THE PUNDIT

Friend of the Court Bureau/SCAO
Michigan Supreme Court
courts.michigan.gov/scao

JULY 2011 | THE SOURCE FOR MICHIGAN CHILD-SUPPORT INFORMATION | VOLUME 24, NUMBER 4

U.S. Supreme Court Rules In Civil Contempt Case

No Right To Counsel When 'Procedural Safeguards' In Place

In *Mead v Batchlor*, 435 Mich 480 (1990), the Michigan Supreme Court ruled that the Due Process Clause of the United States Constitution's 14th Amendment prohibits the trial court from incarcerating an individual in civil contempt proceedings when the defendant has not had the benefit of counsel.

The *Mead* decision is now in question because of a recent United States Supreme Court decision. *Turner v Rogers*, 564 US ____ (2011), issued in late June, found all nine justices agreeing that an indigent defendant does *not* have an absolute right to counsel under the 14th Amendment. That is where the agreement stops. Five justices found that other "safeguards" in the proceedings compensated for the lack of counsel. The dissenting four justices stated that, notwithstanding other safeguards, the right to counsel does not exist in civil contempt proceedings.

The split indicates that although future decisions may find a limited right to counsel in contempt proceedings, for now the question in states which have held that such a right exists (such as Michigan) is ripe for reconsideration.

When *Mead* was argued before the Michigan Supreme Court more than 20 years ago, Roland Fancher, the Cass County friend of the court, wrote an *amicus curiae* brief stating that there is no constitutional right to an attorney in a civil contempt case – just like the United States Supreme Court has now ruled in *Turner*.

"The U.S. Supreme Court has stated that the 14th Amendment does not have the meaning that the Michigan Supreme Court interpreted it to have in *Mead*," said Fancher. "Substitute procedural safeguards were deemed by the U.S. Supreme Court to be sufficient in lieu of appointed counsel safeguards. I think this ruling calls the continued vitality of *Mead* into serious question."

Fancher said he anticipates that counties will save money under the *Turner* ruling because they will no longer be required to pay for court-appointed counsel.

'MEAD' RULING

In *Mead*, the Michigan Supreme Court ruled that the Due Process Clause of the 14th Amendment prohibits incarceration of an indigent defendant if the defendant has been denied counsel in a contempt proceeding for not paying child support. In the time since *Mead* was issued, Michigan courts have consistently appointed attorneys for indigent defendants when the defendant is facing jail time in a contempt hearing for nonpayment of child support.

The defendant in *Mead* had responded to a show-cause complaint for failing to pay

(*continued on page 5*)

Informal Docket Project Uses 'Hands-On' Approach

During these tough economic times, the number of *pro se* parties (people who represent themselves) in divorce cases has increased dramatically.

But self-representation can often make the divorce process more confusing and time consuming because *pro se* parties are often unfamiliar with court rules, applicable laws, and courtroom etiquette.

To alleviate some of the stress and confusion that may be faced by *pro se* parties in divorce proceedings, an "informal docket" pilot project has been developed by the 29th Circuit Court with assistance from the State Court Administrative Office (SCAO).

The project's objective is to use informal methods to guide *pro se* parties through divorce actions, allowing the parties to use the court system more effectively and efficiently. These informal methods help create a cooperative environment for the parties, which may facilitate a more positive outcome.

The judges who participate in the pilot project cases use a "hands-on" approach, trying to make the legal process more easily understood by those parties who have decided to represent themselves in their divorce cases. The program is an "open forum" between the parties and the assigned judge, unlike the process involved in formal divorce litigation.

(*continued on page 2*)

Inside This Issue

Docket Project Uses 'Hands-On' Approach

(*continued from page 1*)

QUALIFICATIONS

Specific criteria must be met for parties to qualify for participation in the pilot project. By meeting these qualifying criteria, the *pro se* parties who are selected are expected to receive the greatest benefit.

Two of the criteria that must first be met are that the divorce case must involve a minor child and the parties must be self-represented – no attorneys are permitted.

After a potential case has been reviewed to make sure it is a divorce case involving a minor child of the divorcing parties and that the parties are representing themselves, the friend of the court office (FOC) verifies that the following requirements are met:

- there is no indication of current or prior domestic violence;
- there is no pending Child Protective Services (CPS) investigation and neither party has been recently involved in a CPS investigation;
- the parties have not previously been litigants in an abuse and neglect proceeding or a domestic violence criminal proceeding; and
- the parties have minimal marital property (defined as no real property, no business assets, no life insurance, and no retirement – including pensions).

THE PROCESS

A divorce case's eligibility for the program is considered when the FOC receives the initial complaint and answer. At that time, the parties are referred for a conciliation conference, which is scheduled approximately three weeks after the plaintiff files for divorce.

At the conciliation conference, the FOC determines whether the parties meet the required qualifications. If they successfully meet the criteria, the parties are told about the project and invited to participate.

If it is determined that the parties are good candidates and the parties have agreed to participate, the conciliator presents the parties with:

- a consent form;
- a letter explaining the informal docket pilot program; and
- a form to withdraw from the pilot project.

The parties must consent in writing to participate in the program. If the parties do not consent, the case will proceed like a regular, formal divorce proceeding.

The parties are also told that, at any point during the program, their case may be removed from the pilot program if either party hires an attorney, if either party requests to withdraw from the project, or if the court discovers a legitimate reason to remove the case from the pilot.

According to Tim Cole, management analyst with the SCAO's Friend of the Court Bureau, "Some legitimate reasons to remove parties from the program include, but are not limited to: the judge's discretion if the case becomes highly contentious, positions of both parties are severely uneven, discovery of child abuse or neglect, and discovery of domestic violence."

After the assigned judge's clerk receives the parties' signed consent form, the clerk schedules a hearing between the judge and the parties to be held within 30 days. Although the hearing is held in a courtroom, the environment is informal and relaxed, and the parties are allowed to ask the judge questions and address

(*continued on page 7*)

THE PUNDIT

Editors

Elizabeth Stomski and Traci Gentilozzi

Editorial Staff

Sally LaCross

Jessica Kolongowski

Julie Loveless

Amy Rebideaux

Matthew Reinhardt

Nicole Summers

Friend of the Court Bureau Contacts

Steven D. Capps, Trial Court Services Director
cappss@courts.mi.gov

Bill Bartels, Management Analyst
bartelsb@courts.mi.gov

Daniel Bauer, Management Analyst
bauerd@courts.mi.gov

Timothy Cole, Management Analyst
colet@courts.mi.gov

Suzy Crittenden, Management Analyst
crittendens@courts.mi.gov

Elizabeth Stomski, Management Analyst
stomskie@courts.mi.gov

Julia Norton, Management Analyst
nortonj@courts.mi.gov

Friend of the Court Bureau

State Court Administrative Office

Michigan Hall of Justice

PO Box 30048

925 N. Ottawa

Lansing, MI 48909

Phone: 517-373-5975

Fax: 517-373-8740

An Interview With The Trial Court Services Director

Steve Capps became director of Trial Court Services (TCS) at the State Court Administrative Office in March 2008. Previously, he was an analyst in the Friend of the Court Bureau, the friend of the court director in Branch County, a referee in Calhoun County, and a private practitioner. He recently took time out of his busy schedule to answer some questions about the future of friend of the court offices and issues facing Michigan's child-support system.

Q. What do you see as the most pressing issue for friends of the court in Michigan, specifically relating to child-support issues?

A. Making sure that the friends of the court across the state are receiving adequate funding is my number one concern.

Friends of the court have to do the same amount of work with less staff. This naturally puts more stress on the staff and makes it harder to provide good service.

Q. If you could make one improvement to the child-support system, what would it be and why?

A. I would use a "team approach" to solve individual problems that impact child-support payments. Our entire child-support system is designed around the premise that everyone is *unwilling* to pay. The fact is that most of our child-support payers pay without the need for enforcement. Some of them may occasionally fall behind a little, but that is no different than what happens to some people who never end up in the child-support system but lose their jobs or become underemployed.

There is a small group of people who actively avoid paying support. Our system is designed for that minority. The regular payers just get swept in with them.

But there is also a middle group of people who are not addressed in our system. Those people don't actively avoid paying support – it is just an afterthought. It may be that they

(*continued on page 6*)

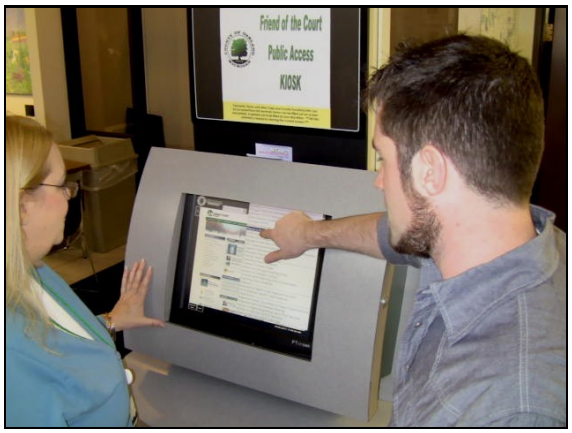
Self-Serve Kiosk Helps Provide Efficient Service

Like most friend of the court (FOC) offices, the Oakland County FOC is an extremely busy place. In the lobby, receptionists greet customers and help them find the information they need. When the FOC is especially busy, the lobby fills with customers who are waiting to speak with a receptionist.

In light of this increased demand for services, the Oakland County FOC has established a self-serve kiosk. The kiosk reduces the wait time of customers by allowing them to access certain case information themselves.

The self-serve kiosk is located in the middle of the FOC lobby, near the front desk. The kiosk resembles an ATM: it consists of a gray, encased computer screen that stands about chest-height, allowing customers to walk up to the touch screen and access their case information.

Pamela Sala, Oakland County deputy friend of the court, said that customers use the kiosk to access information about their case.



Customers can easily access case information themselves at the Oakland County Friend of the Court's self-serve kiosk.

"FOC customers can easily print forms and motions, submit forms electronically, e-mail copies to another computer, look up and print phone numbers for staff assigned to their cases, and visit websites for the FOC and other court divisions," Sala observed.

She explained that the kiosk also allows customers to access information about upcoming hearings, make support payments through MiSDU, and see the status of their support accounts.

Sala pointed out that the kiosk is completely secure because it runs through MiCase, the state's secure website. Customers use a personal identification number to log into the system, but no customer information is saved. Forms can be filled out and printed, but no data is stored in the system.

The Oakland County FOC built the kiosk in about a month at minimal cost. The FOC started with an existing computer and obtained the kiosk housing from the circuit court. The only equipment that the FOC purchased was a touch screen, which was then connected to the computer. The computer and touch screen were placed in the kiosk housing, which conceals the computer and electrical cords, leaving only the touch screen visible to customers.

Systems support staff member Justin Quick spent a little more than a month programming and testing the kiosk, making sure it was ready for use.

(*continued on page 7*)

FOCB PROFILE

Tarra Ray: Ingham County's 'Enforcer'

Summer is a busy time for many friend of the court (FOC) offices. With summer break underway, many children of divorced parents are on the move between homes so they can spend time with their custodial and noncustodial parents. It is not surprising that this residential shuffle creates some parenting-time disputes that require FOC involvement.

At the Ingham County FOC Office, preparation for summer parenting-time schedules actually began on April 1, the deadline for filing summer parenting-time requests.

Tarra Ray is the family services enforcement facilitator at the Ingham County FOC and has worked there for more than seven years. Basically, Ray is "the enforcer" – she enforces the provisions of all court orders that involve custody and parenting time, including summer requests and special schedules.

In addition, Ray oversees supervised parenting time, training, and the Safe Haven Project.

While Ray said that she enjoys handling the Safe Haven Project and many other aspects of her job, "the most exciting part is knowing that I can have a positive impact on a family."

MANY ENFORCEMENT METHODS

Ray acknowledged that parenting-time orders are frequently an issue of concern during the summer months because children are being shuffled between parents more often due to the school break and, as a result, there are more disagreements to resolve.

When a determination is made that a parenting-time order has been violated, Ray is the person who must address the issue and come up with an approach to help the parties reach an agreement.

"This process usually begins with a letter to the parties to schedule make-up parenting time," she said. "However, in complicated situations a joint meeting with the parties may be necessary, with the goal being to have the parties reach an agreement."

Ray noted that, if an agreement is not possible or if the parenting-time provision is no longer in the best interests of the child, she sometimes may make a recommendation to the court to modify the parenting-time order.

But Ray indicated that issues can typically be resolved with the parties by scheduling make-up parenting time, which is the most common enforcement option that she uses.

"I have, on occasion, used the civil contempt process by scheduling a show-cause hearing to be heard by a referee or judge when a parent continues to refuse the NCP [noncustodial parent] parenting time," she said.

In situations of recurring noncompliance, Ray noted another option she uses is to place a monetary sanction against the offending party. "An amount will be held in abeyance pending full compliance with the parenting-time order for a specific length of time," she explained.

"But of the enforcement options available, I seldom recommend no parenting time at all," she stated.

STICKY SITUATIONS

Ray indicated that the most difficult situation to handle is when an issue arises and parenting time perhaps should not continue, but the other parent does not follow the steps to change parenting time. When this happens, Ray intervenes and becomes the "heavy hand."

"Because the FOC must remain neutral, I cannot give legal advice," she acknowledged. "So even though I know what steps need to be taken, I cannot tell the parties how to proceed."

Ray emphasized that FOCs should not be "doing the work" for the parties, even when the parties are not proceeding as they should.

"I cannot do the work for them," she stated. "There are many times when the parents are aware of what steps they can take, such as filing a motion to modify parenting time. But instead of doing what is necessary, they often continue filing complaints."

According to Ray, another tough situation is when a parenting-time order is already in place, but the noncustodial parent has not exercised his or her parenting time for quite a while. Suddenly, the noncustodial parent wants to spend time with the child, but the custodial parent is reluctant to allow it because a significant period of time has passed since the noncustodial parent has visited with the child.

"It is important to remember that even if the noncustodial parent has not been exercising parenting time, the court order still exists," Ray said. "I first advise the noncustodial parent to send a letter of intent to resume parenting time to the custodial parent. If the custodial parent is against parenting time resuming and the parties cannot come to an agreement, it may be necessary to schedule a joint meeting."

Ray advised that, in this circumstance – when parties are not amenable to suggestions of the other parent – it may be in the best interests of the child to develop a parenting-time plan that may include supervised parenting time and/or a graduated parenting-time schedule in lieu of enforcing the parenting-time order.

Another difficult situation that Ray said "occasionally" occurs is when a party raises false allegations of abuse in order to affect a parenting-time and/or custody order.

"Parties may be under the mistaken belief that the FOC can investigate an allegation of abuse, which we cannot," Ray remarked. "When Children's Protective Services (CPS) investigates an allegation of abuse and the allegation is unsubstantiated, the parent then often looks to the FOC to investigate the complaint and change the parenting-time order."

(*continued on page 8*)

U.S. Supreme Court Rules In Civil Contempt Case

(*continued from page 1*)
support by asserting that he was indigent and requesting a court-appointed attorney. The trial court denied defendant's request and scheduled a hearing. Although there was discussion about the defendant's employment status and receipt of welfare, the trial court did not determine if the defendant was, in fact, indigent. Instead, the trial court entered an order holding the defendant in contempt, placed him on probation for two years, and ordered him to pay support.

On appeal, the Michigan Supreme Court ruled that an indigent defendant cannot be incarcerated in a contempt proceeding if the defendant has been denied an attorney. Although the Court acknowledged that contempt in a child-support case is a civil matter, the Court said it was the prospect of incarceration and loss of physical liberty – and not the underlying civil or criminal nature of the crime – that should determine whether a defendant is entitled to a court-appointed attorney.

The Court based its ruling on federal due process requirements and not on the Michigan Constitution.

'TURNER' DECISION

Unlike *Mead*, the United States Supreme Court in *Turner* ruled that an indigent defendant is not entitled to a court-appointed attorney in contempt proceedings for nonpayment of child support. But the majority opinion expressed that its ruling was qualified because there were other procedural safeguards in place.

The defendant had appeared in a South Carolina trial court for his fifth show-cause hearing for nonpayment of child support. His arrearage amount totaled about $6,000. The defendant did not have counsel at the show-cause hearing, claiming that he could not afford an attorney. He told the court that he did not pay support because of incarceration, drug addiction, unemployment, and injury. The trial court found him in contempt and ordered him to serve 12 months in a detention center unless he paid his arrearages. The defendant appealed, arguing that he had a right to counsel before being sentenced to a year in a detention center.

The South Carolina Supreme Court disagreed, finding the defendant was not entitled to counsel on a civil contempt charge, even though the sentence was incarceration. The South Carolina Supreme Court said there is a difference between criminal and civil contempt, and that the defendant could have avoided his sentence altogether by making payments on the original support order. In fact, the Court said the defendant "holds the keys to his cell door and is not subject to a permanent or unconditional loss of liberty." (*South Carolina Supreme Court, No.* 26793 [2010].) The Court said that, because there was no loss of liberty, a court-appointed attorney was unnecessary.

In a 5-4 decision, the United States Supreme Court agreed with the South Carolina Supreme Court and ruled the Due Process Clause does not automatically require that an attorney be appointed for an indigent defendant in a civil contempt case for nonpayment of child support when there are "alternative procedures" in place to allow the payer to prove the ability to comply with the contempt order. The Court noted that the following procedural safeguards were sufficient:

- providing notice to the defendant that his ability to pay is a critical issue in the contempt proceeding;
- using a form (or similar document) to gather relevant financial information about the defendant;
- providing the defendant an opportunity at the hearing to respond to questions about his financial status; and
- an express finding by the court that the defendant has the ability to pay. (*Id.* at 335.)

Even though the defendant had completely served his sentence, because these safeguards were in place but not followed during the defendant's hearing in *Turner*, the Supreme Court vacated the judgment and remanded the case to the South Carolina trial court for further proceedings not inconsistent with the Supreme Court's opinion.

MONEY SAVER?

Since *Mead* was decided in 1990, courts across Michigan have appointed counsel in contempt cases where (*continued on page 9*)

An Interview With The Trial Court Services Director

(*continued from page 3*)

have no relationship with their children. Or they may never have learned how to provide for a family. Or it may be that substance abuse or mental-health issues have impaired their ability to be providers. In many cases, those same factors led to the family's dissolution. Often we see these same people touching the courts as civil defendants, criminal defendants, juvenile delinquents, and in child abuse and neglect cases. Sometimes their children repeat the trend.

For these people, we need to have an approach that addresses the underlying cause of the problem and not just its symptoms. We should combine the resources that we are using in all the individual contacts the family may have with the courts to create a service team that can begin to address the underlying problems at the first place the family comes into the system. Providing services up-front may turn a non-payer into a payer. But it is just as possible that providing those same services in another court action might avoid the family's dissolution in the first place, or keep the problem from being perpetuated in the family's offspring. That is the improvement I would make.

Q. What do you enjoy most about your job as Trial Court Services director?

A. Embracing opportunities. Everything that challenges us presents us with an opportunity to change the way we do things for the better. We have a lot of talented people working in Trial Court Services. When a court has some innovative idea it wants to try or when a court is presented with some obstacle, our staff has the ability to facilitate the innovation or find a way to overcome the obstacle. And we get to do it in a way that lets us learn from the court staff in the field.

Q. How has the recent state budget crisis affected Trial Court Services?

A. Like the trial courts, we have had to make do with a smaller staff. We have had to cut back on some travel and we have had to be more careful choosing the projects that we undertake.

But it has also presented us with great opportunities. We have cross-trained more of our staff and this has allowed them to have new experiences and to contribute in areas in which they would not normally have been involved – to the overall benefit of the projects. We have more carefully planned our priorities and this has led us to develop projects that have a more wide-ranging impact on improving the court system. For instance, we have worked with our stakeholders to develop legislation to improve collections, new specialty court dockets, and new pilot projects – all while continuing to be available to assist individual trial courts with planning and improvement.

Q. What are your goals for the future of Trial Court Services?

A. I want to see us continue to improve court processes through collaboration with trial court staff. Primarily I see this as using workgroups to develop new rules, work on procedure and process-related legislation, and to develop best practices. Workgroups allow us to make sure that stakeholders are directly involved and allow us to work with court staff that we might not otherwise get to know.

Q. What is the most difficult part of your job as Trial Court Services director?

A. Approving expense reimbursement and timesheets. These are necessary evils, but they are tedious.

Q. Tell us a little about your prior job experience – and how it has molded and helped you as TCS director.

A. During my undergraduate studies, I worked in a furniture store/scuba shop (it's a long story). I learned that our job was to serve the customer and to facilitate the customer's buying decision by presenting viable options. It is the same in Trial Court Services. Our customers are the courts and our job is to help them do the things that will make them successful.

I also worked for a period of time with Professor Oscar Gray while he co-authored *Harper, James, and Gray on Torts.* Professor Gray taught me not to take caselaw at face value. I learned to study caselaw and understand that sometimes it is what is *not* said, or the reasoning, that is as important as the decision itself. While a case result may seem limiting, taking the result apart can be liberating in the way it can be applied to other situations.

After law school, I worked for law firms in Maryland and Battle Creek, and I had my own practice in Charlotte. I learned that the court staff is the most important group of people I needed to work with. If I did things that made their jobs easier, my job was easier.

I also served as a referee in Calhoun County and as friend of the court director in Branch County. That is where I learned about court administration from the delivery side.

Finally, I came to work at the State Court Administrative Office, first as a Friend of the Court Bureau analyst and later in its Family Services Division. In those positions, I learned the importance of involving stakeholders in the decision-making process.

Q. Where did you go to college and get your undergraduate degree? Where did you go to law school?

A. I studied history at Michigan State University. I am an avid Civil War buff and, at the time, I enjoyed scuba-diving. So I tried to find a law school near water and Civil War sites. As luck would have it, the University of Maryland (located in Baltimore) accepted me. At the time, Baltimore was undergoing a huge transformation to what many would now describe as an attractive destination.

Q. What do you enjoy doing in your spare time? Do you have any interesting hobbies? It is rumored that you enjoy making wine.

(*continued on page 8*)

Informal Docket Project Uses 'Hands-On' Approach

(*continued from page 2*)

their concerns regarding custody, child support, or parenting time that came from the initial FOC conciliation conference. Also, any objections to the conciliation order must be in writing and filed with the court, so they can be discussed at this hearing.

During the hearing between the judge and the parties, issues relevant to the case are discussed and the parties are allowed to ask questions of each other. If there are witnesses, the witnesses are sworn in together and they are placed in the same area of the courtroom – usually the jury box. This allows an open flow of communication between the judge, the parties, and witnesses.

And even though the assigned judge makes the final decision regarding the divorce order, the pilot program allows the parties to work together with the judge to develop the divorce order.

BENEFITS AND GOALS

The primary benefit of the informal docket project is that it provides an easier process for *pro se* parties with low-conflict cases to navigate their divorce.

The simplified process begins when the assigned judge provides the parties with the appropriate forms and helps guide them through the procedure. In a typical formal divorce, the parties are responsible for determining what forms they need with no guidance whatsoever.

According to Judge Michelle Rick, "If parties understand the process and understand how they can work within the process and be empowered, then they may be better suited to work with one another going forward."

"Immediate access to the court is a huge benefit," observed Judge Rick. "In standard divorce filings, parties do not see their assigned judge until about five months into the divorce action for scheduling conference, and the scheduling order seems like a foreign language to the litigants."

Unlike standard divorce cases, the parties who participate in this pilot project see the judge for a scheduling hearing within 30 days of the conciliation conference. At that time, the judge gives the parties the tools they need to complete their divorce actions.

When asked about the pilot program, Judge Lisa Sullivan said the incentives and benefits are to provide the parties:

- a better understanding of the process;
- a streamlining of the process to reflect the needs of their specific case;
- an investment in the process by providing the parties more opportunities to meaningfully participate in the proceedings; and
- a more satisfying role in reaching a resolution.

The judges note that empowerment of the parties helps create an environment of compromise and unity, and results in parties cooperatively working together.

"The project encourages parties to ask questions and engage in conversation with the assigned judge," remarked Judge Jack Arnold. "I am too busy in regular divorce cases. The project gives the parties a different idea of what a judge represents

(*continued on page 9*)

Self-Serve Kiosk Helps Provide Efficient Service

(*continued from page 3*)

"The kiosk allows customers who would normally wait in line to speak with a receptionist to use this self-help tool instead," said Suzanne Hollyer, Oakland County friend of the court. "The kiosk reduces wait times and allows the staff to focus on individuals who can only have their issue resolved by face-to-face contact."

Hollyer estimates that upward of 10 customers use the kiosk every day.

An important feature of the kiosk is that, in addition to providing customers access to case information and court forms, it also allows for customer input.

"Feedback about the kiosk can be left right on the kiosk system itself by users," said Oakland County Circuit Judge Edward Sosnick. "Many customers have made constructive suggestions about its use. The reactions to the kiosk have been very positive."

In addition to the helpful feedback from customers, the FOC said the kiosk has also had an overall positive effect on the office.

"I think that encouraging customers to use self-help tools is always helpful," said Hollyer. "We are looking at setting up two more kiosks in our building."

For more information about how to build and develop your own FOC self-serve kiosk, contact Pamela Sala at salap@oakgov.com.

The Pundit **is a publication of the Friend of the Court Bureau, State Court Administrative Office, Michigan Supreme Court.** ***The Pundit*** **is published quarterly and is paid for with IV-D funds.**

FOCB PROFILE

Tarra Ray: Ingham County's 'Enforcer'

(*continued from page 4*)

Ray explained that, in these situations, the complaining parent often doesn't realize that orders are usually modified when a motion is filed, and that multiple allegations of unsubstantiated abuse could affect the complaining parent's custody and/or parenting time if it is ultimately determined that the complaining parent is trying to undermine the other parent's relationship with the child.

"This is the very situation that may lead to a joint meeting and/or proposed supervised parenting time," Ray stated.

In recent years, Ray has seen an increase in requests to move children out of the state because of economic hardship. In turn, this affects the parenting time of the noncustodial parent.

"The hardest part in situations where the custodial parent wants to move out-of-state for a job opportunity is fashioning the parenting time so that the relationship with the noncustodial parent is not harmed," she stated.

MAKING A DIFFERENCE

Ray described one case where she felt as if she made a significant difference in a family's life.

"I had a case where the father was from a different country and the Mother had a mental disability," she explained. "When I first began working with the parents, it was very difficult trying to explain what was expected regarding parenting time and how to set up a schedule that was agreeable to both parents."

Ray said she spent "countless hours" with the couple.

"However, in the end they were able to set up a parenting-time schedule without my input or guidance," she observed. "It was very exciting to see how both parents had grown over time and how they became self-reliant."

And even though Ray admitted that her position allows her to make a difference in people's lives on a daily basis, she stated that there are still hurdles to overcome at FOC offices across the state, mainly when it comes to funding.

When asked what she would change about FOC matters if she had a magic wand, Ray said that she would increase funding for supervised parenting time and counseling.

"Currently, Ingham County has parents who require supervised parenting time and not enough money to pay supervisors," she explained.

"I would also change the amount of money the county has available for additional employees to enforce parenting-time orders, to better serve the best interests of the child," she stated.

An Interview With The TCS Director

(*continued from page 6*)

A. I like soccer. I coached youth soccer every year until two years ago when I decided to play.

I have dabbled in winemaking, but my biggest challenge has been trying to develop a vineyard in my backyard. I have almost 200 vines including many that are not well-suited to colder environments. I have had to fight late freezes and frosts, hail, deer, rabbits, and two types of beetles. It gives me a whole new respect for what our farmers have to go through on a much bigger scale.

I also serve as my township's supervisor.

Q. Rumor is that you enjoy running. Have you participated in any races? How often and how far do you typically run?

A. I believe a more accurate term is "plodding." I usually jog a 10K two or three times a week. I have participated in a few 5Ks. My favorite was one I entered in Webberville where I received the third place medal in my age group. Of course there were only three of us running. So the key to success is to pick small races and outlive the competition.

Q. It is also rumored that you are a Michigan State fan. Do you attend the football and basketball games or any other MSU sporting events?

A. We attend football games at least twice a year. Also soccer matches. I just follow the others on television or radio.

U.S. Supreme Court Rules In Civil Contempt Case

(*continued from page 5*)

the defendant is facing possible jail time for not paying child support. The appointment of attorneys in these cases has cost thousands of dollars.

For example, Cass County spends about $12,000 annually on court-appointed attorney services in child-support cases. But under the *Turner* decision, Fancher said that he anticipates thousands, or maybe millions, of dollars can be saved by courts across the state because they will not be required to appoint and pay for counsel.

But Fancher also noted the *Turner* majority's reluctance to make a definitive statement concerning the right to counsel in *all* civil contempt cases. He explained that the decision specifically states that the Court only addressed situations where (1) the defendant is before a court for a civil contempt case for failure to pay support, (2) the defendant is indigent, (3) the other party is without counsel, and (4) there are other procedural safeguards in place. He pointed out that the majority emphasized there were other situations that it was not addressing.

Fancher observed the uncertainty created by the *Turner* decision. "Michigan courts no longer have to appoint attorneys in contempt hearings when the defendant is indigent, but in situations outside the scope of *Turner*, courts might still have to continue to follow the *Mead* ruling," he said.

Fortunately, in most cases it is relatively easy and inexpensive for courts to comply with the *Turner* ruling. First, before a contempt hearing begins, the court could ask the respondent to complete a form regarding his or her financial status. Many already do so. Others have the friend of the court interview the respondent and report to the court on the respondent's financial status. Courts who do not already use this procedure may find SCAO-approved form MC 287, Financial Statement, helpful. Second, at the outset of the contempt hearing, the court may want to explain on the record the purpose of the hearing and what issues it will hear. Third, the respondent must have a chance to respond. And finally, the court should state clearly its reasons for finding the respondent in contempt.

COMPLIANCE WITH 'TURNER'

While the limits of the *Turner* decision are unclear, courts can tailor the procedures they use to bring contempt cases within *Turner's* scope.

One such step would be to ensure that no one appears before the court as an advocate for a contempt finding, or appears in any capacity other than to provide factual information concerning the accounting and procedural history of the case.

Another step would be to allow nonattorney court staff to appear at the hearing without a staff attorney.

Additionally, the court can ensure that its commitment orders clearly comply with MCL 552.637 by stating why other remedies are unlikely to correct the payer's failure or refusal to pay support, and contain the amount that must be paid in order to be released from the order of commitment.

If FOCs or trial courts have questions about the appointment of counsel, please contact Elizabeth Stomski at (517) 373-5975 or at stomskie@courts.mi.gov.

Informal Docket Project Uses 'Hands-On' Approach

(*continued from page 7*)

with personal interaction."

Another main goal of the pilot project is to decrease post-judgment activity.

The 29th Circuit Court anticipates that parties who participate in the program will come away with a feeling of equal bargaining power. This is because the project allows both parties to be heard and to actively engage in the divorce process.

If both parties believe that they have been heard, it is expected that appeals will decrease, along with post-judgment activity such as objections, modifications of custody, and modifications of parenting time, among other things.

POSSIBLE EXPANSION

If the project continues to be successful, the 29th Circuit Court is open to expansion of the program to allow other types of divorce cases to proceed in a similar way. This expansion, of course, would be possible only with approval by the Michigan Supreme Court.

In fact, the 29th Circuit Court has worked with the Michigan Domestic Violence Treatment and Prevention Board (MDVPTB) to explore whether equal bargaining power is also possible in domestic violence situations.

The court has also suggested that divorce cases involving real property may qualify for this type of pilot procedure in the future.

"I think that we are committed to continuing the program with the understanding there may be room for growth after SCAO work and analysis," Judge Rick said.

Overall, the 29th Circuit Court judges agree the empowerment that this pilot project produces in the parties encourages them to work together with the ultimate best positive outcome.

For more information on the informal docket pilot project, please contact Tim Cole at colet@courts.mi.gov.

THE LEGAL CORNER

A summary of recent Michigan Supreme Court and Court of Appeals decisions, Michigan IV-D memoranda, and SCAO administrative memoranda.

COURT OF APPEALS DECISIONS – SEE HTTP://COA.COURTS.MI.GOV/RESOURCES/OPINIONS.HTM

Ewald v Ewald, published opinion, issued May 26, 2011 (Docket No. 295161). The Support and Parenting Time Enforcement Act does not provide for enforcement of parenting-time rights by adjusting child-support obligations; therefore a parent interfering with the parenting time that caused a child to refuse to visit the other parent does not require deviation from the child-support formula.

Whitney v Block, unpublished opinion per curiam, issued April 5, 2011 (Docket No. 299799). On a motion to change custody, there must first be proper cause or a sufficient change in circumstance that warrants a change in custody. The court must then look for the existence of an established custodial environment and analyze the best interest factors of the child.

Groh v Groh, unpublished opinion per curiam, issued June 14, 2011 (Docket No. 300560). The Child Custody Act (MCL 722.28) requires the Court of Appeals to affirm a trial court's decision unless the trial court's findings were against the great weight of the evidence or the decision violates fact or logic. Without evidence, the court is not required to consider criminal statutes when assessing domestic violence allegations, despite domestic violence being listed as a best interest factor.

MICHIGAN IV-D MEMORANDA

Income Withholding Automation for Michigan Unemployment Benefit Redeterminations (2011-006), May 27, 2011: This memorandum outlines new guidelines for redetermination of unemployment benefits. As of June 1, 2011, the data exchange between the Michigan Unemployment Insurance Agency (MUIA) and MiCSES will be improved so that income withholding automation will include unemployment benefit redeterminations.

New RESR Resolver Role (2011-007), Section 2.05: Referrals and Applications, April 4, 2011: This policy outlines the new RESR Resolver Role in MiCSES to work member exceptions and closed case exceptions.

Updates to the *Michigan IV-D Child Support Manual* and Changes Related to the Michigan Child Support Enforcement System (MiCSES) 7.3 Release (2011-008), June 6, 2011: This memorandum replaces Memoranda AT2008-024, AT2004-025, AT2004-029, AT2005-006, AT2005-014, AT2008-031, AT2009-021, AT2006-064, AT2003-015. The update lists the changes to the table of contents of the Michigan IV-D Child Support Manual. Changes can be seen on Mi-Support at http://mi-support.cses.state.mi.us/policy/memos/2011/2011-008.pdf.

Issues With the Processing of Noncooperation (2011-011), June 14, 2011: This memorandum outlines issues with the automated two-way interface between Bridges and the Michigan Child Support Enforcement System (MiCSES) and describes actions for IV-D workers to improve the communication of determinations of noncooperation and subsequent cooperation.

FOC Resource Spotlight: MiDEAL

"Saving Money for Local Government"

MiDEAL (Michigan Delivering Extended Agreements Locally) lets local units of government benefit from the state's negotiating and purchasing power by allowing them to purchase from the state's contracts on the same terms, conditions, and prices as state government. The program is authorized by Michigan law and has existed since 1975.

Membership in MiDEAL is open to any city, village, county, township, school district, intermediate school district, nonprofit hospital, institution of higher learning, or community or junior college in Michigan. To join, e-mail MiDEAL@michigan.gov and pay the nominal membership fee.

For more information, visit http://www.michigan.gov/localgov

* Source of information: http://www.michigan.gov/localgov