substance abuse programs, and mental health services. In order to provide these services, the **PACT** program has formed partnerships with public service agencies and community organizations.

## Child Custody and Support Rights for Military Parents

Parents employed in the military may question what rights they have regarding their children while they are deployed on active duty. Federal and state legislatures have enacted various protections that should help ease concerns for parents who are apprehensive about child custody and support while away from home.

In 2003, the **Servicemembers Civil Relief Act** became law and protects servicemembers from various legal issues that may occur while on active duty. This act applies to any default proceeding, and thus it applies to child-custody and child-support cases. The act allows a court to stay proceedings while a servicemember is on active military duty. However, certain courts have determined that a temporary order for modification of either child support or child custody in general, does not materially affect a servicemember's rights because temporary orders are interlocutory and subject to modification. On a servicemember's request, a court or administrative agency must grant a 90-day stay of proceedings. Additional stays can be granted at the discretion of the judge or hearing official.

Under MCL 32.517, a servicemember may request relief from previously ordered support payment amounts. This provision allows a servicemember to apply to a court for relief from any obligation or liability incurred by the servicemember before his or her military deployment. This request must be made by the servicemember during his or her active duty or within 180 days of termination or release from military service. This anticipatory relief provision can be used to request relief from a preservice obligation, such as payment of child support, when a prospective breach is likely. For example, if a servicemember will be earning less during active duty than at his or her civilian job, he or she would rely on this provision to request a reduction in child support payments that they would be based on his or her new wage and new withholding from the Defense Finance and Accounting Service to pay the other party on a timely basis.

A military parent in Michigan who is a member of the armed forces or National Guard and is called into active military duty for more than 30 days can qualify to have a child support order adjusted so that the payment amount is based on military income. Under MCL 552.615a, this request can be made to lower the obligation to pay child support based on the new military income. Michigan has further protections for military parents related to child custody under MCL 722.27. This statute protects against issuing a new child custody order or modifying a previous custody order if it is filed during the time a parent is on active military duty. The court may, however, enter a temporary custody order if there is clear and convincing evidence that it is in the best interest of the child.

For more information regarding statutory protections of servicemembers, see the Servicemembers Civil Relief Act, 50 USC Appendix 501 *et seq.*, the Michigan Military Act (MCL 32.517), the Support and Parenting Time Enforcement Act (MCL 552.615a), and the Child Custody Act (MCL 722.27).

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## Mandated Reporter Training

The **Michigan Child Protection Law**, 1975 PA 238, MCL 722.621 *et seq.*, now mandates “professional capacity” friend of the court (FOC) employees to report their suspicions of child abuse or neglect to Child Protective Services (CPS). Unfortunately, the new statute does not define “professional capacity.” The possible definition of “professional capacity” FOC employees could include:

1. All FOC employees.
2. Employees who have contact with parties in domestic relations cases.
3. Employees who are specifically designated as professional by position or job description.
4. Employees holding particular positions under a collective-bargaining agreement.
5. Employees whose educational qualifications include postgraduate training on how to detect physical or emotional abuse.<sup>1</sup>

These mandated reporters, through their expertise and direct contact with children, are an essential part of the child protection system because they have acquired an enhanced capacity to identify child abuse and neglect. To assist FOC employees in understanding their responsibilities as mandated reporters, Child Welfare Services and the Friend of the Court Bureau hosted a webinar regarding changes in the mandated reporter legislation on February 18, 2010. The training provided instruction on how to report suspected child abuse and neglect. It also explained how CPS and FOC offices should coordinate mandated reporting requirements.

The webinar is archived on the Child Welfare Services website for future viewing. See <http://courts.michigan.gov/scao/services/CWS/TrainingDevelopment.htm>.

If the courts have any questions regarding the mandated reporter legislation or its requirements, please contact Timothy Cole at (517) 373-5975.

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<sup>1</sup> For further assistance about the designation of “professional capacity” staff members as mandated reporters, please refer to the State Court Administrative Office’s memorandum, “Friend of the Court Staff Reporting of Suspected Child Abuse and Neglect and Information Sharing by Child Protective Services and Friends of the Court”.

See <http://courts.michigan.gov/scao/services/focb/Memoranda/10-01-09-MandatedReporters.pdf>.

*2009 Legislative Amendments, continued from page 1*

The **Support and Parenting Time Act** had proposed amendments that were tie-barred to the **Motor Vehicle Code**. Most of the amendments took effect on December 28, 2009, in order to stop MiCSES from automatically imposing the January 1, 2010, unpaid support surcharges, which were required by earlier laws. Amendments of the **Friend of the Court Act** and the **Revised Judicature Act**, as well as many other components of the package took effect on January 8, 2010. The remaining new provisions have delayed effective dates because they require significant MiCSES programming changes. Those delayed-effect provisions are:

1. Provisions within **2009 PA 193** that allow the case-by-case imposition of support surcharges will take effect on January 1, 2011.
2. Provisions within **2009 PA 193** that affect refunds of payments because of an abatement of support will not become effective until December 28, 2010.
3. Provisions within **2009 PA 193** that limit income withholding to 50 percent of a payer's disposable income will become effective March 28, 2010.

In addition, the actual implementation of a number of the changes that have already taken effect will require SCAO to develop new standards, guidelines or forms, and thus realization of these changes will be delayed for a short time.

Probably the most important provision in the entire package is the one in **2009 PA 193** that amends the **Support and Parenting Time Enforcement Act** by modifying the previous surcharge process that imposed a surcharge automatically each January 1<sup>st</sup> and July 1<sup>st</sup> without regard to the specific facts or circumstances of individual cases, or the financial situation of the litigants. In 2009 alone, over \$250 million in surcharges were automatically added and under federal law cannot be retroactively modified once imposed, as stated under state law. Nearly 50 percent of Michigan's \$9 billion in past due child support is attributed to automatic surcharges. Further, payers who have reported incomes of less than \$10,000 per year (which comprise 54 percent of all payers) owe 77 percent of past due support, which means that the current surcharges were generally uncollectible from the day the surcharges were assessed. A federal study also indicates that routine assessment of surcharges actually *reduces* a state's collection of current support.

The new Michigan law eliminated the *automatic* surcharge process, which became effective December 28, 2009. Courts now have the authority on a case-by-case basis to apply a surcharge if the court finds that the past due amounts resulted from willful noncompliance with the support order. No new surcharges may be added until January 1, 2011.

**2009 PA 193** also authorized several alternatives to incarceration of litigants who either fail to appear for a show-cause hearing or who are held in contempt of court for failing to pay child support or for violating a parenting-time or custody order. New sanctions

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*Interview with Zenell Brown, continued from page 3*

**If you could make one improvement in the Michigan Child Support system, what would it be?**

It would have to happen at the federal level, but we could do much more to help families if we had IV-D funding allotted for both parenting-time and custody activities.

**Who is your personal hero?**

Barbara Jordan. She's just an ordinary person who became extraordinary by setting about to do work that she felt really mattered.

**What do you like to do in your spare time?**

Read.

**If you could travel anywhere in the world, where would you go?**

I plan on traveling to Paris when my youngest daughter graduates from high school. I'll brush up on my French in the next two years.

**What is your favorite season in Michigan and why?**

Summer. I love the sun and warmth.

**Do you have a favorite sport/team?**

The Birmingham Groves High School freshman basketball team.

*2009 Legislative Amendments, continued from page 7*

include placing a violator under "FOC supervision" with specified conditions, or committing a violator to an "alternative to jail." For a failure to appear, a court may authorize "booting" a vehicle.

**2009 PA 193 and 194** also update license-sanction procedures to include a less costly and faster way for litigants to have their driver's licenses restored without a court order. The change also creates a new *administrative* process for license suspension, including suspensions of occupational or recreational licenses.

**2009 PA 193** clarifies and strengthens address reporting requirements. These changes reinforce each party's individual responsibility to keep the FOC advised of a current address and other vital information, and reduce costs that are attributed to sending notices to known bad addresses. One of the changes permits updating addresses and information by means other than in writing.

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*2009 Legislative Amendments, continued from page 8*

A new provision of the SPTEA that was added by **2009 PA 193** clarifies that Michigan State Disbursement Unit and Michigan Child Support Enforcement System (MiCSES) records are considered authentic in proceedings to enforce support, and are thus admissible as evidence without further verification required.

**2009 PA 233**, which generally became effective January 8, 2010, amends the Friend of the Court Act. It authorizes the FOC to enter into repayment plans regarding the collection of past due support as an alternative to the traditional punishments of show-cause and contempt/jail sanctions.

Another potentially significant provision of **2009 PA 233** authorizes FOC offices to provide alternative dispute resolution services (ADR) to resolve custody and parenting-time disputes without resorting to the costly adversarial process. FOC offices, with approval of the chief judge and SCAO, will be developing ADR plans that will permit less formal methods of assisting parties. The new ADR plans must continue to contain the mediation component that existed before January 8, 2010, regarding the qualifications of mediators and the requirement that the process is voluntary.

**2009 PA 233** also permits the FOC to recover actual costs of a custody and/or parenting-time investigation if a party requested the investigation. The cost recovery must be accomplished under standards developed by SCAO.

**2009 PA 1030** simplifies income withholding procedures for employers. This change, which becomes effective March 28, 2010, sets a uniform 50 percent limit for income withholding rather than the 65 percent limit allowed under certain circumstances by the Federal Consumer Protection Act. Similar changes in several other states resulted in those states realizing increased support collections and compliance with support orders by litigants.

There are also several less sweeping changes that are nevertheless important to FOC operations. The State Court Administrative Office (SCAO) and FOCA have been in consultation about various implementation issues. SCAO plans to publish a chart that will show items in the new laws that require attention, and their planned follow up.<sup>2</sup> SCAO plans to convene a work group to help develop standards, model plans and forms, and to design plans to provide future training about the recent changes. It is necessary to update MiCSES in order to take full advantage of many of the statutory changes. That could not be done immediately because of MiCSES budget constraints and other previously determined priorities. But the new limit placed on income withholding and the recent surcharge changes are top MiCSES priorities for the current year.

<sup>2</sup> <http://courts.michigan.gov/scao/services/focb/Memoranda/02-11-10-LegislativeSummary.pdf>