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Contempt Can Be An Effective Enforcement Tool

Civil contempt proceedings continue to be an effective enforcement tool in cases where support payers are able to pay, but choose not to. They are corrective measures the courts use to encourage parties to obey their orders when other measures have failed, with jail time assessed only as a last resort. Even if the court holds the nonpayer in contempt and sentences him or her to jail, the nonpayer can quickly purge the contempt by obeying the court order and making a support payment.

Studies show that civil contempt proceedings rarely result in incarceration because the threat of jail to a payer who has been ordered to pay support and has the ability to pay (but has not) instills enough apprehension in the payer to produce corrective results.

EFFECTIVENESS

A 1979 study found that Michigan counties that used incarceration as an enforcement tool in collecting unpaid support increased their collections of child support by a greater percentage than counties not using incarceration. The study also observed that contempt served as a powerful general deterrent against nonpayment by those who might be inclined to ignore their obligations.

Courts routinely confront the harsh reality that many able support payers do not obey their court orders. According to one study, 42 percent of payers did not pay child support when they had no reason not to pay.[1] Some support-ordered payers hide assets using the underground economy by only accepting their wages in cash, or through bartering or concealing assets.

When income withholding, license suspension, tax-refund offset, and other measures fail, contempt "may often be the only effective tool to ensure payment of support," according to Dan Bauer, management analyst with the Friend of the Court Bureau.

The use of contempt in an effort to force payers to pay their child-support obligations is not without its critics. Some argue that contempt is an overused procedure that jails support payers simply for being poor – a modern day "debtor's prison."

Norm Fryer, referee with the Calhoun County Friend of the Court (FOC), called this assertion a "legal impossibility." Fryer explained that a payer cannot be incarcerated unless the payer has a present ability to pay and has made a willful failure to do so. Furthermore, Fryer pointed out that imposing jail time is rare because it is reserved for extreme situations.

Recently-collected statistics from other states that have studied the use of contempt over the past several years suggest that contempt for nonpayment rarely results in jail of the nonpayer, yet is quite effective in encouraging and receiving payments.

In Massachusetts, less than 0.3 percent of cases resulted in nonpayers being jailed. Colorado has reported that contempt is used only in 2 percent of its cases, and just a small fraction of that percentage actually lead to nonpayers being jailed. Most nonpayers, at that point, choose to pay immediately. In Virginia, less than 1 percent of support payers were found to be in civil contempt. Only a small fraction of those who were held in civil contempt actually spent any time in jail.[2] Oregon has reported that civil contempt, when used with other enforcement tools, resulted in a 200 percent increase in its collections. And Oklahoma and Minnesota have reported that contempt is a highly effective last-resort remedy for receiving court-ordered child support.[3]

But raw statistics only tell part of the story about contempt's effectiveness in bringing about positive results. There are many examples of cases where contempt alone has produced collection of support payments.

A former Ottawa County FOC worker recalled a case in which a support payer was not paying his monthly obligation. His parents, who owned several recreational and rental properties, reported that he was only employed by them on a seasonal basis and was only paid

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minimum wage. He refused to find employment during the months while not employed at his parents' place of business. The FOC learned that the support payer was living by himself rent free in a large lakefront house. He was also driving a new Jaguar. Neither the home nor the car was in the payer's name, making it impossible for the FOC to place a lien on the property. When the support payer came to court he wore designer clothing and expensive jewelry. It was evident that he had substantial resources, despite the fact that he and his parents were claiming that he made minimum wage. The only time the FOC could get him to make payments was when he was held in contempt of court and faced jail time. Apparently this was a repetitive process, but every time he was found in contempt and faced incarceration, he immediately paid his support.

PROCEDURAL SAFEGUARDS

In order to hold a nonpayer in contempt, the court must find that the support-ordered payer actually has the ability to pay.

In *Turner v Rogers,* 564 US ___; 131 S Ct 2507 (2011), the United States Supreme Court ruled there must be procedural safeguards in place to protect those who are held in civil contempt. In this type of case (nonpayment of support), procedural safeguards include a finding on the record that the court-ordered payer actually has the ability to pay the support order. The ability to pay can be established at a show-cause hearing through a series of questions on the record or on a financial disclosure form.

Incarceration may not be imposed for civil contempt if the payer lacks ability to purge the contempt by paying the support. While it is the responsibility of the support payer to prove to the court that there are no means to pay the court-ordered support amount, the court, on the other hand, must find on the record that the payer actually has the ability to pay.

NO OTHER OPTIONS

The use of contempt to prompt able nonpayers into paying their support obligations has overwhelmingly become a final step used by courts after all other options have been exhausted.

Jack Battles, director of the Genesee County FOC, indicated that, in his court, the use of contempt is reserved for chronic nonpayers who have flaunted their noncompliance. Battles noted that he has successfully used contempt as a tool on many well-paid, white-collar professionals, including doctors and lawyers, to compel them to make their support payments.

In one instance, Battles explained that a successful entrepreneur refused to pay $25,000 in arrearages. But when the payer was informed that he faced possible incarceration in an upcoming contempt proceeding, the entrepreneur immediately withdrew $25,000 in cash and paid the debt. This clearly demonstrates that the payer obviously had the means, but simply refused to obey the court order until he faced incarceration.

"Nobody wants to jail parents who cannot meet their support obligation," Battles said. "It does not benefit the state, which must pay for the incarceration. It does not benefit the payee, as the likelihood of obtaining payment is further diminished. And it does not benefit enforcement workers, who could be using their

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The Pundit provides information on current issues to Michigan child-support staff. The Pundit is not intended to provide legal advice and does not represent the opinions of the Michigan Supreme Court or the State Court Administrative Office.

THE PUNDIT

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FOCB PROFILE

Kent Co. Assistant Prosecutor Mark Vermeer

The child-support program in Michigan is sometimes referred to as a "three-legged stool" because of the program's interdependent relationship among the Office of Child Support, the prosecuting attorney, and the friend of the court.

Sandwiched between the more visible functions that occur at the beginning and end of the support establishment process, the role of the prosecuting attorney is sometimes misunderstood by parents, and may not be fully appreciated by the other partners. The Pundit recently spoke with Kent County Assistant Prosecutor Mark Vermeer and asked him to shed some light on what happens in the time that passes between initiation of a case by the Office of Child Support (OCS) and enforcement of a support order by the friend of the court (FOC).

Vermeer has been an assistant prosecuting attorney in Kent County for 24 years, with 13 of those years spent working in the family law division. Vermeer participates in the Establishment Work Improvement Team, the Program Leadership Group, the Prosecuting Attorneys Association of Michigan Child Support Forum, and the Kent County Friend of the Court Citizens Advisory Committee.

THE PROCESS

Vermeer indicated that the prosecuting attorney (PA) becomes involved in the child-support process upon receiving a referral from OCS.

"OCS receives requests for IV-D services from either the Department of Human Services [DHS] or directly from a party," Vermeer explained. "After OCS has completed an initial interview with the party requesting services, including information regarding the noncustodial party [NCP], OCS will refer the case to the PA in a case action referral [CAR]. The majority of OCS referrals are at the initial request of DHS when a party has requested state assistance."

Either a parent or a nonparent who has legal responsibility for the child can request child support and have OCS make a CAR. Once the PA's office receives the CAR from OCS, Vermeer explained that his office will schedule an appointment with the custodian to obtain additional information about the parties and their income.

"In most cases, the custodial party will meet with a caseworker in our office rather than an attorney," he said. "If questions arise, an attorney will be consulted and may become involved in the interview. However, because our caseworkers are all experienced and do a very good job, attorney involvement is rare at the intake interview, although an attorney will meet with both parties at any prehearing conference and at court proceedings."

After the initial meeting, the PA's office makes a preliminary determination of a child-support amount, files a complaint with the court, and serves it on the noncustodial parent. If the parent does not respond within 28 days, the PA will seek a default judgment establishing child support. Because default judgments may not be as accurate as judgments reached in cases in which both parties participate, it is fortunate, according to Vermeer, that this type of intervention by the PA happens in less the half the cases.

Vermeer said that, if a person is seeking child support from the father, paternity must be determined before the PA can establish a child-support order. When a man is married to the child's mother, his paternity is established as a matter of law. The father can also establish his paternity by executing an affidavit of parentage with the mother. In other cases, the PA must file a complaint alleging that the man is the child's father. The case then proceeds like a regular support case except genetic tests are completed to determine paternity.

AVAILABLE RESOURCES

While Vermeer prefers to establish support through cooperation of both parties, he noted that the PA's office has many resources available to help it determine a nonparticipating party's income.

"A primary source of information is the custodial parent – she or he often has been in a long-term relationship with the person who failed to respond and knows where the other parent works, the educational background, work history, and family situations," Vermeer explained. "When we know an employer's identity, we will then send a wage verification request to the employer to complete. In addition, we also use the U.S. Department of Labor Occupational Employment Statistics for our region if we know of the type of work the party is able to or qualified to perform. We also use DHS Business Objects, where we are able to obtain quarterly wage information and new hire information."

Vermeer said that it takes two-to-four months to establish a child-support order in Kent County after a referral has been received from OCS. However, Vermeer also said that it is possible to establish an order sooner in exceptional circumstances, such as pending military deployment. Much of the time that it takes to establish an order is spent serving the defendant and then waiting for a response. If the NCP responds, the PA's office will schedule an appointment to

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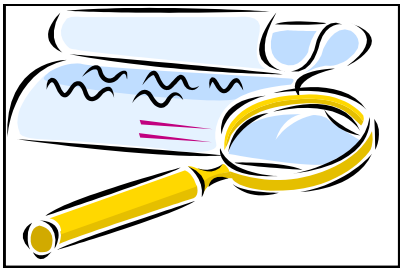
Using Grievance Audits As A Management Tool

The Friend of the Court Act requires the State Court Administrative Office's Friend of the Court Bureau (FOCB) to audit friend of the court (FOC) grievance records and recommend procedural improvements in response to the type of grievances received. If viewed positively and used effectively, these audits can be an effective management tool for FOC offices.

Although the FOCB can review litigant phone calls and letters the FOCB receives to get an idea of what issues the public is facing, the grievance audit process provides the greatest insight to FOCB management analysts.

AUDIT PROCESS

FOC offices are required to submit grievance records to the FOCB at least biannually (January and July) for review by the State Court Administrative Office (SCAO). Upon receiving a grievance record, FOCB staff reviews it for policy issues or concerns. Grievances are randomly pulled by FOCB support staff and audited by FOCB analysts twice a year. The number of grievances pulled varies by SCAO region, which approximates state caseload numbers. (See, "Number of Grievances Pulled" on page 7.)



Once grievances are pulled, they are distributed to the FOCB law clerks, who review the grievance record. The clerks prepare a summary of the grievance and the response, and highlight issues they see as potential problems. The grievance records and the FOCB clerks' summary reports are then distributed to the FOCB management analysts (based on topic) and are reviewed. Each grievance record is reviewed by a minimum of two management analysts, who provide a final analysis independently.

On the basis of the management analysts' recommendations, a letter is drafted and sent to each FOC office for each selected grievance. The letter explains that the grievance was selected for the biannual audit and details the audit's findings.

WHAT ARE ANALYSTS LOOKING FOR?

The primary goals of the biannual audit are to:

- analyze whether the FOC's response addresses the grievance.
- confirm that the FOC is complying with laws and policies.
- confirm that the FOCB is aware of system concerns and trends.

In SCAO Administrative Memorandum 2003-03, Friend of the Court Complaint and Grievance Procedure, SCAO provides the criteria that should be included in each grievance response, as well as suggestions for how to handle grievances. During the biannual audit, the FOCB is looking for the required information in each grievance response, including:

- a brief summary of the grievance.
- a brief summary of the investigation made to answer the grievance.
- a brief summary of the facts disclosed by the investigation.
- when relevant, a brief statement of statute, court rule, or policy that applies to the grievance.
- the disposition of the grievance (acknowledged, acknowledged in part, denied, or nongrievable).
- a brief summary of the basis for the disposition.
- a statement of any action taken in response to the grievance.

In addition, the FOCB checks the appropriateness of the grievance response, including:

- confirming that the grievance response is not in an adversarial tone.
- confirming that the FOC is not expressing frustration within its response, except as relevant to the answer.
- confirming that the response from the FOC does not characterize the grievant's state of mind.
- confirming that the FOC is not expressing disagreement over something that is outside the office's control (statute, court rule, MiCSES).

GRIEVANCE AUDIT FINDINGS

During the most recent audit in July 2011, the FOCB found no real issues or concerns with responses or with statutory compliance. However, the FOCB did notice a few trends.

While the number of filed grievances seems to be remaining steady across the state, it appears that grievance responses are frequently issued outside the 30-day time frame.

If an FOC cannot issue a response within 30 days of receiving the grievance, statute requires the FOC to issue a statement to the grievant, explaining the reason for the delayed response. If the FOC issues this statement, it should be included with the grievance response when the grievance is sent to the FOCB, so the FOCB can be sure that the statute is being followed.

Another trend that the FOCB has noticed is that not all issues within a grievance are being addressed by the FOC. The FOC is encouraged to take the time to note each complaint listed in a grievance and provide a brief, but thorough, response to each complaint. This will ensure that the grievant is receiving a complete answer and will also give the FOCB a better overall picture of what issues the public is experiencing within the child-support system.

The FOCB has also noticed there are many repeat grievants in some FOC offices. If the grievances are persistently being filed by the same person regarding the same issue, then the FOC should work with the chief judge, SCAO regional administrator, and the FOCB to develop a grievance response process that remedies this problem.

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Incentive Payments: How To Maintain & Increase Funding

In these tough economic times, courts are financially strapped. Friends of the court must meet performance measures in order to maintain and increase funding and to protect against reductions because of decreased local revenue.

The Child Support Performance and Incentive Act allows incentive payments to be made to states that meet specific criteria during each fiscal year. The amount of the payment is determined by a state's performance in five categories:

- establishment of paternity,
- establishment of court orders,
- collection on current support orders,
- collection of arrearages, and
- cost effectiveness.

HOW IT WORKS

A specific percentage is set for each performance measure and every state's performance is compared to that number. A state that meets the percentage in the five key performance measures helps the state become eligible to receive an incentive payment. The more counties increase above the set percentage established for the performance measures, the larger the amount of the state's incentive payment received.

In 2009, Michigan received a $27 million incentive payment because of its outstanding efforts in the five key performance measures. This payment was split between the state government and local funding units with FOCs and prosecuting attorneys receiving their share of funding based on the same formula that the federal government uses to distribute incentive payments to the states.

States receiving these payments from the federal government are required to reinvest that money in their child-support programs, and likewise, must increase the amount that these states previously spent on the programs under previous budget baselines.

Each state competes for a fixed pool of incentive money that is established by the federal government for the fiscal year. And as a recipient of a portion of the incentive payments, the county FOCs are rewarded for their efforts in increasing the state's share of incentives.

GENESEE COUNTY INITIATIVE

In May 2011, a cooperative effort led by the Genesee County FOC implemented an 11-week program to increase its support collections and close inactive child-support cases. A group comprised of union workers, the FOC, and all 84 employees of Genesee County devoted time to this effort, and reviewed the criteria from the Child Support Performance and Incentive Act. As a result, the group created six functions it believed, if focused on, would increase incentives received in Genesee County, including:

- increased collections,
- monies waived,
- modification of support orders,
- adjustment of bench warrants,
- case closures, i.e., determination of whether cases are completely uncollectable, and
- amicable agreements between the parents.

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Support Nonpayers Are 'Getting The Boot'

Courts have found a new way to enforce the payment of child support using an old technology: booting.

As many people know, "booting" involves clamping a metal device onto a car's wheel to immobilize the vehicle.

Using vehicle boots to enforce court orders was added in 2009 as an amendment of the Support and Parenting Time Enforcement Act. Booting is now an approved method to be used on vehicles of parents who refuse to appear in court to address their failure to pay support.

In most cases involving unpaid child support, the payer's wages will be garnished and taxes will be intercepted. But in some instances, wages are untraceable because the payer has received wages paid "under the table" and the payer fails to respond to the court's order to appear. At that point, use of the boot may be an effective enforcement tool.

It is believed that booting will be effective because the payer no longer controls compliance with the order, but instead, the sheriff, upon determining that the payer owns a vehicle, immobilizes the vehicle and restricts the payer's ability to avoid responsibility to answer to the court.

LOCAL BOOT USE

Several Michigan counties currently use the vehicle boot as a child-support enforcement tool.

The Jackson County FOC purchased two boots for $400 each and has been training enforcement officers how to use them. Before booting a car, the officer calls the Secretary of State to confirm that

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time more effectively by focusing on recovering missing payments from payers who have the ability to pay."

For several years, Battles said he implemented a community outreach program that lessened the frequency of scheduling show causes for contempt, but there was a dramatic dip in collection rates. Battles said he came to the conclusion that "as a last resort, show cause for contempt is a necessary enforcement tool."

SPECIALTY COURT PROGRAMS

Specialty courts are one example of how Michigan is proactively trying to help support payers become self-sufficient so they can meet their court-ordered obligations. Contempt in specialty courts is used to encourage the court-ordered payer to comply with plans that are known to help the payer become self-sufficient.

Support payers who fail to exercise due diligence may be referred to a specialty court program if the payer is eligible and the program is available in the payer's jurisdiction.

Through these programs, participants receive specialized assistance, such as job training, transportation assistance, and substance-abuse counseling. FOC employees who have specialty court programs available for nonpayer participants have reported cases in which unemployed payers who chronically forgot to make payments and others who willfully chose not to make payments have been able to find employment and begin making payments as a result of the specialty programs.

FOC offices may also use probation programs. These encourage support payers to work with FOC offices to find employment, obtain a GED, and establish a workable payment plan.

Michigan has also made efforts to reduce arrearage amounts. Michigan's use of arrearage repayment and forgiveness programs has eliminated the need to use contempt in cases where it would likely prove ineffective. Under MCL 552.605e, a support payer may ask the court to approve a payment plan and to potentially discharge arrearages under certain circumstances. For the court to approve this plan, the support payer must show by a preponderance of the evidence that the plan is in the best interests of the children and must agree to entry of a payment plan order. It must also be shown that the arrearage did not accumulate because of the payer's willful failure to pay a child-support obligation.[4] If these arrears are owed to the state, the Office of Child Support (OCS) would have the opportunity to agree to or reject the plan, but the court has the final say. These arrearage forgiveness programs are only initiated because payers have been brought into court for a civil contempt proceeding. The show-cause hearing allows the court to work with payers who are unable to meet their obligations. Civil contempt proceedings also make it easier for a court to modify support obligations if there is a change in circumstances by forcing a payer to appear before the court.

There are many options that can be employed before the use of contempt proceedings. When these other options fail, contempt is the ultimate tool in bringing the most success, both for nonpayers who can afford to pay and for those who cannot afford the amount ordered.

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1 Elaine Sorensen and Chava Zibman, *Getting to Know Poor Fathers Who Do Not Pay Child Support*, 75 Soc Serv Rev 420, 422 (2001).

2 *Id.*

3 *Turner v Rogers*, 564 US ___; 131 S Ct 2507 (2011).

4 MCL 552.605e.

LEADING PRACTICES

Prehearing

► Confirm that there is at least some basis for asserting that the defendant has the ability to pay before filing the contempt action.

► Use a standard contempt pleading that includes a clear statement of the facts, lets the defendant know that his/her ability to pay is a critical issue, and provides notice that incarceration is a potential outcome of the hearing.

► Provide a financial disclosure form for the defendant to fill out with specific financial information to bring to the hearing.

Hearing

► Reiterate that the defendant's ability to pay is a critical issue.

► Review the defendant's financial information provided in the defendant's financial form.

► Allow the defendant to ask questions and/or provide information about his/her financial situation.

► Allow the defendant to talk about his/her financial statement and reasons for nonpayment, and follow up the answers.

► Confirm that there is evidence of a past financial ability to pay that supports a contempt finding.

► Confirm that there is evidence of a current ability to pay the purge amount (amount set by the court to avoid being incarcerated).

► Confirm that if the court finds the defendant in contempt, it makes findings that expressly state whether the defendant has a current ability to pay and what that finding is based upon.

Post Hearing

► Confirm that the written findings expressly state whether the defendant has a current ability to pay and the basis for those findings.

[Source: Margot Bean, National Child Support Enforcement Ass'n, *Due Process Standards in Child Support Civil Contempt Proceedings – the Effect of the* Turner v Rogers *United States Supreme Court Decision*, p 4.]

Kent County Assistant Prosecutor Mark Vermeer

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occur within two-to-four weeks for a conference between the prosecuting attorney and the parties to attempt to obtain a consent judgment. If the parties cannot agree, the matter will be set for court proceedings.

MISCONCEPTIONS

Stuck in the middle, the PA is often mistaken as being responsible for functions that other agencies perform.

Vermeer commented that a common public misconception about the PA's office is that it has enforcement responsibility that is actually performed by the FOCs.

Similarly, some payees want the PA to prosecute a nonpaying party. He said that, although the PA has authority to prosecute for criminal nonsupport, Kent County's cases of criminal nonsupport are now handled through the Attorney General's Office.

Vermeer noted that another common misconception is that the PA's office is involved with custody or parenting-time disputes. He explained the statutes that govern PA involvement in child support and paternity establishment specifically state that the PA is not required to represent either party in custody and parenting-time issues.

Vermeer said that the statutory language makes sense because the state's interest is to ensure that two parents are supporting every child, not to determine which parent should have custody or to set a parenting-time schedule.

"When we calculate support, we are required to identify overnights spent with each parent, but we do not advocate for either party," he observed.

Vermeer said that, while the PA's office is involved in paternity testing, this only occurs after a referral from OCS. He noted that the PA's office is not a "paternity testing site." Therefore, requests for paternity tests from NCPs will first be referred to OCS to request IV-D services.

MAKING A DIFFERENCE

Sometimes at a prehearing conference, Vermeer said he will recognize that the parents may just need help.

"The parents have no resources or support, are often encountering overwhelming debt, and there is a lack of communication," he remarked. "Through encouragement and the availability of perhaps financial counseling, I may be able to bring the parents back together."

Vermeer said he feels the most satisfied when he is able to help stabilize the parents in the best interests of the children, and when the parents take responsibility for their children in a positive way.

When asked what one thing he would change, if possible, Vermeer said that he would create stronger nuclear families for the benefit of children, stop children from having children, and end casual parenting.

"As a society we are enabling casual parenting, where children are casually created with no relationship between the parents," he stated. "The parents then use the children for their own benefit, by poisoning the relationship of the other parent. Unfortunately, it is the children who suffer."

Using Grievance Audits As A Management Tool

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MANAGEMENT TOOL

Grievances and the audit process should really be viewed as an FOC management tool. Grievance audits are conducted not only to give the FOCB insight as to what is happening in local offices, but the grievances can also be used by the local FOCs to improve customer service, thereby reducing the volume of customer complaints.

If an FOC office would like information on the biannual grievance audit or would like to schedule grievance response training, please contact Elizabeth Stomski at 517-373-5975 or stomskie@courts.mi.gov

Number of Grievances Pulled (July 2011 Audit)

Region I = 34

Region II = 14

Region III = 8

Region IV = 4

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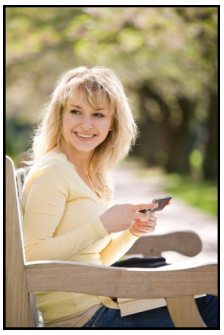
'Going Paperless' — Courts Keep Parties Informed Electronically

Recent trends in technology and reliance on cell phones and e-mail communications have opened the door to a new way courts are able to communicate with parties.



In fact, courts around the world are using e-mail and text messaging as forms of communication. For example, in New Delhi, India, courts have begun to send Short Message Service (SMS) alerts (also known as "text messages") notifying advocates and litigants about court hearings, sending summonses through e-mail, e-stamps, recording of evidence through videoconferencing, and offering virtual tours of court premises. New Delhi's goal is to be the first paperless court and it believes that this process will save time and manpower.

Turkey is also following the technological trend by providing an SMS judicial information system. This system provides a service to both lawyers and citizens, allowing them to receive SMS messages about legal information on their case.

The information may be about ongoing cases, dates of court hearings, changes in the case and lawsuits, or claims against them. This system gives instant notification and information and may prove more effective than notification through traditional paper mail. Subscribing remains voluntary because not all people have SMS or e-mail access. People who wish to receive this service must subscribe. The service is free of charge for those who

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Incentive Payments: How To Maintain & Increase Funding

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FOC employees were split into teams and, as an additional personal incentive, FOC Director Jack Battles agreed to bring back previously terminated flex-time for the three top winning teams. The winning team received 12 weeks of flex-time, second place received 10 weeks, and third place received 8 weeks. The overall focus of the friendly competition was to help employees learn more about the various functions of the FOC and, ultimately, in that same manner, encourage employees to do their part to increase incentive payments received by the state from the federal government.

Case closures were a big factor in Genesee County's overall success. The case closure criterion originates from OCS and federal regulations, depending on the status of the child and the parent. In Genesee County, the FOC was able to close 2,757 cases by dissecting the caseload and determining the cases that were uncollectable.

At the end of the 11-week program, Battles concluded that, of the six functions the group agreed upon, the function of increased collections was the most relevant to Genesee County's success. Battles had recognized that Genesee County's collections were decreasing. He said that this initiative was a positive way to increase overall collections for the county.

Specifically, Battles determined that the Genesee County FOC was able to collect more than $870,000 during the 11-week period of the program and the FOC modified 453 cases in which support payers were being overcharged.

Battles attributes Genesee County's success to everyone, in any capacity, who participated in the effort.

"It is very satisfying for all our employees, and they have a much broader perspective of FOC functions," he said. "This is firm footing for us to move forward to improve additional ideas."

Initiating a team effort can produce massive results – and Genesee County's initiative is proof of this fact. Although Genesee County's success is just a stepping stone, casework supervisor Connie Boniecki said, "By keeping track of their efforts, the employees are able to see the end results."

FOLLOWING THE LEAD

Other Michigan FOCs can follow Genesee County's lead and implement the same initiative in their counties by first determining what functions they need to focus on as a county.

Next, the county can organize workgroups to determine how to increase performance by use of those specific functions. Input gained from all employees results in better success because employees in that type of effort feel that they are part of an initiative for the greater good of the state.

Other key components to success of these types of team programs are that the effort is clearly defined and organized, and that the director of the program provide personal incentives to the winning teams.

Local FOC offices may want to consider implementation of this type of cooperative effort because it allows employees to work together as a team, while at the same time increasing employees' knowledge about various FOC functions. In fact, when FOCs partner with prosecutors and OCS, their efforts represent what can be accomplished. Local agencies in Michigan are doing a great job with their child-support programs, but there is more to be done in the effort to increase Michigan's share of incentive payments from the federal government. And the Genesee County team experiment has shown not only how essential teamwork is in gaining new knowledge and awareness, but has also increased the county's economic strength.

For more information on Genesee County's program, contact Jack Battles at 810-257-3300.

Support Nonpayers Are 'Getting The Boot'

(*continued from page 5*)

the vehicle is registered to the individual who owes support. When the boot is placed on the car, there is a sticker on the boot that provides contact information for the local FOC. The delinquent payer can then call the FOC and pay the child support that is owed in its entirety or may set up a payment plan.

The primary goal of the booting project is to get the attention of delinquent payers so they will contact the FOC to find out how to remove the device. When the payer contacts the FOC, the FOC will work with the payer to establish a payment plan that will eliminate the arrearages.

According to Andy Crisenbery, director of the Jackson County FOC, "We understand that right now there are a lot of people who don't have the ability to pay because of job loss. We will work with those people."

If the "boot" program proves to be effective, the Jackson County FOC has indicated that it will look into getting more boots and will expand their use.

Meanwhile, Ottawa County implemented a booting program in July 2010.

"We're going to try and reach out and touch somebody – in this case in the form of a boot," Kevin Bowling, circuit court administrator, told the Ottawa County Board of Commissioners.

Offenders in Ottawa County may be charged up to $250 in fees to free their vehicles from the boot.

Likewise, in September 2011, Berrien County implemented a booting program. Tom Watson, director of the Berrien County FOC, remarked that boots will be a "wake-up call" for "deadbeat parents" who owe a significant amount in past-due child support and who avoid court hearings. He said that the purpose of the program is to achieve results; that is, to get payers to start paying the debt that they owe.

However, there is a downfall to booting a vehicle: use of the boot cannot differentiate between persons who cannot afford to pay and those who just choose not to pay. Making these distinctions is difficult, and it is a decision left to the courts.

For more information on the booting program, contact the Ottawa County FOC at 616-846-8210 and the Jackson County FOC at 517-788-4470.

'Going Paperless' — Courts Keep Parties Informed Electronically

(*continued from page 8)*

subscribe, but standard text messaging rates apply.

In the United States, West Virginia is using new trends in technology by allowing child-support payers and payees to receive notification about child support via text or e-mail. Parties in West Virginia can register to receive notifications via text and e-mail when a payment is received in their case. The goal is to eliminate the need for parties to regularly check the Support Payment Information website and to simplify access to information. It is anticipated this service may also help reduce the number of calls support specialists receive. Even though the service is free to users, normal text or e-mail fees may be charged based on the individual's service provider. In addition, West Virginia is providing employers with a new option to receive income withholding orders electronically.

THE LAW

The Federal Social Security Act (the act) requires all states to provide monthly notifications, sometimes quarterly, about their child-support case pursuant to 42 USC 654. Additionally, the Code of Federal Regulations (CFR) provides detailed requirements about what information the notifications must include. The CFR does not dictate how notification is to be given – it just indicates that notice must be given.

The Office of Child Support Enforcement (OCSE) in Action Transmittal 10-11, which was distributed to state agencies in November 2010, addressed the issue of alternative methods to meet the monthly notification requirement. It states: "[W]e should defer to states to determine the most effective and efficient means to meet the notice requirement in section 454 (5) of the [a]ct and 45 CFR 302.54."

States must meet all the federal requirements for giving notice of child support. However, the federal government has given states discretion to decide how to notify custodial parents of assigned collections. States must be sure that all parties receive this information in a timely manner. An option for parties to receive notification by traditional mail must also be available for those who prefer that method of notification.

Electronic notifications for child support could end up saving IV-D resources, manpower, and provide instant notifications to both the payer and the payee. West Virginia is paving the path for other states to use alternative methods for child-support notifications. These alternative methods for child-support and court notifications will help courts take advantage of current trends in technology and our mobile world, and will help courts save money in the long run.

For more information on electronic communications, contact Elizabeth Stomski, FOCB management analyst, at 517-373-5975 or stomskie@courts.mi.gov. Also, the West Virginia Bureau for Child Support Enforcement can be reached at 1-800-249-3778.

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

***Arutoff v Arutoff*,** unpublished opinion per curiam, issued June 23, 2011 (Docket No. 300351). The trial court should not have solely relied on the custody order when establishing the custodial environment.

***Carlson v Carlson*,** published opinion, issued June 28, 2011 (Docket No. 292536). The trial court should consider whether a defendant possesses an actual ability and likelihood of earning imputed income, even if the reduction in income was voluntary.

***Smith-McCormick v Payne*,** unpublished opinion per curiam, issued June 30, 2011 (Docket No. 302019). If a party properly objects to a referee's report, the trial court must hold a de novo hearing.

***Beach v Hyman*,** unpublished opinion per curiam, issued June 30, 2011 (Docket No. 302626). The court should not order a change in the parties' custody arrangement without first determining whether the child had an established custodial environment with either or both parents and whether the arrangement was in the child's best interests.

***Kloostra v Kloostra*,** unpublished opinion per curiam, issued July 19, 2011 (Docket No. 302006). Child-custody orders will be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on an issue.

***Coletti v Coletti*,** unpublished opinion per curiam, issued August 16, 2011 (Docket No. 303111). Where defendant filed a motion for change of domicile and parenting time for a second time but provided no evidence that the change in residence would benefit the child, the trial court properly concluded that defendant failed to establish that proper cause existed to revisit the custody order.

***Anderson v Anderson*,** unpublished opinion per curiam, issued September 16, 2011 (Docket No. 299486). Where defendant has not had overnight visits with his child and is not entitled to a parenting-time offset, defendant's child-support obligation should be calculated with the defendant having zero overnights.

***Hessburg v Hessburg*,** unpublished opinion per curiam, issued September 15, 2011 (Docket No. 299942). A motion for a custody hearing can be denied if a party failed to establish by a preponderance of the evidence that proper cause or a change of circumstances existed to warrant a change in custody.

***Mitchell v Mitchell*,** unpublished opinion per curiam, issued September 15, 2011 (Docket No. 303257). A trial court cannot sanction a parent in a custody proceeding for failing to provide the court with information about a third party.

THE PUNDIT can be accessed online at:

http://courts.michigan.gov/scao/resources/publications/focbnewsletters/focbnews.htm