

## Jeff Albaugh Receives Dan Wright Lifetime Achievement

[ED NOTE: The following is excerpted from Friend of the Court Bureau Director Steve Capps' speech introducing and awarding the Daniel J. Wright Lifetime Achievement Award to Jeff Albaugh at the Adoption Day Ceremony on Nov. 25, 2014.]

I am excited on behalf of the Supreme Court and the Department of Human Services to present the Daniel J. Wright Lifetime Achievement Award to Jeffrey S. Albaugh; especially so because I was uniquely privileged to have worked for both men.

Although Dan Wright had a long career in law, it was during the last decade of his life that he found his true calling in child welfare issues. Dan's first assignment was the near impossible task of creating a consensus to convert the state of Michigan to a single statewide child support enforcement system. He worked closely with all friend of the court offices and brought them together to accomplish what today is referred to as the *Michigan Miracle*.

But, as the children's song notes, sometimes even a miracle needs a hand. Dan was lucky enough that the friends of the courts had elected leaders who were equally up to the task to do what was considered impossible. One of those leaders was Jeff Albaugh.

Jeff was the perfect foil for Dan. Dan dispelled conflict with his disarming humor. Jeff could do the same with a lift of the eyebrow and a lighthearted barb. Dan had the faith and backing of his administration. Jeff had the faith and backing of his fellow friends of the court. Both were serious, smart, and knew how to get things done. They developed a relationship based on mutual respect and trust. And so the miracle was born.

Michigan is sometimes known as the birthplace of the modern child support program because it created the Friend of the Court in 1919. Governor Milliken appointed Jeff as the Calhoun County Friend of the Court in 1980.

(continued on page 6)



**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.**

### INSIDE THIS ISSUE

<i>Reflections from Director Corrigan</i> .....	2
<i>Reflections on the Child Support Revolution of the Last 35 Years</i> .....	3
<i>Catching Flies With Honey — A Sweeter Approach to Customer Service</i> .....	4
<i>Child Support Information: — To Share or Not to Share</i> .....	5
<i>2014 Partner Forum Recap</i> .....	7
<i>Legislative Corner</i> .....	11
<i>The Legal Corner</i> .....	15

## Reflections from Director Corrigan

By: Director Corrigan, Former Director of the Michigan Department of Human Services



The end of 2014 marked the end of my tenure as director of the Michigan Department of Human Services. I believe DHS is in better health than it was four years ago when I arrived.

It's our staff members who deserve the most credit for our success — people like our employees in the DHS Office of Child Support. I have the highest regard for OCS, Friends of the Court, judges, prosecuting attorneys and other court staff for their professionalism in a tough job. You have a special place in my heart. It was a privilege working with you.

You've been strong advocates for children by making sure they receive the child support they need and deserve.

Before my tenure as director, I served for 19 years on the Michigan Supreme Court and Court of Appeals. I became involved with child support after I became chief justice in 2001, and remained involved in child support as liaison justice at the court until 2011.

My participation in child support issues taught me how critical the problem of fragmented families is. I believe this is the root of all of our poverty issues. I'll be at a think tank in Washington, D.C., beginning in 2015 and will continue to work with others on this problem. I will pray for success.

A highlight of my career was being involved in the so-called "Michigan Miracle" during those years. Michigan transitioned to a statewide system and averted \$150 million in penalties.

State Court Administrative Office of Child Support and Child Welfare Director Dan Wright was instrumental in our success. Dan died in 2012. We remember him with an award to recognize his outstanding work for Michigan's children. It's handed out every year on Michigan Adoption Day. This year, I received a wonderful surprise: the Daniel J. Wright Lifetime Achievement Award. I was honored to share this award with Jeff Albaugh, a stalwart in the child support community and a great citizen of Michigan. I couldn't have done it without the many outstanding staff members I have worked with in the courts and at DHS.

I leave DHS knowing that the department is in good hands. We have strong leadership and outstanding employees.

I'll leave you with some words of advice. They come from my daughter, who's an improv comedian. When I first saw her on stage, I couldn't imagine how my little girl could do this. It was nerve-wracking. She was doing improv, which involves thinking on your feet and responding to what the other comedians say.

She told me, "Mom, I'll tell you what the key to good improv is. No matter what the other comedian says, you respond, 'Yes, and.' That makes good comedy. Responding with 'Yeah, but,' never makes for good comedy."

The same can be said for what we do at DHS. Success depends on building up, not tearing down. I've been handing out cards that include this message. I ask you this: "Don't say, 'Yeah, but ...' Say, 'Yes and...'" The Office of Child Support has been very good at doing this. You've said "yes and" to innovations that have improved the child support system. Keep it up!

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## *Reflections on the Child Support Revolution of the Last 35 Years*

*By: Thomas M. Robertson, retired Executive Director, Prosecuting Attorneys Coordinating Council*

When I graduated from Law School in August 1977, I joined a small private practice and after four months decided I needed a new career path. I joined the Isabella County Prosecutor's office in March 1978, where my duties included child support, juvenile court, district court, and county civil work. It was definitely an interesting time. My first jury trial was for running a stop sign. Yes, traffic offenses were misdemeanors back then.

The statewide Michigan child support system and many of our laws were in their infancy. The only genetic tests were ABO blood tests, and results could only be used to exclude paternity. The state matched the federal participation rate for everyone; the only financial contribution made by the county was for space and overhead. A mag card typewriter (Google it) was state-of-the-art. We used fill-in-the-blank complaints and orders.

Paternity trials were common. You would mark the child as an exhibit and allow the jury to compare the child's resemblance with the putative father. The first major change in genetic testing was the development of Human Leucocyte Antigen (HLA) testing, which calculated a probability of paternity. Because the law prohibited using the test to establish paternity, I filed an appeal claiming it violated the mother and child's right to equal protection of the law. You can read about my unsuccessful result in *Klein v Franks*, 111 Mich App 316 (1981).

I became the Assistant Executive Director for the Prosecuting Attorneys Coordinating Council in March, 1981, but my interest in Michigan's child support system continued. In 1982, I attended the first of countless meetings to establish the Michigan Child Support Enforcement System (MiCSES), a statewide, integrated child support computer system.

Through the 1980s and 1990s, we developed separate computer modules for prosecutors, friends of the court and the Office of Child Support. It served us well, but federal rules required one integrated system, and a very painful transition to the current system. I was privileged to have continually served on the oversight committee established by then DHS Director Doug Howard that was formalized into the Program Leadership Group (PLG) by former OCS Director Marilyn Stephen. The system has come a long way since that painful integration of the modules, and continues to improve in efficiency and performance under the leadership of current OCS Director Erin Frisch and my remaining colleagues on the PLG.

But let us return to that other revolutionary factor, genetic testing. Not satisfied with the *Klein* result, the Prosecuting Attorneys Association of Michigan made the admission of HLA testing to establish paternity a legislative priority. I testified before Senator Basil Brown and Representative Perry Bullard, and legislation was passed that allowed science to determine paternity. Improvements to that legislation were made over the decades, including the recent passage of the Genetic Parentage Act and the Summary Paternity and Support Act.

The revolutionary changes continue with the passage of public acts allowing all child support services to be consolidated in one county agency. It's all part of the child support plan to provide holistic, effective services to help children succeed. I wish you all continued success as you strive to better serve Michigan's children and families. I look forward to seeing what revolutionary changes the next 35 years provide.



**All issues of The Pundit can be accessed online at**

**<http://courts.mi.gov/administration/scao/officesprograms/foc/pages/pundit.aspx>**

## Catching Flies with Honey – A Sweeter Approach to Customer Service

You just got off the phone with another caller who has told you her whole story, more than you ever needed to give her the help she needs. Another customer is at the window angrily attacking the office and you personally. Although most individuals are generally civil and have questions that are easy to answer, many of us experience the more difficult calls on a frequent basis. Understanding how to read through the emotion and provide the most useful response can be a difficult skill to learn, but help is available.



The Michigan Judicial Institute recently conducted a segment

**When beginning a conversation with a customer, it is important to first address and deal with the customer's emotions. Our job as child support program workers is to be courteous and professional.**

addressing customer service at its Friend of the Court new employee training. Elizabeth Stomski, a management analyst at the Friend of the Court Bureau, along with Julie Izzo, customer service manager at the Oakland County Friend of the Court, provided some strategies for addressing the more difficult customer contacts.

When beginning a conversation with a customer, it is important to first address and deal with the customer's emotions. Our job as child support program workers is to be courteous and professional. As you deal with the customer's emotions, stay calm and positive. Using the customer's name also helps to personalize the conversation. Sometimes it is important to overlook early negative comments as the person needs an opportunity to vent. As you listen, ask questions and do not jump to conclusions. Empathy for the customers will help to validate their feelings and diffuse the situation. Finally, offer solutions that your office can do. The key is to focus on what can be done. As you offer a solution, summarize what you will do and when and what the customer must do (if anything) and when. The solutions must be reasonable; it is better to under-promise and over-deliver.

Some of the common difficult customers and some ideas for effective ways to handle the situation include:

- Hostile/Abusive callers – These callers are angry and aggressively state their issues. These calls sometimes take on a threatening tone.
  - The most effective way to handle this situation is to listen – only when people feel as though they have been heard will they be ready to hear what we have to say. Engage them in an even tone. Do not provoke the already agitated caller, but instead try to find the primary issue and assist in finding a remedy.
- Rambling callers – These callers are often interested in telling their story, sometimes with no real interest in a resolution. They may share more information than is necessary.
  - These calls are best approached by making the caller aware of time constraints and asking questions to focus the issues. If the caller cannot offer a specific problem or question, the caller needs to understand that you need to open the line for additional callers.

*(continued on page 8)*

## Child Support Information — To Share or Not to Share

By: Maureen Peterson, Kalamazoo County Friend of the Court Analyst

“Please give me his address.” Or “Please give me her employer’s name and address.” Or “Where did that large payment come from?” These are a few of the many questions Friend of the Court (FOC) employees are faced with daily. When the questions come from the plaintiff or defendant of the case, the staff knows what can be shared and what cannot be shared. The task becomes difficult when the entity asking the question is their very own circuit court, an attorney, child protective services, or probation and parole. How much information the friend of the court can share is one that has caused confusion with staff.

**The first question to ask yourself in deciding whether to share information: does providing this information further the IV-D plan? If so, the information can probably be shared.**

The friend of the court users group had the privilege of having representatives from the Office of Child Support (OCS) and the State Court Administrative Office (SCAO) attend and present at the November 2014 meeting to address what entities can have access to FOC information. Keegan Malone and Kelly Morse represented OCS and Dan Bauer represented SCAO. The FOC is an interesting bridge as circuit court employees but also as the enforcement arm of court orders for the IV-D (child support) program.

The following questions and answers serve to provide information on some difficult but common scenarios. One theme will be noticed in the answers: *pursuant to the IV-D Plan*. If the information sought does not further the IV-D plan, then the information cannot be

shared.

**Q.** Can the FOC provide account summaries to housing agencies such as MSHDA and HUD?

**A.** MSHDA and HUD can register with MiChildSupport and obtain payment history from MiCASE. Private housing authorities that accept MSHDA and HUD vouchers do not have log-ons to MiChildSupport, but could have a computer terminal in the apartment office that allows the client to pull up the client’s individual MiChildSupport information and give it to the private housing authority manager.

**Q.** Can FOC provide personal information to employers, insurance companies (life, health or disability), social security or payroll companies (sources of income)?

**A.** If the information requested related to a IV-D activity, yes. For example, XYZ Company has 2 employees named Joe Smith. The FOC can give personal information, such as middle name, social security number, and date of birth, to assist the source of income withholding the child support from the correct Joe Smith. As for social security, the FOC can disclose information for establishment or enforcement of Child Protective Services (CPS) custody order if it’s consistent with the IV-D plan. (continued on page 8)



## Jeff Albaugh Receives Dan Wright Lifetime Achievement Award

(continued from page 1)

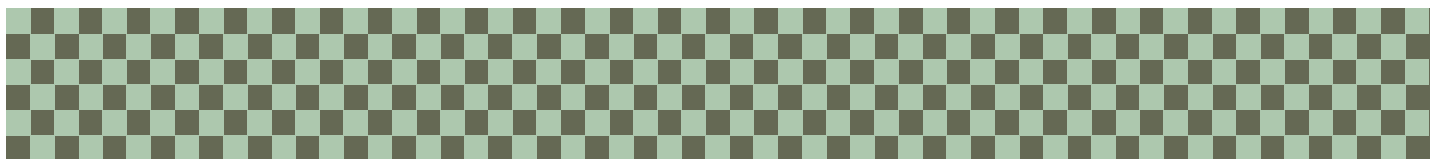
This means that Jeff has been Friend of the Court for over one-third of the life of the country's oldest child support system. During that time, he has served the citizens of Calhoun County well. As Allegan County Friend of the Court, Mike Day pointed out when he nominated Jeff for this award, Jeff's office has been responsible for collecting over \$600,000,000 in child support.

Success is not measured in longevity or dollars alone. In 1982, Jeff was involved in helping to rewrite the Friend of the Court Act. That Act along with the Support and Parenting Time Enforcement Act, ushered in sweeping changes to ensure that children received the child support necessary for their sustenance. The legislation also did something equally important. For the first time, legislation recognized that children not only had the right to support from their parents, but that children had the right to have a court recognize and enforce a child's right to have access to *both* parents. It is interesting to note that two weeks ago, the federal government issued a proposed regulation recognizing the value of establishing parenting time for *America's* children – 32 years after Jeff Albaugh was involved in making that goal a reality for *Michigan's* children.

Far from being a high water mark in Jeff's career, the 1982 legislation was only a beginning. When Governor Engler and then-Chief Justice Corrigan recognized a need to update Michigan's family law, they turned again to Jeff Albaugh. Jeff's contribution to sweeping Friend of the Court legislation in 2002 opened the doors to the collection of millions of dollars in previously uncollectible support. Jeff's contributions were so significant, that both Justice Corrigan and the legislature committed to consider more legislation. In 2004, Jeff led an effort to adopt new reforms that began to address the plight of destitute parents who owed child support – another issue that the federal government is just now beginning to recognize and address. In 2005, when the federal government reduced funding to the state's child support program, Dan Wright and then Office of Child Support Director Marilyn Stephan, immediately decided that Jeff was indispensable to solve the resulting funding crisis. In 2009, Jeff, on behalf of the Friend of the Court Association, worked with legislators of both houses and both parties to pass cost-saving measures.

Even as we honor him with a lifetime achievement award, Jeff continues to lead new initiatives to further enhance children's access to support and parenting time. "It's a Wonderful Life" is a movie that explores the theme of how seemingly innocuous acts on the part of one person can significantly impact the lives of others in his community. Jeff's contributions have had far-reaching consequences beyond his community. But, that doesn't mean that his community is lacking for his influence. Indeed, Jeff has served as a court administrator, county commissioner, and undersheriff in Calhoun County. He served on the Marshall School Board for 13 years – even serving as its president. Jeff is the Marshall Township Treasurer – a post he has held for the past 18 years. These are not positions of personal aggrandizement. No one cheers the school board or lauds the tax man. Rather, they represent Jeff's desire to serve.

The Wright Award is about children. By his efforts, Jeff has impacted the lives of countless children - providing for their support monetarily and through the opportunity to have a relationship with their parents. His work for Marshall Township and Marshall Schools, and his volunteer work will impact generations. He has, time and again, helped to reinvent the country's oldest child support system and improved the lot of the state's children in the process. His influence is immeasurable.



## 2014 Partner Forum Recap

Once again, partners from the child support program gathered to reflect on a year of work, learn from each other, and look ahead to the work in the year to come. The Partner Forum Meeting took place in November 2014. The meeting was a chance for the partners from the various program offices to come together to discuss visions for 2015.



The meeting opened with comments by State Court Administrator John Hohman, who explained the role that SCAO plays as a partner in the program. SCAO is here to provide services and help the courts. We are not here as a regulatory agency.

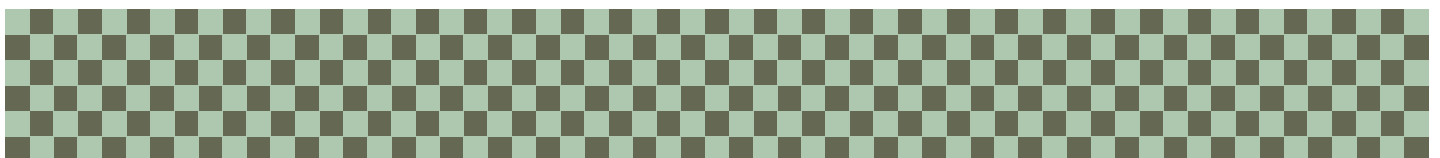
There were presentations on pilot programs in four counties:

POWER (Providing Opportunities for Work, Education, and Respect) Court, a project out of Wayne County, is focused on addressing barriers faced by IV-D participants. Stephanie Witucki, Wayne County Referee, explained that the program seeks to avoid a penalty-based approach, including sanctions such as jail time for failure to meet support obligations. POWER intends to offer remedies to the source of the problem. Some of the programs POWER offers are: GED preparation, work training, mental health counseling, and financial advice.

Terry Novakoski of the Kent County Friend of the Court presented about Referral for Employment, Asset Development, Cooperation, and Hope (REACH). This program in the Kent County Friend of the Court focused on assisting clients with financial counseling, parenting classes, and employment opportunities. REACH was offered to limited income individuals. This program has now been completed.

ADAPT (Acquiring DNA and Paternity Timely) is a pilot program in Genesee County. Jack Battles from the Genesee County friend of the court explained that ADAPT is a paternity establishment project that will be conducted at Hurley Hospital and Hurley Hospital's Prenatal Clinic. The project utilizes a hybrid paternity establishment process, with the Genesee County Friend of the Court and the Genesee County Prosecuting Attorney's Office working together to provide education to families at the hospital regarding their paternity establishment options and assisting families with early genetic testing, expedited filing, and processing of their court case.

Eric Stevens, of the Muskegon County Friend of the Court, presented on the Specialty Establishment and Enforcement Docket (SEED) program. This project helps parents overcome hurdles they face in meeting their monthly child support obligation and facilitates a consistent relationship between the child and both parents. Parents admitted to the program must comply with the requirements, which may include parenting classes, substance abuse treatment, or employment assistance. *(continued on page 10)*



## Catching Flies with Honey – A Sweeter Approach to Customer Service

*(continued from page 4)*

- Baiters – one who is going to try to trap you in an argument or lock you into a position
  - For this situation, it is important not to argue with the customer. Rather, speak softly so that the customer must be quiet in order to hear you. Also, these customers like to have control, so ask for the customer’s opinion, which gives them a sense of control by providing the answer.
- Mental illness – Callers with mental illness may require a conversation that entails a lot of repetition and detailed explanations. These calls may be a bit more time consuming, but they typically conclude without incident.
  - In addressing a caller with mental illness, it is a good idea to remember that he or she may not be able to clearly articulate a question or concern right away. Patience and follow-up questions will go a long way in helping to find a resolution.

While there are many other situations that may occur, the tactics shared above should help. In dealing with difficult situations, remember two things: do not take any attacks personally and remember to uphold the professionalism of your office and the child support program. If you have any questions about handling customer service situations, or would like to discuss training opportunities for your county, please contact Liz Stomski at [stomskiE@courts.mi.gov](mailto:stomskiE@courts.mi.gov) or at 517-373-3769.



## Child Support Information- To Share or Not to Share

*(continued from page 5)*

**Q.** Can FOC provide information to CPS, foster care workers from private agencies, or the prosecuting attorney for abuse and neglect cases?

**A.** Yes, confidential information from MiCSES can be shared with state agencies that administer Title IV-B and IV-E programs. Pursuant with 45 CFR 303.21(d), information that may be disclosed to the agency depends on the person’s relationship with the child. For a custodial parent, non-custodial parent, or putative father, the following may be disclosed:

- Name; Address; SSN; Employer’s Name; Employer’s Address; FEIN; wages, income, and benefits of employment, including healthcare coverage; and
- Type, status, location, and amount of any assets, or debts owed by or to, any such individual.
- Per Office of Child Support Enforcement Information Memorandum-12-02, when locating a relative (grandmother, grandfather, aunt, uncle, etc.) for placement only, the first 6 data elements can be shared.
- Individual’s information cannot be disclosed if family violence indicator is active.
- Federal Tax Information and FIDM cannot be disclosed.

In addition, the FOC can provide information to the Prosecuting Attorney to further the investigation if required by the court, state law, or regulation [(MCR 3.218(C)(1)]. Providing information to the PA for a neglect case would be consistent with the IV-D plan, however the regulation does not state it is *required* but the FOC *may* disclose. If the PA is looking for an address of a person in common, this is not allowed as it does not further a IV-D action. *(continued on page 9)*



## Child Support Information- To Share or Not to Share

(continued from page 8)

**Q.** Can the FOC provide information to district, circuit, and probate courts? Can the court subpoena the FOC records?

**A.** FOCs can only disclose information if it furthers a IV-D purpose. The other courts must retrieve the information from the originating source (court record). The FOC cannot give information from an FOC records to the other courts. If the information was given to a FOC employee outside of court proceedings, that information cannot be shared.

MCR 3.218(A) states that “Friend of the Court Records are not subject to a subpoena issued under these Michigan court rules.” SCAO recommends courts respond by contacting the attorney sending the subpoena, sharing with them the court rule, and requesting that they rescind the subpoena. It also depends on the crime being prosecuted or purpose of disclosure. Under MCR 3.218(C)(1), the FOC must disclose information if disclosing the information is necessary for enforcement of the court’s order under Title IV-D. So, disclosing the payment record to the prosecutor would be permitted. Similarly, providing the account balance due to the court for a pre-sentence report (if the probation officer would aid in collecting support) would be permitted as well.

**Q.** Can the FOC provide information to an attorney? What if the attorney requests information on the other party (not attorney’s client)?

**A.** If the attorney is the current attorney of record, yes information may be shared. If the attorney is seeking information to collect legal fees, no. Information on the other party can only be given if the FOC is the originator of the documents requested. For example, a print out from MiCSES (Michigan Child Support Enforcement System) can be given, however copies of the other party’s W-2 is not allowed. The attorney can request/subpoena records from the other party.

**Q.** Can information be shared with probation/parole staff/Michigan Department of Corrections or other local corrections staff?

**A.** Only to carry out IV-D purposes, not to help with information for a client in common.

**Q.** Can the FOC provide information regarding the absent parent to emancipated dependents?

**A.** No. The child is not a party of the case. Individuals have a right to the information pertaining only to themselves.

The FOC must comply with federal, state, and court rules on the information contained within the FOC files. With all the regulations and statutes, sharing information with other entities boils down to if the information sought is going to be used to further the IV-D purpose. It is important to note that information on parties with family violence or marked as confidential by the court have further restrictions to protect a party. These scenarios only represent a small amount of what workers may actually experience. As new or different scenarios arise, the first question should be whether providing the information furthers a IV-D purpose.

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## 2014 Partner Forum Recap *(continued from page 7)*

Additional information about POWER Court and the SEED program can be found in the August 2014 edition of the Pundit. <http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FOC/Documents/Pundits/2014-08-Pundit.pdf>

To close out the morning session, attendees were divided into small groups for focused discussions. The groups were presented with a different question relating to a present or upcoming issue in the child support program. The groups brainstormed to come up with innovative ideas on how to handle the following issues:

- Development of a program to ensure customers with Limited English Proficiency and Sensory Impairments are provided culturally appropriate services.
- Create a program identifying cases with incarcerated noncustodial parents, as well engaging them at critical points during their incarceration and release.
- Create a program encouraging parents who owe child support to pay into education savings accounts for their children.
- Develop a program implementing MCL 552.631 which allows the court to place a support payer under the supervision of the FOC. Identify the types of cases on which this would be used, the recommended approach to the required “supervision,” the expected outcomes, and elements necessary for proper evaluation of the program’s success.
- Create an innovative and efficient process to transport individuals arrested in other counties on civil bench warrants.
- Identify ways modern technology can be used more efficiently in court hearings and support counties moving to paperless litigation files.

After a chance to network over lunch, the afternoon session started with a panel discussion and Q&A on the morning pilot program presentations. The panel was made up of Program Leadership members and the presenters from the morning. Erin Frisch, Director of the Office of Child Support closed the Forum, thanking everyone for the work that they do and encouraging everyone to help push the program forward. The attendees were then able to meet with their assigned Work Improvement Teams (WITs) for a rare in-person meeting. Many participants view the chance for the WITs to meet in person as extremely beneficial. Typically, WIT meetings occur as conference calls, so the Forum offers a great opportunity to meet face to face.

Overall, the Child Support Program has made great progress over the last year. Through pilot programs such as those highlighted above, the Program should continue to move forward. Although hard work lies ahead, the Forum helps to highlight the partnership and resources available as the Program continues to move forward on its strategic goals released in 2013.

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During the Legislature's final sessions of 2014, it passed 24 bills relating to child support.

### **2014 PA 377 – Criminal Nonpayment of Support (effective 3-17-15)**

The Act changed the former requirement that a prerequisite to prosecution was that the defendant had appeared in or received notice by personal service in the defendant's child support case. The new requirement simply states that the court must have had personal jurisdiction over the defendant in the defendant's child support case.

The second change clarified that the court does not have to enter a separate restitution order for the amount of unpaid support. Instead, the restitution order will require the defendant to comply with the underlying child support order. This change allows the FOC to continue to collect the past due amount using all state and federal child support remedies, and maintains the child support distribution priority instead of the restitution distribution priority.

### **2014 PA 378 – Support and Parenting Time Enforcement Act MCL 552.601 et. seq. (effective 3-17-15)**

#### Change of Address

The new law allows the OCS to submit queries to the National Change of Address Database maintained by the United States Postal Service to determine whether the address is still valid and, if it is not valid, obtain a new address to which mail is deliverable.

#### Contempt

The new law allows the Supreme Court to determine the procedure for contempt actions, which may involve different ways of scheduling hearings and compelling the person's appearance.

Section 31 allows the court to initiate proceedings to enforce a conditional commitment order. That proceeding may be initiated by issuing a warrant for the contemnor's arrest to bring the contemnor before the court to answer the failure to satisfy a condition.

Section 32 was amended to provide that the FOC may accept a voluntary surrender of a person for whom a warrant has been issued, and either accept the bond or arrange for a prompt hearing before the court.

Section 33 was amended to consolidate all bases for contempt in one section. The section also now allows the court to impose a jail sentence that is on compliance with terms and conditions that constitute due diligence to continue to obey the order.

Section 33 also was amended to clarify that the court may impose conditions when placing a person under the FOC supervision that include, but are not limited to, those specifically stated in the statute. Formerly, the statute appeared to limit the conditions to those stated in the statute.

Finally, Section 33 corrects the presumption that a person has currently available resources from a weekly amount (four weeks) to a monthly amount to match the support payment cycle.

Section 36 was amended to allow the court to assess the actual costs of enforcing a spousal support only order.

Section 37 was amended to allow the court to enforce due diligence requirements. Formerly, the court could find that a payer failed to exercise due diligence, but could only impose incarceration as a sanction if the court ordered a purge payment that was within the payer's ability to pay. Now, the court can impose incarceration as a sanction to compel the payer to exercise due diligence that is within the payer's ability to perform.

Section 37 also was amended to create a conditional incarceration requirement – sometimes referred to as *pay or stay*.

- The court may order the person to pay a certain amount or be committed to jail. If the payer fails to pay, the court must hold a hearing to determine why the payer did not make the payment and whether the payer has the ability to pay before committing the person to jail.
- The court may order commitment, but may stay the order conditioned upon the payer making the payments.
- The court may order a maximum term of commitment and reduce that maximum for each complying payment the payer makes.



Section 37 also allows the court to enter similar orders to enforce due diligence, including allowing the court to incarcerate a payer with the right to leave jail to comply with due diligence conditions.

Section 44 was amended to eliminate the statutory procedure for setting a parenting time or custody contempt hearing in favor of the Supreme Court establishing those procedures. The amendment also allows the FOC to attach a copy of the allegations a person claims constitute a denial of parenting time instead of incorporating them into a pleading.

#### **2014 PA 379 – Revised Uniform Reciprocal Enforcement of Support Act (effective 3-17-15)**

##### Fee Consolidation Corrections

In an earlier session, when the Legislature consolidated all fee provisions in the Revised Judicature Act, it failed to include one fee. The Act repeals that fee.

#### **2014 PA 380 – Support and Parenting Time Enforcement Act (effective 3-17-15)**

##### Redirection

The amendments change the requirement for redirecting support. Previously support could be redirected to the person *legally* responsible for the child. Now, support can be redirected to the person who is *providing* the care and support to the child.

#### **2014 PA 388 – McCauley-Traxler-Law-Bowman-McNeely Lottery Act (effective 3-22-15)**

The Act clarifies the functions performed by The Michigan State Disbursement Unit (MiSDU), the Michigan Child Support Enforcement System (MiCSES), the Department of Treasury and Lottery Bureau concerning the intercept process.

#### **2014 PA 381 – Office of Child Support Act (effective 3-17-15)**

##### Allocation and Distribution of Child Support

The Act makes the OCS instead of SCAO responsible for determining how child support payments are allocated and distributed.

#### **2014 PA 382 – Friend of the Court Act (effective 3-17-15)**

##### Friend of the Court Accounting and Payment Responsibilities

The FOC Act was amended to confirm that the MiSDU now processes payments and distributions. Local FOC offices retain the option of accepting payments from support payers, but must forward the payments to MiSDU for final processing.

##### Credit Reporting

The Act also was amended to move responsibility for credit reporting from the SCAO and the FOC to the IV-D Agency. This move is designed to facilitate automated reporting through the MiCSES, which is under the control of the OCS in the executive branch.

##### Alternative Dispute Resolution

The amendments correct some drafting errors in previous laws by making a clearer distinction between statutory mediation and other alternative dispute resolution. They also provide that alternative dispute resolution plans must have a domestic violence screening component.

The amendments remove many statutory qualifications for persons who conduct alternative dispute resolution and instead, allow the SCAO to establish qualifications based on the type of ADR offered.

##### Compensation for Attorney Assisting Friend of the Court and Grievance Reporting

The amendments change the grievance-reporting requirement from biannually to annually and clarify that appointment of an attorney for the FOC and his or her compensation is a judicial determination and not one to be made by the county board of commissioners.

(continued on page 13)



- 2014 PA 364 – Paternity Act (effective 3-17-15)**
- 2014 PA 365 – Genetic Parentage Act (effective 3-17-15)**
- 2014 PA 366 – Summary Support and Paternity Act (effective 3-17-15)**
- 2014 PA 409 – Acknowledgment of Parentage Act (effective 3-30-15)**

#### Paternity Establishment

These Acts all address new ways to establish paternity.

2014 PA 409 expands the list of individuals who may serve as witness for an acknowledgement of parentage.

2014 PA 365 creates the Genetic Parentage Act. The Act provides that parents who wish to establish a child's paternity may take a genetic test by an accredited laboratory and, if the test establishes a likelihood of paternity greater than 99 percent, the man is conclusively determined to be the child's father.

2014 PA 364 amends the Paternity Act to match its provisions to the Genetic Parentage Act.

2014 PA 366 creates the Summary Support and Paternity Act. The Act provides that the IV-D agency may commence an action for support, or paternity and support, by filing a statement (much like an affidavit or general testimony form in interstate cases) with the court. If the statement seeks to establish paternity, the only way to answer is by showing that a previous action excluded him as the father or through genetic testing. If the party does not answer, the issue of paternity is deemed admitted. The party may also acknowledge paternity in writing.

The parties may consent to the amount of support. If not, the IV-D agency shall calculate support and send out a notice (just like it does today for support modifications). If a party objects, the court will hold a hearing to determine support. If a party does not object, the court will generally enter an order incorporating the amount recommended.

The Act also provides for custody and parenting time determinations as the parties agree or after a review and recommendation from the FOC and court order.

- 2014 PA 367 – Paternity Act (effective 3-17-15)**
- 2014 PA 368 – Revocation of Paternity Act (effective 3-17-15)**
- 2014 PA 369 – The Family Support Act (effective 3-17-15)**
- 2014 PA 370 – Uniform Interstate Family Support Act (effective 3-17-15)**
- 2014 PA 371 – Revised Uniform Reciprocal Enforcement of Support Act (effective 3-17-15)**
- 2014 PA 372 – The Emancipation of Minors Act (effective 3-17-15)**

#### Transfer of Prosecuting Attorney Duties

The Acts allow, but do not mandate, that the prosecuting attorney and DHS may transfer the duties assigned to the prosecuting attorney to one of the following:

- The FOC, if the chief circuit judge also approves.
- An attorney employed or contracted for by the county.
- An attorney employed or contracted for by the DHS.

- 2014 PA 374 – Revocation of Paternity Act (effective 3-17-15)**
- 2014 PA 376 – Revocation of Paternity Act (effective 3-17-15)**

#### Revocation of Genetic Paternity Establishment

2014 PA 376 amended The Revocation of Paternity Act to provide procedures for setting aside a determination of paternity based on genetics (Genetic Parentage Act, Paternity Act as amended, and Summary Support and Paternity Act).

2014 PA 374 amended the Revocation of Paternity Act to clarify that the court must make a best-interests determination before entering an order setting aside paternity.



**2014 PA 373 – Support and Parenting Time Enforcement Act (effective 3-17-15)**

Specialty Court for Child Support

2014 PA 373 amends the Support and Parenting Time Enforcement Act to create an alternative contempt track specialty court.

**2014 PA 375 – Social Welfare Act (effective January 1, 2016)**

Preassistance cooperation

2014 PA 375 amends the Social Welfare Act to allow the DHS to deny benefits under the Family Independence Program to a person who fails without good cause to comply with child support requirements.

**2014 PA 532 – Revised Judicature Act (effective April 14, 2015)**

Fees

2014 PA 532 amends the Revised Judicature Act to change the former judgment entry fee (\$80 when custody or parenting time is determined or modified, and \$40 when only support is determined or modified) to a filing fee.

**2014 PA 526 – Amends Child Custody Act**

If the parties agree, allows for the appointment of a “parenting coordinator” to help implement court orders related to parenting time in disputed cases. Provides guidelines for court orders requiring parenting coordinators and scope of parenting coordinators’ duties. Directs SCAO to develop standards for parenting coordinators’ training and qualifications.

**2014 PA 159 – Creates Uniform Collaborative Law Act**

Provides for pre-filing settlement of DR cases.





## THE LEGAL CORNER

A summary of recent Michigan Supreme Court and Michigan Court of Appeals decisions.

**Michigan Supreme Court and Court of Appeals Decisions – see [http://courts.mi.gov/opinions\\_orders/opinions\\_orders/pages/default.aspx](http://courts.mi.gov/opinions_orders/opinions_orders/pages/default.aspx)**

**Court of Appeals**

**Diez v Davey**, \_\_\_ Mich App \_\_\_ (2014). In calculating child support, the trial court clearly errs where it relies on an expert's substituted business judgment as to how much income a business owner could make rather than calculating income based on how the owner historically runs the business. If this historical analysis does not reveal evidence that a party has used the business to hide income for child support purposes, the Michigan Child Support Formula does not support imputing income to a business owner as if he or she runs the business in a particular manner favored by an expert rather than relying on the party's reasonable historical business practices.

Michigan Court of Appeals holds that funds distributed by an S Corporation to shareholders to actually offset payment of taxes on earnings retained by the corporation should not be included as income to the shareholder-parent under the MCSF.

**Sulaica v Rometty**, \_\_\_ Mich App \_\_\_ (2014). Where the moving party seeking a change in domicile has sole legal custody but joint physical custody, the trial court need not analyze the factors set forth in MCL 722.31(4), but must analyze whether the proposed move would change the established custodial environment.

**Sprenger v Bickle**, \_\_\_ Mich App \_\_\_ (2014). An alleged father has no standing under the Revocation of Paternity Act where the evidence demonstrates he had knowledge that the mother was married at the time of conception. For purposes of subsection 3(a) (i), when it is unclear whether conception occurred before or after a divorce judgment, courts should ask "whether the alleged father knew or had reason to know that the child's mother was married before her divorce was finalized."

**Mahone v Noble**, unpublished opinion per curiam, released October 23, 2014 (Docket No. 320872). Even where a party fails to timely object and the issue is unpreserved in a motion to modify custody, the trial court clearly errs when it fails to make any determination or make any findings on the record as to whether an established custodial environment existed with either party, and the error is not harmless because this decision determines the proper burden of proof.

**Foy v Davis**, unpublished opinion per curiam, released December 9, 2014 (Docket Nos. 322015, 322018). In a de novo review of an FOC referee recommendation, the trial court must allow a party to present the same evidence that was presented to the referee where the evidence is relevant to the referee's findings and either party timely objected to those findings.

**Foerster v McKinstry**, unpublished opinion per curiam, released December 9, 2014 (Docket No. 321529). Where a trial court issued a bench opinion regarding initial custody determinations before analyzing the change-in-domicile factors, which did not become a valid court order until it was signed five days later, a harmless procedural error was committed.

**Bertolino v Bertolino**, unpublished opinion per curiam, released December 9, 2014 (Docket No. 322156). Where a court uses its discretion to order a psychological evaluation, it is not bound to consider the psychologist's conclusion in resolving a custody dispute.

**Kloosterman v Gorman**, unpublished opinion per curiam, released December 16, 2014 (Docket No. 317698). A Missouri child-support order that provides for a child's college expenses will be subject to the notification requirements of Missouri statute. But where these requirements are not met, it is within the trial court's discretion to release the parent's obligations under the order.

**Moore v Moore**, unpublished opinion per curiam, released December 16, 2014 (Docket No. 320941). Although the physical altercation that led to a domestic-assault conviction occurred before the last custody order was entered, the corroboration of the altercation, through conviction, can amount to a change of circumstances related to the best interest factors.

**Grams v Grams**, unpublished opinion per curiam, released December 18, 2014 (Docket No. 322697). A child's preference, as one of the best interest factors, can establish proper cause to modify a custody order, but is not sufficient when based on vague and generalized allegations to demonstrate that the current custody arrangement significantly affects the child's well-being.

(continued on page 16)

**THE LEGAL CORNER**

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

(continued from page 15)

**Kagen v Kagen**, unpublished opinion per curiam, released December 18, 2014 (Docket No. 318459). In a joint legal custody dispute, the decision to vaccinate children does not affect the established custodial environment and a moving party would need to establish by the preponderance of the evidence standard that vaccination is in the children's best interests, which the court must analyze according to the best interest factors on the record.

**Davis v Davis**, unpublished opinion per curiam, released December 23, 2014 (Docket Nos. 318390, 319128). The trial court erred when it considered plaintiff-mother's expenses supporting her adult children when considering spousal support.

**MICHIGAN IV-D MEMORANDUM (OFFICE OF CHILD SUPPORT)****2014-031 (December 1, 2014) Michigan IV-D Child Support Manual Section 6.03, "Income Withholding" Policy Updates Regarding Electronic Income Withholding Order (e-IWO) Processing**

This IV-D Memorandum announces updates to Section 6.03, "Income Withholding" of the *Michigan IV-D Child Support Manual*. These updates primarily focus on e-IWO processing. The Michigan Child Support Enforcement System (MiCSES) 8.10 Release (December 5, 2014) will implement an additional e-IWO acknowledgment transaction, enhancements to e-IWO error handling, and separate tracking of certain e-IWO acknowledgments.

**2014-032 (December 1, 2014) Updates to the Federal Tax Refund Offset (FTRO) Fraud Process and to Michigan IV-D Child Support Manual Section 6.21, "Tax Refund Offset"**

Fraudulent FTRO collections continue to be an issue for Michigan's IV-D program. OCS has updated the FTRO fraud process to no longer release collections on hold based on a non-custodial parent's (NCP's) confirmation to OCS that (s)he filed the tax return that generated the refund.

**2014-033 (December 12, 2014) Updates to the Child Support Recommendation (GUIDLINE Template), Determining End Dates for Child Support Obligations, and Recording Deviations From the Michigan Child Support Formula**

This IV-D Memorandum explains changes to the Michigan Child Support Enforcement System (MiCSES) GUIDLINE template as a result of changes to the *Uniform Child Support Order (USO)*. The State Court Administrative Office (SCAO) has made many updates to the USO that will be effective January 1, 2015. The GUIDLINE template will be updated in MiCSES on January 28, 2015.

**2014-035 (December 1, 2014) Updates to Michigan IV-D Child Support Manual Section 1.1.0, "Confidential/Security"**

This IV-D Memorandum announces updates to *Michigan IV-D Child Support Manual* Section 1.10, "Confidentiality/Security." Some of the updates implement new federal information-safeguarding requirements, while others refine existing security policy based on IV-D staff questions and federal guidance issued since the last update to Section 1.10.

**2014-036 (December 1, 2014) Updates to Central Paternity Registry and Birth Registry System (CPR/BRS) Policy and Introduction of Section 4.05, "Paternity Establishment" of the Michigan IV-D Child Support Manual**

This IV-D Memorandum announces updates regarding the Central Paternity Registry and Birth Registry System (CPR/BRS) combined search tool.

This memorandum also introduces Section 4.05, "Paternity Establishment," of the *Michigan IV-D Child Support Manual*. CPR/BRS policy and procedures from IV-D Memorandum 2013-031, *Central Paternity Registry and Birth Registry System (CPR/BRS) Combined Search Tool for the IV-D Child Support Program* have been incorporated into Section 4.05. Significant changes since the last publication of the CPR/BRS policy are indicated by a change bar in the right margin of the manual section and its attached exhibits. Changes in formatting are not identified with a change bar.