

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE
COUNTY JUVENILE COURT; SUE E. RADULOVICH, P.C.;
SUE E. RADULOVICH, as Next Friend of NADIA E., a
Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE
P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as
Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD;
MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a
Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of
NAOMI S., a Minor; JEREMY BRAND, as Next Friend of
KYISHIA R., a Minor; JEREMY BRAND, as Next Friend
of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY,
as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY,
as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK
DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Case No.
Hon.

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

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THE THIRD JUDICIAL CIRCUIT
OF MICHIGAN

711 COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-1413

ADMINISTRATIVE ORDER 2006 -08

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

SUBJECT: PLAN FOR ASSIGNMENT OF COUNSEL IN THE THIRD
JUDICIAL CIRCUIT

This Administrative Order rescinds and replaces Administrative Order 2006-01.

Pursuant to MCR 8.112(B) and 8.123(C), the Third Judicial Circuit (the Court) adopts the following as its Plan for the Assignment of Counsel:

I. Introduction

- A. Organization of the Plan for Assignment of Counsel. The Court presently maintains a Criminal Division to adjudicate criminal cases within its jurisdiction and a Domestic Relations Section and Juvenile Section to adjudicate cases within the jurisdiction of its Family Division. In order to take into account how cases are processed and the traditional methods of assigning counsel in these different parts of the Court, the Court's Plan for Assignment of Counsel (the Plan) is organized into three parts, each of which details how assignments for appointed counsel are made in these divisions of the Court.

II. Assignment of Counsel, Family Division - Domestic Relations Section

- A. Scope. Where appointment of counsel for an indigent party is required involving felony non-support, personal protection matters (PPO), paternity, contempt of court show cause proceedings, or other cases within the jurisdiction of the Third Circuit Court - Family Division - Domestic Relations Section, appointment of counsel shall be made pursuant to the following provisions.

- a. Printed copies of the Eligibility List shall be provided to the Bench.
- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the Eligibility List.

4. Removal From the Eligibility List.

- a. Complaints about attorneys who are assigned cases under the provisions of this Division shall be forwarded to the Committee using the Assigned Counsel Complaint/Request for Discipline form.

- (1) The Attorney Review Committee and the attorney shall be notified of instances of unexcused or unreasonable tardiness or absence of assigned counsel and other policy violations.
- (2) Upon being notified of an unexcused or unreasonable tardiness or absence of assigned counsel, the Presiding Judge shall, via first class mail, notify the attorney that another instance of unexcused or unreasonable tardiness or absence within the next six month period shall, without further notice to the attorney, result in the attorney's name being deleted from the Eligibility List. Assigned Counsel Services shall remove from the Eligibility List the names of attorneys who have failed to comply after being sent a warning letter.
- (3) For other good cause, upon being notified of other complaints against assigned counsel, the Committee shall review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.
- (4) If an attorney is removed from the Eligibility List, the attorney may apply for reinstatement if the attorney can otherwise satisfy the requirements of Section II (B1). However, the attorney may not be placed on the Eligibility List within 90 days from the removal date.
- (5) Upon being informed that an attorney has been suspended or disbarred from the practice of law or has not completed the required training, the attorney shall be removed from the Eligibility List without further notice until the attorney demonstrates training certification, and/or membership in good standing with the State Bar of Michigan.

C. Assignment of Counsel.

- 1. In order to ensure equitable distribution of assignments, House Counsel assignments are made on a rotational basis from the Assigned Counsel Eligibility List.

Family Division-Juvenile Section. For purposes of this Order, assignment of counsel for a juvenile in a neglect case shall include the assignment of a lawyer guardian ad litem. The Court will enter into contracts with providers of legal services such as Legal Aid and Defenders Association (LADA), the Michigan Children's Law Center (MCLC) and other groups of practicing attorneys to provide exclusive representation for juveniles in both delinquency and child protection proceedings including any appeals that arise out of these proceedings. These individual contracts shall govern the provisions of assigned counsel services by these vendors:

Assignment of counsel for all matters not including representation of juveniles in delinquency and child protection proceedings shall be made pursuant to the following provision.

B. Attorney Eligibility.

1. **Requirements:** Attorneys seeking house counsel assignments in the Juvenile Section are required to submit to the Office of Assigned Counsel Services, 1025 E. Forest Avenue, Bldg. A, Suite B12 the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Lincoln Hall of Justice Office of Assigned Counsel Services.
 - b. Annual proof of completion/certification of attorney training issued by the Court's designated educational entity.
 - c. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - d. A statement of prior experience in the area of juvenile law.
 - e. Membership in good standing in the State Bar of Michigan.

2. Appeals.

In addition to the foregoing eligibility requirements, attorneys seeking appellate assignments must submit a sample brief for review by the Juvenile Attorney Review Committee.

3. Designated Cases.

In addition to the foregoing eligibility requirements, attorney groups who provide representation for juveniles on designated cases must provide proof of current Detroit-Wayne County Criminal Advocacy Program (CAP) yearly certification for capital offenses.

Services shall remove from the Eligibility List the names of attorneys who have failed to comply after being sent a warning letter.

- (3) For other good cause, upon being notified of other complaints against assigned counsel, the Committee shall review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.
- (4) If an attorney is removed from the Eligibility List, the attorney may apply for reinstatement if the attorney can otherwise satisfy the requirements of Section III (B1). However, the attorney may not be placed on the Eligibility List within 90 days from the removal date.
- (5) Upon being informed that an attorney has been suspended or disbarred from the practice of law or has not completed the required training, the attorney shall be removed from the Eligibility List without further notice and until such time that compliance of the previous mentioned requirements are obtained.

C. Assignment of Counsel.

1. For those cases that are not already assigned based on contracts as indicated in Section III 3(A), house counsel assignments are made on a rotational basis from the Eligibility List to ensure an equitable distribution of assignments. A sufficient number of attorneys shall be assigned to represent all indigent parties except juveniles for each daily docket. Assignments shall be made only to attorneys who are on the Eligibility List.
 - a. Under the one judge-one family rule, attorneys shall be assigned to cover the same party if there is a pending or open case as defined in the Family Division - Juvenile Section Case Assignment Rule.
2. Scope of Assignment. The assignment of an attorney serving as house counsel shall be scheduled in half-day intervals unless assigned to represent a party in an ongoing case as previously defined. Such assignment continues until case closure.

D. Removal of Counsel

1. A judge may remove an attorney who fails to appear at a scheduled hearing for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge.
2. The Chief Judge may reassign counsel during the post-dispositional stage of a case in order to expeditiously implement this Plan as indicated in Section III (A) and to ensure that the interests of the children and the public are properly served.

- d. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
- e. Statement/description of experience in criminal law.
- f. Residence or bona fide office in Wayne County.

2. Annual Eligibility Review

- a. On an annual basis, the Assigned Counsel Services Office shall review the list of those attorneys who are certified by CAP to receive assignments and review the Michigan Bar Association membership status of all attorneys who are otherwise certified by the CAP as eligible to receive assignments. The Assigned Counsel Services Office shall then distribute a list of attorneys eligible to receive assignments to the judges of the Criminal Division. Assignments may not be made to those attorneys who are not CAP certified or who have been suspended or disbarred from the practice of law.
- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the CAP certified list.

C. House Counsel Assignment System – Arraignment on Information (AOI).

- 1. A capital (maximum sentence of life) list and a non-capital list shall be maintained by the Office of Assigned Counsel Services for assignment as house counsel.
- 2. Spot assignments in AOI courtrooms shall be made from the appropriate capital and non-capital house counsel availability lists.
- 3. Approximately six weeks prior to each calendar quarter, an official notice will be posted informing attorneys that they may sign up for house counsel assignments at the Assigned Counsel Services Office. The notice will allow one week for attorneys to sign up for a maximum of ten days per month. Attorneys are encouraged to sign up for an entire week if possible.
- 4. Attorneys will provide specific dates when they know with reasonable certainty that they will be available.
- 5. Approximately one month before the beginning of each calendar quarter, AOI judges will assign available attorneys to serve as house counsel in their respective courtrooms during the next calendar quarter. AOI judges must complete their assignments within seven (7) days.

4. When an attorney has received at least 20 assignments during a calendar year from a trial judge and/or has received at least 180 probation violation assignments from the entire Third Circuit Court Criminal Division, the Court will notify the attorney in writing that there will be no compensation for handling probation violations that exceed the calendar year limit.
5. The Office of Assigned Counsel Services shall provide the Criminal Division judges daily with the names and phone numbers of the CAP certified attorneys who have indicated their availability to do probation violation and/or spot assignments.

F. Chief Judge Assignments.

1. The Chief Judge or designee will make attorney assignments on fifteen (15) criminal cases per week. Assigned Counsel Services will identify the specific cases for Chief Judge assignment.
 - a. The assignments, with the exception of capital cases, are to be given to newly CAP certified attorneys, attorneys returning from extended medical leave and certified attorneys who have not received assignments for an extended period of time.
2. The Chief Judge or designee shall make all assignments during the week of the Circuit Court Judge's Conference.
3. The Chief Judge or designee shall make no more than eight (8) assignments to any attorney during a calendar year.

G. Administrative Assignments.

1. Assignments made as a result of case packaging are to be counted as case packaging assignments and will be reassigned by the Chief Judge. These cases do not count for purposes of regular assignment of cases.
2. Assignments made in diversion cases are to be counted as diversion assignments. No attorney is to receive more than four (4) diversion assignments in any one-quarter. These cases do not count for purposes of regular assignment of cases.
3. Assignments made to the Legal Aid and Defender's Association (LADA) are counted as Defender's assignments.
4. Thirty-Six District Court House Counsel Assignments - Assignments will be given to attorneys to represent indigent defendants who appear at preliminary examination without counsel. A sign-up date will be posted in the Attorney Lounge and in the Assigned Counsel Services Office in Frank Murphy Hall of Justice. Assignments will be made to attorneys in the order of their arrival on sign up day. Each attorney may serve only once every three months. Attorneys serving as house counsel at

originally assigned. These are termed "on-the-spot" assignments. An attorney may not receive more than twelve (12) "on-the-spot" assignments per calendar year from any one trial judge.

- b. A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge. Designated stand-ins must be CAP certified.
- c. A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Where a judge has removed an attorney from a case for failure to appear or for other good cause, the judge may also refer the matter to the Attorney Review Committee for further action, including barring the attorney from receiving further assignments.

J. Periodic Reports

Reports shall be prepared by Assigned Counsel Services and forwarded to each Judge of the Criminal Division on a monthly basis, to the Presiding Judge and the judge assigned to the two-week rotation on a bi-weekly basis, detailing the following:

- 1. The number of AOI house counsel assignments (days) received by each attorney;
- 2. The number of probation violation assignments (cases) made by each trial judge to each attorney;
- 3. The number of "on-the-spot" assignments (cases) made by each trial judge to each attorney;
- 4. The number of assignments (cases) made to each attorney during a judge's regular two-week assignment rotation period;
- 5. The total number of assignments made to each attorney by the Criminal Division Bench;
- 6. Each report shall include the names of the judges making the assignments;
- 7. In the event that assignments exceed established limitations, Assigned Counsel Services shall send an exception report to the Chief Judge or designee.

K. Compliance

- 1. The Executive Court Administrator shall notify the Chief Judge and any judge who approaches assignment limits in any calendar year. Each trial judge shall be notified when an attorney has received twenty (20) probation violation assignments from the judge (limit:

VI. Reports/Records

- A. The Court shall annually report Assigned Counsel information to the State Court Administrator's Office pursuant to MCR 8.123.
- B. The Court shall maintain all Assigned Counsel records as required by MCR 8.123 and provide those records to the State Court Administrator's Office when requested.

VII. Administration of the Plan

The Director of Assigned Counsel Services shall have overall responsibility for the administration of this Plan, under the general supervision of the Executive Court Administrator.

VIII. Reports to the State Court Administrator

Upon request from the State Court Administrator, the Executive Court Administrator shall provide a copy of the most recent annual report pertaining to appointments made under any or all sections of this Administrative Order or data on an individual attorney or judge for a period specified in the request.



Mary Beth Kelly
Chief Judge
Third Judicial Circuit

DATED: September 22, 2006

EX2

Request for Proposal for Legal Services for Juveniles.

I. Introduction.

A. Issuing Court.

This Request for Proposal (hereinafter, the "RFP") is issued by the Third Judicial Circuit of Michigan ("the Court") through the Executive Court Administrator's Office located in Room 711, Coleman A. Young Municipal Center, Two Woodward Avenue, Detroit, Michigan 48226. Further copies of this RFP may be obtained on-line at <http://3rdcc.org/>.

B. General Purpose.

The purpose of this RFP is to solicit proposals from interested attorneys or attorney organizations, such as the Legal Aid and Defender Association (LADA) or the Michigan Children's Law Center (MCLC), (hereinafter "Vendors"), who wish to provide legal representation, including serving as lawyer-guardian ad litem, for juveniles who are the subject of juvenile delinquency (delinquency) or abuse and neglect (neglect) proceedings in the Juvenile Section of the Court's Family Division (the Juvenile Section).

C. Background.

Pursuant to MCL 712A.1, *et seq.*, and MCR 3.900, *et seq.*, in Wayne County, proceedings involving juveniles in the form of delinquency and neglect proceedings are adjudicated in the Juvenile Section. The judicial resources of the Juvenile Section include the presiding judge of the Juvenile Section, six judges, and thirteen referees. Currently all preliminary examinations for neglect cases are conducted by one referee, permanently designated for this purpose. Effective July 1, 2006, the judges and referees will be divided into "teams" comprised of two specific referees permanently associated with particular judge. That is, cases assigned to a judge will be only referred to one of the

two referees who are associated with that particular judge. With the exception of preliminary examinations, all other proceedings will be conducted by the teams. Generally, each referee will have a "blended" docket consisting of both delinquency and neglect cases. However, a referee will hear delinquency or neglect cases on separate days. It is anticipated that two days a week will be devoted to delinquency cases and three days a week will be dedicated to neglect cases. "Judge demands" will be assigned to the judge to whom the referee is attached. Additionally, each referee will preside over proceedings conducted at the Juvenile Detention Center one afternoon per every two weeks.

Based on the Court's current caseload, under the system to be implemented by July 1, 2006, the typical docket of a referee will consist of 64 pre-dispositional and 109 post dispositional delinquency petitions and 20 pre-dispositional and 198 post-dispositional neglect petitions.

II. Nature of the Work.

A. General Requirements.

The Vendor shall provide competent legal representation for juveniles, including serving as the lawyer-guardian ad litem, who appear in the Juvenile Section in delinquency and neglect cases, in accordance with the Michigan Rules of Professional Conduct and all statutory requirements as set forth in the Juvenile Code, MCL 712A.1, et seq., especially MCL 712A.17d (concerning the duties of a lawyer guardian ad litem); the Michigan Children's Institute Act, MCL 400.201, et seq; the Foster Care Review Board Act, MCL 722.131, et seq.; and the Children's Ombudsman Act, MCL 722.921, et seq., as well as the Michigan Court Rules of 1985, including those provisions addressing proceedings involving juveniles, MCR 3.901, et seq.

B. Assignment to the Preliminary Examination Courtroom.

An attorney or attorney organization shall provide legal representation in the preliminary

examination courtroom for juveniles in cases that will be assigned to the particular referee in whose courtroom the attorney or attorney organization has agreed to provide juvenile representation, unless the assignment for a particular juvenile will be made based on prior representation pursuant to the provisions of the then current local administrative order concerning the assignment of counsel.

C. Assignment for Non-Preliminary Examination Proceedings.

An attorney or attorney organization shall provide legal representation, including serving as the lawyer-guardian ad litem, to juveniles who appear in a particular referee courtroom in delinquency and neglect proceedings, unless the representation of a juvenile is subject to reassignment to another attorney based on prior representation pursuant to the provisions of the then current local administrative order concerning the assignment of counsel. The scope of the representation shall include all trial proceedings, including trial before a judge to whom the referee is linked. If authorized, the scope of representation may include appellate proceedings.

D. Term.

The Court contemplates that the term of any contract entered into as a result of this RFP shall be for a minimum of two years.

III. Procedure for Submission and Consideration.

A. Form and Contents.

1. A proposal made in response to this RFP (the Proposal) shall be in writing. To be considered, the Vendor must submit an original and six copies of the Proposal. Proposals sent via fax or email attachment shall not be considered.

2. The Proposal shall contain, at a minimum, the following:

a. The Vendor's detailed plan for delivery of the requested legal services described

above. While the Court encourages Vendors to be creative in their formulation of delivery plans, such plans should be consistent with the general organization of the Juvenile Section and how cases will be assigned to teams of judges and referees. Plans for the delivery of the legal services described above, at a minimum, shall be for the entire docket (including delinquency and neglect cases) per one referee courtroom. Proposals should also include a description of how the Vendor shall provide representation for juveniles at preliminary proceedings. A Proposal may not be based on the identity of any particular judge or referee.

Proposals may include a plan for the delivery of representation for appeals growing out of cases before a particular referee or judge. Yet, any plan for the delivery of appellate representation must be in addition to a plan for the delivery of legal services at the trial level as described above.

b. The price that the Vendor would charge for the legal services that will be provided and the terms of payment. If the Proposal includes providing appellate representation, then the Proposal must contain a separate price for the delivery of legal services for proceedings at the trial level only.

c. The organization of the Vendor, including staffing, both attorney and non attorneys. The description of the Vendor's organization should include the names of attorneys who are associated within the Vendor's organization, a certification that each of these attorneys is a member in good standing of the State Bar of Michigan, that each of its attorneys who will perform legal services under this RFP has completed all requisite training prior to performing such services, and that a policy of professional liability insurance is maintained for each attorney. The Vendor must agree that upon being awarded a contract under this RFP, the Vendor will have the Court listed as a co- insured. The Court retains discretion to reject Proposals where the amount of liability insurance

is deemed by the Court to be insufficient.

d. A description of the experience of the Vendor in representing juveniles, especially before the Juvenile Section.

e. A provision in which the Vendor agrees to indemnify the Court and/or its judges and/or personnel against all liability and costs for all claims made against the Court and/or its judges and/or personnel where the claim arises out of this RFP or performance or nonperformance by the Vendor or any of its personnel of any contract arising out of this RFP.

f. A provision under which the Vendor agrees that the Vendor and any of its employees or agents shall be deemed independent contractors of the Court for all purposes, and that the Court shall not be responsible for any additional payments of any nature, including salary or any form of insurance or statutory benefits, to the employees or agents of the Vendor.

g. A provision under which the Vendor agrees that in performing any contract entered into as a result of this RFP, the Vendor shall conduct its operations in accordance with all federal or Michigan civil rights statutes, including but not limited to Title VII of the Civil Rights Act of 1964, the Michigan Civil Rights Act, and the Michigan Persons with Disabilities Civil Rights Act.

h. A provision under which the Vendor certifies that it has no interest, nor will subsequently acquire one, that would give rise to a conflict of interest between itself (including its attorneys) and the Court or any judge in the Juvenile Section, and that none of its principals or officers is a relative of a judge or administrator of the Court as set forth in the provision of the Michigan Supreme Court Order 1996-11.

i. A provision in which the Vendor agrees to maintain full and complete books, ledger, or accounts or records that reflect its operations with respect to any contract entered into as a result

of this RFP, and that the Court shall have the right to examine the same.

j. A provision by which the Vendor agrees that an attorney providing legal representation under a contract that is entered as a result of this RFP shall be qualified, and remain qualified to receive appointments from the Juvenile Section under the then current local administrative order regarding court appointment of attorneys and that the removal of an attorney from the eligibility list under the procedure set forth in the then current local administrative order regarding court appointment of attorneys constitutes grounds for termination of the contract at the Court's discretion.

B. Place of Submission.

The original and six copies of the Proposal shall be placed in a sealed envelope and be delivered to the Court's Executive Court Administrator, Mr. Bernard J. Kost, located in Room 711, Coleman A. Young Municipal Center, Two Woodward Avenue, Detroit, Michigan 48226. The envelope shall be clearly marked "Proposal for Legal Services for Juveniles."

C. Time Line for Submission and Award.

Proposals should be submitted to the Court by May 10, 2006, at which date the Court will begin to review any proposals submitted to it. However, the Court retains discretion to consider all Proposals submitted after that date. It is anticipated that the Court will enter into one or more contracts under this RFP no later than June 1, 2006.

D. Review of Proposals.

1. The Court's Chief Judge or his or her designee(s) will review all Proposals timely submitted. At the end of the review process, the Chief Judge will select one or more Vendors with whom the Court will enter into a contract based on the Vendor's Proposal.

2. The award of one or more contracts under this RFP shall be based on an evaluation of a Vendor's ability to competently and economically provide the services required by this RFP as reflected in the Proposal, including, but not limited to, an evaluation of:

a. The expertise and past experiences in providing legal representation to juveniles in general and in particular in Wayne County.

b. The appropriateness of the plan for the delivery of legal services as contained in a Proposal and whether it sufficiently conforms to the organization of the Juvenile Section as described in the RFP.

c. The provision of the services required under this RFP at the lowest overall cost.

3. In the sole and exclusive discretion of the Court, the Court shall evaluate each Proposal and accord such weight to the foregoing factors as the Court deems to be in its best interests. No one factor shall necessarily be determinative.

4. The contents of a Proposal, if accepted by the Court, may, in the Court's discretion, become part of the contract that the Court enters into with the Vendor. In the event that the Court deems a Proposal to be generally acceptable, the Court reserves the right to enter into negotiations with the Vendor and enter into a contract with the Vendor on the basis of those negotiations, even if those terms of the contract ultimately entered into with the Vendor are not contained in a Proposal or are contrary to the terms of a Proposal.

E. Assistance.

Questions regarding this RFP should be directed to the Executive Court Administrator in writing at the foregoing address or via fax sent to 313.224.6070.

F. Court Not Responsible for Costs.

The Court shall not be liable for any costs incurred by a Vendor related to the preparation of a Proposal or for any costs prior to approval of the contract by the Court and formal notification to the Vendor.

G. Terms of Submission.

All material received in response to this RFP shall become the property of the Court and will not be returned to the Vendor. Regardless of the Vendor selected, the Court reserves the right to use any information presented in a proposal unless the Vendor designates the information as proprietary. Each response page containing proprietary information must be clearly stamped "PROPRIETARY." The Court will attempt to restrict such information from disclosure; however, the Court shall not be liable for any accidental or inadvertent disclosure of the proprietary information.

EX 3

Comcast

From: <acs_juv@3RDCC.ORG>

To: < >

Subject: Attorney Notice vadlno789@comcast.net

Date: Thu, 19 Oct 2006 14:15:05 +0000

Dear :

The Third Circuit of Michigan is implementing a new attorney assignment process for juvenile representation. The Court has established attorney groups who will provide representation for juveniles on both neglect and delinquency cases appearing before the Court.

You are presently assigned to Case 06455527 petition 06014064 representing
CLIFTON, DANDELO
CLIFTON, DEESAL
TATUM, JEAN

The next hearing date is scheduled for 2006-10-23 at 09:30 AM with DOETSCH, THOMAS, G.. This case will remain assigned to you until the dispositional hearing is completed. After this hearing, please relinquish all relevant materials pertaining to the case in the referee's courtroom. You will receive payment for your service through that date. Thank you for your assistance.

If you have any questions, please call 313-833-5565.

Sincerely,

Leonard Branka
Director of Assigned Counsel

[Back]

This message has been scanned for known viruses.

From: acs_juv@3RDCC.ORG
To: folasade12s@netscape.net
Subject: Attorney Notice folasade12s@netscape.net
Date: Fri, 3 Nov 2006 12:43 PM

Dear SHELLINGFORD, MURIEL, H.

The Third Circuit of Michigan is implementing a new attorney assignment process for juvenile representation. The Court has established attorney groups who will provide representation for juveniles on both medical and delinquency cases appearing before the Court.

You are presently assigned to Case 06456979 petition 06017692 representing
LOCKHART, CHARMINTQUE

The next hearing date is scheduled for 2006-11-13 at 02:00 PM with
WALTON, KATHLEEN, ALLEN. This case will remain assigned to you until the

EXTRA PAGE. 002

The next hearing date is scheduled for 2006-11-13 at 02:00 PM with
WALTON, KATHLEEN, ALLEN. This case will remain assigned to you until the
dispositional hearing is completed. After this hearing, please relinquish all
relevant materials pertaining to the case in the referee's courtroom. You will
receive payment for your service through that date. Thank you for your
assistance.

If you have any questions, please call 313-833-5565.

Sincerely,

Leonard Branka
Director of Assigned Counsel

Attorney Notice folasade12s@netscape.net

<http://webmail-vra.webmail.aol.com/22250/aim/en-us/mail/display-...>

This message has been scanned for known viruses.

From: acs_juv@3RDCC.ORG
To: folasade12s@netscape.net
Subject: Attorney Notice folasade12s@netscape.net
Date: Fri, 3 Nov 2006 12:43 PM

Dear SHILLINGFORD, MURIEL, H.

The Third Circuit of Michigan is implementing a new attorney assignment process for juvenile representation. The Court has established attorney groups who will provide representation for juveniles on both neglect and delinquency cases appearing before the Court.

You are presently assigned to Case 05443820 petition 36017356 representing
HOLIFIELD, STINE

The next hearing date is scheduled for 2006-11-09 at 09:00 AM with PERKINS, DAVID, A.. This case will remain assigned to you until the dispositional hearing is completed. After this hearing, please relinquish all relevant materials pertaining to the case in the referee's courtroom. You will receive payment for your service through that date. Thank you for your assistance.

If you have any questions, please call 312 833-5565.

Sincerely,

Leonard Branka
Director of Assigned Counsel

Dear SHILLINGFORD, MURIEL, H.

The Third Circuit of Michigan is implementing a new attorney assignment process for juvenile representation. The Court has established attorney groups who will provide representation for juveniles on both neglect and delinquency cases appearing before the Court.

You are presently assigned to Case 06454686 petition 06012098 representing
BELT, DEMARCO LEMAR

The next hearing date is scheduled for 2006-10-23 at 09:30 AM with HARTSFIELD, JUDY, A.. This case will remain assigned to you until the dispositional hearing is completed. After this hearing, please relinquish all relevant materials pertaining to the case in the referee's courtroom. You will receive payment for your service through that date. Thank you for your assistance.

If you have any questions, please call 313-833-5565.

Sincerely,

Leonard Branka
Director of Assigned Counsel

1/31/2007 12:43 PM

This message has been scanned for known viruses.

From: acs_juv@3RDCC.ORG
To: folasade12s@netscape.net
Subject: Attorney Notice folasade12s@netscape.net
Date: Mon, 4 Dec 2006 5:18 PM

Dear SHILLINGFORD, MURIEL, H.

The Third Judicial Circuit is implementing a new attorney assignment process for juvenile representation. The Court has established attorney groups who will provide representation for juveniles on both neglect and delinquency cases appearing before the Court in the future.

You are presently assigned to the following cases:

Case Number	Petition Number	Next Reg Dt	Jurist Name
Juvenile Name			
02407713	04012115	2007-02-28	MCKNIGHT, RICHARD, C.
WALLS, DAISHA JANAY			
02407713	04012115	2007-02-28	MCKNIGHT, RICHARD, C.
WALLS, MICHAEL TONOKO			
02407713	04012115	2007-02-28	MCKNIGHT, RICHARD, C.
WALLS, MICHELLE LANAY			
02407713	04012115	2007-02-28	MCKNIGHT, RICHARD, C.
YOUNG, ANTHONY LEE			
04434280	05021295	2006-12-12	MCKNIGHT, RICHARD, C.
RIDDLE, BIANCA JANAE			
04434280	06007988	2006-12-12	MCKNIGHT, RICHARD, C.
RIDDLE, BIANCA JANAE			
05442586	05010954	2007-01-13	GARDNER, CATHERINE, H.
WHITE, ALYSIA NICHOLE			

After each hearing listed above, please relinquish all relevant materials pertaining to the case(s) in the referee's courtroom. You will receive payment for your service for that last hearing. Thank you for your cooperation during this transition.

If you have any further questions, please call 313-803-5565.

Sincerely,

Leonard Branka
 Director of Assigned Counsel

EX 4

Date: Mon, 13 Nov 2006 09:49:49 -0700
From: jnew@caflc.org [Add to Address Book](#) [Add Mobile Alert](#)
Subject: Wayne County Juvenile Court
CC: jnew@caflc.org, rschool@caflc.org

Greetings all,

I have sent this blind so as not to make anyone uncomfortable.

The good news for Child and Family Law Center is that we will be getting a small contract with the Wayne Juvenile Court to cover one referee docket, both delinquency and neglect and whatever cases get bumped to the judge. By my calculations there is one Judge not assigned - Dingell, his referees are Gardner and McKnight (who will soon be retiring). Bill and I will know more after the end of this week.

You have been sent this email because we have either discussed working together or you have contacted the Child and Family Law Center requesting information. We hope you are still available and interested. Please respond to this email to jnew@caflc.org with your desire.

EX 5

JULIE H. HURWITZ, P.C.
ATTORNEYS AND COUNSELORS

23880 WOODWARD AVENUE
PLEASANT RIDGE, MICHIGAN 48069
248-691-4200
248-691-4207 FAX
hurwitzj@umich.edu

DETROIT OFFICE
1930 BALMORAL DRIVE
DETROIT, MICHIGAN 48203

OF COUNSEL
REOSTI, JAMES AND SIRLIN, P.C.

December 21, 2006

Wayne County Circuit Court
Bernard Koast,
Executive Court Administrator
711 CAYMC
Two Woodward Avenue
Detroit MI 48226-3413

ATTENTION: FREEDOM OF INFORMATION UNIT/RECORDS

Re: Administrative Order 2006-08

Dear Mr. Koast:

This letter is to request, on behalf of my client the Trial Lawyers Association of Wayne County Juvenile Court, the following documents pursuant to the Michigan Freedom of Information Act, MCLA Section 15.231 et seq., in conjunction with MCLA Section 750.492, and pursuant to MCR 8.123(E)

1. A copy of any and all contracts that have been awarded by the Wayne County Circuit Court pursuant to its 2006 Request for Proposal for Legal Service for Juveniles and/or which have been awarded since June 1, 2006;
2. A copy of the most recent contract currently in effect between Wayne County Circuit Court and the following entities and/or individuals for the provision of legal representation for juveniles in the Juvenile Section of the Court's Family Division:
 - a) Legal Aid & Defender Association;
 - b) Michigan Children's Law Center;
 - c) Child and Family Law Center; and,
 - d) Mayssa Attia.

If for any reason you are unable or unwilling to produce such documents at this time, then consider this letter as a final request that such documents be preserved, and not destroyed, for subsequent production pursuant to subpoena, court order or other legal process.

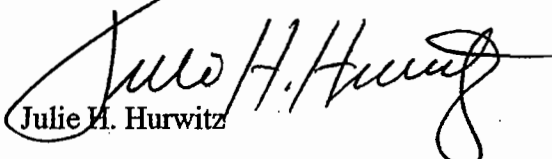
If all or any part of this request is denied, please list the specific exemptions which are being claimed to withhold information. If you determine that some portions of the requested information are exempt, I will expect, as the Act requires, that you will provide us with the non-exempt portions. I, of course, reserve the right to appeal any decision to withhold information and expect that you will list the address and office where such an appeal can be sent.

As you may know, the Michigan Freedom of Information Act permits you to reduce or waive all search and/or copying fees when release of the requested information would be "in the public interest." MCLA Section 15.234(1). I believe that this request fits that category and I, therefore, ask that you waive such fees. If this request is processed under the Privacy Act, however, I expect that no fees will be charged for locating the requested files.

If you have any questions regarding this request, please contact my office and send all records and responses to this address. As provided in the Freedom of Information Act, I expect to receive a reply within five (5) working days.

Very truly yours,

JULIE H. HURWITZ, P.C.


Julie H. Hurwitz

JHH:gja

cc: John Owdzie, President TLAWC

BERNARD J. KOST
Executive Court Administrator



(313) 224-5261
FAX (313) 224-6070
E-mail: bernard.kost@3cc.co.wayne.mi.us

711 COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413

JAN 10 2007

January 8, 2007

Ms. Julie H. Hurwitz, Esq.
23880 Woodward Ave.
Pleasant Ridge, MI 48069

Dear Ms. Hurwitz,

You have requested, on behalf of your client, the Trial Lawyers Association of Wayne County Juvenile Court, to receive copies of certain contracts into which the Third Circuit Court may have entered that concern the provision of legal services to juveniles under a request for proposals issued by the Court in 2006. You have made your request pursuant to the Michigan Freedom of Information Act (FOIA), MCL 15.231, et seq., MCL 750.492 and MCR 8.123(E). After consulting with counsel, I have concluded, as explained below, that none of these authorities require a court to provide copies of its own internal administrative records, including copies of contracts to third parties, and therefore, I respectfully decline your request.

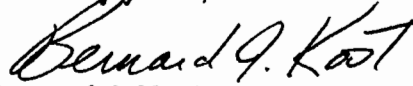
The FOIA does not apply to courts, since courts are expressly exempted from the definition of public bodies to which the FOIA applies. MCL 15.232(d)(v).

MCL 750.492 only relates to an "any officer having the custody of any county, city, or township records ..." The Court is not part of any local governmental unit such as a county, city or township, but instead is part of the state judiciary. See, Const 1963, art 6, § 1; *Judicial Attorneys Ass'n v State*, 459 Mich 291, 299; 586 NW2d 894 (1998).

Finally, the records to which MCR 8.123(E) refers, that "must be available ... for inspection by the public," are those alluded to in MCR 8.123(D), namely "an

annual electronic report of the total public funds paid to each attorney for appointments by that court." Significantly, that latter subsection continues, "Trial courts that contract for services to be provided by an affiliated group of attorneys may treat the group as a single entity when compiling the required records." There is no requirement that the records that the Court must create under MCR 8.123(D), and to which MCR 8.123(E) refers, includes a copy of the contract for services that a trial court may have with an affiliated group of attorneys. Thus, MCR 8.123(E) does not require that the Court provide you with a copy of any of the contracts that are the subject of your request.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bernard J. Kost".

Bernard J. Kost
Executive Court Administrator

JULIE H. HURWITZ, P.C.
ATTORNEYS AND COUNSELORS

23880 WOODWARD AVENUE
PLEASANT RIDGE, MICHIGAN 48069

248-691-4200
248-691-4207 FAX
hurwitzj@umich.edu

DETROIT OFFICE
1930 BALMORAL DRIVE
DETROIT, MICHIGAN 48203

OF COUNSEL
REOSTI, JAMES AND SIRLIN, P.C.

January 16, 2007

Wayne County Circuit Court
Bernard Kost, Executive Court Administrator
711 CAYMC
Two Woodward Avenue
Detroit MI 48226-3413

ATTENTION: FREEDOM OF INFORMATION UNIT/RECORDS

Re: Records Request – MCR 8.123(E)

Dear Mr. Kost:

I am in receipt of your letter dated January 8, 2007, in response to our request for documentary information pertaining to the funds paid to attorneys for appointments for representation of juveniles in the Wayne County Circuit Court, Juvenile Section, Family Division, since June 1, 2006.

At this time, I revise our request, pursuant to MCR 8.123(D) and (E), to obtain the amount of public funds paid to each attorney appointed to represent juveniles for the years 2005 and 2006, including the amounts allocated for each affiliated group of attorneys awarded a contract to provide services since June 1, 2006. Within this request, we seek records reflecting the amount of funds awarded to all affiliated groups of attorneys awarded a contract pursuant to Administrative Order 2006-08, including but not limited to:

- a) Legal Aid & Defender Association;
- b) Michigan Children's Law Center;
- c) Child and Family Law Center; and
- d) Mayssa Attia.

We also request, pursuant to MCR 8.123, the number of appointments given to individual attorneys by the court as a whole.

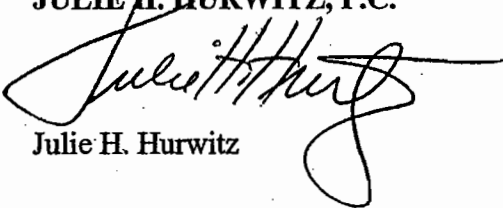
If for any reason you are unable or unwilling to produce such records or information at this time, then consider this letter a final request that such records be preserved, and not destroyed, for subsequent production pursuant to subpoena, court order or other legal process.

Mr. Bernard Kost
January 16, 2007
Re: Records Request – MCR 8.123(E)
Page 2

If you have any questions regarding this request, please contact my office and send all records and responses to this address. As provided in the Freedom of Information Act, I expect to receive a reply within five (5) working days.

Very truly yours,

JULIE H. HURWITZ, P.C.

A handwritten signature in black ink, appearing to read "Julie H. Hurwitz", written over a horizontal line.

Julie H. Hurwitz

JHH:gja

cc: John Owdzie, President TLAWC

BERNARD J. KOST
Executive Court Administrator



(313) 224-5261
FAX (313) 224-6070
E-mail: bernard.kost@3cc.co.wayne.mi.us

711 COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413

JAN 31 2007

January 25, 2007

Ms. Julie H. Hurwitz, Esq.
Attorney At Law
23880 Woodward Avenue
Pleasant Ridge, Mi 48069

Dear Ms. Hurwitz:

Pursuant to MCR 8.123(D) and (E) you have requested that the Court provide you with records concerning the amount of public funds paid to each attorney appointed to represent juveniles for the years 2005 and 2006, including the amounts allocated to affiliated groups of attorneys that were awarded a contract pursuant to the Court's Local Administrative Order 2006-08. You also request that we give you information about the number of appointments given to individual attorneys by the Court as a whole.

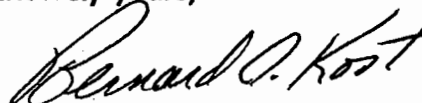
However, per the advice of counsel, I am informed that MCR 8.123(D) only requires trial courts to "compile an annual electronic report of the total public funds paid to each attorney for appointments by that court," and for purposes of that report a trial court may "treat the group [of affiliated attorneys with whom the court contracts for services] as a single entity when compiling the required records." Additionally, per MCR 8.123(E), the trial court must make these records available for inspection without charge or if copies are made, the trial court "may charge a reasonable fee for providing copies of the records."

Per MCR 8.123(D), the Court has compiled a report for 2005 that shows the total public funds paid to each attorney for appointments by the Court. As additionally authorized by that court rule, the Court has chosen to treat affiliated groups of attorneys with whom it has contracted as a single payee. However, because there is no requirement that the report that is the subject of MCR 8.123(D) be made per division of the court or show the number of assignments per attorney, the report that I am prepared to have copied for you will not reflect that information.

The 2005 report that the Court created per MCR 8.123(D) is available and is fourteen pages in length. The 2006 report will not be available until after February 15, 2007. The Court has determined that a reasonable copying fee is \$1.00 per page. To obtain a copy of 2005 report, please remit a cashiers' check to my attention in the amount of \$14.00, made payable to "Third Circuit Court of Michigan." Upon receipt of the funds, the Court will send you the 2005 report. To obtain a copy of the 2006 report, please inquire after February 14, 2007 as to its page length.

As a final note, although you have cited the Freedom of Information Act in your letter as the basis for your expectation that the Court will comply with your request within five working days, as I indicated to you in my previous letter to you, it is the Court's position that it is not bound by FOIA since the Court is specifically exempted. See MCL 15.232(d)(v). Thus, while the Court will endeavor to comply with your request in an expeditious manner after we have received advance payment for the copy of the 2005 report, the Court is under no obligation to fulfill this request within five business days.

Sincerely yours,

A handwritten signature in cursive script, reading "Bernard J. Kost".

Bernard J. Kost
Executive Court Administrator

2006 050643 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISIONORDER OF REMOVAL OF ASSIGNED COUNSEL
NADIACASE NO. 04433702
PETITION NO. 04016401

CASE NAME: EL-RAWAS, BOZANA

REFEREE:
RICHARD SMARTCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE E.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: DISPO REV HEARING DATE: 11/20/2006

IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:


- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/20/2006

DATE:


MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

02/13/07 05:02:21 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04434314
PETITION NO. 06011676

CASE NAME: GRADY, TAWJAUNA DARSHAWN

*Grady / Pettway
Tommy May 17 at 1:30*REFEREE:
ILENE WEISS FRUTMANCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE B.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: POST-TERMHEARING DATE: 02/13/2007

IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

02/13/2007

DATE:


MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 00386361
PETITION NO. 99086557

CASE NAME: MITCHELL, DEBBIE ALFREDA

TOWNS

REFEREE:
ANTHONY CRUTCHFIELDCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: TRENT, MURIEL, DEBORAH

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

- ☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.
New counsel will be Michigan Childrens Law Center

HEARING TYPE: POST-TERM

HEARING DATE: 11/28/2006

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

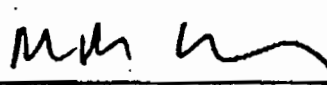
(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/28/2006

DATE:

FILE COPY


MARY BETH KELLY
CHIEF JUDGE

AC

EX 9

CASE: ~~2020-01-16~~ N NEGLECT ID#: _____
Name: WRIGHT, DENISE M (MOT) Jurist: 30489 JENNIFER A PILETTE
EVENTS

Id:00639733 Petition:05010924

```

Date:10/05/2006 Typ:J19 JC19 CP SUPP OR Cmt:10/04/06 CTD TWC
Date:07/14/2006 Typ:J19 JC19 CP SUPP OR Cmt:07/06/06 CTD TWC
Date:04/12/2006 Typ:J64 JC64 CP ORDER P Cmt:04/10/06 CTD TWC
Date:02/16/2006 Typ:J19 JC19 CP SUPP OR Cmt:02/15/06 CTD TWC
Date:11/17/2005 Typ:J19 JC19 CP SUPP OR Cmt:11/15/05 CTD TWC
Date:08/26/2005 Typ:J17 JC17 CP ORDER O Cmt:08/22/05 TWC
Date:07/26/2005 Typ:CAM COMPLAINT AMEND Cmt:AMND/ORIG/NEG/ADD INFO/HOSP
Date:07/26/2005 Typ:REF MISCELLANEOUS R Cmt:SUBM BY: ANTHONY THOMPSON
Date:07/26/2005 Typ:AMD AMENDED COMPLAI Cmt:OFFICIAL
Date:06/13/2005 Typ:CAM COMPLAINT AMEND Cmt:AMND/JC04/ORIG/NEG/HOSPITAL
Date:06/13/2005 Typ:REF MISCELLANEOUS R Cmt:SUBM BY: ANTHONY THOMPSON
Date:06/13/2005 Typ:AMD AMENDED COMPLAI Cmt:OFFICIAL
Date:05/24/2005 Typ:CMP NEGLECT COMPLAI Cmt:ORI/NEG/PH/ABU/PLC AUTH/FC/K +

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CMD KEYS 1-Exit 2-Chg Case 4-Official 8-PRINT 11-Position (Help Key)

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISIONORDER OF REMOVAL OF ASSIGNED COUNSEL
AND APPOINTMENT OF NEW COUNSELCASE NO. 98369166
PETITION NO. 05010924

CASE NAME: WRIGHT, DENISE M

REFEREE:
JENNIFER A PILETTECASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Effective on the date of the entry of this order.

Name of Attorney Removed: SHILLINGFORD, MURIEL, H.

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER
(Name)☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006-08.Effective on the date of the entry of this order new Counsel will be Michigan Childrens Law Center

IT IS FURTHER ORDERED THAT upon the entry of this Order, the removed counsel shall provide to newly
appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

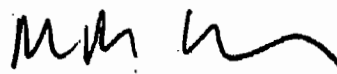
- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

04/09/2007

DATE:

MARY BETH KELLY
CHIEF JUDGECC: Attorney Group
Court File

EX 10

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04433907
PETITION NO. 04016888

CASE NAME: SMITH, RAHSHINE

NAOMI

REFEREE:
ANTHONY CRUTCHFIELD

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: BRAND, JEREMY L.

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: DISPO REV

HEARING DATE: 01/22/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

BY [Signature]
DEPUTY CLERK

01/22/2007

DATE:

CURRENT ATTORNEY COPY

[Signature]
MARY BETH KELLY
CHIEF JUDGE

AC

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT, FAMILY DIVISION

In the matter of Naomi Smith

Case No. 04-433907
06-0255365

CHILD'S STATEMENT REGARDING REPRESENTATION

1. I am a person who is the subject of the above entitled case.

I hereby state the following:

- a. That J. Brand has represented me regarding this case since on or about 9/7/04
- b. That I have an established relationship with J. Brand
- c. That it is my desire to have her continue to represent me in this matter.
- d. That I do not wish to have to establish a relationship with a new attorney.

Dated: 10/26/06

Naomi Smith
Child's Signature

Witnessed by: Jamie Miller (DHS)

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT, FAMILY DIVISION

In the matter of

Kyishia Rogers

Case No. 06-460193

CHILD'S STATEMENT REGARDING REPRESENTATION

1. I am a person who is the subject of the above entitled case.
2. I hereby state the following:
 - a. That ~~Deborah Kent~~ has represented me regarding this case since on or about
J. Brand
 - b. That I have an established relationship with ~~Deborah Kent~~ **J. Brand**
 - c. That it is my desire to have her continue to represent me in this matter.
 - d. That I do not wish to have to establish a relationship with a new attorney.

Dated: 10/14/06

child's signature

child's
Witnessed by
signature

Kyishia Rogers

Jermey L. Brand
P.O. Box 252601
W. Bloomfield, MI 48325

Jermey L. Brand
P.O. Box 252601
W. Bloomfield, MI 48325

EX 12

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 01395330
PETITION NO. 03004950

CASE NAME: CAMPER, SHIRLEY JEAN

TERRI

REFEREE:

DAVID PERKINS

01/24/07

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: BRAND, JEREMY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: POST-TERMHEARING DATE: 01/24/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

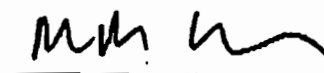
- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

01/24/2007

DATE:

MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

01/31/2007 07:55 2486834222

SYDNEY RUBY

EX. 13
PAGE 03

12/20/06 050043 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 01396079
PETITION NO. 99092489

CASE NAME: STEVENSON, ADORA

CLARENCE S

REFEREE:
JENNIFER A PILETTE

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RUBY, SYDNEY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: POST-TERM

HEARING DATE: 12/20/2006

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

12/20/2006
DATE:

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MARY BETH KELLY
CHIEF JUDGE

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SYDNEY RUBY

PAGE 02

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JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 02412694
PETITION NO. 06008184

CASE NAME: DANIEL, TRACI

WILLIAM J. WESLEY D

REFEREE:
ANTHONY CRUTCHFIELD

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RUBY, SYDNEY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: POST-TERM

HEARING DATE: 01/05/2007

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

BY Karen [Signature]
DEPUTY CLERK

01/05/2007

TE:

CURRENT ATTORNEY COPY

MARY BETH KELLY
CHIEF JUDGE

Jan 24 07 02:08p

EX 15
P. 1

11/15/06 050028 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 00394753
PETITION NO. 99050828

CASE NAME: ARNDT, BONNIE JEAN

JUSTIN S.

REFEREE:
JENNIFER A PILETTE

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, F., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: DISPO REV

HEARING DATE: 11/15/2006

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/15/2006

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CURRENT ATTORNEY COPY


MARY BETH KELLY
CHIEF JUDGE

EX-16-166

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 01395330
PETITION NO. 03004950

REFEREE:

DAVID PERKINS
Dep 1/24/07

CASE NAME: CAMPER, SHIRLEY JEAN

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: BRAND, JEREMY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: POST-TERMHEARING DATE: 01/24/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:


- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

01/24/2007

DATE:

MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

STATE OF MICHIGAN
THIRDJUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04433907
PETITION NO. 04016888

CASE NAME: SMITH, RAHSHINE

REFEREE:
ANTHONY CRUTCHFIELD

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: BRAND, JEREMY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: DISPO REV

HEARING DATE: 01/22/2007

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK

BY [Signature]
DEPUTY CLERK

DATE: 01/22/2007

CURRENT ATTORNEY COPY

[Signature]
MARY BETH KELLY
CHIEF JUDGE

[Signature]

11/15/06 050028 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 00394753
PETITION NO. 99050828

CASE NAME: ARNDT, BONNIE JEAN

REFEREE:
JENNIFER A PILETTECASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, F., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: DISPO REVHEARING DATE: 11/15/2006

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

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Co./Dept.		Co./Dept.		
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11/15/2006

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MARY BETH KELLY
CHIEF JUDGE

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JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 00394753
PETITION NO. 99050828

CASE NAME: ARNDT, BONNIE JEAN

REFEREE:
JENNIFER A PILETTE

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, F., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: DISPO REV

HEARING DATE: 11/15/2006

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/15/2006

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MARY BETH KELLY
CHIEF JUDGE

12/01/06 050025 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 00394319
PETITION NO. 99093304

CASE NAME: CLAYBRON, LATIFFANY SHERRON

REFEREE:
KATHLEEN WALTON ALLENCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, F., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: POST-TERMHEARING DATE: 12/01/2006

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:


- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

12/01/2006

TE:


MARY BETH KELLY
CHIEF JUDGE

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01/09/07 05:00:46 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 06455349
PETITION NO. 06013663

CASE NAME: DEATON, DOLORES

REFEREE:
CHARLES W WILSONCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, F., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: PERM PLANHEARING DATE: 01/09/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

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CATHY M. GARRETT
WAYNE COUNTY CLERK

DEPUTY CLERK

01/09/2007

TB:

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MARY BETH KELLY
CHIEF JUDGE

11/17/06 050040 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 98369371
PETITION NO. 99074395

CASE NAME: HAWKINS, MARY LINETTE

REFEREE:
RICHARD SMARTCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, F., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: POST-TERMHEARING DATE: 11/17/2006

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/17/2006

BY:

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MARY BETH KELLY
CHIEF JUDGE

12/13/06 050126 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 01399427
PETITION NO. 06008852

CASE NAME: ROBINSON, TADORA

Demesha 6/21/02
Demascus 6/3/04REFEREE:
KATHLEEN WALTON ALLENCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: DEVINE, P., PATRICK

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: PERM PLANHEARING DATE: 12/13/2006

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

12/13/2006

JTB:

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MARY BETH KELLY
CHIEF JUDGE

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT FAMILY DIVISION	ORDER OF REMOVAL OF ASSIGNED COUNSEL	CASE NO. 01396670 PETITION NO. 99063619
--	--------------------------------------	--

CASE NAME: BAILLARD, MELDRETT YVONNE	REFEREE RICHARD SMART
--------------------------------------	--------------------------

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: GWDZIEP, JOHN B.

PARTY REPRESENTED: ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER (Name) _____
☐ OTHER (Name, relationship to case, explanation) _____

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006-08.
 New counsel will be: Legal Aid and Defender Association

HEARING TYPE: DISPOREV HEARING DATE: 11/15/2006

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address, and telephone number of the current caregiver or

In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) order of disposition;
- 3) most recent court reports; and
- 4) most recent court orders.

MARY BETH CLARK
 CHIEF JUDGE

CURRENT ATTORNEY COPY

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STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04433702
PETITION NO. 04016401

CASE NAME: EL-RAWAS, BOZANA

REFEREE:
RICHARD SMARTCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Attorney Removed: RADULOVICH, SUE E.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: DISPO REV HEARING DATE: 11/20/2006

IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/20/2006

DATE:


MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

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JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04434314
PETITION NO. 06011676

CASE NAME: GRADY, TAWJAUNA DARSHAWN

Grady / Pettway

REFEREE:

ILENE WEISS FRUITMAN

*May 17 at 1:30*CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE E.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: POST-TERMHEARING DATE: 02/13/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

02/13/2007

DATE:


MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

11/13/06 05:00:17 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 06460069
PETITION NO. 06025331

CASE NAME: KARNS, JODI

JACOB
ZIESMERREFEREE:
PETER SCHUMMER JR.CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE B.,

PARTY: ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New Counsel will be Legal Aid and Defender Association

HEARING TYPE: DISPO

HEARING DATE: 11/13/2006

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

In abuse and neglect proceedings:

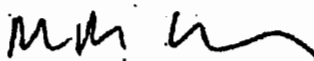
- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

11/13/06

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MARY BETH KELLY
CHIEF JUDGE

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01/23/07 05:00:14 AM

JVACREM

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STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04432575
PETITION NO. 04013756

CASE NAME: TABLES, LINDA

DE MORYAN
FALSONREFEREE:
MICHAEL C HIDALGOCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE B.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Legal Aid and Defender Association

HEARING TYPE: POST-TERM

HEARING DATE: 01/23/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

01/23/2007

MARY BETH KELLY
CHIEF JUDGE

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JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 97357805
PETITION NO. 04023955

CASE NAME: WASHINGTON, MATRICE ANN

*MICAH
WASHINGTON*

REFEREE:
ANTHONY CRUTCHFIELD

CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE E.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS

☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.

New counsel will be Michigan Childrens Law Center

HEARING TYPE: POST-TERM

HEARING DATE: 01/23/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

A TRUE COPY

CATHY M. GARRETT
WAYNE COUNTY CLERK

BY *[Signature]*
DEPUTY CLERK

01/23/2007

DATE:

CURRENT ATTORNEY COPY

[Signature]
MARY BETH KELLY
CHIEF JUDGE

[Signature]

007 050048 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 02412694
PETITION NO. 06008184

CASE NAME: DANIEL, TRACI

REFEREE:
ANTHONY CRUTCHFIELDCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RUBY, SYDNEY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: POST-TERMHEARING DATE: 01/05/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY [Signature]
DEPUTY CLERK01/05/2007[Signature]
MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

12/20/06 10:04:3 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 01396079
PETITION NO. 99092489

CASE NAME: STEVENSON, ADORA

REFEREE:
JENNIFER A PILETTECASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RUBY, SYDNEY L.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

- ☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.
New counsel will be Michigan Childrens Law Center

HEARING TYPE: POST-TERMHEARING DATE: 12/20/2006

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

12/20/2006

DATE:

RENT ATTORNEY COPY


MARY BETH KELLY
CHIEF JUDGE

11/13/06 050017 AM

JVACREM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 06460069
PETITION NO. 06025331

CASE NAME: KARNS, JODI

JACOB
ZIEGLERREFEREE:
PETER SCHUMMER JR.CASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE B.,

PARTY: ☐ ELDER ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006-08.

New Counsel will be Legal Aid and Defender Association

HEARING TYPE: DISPO

HEARING DATE: 11/13/2006

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

1. In abuse and neglect proceedings:

1. the petition and any supplemental petitions;
2. any findings of fact or law;
3. any orders;
4. the most recent court report; and
5. the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

2. In delinquency proceedings:

1. the petition and any supplemental petitions;
2. orders of disposition;
3. most recent court reports; and
4. most recent court order

11/13/06

DATE:

MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

DSEA

169

01/23/07 05:00:14 AM

JVACREM

Removed by MDK - Not Hk 4-3-07 8:30AM

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 04432575
PETITION NO. 04013756

CASE NAME: TABLES, LINDA

DE MORNAY
FALSONREFEREE:
MICHAEL C HIDALGOCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE E.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Legal Aid and Defender AssociationHEARING TYPE: POST-TERMHEARING DATE: 01/23/2007

IT IS FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:


- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

01/23/2007

DATE:


MARY BETH KELLY
CHIEF JUDGE

CURRENT ATTORNEY COPY

Hba

01/23/07 050109 AM

JVACREM

*Crutchfield next #16 - 4-03-07*STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISION

ORDER OF REMOVAL OF ASSIGNED COUNSEL

CASE NO. 97357805
PETITION NO. 04023955

CASE NAME: WASHINGTON, MATRICE ANN

*MICAH
WASHINGTON*REFEREE:
ANTHONY CRUTCHFIELDCASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Name of Attorney Removed: RADULOVICH, SUE E.,

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006 -08.New counsel will be Michigan Childrens Law CenterHEARING TYPE: POST-TERM HEARING DATE: 01/23/2007

IT IF FURTHER ORDERED that upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

A TRUE COPY

CATHY M. GARRETT
WAYNE COUNTY CLERKBY *[Signature]*
DEPUTY CLERK

01/23/2007

DATE:

CURRENT ATTORNEY COPY

[Signature]
MARY BETH KELLY
CHIEF JUDGE*[Signature]**169*

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
FAMILY DIVISIONORDER OF REMOVAL OF ASSIGNED COUNSEL
AND APPOINTMENT OF NEW COUNSELCASE NO. 04429203
PETITION NO. 05021879

CASE NAME: WARE, JEREMIAH

REFEREE:
CATHERINE GARDNERCASE TYPE: ☒ DELINQUENCY ☐ CHILD PROTECTIVE PROCEEDING

Effective on the date of the entry of this order.

Name of Attorney Removed: NEWELL, KATHLEEN, WILLIAMS

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006-08.Effective on the date of the entry of this order new Counsel will be CHAP-Child Advocacy ProgramIT IS FURTHER ORDERED THAT upon the entry of this Order, the removed counsel shall provide to newly
appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

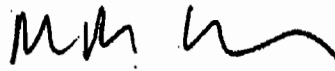
- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver; or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

04/09/2007

DATE:

CC: Attorney Group
Court FileMARY BETH KELLY
CHIEF JUDGE

16B

STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT FAMILY DIVISION	ORDER OF REMOVAL OF ASSIGNED COUNSEL AND APPOINTMENT OF NEW COUNSEL	CASE NO. 98369166 PETITION NO. 05010924
--	--	--

CASE NAME: WRIGHT, DENISE M

REFEREE:
JENNIFER A PILETTECASE TYPE: ☐ DELINQUENCY ☒ CHILD PROTECTIVE PROCEEDING

Effective on the date of the entry of this order.

Name of Attorney Removed: SHILLINGFORD, MURIEL, H.

PARTY REPRESENTED ☒ CHILD ☐ MOTHER ☐ WITNESS☐ FATHER

(Name)

☐ OTHER (Name, relationship to case, explanation)

REASON FOR REMOVAL:

☒ Appointment of New Counsel is required to implement Local Administrative Order 2006-08.Effective on the date of the entry of this order new Counsel will be Michigan Childrens Law Center

IT IS FURTHER ORDERED THAT upon the entry of this Order, the removed counsel shall provide to newly appointed counsel the following documents as soon as possible:

(A) In abuse and neglect proceedings:

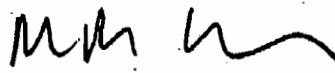
- 1) the petition and any supplemental petitions;
- 2) any findings of fact or law;
- 3) any orders;
- 4) the most recent court report; and
- 5) the most recent placement information about the juvenile including the name, address and telephone number of the current care giver: or

(B) In delinquency proceedings:

- 1) the petition and any supplemental petitions;
- 2) orders of disposition;
- 3) most recent court reports; and
- 4) most recent court order

04/09/2007

DATE:


MARY BETH KELLY
CHIEF JUDGECC: Attorney Group
Court File

16B

F. PATRICK DEVINE

ATTORNEY AT LAW

33470 Lyndon • Livonia, Michigan 48154-5401
(734) 261-4944 • FAX (734) 425-6553

October 24, 2006

Mr. Leonard Branka
Director of Assigned Counsel
Assigned Counsel Services
1025 E. Forest Avenue, Building A, Room B 112
Detroit, Michigan 48207

RE: Emails – October 19, 2006

Dear Mr. Branka:

This letter is in response to your above mentioned emails. Your request for me to relinquish to the court any documents and information of cases and clients that I represent is most inappropriate. Furthermore, my representation of these children and the appointments by the court go back several years. In accordance with the court rules and the statutes, the children are entitled to legal representation until their cases are completed or if their attorneys are removed for cause.

Historically, appointments for attorneys to represent clients have also been based on an implied contractual relationship. These contracts are ongoing, continued representation as long the cases are active or until the matters are dismissed.

Your communication makes reference to a "new assignment program for juvenile representation." It seems quite improper that such a program would include severing or interfering with existing attorney/client relationships. It is one thing to set up a new assignment system for new cases as they come in. It is quite another to summarily discard and sever current ongoing legal relationships.

Please feel free to contact me at my office.

Very truly yours,


F. Patrick Devine

FPD/jam

c: State Court Administrator
Hon. Justice Maura D. Corrigan
Judicial Tenure Commission
Attorney Grievance Commission
Judges – Wayne County Juvenile Court – Family Div.

Nov 07 08 02:25p

NOV-06-2006 16:33 FR33

3132371314

TO: 97344250553

P. 2/28

EX 18

P. 1



THE THIRD JUDICIAL CIRCUIT
OF MICHIGAN

MARY BETH KELLY
CHIEF JUDGE

711 COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413

(313) 224-8220

November 6, 2006

Mr. P. Patrick Devine
Attorney at Law
33470 Lyndon
Livonia, MI 48154-3401

Dear Mr. Devine:

Your October 24 correspondence to Mr. Leonard Branka, our Court's director of Assigned Counsel, has been assigned to me for response. I apologize for any delay, but I just received this letter. As you know, our Court is implementing a new docket system, the objective of which is to bring our adjudications within the time standards imposed by the Supreme Court and the juvenile code itself. This docket system was one of the major recommendations from the Juvenile Task Force, which I believe you served on.

A Local Administrative Order 2006-06 was entered in our Court to implement the new docket system, and Local Administrative Order 2006-08 concerning Assignment of Counsel also addresses issues necessary to implement the new docket system. Local Administrative Order 2006-08 approved by the State Court Administrator's Office, the Administrative arm of the Supreme Court, requires the substitution of Children's counsel in the post dispositional hearing phase. This system was successfully employed in Genesee County. I am very confident that substitution in this very late phase of the representation will not be unduly disruptive of existing attorney-client relationships. As you know, the very high rate of substitution of counsel in representation of children, particularly in the post-dispositional phase, suggests that "continuity" will not be disturbed. Moreover, the Local Administrative Order allows you to bring a motion should you believe that representation in any particular case must continue. I trust this explanation addresses the concern raised by your letter.

Very truly yours,


Mary Beth Kelly

Cc: State Court Administrator
Hon. Justice Maura D. Corrigan
Judicial Tenure Commission
Attorney Grievance Commission
Judges - Wayne County Juvenile Court, Family Division

NOTICE

EFFECTIVE IMMEDIATELY

Assignments to serve as House Counsel on Delinquency Preliminary Hearings will be for that proceeding only. Judge Demands are prohibited at this hearing.

You will be notified by the Assigned Counsel Services Office if your services are needed at subsequent hearings.

If you have any questions, please call the Assigned Counsel Services Office at (313) 833-5565.

EX 20

From: <acs_juv@3RDCC.ORG>
To: < >
Subject: Attorney Notice vadino789@comcast.net
Date: November 6, 2006 1:06:08 PM EST

Dear

On or around October 18, 2006, you received an e-mail notice advising you that the Third Judicial Circuit is implementing a new attorney assignment process for juvenile representation and that your cases were being reassigned.

That notice erroneously included cases that are currently assigned to a judge. Please be advised that the following cases that you are assigned to represent the juvenile on a judge's docket will NOT be reassigned to an attorney group and that you will continue to represent the juvenile until further notice or order of the Court.

Case Number	Petition Number	Next Hrg Dt	Jurist Name
Juvenile Name			
05447335	05021239	2007-01-10	GIBSON, SHELIA, ANN
H	, MAKISHA		
06451747	06004716	2006-10-20	HARTSFIELD, JUDY, A.
D	, CRYSTAL		
06451747	06004716	2006-10-20	HARTSFIELD, JUDY, A.
Z	, KAREN		

We apologize for any inconvenience that this may have caused and we appreciate your patience through the transition of this new process.

If you have any further questions, please call 313-833-5565.

Sincerely,

Leonard Branka
Director of Assigned Counsel

EX. 21

2005 Annual Report Third Judicial Circuit of Michigan

Coleman A. Young Municipal Center
2 Woodward Avenue
Detroit, MI 48226

Lincoln Hall of Justice
1025 E. Forest Avenue
Detroit, MI 48207

Frank Murphy Hall of Justice
1441 St. Antoine
Detroit, MI 48226

Penobscot Building
645 Griswold
Detroit, MI 48226

Mediation Tribunal Association
333 W. Fort Street
Detroit, MI 48226



Mary Beth Kelly
Chief Judge

Bernard J. Kost
Executive Court Administrator

Kelli D. Moore
Deputy Court Administrator

Third Circuit Court Judges

Mary Beth Kelly, Chief Judge

CIVIL DIVISION

William J. Giovan, Chief Judge Pro Tempore and Presiding

Wendy M. Baxter
Susan D. Borman
Michael James Callahan
Robert J. Colombo, Jr.
Daphne Means Curtis

Gershwin A. Drain
John H. Gillis, Jr.
Kathleen Macdonald
Warfield Moore, Jr.
John A. Murphy

Michael F. Sapala
Cynthia D. Stephens
Edward M. Thomas
Isidore Torres
Robert L. Ziolkowski

CRIMINAL DIVISION

Edward Ewell, Jr., Presiding

David J. Allen
Annette J. Berry
Gregory Dean Bill
Ulysses W. Boykin
Margie R. Braxton
James R. Chylinski
Sean F. Cox
Maggie W. Drake

Prentis Edwards
Vonda R. Evans
Patricia S. Fresard
David A. Groner
Cynthia Gray Hathaway
Diane Marie Hathaway
Michael Hathaway
Thomas E. Jackson
Vera Massey Jones

Timothy M. Kenny
Wade Harper McCree
Bruce U. Morrow
Daniel P. Ryan
Craig S. Strong
Brian R. Sullivan, Jr.
Deborah A. Thomas
Mary M. Waterstone

FAMILY DIVISION-DOMESTIC RELATIONS

Lita M. Popke, Presiding

Helen E. Brown
Bill Callahan
William Leo Cahalan
Charlene M. Elder

Richard B. Halloran, Jr.
Amy P. Hathaway
Arthur J. Lombard
Kathleen M. McCarthy

Maria L. Oxholm
Richard M. Skutt
Jeanne Stempien
Carole F. Youngblood

FAMILY DIVISION-JUVENILE

Virgil C. Smith, Jr., Presiding

Megan Maher Brennan
James A. Callahan
Christopher D. Dingell
Sheila Ann Gibson
Leslie Kim Smith

Judges of Probate
Judy A. Hartsfield
James E. Lacey

2005 Highlights

January

New System For Assigned Counsel in the Family Division-Juvenile Section

The Office of Assigned Counsel Services instituted a new administrative process for the selection of attorneys to represent indigent parties appearing before the Juvenile Section of the Family Division. It included the implementation of a web-based computer program that maintains a list of qualified attorneys. The program selects the appropriate number of attorneys to serve as assigned counsel each month based upon the Court's schedule for that month. Selections for assignment are done automatically to ensure that all qualified attorneys receive equal opportunities for service as assigned counsel. Attorneys selected for appointment are notified programmatically by e-mail and indicate their acceptance or rejection of the assignment by return e-mail. The new assigned counsel process represents a significant step forward for the Juvenile Section by improving administrative efficiency and creating fairness and impartiality in the attorney selection process.

February

Friend of the Court Case Establishment Process Improvements

Providing efficient and effective service to the public is an ongoing objective of Third Circuit Court. This goal has been particularly challenging in the Case Establishment Department of the Friend of the Court where paternity, family support and interstate cases are initiated and finalized. Due to limited staffing and a cumbersome statewide computer system, the time standards for case completion were not being met. This, in turn, was having a direct impact on incentive funding for Friend of the Court operations.

A work group chaired by Doris Ryans, Assistant Friend of the Court, was formed in February for the purpose of increasing work productivity and decreasing backlogs in this vital area. The team evaluated departmental processes and job classifications to determine where improvements could be made without increasing staff. Ultimately, Case Establishment's entire workflow from case initiation to entry of the final order was reengineered. Staff assignments and tasks were restructured so that all clerical staff would be cross-trained to become familiar with each step of the process. This allowed for a change in work methodology by having all clerical staff perform the assigned task for that day. Also, clerical staff began pre-screening files for demographic and other case related information, something previously done by domestic relations specialists while interviewing the parties. This change freed up more time for additional interviews to be conducted. In interstate cases, the mailing of pre-interview questionnaires to plaintiffs reduced interview time by over one-half.

The development of management tools and reports has also led to more effective docket scheduling and monitoring. For example, the daily interview schedule and show-up rates are reviewed each week to realistically adjust times, dates and number of interviews for future dockets. Other reports help track cases, such as those involving inventory time standards or case status (whether final, incomplete, or no next action). The performance of the service of process contractor is now closely monitored for compliance and timely return of documents.

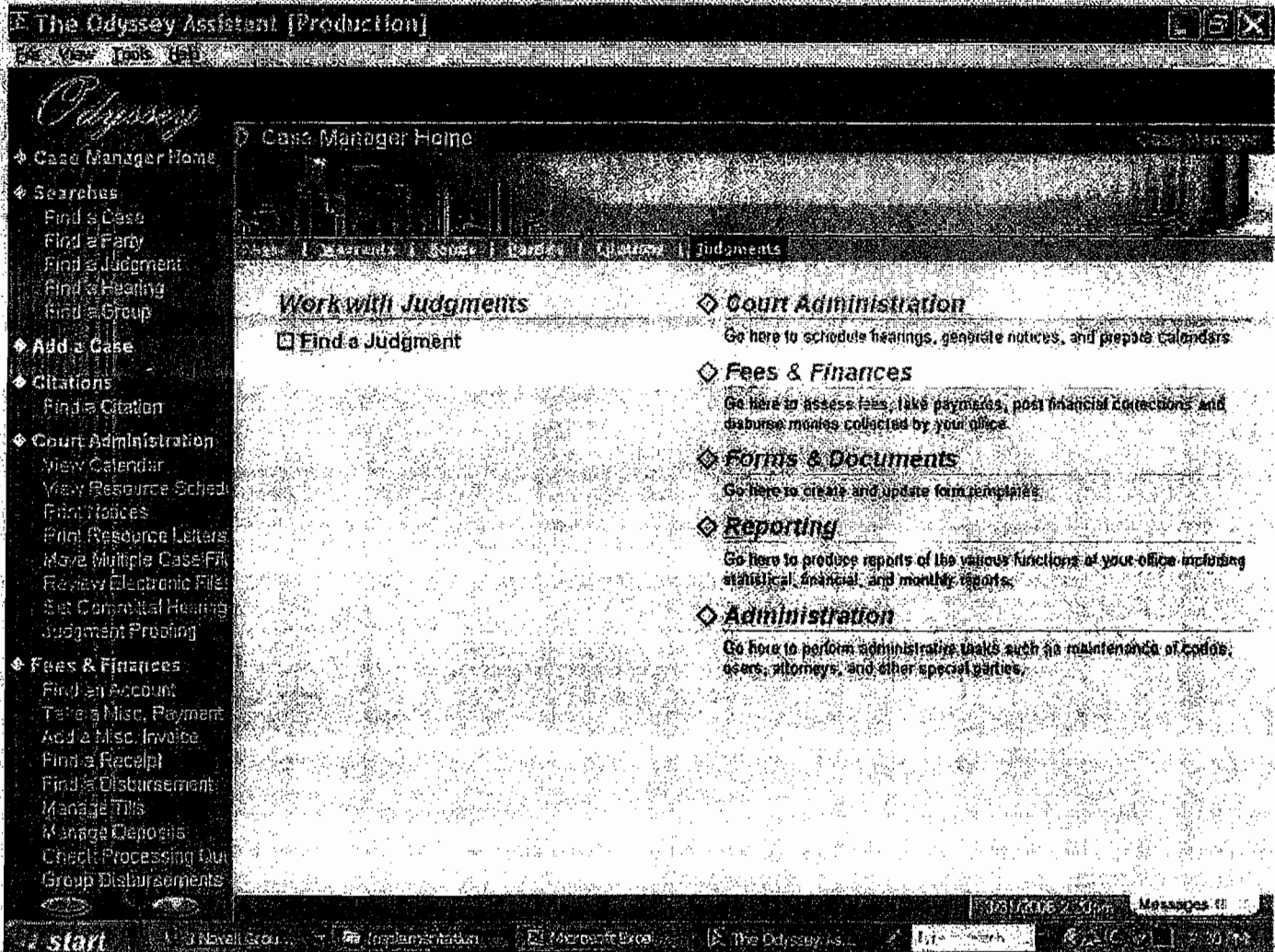
In mid-October, a coordinated effort was implemented to eliminate the backlog of cases still pending beyond the six-month time standard. Business hours were extended to 6:00 p.m. for four days a week and three Saturdays were scheduled for additional overtime as well. By the end of the year, the number of cases pending beyond the time standard was reduced by 36%. The expectation is to eliminate this docket backlog in 2006. The restructuring has also drastically reduced the average time to schedule cases. In January 2005, the average time for family support cases to be scheduled for a hearing was eight months and paternity cases three months. Both family and paternity cases are now scheduled immediately.

2005 Highlights

December

New Case Management System Implementation

The pilot phase of a multi-year project to implement a new case management system was successfully completed in December. The pilot phase involved the migration of Family Division-Juvenile Section guardianship cases to the Tyler Technologies Odyssey Case Manager software application. Adoption cases are scheduled for implementation in April 2006, criminal cases in February 2007, civil cases in December 2007, domestic relations cases in February 2008, and juvenile cases in May 2008. The Court will be able to take advantage of state-of-the-art technology as each division is migrated to the new case management system.



Caseload Trends

Between 2003 and 2005, the Court maintained approximately the same level of new case filings, while experiencing a significant decrease in the number of pending cases at year-end. While the overall level of new case filings remained the same, there were sizeable changes in the case type mix of new filings. For example, the number of new filings in the Civil Division continued their downward trend (-14%), as did the number of new filings for personal protection orders (-15%). Modest decreases in new case filings occurred in both the Criminal Division and Juvenile Section of the Family Division (-4% and -6% respectively). There were large fluctuations in the new case filings in the Domestic Relations Section of the Family Division between 2003 and 2005. New case filings increased by 42% in 2004 and decreased by 5% in 2005. These fluctuations were due primarily to the changing number of paternity and family support referrals from the State's Department of Human Services.

As noted earlier, the total number of pending cases decreased by 13% from 2003 to 2005. The number of pending cases decreased in the Civil Division, Criminal Division and Domestic Relations Section (-14%, -10% and -15% respectively), while the Juvenile Section pending caseload remained unchanged.

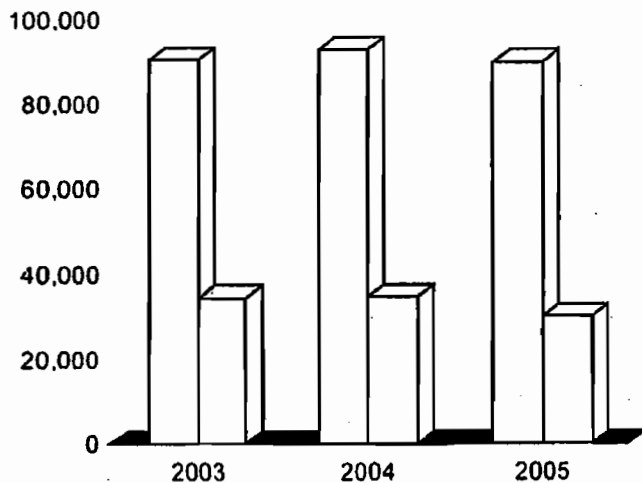
All Cases

	<u>2003</u>	<u>2004</u>	<u>2005</u>
New Filings	90,673	92,783	89,869
Cases Pending	34,403	34,525	29,957

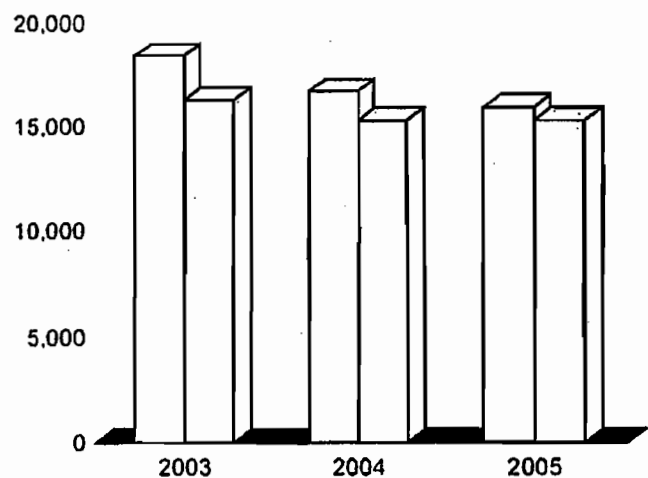
Civil Cases

	<u>2003</u>	<u>2004</u>	<u>2005</u>
New Filings	18,398	16,694	15,908
Cases Pending	16,245	15,261	13,835

□ New Case Filings □ Cases Pending



□ New Case Filings □ Cases Pending



County Divisions and Statistics

Family Division-Juvenile

Seven Circuit Court Judges (including two cross-assigned Probate Judges) were assigned to the Family Division-Juvenile Section in 2005. A staff of thirteen referees prepare written recommendations and findings of fact. Cases handled by this Division include juvenile delinquency, child abuse and neglect, adoption, and guardianship. Probation officers conduct hearings on the informal dockets, which include traffic and ordinance violations, and consent matters. There were approximately 23,000 new case filings in the Family Division-Juvenile Section in 2005, representing 25.6% of the statewide total.

Juvenile 2005 Statistics

	Designated	Delinquency	Traffic	Child Protective	Personal Protection	Total
Beginning Pending	2	1,734	333	470	21	5,560
New Filings	2	9,049	10,310	1,542	431	21,364
Re-Opened Cases	2	847	0	0	0	849
Total Caseload	38	11,630	13,641	2,012	452	27,773
Dispositions Resulting From:						
Jury Verdicts	3	23	0	4	0	30
Bench Verdicts	2	1,274	1,423	744	0	3,443
Guilty Pleas/Admissions	12	3,024	258	465	0	3,759
Prosecutor Waiver	0	12	0	0	0	12
Traditional Waiver	0	0	0	0	0	0
Dismissed by Party	0	0	0	0	38	38
Dismissed by Court	2	1,441	2,649	0	0	4,092
Dismissed/Withdrawn	0	0	0	179	0	179
Consent Calendar	9	423	0	0	0	423
Transferred	0	146	212	26	0	384
Diversion/Not Authorized	0	2,874	5,666	177	0	8,117
Designation Granted	0	0	0	0	0	0
Inactive Status	0	925	0	0	0	925
Not Charged	0	0	0	0	0	0
Cast Type Change	0	3	0	0	0	3
Dis./Denied after Hrg.	0	0	0	0	124	124
Dis./Denied Ex Parte	0	0	0	0	0	0
Orders Issued After Hrg.	0	0	0	0	264	264
Order Issued Ex Parte	0	0	0	0	2	2
Total Dispositions	19	10,145	9,608	1,595	428	21,795
Ending Pending	19	1,485	4,033	417	24	5,978

Court Departments and Programs

FRIEND OF THE COURT CONTINUED

Special Projects Department

The Special Projects Department supports the Friend of the Court operations by serving as the liaison with state partner agencies: Michigan State Disbursement Unit, the Department of Human Services Office of Child Support, and other child support offices within the state. The department is responsible for adding and deleting staff access to the Michigan Child Support Enforcement System, transferring cases from other counties, and ensuring that all staff are assigned the appropriate roles within the system. Conversion to a statewide system has led to data clean-up related projects at the local level. This department is the entry point for all data clean-up projects.

Support Enforcement Department

The Support Enforcement Department's primary focus is to enforce child support obligations. The department monitors and maintains major enforcement remedies with the intention of increasing collections and reimbursements for the Court. Enforcement programs managed by this department are Tax Intercept, License Suspension, Passport Denial, Credit Reporting, Auditing, Interstate Child Support Enforcement, and Medical Support Enforcement. The Medical Enforcement staff ensures that obligors maintain court-ordered health insurance coverage and pay uninsured medical expenses. The Enforcement staff also assists with the Felony Non-Support programs run by the Attorney General and the Wayne County Prosecutor.

JUVENILE ADMINISTRATION

The Office of Juvenile Administration manages the administrative functions of the Family Division - Juvenile Section. The Director of Juvenile Administration oversees the following Court Departments: Adoptions, Court Appointed Special Advocates, Intake, Juvenile Services and Referees.

Adoptions

The Adoptions Unit is responsible for processing all adoptions for Wayne County residents. The unit helps ensure permanently bonded families through the timely termination of parental rights, formal placement of children into approved homes, adoption finalization, and the delivery of efficient post-adoption services. The unit also processes voluntary releases of parental rights stemming from neglect, abuse, or other cases for the purpose of adoption.

Adoptions 2005 Statistics

	2005
Adoption Petitions Filed	883
Dispositions	940
Releases	149
Consents	186
Reports: Non-Identifying & Identifying Reports	30

Court Departments and Programs

JUVENILE ADMINISTRATION CONTINUED

Juvenile Intake

The Intake Unit is responsible for the initial processing of all delinquency and child protective proceedings matters that come to the attention of the Court. This includes the screening and processing of both admissions to the Wayne County Juvenile Detention Facility and complaints regarding juveniles who are not in custody. The unit is responsible for conducting Consent Calendar hearings and Traffic and Ordinance hearings, and diverting cases to various agencies within Wayne County. The unit is also responsible for monitoring Adult Designated cases and Plea Under Advisement cases. Regarding Child Protective Proceedings matters, the Intake Unit processes and maintains requests for Orders to Take Into Protective Custody, police custody matters, and AWOLP cases involving children who may be truant from their foster care placements.

Interviews on Admittance Into Juvenile Detention Facility	4,421
Police/Agency Calls for Placement Authorization	534
Interviews with DHS Workers	
Original Petitions w/ Placement Authorizations	577
Supplemental Petitions w/ Placement Authorizations	77
Original Permanent Custody Petitions	116
Family Interviews	
Consent Probation	16
Consent Dockets Held	104
Traffic/Ordinance Dockets Held	70

Juvenile Drug Court

Juvenile Drug Court is formally named the Supervised Treatment for Alcohol and Narcotics Dependency Program (STAND). The program utilizes therapeutic jurisprudence and case management to develop, coordinate, and monitor a juvenile's treatment. STAND uses a system of graduated incentives and sanctions to encourage progress toward compliance, negative drug screens, school attendance or employment, and no additional delinquency petitions. When a juvenile in the program successfully completes all requirements and graduates, the Court dismisses the original charge.

Juvenile Drug Court 2005 Statistics

Total Participants in Program	84
New Admissions	51
Returning Participants	0
Graduating Participants	14
Removed Participants	23

	Domestic Relations	Non Domestic Relations	Total	Number of Juveniles in the System	
Adult PPOs Issued	6,264	2,441	8,705	Juveniles for Whom a Petition is Pending Adjudication Who are Not Already Under Supervision	2,206
Adult PPOs Rescinded	898	420	1,318	Juveniles in the System Who are Supervised by the Court	458
				Juveniles in the System Who are Supervised by the Department of Community Justice	2,632
				Juveniles in the System Who are Supervised by the Department of Human Services	10
Out of County Violators			2	Number of Children in the System	
PPOs Issued Against a Minor				Children for Whom a Petition is Pending Adjudication Who are Not Already Under Court Jurisdiction	911
PPOs Rescinded Against a Minor			266	Children in the System Who are Permanent Wards of Either the Michigan Children's Institute or the Court	2,953
			27	Children in the System Who are Temporary Wards of the Court	4,157
				Children in the System Who are Temporary Wards of the Michigan Children's Institute for Observation	0
				Children Who Came in on New Petitions During the Year Who Have Had Prior Court Jurisdiction	349
Petitions filed for the Appointment of a Confidential Intermediary			119	Number of Other Child Protective Petitions Filed	
Requests filed for Release of Adoption Information			246	Termination Petitions Filed in Original Petition	406
Total releases to adopt as a result of a child protective proceeding			113	Termination Petitions as a Supplemental Petition	412
Total releases to adopt where no case is pending			36	Supplemental Petitions	279
				Children per Petition	714
					857
					397
				Number of Children Associated with Child Protective New Filings	2,783

Michigan Circuit Court - Child Protective Proceedings In 2005

Court Code	County	County/County Name	Beginning Pending	Children Associated with Beginning Pending	New Filings	Children Associated with New Filings	Children in New Filings w/ Prior Court Jurisdiction	Reopened	Children Associated with Reopened	Termination Petitions: Original or Amended	Children in Termination Petitions; Original or Amended	Termination Petitions; Supplemental	Children in Termination Petitions; Supplemental	Supplemental Petitions
Statewide			2,776	4,514	8,323	12,925	1,108	98	171	1,224	2,009	1,468	2,597	674
C28	Missaukee	28th Circuit Court - Missaukee	1	2	3	5	0	0	0	0	0	1	2	0
C38	Monroe	38th Circuit Court	83	128	88	159	7	0	0	1	2	0	0	0
C08	Montcalm	8th Circuit Court - Montcalm	0	0	50	50	0	0	0	7	7	13	13	0
C26	Montmorency	26th Circuit Court - Montmorency	8	13	9	17	0	0	0	0	0	5	7	0
C14	Muskegon	14th Circuit Court	71	116	187	386	17	0	0	71	121	18	27	3
C27	Newaygo	27th Circuit Court - Newaygo	6	12	35	70	1	0	0	4	5	5	9	2
C06	Oakland	6th Circuit Court	179	326	603	1,122	0	0	0	159	288	99	205	6
C27	Oceana	27th Circuit Court - Oceana	1	4	20	39	1	1	1	7	11	4	12	2
C34	Ogemaw	34th Circuit Court - Ogemaw	14	33	21	38	2	0	0	3	4	4	7	4
C32	Ontonagon	32nd Circuit Court - Ontonagon	2	3	6	7	2	0	0	2	4	0	0	0
C49	Oscoda	49th Circuit Court - Oscoda	5	8	20	41	1	0	0	2	2	0	0	0
C23	Oscoda	23rd Circuit Court - Oscoda	0	0	1	1	0	0	0	0	0	0	0	0
C46	Otsego	46th Circuit Court - Otsego	7	12	46	63	0	0	0	0	0	0	0	0
C20	Ottawa	20th Circuit Court	14	23	106	205	32	9	16	17	30	14	23	10
C53	Presque Isle	53rd Circuit Court - Presque Isle	13	23	2	2	0	0	0	0	0	1	3	2
C34	Roscommon	34th Circuit Court - Roscommon	3	7	19	36	0	1	2	3	4	5	11	1
C10	Saginaw	10th Circuit Court	122	122	332	332	56	0	0	47	47	50	50	0
C24	Sanilac	24th Circuit Court	43	95	43	93	1	0	0	0	0	6	16	0
C11	Schoolcraft	11th Circuit Court - Schoolcraft	0	0	4	11	2	0	0	0	0	0	0	0
C35	Shiawassee	35th Circuit Court	31	58	49	89	4	1	1	3	4	11	23	4
C31	St. Clair	31st Circuit Court	75	124	134	227	5	3	4	24	33	46	76	0
C45	St. Joseph	45th Circuit Court	6	13	77	159	15	0	0	2	4	16	31	0
C54	Tuscola	54th Circuit Court	120	229	29	50	0	0	0	0	0	4	7	0
C36	Van Buren	36th Circuit Court	22	51	63	112	3	0	0	16	21	0	0	0
C22	Washtenaw	22nd Circuit Court	54	58	117	126	17	0	0	18	18	55	60	0
C03	Wayne	3rd Circuit Court	470	830	1,542	2,783	349	0	0	406	714	412	857	279
C28	Wexford	28th Circuit Court - Wexford	4	5	22	44	1	0	0	5	13	5	11	4

Michigan Circuit Court- Child Protective Proceedings In 2005

Court Code	County	Court/County Name	Children in Supplemental Petitions	Jury Verdict	Bench Verdict	Admission/No Contest	Dismissed/Withdrawn	Transferred	Not Authorized	Children who are Temporary Court Wards	Children who are Temporary State Wards	Children who are Permanent Wards	Children Pending Adjudication
Statewide			985	41	1,494	3,964	1,294	160	630	400	11,423	6,242	2,432
C28	Missaukee	28th Circuit Court - Missaukee	0	0	0	2	2	0	0	0	4	15	0
C38	Monroe	38th Circuit Court	0	0	0	24	8	0	2	0	2	1	97
C08	Montcalm	8th Circuit Court - Montcalm	0	0	1	32	7	0	5	0	38	22	5
C26	Montmorency	26th Circuit Court - Montmorency	0	0	0	5	4	1	0	0	13	4	9
C14	Muskegon	14th Circuit Court	10	0	11	156	17	2	10	0	333	144	24
C27	Newaygo	27th Circuit Court - Newaygo	3	0	0	21	4	0	4	0	65	25	7
C06	Oakland	6th Circuit Court	9	5	155	344	45	26	71	0	1,236	473	25
C27	Oceana	27th Circuit Court - Oceana	5	0	0	13	3	0	3	0	20	3	1
C34	Ogemaw	34th Circuit Court - Ogemaw	7	2	0	7	5	0	2	0	25	13	0
C32	Ontonagon	32nd Circuit Court - Ontonagon	0	0	0	0	4	0	0	2	2	0	0
C49	Osceola	49th Circuit Court - Osceola	0	0	0	12	6	0	0	0	9	6	0
C23	Oscoda	23rd Circuit Court - Oscoda	0	0	0	1	0	0	0	0	3	2	0
C46	Otsego	46th Circuit Court - Otsego	0	0	2	31	6	2	1	0	49	11	5
C20	Ottawa	20th Circuit Court	23	0	10	73	23	1	5	0	161	47	42
C53	Presque Isle	53rd Circuit Court - Presque Isle	3	0	0	0	1	0	0	0	14	0	2
C34	Roscommon	34th Circuit Court - Roscommon	2	0	0	9	5	2	0	0	24	7	0
C10	Saginaw	10th Circuit Court	0	6	158	160	29	5	7	0	263	230	89
C24	Sanilac	24th Circuit Court	0	0	0	18	16	0	0	0	55	5	4
C11	Schoolcraft	11th Circuit Court - Schoolcraft	0	0	0	3	0	1	0	0	3	0	2
C35	Shiawassee	35th Circuit Court	7	1	2	30	6	2	0	0	39	29	19
C31	St. Clair	31st Circuit Court	0	2	14	87	18	7	9	0	186	113	22
C45	St. Joseph	45th Circuit Court	0	0	3	42	20	0	11	0	145	67	21
C54	Tuscola	54th Circuit Court	0	0	0	17	0	0	0	0	38	7	33
C36	Van Buren	36th Circuit Court	0	0	1	51	7	1	0	0	184	1	1
C22	Washtenaw	22nd Circuit Court	0	2	18	62	11	11	2	5	152	92	48
C03	Wayne	3rd Circuit Court	397	4	744	485	179	26	177	0	4,167	2,965	941
C28	Wexford	28th Circuit Court - Wexford	8	0	1	20	3	0	0	0	44	14	0



**THE THIRD JUDICIAL CIRCUIT
OF MICHIGAN**

711 COLEMAN A. YOUNG MUNICIPAL CENTER
2 WOODWARD AVENUE
DETROIT, MICHIGAN 48226-3413

ADMINISTRATIVE ORDER 2006 - 01

**STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT**

**SUBJECT: PLAN FOR ASSIGNMENT OF COUNSEL IN THE THIRD
JUDICIAL CIRCUIT**

This Administrative Order rescinds and replaces Administrative Order 2004-05.

Pursuant to MCR 8.112(B) and 8.123(C), the Third Judicial Circuit (the Court) adopts the following as its Plan for the Assignment of Counsel:

I. Introduction

- A. Organization of the Plan for Assignment of Counsel. The Court presently maintains a Criminal Division to adjudicate criminal cases within its jurisdiction and a Domestic Relations Section and Juvenile Section to adjudicate cases within the jurisdiction of its Family Division. In order to take into account how cases are processed and the traditional methods of assigning counsel in these different parts of the Court, the Court's Plan for Assignment of Counsel (the Plan) is organized into three parts, each of which details how assignments for appointed counsel are made in these divisions of the Court.

II. Assignment of Counsel, Family Division – Domestic Relations Section

- A. Scope. Where appointment of counsel for an indigent party is required involving felony non-support, personal protection matters (PPO), paternity, contempt of court show cause proceedings, or other cases within the jurisdiction of the Third Circuit Court – Family Division – Domestic Relations Section, appointment of counsel shall be made pursuant to the following provisions.

B. Attorney Eligibility.

1. **Requirements.** Attorneys seeking house counsel assignments for domestic relations matters are required to submit to the Case Processing Department, 770 Coleman A. Young Municipal Center or the Office of Assigned Counsel Services, 1025 E. Forest Avenue, Suite 203/204 the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Case Processing Department and Assigned Counsel Services Office.
 - b. Proof of completion/certification of annual attorney training issued by the Court's designated educational entity.
 - c. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - d. A statement of prior experience in the field of domestic relations law.
 - e. Membership in good standing in the State Bar of Michigan.
2. **The Domestic Relations Attorney Review Committee.** The Domestic Relations Attorney Review Committee (the Committee) includes the Presiding Judge of the Domestic Relations Section, the Executive Court Administrator (or designated representative), and two judges serving in the Domestic Relations Section. The Presiding Judge shall annually select these judges on a rotational basis.
 - a. The Committee shall meet periodically to review attorney profiles and determine in its sole discretion whether an attorney is qualified, under the foregoing provisions for placement on the Assigned Counsel Eligibility List. The Committee shall also designate those attorneys eligible to receive assignments as appellate counsel.
 - b. The Committee shall also remove attorneys in its sole discretion from the Assigned Counsel Eligibility List who violate court policy and/or do not demonstrate the ability to provide adequate representation to clients.
3. **The Assigned Counsel Eligibility List.** The names of all attorneys approved by the Committee shall be maintained in an automated assigned counsel program database. The database will contain all attorneys approved for assignment in the Domestic Relations Section. The database of approved attorneys shall constitute the Domestic Relations Assigned Counsel Eligibility List (Eligibility List).
 - a. Printed copies of the Eligibility List shall be provided to the Bench.

- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the Eligibility List.

4. Removal From the Eligibility List.

- a. Complaints about attorneys who are assigned cases under the provisions of this Division shall be forwarded to the Committee using the Assigned Counsel Complaint/Request for Discipline form.

- (1) The Attorney Review Committee and the attorney shall be notified of instances of unexcused or unreasonable tardiness or absence of assigned counsel and other policy violations.
- (2) Upon being notified of an unexcused or unreasonable tardiness or absence of assigned counsel, the Presiding Judge shall, via first class mail, notify the attorney that another instance of unexcused or unreasonable tardiness or absence within the next six month period shall, without further notice to the attorney, result in the attorney's name being deleted from the Eligibility List. Assigned Counsel Services shall remove from the Eligibility List the names of attorneys who have failed to comply after being sent a warning letter.
- (3) For other good cause, upon being notified of other complaints against assigned counsel, the Committee shall review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.
- (4) If an attorney is removed from the Eligibility List, the attorney may apply for reinstatement if the attorney can otherwise satisfy the requirements of Section II (B1). However, the attorney may not be placed on the Eligibility List within 90 days from the removal date.
- (5) Upon being informed that an attorney has been suspended or disbarred from the practice of law or has not completed the required training, the attorney shall be removed from the Eligibility List without further notice until the attorney demonstrates training certification, and/or membership in good standing with the State Bar of Michigan.

C. Assignment of Counsel.

- 1. In order to ensure equitable distribution of assignments, House Counsel assignments are made on a rotational basis from the Assigned Counsel Eligibility List.

2. Attorneys shall be notified of assignment (type, date, time, and place of hearing) via email.
3. Scope of Appointment.
 - a. House Counsel assignments to the PPO and Show Cause dockets shall be for the purposes of that hearing day only.
 - b. Assigned Counsel assignments to felony non-support cases or to a paternity case in which no order of filiation has been entered shall be through case closure or the entry of an order of filiation. Once appointed, assigned counsel shall not be removed from the case before sentencing or an order of filiation has been entered unless upon order of the Court for good cause.

D. Removal/Replacement of Counsel.

A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge. Designated stand-ins must be CAP certified.

E. Compensation.

1. Attorneys serving as house counsel for the PPO or Show Cause dockets shall submit vouchers for payment as directed by the Case Processing Department on the day of the assignment. Compensation for service as house counsel for the PPO or Show Cause Dockets is per half day based upon the Court's applicable fee schedule.
2. Assigned counsel shall submit vouchers to the Case Processing Department for felony non-support, pre-filiation paternity cases and appeals, under the provisions of the applicable fee schedule.
3. The Case Processing Department shall submit vouchers to the Office of Budget and Finance for review and processing.
4. Disputes: Attorneys may appeal payment discrepancies by completing an attorney inquiry form available in the Office of Budget and Finance. Upon receipt of an attorney inquiry concerning a payment discrepancy, management from the Office of Budget and Finance shall review and investigate the complaint and make any fee adjustments as required.

III. Assignment of Counsel, Family Division - Juvenile Section

- A **Scope.** Assignment of counsel for an indigent party is required for children in delinquency cases and for respondents and children in child protection proceedings or other cases within the jurisdiction of the Third Circuit Court Family Division-Juvenile Section. Assignment of counsel in the Juvenile Section shall be made pursuant to the following provisions, except where the

Court has entered into a contract with a vendor, such as the Legal Aid and Defenders Association (LADA) or Michigan Children's Law Center (MCLC). The contracts shall govern the provisions of assigned counsel services by these vendors.

B. Attorney Eligibility.

1. **Requirements:** Attorneys seeking house counsel assignments in the Juvenile Section are required to submit to the Office of Assigned Counsel Services, 1025 E. Forest Avenue, Bldg. A, Suite B12 the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Lincoln Hall of Justice Office of Assigned Counsel Services.
 - b. Annual proof of completion/certification of attorney training issued by the Court's designated educational entity.
 - c. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - d. A statement of prior experience in the area of juvenile law.
 - e. Membership in good standing in the State Bar of Michigan.

2. Appeals.

In addition to the foregoing eligibility requirements, attorneys seeking appellate assignments must submit a sample brief for review by the Juvenile Attorney Review Committee.

3. Designated Cases.

In addition to the foregoing eligibility requirements, attorneys seeking assignments on designated cases must provide proof of current Detroit-Wayne County Criminal Advocacy Program (CAP) yearly certification.

4. The Juvenile Attorney Review Committee.

The Juvenile Attorney Review Committee (the Committee) includes the Presiding Judge of the Juvenile Section, the Executive Court Administrator (or designated representative), and two judges serving in the Juvenile Section. The Presiding Judge shall annually select these judges on a rotational basis.

- a. The Committee shall meet periodically to review attorney profiles and determine whether an attorney is qualified, under the foregoing provisions for placement on the Assigned Counsel Eligibility List.

The Committee shall also designate those attorneys eligible to receive appointments as appellate counsel.

- b. The Committee shall also remove attorneys from the Assigned Counsel Eligibility List who violate court policy and/or do not demonstrate the ability to provide adequate representation to clients.**

5. The Assigned Counsel Eligibility List.

The names of all attorneys approved by the Committee shall be maintained in an automated assigned counsel program database. The database will contain attorneys approved for assignment in the Juvenile Section. The database of approved attorneys shall constitute the Juvenile Assigned Counsel Eligibility List (Eligibility List).

- a. Printed copies of the Eligibility List shall be provided to the Bench.**
- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the Eligibility List.**

6. Removal from the Eligibility List.

- a. Complaints about attorneys who are assigned cases under the provisions of this Division shall be forwarded to The Committee using the Assigned Counsel Complaint/Request for Discipline form.**
 - (1) The Attorney Review Committee and the attorney should be notified of instances of unexcused or unreasonable tardiness or absence of assigned counsel and other policy violations.**
 - (2) Upon being notified of an unexcused or unreasonable tardiness or absence of assigned counsel, the Presiding Judge shall, via first class mail, notify the attorney that another instance of unexcused or unreasonable tardiness or absence within the next six month period shall, without further notice to the attorney, result in the attorney's name being deleted from the Eligibility List. Assigned Counsel Services shall remove from the Eligibility List the names of attorneys who have failed to comply after being sent a warning letter.**
 - (3) For other good cause, upon being notified of other complaints against assigned counsel, the Committee shall review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.**
 - (4) If an attorney is removed from the Eligibility List, the attorney may apply for reinstatement if the attorney can otherwise satisfy the**

requirements of Section III (B1). However, the attorney may not be placed on the Eligibility List within 90 days from the removal date.

- (5) Upon being informed that an attorney has been suspended or disbarred from the practice of law or has not completed the required training, the attorney shall be removed from the Eligibility List without further notice and until such time that compliance of the previous mentioned requirements are obtained.

C. Assignment of Counsel.

1. To ensure an equitable distribution of assignments, house counsel assignments are made on a rotational basis from the Eligibility List. A sufficient number of attorneys shall be assigned to represent all indigent parties for each daily docket. Assignments shall be made only to attorneys who are on the Eligibility List. House counsel assignments to LADA and MCLC are also made on a rotational basis and are designed to ensure that the number of assignments comply with contractual requirements.
2. Reassignment of Counsel/Case Packaging
 - a. Under the one judge-one family rule, attorneys shall be reassigned to cover the same family or the same party if there is an "open case" i.e. ongoing supervision, wardship, jurisdiction or order of a Judge regarding new issues or petitions.
 - b. For cases closed within one year, the same attorney shall be reassigned when possible.
 - c. If it has been more than one year since closure, the case shall be assigned by rotation according to the Eligibility List.
3. Scope of Assignment. The assignment of an attorney serving as house counsel shall be scheduled in half-day intervals unless assigned to represent a party in an ongoing case as previously defined. Such assignment continues until case closure.

D. Removal/Replacement of Counsel.

A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge.

E. Compensation.

1. LADA, MCLC, and any other contracted agencies shall be compensated according to the terms of the existing contract between the Court and that agency.

2. Individual Assigned Counsel

- a. Compensation for private attorneys shall be pursuant to the Court's applicable fee schedule. Copies of the current fee schedule are available in the Office of Budget and Finance.
 - b. Verification of Services and Request for Payment of Attorney Fees forms shall be provided for payment for services in the following instances: standby counsel, guardian ad-litem, adoptions, non-party adults, extraordinary fees, mediation, AWOLP docket, show-ups, custody hearings and appeals.
3. Disputes: Attorneys may appeal payment discrepancies by completing an attorney inquiry form available in the Office of Budget and Finance. Upon receipt of an attorney inquiry concerning a payment discrepancy, management from the Office of Budget and Finance shall review and investigate the complaint and make any fee adjustments as required.

IV. Assignment of Counsel, Criminal Division

A. Scope. The following provisions govern the selection and appointment of counsel for representation of indigent defendants in felony cases in the Third Circuit Court Criminal Division.

B. Attorney Eligibility.

1. Attorneys shall qualify for assigned counsel appointments as specified below by submitting to the Assigned Counsel Services Office, located at the Frank Murphy Hall of Justice (FMHJ) information demonstrating the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Office of Assigned Counsel Services.
 - b. Membership in good standing in the State Bar of Michigan.
 - c. Annual continuing legal education certification from the Detroit-Wayne County Criminal Advocacy Program (CAP).
 - d. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - e. Statement/description of experience in criminal law.
 - f. Residence or bona fide office in Wayne County.

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Tuesday, February 6, 2007

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Assessment of Probate Courts'
Handling of Child Abuse and Neglect Cases**

These 57 recommendations, edited by Kathi L. Grasso, Esq., were submitted to the Michigan Supreme Court State Court Administrative Office by the American Bar Association's Center on Children and the Law and the National Center for State Courts.

Recommendation 1: The Michigan Supreme Court and SCAO should ensure that a direct calendaring system of case assignment in child abuse and neglect cases be established and maintained in all counties.

Recommendation 2: The Michigan Judicial Institute and SCAO should develop and implement training for judges and referees at the time they are elected, appointed, or assigned to the bench, and periodically thereafter. This training should be mandatory for all judges and referees, as well as court administrators and other court personnel and should focus on permanency planning issues.

Recommendation 3: To ensure the timely and expeditious implementation of permanency plans, all courts handling abuse and neglect cases should have written policy and procedures governing timely hearings and decision making that mirrors Michigan's statutory mandates.

Recommendation 4: Tracking systems should be implemented in all courts in which appropriate court personnel are designated to track the amount of time it takes a case to proceed through various stages of child neglect and abuse proceedings, identify the reasons for delay, and move court personnel and parties to a more expeditious handling of a case.

Recommendation 5: The recommendations of the Michigan Probate Judges Association are incorporated herein and should be adopted. "The Michigan Probate Judges Association believes that reforms should be put in place which would result in closer monitoring of compliance with time limits and that steps can be taken to expedite termination cases that are appealed..." The Association "support[s] the following actions being taken to reduce delays in receiving appeal opinions in termination of parental rights cases:

1. Restructure Court of Appeals reporting system to assure that:

- a. The Probate Court is notified when time limits on appeals of termination of parental rights cases are not met.
- b. The Supreme Court receives necessary reports to assure adherence to time limits by all courts.

2. Revise the Court Rules to require that the local Probate Court and Interested parties receive:

- a. Affidavits of service by court reporters for filing transcripts.
- b. Correspondence between attorneys and the Court of Appeals of delays in time limits and filing of briefs.

3. The Supreme Court review how expeditiously termination cases should be heard and review all time limits in the Court Rules on appeals as to their reasonableness as well as the strength of the existing sanctions and, if appropriate, make necessary revisions of the Court Rules. 4. Michigan Probate Courts should develop methods to:

- a. Place a higher priority on the completion of transcripts and expeditiously send the lower court record to the Court of Appeals.
- b. Improve the appointment of counsel process to assure that attorneys comply with the time limits in the appeals process."

Recommendation 6: The SCAO should ensure that as statewide court reorganization is implemented, court procedures and practices that are instrumental in diminishing delays in child abuse and neglect cases are maintained.

Recommendation 7: The SCAO should work with those minority of probate courts that are not scheduling individual cases for a date and time certain. The SCAO should issue a reminder to all probate courts of the applicability of MCR 8.116 "Sessions of the Court" to the handling of child abuse and neglect cases.

Recommendation 8: Pretrial conferences should occur in cases in which the parties anticipate a contest so that issues for litigation can be clarified and appropriate time set aside for the trial of the case.

Recommendation 9: The SCAO should ensure that the judiciary and the bar are aware that case adjournments should be granted in child abuse and neglect cases in only the most exceptional of circumstances.

Recommendation 10: In order to diminish adjournments, county practices addressing the identification of and service of process on fathers, especially FIA practices, need to be more closely examined to determine how fathers can be better identified and served early in the court

process.

Recommendation 11: Policies and practices should be implemented that guarantee that attorneys for the parties (FIA, child, and parent) are appointed before the initial removal and non-removal preliminary hearings.

Recommendation 12: The SCAO should develop a consistent method of file management, including an automated record system, for use by county courts.

Recommendation 13: The SCAO should work closely with each county court to evaluate whether each court is utilizing its existing computer technology as effectively as possible for the tracking of cases.

Recommendation 14: SCAO policy should be implemented to require that each county court produce a uniform quarterly report for submission to the SCAO, the bar and public detailing case tracking information.

Recommendation 15: Sufficient funding should be appropriated for the purchase and installment of computer software and equipment necessary to upgrade or make uniform existing county case tracking systems.

Recommendation 16: The SCAO should train judges, local administrators, and other appropriate court personnel on the implementation of an automated tracking system to ensure that a high level of expertise in data management is maintained. Tracking systems should be utilized so that appropriate court personnel or a permanency planning committee are designated to monitor caseload.

Recommendation 17: All courts presiding over child abuse and neglect cases should implement procedures that guarantee that each child and parent are appointed trained and skilled attorneys in advance of initial preliminary hearings and who will continue representation to each child and parent until a plan of permanency is implemented (e.g., adoption, reunification, permanent custodial placement). Attorneys for children and parents should be recruited and selected in part for their skill and knowledge in law and fields relevant to child welfare.

Recommendation 18: The Michigan Bar and the SCAO should work with courts to develop models for use when courts contract with attorneys to provide legal services to parents and children in abuse and neglect cases. The contracts should incorporate provisions addressing the attorney's obligations to the client and standards for reasonable attorney caseloads taking into consideration the need for out-of-court case preparation time.

Recommendation 19: Recommendation 47 of the Blmsfeld's Children's Commission should be implemented. This recommendation provides: "Juvenile Courts in each county shall be assigned specialized, highly trained, permanent prosecutors/attorneys general to represent FIA at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home. The Family Independence Agency will expand the pilot project that is providing funds to prosecutors to increase their ability to represent the FIA except where a conflict of interest arises."

Recommendation 20: The FIA or its agent should be represented by reliable civil counsel at all stages of child abuse and neglect proceedings. Michigan's statute and court rule addressing attorney services for the FIA or its agent refers to a prosecuting attorney serving as a "legal consultant" to the FIA. MCL 712A.17(5), MCR 5.914(B)(1). In order to ensure that the FIA is assured of adequate representation in child abuse and neglect proceedings, the above-cited statute and court rule should be modified to clarify that the prosecuting attorney or assistant attorney general is to act as the FIA or its agent's "attorney" in child abuse and neglect proceedings.

Recommendation 21: The practice in some counties in which FIA workers are responsible for drafting the initial abuse and neglect petition should be modified to delegate this responsibility to the FIA attorney.

Recommendation 22: The recommendation by the Michigan Children's Ombudsman that MCL 712A.17c(7), the statutory provision addressing the case preparation obligations of the child's attorney, should not only be "better enforced," but "should also be amended to specifically require that the child(ren)'s attorney meet with the child(ren), at least once before each proceeding or hearing" should be adopted.

Recommendation 23: Public Act 204 that "requires the Ombudsman to investigate and report alleged infractions about attorneys who engage in adoption" should be amended to "...require the Ombudsman to report violations of MCL 712A.17c(7) to the Attorney Grievance Commission."

Recommendation 24: Prior to appointment, all attorneys who represent the FIA, children, and parents in abuse and neglect cases should be required to undergo mandatory training on topics relevant to advocacy in the juvenile or family court forum and provide information to the court on their experience level.

Recommendation 25: The recommendations as outlined in the Final Report of the State Bar of Michigan Children's Task Force (September 21, 1995) should be implemented, including that:

The State Bar of Michigan adopt [the Final Report's] Guidelines for Advocates for Children and distribute them to bench, bar and other interested persons throughout Michigan;

The Guidelines for Advocates for Children be implemented by the organized bar, courts, and individual attorneys representing children in Michigan courts for the improvement of such representation; and

Law schools, Michigan Judicial Institute, Institute for Continuing Legal Education, other lawyer training units, and the Michigan CASA Association use [the] Guidelines for Advocates for Children as a basis for training attorneys and others to advocate for children.

Recommendation 26: The court, attorneys for children, and the organized bar should consider establishing mentorship programs in which more experienced attorneys provide guidance to less experienced attorneys on child advocacy practice.

Recommendation 27: Recommendation 50 of the Binsfeld Commission Report should be adopted and expanded upon. The Recommendation states: "[The] FIA should work with Prosecuting Attorneys Association of Michigan (PAAM) to ensure Michigan's public and private law schools have child welfare/protection/juvenile law curricula." Added to it should be the statement that other Michigan child and parent legal advocacy groups should also participate in curricula development to ensure that subjects relevant to the representation of parents and children are covered.

Attorneys for children must also be knowledgeable of Michigan's statutory requirements for children's attorneys, the State Bar of Michigan Children's Task Force's "Guidelines For Advocates For Children In Michigan Courts," and the American Bar Association's "Standards of Practice For Lawyers Who Represent Children In Abuse and Neglect Cases," approved by the American Bar Association's House of Delegates on February 5, 1996.

Recommendation 28: Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in child abuse and neglect cases.

Recommendation 29: Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility and other standards (e.g., annual, "no case cap" contracts).

Recommendation 30: Funding should be provided for the establishment of Court Appointed Special Advocate (CASA) programs in all counties in the state.

Recommendation 31: New programs should work closely with already existing CASA programs in the state to establish policy and procedure related to the recruitment, training, screening and monitoring of CASA volunteers.

Recommendation 32: In order for hearings to be effective, the SCAO should develop caseload standards for the judiciary modeled after the formula developed in the Kent County study.

Recommendation 33: The judiciary's staffing resources should be carefully evaluated as a unified family court is established in Michigan.

Recommendation 34: The impact on caseload of recent changes in delinquency laws needs to be examined.

Recommendation 35: All judges and referees handling abuse and neglect cases should familiarize themselves with the Resource Guidelines' rationale supporting lengthier court proceedings in routine or non-contested cases.

Recommendation 36: Courts should require the assigned caseworker to submit a comprehensive report on the progress being made toward the implementation of the case permanency plan. A statute or court rule should be enacted which mandates that these reports be submitted to the court, the parties' attorneys, and unrepresented parties at least seven days prior to the scheduled hearing. Courts should monitor the submission of reports and impose appropriate sanctions for any failure to submit a report in a timely manner.

Recommendation 37: Judges and referees handling abuse and neglect cases should ensure that assigned caseworkers are present for all court proceedings and encourage and mandate the attendance of age-appropriate children.

Recommendation 38: In addition to the training recommended previously in this report, judges and referees should receive specific training on the Resource Guidelines, in particular the nature and content of preliminary hearings and permanency planning reviews.

Recommendation 39: In order to ensure that the removal of children from their families is the most appropriate plan, courts must issue orders as to whether the FIA or its agents have made or should make "reasonable efforts" to prevent removal through the provision of adequate family preservation services at all preliminary removal hearings.

Recommendation 40: Michigan's system for funding foster care and other services to children and families should be evaluated to modify those aspects of the system that create financial disincentives to making negative findings of reasonable efforts.

Recommendation 41: The following recommendations of the Children's Task Force of the State Bar of Michigan should be adopted:

Implement a flexible funding mechanism that allows the court services to follow the family;

Overhaul existing funding statutes so that they are driven by the best interests of the child and not fiscal implications, so that issues such as the following are addressed:

1. Amend existing law so that the reasonable efforts determination required by federal mandate does not carry a financial penalty to the county when the court finds that reasonable efforts have not been made;
2. Amend existing law so that treatment plans and placement decisions are independent of considerations regarding funding sources and the parent's economic circumstances.

Recommendation 42: Courts should issue detailed written findings of fact and court orders that clearly state the responsibilities of each party and time frames for satisfying those responsibilities.

Recommendation 43: All Michigan courts should work with their local FIA office to determine whether adoption is being considered early enough as a permanency planning option in all appropriate cases. This issue may be especially relevant in urban courts.

Recommendation 44: Sufficient funds should be appropriated by the Legislature to ensure the establishment of appropriate preventive and reunification services, as well as placement alternatives that ensure a child's safety and at the same time allow for the timely implementation of

permanency plans of family reunification, permanent custody, adoption, or independent living.

Recommendation 45: Consideration should be given to the establishment of Foster Care Review Boards in those jurisdictions that currently do not have them.

Recommendation 46: The SCAO should work with local FCRB representatives to evaluate how the Boards' recommendations can be more effectively utilized by courts (e.g., scheduling of court review if the FCRB disagrees with agency's permanency plan; attendance of FCRB representatives at hearings to present case reports). Consideration should also be given to how attorneys for the parties can be more actively involved at FCRB hearings.

Recommendation 47: A state statutory provision or court rule should be enacted that requires all judges and referees to inquire fully as to whether or not an Indian child is the subject of a neglect and abuse petition at the preliminary hearing in all cases. The SCAO should work with local courts to insure that their preliminary hearing form orders include language on the court's inquiry about the child's Indian heritage.

Recommendation 48: The Court Improvement Project Advisory Board, local courts, and the SCAO should investigate, establish, and evaluate demonstration alternative dispute resolution (ADR) programs in child abuse and neglect cases in selected sites in accordance with the Resource Guidelines.

Recommendation 49: The SCAO should identify Michigan courts that may be using the services of mediators in child abuse and neglect cases and examine the effectiveness of those programs in resolving disputes in the best interest of the child.

Recommendation 50: As unified family courts are established within Michigan, consideration should also be given to expanding already existing domestic relations mediation programs to the realm of abuse and neglect cases taking into account the Resource Guidelines' admonition that mediators be knowledgeable on all aspects of child welfare.

Recommendation 51: The Kent County model project on family group conferences should be evaluated for effectiveness and possible replication in other Michigan counties.

Recommendation 52: Courts should have the authority to order permanent guardianship, power of attorney or "stand-by" guardianship, or open adoption as an alternative permanency plan.

Recommendation 53: The recommendations of the State Bar of Michigan Children's Task Force on permanent guardianship should be adopted.

Recommendation 54: In order to increase permanency planning options for children, consideration should also be given to enacting legislation that permits "open" adoption which in appropriate cases, allows a child and his or her biological family to maintain contact after an adoption decree is issued.

Recommendation 55: The recommendations of the State Bar of Michigan Children's Task Force on expanding the statutory definition of "relative" for purposes of child placement should be considered for implementation. The Recommendations incorporated herein state:

The Task Force recommends that the Michigan Legislature expand MCL 712A.18(1); MSA 27.3178(598.18(1)) to allow for placement of children in conformity to Act 116 of the Child Care Licensing and Regulation Act, MCL 722.115a; MSA 25.358(15).

It is further recommended that the Michigan Legislature clarify the definition of suitable relative placements in child protective proceedings to allow the court the discretion to define "relatives" within the context of the family relationship and community norms. Act 116 of the Child Care Licensing & Regulation Act should be amended to allow for this expanded definition.

Recommendation 56: Kinship caregivers should receive adequate financial subsidies and appropriate services that will encourage kinship care for children who otherwise would be placed in the public foster care system.

Recommendation 57: In light of creation of the family division of the circuit court, and because it is in the best interest of children, sufficient funding should be appropriated by the legislature so that all Michigan courthouse facilities being used for child abuse and neglect proceedings come into compliance with the Resource Guidelines. In all facilities handling child abuse and neglect cases, the following need to be created or, if currently available, maintained:

adequate waiting and play rooms that are "child-friendly" and designated for children;

courtrooms that are separate and apart from courtrooms used for criminal and other civil cases, including delinquency cases;

adequate courtrooms so that all court participants, including judicial officers, court staff, attorneys for the parties, can be comfortably seated; attorneys should have access to adequate counsel table space to allow for consultation with clients and for the taking of notes and reviewing of files and other appropriate materials;

adequate and private conference rooms (in the vicinity of the juvenile courtrooms) that enable attorneys to consult with their clients, including child clients;

consistent policies about confidentiality of files and the public's access to child abuse and neglect hearings.

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***NACC Recommendations
for Representation of Children
in Abuse and Neglect Cases***

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN



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NACC Recommendations for Representation of Children in Abuse and Neglect Cases was produced as part of the NACC's objective to establish the practice of law for children as a legitimate profession and legal specialty. As part of that objective, the NACC periodically produces standards of practice or guidelines for the representation of children.

The document was drafted by the NACC Program Committee and the principal authors listed below.

The document was adopted by a unanimous vote of the NACC Board of Directors on April 28, 2001.

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Funding for this project was provided by The Anschutz Foundation, Denver, Colorado.

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EXECUTIVE SUMMARY

The lack of standards of practice or guidelines for attorneys representing children in child protection proceedings has frequently been cited as a major cause of substandard and ineffective legal representation of children. Unlike more traditional areas of practice where the model of representation and the lawyer code of conduct are essentially uniform from state to state, the practice of law for children has no commonly accepted uniform model or code, and many states provide inadequate guidance for attorneys doing this work. This is the case in part because the practice of law for children is a unique and relatively recent development, and because the evolution has occurred on a state by state basis. Additionally, there has been significant disagreement as to whether representation for children should take a traditional client directed ("expressed wishes"), or an advocate directed ("best interests") form, making it difficult to adopt a model.

Important progress was made toward the creation of a uniform model of representation with the creation of the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* in 1996. Still, jurisdictions struggle to adopt clear and comprehensive guidelines for children's attorneys, frequently because of the long-standing debate over the form of representation.

The *NACC Recommendations for Representation of Children in Abuse and Neglect Cases* is a document designed to assist jurisdictions in the selection and implementation of a model of child representation. Rather than urging jurisdictions to choose a particular model, this document sets out a checklist of children's needs that should be met by whatever representation scheme is chosen. It is the NACC's hope that this approach will allow jurisdictions to focus on what matters, serving the child client, and avoid becoming mired in the debate over best interests and expressed wishes.

The NACC believes that children's legal service needs can be met by both client directed ("expressed wishes") and advocate directed ("best interest") models of representation. In an effort to help jurisdictions understand various models, this document includes a section describing the various models of representation.

Whatever form of representation jurisdictions choose, the NACC believes that every child subject to a child protection proceeding must be provided an independent, competent, and zealous attorney, trained in the law of child protection and the art of trial advocacy, with adequate time and resources to handle the case.

NACC RECOMMENDATIONS FOR REPRESENTATION OF CHILDREN IN ABUSE AND NEGLECT CASES

I. Introduction

This document is designed to assist children's attorneys, courts, and policy makers working to improve the legal representation of children. The focus is on the representation of children in abuse and neglect proceedings. The document also has application in private custody and adoption matters.

Rather than prescribing one specific model of representation, this document provides a policy framework for the legal representation of children, followed by a checklist of children's needs that representation should meet, whatever form of representation states choose. The document describes various models of representation in an effort to help the reader appreciate the strengths and weaknesses of each.

The NACC is aware of the debate in the child advocacy community over the two primary models of representing children - the attorney guardian *ad litem* (advocate directed "best interests" model) and the traditional attorney (client directed "expressed wishes" model). While this debate can be useful, the NACC suggests that rather than spending time and resources debating the merits of the various models, states should focus on ensuring that the model of representation used meets the children's needs checklist.

II. Children's Legal Representation Policy

A. Overview

The NACC believes that each child must be valued as a unique human being, regardless of race, ethnicity, religion, age, social class, physical or mental disability, gender, or sexual orientation. Each child is vested with certain fundamental rights, including a right to physical and emotional health and safety. In order to achieve the physical and emotional well being of children, we must promote legal rights and remedies for children. This includes empowering children by ensuring that courts hear and consider their views in proceedings that affect their lives.

Children's attorneys play a critical role in empowering children and ensuring that children's views are heard in legal proceedings. Outcomes in our adversarial process are directly tied to the quality of legal representation. Additionally, the presence of children's attorneys is critical to ensuring the timeliness of proceedings.

The NACC believes that attorneys representing children should have a combination of knowledge, training, experience, and ability which allows them to effectively discharge their duties to their clients. The NACC supports federal, state, and local programs to enhance the competence of these attorneys.

B. Child Welfare Cases

The NACC believes that in order for justice to be done in child abuse and neglect related court proceedings, all parties, including children, must be represented by independent *legal counsel*¹. The children who are the subjects of these proceedings are usually the most profoundly affected by the decisions made, and these children are usually the least able to voice their views effectively on their own. In many jurisdictions, however, courts do not appoint independent attorneys for all children in abuse and

¹ The U.S. Department of Health and Human Services supports this principle. *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999.

neglect related proceedings. NACC believes that federal, state, and local law must mandate that independent attorneys be appointed to represent the interests of children in all such proceedings.

C. Private Custody and Adoption Cases

The NACC believes that while legal representation is not required for every child who is the subject of a child custody determination, the judge *should* appoint an attorney to represent the child in certain cases: when there are certain substantive allegations that make child representation necessary -- i.e., when there is an allegation of child neglect or abuse (physical, sexual, or emotional) by a parent or household member, when there is a culture of violence between the parents, when there is an allegation of substance abuse by a parent, when there are allegations of non-paternity, or when there is an allegation of or fear about child snatching -- as well as when there are certain procedural situations which make child representation necessary -- e.g., when a child will be a witness or when the case develops an extremely adversarial nature. In addition, the judge *should consider* appointing an attorney to represent the child in certain other cases: when there is an allegation of mental illness on the part of a parent, when a custodial parent is relocating geographically, when child representation can reduce undue harm to the child from the litigation itself, when the child has exceptional physical or mental health needs, when the child expresses a strong desire to make his or her opinions known to the judge, when there is a *pro se* parent, when there is a third-party custody action against a parent (e.g., by a grandparent), or when the failure to appoint a representative for the child would otherwise impede the judge's capacity to decide the case properly. (Attorneys can be instrumental in ensuring that judges have the necessary data upon which to make an informed decision.)

III. Needs Checklist for Children Involved in Abuse and Neglect Cases

The NACC encourages jurisdictions to adopt a system of legal representation of children which satisfies the following checklist. The representation scheme should ensure that each of the following children's rights or needs are satisfied through a combination of systemic safeguards, advocacy duties, and basic advocacy issues.

A. Systemic Safeguards

- 1. Children need competent, independent, and zealous attorneys. The system of representation must require the appointment of competent, independent, zealous attorneys for every child at every stage of the proceedings. The same attorney should represent the child for as long as the child is subject to the court's jurisdiction.

Comment A: Competence is the foundation of all legal representation. The fundamental requirements of competency as defined in each jurisdiction, combined with the ability to function without constraint or obligation to any party other than the child client is of paramount importance. (See, ABA Model Rules of Professional Conduct (Model Rules): Preamble; 1.14(a); ABA Model Code of Professional Responsibility (Model Code): EC 7-1; EC 7-12; ABA Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases (ABA Standards): Preface; A-1.)

Comment B: Competent representation includes knowledge, skill, thoroughness, and preparation. This includes knowledge of placements and services available for the child, and services available to the child's family. (See, Model Rule: 1.1; Model Code DR 6-101(A)(1)(2); ABA Standards B-1; C.) Jurisdictions should provide special initial and periodic training to all attorneys in child welfare proceedings covering substantive law (federal, state, statutory, regulatory, and case law), procedure, trial advocacy, child welfare and child development.

Comment C: Continuity of representation is important to the child. The same lawyer should represent the child for as long as the child is under the jurisdiction of the court. Temporary substitution of counsel, although often unavoidable, should be discouraged. Any substitute counsel must be familiar with the child and the child's case.

- ❑ 2. Children need attorneys with adequate time and resources. The system of representation must include reasonable caseload limits and at the same time provide adequate compensation for attorneys representing children.

Comment A: The NACC recommends that a full time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. This is the same cap recommended by the U.S. Dept. of HHS Children's Bureau and the American Bar Association². One hundred cases averages to 20 hours per case in a 2000-hour year.

Comment B: For the sake of the child client and the interests of the system, attorneys must be provided appropriate and reasonable compensation. The NACC adopts the following position of the Dept. of HHS on this point: "Primary causes of inadequate legal representation of the parties in child welfare cases are low compensation and excessive caseloads. Reasonable compensation of attorneys for this important work is essential. Rather than a flat per case fee, compensate lawyers for time spent. This will help to increase their level of involvement in the case and should help improve the image of attorneys who are engaged in this type of work. When attorneys are paid a set fee for complicated and demanding cases, they cope either by providing less service than the child-client requires or by providing representation on a pro bono or minimum wage basis. Neither of these responses is appropriate. Rates should also reflect the level of seniority and level of experience of the attorneys. In some offices, lawyers handling child welfare cases receive lower pay than other attorneys. This is inappropriate. Compensation of attorneys handling children's cases should be on a par with other lawyers in the office handling legal matters of similar demand and complexity. The need for improved compensation is not for the purpose of benefiting the attorney, but rather to ensure that the child receives the intense and expert legal services required."³

- ❑ 3. Children need attorneys who understand their role and duties. The system of representation of children must be well defined by statute, bar standards, administrative guidelines, supreme court directive or other documents such that every attorney appointed for a child can understand his/her precise role and duties, and such that an attorney can be held accountable for performance of those duties.

Comment: It is helpful here to distinguish between role and duties. Role refers to whether, for example, the attorney is client directed (traditional attorney model or child's attorney models) while duties refer to those actions to be taken by the attorney (investigation, calling witnesses, etc.). Although duties are in part dependent on role, most commentators agree that certain fundamental duties should apply regardless of role. See ABA and ABA / NACC Revised Standards § C Actions to be Taken.

- ❑ 4. Children need an opportunity to present their positions to the court through counsel. The system of representation must provide the child with an opportunity for his/her needs and wishes to be expressed to the court.

Comment: Children have an independent perspective and may have information and positions to present to the court on a wide range of issues including but extending beyond the issue of placement. Other parties and the court may otherwise be unaware of the child's perspective or of how certain decisions subjectively affect the child.

- ❑ 5. Children need confidential communication with their attorneys. The attorney has a duty to explain the extent of confidentiality in developmentally appropriate language.

Comment A: Every child should have the right to communicate confidentially with the representative. (See, Model Rules: 1.6, 3.7; Model Code: DR 4-101; 5-102; ABA Standards: A-1; Comment B-2(2).)

Comment B: But see Alaska Ethics Op. 854. Some jurisdictions include attorneys as mandatory reporters, and pure confidentiality may be precluded with a GAL - advocate directed representation system.

² ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, §§L-1, L-2; The U.S. Department of Health and Human Services supports this principle. *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-5.

³ *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-4.

- ❑ 6. Children need to be involved as litigants in the entire litigation process, including any post disposition, termination of parental rights, and adoption proceedings. The system of representation must recognize the child as a party to the litigation and must include the child in all phases of the litigation, including the opportunity to participate in arguments and jury selection where applicable, offer exhibits, call witnesses, examine and cross examine witnesses and engage in motions and discovery processes. The child must also be given notice of all proceedings and copies of all pleadings.

Comment: The child should be physically present early in the proceedings, so as to allow all parties and their representatives the opportunity to become acquainted with the child as an individual. Although the child's presence may not be required at every court hearing, it should not be waived by the representative, unless the child has already been introduced to the court and his/her presence is not required by law, custom, or practice in that jurisdiction. Every child should be notified through counsel of every court hearing, every agency meeting, and every case conference or negotiation among the various professionals involved in the case and the child's attorney should be notified concerning any change in the child's welfare, placement, education, or status. Every child should be considered a party to the litigation, and should therefore, be entitled to any and all benefits under the law granted to any other party. Every child should have access to sufficient information to allow his/her representative to provide competent representation including the child's representative having access to social services, psychiatric, psychological, drug and alcohol, medical, law enforcement, school and other records relevant to the case, and opportunity for interviewing child welfare caseworkers, foster parents and other caretakers, school personnel, health professionals, law enforcement, and other persons with relevant information. This access may require the representative to file motions for discovery, subpoenas, subpoenas duces tecum, depositions and interrogatories, according to the discovery mechanisms available in the jurisdiction. Every child should have the opportunity to present his/her witnesses in the court proceedings. This requires the representative to investigate facts, identify and communicate with witnesses, and issue subpoenas to ensure that witnesses appear in court.

- ❑ 7. Children need judicial review of adverse decisions. The system of representation must provide an opportunity to appeal an adverse ruling.

Comment: Children need to have access to the court after the adjudication occurs. This may require the representative to forego informal resolution of issues at the review stage of the litigation. See State ex rel. Jeanette H., 529 S.E. 2d 865 (2000).

- ❑ 8. Children need to be able to hold their attorneys accountable. The system of representation must provide recourse for ineffective assistance of counsel.

Comment: Every child should be able to hold the representative accountable for providing less than competent representation.

- ❑ 9. Children need an attorney with a fair opportunity to be effective in the court system. The system of representation must include a court system that devotes adequate time and resources to cases.

Comment: Courts cannot be "rubber stamp" agencies for social service agencies and must be equipped to handle caseloads responsibly. See, *Resource Guidelines, Improving Court Practice in Child Abuse and Neglect Cases*, National Council of Juvenile and Family Court Judges, © 1995 NCJFCJ, Reno, NV

B. Advocacy Duties

- ❑ 1. Children need attorneys who fully understand their cases. The attorney must perform a full and independent case investigation.

Comment: The child's attorney has a duty of full investigation of the case. (See, Model Rule: 4.2; Model Code: DR 7-104 (A) (1); ABA Standards: C-2(4); C-6.)

- ❑ 2. Children need meaningful communication with their attorneys. The attorney must observe the child, and dependent upon the child's age and capabilities, interview the child. The attorney must engage in regular and meaningful communication with the child. Children need to participate in

making decisions that affect their cases. The attorney has a duty to involve the child client in the process, whether under a client directed model or advocate directed model. The attorney has a duty to explain his/her role to the child in developmentally appropriate language.

Comment A: Under a client directed model, the scope of representation by the child's attorney includes the duty to abide by the client's decision concerning the objectives of the representation. (See, Model Rule: 1.2(a); Model Code: DR 7-101(A)(1); EC 7-7; EC 7-8; ABA Standards: B-4.)

Comment B: This is a universal need, and it applies whether or not the child is pre-verbal. Visual encounters with children who are represented, even with pre-verbal children, are crucial to the representation. Otherwise, the representative is limited by relying upon the mental impressions of third parties. The child's attorney has a duty of effective, thorough, and developmentally appropriate communication with the client, including the duty to meet with the client. (See, Model Rules: 1.4 (a), (b); Model Code: EC 7-8; 9-2; ABA Standards: C-1; A-3; B-1(5); D-2; E-2; F-4.)

Comment C: Children need education about the law and all options available under the legal system. This need is restricted to developmentally appropriate clients, capable of communication.

Comment D: The child client must be informed about the responsibilities and obligations of the representative, as well as the ability and requirements of the representative to accomplish these things.

- 3. Children need loyal attorneys. The child's attorney is prohibited from representation that would constitute a conflict of interest.

Comment: Attorneys must be aware of the potential for conflict while representing a sibling group. Additionally, the child's attorney must be sensitive to the age and maturity of the client where waiver is an issue. (See, Model Rules: 1.7; Model Code: DR 5-101 (A); 5-105(A), (C); 5-107 (B); ABA Standards: B-2(2).)

- 4. Children need the full benefit of legal counsel. The attorney must provide competent, independent and zealous representation for each client. The attorney must have adequate time and resources to devote to the child's case, and to understanding his/her role and duties, insuring confidentiality, and full active participation in all stages of the child's case.

C. Advocacy Issues

- 1. Children need permanence. The attorney must advocate for timely resolution and permanent resolution (absent compelling reasons to the contrary) of the case.

Comment: The child's attorney has a duty of diligent and prompt representation, and a duty to expedite litigation, especially where placement of a young child is at issue. (See, Model Rule: 1.3; 3.2; Model Code: DR 6-101(A)(3); EC 6-4; ABA Standards: B-1(4); C-6.)

- 2. Children need their immediate and basic needs met. The attorney must advocate for food, shelter, clothing, and safety, including a safe temporary placement where necessary and for educational, medical, mental health, and dental needs.

Comment: The child's most immediate physical needs must be addressed and should be the highest priority for the child's representative. After the immediate needs of sustaining life have been addressed, the child's education, mental health, medical, and dental needs must be addressed. Children's attorneys should act as a kind of "watchdog" for the children's needs, insuring that services are provided.

- 3. Children need family relationships. The attorney must advocate for continuation of appropriate familial relationships and family preservation services where appropriate.

Comment: Without jeopardizing the child's physical or emotional safety, arrangements to maintain familial relationships (including siblings) which are not deemed to be harmful to the child should be established as soon as practicable. Family services may include visitation and services for family members: parenting education, medical and mental health care, drug

and alcohol treatment, housing, etc. Such family services may also be appropriate to continue other meaningful relationships and ongoing activities where feasible.

- 4. Children need to be protected from unnecessary harm that can result from legal proceedings. The attorney must advocate for the utilization of court processes that minimize harm to the child, and make certain that the child is properly prepared and emotionally supported where the child is a witness.

IV. Representation Models

The following representation models are presented to assist states in evaluating and formulating models of representation. States should consider the requirements of the federal Child Abuse Prevention and Treatment Act (CAPTA) regarding the appointment of representation for the child. The U.S. Department of Health and Human Services, Children's Bureau has indicated that although CAPTA requires a GAL best interests representative, that role may be filled by either an attorney GAL or more traditional client directed attorney.⁴

A. Advocate Directed Representation

1. The Attorney Guardian *ad Litem* Hybrid⁵ Model.

This model provides an attorney to represent the child and instructs the attorney to represent the child's "best interests." The attorney GAL advocates for a result which he/she believes (not necessarily what the child believes) is in the child's "best interests." Rather than taking direction from the client, as is the case in traditional attorney representation of adults, the attorney GAL is charged with forming the client's position by using his/her own judgment. Under this model, the attorney GAL's judgment as to the child's "best interests" takes precedence over the client's wishes.

Pros: This model is favored by many as the traditional model of representing children, particularly young children who cannot meaningfully participate in their litigation. It is also thought to protect older children from the harm of their own bad choices.

Cons: Critics charge that this is an "old fashioned," paternalistic model of representation that treats children as chattel rather than empowering them in the system. Critics charge that advocate directed representation is wrong by definition because: 1) attorneys are not ethically allowed to disregard their clients directives; 2) attorneys are not qualified to make "best interests" determinations; and 3) the legal system requires that attorneys be zealous advocates for a client's position, not agents of the court. Critics also charge that the system results in "relaxed advocacy" where attorneys appointed as GAL feel, and are treated, as relieved of their traditional lawyering responsibilities. Critics argue that this model has contributed to sub standard representation of children across the country.

Jurisdictions Using a Form of This Model: Approximately 60% of the U/S jurisdictions use a form of this model.⁶

⁴ *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, p. VII-21.

⁵ Ann M. Haralambie identifies and discusses the "hybrid" role in *The Child's Attorney, A Guide to Representing Children in Custody, Adoption and Protection Cases*, ABA 1993 at p. 37.

Source: The Colorado version is comprised of the following sources: Colorado Revised Statutes §§ 19-1-103, 19-1-111, 19-3-203; The Colorado Rules of Professional Conduct at CRS, Volume 12 - pages 711-831; Supreme Court of Colorado Chief Justice Directive 97-02; Colorado GAL Standards of Practice.

2. The Lay Guardian *ad Litem* Model

This advocate directed model provides for a non-attorney to "represent" the child's "best interests." This person, usually a non-professional volunteer, advocates for what he/she believes (not necessarily what the child believes) is in the child's "best interests." The lay GAL "stands" in the proceeding for the presumptively incompetent child. The focus is the protection of the child by an adult who attempts to know and then articulate the child's best interests.

The NACC discourages the use of this as an exclusive model. Children, even more than adults, require trained legal representation and this model, by definition, is not legal representation. While the NACC recognizes the value of non-legal advocacy for children, whether in the form of lay GAL or CASA, we stress that it cannot be a substitute for trained professional attorneys for children. On this point, the NACC and National CASA have agreed. Non-legal advocates play an important role in the process, and jurisdictions should consider implementing such programs *in addition* to appointing attorneys.

Due to the substantial shortcomings of this model, states which use this model of representation frequently appoint an attorney to represent the child or the lay GAL.

Pros: The model has value when used in conjunction with legal counsel.

Cons: Assuming this is the only "representation" provided, the child has no legal counsel. Lay GALs are unable to provide "legal" counsel and cannot, for example, present evidence, examine witnesses, appeal adverse decisions, or advise the client of the ramifications of legal matters. Lay GALs attempting to serve in the role of legal counsel are engaging in the unauthorized practice of law. Additionally, lay representatives are less accountable than professionals for their actions because their conduct is not governed by ethical and legal standards.

Jurisdictions Using a Form of this Model Include: Florida, Hawaii, Maine

Sources: Florida uses a lay volunteer Guardian *ad litem* model. Florida's Guardian *Ad Litem* Program includes an attorney who advises volunteers on the protection of children's rights and represents the program in contested court proceedings. Fla. Stat. § 39.820 (2000).

In Hawaii, children in dependency cases are generally represented by volunteer lay guardians *ad litem* and CASAs called Volunteer Guardians *Ad Litem* (VGAL). Children *may also* be represented by an Attorney Guardian *Ad Litem*. H.R.S § 587-40.

⁶ *Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice*. NCJFCJ Permanency Planning for Children Project, Technical Assistance Bulletin, 1999, page 45.

Maine law calls for a GAL who is usually an attorney but is not required to be by statute. The GAL is considered a party and has the right to call and cross examine witnesses and has access to discovery. Should the GAL be an attorney, he/she essentially functions in the hybrid role of Attorney GAL defined in IV. A. 1. above. It is not clear how such duties can be performed competently or without violating the law against unauthorized practice of law if the appointment is of a lay person. Maine Supreme Judicial Court Rules for Guardians *Ad Litem*; 22 M.R.S. § 4005; 4 M.R.S. §1501.

3. The "Two Distinct Lawyer Roles" Model.

A single lawyer model, either advocate directed (best interests) or client directed, may not meet the needs of all children, given their developing and varied capacities from infants to mature and articulate teens. This model would require appointment of a best interest lawyer-guardian *ad litem* or a traditional attorney under certain circumstances as set out in law.

In 1998, Michigan passed a version of this model that creates two separate and distinct roles for the lawyer representing children: attorney and lawyer-guardian *ad litem*. Michigan requires the appointment of a lawyer-GAL in every case and the lawyer-GAL is to represent the best interests of the child. The statute permits the court to appoint an attorney where the mature child and lawyer-GAL are in conflict about identification of the child's interests. The model prescribes aggressive duties for the lawyer-GAL and provides for attorney-client privilege. It requires the lawyer-GAL to tell the court the wishes and preferences of the child even if the lawyer-GAL advocates for a different view and requires the lawyer-GAL to weigh the child's wishes in making the best interests determination according to the age and maturity of the client. When a lawyer is appointed as "attorney," however, the attorney owes the same duties of undivided loyalty, confidentiality and zealous representation of the child's express wishes as the attorney would to an adult client. Some proponents of the Two Distinct Lawyer Role model urge that the law *require* appointment of an attorney instead of a lawyer-GAL at a certain age (unless the child is mentally handicapped), rather than leave attorney appointment to the discretion of the court.

Pros: Proponents argue that the pure forms of either advocate directed ("best interests") or client directed ("expressed wishes") models are deficient when applied to all children, so that a model which provides clear lawyer duties depending on the age and maturity of the child better serves the child client. This model is also well defined by statute and lessens the tendency toward "relaxed advocacy." This model also reduces the risk inherent in the ABA and NACC models that a lawyer appointed as "attorney" would find an exception to (or water down) the duty of aggressive and client-directed advocacy.

Cons: Critics argue that, at its foundation, this is just an attorney directed model with most of the shortcomings of model A. 1. above. The appointment of an attorney GAL is the rule, not the exception, and an attorney is appointed only in rare circumstances. Also, under rare circumstances the child could be represented by both an attorney and a lawyer-guardian *ad litem* which adds to the cost. The test for appointing one or the other lawyer roles remains unsettled.

Jurisdictions Using the Model:

Michigan

Source: MCL 712A.13a(1)(b) (for definition of "attorney") and MCL 712A.17d (for duties of lawyer-guardian *ad litem*)

B. Client Directed Representation.

1. Traditional Attorney.

A traditional attorney functions as a client directed advocate. He/she advocates for the expressed wishes of the client and is bound by the client's directives concerning the objectives of representation. The model does not prohibit the attorney from acting in his/her capacity as counselor for the client, and state ethics codes include the counseling function. Attorneys are not required, without first counseling their client as to more appropriate options, to blindly follow directives that are clearly harmful to the client. Further, the model does not require attorneys to advocate positions not supported by facts and the law.

Pros: The model is thought to give voice and autonomy to the client and to empower the child within the system. It allows attorneys to function in a familiar setting. Proponents believe it produces good outcomes for children because it encourages independent, zealous advocacy, and the attorney is not confused by the role or duties.

Cons: Critics charge that the model does not work for young children who cannot meaningfully direct their litigation or for older children who may misdirect their litigation.

Jurisdictions Using a Form of This Model Include: Oregon uses a traditional attorney, but not in all cases. Additionally, a CASA appointment is required in Oregon. Likewise, in many cases a traditional attorney is used in Massachusetts, but in conjunction with a Guardian *ad Litem*.

Sources: Oregon Revised Statutes §§ 419A.170; 419A.012; 419B.195; Ethics provision 3.3. Mass. Gen. Laws ch. 119, § 29; Mass. Ethics Opinion 93-6. ABA Model Rules of Professional Conduct (Model Rules): Preamble; 1.14(a); ABA Model Code of Professional Responsibility (Model Code): EC 7-1; EC 7-12.

2. Child's Attorney (ABA Standards Model)

The following selected provisions from the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* define the model. "The term 'child's attorney' means a lawyer who provides legal services for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as is due an adult client. The child's attorney should elicit the child's preferences in a developmentally appropriate manner, advise the child, and provide guidance. The child's attorney should represent the child's expressed preferences and follow the child's direction throughout the course of litigation. To the extent that a child cannot express a preference, the child's attorney shall make a good faith effort to determine the child's wishes and advocate accordingly or request appointment of a guardian *ad litem*. To the extent that a child does not or will not express a preference about particular issues, the child's attorney should determine and advocate the child's legal interests. If the child's attorney determines that the child's expressed preference would be seriously injurious to the child (as opposed to merely being contrary to the lawyer's opinion of what would be in the child's interests), the

lawyer may request appointment of a separate guardian *ad litem* and continue to represent the child's expressed preference, unless the child's position is prohibited by law or without any factual foundation."

Pros: Proponents see the model as the most significant advance in child representation in many years. They see the model as an evolution from the GAL model of the 1970s. The model is a detailed roadmap for representation taking role and duty confusion out of the picture. The model also discourages relaxed advocacy.

Cons: Critics argue the model still does not work well for young children and that the directive to resort to representation of the child's "legal interests" in some cases is not a meaningful directive. Critics complain that focusing on the child's so-called "legal interests" is unsatisfactory because the legal interests of the child may be unclear or contradictory. For example, a child has a legal interest in being protected from abusive or neglectful parents. The ABA Standards are also criticized for including broad exceptions to the client-directed ideal and thus giving the lawyer unfettered and unreviewed discretion identifying the goals of the child - the same sort of unbridled discretion that critics complain about in the best interests substituted judgment model.

Jurisdictions Using a Form of This Model Include: At the time of the preparation of this document, no jurisdiction had adopted the ABA Standards as the exclusive system of representation. A number of jurisdictions have adopted many of the "duties" requirements of the standards (e.g., case investigation, motion practice) as opposed to the "role" requirements. As to "role" of counsel, Oregon uses a traditional attorney similar to this model.

Source: *ABA Standards of Practice for Lawyers Who Represent Children in Abuse & Neglect Cases*, © 1996 American Bar Association, Chicago, IL

3. Child's Attorney (ABA / NACC Model)

The *ABA Standards* were adopted by the ABA in 1996. The following year, the NACC adopted the standards with reservation as to Standard B-4. Standard B-4 is the critical client direction language of the standards and some members of the NACC board believed the *ABA Standards* gave too much autonomy to the child client and was unrealistic where young children were concerned. The *ABA Standards (NACC Revised Version)*, is the NACC's attempt to achieve a better balance of client autonomy and protection within standard B-4. This child's attorney model places the attorney in the role of traditional attorney and addresses the needs of the young child through the application of an objective best interests evaluation in limited situations. The model requires that the attorney assume the traditional role of zealous advocate and not GAL to avoid any propensity toward relaxed advocacy. At the same time, it recognizes that some children are not capable of directing their litigation. The model allows for a degree of advocate direction so long as it is the exception to the rule, and based on objective criteria.

The distinction between the *ABA Standards* and the *NACC Revised ABA Standards* is that where the ABA remained consistent with the client directed attorney throughout, the NACC carved out a significant exception where the client cannot meaningfully participate in the formulation of his or her position. In such cases, the NACC's version calls for a GAL type judgment using objective criteria. Additionally, the

NACC's version *requires* the attorney to request the appointment of a separate GAL, after unsuccessful attempts at counseling the child, when the child's wishes are considered to be seriously injurious to the child.

Pros: Proponents believe this is the best blending of the traditional attorney and attorney / GAL, providing the best of both options.

Cons: One critic has suggested that, by blending the attorney and GAL roles, this model dilutes both. The NACC model is also criticized for giving the lawyer unfettered and unreviewed discretion identifying the goals of the child - the same sort of unbridled discretion that critics complain about in the best interests advocate directed model.

Jurisdictions Using a Form of This Model Include: At the time of the preparation of this document, no jurisdiction had adopted the ABA NACC Revised Standards as the exclusive system of representation. A number of jurisdictions have adopted many of the "duties" requirements of the model (e.g., case investigation, motion practice) as opposed to the "role" requirements. As to "role" of counsel, Oregon uses a traditional attorney similar to this model.

Source: *ABA Standards of Practice for Lawyers Who Represent Children in Abuse & Neglect Cases*, (NACC Revised Version) NACC Children's Law Manual Series, 1999 Edition, p. 177.

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MICHIGAN COURT IMPROVEMENT PROGRAM REASSESSMENT

August 2005

submitted to

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STATE COURT ADMINISTRATIVE OFFICE**

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ACKNOWLEDGEMENTS

The authors and researchers responsible for this report wish to offer their sincere thanks to the many people who contributed to the reassessment process and thus made this report possible. For their friendliness, helpfulness, and time spent assisting with and coordinating site visits we thank court administrators and their staff at the following courts: Kent, Jackson, Macomb, Marquette, Roscommon, and Wayne Counties. In spite of very busy schedules, they pulled files, provided us with contact information for interviews (and in some cases arranged the interviews for us), provided space for the interviews and file reviews to take place, counseled us on hotels and restaurants and local attractions, and generally made us feel very welcome.

Many thanks to the judges, referees, prosecutors, attorneys, court administrators, DHS managers and staff, private foster care agency staff, parents, foster parents, youth, and others who generously shared their time, knowledge, experiences, and suggestions with us. If the data collected from file reviews and DHS could be considered the flesh of the report, what was gathered in these interviews was truly the heart and heartbeat of the report.

Special thanks to staff at the Michigan Department of Human Services for sharing DHS data on child protective court cases in the six courts.

To Roderick Johnson and the CIP Advisory Committee members who met with us in December of 2003 to provide guidance regarding areas of concern to be examined in the reassessment and to assist with the selection of courts to study, thank you.

For editorial assistance we thank Kate Kennedy and for administrative support and endless patience we thank Anna Diaz, Bobby McAuliffe, and Janson Chapman.

To Kathryn O'Grady and Michael Foley, who have impressed us with their commitment to the welfare of children and their tireless efforts to improve Michigan's courts' treatment of children and families, many thanks for your support and your prompt answers to our many questions. It has been a privilege to work on this reassessment and to meet and work with the many individuals in and around Michigan's court system who are passionately committed to the welfare of children. Thank you for this opportunity and our best wishes to you in your efforts.

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INTRODUCTION

CHAPTER 1

CHAPTER 1: INTRODUCTION

Background: What is the Court Improvement Program (CIP)?

In response to a dramatic increase in child abuse and neglect cases and the expanding role of courts in assuring stable, permanent homes for children in foster care, the State Court Improvement Program (CIP) was created by Congress in 1993.¹ CIP provided grants to state courts to help them improve the quality of their litigation involving abused and neglected children as well as children in foster care. The grants directed states to conduct assessments of their foster care and adoption laws and judicial processes and then to develop and implement plans to improve litigation in these cases.

CIP was enacted because courts have been under intensive pressures in recent years affecting their handling of child abuse and neglect cases. Federal and state laws have imposed new duties on the courts, greatly increasing the complexity of cases. For example, in each case, courts must address a far wider range of issues than in earlier years. There are an increasing number of hearings per case. More individuals are involved in the litigation. This has placed greater demands not only on judges, but also on court staff, attorneys, and agencies in their dealings with the courts.

In most states, those who wielded the power within the state judiciary have still not fully understood the changing needs of the juvenile courts. This lack of understanding has kept state court systems from providing juvenile courts the full resources, training, and oversight needed to cope with the new demands placed upon the juvenile courts and to allow timely, full, and fair proceedings for children and their families.

For this reason, the federal grants are channeled to the highest state courts, those that have the responsibility for administering state court systems. It is hoped that as the high courts (and their administrative offices) are made increasingly aware of the situation and needs of the juvenile courts, priorities will change and improvements will be made.

¹ CIP was enacted as part of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Public Law 103-66. OBRA designated \$5 million in fiscal year 1995 and \$10 million in each of FYs 1996 through 1998 for grants to state court systems. All 50 states, the District of Columbia, and Puerto Rico are recipients of funding under the federal Court Improvement Program (CIP), which is administered by the Children's Bureau of the US Department of Health and Human Services.

According to federal law and policy directives, the CIP assessments were to identify federal and state laws that affect judges' decisions concerning children in foster care -- decisions whether to place or continue children in foster care, whether to terminate parental rights, and whether to secure permanent placements for foster children.

In addition to identifying the pertinent state laws and evaluating their sufficiency, the assessment was supposed to evaluate the performance of the courts in carrying out those laws and in conducting timely, fair, and decisive hearings. For example, the assessments were to address:

- How consistently state courts adhered to federal and state requirements concerning foster children;
- The seriousness of delays in abuse and neglect trials, court reviews, and termination of parental rights proceedings;
- Whether enough court time was made available to allow judges to implement federal requirements fully (e.g., time for the judge to carefully determine whether agencies have made reasonable efforts and time for the parties to make arguments and offer evidence concerning reasonable efforts);
- Whether parties are introducing evidence and calling witnesses, when appropriate, concerning judicial determinations of reasonable efforts and during judicial foster care review hearings -- and, if not, why not;
- Whether judges' caseloads are preventing them from fulfilling federal and state requirements in a timely, thorough, and fair manner; and
- Whether parents and children are receiving adequate legal representation and, if not, why not.

The Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89, reauthorized the Court Improvement Program through 2001, and the Promoting Safe and Stable Families Amendments of 2001, Public Law 107-133, reauthorized the Court Improvement Program through FY 2006. The 2001 amendments also expanded the scope of the program to: (1) include improvements that the highest courts deem necessary to provide for the safety, well-being, and permanence of children in foster care, as set forth in ASFA; and (2) implement a corrective action plan, as necessary, in response to findings identified in a Child and Family Services Review (CFSR) of the State's child welfare system. The amendments also continued the mandatory funding level of \$10 million for CIP while authorizing new discretionary funding for FYs 2002 through 2006. The additional discretionary funds have added several additional million per year to CIP.

In 2003 the federal government issues Program Instruction ACYF-CB-PI-03-04 which, among other things, required each state CIP project to conduct a reassessment of its laws and performance and to adopt a strategic plan to further improve its handling of litigation involving child abuse and neglect and children in foster care.

Michigan CIP: How has Michigan used its CIP funds?

After receiving its first CIP funds, the Michigan State Court Administrative Office (SCAO) commissioned a study of its state's courts, as required by federal law. The study was conducted by the American Bar Association, in partnership with the National Center for State Courts. A state-wide judges' survey was conducted. Evaluators visited three courts, where they interviewed jurists and attorneys, reviewed court files, and observed court hearings and Foster Care Review Board review hearings. The report resulting from that study (the original CIP assessment)² was released in 1997. It contained 57 recommendations (see Appendix A for a listing of the 1997 CIP Assessment Recommendations) addressing a wide range of topics, such as the timeliness and quality of hearings, attorney and judicial caseloads, quality of legal representation, treatment of parties and witnesses, training, adequacy of court facilities, and use of computer technology and management information systems.

Following the original Michigan CIP assessment, a CIP Advisory Committee prioritized the recommendations from the assessment and focused its efforts over the next several years on the following projects and initiatives:

Permanency Planning Mediation Project—CIP funds supported mediation pilot sites and has supported ongoing training for coordinators and mediators in expanded sites. In 2004, an evaluation of the project was completed with CIP funds.

Absent Parents Protocol—the Children's Charter of Michigan developed a protocol and training module for court and child welfare agency staff on locating and serving process on absent parents in child protection proceedings. Failure to locate and serve primarily absent fathers was determined to be a cause of serious delay in reaching permanency in these cases.

Evaluation of the implementation of the LGAL protocol—this assessment was conducted by the ABA's Center on Children and the Law, and a report was issued in 2002. Michigan CIP provided a 20% match, which included cash and CIP staff time for coordinating and supporting the evaluation.

Permanency Planning Indicator Report—Michigan CIP has engaged in ongoing efforts, including a pilot project, to develop a data collection process that will enable courts to comply with legislative requirements to report on their compliance with statutory time frames and their progress in achieving permanency for children. CIP has worked with the Judicial Information System Division of the State Court Administrative Office to develop specifications and software.

Child Protective Proceeding Judicial Benchbook—Michigan CIP worked with the Michigan Judicial Institute to complete the benchbook, which comprehensively addresses

² The original report can be found at the Michigan Supreme Court website at <http://courts.michigan.gov/scao/resources/publications/reports/cipaba.pdf>

child protective proceedings. CIP funds were used to research, prepare, and distribute the benchbook.

Guidelines for Achieving Permanency in Child Protection Proceedings—this manual is a companion to the judicial benchbook and was developed for practitioners such as attorneys (prosecutors, LGALs, and parents attorneys) and caseworkers.

Adoption Benchbook—this publication is, in part, the result of collaborative discussions convened and facilitated by Michigan CIP regarding systemic barriers to timely adoption. It is designed for judges, referees, and court support staff who process adoptions.

Training—Michigan CIP, in collaboration with the Michigan Judicial Institute, Child Welfare Training Institute, Michigan Department of Human Services (DHS), and others has delivered training to jurists, court staff, attorneys, and DHS personnel on laws, policies, practices, and subject areas relevant to child protective proceedings.

To continue receiving CIP funds, the Michigan Court Improvement Program was required to conduct a reassessment of its laws and performance and to adopt a strategic plan to further improve its handling of child protection cases. The Muskie School of Public Service, Cutler Institute for Child and Family Policy, and the American Bar Association's Center for Children and the Law contracted with Michigan's State Court Administrative Office to conduct the Reassessment. This report represents the results of the reassessment study.³

Methodology: How was the Reassessment conducted?

The Reassessment followed a research design similar to that used for the original assessment.⁴ The reassessment process began in December 2003, with a meeting between the evaluation team and the CIP Advisory Committee, including, among others, the State Court Administrator, the Director of Child Welfare Services, the director of the Child Advocacy Law Clinic, a judge, and representatives of the Michigan Judicial Institute, CASA program, and Michigan's Foster Care Review Board Program (FCRBP). The committee identified the areas and issues to be examined (in addition to those require by the federal program instruction), chose the study site courts, and agreed on the particular individuals and constituencies to be interviewed.

Evaluators used a mixed methods approach to the reassessment, because of the many participants involved in child protection proceedings (e.g., judges, court personnel, attorneys, GALs and CASAs, DHS staff, parents and caregivers, foster and adoptive parents, and youth) and their varying issues and interests, and also because of the many issues to be addressed in the reassessment.

³ In addition to this full report, a report summary is also available.

⁴ The two primary differences are that (a) the original evaluators visited three courts: Wayne, Jackson, and Roscommon and (b) they did not have access to DHS case-level data for the courts visited.

Both quantitative (from case file reviews, a statewide jurist survey, and state and county data and statistical reports) and qualitative data (from the jurist survey, interviews, and focus groups) were collected. Triangulation, that is, using more than one method to collect similar data and asking for similar information at different sites and from different participants, was also employed to insure the validity of findings.

To the extent possible, the instruments used in the reassessment were adapted from those used in the original assessment, to enable evaluators to compare results of the original assessment with findings of the reassessment.

Specific Methodologies

The following research methods were used to collect the data contained in this report:

Legal research: This was necessary to establish a foundation for understanding the legal and procedural background for the handling of child abuse and neglect cases in the State of Michigan and to determine if the state was in compliance with ASFA and other federal requirements, as well as Michigan's state requirements. The following were reviewed:

1. Adoption and Safe Families Act, and subsequent amendments;
2. Other federal legislation addressing child abuse and neglect and related matters, such as ICWA and CAPTA;
3. Michigan statutes, administrative procedures, and court rules relating to child abuse and neglect cases;
4. Michigan case law addressing Michigan's statutes, rules, and procedures as they relate to child abuse and neglect;
5. Family Court Plans, as approved by the Michigan Supreme Court, for the six study sites.
6. Journal articles relating to Michigan child abuse and neglect law and practice;
7. Guidelines and standards of practice for judges and attorneys in child abuse and neglect cases.⁵

Secondary research: Existing research and findings that related to the issues being studied in the reassessment were reviewed by evaluators. Those materials included the following:

- Evaluation of the Permanency Planning Mediation Project
- ABA Evaluation of the implementation of the Michigan lawyer-GAL statute
- 2002 Child and Family Services Review (conducted by ACS)
- 2004 Program Improvement Plan (developed by DHS, in response to the CFSR)

⁵ Some examples are *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (NCJFCJ); *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (ABA); *Guidelines to Permanency in Child Protection Proceedings* (Children's Charter of Michigan). See Bibliography for a complete list of references.

Case file review at six study sites: To determine whether the courts studied were in compliance with the timeliness mandates set out in ASFA and in Michigan statutes, rules and procedures, and with other federal laws such as ICWA and CAPTA, evaluators recorded dates for the following key events during their review of court files at the six study sites (Jackson, Kent, Macomb, Marquette, Roscommon, and Wayne Counties):

- Removal from home;
- Preliminary hearing;
- Adjudication;
- Disposition;
- Review hearings;
- Termination of parental rights;
- Final adoption.

Evaluators also reviewed files for qualitative purposes: to better understand the stories of the children and families involved in the cases, to review the case plans and types of notice sent to parents, and other elements of the cases. File reviews enabled evaluators to see up close some of the things that were reported in the interviews and focus groups. The information gleaned from the files informed the interviews at the sites, leading to additional questions. Likewise, information obtained in interviews enabled evaluators to better understand what was reflected in the case files.

Review of case level and reported statistical data from DHS: Data maintained in the DHS database and data reported by DHS on the county and state level, including AFCARS data on average times to adoption, were used in the analysis of timeliness of important case events.

Interviews with judges, court staff, and other stakeholders at each of the six study sites: Evaluators conducted interviews to determine the effect of particular mandates, practices, and procedures on compliance and on the safety and well-being of children; the effect of caseload size and resource limitations on judicial performance; the extent to which parties present witnesses, evidence and legal arguments; the quality and adequacy of information available to courts in child welfare cases; the extent to which mandates impose administrative burdens on the courts; the quality of representation of parties; the treatment of participants in the system; and the effectiveness of CIP initiatives.

Statewide surveys of Chief Judges, referees, court administrators, and other stakeholders: Areas addressed in the self-administered survey were experience and training of jurists, caseload, case assignment and scheduling, length and quality of hearings, delays, services, reasonable efforts findings, representation of parties, ICWA, Foster Care Review Boards. (See Appendix B, Courts Completing Jurist Survey.)

Focus groups of stakeholders, primarily in each of the six study sites: These assisted evaluators in determining, among other things, the quality of representation of parties, the

treatment of parties, and other participants by the courts, and the impact of CIP activities. Focus groups were conducted with attorneys (including L-GALs), CASAs, parents (including birth, foster, and pre-adoptive), DHS managers and staff, and Foster Care Review Board members at the six court locations.

Description of Respondents and Data Collected

Qualitative: Interview and Focus Groups

Below is a table reflecting the interviews and focus groups conducted by evaluators, including the type of respondent, numbers, and locations:

Court	Jackson	Kent	Macomb	Marquette	Roscommon	Wayne
<i>Interviews</i>						
Court Administrator	Yes	Yes	Yes	Yes	Yes	Yes
Judges	2	3	1	1	1	2
Referees	1	3	4	NA	NA	7
Attorneys	2	3	6	8	1	2
Prosecutors	1	1	2	1	1	2
<i>Focus Groups</i>						
FIA Directors/Managers	Yes (5)	Yes (5)	Yes (6)	Yes (1)	Yes (2)	No
FIA Caseworkers and Supervisors	Yes (5)	Yes (20-25)	Yes (12-15)	Yes (6)	Yes (5)	Yes (15-20)
POS Agency Managers and Caseworkers	Yes (5)	Yes (4)	Yes (5)	No	No	Yes (5)
Foster Care Review Board	Yes	Yes	Yes	Yes	Yes	No
Parents	Yes (7)	Yes (15)	Yes (5)	No	Yes (1)	Yes (8-10)
Youth	No	No	Yes (12)	No	No	Yes (5)
Foster parents			Yes (3)	Yes (1)	Yes (1)	
Court Appointed Special Advocates (CASAs)	NA	Yes (1)	NA	NA	NA	Yes (5)
<i>Misc.</i>						
Home educator				Yes (1)		
CASA statewide association of coordinators	CASA managers (14) representing Ogama, Benzie, Saginaw, Muskegon, Monroe, Oakland, Kent, Wayne, and Kalamazoo Counties					

Quantitative Data: from DHS

Evaluators worked with administrators and analysts at DHS to obtain de-identified case level data from the DHS database system referred to as SWSS CANS (for protective services) and FAJ legal module (for foster care). Data is entered into this database by protective and foster care caseworkers on all children in DHS custody. Evaluators requested only data elements regarding the following key case events to enable analysis of timeliness: preliminary hearing, adjudication, disposition, permanency planning, termination of parental rights, adoption, date case closed, and child status at close.

Because more DHS data was available for Kent and Wayne counties than evaluators were able to collect during their review of court files, that data was used for the analyses of time between key case events for those two courts. For the remaining counties, evaluators collected more data from the court file reviews than was provided by DHS, so the court file review data was used to analyze timeliness.

Evaluators were advised to only use DHS data entered as of February 2002, since the database was put in place in 2001 and the agency was more confident of the data's accuracy as of that date in 2002. The primary difference between court file review data and the DHS data is that the DHS entries were by *child* rather than by *parent*. This means that the numbers presented in the analyses for Kent and Wayne may include multiple children from the same family.

Dataset One from DHS: This consisted of cases (i.e., children) in which there was a preliminary hearing sometime in 2002. For Wayne County, there were 1,068 cases available for analysis; for Kent County, there were 88.

Dataset Two from DHS: This consisted of all cases (i.e., children) opened in 2004 and still open as of December 7 of 2004. (See comparisons between 2002 and 2004 cases for Kent and Wayne in Chapter 3 on Timeliness.) For Wayne County, there were 1,458 cases available for analysis; for Kent County there were 294.

Quantitative Data: from Court File Review

Court files were selected for review at each of the six courts visited. The numbers of cases reviewed at each of the six study sites depended upon a number of factors: the number of recent child protective cases in the court; the ease with which evaluators were able to find file documents reflecting the significant case events, and the amount of time available to conduct file review.

For the most part the cases reviewed were representative of overall cases based on dispositions for cases closed in 2003—e.g., dismissed, child returned home, parental rights terminated. Also, the great majority of cases chosen for review were opened no later than 2000 or 2001. A small number of cases opened earlier than 2000 that were still

open at the time of the site visits were also reviewed.⁶ Evaluators randomly selected one child from each file and recorded data only on that child. This means there were no multiple children from the same families in the timeliness analyses for Jackson, Macomb, Marquette, and Roscommon.

Quantitative and Qualitative Data: from Jurist Survey

All Michigan jurists presiding over child protective proceedings in the spring or summer of 2004 were asked to respond to a self-administered survey covering the subjects described above. Fifty-four (54) of Michigan's 83 counties, and 46 of its 56 judicial circuits, were represented in the 137 surveys returned and completed by jurists. After screening, 125 of those were chosen for use in the analysis for this report.⁷ (See C for listing of courts and counties that completed the survey.)

The analysis included comparative breakdowns of the responses by court size (small=up to 200 child protective filings per year; medium=200-800 filings per year; large=over 800 filings per year (Wayne County only)); by judge and referee; and by whether the jurist was full-time v. part-time on the juvenile docket. Where there were significant differences in the responses offered by these groupings, they were included in the report.

Summary of Findings and Recommendations: What did evaluators find and what do they recommend?

Evaluators met with dozens of professions engaged in child protection proceedings who were committed to and often passionate about, their work. Many of the judges and referees interviewed have substantial experience presiding over child protection proceedings, have had previous, related experience in the field and have exhibited leadership and dedication to improving the lives of children and families. These individuals were united in a sincere desire to help children find safe, healthy, and permanent homes, either with new families or by returning to families that were safer and healthier than they were prior to court intervention.

Evaluators also met with individuals who were overwhelmed by inefficiencies in the system:

- ❑ Caseworkers frustrated by their experiences at court, such as going into hearings with no representation and waiting weeks for court orders before they could obtain services for parents;
- ❑ Jurists frustrated by the inexperience of caseworkers and by the inadequacies of a system that doomed certain categories of parents to losing their children; and

⁶ Of the 128 court files reviewed in the four courts for which this data was used to analyze timeliness, ten were opened prior to 2000: Jackson—1 out of 41; Macomb—4 out of 47; Marquette—2 out of 24; and Roscommon—3 out of 16.

⁷ Surveys from jurists who spend an insignificant percentage of their time on child protective cases or who were not currently presiding over these proceedings were eliminated.

- ❑ Parents, who did not feel heard, did not understand what was expected of them, and did not feel that their attorneys were speaking for them at hearings.

Analysis of the quantitative data revealed some problems with regard to the timeliness of significant case events, but most of the courts visited are in substantial compliance, or are improving. Where delays are occurring, and where permanency for children is affected, however, evaluators believe there are certain important improvements that might help reduce such delays.

Similarly, while Michigan courts compare favorably with many others in terms of such issues as the completeness and depth of their hearings, legal representation, and court organization and management, evaluators identified many areas that can be improved. We believe that Michigan courts have much impressive strength in this area and, with further specific reforms, the state can be a national leader.

Following are some recommendations⁸ that evaluators believe, if followed, could significantly improve the overall quality of child protection proceedings and shorten the time to permanency. They are directed to the staff at SCAO who, in the opinion of the evaluators, should do the following:

- ❑ Develop methods for improved judicial caseload analysis, specifically for child protective proceedings, to take into account the judicial time needed to fulfill the letter and spirit of the law and to implement nationally accepted best practices. This analysis should also determine typical appropriate lengths of non-contested hearings in child protective proceedings.
- ❑ Work collaboratively with DHS toward the goal of having permanent, specialized prosecutors/attorneys general assigned to represent DHS at all stages of child protection proceedings, beginning with the filing of the removal petition. Revise the Michigan statute regarding representation of DHS to read that the prosecuting attorney or assistant attorney general is to act as the DHS (or its agent's) attorney in these proceedings.
- ❑ Strengthen and enforce statutory requirements for mandatory training for the judiciary and for attorneys (including those representing parents, children, and DHS or its agents) on child protection statutes, court rules and procedures, case law, and on other child welfare related issues.
- ❑ Establish standards for court information systems that will allow courts to collect and report on compliance with all deadlines in child protective proceedings, as required by the state statute.
- ❑ Encourage collaborative relationships between DHS and the courts on a state and county level that would result in the sharing and reviewing of data regarding timeliness in child protective proceedings and in working toward shared solutions to delays in reaching permanency.

⁸ A complete listing of the Recommendations contained in this report can be found on page 187. Recommendations relating to the chapter subjects can be found at the end of each chapter.

- ❑ Consider ways to assign judges with a specific interest and/or background in child welfare law to specialized, longer-term assignments to preside over child protection proceedings.
- ❑ Develop statewide standards (or issue an administrative order) regarding the scheduling of types of hearings in child protective proceedings, specifying which hearings should/must be set for a time certain and which may be block set, as well as the length of time needed for each type of hearing.
- ❑ Establish a mechanism to ensure accountability of attorneys representing parents and children. This should include the ability to enforce standards or requirements regarding minimum qualifications, mandatory training, and ongoing supervision. In addition, there should be a mechanism for parents and children to raise concerns about the quality of representation they are receiving.
- ❑ Advocate for legislation to eliminate, as a permanency option, any decision to continue a child's placement indefinitely in foster care. Michigan law should substitute for the term "long-term foster care" the term "another planned permanent living arrangement" and define the latter term to include only long term arrangements in which the goal is to establish and secure a permanent relationship between the child and an adult.

REPRESENTATION OF PARTIES

CHAPTER 5

CHAPTER 5: REPRESENTATION OF PARTIES

It is important that all parties to child protection proceedings receive good quality representation before the courts. The stakes in these cases are high: the safety and well-being of a vulnerable child; the rights of parents to love, protect, and care for their legal children; and the responsibility of the state to protect its vulnerable citizens against harm. Ideally, lawyers representing the child, the parents, and the agency act as the judge's eyes and ears, presenting vital evidence upon which the judge can base decisions that will be in the child's best interests. Without this information, there is an increased risk that the judge will make decisions that could result in the child's injury (or even the death), the needless breakup of a family, or a child growing up in foster care rather than in a permanent home.

Michigan child abuse and neglect statutes exceed the minimum requirements of ASFA and U.S. Constitutional case law with regard to representation in child protection proceedings.¹³⁰ Each respondent is permitted legal representation at every stage of a child protection proceeding. Legal representatives will be appointed if the parents are indigent. MCL 712A.17c Children not only have mandatory representation by a lawyer guardian *ad litem*, but the potential for either or both an additional guardian *ad litem* and a court appointed advocate. MCL 712A.17d

The original CIP assessment report contained twelve (12) recommendations addressing representation in child protection proceedings. (See Appendix A, Summary of Recommendations in 1997 Report, Recommendations 11 and 17-28.) In summary, the report recommended that the Michigan courts:

- Implement attorney quality control measures, such as mandatory training and experience requirements;
- Advocate for reasonable compensation for attorneys;
- Educate attorneys on juvenile court practice;
- Ensure attorney caseloads are reasonable;
- Appoint attorneys for parties in advance of the preliminary hearing with that representation continuing throughout the life of a case;

¹³⁰ Neither ASFA nor U.S. Constitutional case law requires legal representation for children in neglect-abuse cases. However, in order for a state to receive federal funding for foster care under the Child Abuse Prevention and Treatment Act (CAPTA), P.L.100-294, amend. P.L.108-36 (2003), 102 Stat.102, it must require legal representation of children in these cases. *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* states in the preface that "All children subject to court proceedings involving allegations of child abuse and neglect should have legal representation as long as court jurisdiction continues."

- Appoint attorneys to independently represent each child and parent;
- Appoint attorneys to remain with one case through all its stages;
- Recruit attorneys for parents and children based, in part, on their skill and knowledge related to child welfare;
- Monitor attorney conduct;
- Require children's attorneys to meet with the child they represent at least once before each proceeding or hearing.

This chapter will consider specific recommendations from the original assessment that have been addressed by CIP initiatives and also those that have not been addressed, where the reassessment has found a continuing need for attention. It will examine the representation of the Family Independence Agency, of the parents of children who are subject to a child protection proceeding, and of the children themselves. It will address the quality of representation; training of attorneys and prosecutors; the methods of appointment, qualifications, and compensation of attorneys; and the use of court-appointed special advocates (CASAs). There will be references to relevant statutes and standards of practice to assist in the assessment of how well advocates are performing in child protective proceedings in Michigan and to guide in the development of recommendations.

DHS Representation

While Michigan law is clear that each respondent in a CPP has the right to an attorney, it does not provide for representation per se for the moving party, the Family Independence Agency. Rather, Michigan Court Rule 3.914 states that "on request of the court, a prosecuting attorney shall review the petition for legal sufficiency and shall appear at any child protective proceeding." Under the Rule, and in accordance with the most common practice, the prosecuting attorney may also appear at all stages of a child protective proceeding as a "legal consultant" at the request of the Michigan FIA or of an agent under contract with the agency. Finally, the Rule allows for the agency to retain "legal representation of its choice when the prosecuting attorney does not appear on behalf of the agency or an agent under contract with the agency." MCR 3.914(C)(2)

Michigan's Models of Agency Representation

The original CIP assessment report urged implementation of the Binsfeld Commission's recommendation that the Juvenile Courts assign "specialized, highly trained, permanent prosecutors or attorneys general to represent DHS at all stages of abuse and neglect cases, beginning with the filing of the petition to remove children from the home." Another recommendation of the assessment was to modify the practice of caseworkers in preliminary petitions. (See Appendix A, Summary of Recommendations, Recommendations 19-21.)

The *Standards of Practice for Lawyers Representing Child Welfare Agencies*, promulgated by the American Bar Association in 2004, promotes a model they refer to as "agency representation." Under this model, the agency attorney represents the agency as

a legal entity, much the same as in-house counsel represents the corporation. The attorney could be an employee of the agency or of another governmental body, but the agency is clearly the defined client. In this model, the attorney advocates on behalf of the agency and its position, assists with the filing of the preliminary petition, and attends all hearings. Michigan courts do not operate under this model.

In most of the courts visited, assistant county prosecutors appear at CPPs to represent the interests of the state. Nearly 80% of the jurists responding to the statewide survey said the government was represented by local prosecutors; 8% said it was represented by a contractual attorney; and 7% answered that it was represented by attorneys employed by the FIA.

In Michigan's largest jurisdiction, Wayne County, the state attorney general's office is under contract to appear in child protection proceedings. Wayne County is one of two study site courts in which the prosecutor¹³¹ is present at every hearing. The practice there is to permanently assign a prosecutor to a particular jurist's courtroom. Even though there is consistent presence of prosecutors and a procedure by which the prosecutors are to review preliminary petitions ahead of time, those prosecutors may nonetheless be seeing the preliminary petition for the first time when the caseworker walks into the courtroom.¹³² There were complaints in Wayne County that prosecutors were recommending pleas that they knew the jurist would accept, rather than advocating for what the agency believed was best for the child.¹³³

One of the most remarkable findings of this reassessment was that in only one of the courts visited was the prosecutor's office held in nearly universally high regard with respect to the quality of the advocacy. This was attributed in part to the value placed on the prosecution of child abuse and neglect cases by the Chief Prosecutor in that jurisdiction, which was reflected in long-term specialized assignments of prosecutors to child protection cases. The longevity, skill, and commitment of the assistant prosecutor who was primarily responsible for these cases were also significant factors. However, it was also reported that there is a considerable "gap" in the quality of the representation between this particular prosecutor and others who appear when that person is not available.

In all other courts, there was significant dissatisfaction by at least some of the stakeholders regarding the quality and consistency of prosecutors' participation in the cases. The primary complaint by DHS workers is that the prosecutors do not represent the agency or the workers at the hearings. The fact that prosecutors are overworked and unavailable to them contributes to the sense that the agency is not represented.¹³⁴ When a

¹³¹ "Prosecutor" will be used to refer to anyone appearing in CPPs on behalf of the state, whether it be a Chief or Assistant Prosecutor, an Assistant Attorney General, or an attorney employed directly by the DHS.

¹³² Evaluators observed prosecutors conferring with DHS caseworkers in the courtroom, immediately before the convening of the preliminary hearing, to review the contents of petitions.

¹³³ Many of the referees in Wayne County are former assistant attorneys general who practiced in that court in child protective cases prior to being employed as referees. This shared experience, combined with the fact that the prosecutor remains in the courtroom with the jurist while other parties and attorneys come and go may create the impression that the jurist and the prosecutor work together, rather than that the prosecutor works for the agency. This also presents frequent opportunities for informal conversation between the two during the breaks between hearings. Evaluators did witness such conversations during the court visit to Wayne.

¹³⁴ In one of the study sites it was reported that there was no system for DHS workers to confer with prosecutors. If there were contested issues in a case, caseworkers were sometimes advised by the

prosecutor is participating in a case and makes recommendations to the court substantively different from what FIA is recommending, procedures allow for an attorney to be hired to represent DHS's position. However, caseworkers reported that the process of hiring another attorney can be complex and time-consuming, largely because of bureaucratic requirements.

In the statewide survey, jurists were asked if it was their understanding that "government attorneys believe that they are legally required to represent FIA's position." Forty-three (43) percent of them answered "No." In at least one of the site visit courts where both the agency caseworker and the prosecutor were present at a hearing, it was reported that jurists will first ask for the agency's recommendations, then for the prosecutor's.

Other complaints reported by DHS workers included the following:

- ❑ Lack of assistance and support in the filing of preliminary petitions;
- ❑ Absence of prosecutors from preliminary hearings, where the caseworkers are required to represent themselves as they present their evidence, respond to examination by other attorneys, and negotiate pleas with parents and their attorneys;
- ❑ Lack of understanding and preparation by the prosecutors, who reach pleas with parents' attorneys without the input and participation of the caseworkers;
- ❑ Frequent substitutions by the prosecutor's office, resulting in appearances by prosecutors who are not familiar with the case and do not know its history.¹³⁵ These prosecutors may not be prepared to support the agency's recommendations, should they come under fire, or, in rare cases, may make recommendations not consistent with the agency's. (Statewide data showed that 38% of jurists reported that more than one government attorney appears "often" or "most of the time" during the life of a case.)
- ❑ Lack of training and understanding of the law. (Caseworkers expressed frustration at knowing more than prosecutors do, particularly with new prosecutors who do not work on child protection proceedings for more than six months or a year.)

The original CIP assessment specifically addressed three of the complaints raised by FIA workers in the reassessment when it recommended the following:

1. That "specialized, highly trained permanent prosecutors/attorneys general [be assigned] to represent DHS at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home" (Recommendation 19);
2. That MCL 712A.17(5), MCR 5.914(B)(1) "be modified to clarify that the prosecuting attorney or assistant attorney general is to act as the

prosecutor to go into the hearing and, if they felt that they could not handle what came up, to ask for an adjournment. In another court, the judge would adjourn a hearing and ask the agency to find a prosecutor to confer with before the hearing would be reconvened.

¹³⁵ In the most extreme example reported, five (5) different prosecutors appeared in one case. The final prosecutor disagreed with DHS's position and recommended changing the direction of the case. The agency then began the process of hiring its own attorney. This occurred at a late stage in the case and resulted in further delay.

FIA or its agent's 'attorney' in child abuse and neglect proceedings" (Recommendation 20);

3. That "the practice in some counties in which DHS workers are responsible for ing the initial abuse and neglect petition should be modified to delegate this responsibility to the FIA attorney."¹³⁶

The ABA's *Standards of Practice for Lawyers Representing Child Welfare Agencies* recommends that attorneys representing the agency "prepare or help prepare the initial petition and all subsequent pleadings" (C-7), "participate in settlement negotiations (C-11), and "attend and prepare for all hearings" (C-15). Interviews and court observations at the study sites revealed that the issues raised in the original assessment regarding agency representation remain problems in Michigan's courts. Also, current practice at the study courts falls far short of the ABA practice standards.

Presence of Prosecutors at Hearings

Where the prosecutor is absent from the hearing, the L-GAL will often function as the de facto prosecutor, it was reported, bringing out the evidence in support of DHS's position and recommendations (since most of the time the L-GAL's position is consistent with that of the agency) and cross-examining parents when necessary. This may be one reason why prosecutors' offices decide to redirect their resources to other places, possibly to criminal juvenile cases, for example, unless a hearing is contested or an amended petition and plea are being submitted. Although in individual cases this may work well--in theory--, it may also lead to a confusion of roles, when an L-GAL who has functioned in this role over time could lose sight of his or her singular duty to determine and advocate for the child's best interests.^{137/138}

It's not appropriate for preliminary hearings to go forward without the prosecutors. It's hard for the children's attorney to do that because we don't work with DHS and we haven't seen the petition before or talked to the caseworkers.

—Private attorneys

On a statewide level, jurists report the presence of prosecutors at the following types of hearings:

¹³⁶ In all six of the jurisdictions visited, DHS caseworkers were responsible for drafting the initial abuse and neglect petition.

¹³⁷ This confusion of roles may also be attributable to two unusual provisions of the Michigan statute that set out the duties of the L-GAL in these proceedings: to foster cooperation among the parties; and to recommend to the court which of the allegations have been proved in the adjudicatory hearing. MCL 712A.17d(2), MCR 3.972(D) One could say that the latter of these duties would be more appropriately performed by a prosecutor, or counsel for the DHS.

¹³⁸ Illustrations of this point include a report that a judge in one of the courts studied reminded an L-GAL that it was okay to cross-examine the state's witnesses. Another was a report from an attorney that she has done case preparation for an inexperienced prosecutor and case worker in some cases in which she herself was representing the child.

Type of Hearing	Never		Rare 1 - 10%		Routine 90 - 99%		Always	
	#	%	#	%	#	%	#	%
Removal (n = 116)	15	12.9	15	12.9	13	11.2	61	52.6
Adjudication (n = 118)	2	1.7	2	1.7	7	5.9	98	83.1
Review (n = 114)	15	13.2	18	15.8	16	14.0	42	36.8
Permanency Planning (n = 113)	11	9.7	13	11.5	13	11.5	67	59.3
TPR (n = 113)	0	0	0	0	4	3.5	108	95.6

While prosecutors are nearly always present for adjudication and termination proceedings according to the responding jurists, their presence at removal hearings, reviews, and permanency planning hearings is substantially less routine.

The FIA workers' complaints about frequent substitutions of prosecutors were reinforced by jurists' responses to question in the statewide survey regarding how often more than one prosecutor appears during the life of a case. Nearly two-thirds of the jurists answered that this happens "often" (1/3 to 2/3) or "most" (more than 2/3) of the time.¹³⁹

Concerns regarding the lack of both communication between DHS and prosecutors and preparation for hearings were also supported by the jurists' responses to the survey. In answer to the question of how often prosecutors spoke with the child's social worker prior to the day of the hearing, 29% of the jurists said they believed this happened "most" of the time; another 29% said it happened "some" of the time (i.e., less than 1/3); and 25 % said it happened "rarely."

The DHS workers expressed strongly their wish to have their own counsel represent the position of the agency's workers as well as to be present at hearings so the workers could concentrate on being social workers. The absence of representation at hearings was cited as a reason for high turnover, since many workers are not comfortable acting as attorneys in the hearing setting and are not equipped to deal with the stress of being cross-examined by parents' attorneys. This was a greater problem in certain courts, where particular jurists have specific expectations of how workers should perform these functions, especially at the preliminary hearing stage, and may express their disappointments and frustrations at the hearing. Workers who had this experience said that this criticism undermined their ability to work with parents and their authority to oversee and enforce parent agency agreements.

¹³⁹ It is interesting to compare this to the jurists' responses to the same question with regard to L-GALS: only 7% of them said that more than one L-GAL appeared on behalf of a child "often" or "most" of the time.

Agency supervisors and managers reported that unpleasant experiences in court contributed significantly to a high turnover rate among caseworkers. They pointed out that this reduces the pool of experienced and skilled workers who can appear at hearings, thus exacerbating the problem. (See Chapter 6 for an in-depth discussion of court-agency issues.) Were the agency to have its own properly trained and prepared attorneys present for all hearings, as was recommended in the original assessment and as called for by the ABA standards, the problem of turnover might be eased to a significant extent.

Appointment and Compensation of Attorneys to Represent Parents and Children

Courts utilize a variety of approaches to meet their obligation to provide counsel for children and for parents in child protection proceedings. The six courts visited for this study represent the primary methods of contracting for, appointing, and paying attorneys. Courts either have attorneys, or attorney organizations such as the Legal Aid and Defenders' Association, with whom they enter into contracts to represent children and parents, and/or they appoint attorneys from a list developed and monitored either by the court (as in Kent County) or by the judges (as in Wayne County).

In the courts that do not have attorneys under contract, appointments generally rotate among the attorneys on the appointment list, alternating between appointments to represent children and appointments to represent parents. Jurists reported that in special cases they may appoint a particular attorney who has substantive knowledge of the issues presented in a case (e.g., a baby who has been shaken or a parent with a diagnosis of Munchausen's Syndrome) or who has represented a particular child or parent in a past case that has returned to court. Court rules are strict and specific about judges not having bias in the appointment of attorneys. [find this cite]

As Table 38 indicates, the compensation possibilities include monthly or annual contracts (\$18,000 to \$62,000 a year); hourly fees (\$45 for in-court, \$30 for out of court); fees based on type of hearing (e.g., \$100 for prelims and adjudication and \$75 for reviews); and fees for bringing a case from the preliminary hearing to disposition (\$420). Even courts that have annual contracts with individual attorneys must also pay other attorneys on an hourly basis, when those attorneys are not able to provide representation in particular cases or when they have exceeded the number of cases for which they have contracted.

Table 38 ATTORNEY COMPENSATION IN CHILD PROTECTION CASES		
Court	Compensation	Number
Jackson	Under contract--\$62,424/yr. Other--\$58/hr.	Contract (2) Others (4)
Kent	\$50/hr.	65
Macomb	Prelims, adjudication, disposition, pretrial motion-- \$100 Reviews--\$75	80-100

	Plea or consent to TPR--\$200 Trial (full day)--\$300 Trial (half day)--\$150 Hearing adjourned--\$50	
Marquette	\$50/hr.	15
Roscommon	\$1411/mo for two who each do 1/3 of the cases; \$705.50/mo. for two who each do 1/6 of the cases	4
Wayne	For children: LADA under contract amount for 2300 new juvenile (delinquency and neglect) cases per year For children and parents: Flat \$420.00 from prelim to disposition; hourly \$30.00 out of court, \$45.00 in court thereafter	Not known

The statewide survey results show that the most common approach is to pay attorneys an hourly fee. These fees range from \$35 per hour to nearly double that amount--\$72 per hour (but for court time only)--with 51 of 68 responding jurists answering that their courts pay attorneys an hourly rate. The next most common approach is to enter into a monthly or annual contract, with 13 jurists describing that as their court's practice. Annualized, those contracts range from \$12,000 to \$47,500

At the courts visited, the size of the attorney lists varies from court to court, and even from judge to judge. There is more or less oversight by courts and judges of the attorneys on the list at these courts as well. In one court, a judge interviews attorneys before they are placed on the list. In another court, administrators and judges review the attorney list annually, remove names of attorneys whose performance is considered substandard and replace them with new attorneys.

There is significant variation among the courts visited regarding what the court pays for when attorneys are appointed from a list. One court pays attorneys for time spent visiting children, in mediation sessions, and for attendance at Foster Care Review Board hearings. As Table 38 shows, one court pays a higher hourly rate to attorneys but it only applies to the attorneys' time spent in court.

Issues in these cases are far more serious, but we are paid only half as much for twice the work as with misdemeanor criminal cases. There is a tremendous disparity of payment in the system. This work is very important, but it's treated as though it's less important.

—Attorney

Regarding attorney compensation, the original assessment made the following recommendations:

- ◆ "Attorneys representing children and parents should receive compensation that is reasonable and commensurate with the amount and complexity of work involved in child abuse and neglect cases." (#28)
- ◆ "Compensation systems should not be utilized that provide disincentives to fulfilling responsibilities mandated by statutes, codes of professional responsibility, and other standards (e.g., annual, 'no case cap' contracts)." (#29)

There are currently no state standards guiding the compensation of attorneys representing parents and children in Michigan. It would seem to make sense that the SCAO promulgate such standards. For example, it seems grossly unfair for a child or parent in one court to be potentially disadvantaged in representation because of a compensation system that discourages case preparation outside of court appearance time. Every child and parent deserves the highest possible quality of representation in these proceedings. Though reasonable compensation alone cannot insure that quality and needs to be combined with other factors (e.g., appropriate training and reasonable caseloads), it is nonetheless vitally important and should be made a priority.

Representation of Children

The State of Michigan Court System, and the State Court Administrative Office in particular, deserves high praise for its responsiveness to the issues raised in the original assessment regarding the quality of representation for children in child protective proceedings. The original assessment contained the following recommendation:

The recommendation by the Michigan Children's Ombudsman that MCL 712A.17c(7), the statutory provision addressing the case preparation obligations of the child's attorney, should not only be "better enforced," but "should also be amended to specifically require that *the child(ren)'s attorney meet with the child(ren), at least once before each proceeding or hearing*" should be adopted. (Recommendation 22)

In 1998, subsequent to the report and this recommendation, the Michigan Legislature enacted MCL 712A.17.d, a statute that delineates the powers and duties of the L-GAL and includes a provision requiring the child's attorney to meet with the child at least once before each hearing. The ABA has called this statute "one of the nation's most detailed set of mandatory guidelines for representing children."¹⁴⁰

In its 2001 annual report, the Michigan Foster Care Review Board reported that statewide data compiled by board members found that inaction on the part of L-GALs was one of the top ten barriers to permanency. While the FCRBP recommendation for a state Office of Lawyer-guardian ad litem was not implemented due to budgetary restrictions, their concerns were echoed by the results of a study by the ABA, released in 2002. This study found that poor training, inadequate funding, and poor enforcement of the requirements of the L-GAL statute [refer to ABA study].

In response to these findings that the requirements of the L-GAL statute were not being complied with, the Michigan State Court Administrative Office engaged in one of its most significant CIP initiatives, the development of the L-GAL protocol. The protocol was intended to further the implementation of the statutory provisions of the L-GAL statute and "to assure competent, effective representation in every case in which the

¹⁴⁰ *A Challenge for Change: Implementation of the Michigan Lawyer-Guardian ad litem Statute*, ABA (Nov. 2002)

court appoints an L-GAL.”¹⁴¹ The protocol was disseminated in 2004, and attorneys across the state received regionally-based training.¹⁴²

Michigan law requires that an L-GAL be appointed to represent a child in child protective proceedings. MCL 712A.17c(7) and MCL 722.530. Where a child’s expressed wishes conflict with the L-GAL’s determination of what is in the child’s best interests, an attorney may be appointed to represent the child. This attorney owes the same duties to the child as to an adult client. MCL 712A.13a(1)(b)

Duties of the lawyer guardian *ad litem* (L-GAL) under Michigan law are specific and demanding. The statute sets out the duties and power as follows: “to serve as the independent representative for the child’s best interests;” “to determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others;” and “to meet with and observe the child, assess the child’s needs and wishes with regard to the representation and the issue in the case, review the agency case file”

712A.17d(1)(d)¹⁴³.

The L-GAL protocol sets out a number of practical suggestions for ways in which the L-GAL and the child may meet:

- ♦ in the child’s living environment or in a place where the child is comfortable;
- ♦ at the courthouse several hours before the hearing;
- ♦ during parenting time sessions, especially where the child’s siblings will also be present;
- ♦ at his or her school after school hours;
- ♦ at the agency;
- ♦ at the psychologist’s or counselor’s office after the child’s appointments;
- ♦ at a meeting place half-way between the child’s foster home and the court.¹⁴⁴

The Protocol goes on to say that an L-GAL should meet with a child no later than one week after the preliminary removal hearing and that they must visit with and observe very young or non-communicative children prior to hearings (p. 32, Protocol).

To reinforce the statutory requirement that attorneys visit children they represent, in September of 2003 the State Court Administrator ordered the courts to require attorneys to file an affidavit in which the attorneys attested to visiting the children they represented before each hearing.

¹⁴¹ from the Introduction to *Lawyer Guardian ad Litem Protocol*

¹⁴² Thirty-one all-day training sessions were conducted at 20 different sites across the state (six of the sessions were in Detroit). The number of L-GALs trained as of February, 2005, was 671. (Wayne County L-GALs receiving the training numbered 147, Oakland County 104.) Trainees represented all but 23 of Michigan’s 83 counties.

¹⁴³ Effective December 28, 2004, a legislative amendment added language specifying the instances in which L-GALs were required to meet with children, that is, before the following types of hearings: pretrial, initial disposition (if held more than 91 days after the petition has been authorized), dispositional review, permanency planning, post-termination review, and at least once during the pendency of a supplemental petition. The amendment also added language stating that “the court may allow alternative means of contact with the child if good cause is shown on the record.” MCL 712A.17d(1)(e).

¹⁴⁴ The Protocol also mentions that if a child has been placed in another county, the court may appoint co-counsel to meet with and observe the child in the child’s living environment and file a report with the L-GAL.

L-GAL Visits with Children

At the time of the CIP reassessment, the most striking issue that emerged from interviews and focus groups concerning the quality of representation of children was that L-GALs were not consistently visiting with children prior to hearings. This was reported in all the study sites except one and by various stakeholder groups from caseworkers to foster parents to the youth themselves.

In spite of the newly-implemented L-GAL protocol and the training provided by the SCAO during the spring and summer of 2004 regarding the protocol,¹⁴⁵ the practice was not widespread at the time this study was conducted. A major barrier to compliance with the requirement was reported to be the failure of the courts to compensate attorneys for the time spent visiting children. Three of the site visit courts reported that some L-GALs withdrew from their cases when the filing of affidavits and/or informing the court on the record regarding visits with children became a requirement,¹⁴⁶ since no additional compensation was made available for the time spent on the visits. (Jurists in five of the study courts reported asking L-GALs at the hearing whether they had visited with the child or children they were representing.) However, in one court, that was not seen as detrimental, since the attorneys who remained as L-GALs were committed to the work and were sufficient in number to meet the court's need.

Caseworkers, foster parents, Foster Care Review Board members, and CASAs interviewed at the study sites reported a deep-seated concern that LGALs were not meeting with children. In one county, caseworkers reported that it was more often the case that the attorneys were not seeing the children. A judge in the same jurisdiction disagreed and stated that it was the exception for them not to meet with their clients. A jurist in another court stated that 95% of the attorneys were visiting children in their homes. In yet another court, a judge recognized that it was not possible for children's attorneys to travel to out of county placements to visit children. In Wayne County there were varying reports on the extent to which LADAs and private attorneys were visiting children. One jurist thought most LADAs were, but said a few claimed they could not because of their high caseloads. Another jurist reported that LADAs did not visit children.

We have no compensation for traveling. The law and reality don't match—it's just unrealistic to expect attorneys to comply with the visitation requirement.
—Attorney

On the other hand, there were many reports that the practice of seeing children prior to hearings was happening more often than it did prior to the LGAL protocol. Numerous stakeholders connected the change to the "new Supreme Court requirement," which they associated with the use of the affidavit.¹⁴⁷ In Wayne County it was reported that the private bar's representation of children had improved as a result of the protocol.

Children placed out of the county presented particular challenges, though some L-GALs dealt with this by asking another attorney in the county where the child resided to

¹⁴⁵ Training on the L-GAL protocol coincided with evaluators' visits to the six study courts, which were conducted between May and October of 2004. (See previous footnote.)

¹⁴⁶ In one study site, a jurist stated that "some of the best and most devoted attorneys" asked to be taken off the list when the requirement to file affidavits testifying to visits with children came into effect. This was reported by a number of other interviewees at the same site.

¹⁴⁷ In fact, this had been a statutory requirement since 1998, pursuant to MCL 712A17.d.

conduct the visit and send them reports. Some L-GALs questioned the value of visiting an infant, though one pointed out that it was important to see the type of environment the child was placed in, even if the child could not speak, since the attorney could learn a lot from being in the child's home.

In one of the jurisdictions visited, an attorney who represents children held "visiting hours" on Saturday morning at his office, sent out a notice to that effect to caseworkers and foster parents, and expected the child's case workers to bring the children there to fulfill the requirement. This presented problems for caseworkers, since it was Saturday, as well as for foster parents, who often had Saturday activities for their other children.

In another jurisdiction, a few attorneys had asked for extra compensation to visit children when they were required to travel more than a short distance. While the judge allowed the extra compensation when asked, the availability of the extra compensation was not made known to other attorneys, nor was the extra compensation offered by the court unless a specific request was made.

Affidavits in which L-GALs list and testify to visits with the child are used in some of the courts visited and not in others. In a couple of court sites where the affidavits were required in order for the attorneys to be paid, there was concern that additional inquiry or oversight by the court might be necessary to ensure that the visits were indeed taking place. In one court that does not require the affidavit, L-GALs testify at the hearings about whether or not they have seen the child or children they represent prior to the hearing, so that information is entered on the record.¹⁴⁸

In Wayne County, the LADA attorneys (see earlier section of this chapter on "Appointment and Compensation of Attorneys" for explanation of "LADA") divide up the visits so that one attorney will visit all the children at a particular institutional setting, while others will divide the city up geographically, visit children in their regions, and provide reports to the appropriate children's attorneys. Both because of their high caseloads¹⁴⁹ and because of the way cases are called in Wayne County (see Chapter 3, p.), LADA attorneys may frequently substitute for each other. So in spite of the LADAs best efforts to see the children prior to each hearing (and even when the child has been seen, if the LADA attorney who is substituting for that hearing did not see the child), the attorney will have to answer "no" to the question of whether the child was seen prior to the hearing.

According to jurists in the statewide survey, most L-GALs are seeing their child clients before hearings. Following is a table of their responses to the questions:

¹⁴⁸ Evaluators observed review hearings in which LGALs so testified, using precisely the same language in each instance. The LGALs either said "the child was seen" or "there has been a breakdown in communication." Evaluators did not observe the court make further inquiry regarding the LGALs attempts to see the child.

¹⁴⁹ There are 19 attorneys with LADA who do both neglect and delinquency cases. In the recent past, the caseload for each of these attorneys was reduced from over 200 to 130.

Frequency	Talk to		Visit at Residence	
	#	%	#	%
Rarely 1 - 10%	4	3.4	16	13.8
Sometimes 11 - 35%	3	2.6	13	11.2
Often 36 - 65%	17	14.5	19	16.4
Most 66 - 95%	63	53.8	55	47.4
Always 96 - 100%	30	25.6	13	11.2

It is interesting to note that 24% of the jurists believed that attorneys were *always talking to the children* they represented prior to the day of the hearings, while only 10% believed that attorneys were *always visiting children at their residences* prior to the hearings.

There is a lack of clarity and consistency on the part of the courts with regard to how and where L-GALs are to visit the children they represent. In one court, a judge makes it clear that it is the attorney's responsibility to go to the child's home. In another, the L-GALs never visit the children in their placement (unless, for example, the child is disabled or is about to be adopted) and, instead, leave it up to the caretaker to bring the child to the lawyer.¹⁵⁰ In still other jurisdictions, attorneys will request (and on occasion judges will order) that caseworkers bring the child to the attorney, sometimes to the courthouse on the same day as the hearing. It was reported that this is problematic in terms of the other demands on caseworkers' time and because many of the courts are not child-friendly and have no private meeting spaces for the child and attorney to speak.

While it may make sense in exceptional circumstances for caseworkers to assist with those visits, the court should not encourage that as a regular practice. The caseworkers are already charged with working with families, monitoring the provision of services and compliance with those services, and reporting to the court. On the other hand, attorneys are also overburdened, and the inflexibility of the requirement to meet with every child, no matter what the age or circumstances, before each hearing, may not be reasonable. Requiring attorneys to file affidavits attesting to visits that may not have happened and

I attend all the hearings, and before I leave the court I ask the attorneys right there on the spot when they'll be coming to visit the kids. As soon as I get the date, I put it in my calendar.

—Foster parent

¹⁵⁰ One foster parent reported bringing her foster child to a Wendy's, which was half-way between the attorney's office and the foster home, for a 3-minute meeting with the child's attorney prior to a hearing. Another foster parent said she attends all the hearings and asks the attorneys when they will be coming to visit and puts the date in her calendar.

having judges inquire superficially about whether those visits have taken place constitute pro forma rather than substantive compliance with the requirement of the statute.

For the most part, youth¹⁵¹ reported not being contacted by their attorneys and in some cases not having a way to contact their attorneys (e.g., one lawyer's business card had a post office box but no phone number). They also reported not understanding that the case in court was about them, as well as about their parents. Even youth who said they call their attorneys reported not often receiving return calls, and they generally only meet their attorneys minutes before the hearing. At that time, the attorney may describe what's going on in a language the youth does not understand. Youth said that they are not shown the reports that go to the court and are not asked whether or not what is stated in the report is accurate.

Youth in Wayne County reported that frequently at their hearing an unfamiliar attorney will show up who will quickly read the report but who does not understand what is going on in the case. Substitution of counsel is an issue for children and for parents, particularly in Wayne County. As mentioned elsewhere, this occurs in part because of the scheduling of a number of cases for the same time, making it difficult for attorneys to be present at all hearings in which they represent clients.

The absence of the attorney of record can mean that the substituting attorney does not play an active role in the hearing. In that case, no one will be there to ask questions and present evidence on behalf of the child. If the child's wishes differ from those of the agency, those views will not be represented.

Recently-passed Michigan legislation clarifies the issue of when L-GALs must visit children. It specifies the types of hearings before which the L-GAL should visit the child, and allows for alternative means of contact if good cause is shown on the record. [look for Senate Bill No. 1440 of 2004 regular session, or the statute, if amendments have been codified. Insert in earlier section on the LGAL statute.]

The LGAL Protocol itself and training on the protocol are directed at attorneys representing children and do not include the courts. The role of the court is rarely addressed in the text of the protocol. In one section of the legislation it states that the LGAL may substitute representation for the child "only with court approval." MCL 712A.17d(1)(g) In its practice suggestions for how and where visits should take place, the Protocol says, "If a child has been placed in another county, the court may appoint co-counsel located in the other county to meet with and observe the child in the child's living environment," (Protocol, page 32).

Revising the protocol¹⁵² is needed to include guidance for the courts in how to promote and enforce the legal requirement for the L-GAL to visit with the child and how to most appropriately respond to exceptional circumstances. The courts need to be familiar with and understand the protocol if they are to enforce the statutory requirements and support the practical suggestions for implementing them.

Finally, courts should be encouraged to recognize the importance of LGAL visits with children and to compensate L-GALs appropriately for the additional time spent on

¹⁵¹ Focus groups with youth in foster care were conducted in two of the six sites visited. One of those sites was Wayne County.

¹⁵² Current proposals for revising the L-GAL protocol include the following [check to find out what those are]

the visits. (In Wayne County, however, where attorneys have extremely high caseloads, compensating them for visits may not be enough to solve the problem. In order to be effective, this change would need to be accompanied by a reduction in the caseloads of attorneys representing children.) The practice suggestion in the protocol of appointing a co-counsel for a child in an out-of-county placement, who would then submit a report to the L-GAL, should be routinely implemented.

Participation of LGALs at Hearings

In courts where the prosecutor (See this chapter, section on "Representation of DHS") does not appear at every hearing, the LGALs' role becomes more important. It was reported in several of the courts that in these situations, the direct examination of the caseworker is conducted by the L-GALs and the cross-examination is conducted by the parents' attorneys. In one of the courts, prosecutors reported that while L-GALs are routinely present and "ask good questions" they tend to rely on the prosecutor to do the real legal work in the case, and they do not file motions, or pleadings, or ask questions during trials.

In Wayne County, where a prosecutor is present at every hearing and where frequent attorney substitutions occur, it was reported that it is the prosecutor who will take the initiative, ask questions, and present evidence. It was also reported by a jurist with a generally low opinion of children's attorneys that LADAs, who may only represent 20-30% of the children, are better than the private bar because "at least they will ask questions and present motions." Taking another view, another jurist in Wayne County stated that LADAs may not have a real world view and may raise too many issues.

In another of the courts visited, a private agency reported that the LGAL routinely says, "I am in accord with the recommendation." A jurist reported that LGALs in his court add to what the prosecutor may have missed and, in general, are not as aggressive as the prosecutor but still are "very zealous."

More than one of the study sites reported that the L-GAL plays an important role when a mandatory preliminary [what is the correct term for this?] petition for permanent custody, also referred to as a "Binsfeld petition," is filed with the court. Under Michigan law, this type of petition is filed when parental rights to a sibling were terminated in the past and there is an unreasonable risk of harm to the current child, often a newborn. MCL 722.638(2) DHS policy states that a mandatory petition to terminate parental rights must be filed in any case in which there is "current risk of harm to the child and the parent's rights to another child were previously terminated" either as a result of an abuse/neglect proceeding or voluntarily, following the initiation of such a proceeding. (CFP 715-3, October 2003)

In a number of the jurisdictions visited, the practice of DHS workers and supervisors has been to file mandatory petitions even when the agency does not believe that termination of parental rights is best for the child. Neither DHS caseworkers nor prosecutors (when present), consider themselves able to argue again against their own petition or against DHS policy. Therefore, it is the LGAL who makes the argument that

the petition should be dismissed because it is not in the child's best interests to terminate parental rights.¹⁵³

Representation of Parents

In most of the courts studied, the same attorneys are either under contract or appointed by the court on a case-by-case basis to represent both children and parents. (In rare instances, attorneys who make the request to represent only children are allowed to do so.) Courts will generally rotate assignments for individual attorneys between parents and children to provide for some balance.

In Wayne County, attorneys must be placed on an individual judge's list in order to be assigned to represent parents and/or children. The requirements for gaining admittance to the lists vary from judge to judge, and the sizes of the judges' lists vary as well.¹⁵⁴ There is a widespread perception that cronyism plays a role in who is admitted to the judges' lists. Since the judges' control their own lists, no consistent standards apply, and there is no overall system of oversight. Attorneys are appointed to referees' cases from the list of the judge they are working under. It was reported that referees may discharge an attorney from a case for failure to appear at hearings but that the judge may overrule the referee and put the attorney back on the case.

One person observed that parents' attorneys in Wayne County meet in the

Since the burden is on the parents to comply with the service plan, I don't have much to do [after adjudication].

—Attorney

cafeteria and "deal the morning's cases like cards," trading cases back and forth based on who is going to be in which courtroom that day. Attorneys who work on these cases in Wayne County generally are not able to do other kinds of work and must maintain high caseload numbers to assure themselves adequate income. These high caseloads contribute to the necessity to substitute for each other.¹⁵⁵

If a parent's attorney is not available at the time of the hearing, the parent is offered house counsel—an attorney who is on call for that day and who is assigned to come in to the hearing without ever having seen the case file or ever having met the parent. The parent is not required to accept house counsel and can instead choose to have his or her hearing adjourned to a later date. The inconvenience of having to return to court may be a disincentive to parents' choosing to adjourn, particularly where they may have had to wait up to several hours for the hearing to be called.

¹⁵³ Though the petition for termination will likely be dismissed in these instances, the court will often decide to take jurisdiction with the goal of making the child a temporary ward of the court, to enable monitoring of the parents and the provision of services.

¹⁵⁴ One jurist with a long history with the Wayne Court described some of these attorneys as "greedy," saying they get assigned to many more cases than they can realistically handle. These high caseloads, the jurist noted, unavoidably result in frequent substitutions.

¹⁵⁵ One interviewee estimated that some attorneys have as many as 200-300 cases, and that they seem to rely on the prosecutor to present the case.

Attorneys in another court reported that it was not possible to meet with clients in their offices, since they were not compensated for the time. If they do have contact outside the courthouse, it is by phone, but most often they talk to their clients in the lobby or outside the courthouse just before the hearing. (See Chapter 1, section on court facilities.) An attorney in this court described case preparation as being "training and learning the law," as opposed to spending time with the client. A jurist in this court stated that

attorneys often do not interview witnesses prior to trials; another jurist said, "Everything is more casual at a bench trial—sometimes too casual." An attorney in yet another court described his preparation for adjudicatory hearings in this way: "I study the information that the prosecutor and DHS have—their files are completely open to me. I don't need to do any additional investigation."

The strongest criticisms about the quality of representation came, as one might expect, from the parents themselves. They reported that their attorneys do not return phone calls or provide parents with their phone numbers, do not explain what is going on in their cases, do not give parents a chance to tell their side of the story at court hearings, and make deals without consulting with them. Parents described talking to their attorneys for only a few minutes before their hearings.

The next strongest criticisms came from DHS and private agency caseworkers. According to the caseworkers, parents often say that they are unable to reach their attorneys prior to hearings and that they meet their attorneys for the first time at the courthouse five minutes before hearings begin. Some workers described coaching parents in how to get increased visitation. Private agency workers complained that parents' attorneys had not read their reports.

Of the jurists responding to the statewide survey regarding how often parents' attorneys were speaking to parents before the day of their hearings, 28% answered that this is happening "rarely" (less than 10%) or "sometimes" (less than 1/3), 26% said it was happening "often" (36-65%), and 37% said they believe this happens "most" (over 2/3) of the time.

Jurists interviewed at the study courts had fewer negative things to say about attorneys representing parents than did other stakeholders. They reported some variations in the quality of the attorneys, but overall they thought the quality of representation was good. Most of the jurists at the study courts have backgrounds as either prosecutors of juvenile cases or as attorneys who were appointed to represent parents or children in child protective cases. It seems possible that the jurists' backgrounds and familiarity with the challenges of insufficient compensation, inadequate training, and lack of time could result in a lowering of expectations of the attorneys who practice before them.

Often the prosecutors are more mindful of the rights of the parents than the defense attorneys. They seldom file motions or pleadings or present witnesses in court. It bothers me that a defense attorney in a TPR hearing might never call a witness.

—Prosecutor

Sometimes we end up representing the parent, too, because you feel bad for them.

—Caseworker

It was reported by a broad range of stakeholders that when parents hire private attorneys with little or no knowledge or experience in child protection law, it often works against the interests of the parent. The attorney may take a more adversarial approach to the case and may fail to advise the parent to agree to the voluntary provision of services prior to adjudication. Without an understanding of the strict timelines and the serious consequences of parents' failure to show improvement within those timelines, these attorneys may actually harm parents' chances of having their child(ren) returned to them.¹⁵⁶

What was reported to evaluators in this reassessment and what was observed at court hearings falls disturbingly short of standards of practice. *Representing Parents in Child Protection Proceedings*, an ABA publication, recommends that, prior to each factual hearing at the critical stages of the proceedings, attorneys for parents do the following, among other things:

- ◆ discuss the matter with your client sufficiently in advance to have time to investigate and prepare the case;
- ◆ conduct a thorough, independent investigation (p. 5).

Michigan's own *Guidelines for Achieving Permanency* sets out similar standards for parents' attorneys. At the preliminary hearing stage, for example, the responsibilities outlined include the following: interview parents (i.e., ask parents for their view of the problems that led to the petition and their view of their services needs) and conduct independent fact gathering to ascertain harms and levels of risk of future harms (*Guidelines*, p. 27). Clearly, when the attorney is only talking to the parent client for a few minutes prior to hearings and is not compensated for out of court time, these standards are not likely to happen in most cases, even though they would be considered minimal professional practices in all other areas of law.

One of the difficulties in assuring the quality of representation of parents is that often no mechanism exists for the court to supervise the work being performed by the attorneys appearing before them. There are models to ensure increased accountability without compromising the independence of attorneys and the Court's objectivity. The use of contracts that outline the attorneys' roles and responsibilities have been used in some states. In others, a Public Defender model ensures adequate training and supervision.¹⁵⁷

¹⁵⁶ The hiring of private counsel was reported to occur in more affluent regions, such as western Wayne County.

¹⁵⁷ In Massachusetts, the Children and Family Law Program (CAFL) of the Massachusetts Committee for Public Counsel Services provides legal representation to indigent parents and children in state intervention/child welfare matters, including care and protection proceedings. Representation is provided by a panel of private court-appointed attorneys and by staff attorneys in two areas. Admission to the CAFL trial panel is by application only and requires satisfactory completion of a five-day training program combining substantive law and trial skills. Upon completion of the trial certification training, attorneys are assigned to an experienced CAFL attorney for mentoring and support. Regional Coordinators also are available to provide advice and technical assistance to CAFL attorneys. G.L.ch. 119 § 29; G.L.ch. 210 § 3

Qualifications and Training

The original assessment made the following recommendation:

Prior to appointment, all attorneys who represent the DHS, children, and parents in abuse and neglect cases should be required to undergo mandatory training on topics relevant to advocacy in the juvenile or family court forum and provide information to the court on their experience level. (#24)

The ABA Standards for agency attorneys recommends (within its “agency representation” model—see section of representation of DHS) that new agency attorneys be paired with an experienced “attorney mentor” who will work with the new attorney. The new attorney should be required to “observe each type of court proceeding, second-chair each type of proceeding, try each type of case with the mentor second-chairing, and try each type of proceeding on his or her own, with the mentor available to assist, before handling cases alone.” The Standards also call for the new attorney to attend at least 12 hours of training before beginning, and at least 10 hours of training every year after that. Training should include general legal topics such as evidence and trial skills and child welfare-specific topics, such as relevant state, federal and case law, procedures and rules, agency policies and procedures, and numerous other topics relevant to child protection cases (Standards 2004, pp. 21-22).

Likewise, the ABA Standards for lawyers representing children call upon the court to “determine that the lawyer has been trained in representation of children and skilled in litigation” and upon the trial judge to “ensure that the child’s attorney has had sufficient training in child advocacy and is familiar with these Standards.” The minimum content of lawyer training is outlined in the standards and it is also recommended that courts “provide individual court-appointed lawyers who are new to child representation the opportunity to practice under the guidance of a senior lawyer mentor,” (Standards, 1996, pp. 18-20).

The reassessment process revealed that there are no statewide requirements for mandatory training for attorneys who function as advocates in child protection proceedings.¹⁵⁸ While all but one of the study courts require attorneys to complete application forms to represent parents and children in CPPs, most of them do not have clear and specific training requirements, either for new attorneys or for those with some experience.

One site visit court reported there is a mandatory “nuts and bolts” half-day training that attorneys must complete to get on the list, as well as an obligation to attend at least one additional seminar a year. While these training requirements are listed on the application form the attorneys are required to fill out, it is not clear that there is a process for determining who has and who has not completed the trainings.¹⁵⁹

¹⁵⁸ While the L-GAL training discussed earlier in this chapter was available statewide, it was offered in response to requests from the individual counties or regions.

¹⁵⁹ Another attorney in the same court reported that all that was needed to get on the list was “a county bar card and a license.” This presumably indicates that there may not be oversight and enforcement

Another of the site visit courts provides guidelines to new attorneys: that they read the CPP bench book, attend hearings to observe, and meet with an experienced attorney who can act as their mentor. In another court, a judge meets with attorneys before they are placed on the list and conducts an orientation for them. Still, attorneys in that court expressed a need for more training, saying, "We're just thrown into it." They reported that they would have also benefited from an overview from other, more experienced attorneys.

Attorneys in Wayne County are supposed to receive two days of training if new and one day a year if experienced. The LADA, which contracts with Wayne County Juvenile Court to represent children, is able to use more experienced attorneys in its organization to mentor newer ones and also has a training budget that allows them to send attorneys to conferences and trainings outside the state.

Almost everyone interviewed at the site visit courts reported that additional training for attorneys and prosecutors would be helpful, if not essential. One jurist thought it would not be a good use of CIP monies to train attorneys, since they often move on into other practice areas. This judge encourages mentoring, so that new attorneys can learn from more experienced attorneys who have made a commitment to these kinds of cases.

Finally, two of the site visit courts mandate yearly training requirements for attorneys who represent children and parents. One of these courts performs an annual review of all attorneys on their appointment list and decides whether those attorneys will continue. Attorneys are removed from this court's list if they receive poor evaluations.

Many respondents in the study sites reported that attorneys could benefit from additional training. The strongest statements were made with regard to prosecutors, in part because of the high turnover rate. In many jurisdictions it is the newest and least experienced attorneys who are assigned as prosecutors to the child protection cases. Usually, they have had no training. Because they are assigned to handle all juvenile cases, they may spend considerably more time doing criminal delinquency cases, which are very different from child protection cases. As stated earlier, it is often left up to the DHS worker to "educate" the prosecutor about the law and procedures in these cases.

In three of the study sites, the prosecutors themselves said that they needed and wanted training, particularly on time lines, court rules, the Binsfeld legislation, and Title IVE. They said there was no training curriculum per se for prosecutors in child protection cases and that it is up to the Chief Assistant Prosecutor to train the other attorneys. Training on the criminal prosecution of child abuse cases was offered recently by the Prosecuting Attorneys' Association of Michigan. While not directly relevant to the work of a prosecutor handling child protection proceedings, it was the only training offered to juvenile prosecutors that related at all to this area of practice.

of the training requirements and/or that the training requirements are not clearly and consistently communicated to attorneys.

Court Appointed Special Advocates (CASAs)

Begun in the late 1970's by a juvenile court judge in Seattle, Washington, the use of court-appointed volunteer advocates in child protective proceedings has been shown to contribute to improved outcomes for children: more services, fewer placements, and lasting permanence (i.e., decreased likelihood of a child re-entering the foster care system once discharged.)¹⁶⁰ According to Michigan Court Rules, a court may "appoint a volunteer special advocate to assess and make recommendations to the court concerning the best interests of the child in any matter pending in the family division." MCR 3.917(A). The rule sets out the duties of this volunteer as follows:

- Maintain regular contact with the child;
- Investigate the background of the case;
- Gather information regarding the child's status;
- Provide written reports to the court and all parties before each hearing; and
- Appear at all hearings when required by the court.

Guidelines for Achieving Permanency in Child Protection Proceedings, a publication of the Children's Charter of Michigan, provides specific guidance about how those duties should be carried out. It recommends that the CASA see the child every week to 10 days, maintain regular contact with professionals and others who have information about the child, and monitor the implementation of court orders and service plans.

Michigan's CASA volunteers must undergo 40 hours of training in a nationally-approved curriculum before they are qualified for appointment in court cases. For every 30 volunteers, there must be at least one supervisor. While most volunteers are assigned only one case, and stay with that case until it reaches a final disposition, some work on two cases.

There are three models for how CASA programs are organized in Michigan:

- 1) Court-based, in which the court assumes the costs for the program. This model applies to five of Michigan's programs.
- 2) Under the umbrella of another agency, such as a child abuse council. This model applies to ten programs.
- 3) Non-profit stand-alone agency that raises its own funds. This applies to four programs.

Local communities choose which structure will work best for their jurisdiction.

The state of Michigan currently has 19 CASA programs that serve 21 of the state's 83 counties in child protection proceedings. (See Appendix C, Michigan CASA Profile 2004.) Jurists were asked how often CASA volunteers were assigned to their child protection cases: 60.1 % said CASAs were "never" or "rarely" assigned, and 21.1% said they

CASAs do sometimes get over invested, but I will put up with some non-objectivity in exchange for good information.

—Jurist

I am using CASAs more and more. Before, I was being my own CASA, I was micromanaging my cases. I rate them very highly.

—Jurist

¹⁶⁰ *Guidelines for Achieving Permanency in Child Protection Proceedings*, p.150.

were “sometimes” assigned. Two of the six courts visited have active CASA programs. In Kent County¹⁶¹ the CASA program was part of the Permanency Planning Division of the Family Court at the time of the visit.¹⁶² The CASA coordinator and supervisor are contractors rather than court employees, and they report to the Director of the Permanency Planning Division. This structure helps ensure close communication between the court and the CASA program regarding issues such as training, problems with placements or funding for services in particular cases, and issues that arise with regard to individual CASA volunteers.¹⁶³

Overall, the court in Kent County has high regard for the CASA volunteers. At the time of the visit to their court in the spring of 2004 the court was planning to double their CASA budget and add 40% more cases, raising the number from 70 or 75 to 120. The CASA volunteers are described by jurists as a “sheltering presence,” and as having an “objective perspective” and a “love of children.” One jurist reports using CASAs as investigators in “messy cases.”

A number of people reported that the quality of the CASAs was inconsistent, with some being outstanding, and others, particularly those who do not have a professional background (e.g., as attorneys or social workers), not understanding their role and going too far. One interviewee offered the contrasting view that volunteers with completely different backgrounds often provide the best results because they are able to “think outside the box.”

According to CASA coordinators, the volunteers are trained to push past the policies, if possible, so that when the caseworker may say that certain services cannot be provided, the CASA worker may persist in inquiring about and advocating for the service until funds are found to provide it. The role of the CASA takes on greater importance in jurisdictions with high turnover among caseworkers. In such situations, there is a danger that they take on responsibilities that belong more to the caseworkers. While the CASA role does require that the volunteer spend time with the child, some may cross the line by assisting the child with transportation to appointments for services.

In many cases, case workers have changed and we are the only ones who know what happened with that case over time. We give time but caseworkers don't have that time to give.

—CASA coordinator

Wayne County also has a CASA program, which is based within the juvenile court. At the time of evaluators' visit to that court, the court was planning to expand the CASA program. Opinions about the CASAs among other stakeholders in Wayne County were mixed, with some commenting that their training was inadequate and that the volunteers become overly invested in the cases. Jurists reported using CASAs in cases where there is a lot of conflict and the jurist does not know what to do and where the agency worker does not have a clear and detailed viewpoint of what is needed in the case.

¹⁶¹ While a CASA volunteer in Kent County is considered a party to child protection proceedings; this is not true in other courts. This status allows the volunteers to work independently with the attorney employed by the CASA program rather than relying on the L-GAL to file motions or call witnesses.

¹⁶² Kent County is changing from a court-based program to a nonprofit agency in 2005.

¹⁶³ A comment was made that this structure (the location of the CASA office in the courthouse and the reporting system) allowed the CASA program to have access to the court in a way that other parties and their counsel did not.

It is not possible to separate the question of the value of CASAs from the issues discussed previously with regard to the high turnover rate at FIA (and at the private agencies) and the high caseloads and frequent substitutions of children's attorneys, particularly in Wayne County. In considering the "best fix" for such problems, it may not be wise to add CASA volunteers to a system that is not working as it should—it may be better to tackle the underlying problem. It is understandable that jurists would want the depth of information as well as the advocacy that a CASA can bring to a case when others involved, who may be operating with excessive caseloads, do not have sufficient time to do those things. But, if adding CASA volunteers is planned as a substitute for ensuring competent legal representation by attorneys, it should be reconsidered.

The original assessment recommended that funding be provided to establish CASA programs in all counties of the state and that the new programs work with the existing ones to develop policies and procedures. Given current budgetary restrictions, it is not likely that this will happen on a statewide level at this time, or in the near future.

Ideally, the use of CASAs in the courts where the programs currently exist would focus on cases in which they can be most useful: for example, those in which the information presented to the court is in conflict, or where the child and/or family face unusual challenges.¹⁶⁴ Particularly in Wayne County, where the case numbers in child protective proceedings are so high, it is important that there be some consistency and thoughtfulness about when a CASA should be appointed to a case. These are precious resources and should be treated as such. Currently, some jurists use them while others never do. It may be that an orientation or training discussing the role of CASAs and the types of cases in which CASAs can be used to best effect would move courts closer to this consistency and introduce jurists who have not yet used CASAs to the practice of doing so.

Recommendations relating to representation

- Establish statutory requirements and/or court rules setting minimum standards for attorney compensation. Include compensation for case preparation and client meetings outside hearing times.
- Establish guidelines regarding maximum attorney caseloads.
- Develop model contracts for courts to use with attorneys providing representation for parents and children. The contracts should specify the attorney's obligations to the client and set out standards for reasonable attorney caseloads.
- Establish guidelines for the courts regarding oversight and enforcement of statutory requirements regarding L-GAL contact with child prior to hearings.
- Expand requirement for the filing of affidavits by L-GALs regarding the fulfillment of their responsibilities, including visiting with the child, to parents'

¹⁶⁴ A study released in 2004 by Caliber Associates, using national CASA data and data collected through the National Survey of Child and Adolescent Well-being (NSCAW), showed the following, regarding children who were assigned a CASA volunteer: they had more severe cases, more prior contact with the child welfare system, received more services (as did their parents), and were less likely to be reunified with their families or placed in kinship care. Caliber Associates, *Evaluation of Casa Representation* (2004)

attorneys. Make the provision of this documentation a prerequisite for payment by the court.

- Establish statutory requirements and/or court rules specifying mandatory training for attorneys providing representation for children and parents.
- Establish a mechanism to ensure accountability of attorneys representing parents and children. This should include the ability to enforce standards or requirements regarding minimum qualifications, mandatory training, and ongoing supervision. In addition, there should be a mechanism for parents and children to raise concerns about the quality of representation they are receiving.
- Establish Court rules specifying that, subject to advance court approval for exceptions, the same attorney will represent the client (including DHS) at all stages of the court process and that members of the same firm or organization cannot substitute for the individual attorney. Establish strict criteria for exceptions. [Does this Rule already exist?]
- Revise state statute at MCL 712A.17(5), MCR 5.914(B)(1) regarding representation of DHS to read that the prosecuting attorney or assistant attorney general is to act as the DHS (or its agent's) "attorney" in child abuse and neglect proceedings.
- Work collaboratively with state administrators of DHS toward the goal of accomplishing the following: the assignment of "specialized, highly trained, permanent prosecutors/attorneys general to represent FIA (now DHS) at all stages of abuse and neglect cases, beginning with the filing of the petition to remove the children from the home." (Recommendation 19 of the original CIP assessment; Recommendation 47 of the Binsfeld Commission) Assist DHS with the development of a model contract for use with prosecutors that would include provisions regarding appearance at all hearings and consulting with the agency prior to making case decisions.
- Work collaboratively with state administrators of DHS, Prosecuting Attorneys Association of Michigan (PAAM), the state bar association, and with state-based law schools to develop a curriculum on child welfare law and child protection proceedings.¹⁶⁵
- Require all attorneys who represent DHS in these proceedings to have taken the law school class and/or to have participated in a minimum two-day training that should include the ABA standards, as well as the Guidelines to Permanency published by the Children's Charter of Michigan. (See Chapter 7 for more on the Guidelines.)

¹⁶⁵ This is modeled on Binsfeld Commission Recommendation 50, which is restated in Recommendation 27 of the original assessment.

SUMMARY OF RECOMMENDATIONS

This summary contains all of the recommendations from the body of the Reassessment Report and organizes them by subject areas that generally reflect the chapter titles. A number of similar or overlapping recommendations that were made in more than one chapter have been consolidated in this summary to avoid redundancy. Recommendations cited in the Summary of Findings and Recommendations in Chapter 1 are in bold.

Court Organization

1. **An improved method for judicial caseload analysis is needed, specifically for child protective proceedings, to take into account judicial time needed to fulfill the letter and spirit of the law and to implement nationally accepted best practices.** This analysis should also determine typical appropriate lengths of non-contested hearings in child protective proceedings.
2. **SCAO should, in accordance with state law, ensure that judges assigned to the Family Division have expertise both in family law in general and child protection proceedings in particular.** It should do this by:
 - a. Setting requirements or standards concerning the qualifications of judges assigned to the family division;
 - b. Setting standards or guidelines for the duration of assignments to the family division;
 - c. Establishing specialized courts for sparsely populated areas;
 - d. Setting stricter expectations for Family Court Plans;
 - e. Discouraging or barring the practice of designating particular types of hearings either to judges or referees;
 - f. Slowing or ending rotation of judges in and out of the Family Division;

- g. Requiring systematic and consistent methods to identify related family cases.
- 3. SCAO should develop standards regarding staff support for all jurists, reduce differences in training for referees and judges hearing child protection cases, and provide both with comparable facilities and equipment. SCAO should set standards for support staff for CP cases and should address in such standards the duties qualifications of such staff.
- 4. SCAO and counties should increase their investment in automated management information systems (MIS) specifically for CP cases and should speed the development of MIS specifically for CP cases. SCAO should develop statewide data specifications for those systems.
- 5. **SCAO should work with DHS to obtain and distribute relevant statistics to the courts in each county and judicial circuit, regarding the timeliness of adoptions and reunifications and barriers to permanency.** (Kent County should be considered as a possible model for this, since it uses data provided to the court by DHS to monitor timeliness and to identify which cases are delayed and at what points the delays occur.
- 6. SCAO should establish guidelines for new court facilities for family division cases in general and for child protection cases specifically. Among other things, the standards should call for:
 - a. Child-friendly waiting rooms equipped with toys and other sources of amusement to make it possible to bring children to court and to minimize the unpleasantness of the experience;
 - b. Waiting areas in which caseworkers can catch up on work when waiting for court hearings;
 - c. Rooms for attorneys and clients to meet;
 - d. Especially in urban areas, space for the co-location of certain services that enhance the efficiency of the court process, such as on the spot drug and paternity testing;
 - e. Capacity to videotape court proceedings; and

- f. Interactive video technology for juvenile and child protective cases, allowing testimony from remote locations.

Timeliness

7. SCAO and the legislature should set a schedule for courts to fully comply with state law regarding reporting of compliance with deadlines in child protection proceedings. The legislature and counties should provide resources to make this possible.
8. SCAO should set statewide norms regarding typical lengths of different types of hearings and the specific issues to be addressed and findings to be made for each of these hearings (based on the time it takes to fulfill legal requirements and to engage in best practices). These should be implemented through the use of guidelines for judges and court staff, court rules, and model forms.
9. SCAO should adopt a rule or administrative order requiring jurists to schedule the next hearing at the bench in the current hearing. A streamlined system should be developed for scheduling hearings when there has been a judge demand.
10. Jurists should tightly control continuances, as prescribed by Michigan's statute. SCAO should require jurists to document reasons for each continuance or adjournment that is granted.
11. Hearing should be scheduled for a time certain. Time-certain scheduling respects the time of the parties and witnesses, helps to ensure their presence at hearings, and improves the quality of litigation.
12. Adequate time should be provided on dockets for contested child protection proceedings to be heard in their entirety, in most cases without adjournments beyond 24 hours.
13. To improve the timeliness of adoption, jurists should conduct more frequent and thorough post-TPR review hearings. All jurists should receive detailed materials and training concerning all phases of the adoption process and in how to conduct an effective post-TPR review hearing.
14. SCAO should study and develop guidelines on whether and how pre-trial hearings can more effectively support adjudications and TPR proceedings.

15. SCAO should develop and require a streamlined system for completing and distributing court orders whether from referees or judges.

Quality and Depth of Hearing

16. SCAO should enter into a contract with DHS to develop quality assurance procedures to ensure that court orders comply with Title IV-E of the Social Security Act, with regard to “contrary to welfare” and “reasonable efforts” findings.
17. Work to clarify state law and court rules regarding the issuing of orders addressing specific placements and services only when such orders are supported by evidence and the parties have prepared and presented evidence in opposition to such orders. Provide training to jurists on this issue.
18. Work to clarify state law and court rules addressing the jurists’ review of case plans and issuing of court orders, to include consideration of the ability and resources of parents to follow the requirements of case plans and court orders. Provide training to jurists on this issue.
19. Establish protocols regarding the timely notification of foster parents, pre-adoptive parents, and relative caretakers of the dates and times of post-dispositional hearings, including following adjournments of previously-scheduled hearings. The protocol should also address the participation of notified persons at the hearings and should specify that the court not make foster parents’ addresses available to parents and their attorneys unless the court finds that to be in the child’s best interests.
20. Advocate for legislation to eliminate, as a permanency option, any decision to continue a child’s placement indefinitely in foster care. Michigan law should substitute for the term “long-term foster care” the term “another planned permanent living arrangement” and define the latter term to include only long term arrangements in which the goal is to establish and secure a permanent relationship between the child and an adult. This relationship (such as with an identified permanent foster parent or permanent adult parent figure and mentor).

should continue long into the child's adulthood. SCAO should issue a policy rejecting use of the term "long-term foster care" as a synonym for the child eventually aging out of foster care with no specific permanent arrangements.

21. SCAO, in cooperation with DHS and the bar, should help courts provide written and video information for parties and witnesses in abuse and neglect cases.

Representation of Parties

22. Establish statutory requirements and/or court rules setting minimum standards for attorney compensation. Include compensation for case preparation and client meetings outside hearing times.
23. Establish guidelines regarding maximum attorney caseloads.
24. Develop model contracts for courts to use with attorneys providing representation for parents and children. The contracts should specify the attorney's obligations to the client and set out standards for reasonable attorney caseloads.
25. Establish guidelines for the courts regarding oversight and enforcement of statutory requirements regarding L-GAL contact with child prior to hearings.
26. Expand requirement for the filing of affidavits by L-GALs regarding the fulfillment of their responsibilities, including visiting with the child, to parents' attorneys. Make the provision of this documentation a prerequisite for payment by the court.
27. **Establish a mechanism to ensure accountability of attorneys representing parents and children. This should include the ability to enforce standards or requirements regarding minimum qualifications, mandatory training, and ongoing supervision. In addition, there should be a mechanism for parents and children to raise concerns about the quality of representation they are receiving.**
28. Establish Court rules specifying that subject to advance court approval for exceptions, the same attorney will represent the client (including DHS) at all stages of the court process and that members of the same firm or organization cannot substitute for the individual attorney. Establish strict criteria for exceptions.

29. Revise state statute at MCL 712A.17(5), MCR 5.914(B)(1) regarding representation of DHS to read that the prosecuting attorney or assistant attorney general is to act as the DHS (or its agent's) "attorney" in child abuse and neglect proceedings.
30. **Work collaboratively with state administrators of DHS toward the goal of assigning specialized, highly trained, permanent prosecutors/attorneys general to represent DHS at all stages of child protection cases, beginning with the filing of the petition for removal. Assist DHS with the development of a model contract for use with prosecutors that would include provisions regarding appearance at all hearings and consulting with the agency prior to making case decisions.**

Courts and DHS

31. Direct courts to meet regularly with DHS at a local level to address mutual concerns. Recommend that they include attorneys, service providers, representatives of community organizations, and other interested stakeholders as appropriate, and that different levels of representatives (e.g., supervisors or caseworkers and jurists, as opposed to agency managers and court administrators) from the agencies and the court be included, depending upon the issues to be discussed. Some of the issues in need of continuing discussion are:
 - a. Finding the most efficient way of delivering court orders to DHS/POS agencies and to parents;
 - b. Developing a template for court orders. This could be done at a state level by SCAO for all counties to follow. Variances could be requested to the template to make it responsive to local needs and service systems;
 - c. Implementing mandatory delivery of court reports no later than 5 days before hearings. At the local level, this would mean working out a mechanism for enforcement of this policy, and developing a process of notifying caseworkers when their report is due;

- d. Discussing and standardizing the format and contents of court reports so that caseworkers are clear regarding the expectations of what should be contained in the report;
 - e. Sharing information on service availability in the community. Depending on the locality, this could result in written information provided by DHS to the court;
 - f. Clarifying DHS policies that impact service referrals;
 - g. Identifying barriers to timely adoption and working out solutions to decrease the number of 'legal orphans';
 - h. Inviting service providers to meetings with the court and DHS to strengthen communication with existing service systems; and
 - i. Brainstorming ways to bring adequate services, particularly mental health services, to the community.
32. Jurists should treat caseworkers respectfully. This should include calling the caseworker by name, and taking caseworker availability into account when scheduling hearings.
33. Clarify expectations for parents. Jurists and attorneys should assist families by ensuring that parents understand what they need to do to have their children returned home. Reiteration by jurists, caseworkers, and attorneys of what is expected from parents is necessary, since parents are often overwhelmed and confused by the legal process. It is imperative that parents be given copies of court orders to help them understand what is expected of them.
34. Monitor service plans. The courts should examine service plans to ascertain that service plans are tailored to families' needs. Service plans should prioritize services for parents and jurists should monitor plans to ensure that they are addressing areas that directly impact the child's safety .
35. Support concurrent planning. While the court cannot by itself streamline foster care licensing requirements or increase the level of care payments for foster and adoptive parents, the court can encourage concurrent planning. The identification of potential options for a child early in the case can speed up the adoption process for children who need permanency.

Publications/Benchbooks

36. Michigan should find a way to ensure that attorneys providing representation in child protection proceedings are aware of *Guidelines for Achieving Permanency in Child Protection Proceedings* and further, that the guidelines are affordable and easily available to them. The distribution of *Guidelines* to attorneys should be done in conjunction with mandatory training, either at the state or at the court level, depending upon where the training takes place.

Absent Parents Protocol

37. The Absent Parent Protocol should be mandatory, in an amended form that includes search of criminal justice and hospital systems. The Protocol should be distributed to jurists, court administrators, and those responsible for supervising process servers. Cross-training on the Protocol should include both court personnel and agency workers. Court rules and court forms should require that diligent searches to notify absent parents begin by the first court hearing.

Mediation

38. In courts where high attorney caseloads are not an issue and there is a strong consensus regarding the benefits of the process, it may make sense for SCAO to assist those courts in finding other funding to support mediation programs. Continued study of the costs and benefits of mediation, compared with the costs and benefits of other, similar initiatives or processes, should be encouraged.
39. Courts should consider how to incorporate positive aspects of the mediation process—particularly providing the opportunity for parents, family members, and other caretakers to be heard and to feel included and respected—into child protective proceedings.

Foster Care Review Board

40. Consider reducing the number of individual case reviews done by the Boards if, over time, other activities prove to be more effective means of gathering information to be used to advocate for children in foster care. Regardless of the method used, factors such as the appropriateness and implementation of the service plan, foster parent participation at court hearings, and the quality of

attorney representation should continue to be areas of focus for the Boards' efforts.

41. Investigate with the Department of Human Services whether there are ways to reduce the foster care staff time involved in copying and forwarding materials to the FCRBP in preparation for reviews.
42. Place a greater emphasis on:
 - a. Including FCRB members in meetings between systems (the court, DHS, foster care agencies, attorneys, service providers, etc.) at the local and state level and in training and cross-training opportunities. Invite board members to share what they have learned about problems and barriers to permanency.
 - b. Communicating with policymakers on the issues the FCRBP sees as barriers to permanency for children. (The FCRBP Annual Reports address these issues in detail and should be used as a basis for discussions.)
43. Meet with or conduct telephone surveys with jurists who preside over child protective proceedings to determine their views of how FCRB Findings and Recommendations and, more broadly, the input of Board members, can best be used to improve the handling of child protection cases.

Training

44. SCAO should provide training and demonstrations of well-conducted hearings of certain types (e.g., through videos), such as preliminary hearings, disposition hearings, review hearings, permanency hearings, and post-TPR review hearings.
45. Ensure that all jurists receive detailed materials and training concerning all phases of the adoption process (e.g., adoption recruitment, placement, subsidies, matching adoptive parents with children) and on how to conduct an effective post-TPR review hearing. If comprehensive training is not available, consider the model of a specialized docket limited to post-TPR reviews.
46. **Establish statutory requirements and/or court rules specifying mandatory training for attorneys providing representation for children and parents.**
47. Work collaboratively with state administrators of DHS, Prosecuting Attorneys Association of Michigan (PAAM), the State Attorney General, the state bar association, and with state-based law schools to develop a training curriculum on

child welfare law and child protection proceedings for attorneys appearing on behalf of DHS.

48. Require all attorneys who represent DHS in these proceedings to participated in a minimum two-day training that should include the ABA standards, as well as the Guidelines for Achieving Permanency published by the Children's Charter of Michigan
49. Increase cross training opportunities on mutual topics such as Title IV-E eligibility.
50. Offer training conducted by prosecutors and jurists for DHS/POS agency staff, particularly regarding writing petitions, locating absent parents, investigation of case facts in preparation for court, and testifying in court.

THIRD CIRCUIT COURT JUVENILE DOCKET TASK FORCE REPORT



CHAired BY CHIEF JUDGE

MARY BETH KELLY

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SCOPE OF TASK FORCE

The goal of the Juvenile Docket Task Force is to develop a new docket management system for the Third Circuit Court, Juvenile Division, by adopting a scheduling order in each case that achieves the applicable time standards.

The Task Force was made up of a variety of stakeholders that included judges, court management, representation from the Michigan Supreme Court, the office of the County Clerk, the office of the Prosecuting Attorney, the Attorney General's office, and members of the private bar.

FORMATION OF COMMITTEES

The Task Force members were initially divided into three committees to identify barriers and make recommendations regarding case flow processing, judicial scheduling, and case processing. Ultimately, a fourth committee was created to investigate the Court's case assignment rules.

Judicial Scheduling – Chaired by Judge Robert J. Colombo, Jr.

This committee was responsible for reviewing judicial scheduling practices and make recommendations regarding:

- Establishing guidelines for the supervision/management of time and events necessary to move the case to disposition.
- Establishing meaningful events.
- Establishing reasonable timeframes for events (in accordance to established time standards).
- Creating a predictable system where events occur on the first date scheduled by the Court.
- Developing Scheduling Orders.

Juvenile Case Flow Management – Chaired by Judge Judy Hartsfield

This committee was responsible with identifying the case flow management barriers inherent to the current case processing system by utilizing reports such as:

- Case Age at Disposition.
- Filings, Disposition, Activity, and Adjournment Rate Report.
- Open/Pending Cases Report.

Case Processing – Chaired by Judge Virgil C. Smith, Jr.

This committee was responsible for reviewing the assignment and flow of cases through the system:

- Review the current case assignment procedures.
- Identify system changes necessary to effectuate assignments.
- Create case management tools and policies:
 - Scheduling Policy
 - Adjournment Policy

Case Assignment – Chaired by Judge Robert J. Colombo, Jr.

The current practice of the Juvenile Division is for a case to initially be assigned to a referee with no judge being assigned to the case, unless there is a Judge Demand filed. After a review by legal staff, it was determined that this did not comply with Michigan Court Rule, 8.111 – Assignment of Cases.

The task of this committee was to draft recommendations regarding:

- Whether the case should be assigned to a judge upon filing, at the time of a contested hearing, or before an uncontested dispositional hearing.
- Whether the types of matters handled by judges and referees should be defined.
- Whether a team concept of one judge and two referees should be implemented.
 - If so, how the referees will be assigned to a judge.
 - If so, how a case is assigned to a referee after it has been assigned to the judge.
 - Whether judges be allowed to select which referee handles a matter.
 - Whether there should be a second blind draw if there is a Judge Demand filed.
 - How inequities between dockets can be resolved.

IDENTIFIED BARRIERS

The first task of each of the committees was to determine barriers that may be causing the delay in the processing of cases. Below is a chart that outlines a compilation of those barriers reported by the committees.

BARRIER	DETAILS
Judge Demands	When a Judge demand is filed, there are frequent delays in the length of time it takes to blind draw to a judge and then move the file to the Judge's courtroom for scheduling of a pretrial.
Service of Process	<ul style="list-style-type: none">○ Frequently service issues are not known until the day of trial.○ There can be barriers in the amount of time it takes to effectuate service and leads to repeated adjournment of hearings.○ There is no standard practice of effectuating service among incarcerated parents between various correctional facilities.
Caseloads of Referees	The caseloads of referees are currently unequal.
Adjournments	Adjournments are repeatedly made due to service of process issues as well as attorney conflicts.
Limited Number of APAs and AAGs	There are not enough APAs and AAGs to cover courtrooms, which can lead to adjournment of hearings.

BARRIER	DETAILS
Meaningful Pretrial Conferences	Many times at the pretrial conference, motion hearing dates and discovery issues are not addressed. If they were addressed at the pretrial, they could be included in the scheduling order, which in turn would help ensure that the case is disposed within the applicable timelines.
Boilerplate Petitions	When boilerplate petitions are received from DHS, the information is often incomplete or inaccurate and can cause delay in determining the whereabouts of the parents, names of children, putative fathers, etc.
Attorney Fee Schedule	There is not a financial incentive for pleas at preliminary or pretrial hearings.
Scheduling Order	In the Juvenile Division, a scheduling order was not implemented and being utilized with uniformity. Developing a scheduling order would not only enhance the case processing timelines, but would improve scheduling conflicts between jurists, AAG and APAs coverage, and defense attorney's schedules.
Overcoming Tradition of Setting all Hearings at One Time	Frequently hearings are set for either morning or afternoon with no set time which means the case may be heard at anytime in the morning or afternoon, which can be a hardship on attorneys trying to be in more than one courtroom at one time, causing delays of the hearing.
Impact of Conflicts due to Judge's Docket and Referee's Docket	Frequently attorneys are scheduled for hearings in both referee and judge courtrooms at the same time, thus causing delays in one or both of the courtrooms.
Substitution of Counsel	Many times where there is substitution of counsel, it may cause delays in case processing in order for the new counsel to become familiar with the case.
Court Services Clerks vs. Courtroom Clerks	These roles are separate and distinct and can cause delays when clerks in one area only complete so much of the information and then send it to other clerks to complete the rest of the task.
Utilizing Caseload Reports	Caseload reports need to be revised to be more effective and useable. Providing the judges and referees with this information to be a more effective and useable case management tool in identifying problem cases on the docket will enhance case processing.
Trial Ready Preparedness	There is no monitoring of the case file to ensure that service on witnesses had been completed, if there had been contact made with clients, if necessary medical records were in the file, etc.

COMMITTEE RECOMMENDATIONS

After barriers were identified, the committees were then directed to review those barriers and identify possible solutions. Below is a table that outlines a compilation of those recommendations reported by the committees.

RECOMMENDATION	DETAILS
Case Assignment	
Judge Assignment	The Judge assignment will occur at the time the case is filed.
Initial Assignment	After the case is assigned to a judge, the assignment will then be given to one of the two referees on that judge's team, and the assignment will stay with that referee unless a Judge Demand is filed.
Judge Demand	If a Judge Demand is filed, the matter will be moved to the judge that was assigned to the case upon filing.
Pretrial after Judge Demands	When a Judge Demand is filed, the courtroom clerk of the referee or a clerk in court services will schedule the pretrial on the Judge's docket.
Blended Dockets	All referees will have dockets that consist of both delinquency and neglect cases.
Case Processing	
Proper Judicial Assignment	Refining, either through computer enhancements or manual screening to ensure new petitions have the proper judicial assignments.
Scheduling Orders	More cases would comply with the time guidelines if the use of a scheduling order was implemented as well as improve on scheduling conflicts between jurists, Attorney General and Prosecuting Attorney coverage, and defense attorneys' schedules.
Information from DHS	Improved and timely information from DHS regarding absent parents be provided to the Court, to reduce time delays related to service/notification issues.
Adjournment Policy	The adoption of a formal adjournment policy will improve case scheduling.
Continuous Trial Dates	The scheduling of continuous trial dates until completion, will vastly improve case flow, over time standard issues and be a more effective and efficient manner of not only processing the case, but in how we administer justice to the litigants.

RECOMMENDATION	DETAILS
Case Management Reports	<ul style="list-style-type: none"> Revising the reporting format of the monthly pending data inventory reports to be a more effective and useable case management tool in identifying problem cases on the docket in terms of over time standards, past dated events, missing dispositional data entry or next action scheduling, if appropriate. Similar to the other divisions, development of a "past due hearings report" that will list all past dated scheduled events that require data entry.
Judge Teams	Each team of judges and referees meet on a regular basis to review the dockets for problem cases and take necessary steps or actions to expedite case scheduling.
Judicial Docket Review Committee	A Judicial Docket Review Committee should be created to set goals and monitor current processes.
Case Management Seminars	Create case management seminars in order for each team to get a firm understanding of the case management reports in order to determine issues that are brought to the attention of the team judge.
Case Flow Management	
Information Obtained at Preliminary Hearing	Conducting a thorough inquiry, via checklist, for names, and addresses at the preliminary hearing by the referee. Referee Ramsey will draft the proposed checklist.
Preliminary Order	Adding automated language to the preliminary order that DHS must file an amended petition within five (5) days of the order for all boilerplate petitions or be subject to contempt.
Preliminary Hearing Scheduled Times	Requiring preliminary hearing referee and courtroom staff to be available until 4:30 p.m. in order to effectuate service on tardy parents. When a parent is late, all parties will remain or go back on the record.
Clerk Training on Judge Demands	<ul style="list-style-type: none"> Training all clerks to do data entry for Judge Demands in the AS400. Data entry should be completed by the end of the pretrial and the file moved by the end of the day.
Service	<ul style="list-style-type: none"> Develop a Local Court Rule to provide for alternate service at the early case processing stages of all petitions. Service should be addressed at the preliminary hearing and again prepared at the pretrial. Developing a process to monitor and then confirm that requested service was completed.
Incarcerated parents	Committee should come up with a recommendation as to how service, DNA testing, and video/telephonic hearings should be standardized with incarcerated parents so it can be presented to various state and local correctional facilities.

RECOMMENDATION	DETAILS
Case Counts	Create reports that would be able to give case counts for an entire judge's team as well as a breakdown of case counts that each member of that team (two referees and the judge) are specifically assigned.
Judicial Scheduling	
Pretrial Order	<ul style="list-style-type: none"> ▪ Goal of this order is to put all parties on notice early, eliminating the filing of motions. ▪ Summary of Order (see Appendix for full order): <ul style="list-style-type: none"> ○ Speaks to Discovery. ○ The words "unless justice otherwise dictates" is mentioned throughout the order. ○ Provides motion hearing date deadline. ○ Speaks to demands for Judge/Jury, includes allowances for late filing "in the interest of justice." ○ It is the expectation that the trial attorneys be present, as they will know ahead of time when the trial begins. ○ It is the expectation that DHS bring their case file to court for review, if necessary, and expedite the process, avoiding adjournments. ○ Speaks to DNA testing.
Adjournment and Continuance Policy	<ul style="list-style-type: none"> ▪ Court Rule MCR 3.923(G) speaks well of when adjournments can be given and should be adopted as the official policy of the court. ▪ A continuance should only be granted for good cause after taking into consideration the best interests of the child, and for as short a period of time as necessary. ▪ Where dockets become backlogged, an analysis should be done of the docket to determine if adjournments or continuances have been appropriately granted. ▪ If there are excessive adjournments or continuances that explain why the docket is backlogged, the judge or referee shall review the adjournments or continuances with staff, the Presiding Judge of the Juvenile Division or the Docket Review Committee to determine if adjournments or continuances were appropriately granted. ▪ Codes within the AS400 should be developed and utilized to track the reasons for adjournments and continuances being granted or denied. This would protect the court and ensure that adjournments and continuances were not abused.

- When court holidays fall during the week, the schedule will be divided into two neglect days and two delinquency days for each referee (assuming that there is a four-day work week). A different configuration would be needed for the week of Thanksgiving and around the Christmas holiday.

Daily Schedule For Model One

This model has a docketing cycle for each referee of two weeks.

- In the first week:
 - Referee A will hear neglect on Monday, Tuesday, and Wednesday, and will hear delinquency on Thursday and Friday.
 - Referee B will hear delinquency on Monday and Tuesday, and will hear neglect on Wednesday, Thursday, and Friday.
- In the second week:
 - Referee A will hear delinquency on Monday and Tuesday, and will hear neglect on Wednesday, Thursday, and Friday.
 - Referee B will hear neglect on Monday, Tuesday, and Wednesday, and will hear delinquency on Thursday and Friday.
- The third week follows the same as the first week, and the fourth week follows the same scheduling as the second week.

Daily Schedule For Model Two

This model has a docketing cycle for each referee of two weeks.

- In the first week:
 - Referee A will hear neglect on Monday, Tuesday, and Wednesday, and will hear delinquency on Thursday.
 - On Friday (unless week is shortened by a holiday), referee A will hear delinquency either in the morning or afternoon, and will hear PTR hearings utilizing coverage from the AAG's office in the opposite morning or afternoon session as the delinquency session.
 - Referee B will hear delinquency on Monday and Tuesday, and will hear neglect on Wednesday, Thursday, and Friday.
- In the second week:
 - Referee A will hear delinquency on Monday and Tuesday, and will hear neglect on Wednesday, Thursday, and Friday.
 - Referee B will hear neglect on Monday, Tuesday and Wednesday, and will hear delinquency on Thursday.
 - On Friday (unless week is shortened by a holiday), referee B will hear delinquency either in the morning or afternoon, and will hear PTR hearings utilizing coverage from the AAG's office in the opposite morning or afternoon session as the delinquency session.
- The third week follows the same as the first week, and the fourth week follows the same scheduling as the second week.

ASSIGNMENT CHANGES EFFECTIVE JANUARY 3, 2006

- Starting on January 3, 2006, if an initial petition is filed (meaning there is not a prior jurist of record), the blind draw will be conducted at the judge level first and then it will be blind drawn to one of the two referees on the Judge team.
- Screens on the AS400 will be modified that would list separately:
 - The jurist the docket is assigned to (the jurist hearing the matter).
 - The judge that is assigned to the case.
- When a Judge Demand is filed, the case will be placed on the docket of the judge that is already assigned to the case.
 - For those teams that are not involved in the pilot, the courtroom clerk of the referee and/or clerk in administration unit will schedule the pretrial on the judge's docket based on a master calendar for that judge either at the referee pretrial or in the administration unit so that the parties know before leaving when the next pretrial will take place.

PILOT CASE PROCESSING SYSTEM

A pilot program will begin starting January 3, 2006 that will involve two Judge teams each following a separate docket schedule.

The first model of the docket schedule will involve a split in docket time of sixty percent devoted to neglect cases, and forty percent to delinquency cases. The second model involves a split in docket time of sixty-five percent to neglect cases and thirty-five percent to delinquency cases.

Standards For Both Models

- Every Wednesday (except on weeks where there is a holiday), both referees would hear neglect cases, with one of the referees using the Judge's Assistant Attorney General (AAG).
 - Judges would not be able to hold neglect hearings on Wednesdays.
- Preliminary hearings would be held in front of the referee that is scheduled to have neglect on that particular day for the cases that were assigned to that team.
 - A slot for the hearings will be open each day for that referee assigned to neglect at 1:30 in the afternoon.
 - On Wednesdays, when both referees are hearing neglect, the referee that is not using the Judge's AAG will hold the preliminary hearings for the team that day.
- The entire Judge team will have the same pretrial day.
 - If a Judge Demand is requested, regardless of whether it was neglect or delinquency, then the file and parties will immediately be sent to the judge's courtroom to have the pretrial.
 - The referee assigned to neglect would still have a slot for preliminary hearings scheduled at 1:30 in the afternoon on the established pretrial day.
 - The days that a team can permanently select as their pretrial day is either Tuesday or Thursday.

APPENDIX

Formation Of Judge Teams

- The teams that will be involved in the pilot starting January 3, 2006 will include:
 - Using model one (60/40 split):
 - Judge Manning
 - Referee Fruitman – Utilizing Referee Ramsey's neglect docket
 - Referee Perkins – Utilizing Referee Gardner's delinquency docket
 - Using model two (65/35 split):
 - Judge Leslie Kim Smith
 - Referee Pilette
 - Referee Wilson
- While the pilots are in progress, the processes will be evaluated regularly and adjustments may be made. After a set period of time, a decision will be made as to which model was more feasible. May 1, 2006 is the tentative date when two more teams will be added to the new case processing system, and the last three teams will tentatively be added starting August 1, 2006.

STATE OF MICHIGAN
COUNTY OF WAYNE
THIRD JUDICIAL CIRCUIT COURT
FAMILY DIVISION

PRETRIAL ORDER
(Child Protective Proceedings)
☐ AMENDED ORDER

Case No.
Petition No.
Removal Date:
Placement Date:

In the matter of:

It is hereby ordered by the Court:

- (1) At least two (2) weeks prior to trial or _____, unless justice otherwise dictates, the assistant attorney general shall serve all counsel with a copy of:
- (a) All written or recorded statements and notes of statements in possession or control of petitioner, DHS or a law enforcement agency, including oral statements if they have been reduced to writing;
 - (b) All written or recorded nonconfidential statements made by any person with knowledge of the events in possession or control of petitioner, DHS or a law enforcement agency, including police reports;
 - (c) The names, addresses and phone numbers of prospective witnesses;
 - (d) All medical records and a copy of all prospective exhibits, including the results of all scientific, medical or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition;
 - (e) Any/all other evidence/discovery that is granted by motion.
- At least one (1) week prior to trial or _____, unless justice otherwise dictates, the respondents shall serve the assistant attorney general and counsel of record with:
- (a) A list of witnesses, including names, addresses and phone numbers;
 - (b) A copy of all prospective exhibits, including the results of all scientific, medical, or other expert tests or experiments, including the reports or findings of all experts, that are relevant to the subject matter of the petition.
- (2) Parenting-time:
- ☐ Is suspended because the petition/supplemental petition for permanent custody has been filed per MCL 712A.19b.
 - ☐ Though automatically suspended, upon the filing of a petition for termination of parental rights, the Court finds that it is not contrary to the child (ren)'s welfare and therefore (supervised / unsupervised) parenting-time of the (mother, father of _____) of _____ times/week is allowed at _____ until further order of this Court. (MCL 712A.19b(4))
- (3) Requests for use of hearsay statements by child under age of 10 (including statements denying abuse/neglect for impeachment) or any motions, notice of hearing on motion, any supporting briefs or affidavits must be filed and served on or before _____, except for good cause shown.
- Any response to a request for use of hearsay statements by child under age of 10 (including statements denying abuse/neglect for impeachment) or any motions, notice of hearing on motion, any supporting briefs or affidavits must be filed and served on or before _____, except for good cause shown.
- Hearing on the above will be conducted on _____.
- (4) The provisions of MCR 3.911 and MCR 3.912 will be strictly adhered to when demanding a trial by judge / jury.
- ☐ 14 days after the Court gives notice of the right to a judge / jury.
 - ☐ 14 days after an appearance by an Attorney or a Lawyer-Guardian Ad Litem, whichever is later, but no later than 21 days before trial.
 - ☐ The Court will excuse the late filing in the interest of justice.
- (5) The specific attorneys who have filed an appearance or who have been assigned as counsel in this case shall try the case. There shall be no substitution of attorneys on the day of Trial.
- (6) Trial shall commence on _____.
- (7) Worker shall present agency file at trial to resolve disagreements and avoid delays. Judge may review file to determine relevancy and issues of confidentiality, if applicable.
- (8) Initial disposition shall be held immediately after the trial if all information required by the Court rules is available. If not immediate, written recommendations and service plans must be provided to the Court / parties no later than five days prior to the scheduled dispositional hearing. Dispositional hearing shall be conducted on _____.
- (9) DNA testing is ordered for the child and _____.
- (10) The filing of motions for extraordinary fees shall be no later than 28 days after adjudication / disposition.
- (11) All previous orders of the Court shall remain in full force and effect until further order of this Court.
- (12) _____

This constitutes a duly entered order of this Court and failure to comply strictly with all terms, may result in sanctions, including but not limited to dismissal, default, restrictions in proofs, costs, and attorney fees.

Approved as to form and content:

Attorney for _____ Bar No. _____

Attorney for _____ Bar No. _____

Attorney for _____ Bar No. _____

Attorney for DHS (AAG) _____ Bar No. _____

Attorney for _____ Bar No. _____

Attorney for _____ Bar No. _____

Attorney for _____ Bar No. _____

Recommended by: CIRCUIT COURT REFEREE

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(313) 456-1254

Hon. Virgil C. Smith, Jr.
Presiding Judge – Juvenile Division
Third Circuit Court
1025 E. Forest
Detroit, Michigan 48207
(313) 833-0165

Honorable James. A. Callahan
Third Circuit Court
Juvenile Division #3E
1025 E. Forest
Detroit, Michigan 48207
(313) 833-4985

Honorable Judy Hartsfield
Third Circuit Court
Juvenile Division #3B
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(313) 833-0667

Honorable James E. Lacey
Third Circuit Court
Juvenile Division #3A
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(313) 833-0662

Honorable Christopher Dingell
Third Circuit Court
Juvenile Division #3C
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Honorable Sheila Gibson Manning
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Honorable Leslie Kim Smith
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Director of Juvenile Services
Third Circuit Court

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(313) 833-4777

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE-JUVENILE DIVISION**

**IN THE MATTER OF NADIA EL-RAWAS*
Minor child.**

04-433-702N

*** And on behalf of children/cases listed in Appendix "A"**

Sue E. Radulovich, P33346
Attorney and LGAL for minor children
505 Hampton Rd
Grosse Pointe, MI 48236
313-885-1460

**MOTION TO STRIKE ORDERS OF REMOVAL OF COUNSEL
MOTION FOR COSTS AND REQUEST FOR EXTRAORDINARY FEES**

NOW COMES NADIA EL-RAWAS, by her LGAL, Sue E. Radulovich, PC and all children in cases listed in Appendix "A," and in support of their motion to strike the order of removal, plead as follows:

1. On November 20, 2006, LGAL Radulovich appeared as scheduled for her dispositional review hearing concerning Nadia El-Rawas.
2. LGAL Radulovich was handed a green order sheet dated November 20, 2006 that had a stamp purporting to be the signature of "Mary Beth Kelly, Chief Judge."
3. The order removed Sue E. Radulovich from the above captioned case and replaced her with Legal Aid and Defender Association, a nonprofit charitable organization, as the new LGAL. Exhibit 1.
4. On or about November 29, 2006, LGAL Radulovich appeared as scheduled for her

dispositional review hearing concerning Dajuan Washington. Exhibit 2.

5. LGAL Radulovich was handed a green order sheet dated November 29, 2006, with no case caption. The generic green order had the same computer generated signature of the Chief Judge and had a case number of 05448709. Exhibit 2.
6. The green order removed Sue E. Radulovich and appointed Michigan Children's Law Center, a nonprofit organization incorporated solely to provide educational services, as new LGAL. Exhibit 3.
7. LGAL Radulovich expects to receive other orders while this motion is pending and others in the future, requiring a stay to prevent interference with the attorney/client relationship.
8. The list of children affected by the improper green removal orders are attached as Appendix "A" which is incorporated to form the full caption of all cases to be addressed in the Motion to Strike the removals.
9. The green order states that LGAL Radulovich is to turn over a list of 5 documents, presumably from her personal files, to the nonprofit corporations. A memorandum from the court directed LGAL Radulovich to surrender her file and work product upon receipt of the removal order:

After each hearing listed above, please relinquish all relevant materials pertaining to the case(s) in the referee's courtroom. You will receive payment for your service for that last hearing. Thank you for your cooperation during this transition.

If you have any questions, please call 313-833-5565.

Sincerely,

Leonard Branka

Director of Assigned Counsel

10. Nonprofit corporations are not attorneys, cannot be LGALs and cannot have an attorney's file information, reports, etc., especially those containing notes, thoughts, work product and confidential information written on the documents, nor is this the property of the client or the court. In fact, many documents are stamped "confidential."

11. The five documents are available for copying from the court's file and should be copied at court expense and not at the expense or uncompensated time of a court appointed LGAL.

12. The removal order is generated without a good cause hearing, without a hearing to determine best interest of the client, interferes in the attorney/client relationship and without the appointment of an LGAL, but rather a nonprofit corporation.

13. The removal order is without the client's consent and is not in the best interest of the child.

14. Nadia El-Rawas specifically stated that she objected to the removal of her counsel who has stood by her through very difficult and tragic times, performed extraordinary services to protect Nadia, fought DHS and the AAG's recommendations, fought to keep her in the USA, which legal assistance included immigration research, INS contacts, etc., to ~~ins~~ prevent from placing her back with her abusive deported parents.

16. Extraordinary time was spent handling this case, which requires extraordinary fees. LGAL Radulovich seeks extraordinary fees.

17. LGAL Radulovich seeks to halt the removal of assigned counsel and requests the court proceed with a phase-in system of properly appointed LGALs as it originally planned.

WHEREFORE, the green removal orders, computer generated by the court, are improper,

deny due process, are contrary to the best interests of the children, are contrary to the children's wishes, are contrary to statute and court rule, force the removed LGAL to assist in the unauthorized practice of law and fail to appoint an LGAL for the child, which requires a stay until a good cause hearing is held.

RESPECTFULLY SUBMITTED,

November 30, 2006

SUE E. RADULOVICH, PC P33346
LGAL for Nadia El-Rawas and all parties listed in
Appendix "A"
505 Hampton Road
Grosse Pointe, MI 48236
313-885-1460

BRIEF IN SUPPORT OF MOTIONS

I. THE REMOVAL ORDERS DENY DUE PROCESS, INTERFERE WITH THE ATTORNEY/CLIENT RELATIONSHIP AND ARE WITHOUT GOOD CAUSE

The duties of an LGAL are set forth in MCLA 712A. 17d and MCR 3.915 and make those specific duties personal to the assigned LGAL. In fact, substitution of the court appointed LGAL is limited only to court approved special circumstances to avoid an adjournment. The statute also defines an LGAL.

M.C.L.A. 722.22

(g) "Lawyer-guardian ad litem" **means an attorney** appointed under section 4. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 4. **Emphasis supplied.**

Attorneys are defined by statute as those licensed to practice law in Michigan.

The state bar of Michigan is a public body corporate, the *membership* of which consists of all persons who are now and hereafter *licensed to practice law* in this state. The members of the state bar of Michigan are officers of the courts of this state, and have the *exclusive right to designate themselves as "attorneys and counselors," or "attorneys at law," or "lawyers."* No person is authorized to practice law in this state unless he complies with the requirements of the supreme court with regard thereto. MCL 600.901 (emphasis added).]

The court must appoint attorneys to represent children in delinquency matters pursuant to MCLA 712A.17c and MCR 3.915. When a case is filed pursuant to 712A.2(b) or (c), the statute

imposes a duty *upon the court* to appoint an LGAL for the child(ren).

(7) In a proceeding under section 2(b) or (c) of this chapter, ***the court shall appoint a lawyer-guardian ad litem to represent the child. The child shall not waive the assistance of the lawyer-guardian ad litem.*** In addition to any other powers and duties, a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d. Emphasis supplied.

An attorney/LGAL is to remain assigned for as long as the child is within the jurisdiction of the court. All children listed in the above caption and in Appendix A are within the jurisdiction of the court.

Ms. Radulovich cannot be removed absent a hearing demonstrating good cause.

M.C.L.A. 712A.17c

(9) An attorney or lawyer guardian ad litem appointed by the court under this section shall serve until discharged by the court. If the child's case was petitioned under section 2(b) of this chapter, the court shall not discharge the lawyer-guardian ad litem for the child as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the lawyer-guardian ad litem for good cause shown on the record. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child.

For good cause to be "shown on the record," Radulovich and her clients would be entitled to a pre-removal hearing. A hearing must be held *prior* to removal where proofs can be presented by the court and good cause demonstrated for every case from which the court wishes to remove her. Of course counsel needs to be compensated for preparation and attendance at each hearing. The LGAL must prepare, subpoena witnesses, obtain and review discovery and present testimony, cross-examine witnesses and challenge any exhibits, testimony and any evidence presented that purports to demonstrate good cause exists to interfere with her professional relationship with her clients.

Given that all of the generic orders were computer generated, were without a hearing and

without good cause shown on the record for each case, the orders of removal must be stricken, set aside and held for naught.

II. DISPARATE TREATMENT DENYS DUE PROCESS AND EQUAL PROTECTION

Radulovich and her clients object to the denial of their Sixth and Fourteenth Amendment Federal Rights and to their rights under Michigan's Constitution. The clients are entitled to competent, experienced counsel, who are paid a reasonable fee and who are not hampered by government interference in the relationship.

U.S. Const., Am. XIV provides in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.* [Emphasis added.]

Const. 1963, art. 1, § 2 provides:

No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation.

Those children who have their cases heard by a Judge retain their LGAL and counsel. Only children who have their cases heard by Referees suffer government interference in the Attorney/LGAL relationship. A child charged with delinquent acts is entitled to an attorney just as an adult. MCLA 712A.17c(2) and MCR 3.915(A). At every court appearance in a delinquency proceeding, the child is subject to being detained and could suffer loss of liberty. Interference in that relationship denies the child his Sixth Amendment Right to counsel.

The court cannot selectively harm a certain group of children and protect another for the sole

purpose of moving a docket or helping the court make administrative changes. Convenience to the court does not override constitutional rights or permit selective enforcement of the law.

III. DISPARATE TREATMENT IN PAY IS ALSO AN EQUAL PROTECTION VIOLATION THAT MUST BE ADDRESSED PRIOR TO REASSIGNING A CHILD TO AN UNDERPAID ATTORNEY OR LGAL

Prior to the court entering into private contracts with nonprofit corporations and private groups, all attorneys acting as assigned counsel and LGALs were paid under a specific pay schedule. Now, different contracts are in effect, in different amounts, with no parity in an independent contractor's pay or consideration of the contractor's caseload to pay ratios.

The Court's improper delegation of its statutory duty to appoint LGALs to nonprofit corporations has now made issue of the reasonableness of fees paid to LGALs and attorneys for children.

Prior to engaging nonprofit corporations to usurp the court's duty to appoint and pay LGALs, the appointing of cases was done, without cost to taxpayers, by the trial judges and their administrative assistants, who assigned attorneys and LGALs pursuant to statute under a uniform fee schedule. All children received counsel who were paid the same fee.

Now, upon information and belief and anecdotal information, the overpaid group leaders/presidents (approximately \$230,000 annual fee taken by individual group leader), refer cases to independent contractors who are paid unreasonably low and inadequate fees, and must handle a large volume of cases. Superficially, the amount paid to represent children seems adequate, however, in these new group situations, there is a top-heavy suction, leaving scraps for the contractors used as

LGALs, which underpayment, according to the holding in *Recorder's Court Bar Association v. Wayne County Circuit Court*, 443 Mich 110, 503 N.W.2d 885 (1993), correlates into inadequate representation. Further anecdotal information suggests that these groups are using students to perform LGAL statutorily mandated duties to be performed solely by an "attorney."

The law is clear that the court cannot pay an attorney or LGAL an unreasonable fee. It is presumed that a proper fee provides proper representation and that an unreasonable fee does not. This was precisely why the Supreme Court struck down the Recorder's Court flat fee schedule.

Recorder's, Id. It is only reasonable to assume that the law would prohibit the court from circumventing the requirements in *Recorder's Court* by delegating its duties to one person who, in turn, pays an unreasonable fee to attorneys and LGALs. This means one child could have an attorney or LGAL making a reasonable fee and the next child have counsel making an unreasonable fee.¹ The Supreme Court found the fee schedule for individual case assignments to be reasonable in 1996. The reasonableness of those 10 year old fees has not since been evaluated. However, at least with the private attorney fee schedule, there was Supreme Court oversight. With the new group plan, there is no oversight as to whether the pay is reasonable, disparate or wholly inadequate. Unless the pay rate of the new groups and each employee or contractor is known, parity in pay is unknown, the reasonableness of the fee is unknown, and it cannot be established by the court that it is in the child's

¹ Upon information and belief, one group given a contract has a president receiving \$225,000 and each independent contractor in the group receiving \$40,000 annually with no benefits for full-time work, with no relationship between the \$40,000 and the number of cases assigned. It is believed another group offered \$55,000 annually with no benefits to independent contractors and the president kept a fee of approximately \$230,000. Attorneys assigned by the judges receive payment per an old fee schedule at a different amount. One group offers salary and benefits.

best interest to be transferred to an underpaid, overworked independent contractor of a nonprofit corporation that fails to comport with ABA caseload standards.

IV. LGAL RADULOVICH'S CASELOAD COMPORTS WITH ABA STANDARDS

Michigan has statutory language that strongly disfavors substitution of LGALs and envisions that one attorney will develop a close relationship with the child(ren) and, through competent independent investigations, will be in an informed position to advocate for the needs of the child(ren). MCLA 712A.17d. The National Association for Counsel of Children drafted recommendations for LGALs that adopted the ABA and US Department of Health and Human Services Childrens Bureau standards of practice. All agencies stress continuity of counsel and limited caseloads. The ABA standards cap LGAL caseloads at a maximum of 100 children.

Comment A: The NACC recommends that a full time attorney represent no more than 100 individual clients at a time, assuming a caseload that includes clients at various stages of cases, and recognizing that some clients may be part of the same sibling group. This is the same cap recommended by the U.S. Dept. of HHS Children's Bureau and the American Bar Association². One hundred cases averages to 20 hours per case in a 2000-hour year. (ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, §§L-1, L-2; s *Adoption 2002: The President's Initiative on Adoption and Foster Care. Guidelines for Public Policy and State Legislation Governing Permanence for Children*, U.S. Dept. of HHS ACF ACYF Children's Bureau, 1999, page VII-5.

The Court's 2004 docket summary indicates that a total of 8661 children were in the abuse/neglect system and that 11,630 delinquency cases were handled. The manpower to handle these numbers under ABA standards is staggering. The ABA set a cap of 200 juvenile delinquency cases per year.

Radulovich has a total of 42 children as an LGAL at the time of the drafting of this motion, and

a total of 17 delinquency children. She is in full ABA compliance. However, a check of the court's 2004 figures reveals that the nonprofit corporations will handle 1938 juvenile cases per team. Further 8661 children in the system would place approximately 1443 children on each team. Currently, these groups allotted five attorney/LGALs (or the part-time equivalents) to a team, this means that each attorney/LGAL will handle 288 children and 387 delinquency cases. The neglect cases alone exceed ABA standards by 188 children. The delinquency cases alone exceed ABA standards by 187 cases. Using these figures, the groups would need triple the manpower to meet ABA standards. And, upon information and belief, this caseload is being handled by contractors being paid \$40,000 annually with no benefits, while the person simply referring the work makes approximately \$230,000 annually. It cannot possibly be in the best interest of any child represented by attorney/LGAL Radulovich to be transferred to underpaid, overloaded, lesser experienced and lesser caring counsel.

IV. GOOD CAUSE TO REMOVE COUNSEL OR INTERFERE IN THE ATTORNEY/CLIENT RELATIONSHIP IS NOT FOUND BECAUSE OF COURT BENEFIT OR COURT CONVENIENCE

The Court of Appeals addressed the ability to remove assigned counsel in *People v. Johnson*, 215 Mich.App. 658, 547 N.W.2d 65 (1996) and set forth three reasons a trial court may remove assigned counsel.

The trial court had no authority to remove sua sponte defense counsel from his representation of defendant in this case. A court may remove a defendant's attorney on the basis of *gross incompetence, physical incapacity, or contumacious conduct*. *People v. Arquette*, 202 Mich.App. 227, 231, 507 N.W.2d 824 (1993). Here, the court did not remove Hess for gross incompetence, physical incapacity, or contumacious conduct. ***

It follows that once counsel is appointed to represent an indigent defendant, whether it be the public defender or a volunteer private attorney, the parties enter into an attorney-

client relationship which is no less inviolable than if counsel had been retained. To hold otherwise would be to subject that relationship to an unwarranted and invidious discrimination arising merely from the poverty of the accused. ***

Thus, once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the trial court may not arbitrarily remove the attorney over the objection of both the defendant and counsel. *In re the Welfare of M.R.S.*, 400 N.W.2d 147, 152 (Minn.App.1987), citing *Harling, supra*; *People v. Davis*, 114 Ill.App.3d 537, 542, 70 Ill.Dec. 363, 449 N.E.2d 237 (1983); *McKinnon v. State*, 526 P.2d 18, 22 (Alas.1974); *English v. State*, 8 Md.App. 330, 335, 259 A.2d 822 (1969); see also *Stearnes v. Clinton*, 780 S.W.2d 216, 221 (Tex.Crim.App.1989). Accordingly, we follow this well-established line of cases that hold that the arbitrary, unjustified removal of a defendant's appointed counsel by the trial court during a critical stage in the proceedings, over the objection of the defendant, violates the defendant's Sixth Amendment right to counsel. *Johnson, Id.* (Emphasis supplied).

Although *Johnson* is a criminal case, Michigan law has clearly applied the same rights provided defendants in criminal proceedings to delinquents and respondents in child protective proceedings. A respondent has a right to effective assistance of counsel in child protective proceedings. *In re CR*, 250 Mich.App 185, 197-198; 646 NW2d 506 (2002). "[T]he principles of effective assistance of counsel developed in the context of criminal law apply by analogy in child protective proceedings." *In re EP*, 234 Mich.App 582, 595 NW2d 167 (1999), overruled in part on other grounds by *In re Trejo Minors*, 462 Mich. 341, 612 NW2d 407 (2000).

The court cannot find that Radulovich should be removed for *gross incompetence, physical incapacity or contumacious conduct*. It is doing so for court convenience. At all times during the Request for Proposal (RFP) discussions, court administration maintained that the new system would be a "phase-in system," recognizing that the court could not remove assigned counsel. It was discussed that an administrative order would enter shortening the reassignment time for attorneys from one year to

90-days, to quicken the transfer of cases from attorneys to the nonprofit corporations.

The use of groups using part-time contractors over individually assigned attorneys does not expedite the docket. To achieve the docket objectives, the court needed to hire experienced attorneys who would devote themselves to a full-time job at juvenile court. Those who work in all counties and in all courts cannot possibly expedite the juvenile docket or strive for continuity of counsel for the children. However, a full-time attorney, dedicated only to a juvenile court caseload, would never be late, never be in another court, but, rather, would be ever-present and most reliable for the court and the child.

VI. THE LGAL HAS A DUTY TO PROTECT THEIR CLIENT FROM THE UNAUTHORIZED PRACTICE OF LAW

Practicing law, a profit activity, is outside the MCLC nonprofit corporate charter and MCLC's assignments as LGALs violate the statute. MCLC was created by Fred Gruber, Professor Donald Duquette and Dept of Education employee Donald Weatherspoon to provide educational services, not legal services. Exhibit 3. Upon information and belief, Donald Weatherspoon is not an attorney. Providing educational services is not a law firm function. A nonlawyer could be a stockholder or owner of MCLC. A social worker, educator, etc., could not be a stockholder or owner of a law firm. MCLA 450.224. Representing children as an LGAL is an attorney function, limited to those licensed to practice law in the State of Michigan. MCLA 722.22 and MCLA 600. 901.

A corporation that is not established to practice law cannot practice law, nor can it refer legal work to others unless registered and approved by the State Bar of Michigan. MRPC 6.3 and MCLA 450.681.

The State Bar of Michigan does not list MCLC as a registered or an approved referral agency. MCLC is, therefore, illegally referring work received from the Court to independent contractors and illegally retaining attorney fees paid, which makes the LGALs beholden to the referral agency rather than the client.

Further, a group cannot be a guardian or LGAL as this duty is nondelegable. "Sec. 17d. (1) A lawyer-guardian ad litem's duty is to the child, and not the court." MCLA 712A.17d. An MCLC contractor certainly could not owe a duty to MCLC, but is beholden to the nonprofit corporation for continued work. In fact, the court rules restrict substitution, yet the group representation system utilized by MCLC, LADA and soon by others, is an anyone who is available--attorney of the moment system, leaving the LGALs ineffective and clueless as to their clients' needs. MCR 3.915.

M.C.L.A. 712A.17c

(7) In a proceeding under section 2(b) or (c) of this chapter, **the court shall appoint a lawyer-guardian ad litem to represent the child. The child shall not waive the assistance of the lawyer-guardian ad litem.** In addition to any other powers and duties, a lawyer-guardian ad litem's powers and duties include those prescribed in section 17d. Emphasis supplied.

MCLC, a nonprofit corporation, cannot be an LGAL and cannot actually represent the children assigned to it by the court and, for reasons cited in MCLA 450.681, it cannot practice law. MCLC is simply an unregistered referral agency taking an illegal 15% referral fee from all independent contractors, usurping the sole statutory duty of the court to "appoint a lawyer-guardian ad litem," and is wrongfully referring out LGAL appointments to attorneys of *its* choosing, violating statutory law (MCLA 450.681), Court Rule (MCR 3.915) and Michigan Rule of Professional Responsibility 6.3.

The nonprofit corporation MCLC is collecting legal fees for referring that work to the

The above formal opinion clearly states that the attorneys and LGALs do not have to surrender their files or portions thereof. However, if the client requests access, compensation must be paid, "for the service of searching the files" and "for copies or other methods of client access..." R-19.

The Court's memoranda and removal order improperly directs the attorneys/LGALs to surrender files, case materials, etc., without compensation for time and copy costs. For the reasons noted in R-19, the removal orders compelling this improper conduct of the attorneys/LGALs must be stricken.

VIII. RADULOVICH REQUESTS EXTRAORDINARY FEES FOR THE EL-RAWAS CASE AND WILLIAMS CASE

El-Rawas was a high profile case that involved Islamic religious leaders and Arabic community leaders appearing in court to support the parents and denounce Nadia. The father chained Nadia in the basement, beat her and denied her food and water. The leaders placed intense pressure on this LGAL to believe the parents and to view her client as a seriously troubled, drug-addicted devil incarnate. However, twenty-five years of experience told her otherwise. The more pressure brought to bear, the more support the children needed. This involved hours of comfort, advice, encouragement and legal work.

Four different trial dates were set with a full day set aside on the court's, counsel's, the police officers' and children's schedules. Prior to each trial date, Radulovich met with the children, comforted them, encouraged them to remain strong and prepared them for their testimony and the court experience. Radulovich cleared her schedule and appeared promptly for each trial date. On each date, she sat in court for hours awaiting the arrival of father's attorney who failed to appear (always in

another court building). Three adjournments were required as a result of father's attorney being unavailable. On the third trial date, his counsel called the Referee as all counsel, witnesses and parties sat at the table waiting. He claimed he was in a jury trial in Recorder's Court before Judge Vera Massey Jones. The Court and counsel had the entire day set aside, however, the Court gave a fourth trial date, claiming a trial before a judge overrides a Referee. Father's attorney was on speakerphone and Referee Smart placed that call detailing his "in progress" jury trial on the record. After the call, Radulovich, having practiced in Recorder's Court for twenty-five years and being aware that no jury trials occur on a Friday, used the court phone and called Judge Vera Massey Jones' courtroom. The clerk confirmed there was no jury trial and that father's counsel was not in trial in their courtroom. The information was given to the Referee and Radulovich asked for a show cause referral. The referee refused and indicated counsel would have to file a motion for extraordinary fees and seek her own show cause. Father's attorney did not appear in Juvenile Court on this matter and father was given another attorney.

When a trial is scheduled for a full day, Radulovich does not schedule any other work. When a matter is adjourned, she receives no compensation. Thus, the three (all day) trial dates (24 total billing hours lost) and the three evenings prior to each date preparing and comforting the children (10 hours), cost LGAL Radulovich 34 hours of lost compensation.

Further, immigration issues caused LGAL Radulovich to do extensive research to keep Nadia in the USA and from being deported to an extremely abusive father and overly subservient mother. DHS, the AG's office and the parents' attorneys all fought to have Nadia deported with the parents.

LGAL Radulovich performed over 40 hours of INS research, found case law and was able to convince INS that she should not be deported.

A high school friend's family, responsible for Nadia's rescue from being chained in the basement, sought custody as fictive kin. LGAL Radulovich investigated the family, found them to be wonderful and Nadia is now living with a warm, loving family. Nadia and her fictive family turn to Radulovich for continuous assistance and guidance.

In August 2004, Radulovich was removed as LGAL because the younger sister wanted the family united and wanted to be home with her mother. The Referee found that Radulovich had a conflict of interest and could no longer be on the case for Natalia. Radulovich was removed and EHC was appointed. Radulovich filed a 17 page petition for review, attended the hearing, prevailed and was reassigned to the case by Judge L.K. Smith. Exhibit 5. The removal of Radulovich was clearly contrary to unambiguous law and was spiteful for her defiance of the DHS plan. The court's actions were to solely put a young, inexperienced attorney on the case who would, like a bobble-head, mimic the DHS and AG, an all too common occurrence with the influx of new inexperienced attorneys.²

Ms. Radulovich charges an hourly rate of \$275.00. Due to the three full days of trial and preparation time prior to those days, resulting from the nonappearance of father's counsel, LGAL Radulovich requests 34 hours of compensation at \$275.00 per hour.³ She requests compensation for

² With the influx of new, inexperienced counsel through MCLC and the rotation system, attorneys walk in as EHC and ask "what does PC mean?" or "what is a permanency planning hearing?"

³ Of course, the court can order father's counsel to reimburse the court for Radulovich's fee, its own loss, witness fees, etc.

her 40 hours of INS research that saved the child from deportation. She requests compensation for 14 hours for having to research, draft and file a Petition for Review and for appearing in court to argue the motion, resulting from an improper act of the court. Exhibit 5. She requests 30 hours compensation for her time researching, drafting and preparing this motion and brief to oppose the improper removal orders.

Total extraordinary fee hours:	118
Hourly rate:	\$275.00
Total fee requested:	\$32,450.00

WILLIAMS CASE: (02-413719- RE: May 3, 2006 DRH before Referee Gardner).

This was a very complex case where Radulovich successfully defended mother on two permanent custody trials. Radulovich went through extraordinary effort to demonstrate that the agency filed a false pleading by claiming mother was homeless and had been evicted, when mother was in a safe, suitable home—approved by the therapist and foster care worker. The worker lied to the court when asked if she knew mother's whereabouts and whether mother knew about the hearing. The worker claimed she did not know her whereabouts and failed to report that she instructed mother not to come to court, claiming the hearing had been canceled. Based upon the false petition and the misrepresentation of the worker, the court took baby Gabrielle from mother and the agency, in essence, began the process to steal the child.

When administrative docket adjustments were made, this matter was transferred from Referee

Pilette to Referee Gardner. Radulovich learned of the false pleading filed by the agency and the misrepresentation made by the worker and eagerly awaited the hearing to argue for the immediate return of the child and planned to request sanctions. The matter was set for 9:00 a.m. on May 3, 2006. Although extremely ill, suffering from a fever and a severe cold/flu (and this was the only matter she had scheduled), Radulovich arrived promptly to attend this important hearing and *avoid* an adjournment. Certainly, had the hearing not been so vital, she would have sought to adjourn it. At 12:25p.m., Radulovich was paged to the courtroom and was told that her case was adjourned to the afternoon. Eager to return home and rest, she protested the adjournment to the afternoon, which also interfered with her family duties in transporting her child to tennis, skating and dance. Radulovich arranged transportation with a family member and waited for her case to be heard in the afternoon. At 4:10 p.m, Radulovich went to the courtroom and watched the Referee sitting on the bench engaging in casual conversation. No case was being heard. Radulovich then said, "excuse me, but when do you plan to hear my 9:00 case?" Referee Gardner then said, "Oh, let's just cancel this one." When a case is cancelled, the attorneys are not paid and this was a case, for the reasons noted above, that needed to be heard. Radulovich admittedly was angry and responded: "I am sick, you ruined my afternoon, your inability to handle a docket forced me to stay here all day-- forced my 73 year old mother to handle my commitments, and this case needs to be heard today-- and we need to put this on the record!" The Referee refused and told the clerk to cancel the case. By cancelling the case, there is no record that Radulovich was in court for 8 hours, no record that mother was there to demand her child be returned and no record that Referee Gardner couldn't handle her docket. After listening to Radulovich

complain, the Referee went on the record and simply said "this case is cancelled" and left the bench.

Radulovich did request a hearing, but the Referee still cancelled the hearing and the clerk recorded the hearing as canceled.⁴

Although these adjournments and cancellations are routine when appearing before Referee Gardner, Radulovich is only seeking 8 hours of extraordinary fees for this case. Total fee requested for Williams: \$2,200.00.

The 1996 hourly rate of \$60.00 paid to attorneys at Juvenile Court is unreasonable, and any hourly rate employed by the court, if other than the rate requested by Radulovich, needs to be higher than a rate of \$60.00, the amount on a 10 year old fee schedule.

IX. CONCLUSION AND RELIEF REQUESTED

For the above stated reasons, Radulovich, as attorney and LGAL on the above captioned cases slated for removal, objects to the orders of removal, objects to being replaced by a nonprofit group and objects to the interference with her clients. She requests extraordinary fees for work performed that exceeds all expectations of an attorney and LGAL.

RESPECTFULLY SUBMITTED,

November 30, 2006

SUE E. RADULOVICH, PC P33346

⁴ Insisting on a hearing was not the result of being ill, but, rather, this was the third time in a week that Radulovich appeared for court, sat for 3 hours and was told to either return for the afternoon or have the hearing cancelled—all without pay. The inability of a Referee to handle her docket needs to be addressed by administration. Underpaid attorneys and impoverished parties should not have to spend hours waiting for a hearing, only to be adjourned and forced to re-live the waiting game another day. This, unfortunately, is the norm in Courtroom 1-G and administration's failure to remedy this behavior warrants extraordinary fees.

LGAL for Nadia El-Rawas and all parties listed in
Appendix "A"
505 Hampton Road
Grosse Pointe, MI 48236
313-885-1460

APPENDIX A

Case Number	Petition Number	Next Hrg Dt	Jurist Name	Juvenile Name
00389935	06009066	2006-12-04	GIBSON,SHELIA,	GAY, DITTRICH
00390597	04005765	2007-01-10	SMART,RICHARD,L.	CALLOWAY, FRANKIE
03417372	06008344	2007-01-10	GIBSON,SHELIA,ANN	GREEN, XAVIER
03417573	04004222	2006-12-15	SCHUMMER,PETER,J.	WELLS, ASHLEY
03421181	05017872	2007-01-17	GIBSON,SHELIA,ANN	ANDREWS, JERALD
04427164	04002302	2007-01-08	HIDALGO,MICHAEL,C.	GUYTON, JUSTIN WHITNEY
04427164	05012519	2007-01-08	HIDALGO,MICHAEL,C.	BLUNT-GUYTON,BRE"ANNA
04427164	05012519	2007-01-08	HIDALGO,MICHAEL,C.	GUYTON, JUSTIN WHITNEY
04427450	04002886	2006-11-01	HIDALGO,MICHAEL,C.	REEVES, CHANCE
04427450	04002886	2006-11-01	HIDALGO,MICHAEL,C.	REEVES, PHASHAR

04427450	04002886	2006-11-01	HIDALGO, MICHAEL, C.	REEVES, UNIQUE
04427806	05018074	2006-11-29	GIBSON, SHEILIA, ANN	LEWIS, NIKO
04429361	05024112	2007-01-19	GIBSON, SHEILIA, ANN	MARTIN, VINO
04429361	05024112	2007-01-19	GIBSON, SHEILIA, ANN	MARTIN, VINOQUE
04429361	06006659	2006-12-07	GIBSON, SHEILIA, ANN	MASON, LANIAJAH DAVIA
04431939	05001670	2007-03-20	DOETSCH, THOMAS, G.	PENNINGTON, DANIEL
04432575	04013756	2006-11-08	HIDALGO, MICHAEL, C.	FAISON, DE" MORYION
04433702	04016401	2006-11-20	SMART, RICHARD, L. E	EL-RAWAS, NADIA
04434203	05022942	2007-04-02	HIDALGO, MICHAEL, C.	CHAPMAN, JAVO" N
04434203	05022942	2007-04-02	HIDALGO, MICHAEL, C.	CHAPMAN, LEMONT
04434203	05022942	2007-04-02	HIDALGO, MICHAEL, C.	DUGGER, DASHAWN
04434203	05022942	2007-04-02	HIDALGO, MICHAEL, C.	DUGGER, LATASHA
04434203	05022942	2007-04-02	HIDALGO, MICHAEL, C.	DUGGES, TALISA
04435529	04020477	2006-12-12	GIBSON, SHEILIA, ANN	LAWSON, ALYSSA
04435529	04020477	2006-12-12	GIBSON, SHEILIA, ANN	LAWSON, CHARLES
04435529	04020477	2006-12-12	GIBSON, SHEILIA, ANN	LAWSON, MICHAEL
04435529	04020477	2006-12-12	GIBSON, SHEILIA, ANN	WRIGHT, HOLLY
04435529	04020477	2006-12-12	GIBSON, SHEILIA, ANN	WRIGHT, PAUL
04435529	04020477	2006-12-12	GIBSON, SHEILIA, ANN	WRIGHT, WILLIAM
04435529	06015087	2006-12-12	GIBSON, SHEILIA, ANN	FLORES, VICTOR
04436117	05025067	2007-01-18	HIDALGO, MICHAEL, C.	CHADWICK, SHYANNE
04436117	05025067	2007-01-18	HIDALGO, MICHAEL, C.	EMERY, DAKOTA
04436117	05025067	2007-01-18	HIDALGO, MICHAEL, C.	EMERY, TREVOR
05443246	06019216	2006-12-04	GIBSON, SHEILIA, ANN	REILLY, STACEY
05445776	05018068	2007-01-19	GIBSON, SHEILIA, ANN	JENKINS, LAWRENCE
05448207	06010122	2007-01-26	GIBSON, SHEILIA, ANN	FOY, KEVYONAH
06452175	06012682	2006-12-11	GIBSON, SHEILIA, ANN	TUCKER, DOMINIQUE
06454234	06012707	2006-12-12	GIBSON, SHEILIA, ANN	HARGROVE, KEVIN
06454878	06015797	2006-11-27	GIBSON, SHEILIA, ANN	MARTIN, SAMANTHA
06456873	06017432	2006-12-08	FRUITMAN, ILENE	HENDERSON, ROVELLE
81193167	03002822	2006-12-01	HARTSFIELD, JUDY, A.	WASHINGTON, ANQUINETTE
81193167	03002822	2006-12-01	HARTSFIELD, JUDY, A.	WASHINGTON, CURTIS
81193167	03002822	2006-12-01	HARTSFIELD, JUDY, A.	WASHINGTON, DEONTE
83236110	04018005	2006-11-08	HIDALGO, MICHAEL, C.	DUNKLIN, ANGELICA
83236110	04018005	2006-11-08	HIDALGO, MICHAEL, C.	DUNKLIN, CLEVELAN
85249946	04000633	2006-12-08	SCHUMMER, PETER, J.	YOUNG, TREMAYNE
85249946	99068920	2006-12-08	SCHUMMER, PETER, J.	LEWIS, KEVIN
87265965	97006785	2006-12-06	SCHUMMER, PETER, J.	MOSES, AJA ALICIA
87265965	99068312	2006-12-06	SCHUMMER, PETER, J.	MOSES, MAXINE
94314692	06008546	2007-01-08	SMITH, LESLIE, KIM	MOSS, DESZARAE A
94314692	06008546	2007-01-08	SMITH, LESLIE, KIM	WOODARD, DEANN R
95323829	99078614	2006-11-13	HIDALGO, MICHAEL, C.	LAYTON, TRENA
99377009	99031612	2006-12-15	GIBSON, SHEILIA, ANN	DAVIS, KENNETH
90286404	04023970	2006-11-15	PILETTE, JENNIFER	CHILDRY
05444071	05014417	2007-02-21	GARDNER, CATHERINE, ARMSTRONG, Samella	
05448708	05024509	2006-12-21	MCKNIGHT, RICHARD	SPRINGFIELD, JEREMIAH
92303371	04023975	2006-12-18	MCKNIGHT, RICHARD	MCALLISTER, DAVID
00392539	06018477	2007-2-22	SMART, RICHARD	SMITH, KEITHRON L
04433490	06015807	2006-12-19	GIBSON, SHEILA	OWENS, JARRYL
06458046	06020413	2006-12-4	PILETTE, JENNIFER	ALZIADEH, ALEXANDRA
06456873	06023393		FRUITMAN, ILENE	HENDERSON, ROVELLE
04434314	06011676		FRUITMAN, ILENE	GRADY, QUINTELL

04434314

06011676

FRUITMAN, ILENE

PETTWAY, TOMMIE

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE—JUVENILE DIVISION**

**IN THE MATTER OF NADIA EL-RAWAS*
Minor child.**

04-433-702N

*** And on behalf of children/cases listed in Amended Appendix "A"**

Sue E. Radulovich, P33346
Attorney and LGAL for minor children
505 Hampton Rd
Grosse Pointe, MI 48236
313-885-1460

**SUPPLEMENT TO
BRIEF TO STRIKE ORDERS OF REMOVAL OF COUNSEL**

**I. ADMINISTRATIVE ORDER 2006-08 EXCEEDS INTERNAL COURT
MANAGEMENT LIMITATIONS AND ALL PROVISIONS EXCEEDING THAT
LIMITATION ARE INVALID.**

The Chief Judge is authorized under MCR 2.112 to enter administrative orders for the limited purpose of governing internal court management. *Schlender v. Schlender*, 235 Mich App 230; 596 NW2d 643 (1999). If an administrative order extends beyond court management, it is considered more an attempt at promulgating a local court rule, which must be submitted to and approved by the Supreme Court to be enforceable. *Id.* MCR 8.112(A)(2).

In *Schlender*, the court proceeded pursuant to an order entitled "Administrative Policy 1996-16," which denied evidentiary hearings on temporary change of custody motions. The Court of Appeals concluded that the policy could not be an administrative order because it exceeded the limited purpose of governing internal court management, citing *Employees & Judge of the Second Judicial Dist. Court v. Hillsdale Co.*, 423 Mich 705, 378 NW2d 744 (1985). If it had been an attempt to create a local court rule, it must not conflict with or regulate matters

covered by the Michigan Court Rules and must be approved by the Supreme Court. MCR 8.112.

To the extent that it does conflict with the Michigan Court Rules, it is invalid. *Schlender, supra* at 233. *People v. James*, 184 Mich App 457, 458 NW2d 911 (1990), vacated on other grounds 437 Mich 988, 469 NW2d 294 (1991).

The Court of Appeals found that the entitlement to a hearing to determine best interests was not a matter of internal management and the court could not deprive a litigant of that right to expedite docket matters.

We recognize and commend the authentic concern behind the circuit court's efforts to control its docket and to eliminate frivolous actions. However, it is evident from the body of law surrounding custody decisions that both the Legislature and the judiciary recognize the need to proceed cautiously in this sensitive and critical area. Accordingly, we find the circuit court's Administrative Policy, 1996-16 invalid and reverse and remand for further proceedings. *Schlender, supra*.

Schlender is virtually identical in theory to this situation. The court has implemented 2006-08 to expedite docket matters. Statutory law and Michigan Court Rules speak directly to the right of the child to appointed counsel and speaks to the duties and term of the appointment of an LGAL. As noted in Radulovich's brief, the LGAL serves until the child is discharged from the jurisdiction of the court and can only be removed after the court shows good cause. M.C.L.A. 712A.17c. Good cause was defined in *People v. Johnson*, 215 Mich.App. 658, 547 N.W.2d 65 (1996) as "*gross incompetence, physical incapacity, or contumacious conduct.*" Administrative Order 2006-08 cannot deny Radulovich and her clients the right to a hearing, it cannot shift the burden for removal from the court to the attorney and client, it cannot abridge the Sixth Amendment or any other statute or court rule.

In an unpublished opinion relying on *Schlender, People v Roberts*, (2000 WL 33534541),

concluded that any administrative order or policy that affected the prosecutors and "every defense attorney practicing within St. Clair county" exceeded the limited purpose of governing internal court management.

The administrative order at issue affects every child in the Wayne County Circuit Court system and every defense attorney and LGAL. According to 2005 court statistics filed with SCAO, there are approximately 23,353 neglect and delinquent children affected by the order and several hundred LGALs and defense attorneys.

The one constant in the court system is the attorney or LGAL. Sadly, it is routine for underpaid and overworked social workers to rotate or move on. Either they move from Protective Services to Foster Care, join a different agency or pursue a better paying career. It is not unusual to have three or four social workers on a case. Nor is it unusual to have rotating assistant attorney generals and jurists. The one steady person on a file is LGAL Radulovich. Radulovich rarely, if ever, misses a case, and if substituted for, it is usually over her objection.¹

The Michigan Rules of Court set forth the duties of a Chief Judge, which specifically limits its power and control to internal matters:

(3) As director of the administration of the court, a chief judge shall have administrative superintending power and control *over the judges* of the court and *all court personnel* with authority and responsibility to: ... MCR 8.110.

¹ It is common for an LGAL to agree to a 9:00 a.m. dispositional review hearing or PTR and an 11:00 am DRH or PTR on the same morning. However, it is not uncommon for the 9:00 case to be called at 11:30 and the 11:00 case called moments before. The courtroom running behind will choose not to wait five or ten minutes until Radulovich is free and will call Emergency House Counsel (EHC) over Radulovich's objection. Court EHC policy requires an attorney, without Radulovich's permission, without preparation, without a file, without knowledge of the case, to handle her case. Despite waiting 2.5 hours for the case, Radulovich is not paid and an EHC will interfere with her client and professional representation.

Emphasis supplied.

The attorneys and LGALs are independent contractors. The children are parties to cases. The limitations placed on Administrative Orders by the Michigan Court Rules allow the Chief Judge to govern only internal operations of the court, and limits power of a Chief Judge to control Judges and all employees. Those powers do not include the ability to control, regulate or interfere with attorneys and their clients who appear before the court, or infringe on constitutional rights. An administrative order cannot usurp a statute or a constitutional right when it affects nonemployees, litigants and matters outside of governing internal operations. *Schlender, supra*. MCR 8.112. Any provision not governing internal management and affecting counsel, parties and nonemployees, is invalid and must be stricken.

II. THE ORDERS OF REMOVAL ARE INVALID

After filing her motion and supporting brief to strike the removal orders, Radulovich learned that all removal orders were generated by the clerks, on the spot, in the Referee courtrooms. There are no orders with original signatures in existence and no judicial oversight or review in generating the orders. Radulovich, as well as all other counsel representing children in a Referee courtroom, are simply handed a copy of an order of removal by the clerks. Many ethical issues are raised by this procedure:

◆ How do attorneys represent their client at that hearing after being handed an order of removal?

◆ Are these orders valid? If so, how do attorneys return on an in progress or adjourned hearing contrary to an order?

To answer these ethical concerns, the Chief Referee sent a memo to the Deputy Court

Administrator seeking clarification. The response was that a Referee could simply amend the computer generated order on the spot and permit the attorney to return. Exhibit 1. However, this "solution" is improper and violates MCL712.10.

In *In re AMB*, 248 Mich.App. 144, 640 N.W.2d 262 (2001), the Court held a Referee may not enter an order and exceeds his authority for using a judge's signature stamp to enter orders. Here, the court is allowing *court clerks* to computer generate orders with the Chief Judge's signature, an even more egregious procedure than allowing a referee, a quasi-jurist, to enter orders.

Neither the court rules nor any statute permits a hearing referee to enter an order for any purpose. In fact, that a hearing referee must make and sign a report summarizing testimony and recommending action for a judge reveals that the Legislature specifically denied referees the authority to enter orders, no matter their substance. MCL 712A.10c).

The responsibility for the ultimate decision and the exercise of judicial discretion in reaching it still rests squarely upon the trial judge" and may not be delegated. Consequently, when it is apparent that someone other than a judge made the substantive legal decision in a case, the only appropriate appellate response is to reverse. This holds true regardless of whether the case concerns end-of-life issues. *In re AMB*, citing *Campbell v. Evans*, 358 Mich. 128, 131, 99 N.W.2d 341 (1959). Emphasis added.

Michigan Court Rule 2.602 sets forth the method for entry of orders *by a judge*. The signature of the Judge is required. Here, no original signature exists anywhere. Neither the Chief Judge nor any other Judge has seen the orders generated. The clerk hits a print button, the printer prints three copies of the order of removal and the clerk hands a copy to the attorney and places two copies in the court file. No judge is involved, yet constitutional, statutory and procedural rights of innocent children and their counsel are violated without due process.

As noted in *AMB*, there is only one remedy for this procedure—reversal. Here, Radulovich requests the Chief Judge to recognize the errors and void all orders of removal, as they are all

improper.

III. AMENDED APPENDIX "A" REPRESENTS CASES AT ISSUE

Radulovich has attached an amended appendix properly listing the cases at issue. The original list was sent to her by assigned counsel services and was blindly attached. After review, Radulovich discovered a few cases missing and learned that she was not being removed from Judge assigned cases.

RELIEF REQUESTED

WHEREFORE, Sue Radulovich, attorney and LGAL on cases listed in AMENDED APPENDIX "A," requests that the orders of removal be voided, the Administrative Order 2006-08 be reviewed and all matters exceeding internal court management be stricken from the order. Further, she requests she continue to zealously serve her clients until jurisdiction is discharged, and requests costs and attorney fees for the extraordinary fees noted and for these proceedings.

RESPECTFULLY SUBMITTED,

December 15, 2006

**SUE E. RADULOVICH, PC P33346
505 Hampton Road
Grosse Pointe, MI 48236
313-885-1460**

EX-28

STATE OF MICHIGAN

IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

IN THE MATTER OF NADIA EL-RAWAS,*

Case No. 04-433702N

Minor child.

Hon. Mary Beth Kelly

*And on behalf of children/cases listed in Amended Appendix "A"

ORDER

At a session of said Court held in the Coleman A.
Young Municipal Center, Detroit, Wayne County,
Michigan, on this:

JAN 30 2007

PRESENT: Hon. Mary Beth Kelly
Chief Judge

The Court being advised in the premises and for the reasons stated in the foregoing

Opinion,

IT IS ORDERED that the Motion to Strike Orders of Removal of Counsel is

DENIED.

IT IS FURTHER ORDERED that the Motion for Costs and Extraordinary Fees is

DENIED.

Hon. Mary Beth Kelly
Chief Judge

TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY *[Signature]*
DEPUTY CLERK

STATE OF MICHIGAN
IN THE THIRD CIRCUIT COURT FOR THE COUNTY OF WAYNE

IN THE MATTER OF NADIA EL-RAWAS,*

Case No. 04-433702N

Minor child.

Hon. Mary Beth Kelly

***And on behalf of children/cases listed in Amended Appendix "A"**

OPINION

1. Introduction.

This case is before the Court on combined motions to strike orders of removal of counsel and for costs and extraordinary fees. These motions are filed in this case by Sue E. Radulovich on behalf of the minor who is the subject of these proceedings and additionally all those minors listed in petitioner's Appendix "A,"¹ for whom Radulovich has been appointed as a lawyer guardian ad litem (LGAL) or attorney. For the reasons stated below, the Court will deny the motion to strike the orders of removal of counsel.² The Court, also will deny Radulovich's motion for costs and extraordinary fees.

¹ Appendix "A" consists of the names of approximately 63 juveniles who are subject to juvenile proceedings and who are represented by petitioner's present counsel, Sue E. Radulovich.

²

These arguments challenge the general legality of the removal orders. Radulovich has not made an individual showing contemplated by Third Circuit Court Local Administrative Order 2006-08(III)(D)(3) that purports to demonstrate "special circumstances" that would warrant the retention of her in any given case. Although she has made arguments as to why she is entitled to extraordinary fees for her work in this case and another, nonetheless it does not appear from her briefs that she has attempted to argue that the justification for extraordinary fees would also warrant her being retained in these cases given that all are in post dispositional status.

2. Motion to Strike Orders of Removal.

By way of background, Radulovich is the LGAL who was appointed in this neglect and abuse case. Since her initial appointment, however, the case has gone into post dispositional status.

In the meantime, the Court entered into contracts with several affiliated groups of attorneys, see MCR 8.123(D), to provide representation for juveniles in either delinquency or abuse and neglect proceedings. A unique feature of these contracts was that the vendors would be appointed to provide representation for all cases that were assigned to a specific referee. Thus, at least generally, the goal was that there would be one group of affiliated attorneys who would provide legal representation for juveniles in a given referee courtroom. Pursuant to MCR 8.112(B) and MCR 8.123(C), the Court issued Third Circuit Court Local Administrative Order (LAO) 2006-08, entitled: "Plan for Assignment of Counsel in the Third Judicial Circuit." Part III of LAO 2006-08 addresses the assignment of counsel in the Juvenile Section of the Court's Family Division. It applies to both the assignment of counsel for juveniles in delinquency proceedings and the assignment of LGALs in abuse and neglect cases. LAO 2006-08, (III)(A).

In particular LAO 2006-08 (III)(A) further states, in pertinent part,

The Court will enter into contracts with providers of legal services such as Legal Aid and Defenders Association (LADA), the Michigan Children's Law Center (MCLC) and other groups of practicing attorneys to provide exclusive representation for juveniles in both delinquency and child protection proceedings.

LAO 2006-08 (III)(D)(2) addresses the issue of the removal of appointed counsel and states:

The Chief Judge may reassign counsel during the post-dispositional stage of a case in order to expeditiously implement this Plan as indicated in Section III (A) and to ensure that the interests of the children and the public are properly served.

On November 20, 2006, this Court issued an order (the Order) removing Radulovich as the LGAL of the juvenile in this case and that new counsel would be "Legal Aid and Defender Society."³ The Order stated, "Appointment of New Counsel is required to implement Local Administrative Order 2006-08." Further, removed counsel was ordered to provide to newly appointed counsel five documents: the petition and any supplemental petitions; any findings of fact or law; any orders; the most recent court report and the most recent placement information about the juvenile including the name, address and telephone number of the current caregiver.

A memorandum from the Court's Director of Assigned Counsel that was given to Radulovich contemporaneously with the entry of the Order stated that she was to "relinquish all relevant materials pertaining to the cases(s) in the referee's courtroom."

Subsequently, Radulovich filed this motion. In her motion, she makes numerous arguments that generally attack the validity of removing counsel pursuant to LAO 2006-08. Additionally, she challenges the propriety of the Court's designation of the Michigan Children's Law Center (MCLC) as replacing her on one or more of the cases.

Initially, Radulovich argues that she cannot be removed from being the LGAL in abuse and neglect cases absent a hearing. Because the Court did not hold a hearing before it entered the Order, Radulovich further summarily contends that the Order denies due process. She relies on MCL 712A.17c(9), which states,

An attorney or lawyer guardian ad litem appointed by the court under this section shall serve until discharged by the court. If the child's case was petitioned under section 2(b) of this chapter, *the* court shall not

3

In another case in which Radulovich was replaced, the order of removal stated that the Michigan Children's Law Center would be the new counsel. See Order in Case No. 95-448709 Motion, Exhibit 2.

discharge the lawyer-guardian ad litem for the child as long as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, *unless the court discharges the lawyer-guardian ad litem for good cause shown on the record*. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child.

(Emphasis added).

In construing this statute according to the well established canons of statutory interpretation, see generally, *Wayne County v Wayne County Retirement Com'n*, 267 Mich App 230, 243-244, 248; 704 NW2d 117 (2005); *Omelenchuk v City of Warren*, 461 Mich 567, 575; 609 NW2d 177 (2000) (Courts generally will not read words into a statute), this Court notes that nowhere in MCL 712A.17c(9) is there a requirement that the Court hold a hearing prior to discharging a LGAL. Instead, the statute only requires that reason for the removal (i.e., good cause) be "on the record."

The phrase "on the record," is not defined in MCL 712A.17c(9) and otherwise does not appear to have a fixed meaning. The word "record," as used as a noun with respect to legal proceedings is commonly understood to mean a "written account of some act, court proceeding, transaction, or instrument ... and designed to remain as a memorial ... of the matters to which it relates." Black's Law Dictionary (6th ed), p 1273. Therefore, the phrase "on the record" as used in MCL 712A.17c(9) simply requires that there be some written memorandum or order indicating the reasons for the removal. Pointedly, the statute does not require a pre-adjudication hearing before an order of removal is entered, and consistent with the foregoing rules of statutory construction, that requirement should not necessarily be read into the statute. Moreover, whatever due process rights might be entailed in this situation are satisfied by a provision in LAO 2006-08 (III)(D)(3) which

establishes a procedural mechanism for challenges to removal orders to be heard by the Chief Judge after an order of removal is entered. See for example, *DaimlerChrysler Corp v Michigan Dept. of Treasury*, 268 Mich App 528, 541; 708 NW2d 461 (2005) (provision of a meaningful post deprivation remedy satisfies due process requirements).

Next, Radulovich argues that there has been insufficient "good cause" shown. She contends that the Court can only remove her for the type of reasons articulated by the Court of Appeals in *People v Johnson*, 215 Mich App 658, 662-663; 547 NW2d 65 (1996).

In *Johnson, supra*, the Court of Appeals noted that the trial court had relieved the defendant's court appointed attorney because the attorney was challenging the court's interim investigation orders and refused to comply with the orders. In this situation, the Court found, "The trial court had no authority to remove sua sponte defense counsel from his representation of defendant in this case." Although the Court of Appeals recognized, "[a] court may remove a defendant's attorney on the basis of gross incompetence, physical incapacity, or contumacious conduct," the Court of Appeals further noted that none of those factors was present and that "the trial court improperly removed court-appointed counsel *with no authority to do so*." (Emphasis added). *Id.*, at 663. After making this finding, the Court of Appeals went on to examine whether the removal violated the defendant's Sixth Amendment right to counsel. The Court of Appeals held that the "unjustified removal of a defendant's appointed counsel by the trial court during a critical stage in the proceedings, over the objection of the defendant, violates the defendant's Sixth Amendment right to counsel." *Id.*, at 666.

To the extent that *Johnson, supra*, may offer guidance on what constitutes "good cause" under MCL 712A.17c(9) to remove counsel, this Court finds that *Johnson* is not altogether preclusive of the Court's removal of Radulovich in the circumstances of this case or in the other

cases in which she is appointed counsel. First, while the Court listed three types of reasons that would justify the removal of counsel, the Court did not indicate that those types of reasons constituted an exclusive list. Thus, even though none of the types of reasons listed by the Court of Appeals in *Johnson, supra*, may be present in this case, that alone is not determinative.

Second, the Court in *Johnson, supra*, also noted the absence of any authority by the trial court to remove counsel. In the case at bar, this Court has proceeded under the provisions of a local administrative order that was duly promulgated after review by the State Court Administrator's Office. Hence, unlike the situation in *Johnson*, there is authority for this Court to remove Radulovich.

Third, the Court of Appeals described the trial court's action as being arbitrary. "Arbitrary" actions are those done "[w]ithout [an] adequate determining principle ... that is without cause based upon the law." Black's Law Dictionary, *supra*, p 104. Because the Court has acted in accordance with LAO 2006-08, its actions cannot be said to be arbitrary.

Finally, the circumstances that gave rise to the Court's removal of Radulovich make the result reached in *Johnson, supra*, not controlling here. In *Johnson, supra*, the trial court discharged the appointed counsel essentially in retaliation for the appointed counsel's vigorous advocacy on behalf of his client. In the case at bar, this Court's action in removing Radulovich, as well as other appointed counsel, has been pursuant to LAO 2006-08.

Accordingly, for all the reasons stated above, this Court finds that the reasoning and result in *Johnson, supra*, is distinguishable in that, because the Court acted in accordance with LAO 2006-08, it had "good cause," under MCL 712A.17c(9) to remove a LGAL in neglect proceedings or appointed counsel in delinquency cases.

Radulovich, however, also challenges the legitimacy of LAO 2006-08. She contends that LAO 2006-08 is actually not a true administrative order since it goes beyond matters of internal court management. Instead, Radulovich contends the subject matter of LAO 2006-08 should have been promulgated as a local court rule in accordance with the procedures for the adoption of local court rules found in MCR 8.112(A)(2).

The distinction between local administrative orders and local court rules found in MCR 8.112 is one recognized by our courts, and ordinarily, a local court rule promulgated in the guise of a local administrative order is invalid, along with judicial action taken under its aegis, where the procedures for promulgating local court rules have not been followed. *Schlender v Schlender*, 235 Mich App 230; 596 NW2d 643 (1999).

However, MCR 8.123 expressly governs the rules by which a trial court appoints counsel, and requires that each trial court "must adopt a local administrative order that describes the court's procedures for selecting, appointing, and compensating counsel" (Emphasis added). MCR 8.123(B). With the use of the mandatory verb "must," see Black's Law Dictionary, *supra*, at 1019, in MCR 8.123(B), the Supreme Court has expressly indicated that such plans are required to be adopted as local administrative orders.

Moreover, in general, "the power to appoint to an office or position ... necessarily carries with it the power of removal," *Brand v Common Council of City of Detroit*, 271 Mich 221, 228; 261 NW 52 (1935); also see generally, *State ex rel Minor v Eschen*, 74 Ohio St 3d 134, 139; 656 NE2d 940 (1995) (citing cases for the rule that "the power of removal is regarded as incident to the power of appointment"). Since MCR 8.123(B) mandates that a trial court adopt an administrative order for, *inter alia*, appointing counsel, it can be fairly inferred that the scope of such orders includes the

removal of counsel. Thus, those provisions of LAO 2006-08 that address the removal of counsel are well within the subject matter of MCR 8.123(B), and thus, are properly included in a local administrative order promulgated under MCR 8.123(B), and it was not necessary to have those provisions separately promulgated under a local court rule.

Therefore, this Court finds that LAO 2006-08 is not invalid because it was not promulgated as a local court rule under MCR 8.112(B), but instead LAO 2006-08 is valid and enforceable pursuant to MCR 8.123(B).

Radulovich also, in summary fashion, asserts that the Court's removal order violates the Federal and State Constitutional guarantees of equal protection and due process. Radulovich summarily assumes in her Brief, p 3, that this Court's removal orders have harmed the children by appointing substitute counsel, and are unjustified because the removal orders were motivated only for administrative convenience.

Preliminarily, it should be observed that Radulovich does not point to any authority that gives her clients an absolute right to the same appointed counsel throughout juvenile proceedings. Indeed, it has been noted, "We know of no absolute requirement that the same attorney represent a child throughout a protective proceeding." *In re AMB*, 248 Mich App 144, 230; 640 NW2d 262 (2001). In the context of delinquency hearings, the same comment might be made. See *Johnson, supra*.

In any event, the Court disagrees with the major premise of this portion of Radulovich's argument that the substitution of counsel will necessarily harm her clients. In fact, the real beneficiaries of the system adopted by the Court in LAO 2006-08 are the children represented by assigned counsel. The legal maxim "justice delayed is justice denied" has especial application in juvenile matters. One major source of delay in juvenile matters has arisen due to assigned counsel

having to adjourn cases before one referee or judge in order to accommodate perhaps a more urgent matter in another courtroom. Once fully implemented, the system of assigned counsel for children adopted in LAO 2006-08 (III) should result in far fewer adjournments since one defined group of attorneys will be responsible for covering virtually all cases in one courtroom. Because these attorneys will not have juvenile matters in other courtrooms, a major cause for having to adjourn cases should dramatically decrease and result in the swifter resolution of cases. Thus, far from harming children, the primary beneficiaries of this system should be the children who are the subject of these proceedings.⁴

The Court, therefore, rejects Radulovich's equal protection and due process arguments. •

The other constitutional argument raised by Radulovich in her Brief, pp 4-5, is her contention that the Court's plan to enter into private contracts with private attorney groups somehow violates the equal protection rights of those attorneys who are employed or retained. However, apart from the significant legal issue of whether she has standing to assert the rights of third parties with whom she has no connection, the point is that the Court negotiated individual contracts with various affiliated groups of attorneys and the fee that the Court has agreed to pay these groups was a matter of bargaining and agreement. As noted above, MCR 8.123(D) expressly contemplates that a trial court may contract with affiliated groups for the provision of legal services for juveniles. There is simply no requirement that the terms and conditions of those contracts, contracts that are the product

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On the other hand, the Court, in drafting the LAO, was not unmindful of the critical role that assigned counsel plays in the adjudication of juvenile matters. Hence, counsel originally assigned to a case remains on the case through the entry of a dispositional order. It is only in post dispositional proceedings that the Chief Judge is authorized to enter orders of removal of counsel. Additionally, there are cases where even in post dispositional matters in exceptional cases, upon motion of the juvenile's assigned counsel, the Court has discretion to permit counsel to remain on the case.

of individual negotiations with the attorneys, be identical. Indeed, because those contracts were the fruit of discreet agreements between the Court and the attorneys, the Court further finds inapplicable the line of authority cited by Radulovich that concerns reasonable compensation under fee schedules.⁵

Finally, Radulovich argues that it is improper for the Court to assign cases to MCLC based on a variety of arguments concerning its organizational status, its status with the State Bar of Michigan, and its compensation plan, as well as whether the Court can, in fact, contract with affiliated groups of attorneys, such as MCLC and LADA, to perform the duties of a LGAL. Notably, Radulovich has not served a copy of her motion on either MCLC or LADA.

Given the procedural posture of the case, the Court will decline to rule on these arguments. First, Radulovich, in those cases in which she unsuccessfully moves to remain assigned to the case under LAO 2006-08(III)(3), will no longer represent the juveniles. Thus, her standing to challenge any further action of the Court in these cases is questionable. Additionally, many of the factual bases for her arguments rest on assumptions, unproven or undocumented assertions, or even rank hearsay. Moreover, in any event, Radulovich's arguments as to why MCLC or LADA should not be appointed to be the LGAL are not determinative of whether her motion in which she seeks to remain counsel or LGAL should be granted, since those arguments regard the propriety of the Court's

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Radulovich also contends that the Court should examine or exercise some oversight over how the affiliated groups of attorneys pay their employees or contractors, and took issue with how some groups compensated their attorneys at different levels. Once again, it is unclear what standing Radulovich has to raise this issue. In any event, there is simply no authority for this Court to interfere in the private business affairs of affiliated groups of attorneys on the issue of compensation among attorneys in a given group. In a related argument, Radulovich contends that the Court should abide by the ABA Standards for caseload standards for a LGAL. However, Radulovich does not cite any court rule that mandates that a trial court adopt ABA caseload standards in its assigned counsel plan. Therefore, her argument founded on ABA caseload standards has no merit.

assigning cases to MCLC and LADA after Radulovich is removed, and not whether she should be removed in the first instance. Finally, Radulovich's contentions amount to a challenge to the validity of the Court's contracts with entities, who, because the contracts have been executed and are currently being implemented, can be said to have an enforceable property interest in the contracts. Due process considerations of notice and an opportunity to be heard would counsel that in any proceeding in which the Court considers the validity of its contracts with MCLC and LADA, those entities should be accorded notice of the objection to their representation.⁶

For all the foregoing reasons, the Court finds that the objections by Radulovich to the propriety of the Court making assignments to MCLC or LADA do not presently constitute a cause to set aside the Order or other orders removing her from the cases.

Next, Radulovich objects to that part of the orders that require removed counsel to provide five documents to newly appointed counsel. The basis of her objection is that the contents of her files are her property, as opposed to the property of the client, citing Formal Opinion R-19 of the State Bar of Michigan Standing Committee on Professional and Judicial Ethics in which the Committee opined that files are the property of the attorney and an attorney may charge a client to search a file for information and for reproducing copies of documents in the client's file.

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At least part of Radulovich's objection to MCLC rests on her assertion that the organization has not been approved by the State Bar. Complaints about whether MCLC's operations and its attorneys violate certain provisions of the Rules of Professional Conduct can be made to the State Bar for its investigation. Surprisingly, although MCLC has been receiving assignments from this Court for well over a year, and analogous questions about its competency to receive assignments circulated very quickly, there has not, at least to the Court's knowledge, been a direct challenge that actually involves MCLC as a party. Instead, the question has been raised only obliquely as is done in the case at bar.

This authority does not address an order of the Court to an attorney who had been appointed by the Court to represent a juvenile that requiring a public document or order, or some other minimal amount of information, be made available to counsel who will be the successor to that attorney. Here, the request is not coming from the client, and so there is no occasion to rule on the merits of R-19, but instead comes from the Court as a means of expediting the transfer of assignments and in turn the efficient administration of justice.

Attorneys are universally recognized as "officers of the court," and as officers of the court they are bound to assist in the court in the sound administration of justice, even where the services of the attorney will not be compensated. *In re Meizlish*, 387 Mich 228, 236; 196 NW2d 129 (1972):

The contents of the order that Radulovich challenges would not appear to impose an onerous task on her in any given case, and the cost of her compliance can be seen only as comparatively de minimus. Beyond mere assertion, she has not demonstrated how compliance with the Court's order would impose on her a substantial burden.⁷ On the other hand, her complying with the order of the Court to provide newly appointed counsel with the several items listed in the order of removal of assigned counsel will greatly facilitate newly assigned counsel's quick understanding of the posture of the case, the location of the juvenile and, hence, will result in better representation of the juvenile.⁸

⁷
In truly exceptional cases, Radulovich could petition the court for an award of extraordinary fees.

⁸
Radulovich also objected to the content of a letter from one of the Court's administrators directing her to provided unspecified relevant documents. This letter should be viewed in context with the order of removal. Relevant documents are those that are specified in the Court's order.

Finally, Radulovich questions whether the removal orders are valid since they are computer generated, including the signature of this Court. However, it has been held that orders analogous to the ones at issue, namely those that are generated chiefly for administrative purposes and do not involve the discretion of the trial court, are nonetheless "orders." *Laidler v National Bank of Detroit*, 133 Mich App 85, 92; 348 NW2d 42 (1984) (Computer-generated dismissal for lack of progress, done automatically without any consideration by trial judge, is an order).

Radulovich also raised various hypotheticals that may involve these orders – yet, it is not apparent to the Court that any of these are involved in this case. Hence, the Court need not resolve these questions.

For all the reasons stated above, the Court denies Radulovich's motion to strike orders of removal of counsel.

3. Motion for Costs and Extraordinary Fees.

The Court next turns to Radulovich's motion for Costs and Extraordinary Fees. She contends that in Case No. 04-433 702N (In the matter of Nadia El-Rawas), the Court should award her a total of \$32,450 for 118 hours of work at the rate of \$275 per hour. In Case No. 02-413719 (In the Matter of Williams), she requests a total of \$2,200 for 8 hours of work at the same rate.

In the El-Rawas case, Radulovich asserts that compensation for 34 hours of work should be awarded to her based on adjournments caused by the failure of the father's attorney to attend court hearings. However, in the Court's Fee Schedule that is currently in place, it is noted, "no payment due for attending hearings that were adjourned, canceled or reset." This statement reflects the reality of litigation that adjournments, while regrettable, are a fact of life. Therefore, consistent with the

Court's own fee schedule, the Court declines to find that hours attributable for adjournments warrant the payment of extraordinary fees.⁹

Next, Radulovich asserts that she should be compensated for 40 hours of legal research that she conducted to defeat attempts to deport El-Rawas by the Federal Immigration and Naturalization Service (INS). However, she notes that the deportation proceedings were before the INS, and not this Court. Radulovich cites to no authority that she is entitled to extraordinary fees from this Court due to her representation of a minor before the INS. Notably, a LGAL is empowered under MCL 712A.17d(k)(1) "[t]o request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment." That section apparently contemplates that before the LGAL renders services on behalf of the child for matters not before this Court, the LGAL will obtain express permission from the Court. The negative inference drawn from this is that consequently if a LGAL has not obtained prior permission, the services rendered by the LGAL are outside the scope of those services that he or she is performing under MCL 712A.17d, with the added consequence that they cannot be considered to be a basis for awarding the LGAL extraordinary fees that were incurred within the scope of performing his or her duties under the appointment from the Court. Thus, the Court declines to award extraordinary fees for work done by Radulovich in the INS proceedings.

Finally, Radulovich seeks to be compensated for filing a brief contesting the referee's recommendation that El-Rawas be subject to unsupervised visits with her parents and that

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To the extent that the father's attorney made misrepresentations to the Court in securing adjournments for his client, it would appear that this conduct might violate one or more ethical duties which might form the basis for a complaint by Radulovich before the Attorney Grievance Commission.

Radulovich be removed from the case. However, in reviewing the brief filed by Radulovich, this Court is of the opinion that no extraordinary fees should be paid. The brief does not appear to have been the fruit of extensive or extraordinary legal research or to involve novel questions of law or facts, but instead appears to involve fairly typical proceedings. Therefore, the Court will decline to award Radulovich extraordinary fees based on her filing a brief contesting the referee's recommendation in this case.

Regarding Radulovich's claim for extraordinary fees in the Williams case, Radulovich seeks an award for her time (8 hours) that she spent in court awaiting a scheduled hearing that was ultimately adjourned. As noted above, however, adjournments ordinarily cannot be the basis of extraordinary fees. The Court will, therefore, deny her request for extraordinary fees in the Williams case.

For the foregoing reasons, the Court will also deny Radulovich's motion for costs and extraordinary fees.

Hon. Mary Beth Kelly

Chief Judge

DATED: JAN 30 2007

A TRUE COPY
CATHY M. GARRETT
WAYNE COUNTY CLERK
BY *[Signature]*
DEPUTY CLERK

2.26.07

EX-29

Forces push for more Black jurors

JUDGE THOMAS DRAWS SUPPORT FROM NAACP, BLACK ATTORNEYS AND DETROIT DEMS

By Diane Bukowski
The Michigan Citizen

DETROIT — The 13th and 14th Democratic Congressional Districts, the NAACP and a new group called Black Attorneys United for Justice are coming forward to support Wayne County Circuit Court Judge Deborah Thomas in her battle for racial justice on county juries.

Both Democratic Party districts passed resolutions Feb. 10 supporting Thomas and condemning Chief Judge Mary Beth Kelly's actions in a case involving a panel with one Black juror. The resolution will be brought to the Democratic State Convention Feb. 24.

The districts also approved a resolution requiring the names from state voter registration, income tax, unemployment and welfare rolls be added to jury panel lists.

Currently, only citizens with driver's licenses and state ID's are listed as potential jurors.

Another resolution condemned an order by Kelly which has reduced the number of Black attorneys representing cases in Family Court.

"These resolutions show that the citizens of Wayne County want juries and attorneys to be representative of the community and want to participate in every aspect of government," said Thomas.

The Democratic districts also voted for an investigation of four ultraconservative justices on the State Supreme Court.

Among other matters, the Supreme Court has issued a hotly-disputed rule preventing sitting judges across the state from directly intervening to balance racial representation on jury pools.

Attorney Richard Cunningham represents McDaniel Hopson in the case with one Black juror on a panel of 30.

Cunningham said he filed an appeal Feb. 20 to the State Supreme Court of a lower court decision supporting Kelly's stance on the case. He has also filed another case at the appeals court level in the matter.

Cunningham and his client want Thomas to hear their challenge to the jury panel. However, Kelly has issued an order assigning all jury challenges to herself, and indicated that she would not hear Hopson's challenge until after his trial. Kelly told media outlets that she believes there is no "systematic" exclusion of Black jurors from Wayne County panels.

The 13th Congressional District resolution says that the district "applauds Judge Deborah A. Thomas for her interest in ensuring fairness in jury selection in Wayne County . . . and calls on the Michigan Supreme Court to uphold the constitutional right of due process by disqualifying Kelly from hearing the jury constitution issue and direct that the defendant be granted a hearing on the question of a jury of his peers."

Thomas said she has met with representatives of the Detroit NAACP as well as a newly-formed group called Black Attorneys United for Justice, and gained their support in her stance on the jury question, as well as other matters.

Attorney M. Deborah Trent said that the Black attorney group has met four times so far, and is in the process of setting up an office and a website.

"We are very enthusiastic and dedicated to these issues," said Trent. "We feel that Black attorneys have profited from the struggles of those who came before us and have a duty to protect the rights they fought for during the 50's and 60's. We are committed to do whatever is necessary around issues like jury selection, the issue of the representation of Black children in Wayne County Family Court, and the absentee ballot situation."

The 13th Congressional District resolution regarding Wayne County Family Court attorneys condemns Chief Judge Kelly's replacement of many Black attorneys representing children in that court by a bidding process.

"The net result has been the reduction of African-American attorneys representing African-American children by two-thirds," says the resolution.

"The number of Black attorneys now assigned cases is only 20, down from 60. Approximately 80 percent of the children in the Wayne County Court system are African-American . . . [the new attorneys]' lack of experience and/or interest in the welfare of their clients has grievously harmed the children they represent and could destabilize Black families."

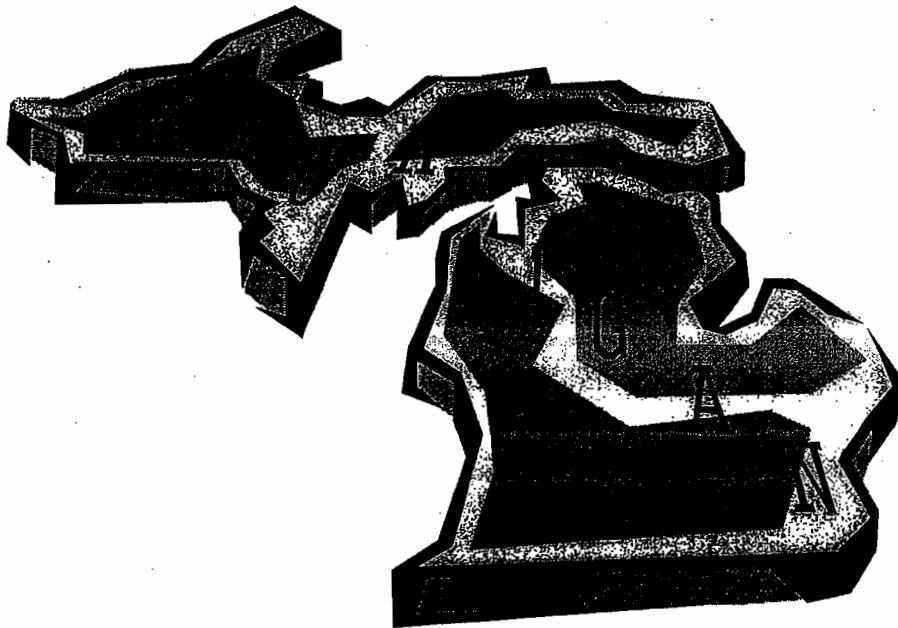
Trent's reference to the absentee ballot issue also involved Chief Judge Kelly. In 2005, Kelly prevented the Wayne County Clerk from mailing out applications for absentee ballots to senior citizens and disabled individuals. Kelly had taken the case, involving allegations of corruption by Wayne County Clerk Jackie Currie, from Wayne County Circuit Judge Wendy Baxter, who was originally assigned to it.

Many other counties routinely mail such ballot applications to broaden the voting process. Macomb County Clerk Carmella Sabaugh, the Democratic candidate for Secretary of State, who lost to Terri Lynn Land, additionally supported no-reason absentee voting, Election Day registration, automatic voter registration, and opposed photo ID requirements to vote.

The 13th and 14th Congressional Districts also passed resolutions Feb. 10 opposing photo ID requirements. Judge Kelly, a Republican, was appointed as Wayne County's chief judge by the ultraconservative majority state Supreme Court. She did not respond to a call for comment before press time.

A CHALLENGE FOR CHANGE: IMPLEMENTATION OF THE MICHIGAN LAWYER- GUARDIAN AD LITEM STATUTE

FINAL REPORT



Funded by the
Governor's Task Force on Children's Justice



Gary A. Lukowski, Ph.D.
Heather J. Davies, M.S.

American Bar Association
Center on Children and the Law

November 2002

DISCLAIMER

A Challenge for Change: Implementation of the Michigan Lawyer-Guardian Ad Litem Statute

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This evaluation was funded by a grant from Michigan's Governor's Task Force on Children's Justice to the State Court Administrative Office. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the Governor's Task Force on Children's Justice or the State Court Administrative Office of the Michigan Supreme Court. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association or its Center on Children and the Law.

Printed in the United States of America.

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ACKNOWLEDGMENTS

The ABA project staff thanks the many people who shared their practice and knowledge during the course of this evaluation.

We want to specifically thank our advisory board. Advisory Board members were Brenda Baker, Jim Beougher, Nannette Bowler, Honorable Sue Dobrich, Don Duquette, Cheryl Gilbert, Robert L. Goldenbogen, Linda Glover, Rod Johnson, Tom Kissling, William Ladd, Alexander Luvall, Myrna McNitt, Honorable Eugene Moore, Ernestine Moore, Katha Moye, Honorable Frederick R. Mulhauser, Bill Newhouse, James Novell, Gayle Robbert, Kevin Sherman, Frank Vandervort, and Dee Van Horn. Input from the project Advisory Board assisted us in refining our mail, telephone, and focus group instruments, and they reviewed and offered comments for the final report. Special thanks goes to Don Duquette and John Ferry for their assistance throughout the advisory group meetings and through the completion of the evaluation.

We also thank the many judges and referees, lawyer-guardians ad litem, caseworkers, and foster parents who completed mail surveys and telephone surveys with our project staff. We want to thank Myrna McNitt and the Michigan Foster and Adoptive Parent Association (MFAPA) for administering via telephone the foster parents survey. We also want to thank Luci Stibitz of FIA and Bill Long and Verlie Ruffin of the Michigan Federation of Private Child and Family Agencies for disseminating the mail survey instruments to caseworkers.

In three court circuits, dedicated court staff, lawyer-guardians ad litem, caseworkers, parents, foster parents, and foster children, generously gave their time, shared experiences, and provided detailed

descriptions of their evaluation of the Michigan lawyer-guardian ad litem statute during focus group discussions. We also want to thank those individuals who attended the focus groups from neighboring circuits. We give special thanks to these individuals, who are unable to be named due to promised anonymity, for granting to project staff time for interviews and case-related information.

ABA Center attorneys, Mark Hardin and Jennifer Renne, contributed to this evaluation effort through their careful review of drafts of the instruments, attendance at advisory board meetings, on-site work, and review of drafts of the final report. Our Center director, Howard Davidson, provided feedback throughout the project, reviewed drafts of the final report, and offered helpful comments and suggestions throughout the project. We want to extend special thanks to our Center interns, Heather Smith, Edison Lee, Mindy Lo, and Maria DeCristofaro, for assistance with their skilled data entry efforts. In addition, we would like to thank our Center's publication coordinator, Lisa M. Waxler, for her assistance with mail survey distribution and data entry.

Funding for this evaluation and report was provided by the Governor's Task Force on Children's Justice, chaired by Justice Elizabeth Weaver of the Michigan Supreme Court. Linda Glover and Katha Moye of the State Court Administrative Office provided invaluable staff support to the project team.

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CHAPTER 1: BACKGROUND, SCOPE OF THE INVESTIGATION AND EVALUATION METHODOLOGY

Introduction

As documented in the ABA's national summary of state court self-assessments conducted in the late 1990s, many states have serious, pervasive problems in the representation of children in child protection cases.ⁱ To address this problem in its own dependency proceedings, the State of Michigan recently enacted one of the nation's most detailed sets of mandatory guidelines for representing children. Through 1998 legislation (MCL 712A.17d) and court rule (Probate Court Rule 5.915(B)(2), Michigan has specified key duties and responsibilities for lawyer-guardians ad litem.

With regard to the quality of representation of children, we know that performance is very uneven throughout the United States. In many states, if attorneys meet with their child clients at all, they first meet before each hearing in the hallways of the courthouse, leaving little opportunity for private or quality discussion.ⁱⁱ To help eliminate such poor practice, the Michigan statute and rules are quite directive. For example, before each hearing lawyer-guardians ad litem must not only meet the child and assess the child's needs, but also review the case file and confer with the foster parents and caseworker.ⁱⁱⁱ Further, the law directs lawyer-guardians ad litem to play a very active role in many aspects of

the child's case. They must: file necessary pleadings and papers; independently call witnesses; attend all hearings; in most cases, continue representing the child until the case is closed; and monitor the implementation of case plans and services and inform the court of problems. They are expected to conduct independent investigations of each case. Where appropriate, they must ask the court to permit them to advocate for the interests of the child in legal proceedings separate from the child protection case.^{iv}

To determine whether the requirements of this statute were in fact being met, the State of Michigan commissioned an independent study. In the summer of 2001, the State awarded a contract to the American Bar Association's Center on Children and the Law to evaluate implementation of the lawyer-guardian ad litem statute. One basic question was behind the evaluation: are attorneys doing the job that is prescribed by the statute? Using a multi-method approach, the ABA set out to answer that basic question, and several other more detailed questions.

What follows is a report on that study conducted by the American Bar Association's Center on Children and the Law. This chapter describes the background of the evaluation, the reasons the State of Michigan enacted additional responsibilities for lawyer-guardians ad litem, and some of the support for and critique of the statute. It further describes the key research questions behind the study, and the methods used to answer those questions.

A final issue to be aware of is that the findings of this report represent a baseline of information for the State of

Michigan from which they can proceed to continually improve the representation of children. There has been no assessment of these requirements prior to this report, and therefore there is nothing available against which to gauge any progress. At times, however, the perspective of individuals who have been involved in the system for several years is included to present some sense of whether or not things have actually changed in the State of Michigan with regard to the representation of children.

Overview of Major Evaluation Issues

There are several major issues that this evaluation focuses on that are clearly enumerated in the research and in the statute itself. These issues include: to what extent the L-GAL represents the "child's wishes versus best interests"; professional responsibility of the lawyer-guardian ad litem; training; budgetary impact of added responsibilities; and general support and criticism of the statute. Each of these areas is covered briefly in the paragraphs below.

Child's Wishes Versus Best Interests

Many attorneys nationally face confusing circumstances in representing children, and often do not have clearly defined roles. Laws may not be clear as to whether the attorney's role involves determining and presenting the child's best interests, serving as a traditional attorney representing the child's expressed wishes, or functioning as a blend of the two. In many states, individuals appointed to "represent" and "protect" a child in a protection proceeding face the conflicting responsibility of representing the child's "wishes" and advocating for the child's

"best interests". The dual role of counsel and guardian ad litem leads attorneys to look to the courts and state statutes for assistance in determining which role takes priority. Such attorneys are usually offered minimal guidance from court rules or laws.

The Michigan Lawyer-Guardian Ad Litem statute (MCL 712A.17d) is intended to alleviate some of this confusion and to redefine the role of the guardian ad litem and traditional legal counsel in child protection proceedings.^v The Michigan statute establishes and defines the role of "lawyer-guardian ad litem" in representing children.^{vi}

Earlier legislation required Michigan to appoint legal counsel for children in abuse/neglect cases -- but the role of the legal counsel was unclear and confusing. Many lawyers were uninvolved and inactive in the role. Some represented what the lawyer saw as the child's *best* interests while still others represented the child's *stated* wishes. The new legislation attempts to clarify the role of the child's legal representative. The new statute requires courts to appoint a lawyer-guardian ad litem who would be a licensed attorney obliged to represent the child's best interests.^{vii} In determining the child's best interests, the lawyer-guardian ad litem is to recognize the developing competence of a child to direct his or her legal counsel by giving weight to the child's wishes according to the child's competence and maturity. That is, the statute directs the lawyer-guardian ad litem to determine and advocate for the child's best interests while simultaneously obligating him or her to also take the child's wishes into consideration.^{viii} In addition, when the LGAL's determination of the

child's best interests differs from the child's, the lawyer-guardian ad litem is to inform the court of the child's wishes and preferences except when the child asks that the wishes and preferences remain confidential. Thus, the lawyer-guardian ad litem must determine what is in the child's best interest and advocate that position to the court regardless of whether the determination reflects the expressed wishes of the child.^{ix}

Under the traditional model of legal counsel, by contrast, an attorney would not be permitted to present the court with information that differs from the client's wishes.^x

In the event that the wishes of an older and mature child are inconsistent with the lawyer-guardian ad litem's determination of the child's best interests, the lawyer-guardian is to notify the court of the disagreement. It is then up to the court to decide whether to appoint a separate attorney to represent the child's wishes, based on the child's age and maturity and the nature of the inconsistency between the views of the lawyer-guardian ad litem and the child.

Upon appointment of a separate attorney to represent the child's wishes the newly appointed attorney is to perform the same duties as a traditional attorney of vigorously advocating for the expressed wishes of the child. The lawyer-guardian ad litem continues to advocate for what the L-GAL sees as the child's best interests.

Advocates for this legislation believe that allowing the lawyer-guardian ad litem to be forthcoming with a judge and to relay any facts that the court might need to know

in making the final determination of the case will assist the judicial system in obtaining the best outcome for the child.^{xi} The statute is meant to ensure that the child's voice is heard by the court, as the lawyer-guardian ad litem is obligated to present the child's wishes to the court even if they differ from the guardian ad litem's determination of best interests.^{xii}

Studying the impact of the statutory delineation of the responsibilities of attorneys representing children presents unique challenges. The understanding attorneys and judges have of these roles is critical to the statute's success. Understanding the practicalities of how the simultaneous representation of best interests while taking into account the wishes of the child is key to the implementation of the statute. When and how often do lawyer-guardians ad litem actually raise these differences, and why? When and how often do judges appoint separate attorneys to represent children's wishes and why? How much has practice changed so far and why?

It is important to note that the law includes other important requirements affecting the role of the child's court-appointed legal representative. As indicated above, the lawyer-guardian ad litem is to safeguard the attorney-client privilege and reveal information about the child's wishes only when consistent with that privilege.

Key to assessing the privilege issue is determining whether or not attorneys are having difficulty in keeping the child's confidence when faced with the possibility of having to air conflicts between the child's best interests and the child's expressed wishes. The lawyer-guardian ad litem must

explain to the child the limits of the client-child relationship under the statute, and the child's understanding of this relationship is important. Further, due to the lawyer-guardian ad litem's expanded role and increased responsibilities, court appointed attorneys might be more likely to also represent the child more in other judicial proceedings (e.g., domestic relations cases) after implementation of the statute. Does this present any particular problems or conundrums?

Professional Responsibility

Another provision affecting counsel's role is that the lawyer-guardian ad litem is to identify common interests among the parties and promote a cooperative resolution of issues in the case. These duties are to be performed "consistent with the rules of professional responsibility." We determined the extent to which this is taking place, including whether the statute has changed practice and, if not, why not.

In summary, there are many issues surrounding the Michigan Lawyer-Guardian Ad Litem statute that have presented challenges for its evaluation.

The fundamental question is, of course, whether there has been value added to child protection proceedings by individuals accepting and adhering to the new roles and responsibilities of the lawyer-guardian ad litem, including better representation, improved information made available to the court, judges making better decisions, and children being better served.

Training

Essential to any major change in policy or in the roles and responsibilities of individuals providing services to children is the training that must accompany that change. One issue, for example, is whether training provided to lawyers addresses all critical aspects of the statute, including, legal representation, factual investigation, and helping the child access services. The parties affected by the statute must be trained to adequately fulfill all their new roles and responsibilities. The issue of training is addressed in this evaluation.

Budgetary Impact

Finally, does the legislation have a financial impact? This could include training costs, the need for new office space, the need for additional attorneys, increased compensation for attorneys because of expanded duties, and other projected and unanticipated costs. The legislature may or may not have provided adequate funding to fulfill all aspects of the statute for effective implementation, and there may or may not have been a satisfactory funding mechanism in place at the time of the bill's passage.

Support and Criticism of the Statute

There has been both support and criticism of the statute since its implementation. In 2000, Frank Vandervort wrote about the perceived strengths and weaknesses of the lawyer-guardian ad litem statute.^{xiii} In 1997, Albert Hartmann highlighted several policy issues related to the legislation and analyzed four components prior to its passage.

In Hartmann's article supporting revision of the Michigan statute, he

expressed the view that a new statute was necessary to more clearly define the rights and duties of attorneys representing children.^{xiv} He argued that the role of lawyer-guardian ad litem provided flexibility, allowing the child to make some decisions regarding the case. He saw training as essential for the lawyer-guardian ad litem to properly perform his or her function of counseling the client and having the child help set the goals of the representation.

In contrast to the traditional child representation model, the lawyer-guardian ad litem would be obliged to determine the goals of the representation but must not ignore the client's wishes. Training would help make "best interests" decision-making less subjective, helping eliminate racial or class prejudices and stereotypes. Lastly, he suggested that such new legislation would send a message that the outcome of cases should be objectively determined by the child's best interests with respect to the facts, yet balanced with information on the expressed wishes of the child.^{xv}

Frank Vandervort has likewise described the strengths of the lawyer-guardian ad litem statute, suggesting that the new statute has improved the quality of legal representation children receive.^{xvi} He concludes that Michigan lawyers believe that representing a child in child protection proceedings is a complex and difficult job, and is as serious as representing adults. He reports that attorneys claim that they are striving to meet with their clients, are more actively involved in proceedings, are following investigation requirements, and are asserting strong positions in court.

He further suggests that the statute now assures access to all relevant information regarding the child, access to records relating to the parents (e.g., mental health records to ensure services are being provided), and access to all records possessed by public and private child welfare agencies (e.g., records access can help monitor whether referrals were made for drug treatment). He applauds efforts to resolve cases cooperatively, which has potential to reduce unnecessary adversarial posturing and litigation.

Vandervort also noted some shortcomings in the statute. Foremost, he noted a lack of funding to support the proper implementation of new responsibilities for the lawyer-guardian ad litem. For example, the legislation provided no additional funding to counties to support increased attorney workloads. The flat fee that many counties pay attorneys was not raised even though additional responsibilities were placed on them. The statute did not provide resources to train lawyer-guardians ad litem in the proper methods of interviewing child clients. Without such training, he suggests, lawyers may upset an already fragile child.

Vandervort also points out that the current statute does not recognize differences between urban and rural caseloads. He says that attorneys in some areas will be unable to meet statutory requirements because there are simply not enough attorneys available. He also notes that some courts are entertaining parents' attorneys' objections if the lawyer-guardian ad litem has not complied with each statutory requirement, despite case law establishing that a parent lacks standing to raise ineffective assistance of counsel claims.

against the child's legal representative.^{xvii} He also contends the statute does not sufficiently guide the lawyer-guardian ad litem or the courts regarding factors for determining the child's best interests. This contrasts with the Michigan Child Custody Act, which lists 12 criteria that must be assessed when determining best interests in domestic relations proceedings.^{xviii}

Vandervort also notes several weaknesses with the best interests and expressed wishes provision in the statute. For instance, he argues, it provides for an attorney-client privilege yet allows it to be violated so the lawyer-guardian ad litem can tell the court the child's wishes. In addition, the statute contains no provision as to how the lawyer-guardian ad litem is to communicate to the judge that a conflict exists. Will the lawyer-guardian ad litem stand in open court and declare a conflict, or is it to be accomplished through an *ex parte* communication? Finally, he observes that the statute does not define or limit when the lawyer-guardian ad litem should seek and obtain the court's permission to pursue other issues for the child.^{xix}

Scope of the Investigation and Evaluation Methodology

Not only does this assessment evaluate whether the requirements of the statute are being met, it also examines information from counties and circuit courts about the fiscal impact the statute has had since its enactment. Any legislative amendments or changes in implementation strategies should carefully evaluate the fiscal impact of the statute and the availability of needed funding. This must include considering both the statutory requirements

for legal representation and funding resources (e.g., public and private dollars) available and needed to meet those requirements.

Several different research methods are used to evaluate the implementation and success of Michigan's lawyer-guardian ad litem statute. The ABA examines each specific aspect of the statute using multiple primary methods. These include LGAL compensation survey, written surveys of groups of individuals involved in child welfare cases, telephone surveys of selected members of those groups, focus groups, and reviews of selected case files. The evaluation also examines the financial impact of the statute to the degree possible based on reported information.

In order to fulfill this contract, the ABA has now completed a thorough evaluation of the Michigan Lawyer-Guardian Ad Litem statute, MCL 712A.17d including applicable court rules. The ABA established processes and methods in conjunction with the project Advisory Committee to accomplish the following objectives:

- Establish the extent to which the specific elements of the statute and court rule have been implemented.
- Identify which elements are not fully implemented and the key reasons for lack of implementation.
- Identify the primary barriers to successful implementation.
- Indicate general perceptions regarding the impact of the law on the child welfare system from various stakeholders' perspectives (e.g., does it promote permanency, child safety, etc.)

The evaluation methods were intended to answer the following questions. To what extent do counsel actually fulfill these duties as intended by the law? Where counsel falls short of meeting these responsibilities, why does this occur? How much has changed since the law took effect? Where counsel fulfills their new responsibilities under the law, what is the added value to the courts in the form of better and more complete information? Is this new system of representation cost effective? What is its impact, ultimately, on children and their families? More specifically, the following areas are addressed by this evaluation:

- How lawyer-guardians ad litem are appointed
- How and when separate attorneys for the child are appointed
- The extent to which lawyer-guardians ad litem receive increased access to information.
- The extent to which the lawyer-guardians ad litem conduct an independent investigation regarding the case.
- The extent to which lawyer-guardians ad litem meet with the child and appropriate parties.
- The extent to which lawyer-guardians ad litem explain their role to the child.
- The extent to which lawyer-guardians ad litem independently present a case on behalf of the child, including calling witnesses, and filing necessary pleadings.

- The extent to which representation is consistent throughout various stages of court proceedings.
- The extent to which lawyer-guardians ad litem are present at all hearings.
- The extent to which there are conflicts between the child's best interest and the child's wishes and whether or not these conflicts are reported to the court.
- The extent to which the lawyer-guardians ad litem monitor case plans, court orders and services.
- The extent to which the lawyer-guardians ad litem promote cooperative resolutions among the parties.
- The barriers to any or all of the above and to the overall implementation of the statute.
- The financial impact of the statute especially upon courts and court-appointed attorneys.
- Opportunities for training, and how training has impacted implementation.
- Assessment of the overall context of the environment in which the statute is being implemented, including court organization, the socio-economic climate and the service delivery system.

Compensation Survey

During December 2001, ABA project staff designed a compensation survey for distribution to Michigan counties. The survey was designed to poll counties about the manner in which they pay lawyer-guardians ad litem, how much they pay LGALs, and the amount of county funds that have been spent over the past few years. The instrument was sent to the SCAO, which provided comments and suggestions.

There were delays in mailing the compensation survey due to another survey on a different topic being sent at the same time to many of the same people. At the end of January 2002, the SCAO disseminated our compensation survey to county officials. In addition, we requested a list of attorneys handling child protective cases. The project team made second and third requests until the project team was satisfied with the results.

Ultimately, we received compensation surveys from 59 of the 83 counties in Michigan. At least one county from 47 circuits was represented, out of the total 57 circuits.

Mail Surveys

The ABA evaluation team developed separate mail survey instruments for judges, lawyer-guardians ad litem, and child welfare agency personnel. The distribution process for each group differed. The ABA assured that the surveys were kept anonymous upon their return, and identifying information was kept only for the purpose of second mailings or telephone surveys, if needed. No identifying information is presented in this report. The ABA project team further assures that all aspects of privacy and anonymity are respected.

There were several difficulties experienced at the beginning of the project with regard to the mail surveys in general. There were anthrax scares in the Washington, DC area mail delivery service that led the ABA to decide to prepare compensation survey packets and send those packets to the SCAO for mailing from

Michigan. The ABA and the SCAO agreed that a postmark from Michigan would lessen any potential problems with mail being discarded unopened. It was also believed that the SCAO letterhead would increase response rates from the courts.

The project team attributes initial difficulty in achieving a response rate to several factors, including the anthrax contamination of federal buildings. The ABA's mail is processed through the Brentwood mail distribution facility in Northeast Washington that was closed after contamination with anthrax. Although the mail surveys were disseminated months after the initial scare, we received several surveys irradiated by the US Postal Service during the duration of the project, indicating that the surveys were arriving at the facility as heightened security measures were implemented. While some of the mail processed through Brentwood may simply be lost, the facility may still be holding mail and it is likely that the response rate is lower as a result. The impact that heightened security measures and increased public scrutiny of personal mail had on this research method is impossible to measure.

These difficulties were overcome, however, and the ABA project team believes the results that were finally achieved are representative of counties and circuit courts across Michigan, both in size and geographic location.

Mail Survey to Lawyer-Guardians Ad Litem.

The cover letter for the compensation survey also requested a list of court-appointed lawyer-guardians ad litem.

These lists formed the base for the attorney mail survey. We received attorney lists from 37 counties out of the 83 counties in Michigan. At least one county from 30 circuits was represented out of the total 57 circuits.

Our 11-page survey was disseminated to 220 lawyer-guardians ad litem. Standard research methods were used to ensure as high a response rate as possible. First, a cover letter explained the importance of the study and urged its completion. Second, a self-addressed stamped envelope was included and participants were given the option of faxing the return survey. Third, the project team made a second request with a postcard for those who did not return the survey by the requested date. Fourth, a second mailing of the survey, with another self-addressed stamped return envelope, was sent with another request to complete the survey. We also made the instrument available to attorneys electronically.

The lawyer-guardian ad litem response rate was 29 percent (63 responses/220 disseminated). Only eight were returned with bad addresses. The low response rate is attributable to the unwillingness of lawyer-guardians ad litem to share information that might cast their work in a less than exemplary light, and was not entirely unanticipated. The responses received are geographically representative, and are supplemented by information from the focus groups.

Mail Survey to Judges.

Surveys to judges across the State of Michigan were made available to them by electronic mail. The SCAO provided the

ABA with a list of electronic mail addresses. Surveys were sent to the Chief Judge (or presiding Family Judge where indicated) of each circuit or, where no email address was available, to the family division administrator. Each of the judges and administrators was also asked to provide copies of the instrument to their referees or judicial officers who also handled child protection cases. An initial electronic mail message was sent to each Chief Judge with the survey and cover letter attached. When responses were not received, subsequent emails were sent seeking a completed questionnaire and stressing the importance of the study.

It is difficult to ascertain the exact response rate, not knowing how many referees and judicial officers handle child protection cases in each circuit or county. We received a total of 66 mail surveys from judges and referees. Twenty-seven of 57 circuits responded. Of the judges that responded, 15 indicated they were chief judges.

Mail Survey to Caseworkers.

During July 2002, a survey designed for caseworkers was disseminated to both public and private caseworkers across the State of Michigan. The ABA project team worked closely with Luci Stibitz of FIA and Bill Long and Verlie Ruffin of the Michigan Federation of Private Child and Family Agencies in disseminating the survey instruments. Using a conservative sampling determination, 252 (of 762) FIA foster care workers and 256 FIA protective services workers were needed for the sample. A relative distribution of existing staff carried across FIA "zones" produced the needed

sample. A response rate of 353 surveys returned of the 508, or 69 percent, was achieved.

A similar sampling strategy was used for private agency foster care workers across Michigan. The ABA project team surveyed 208 of 455 private foster care workers. A response rate of 45 percent (93 surveys returned) was achieved.

Telephone Interviews

In order to secure more in-depth information, telephone interviews were conducted with judges, lawyer-guardians ad litem, child welfare personnel, and foster parents. The telephone interviews varied in length from 5 minutes to 15 minutes. The respondents interviewed were chosen based on their responses to the mail surveys. Follow-up telephone interviews were conducted if the project team deemed it necessary to clarify information received during the focus groups or in the mail survey responses.

Telephone Interviews with Foster Parents.

The original foster parent mail survey reviewed by the advisory board members was culled for the most pertinent questions, resulting in a 6-page telephone survey instrument. The ABA project staff felt the streamlined instrument was much more "user-friendly" to foster parents. The ABA project team worked closely with the Michigan Foster and Adoptive Parent Association (MFAPA) in revising the instrument. The telephone survey was administered via telephone by MFAPA staff.

The ABA project staff detailed a sampling plan for MFAPA to use in completing the telephone survey with foster parents to ensure a geographic representation of foster parents and type of placement.

For sampling purposes, foster parents in all types of placements were interviewed. The size of the counties were placed in small, intermediate, medium, and large categories. Ninety-nine foster parents' telephone interviews were conducted by MFAPA, and the respondents are geographically representative.

Focus Groups

Focus groups were conducted after preliminary analysis of the mail surveys, with a greater focus on the major issues under consideration. We chose to visit a small, medium, and large county to ensure diverse perspectives. Focus groups included participants from contiguous counties at one of the sites. In June 2002, the ABA evaluation team convened focus groups in three courts: Bay, Saginaw, and Oakland Counties.

The focus groups were comprised of like individuals to minimize bias and pressure. The focus groups included: judges and court administrators; lawyer-guardians ad litem; child welfare agency personnel; parents; foster parents; and youth in foster care. A face-to-face focus group was held with the foster care review board in Oakland County. A telephone conference was held with foster care review board members from the Bay and Saginaw county areas. Each focus group lasted approximately one and one-half hours.

Discussion with each of the focus groups focused on those areas of the evaluation pertinent to each group. For example, judges and court administrators were asked for their perspectives on the positive and negative aspects of the statute, what they felt were the greatest barriers to implementation of the statute, and what improvements they would like to see, if any. The focus groups provided much more depth than the mail and telephone surveys.

Case File Review

The ABA evaluation team sought the assistance of Saginaw, Bay, and Oakland counties during our site visits to identify cases for file review. The ABA evaluation team was primarily interested in those cases where the conflict between the child's best interests and the child's wishes was so great that the court was asked, or otherwise decided, to appoint an attorney in addition to the lawyer-guardian ad litem. The ABA evaluation team did not anticipate and did not receive a large number of these cases.

Where appropriate, the ABA evaluation team focused on the nature of the attorney's conflict, the decision-making process leading to the appointment of a separate attorney, continuity of representation, and how the parties involved viewed the outcome as being affected by the new appointment (as compared to cases wherein appointments are not granted). Files that contained affidavits or filings describing the nature of the conflict between the child's interests and wishes were reviewed in detail. Sites reported only two such cases. Because of this low number, additional files were reviewed to determine

how courts were able to monitor the activities of lawyer-guardians ad litem. Approximately 10 case files were reviewed at each site.

Advisory Group

The ABA worked closely with the project advisory board throughout the duration of the project. The advisory board included the following individuals.

- Brenda Baker, Program Representative, SCAO Foster Care Review Board
- Jim Beougher, Director of Child & Family Services Administration, FIA
- Nannette Bowler, Director, Chance at Childhood Program, MSU School of Social Work
- Honorable Sue Dobrich, Chief Judge, Cass County Probate Court
- Don Duquette, Director, Child Advocacy Law Clinic, University of Michigan Law School and Chair of the Governor's Task Force Subcommittee on the L-GAL Evaluation
- Cheryl Gilbert, Communications Training Specialist, Michigan Foster and Adoptive Parent Association
- Linda Glover, Coordinator, Court Improvement, Michigan Supreme Court, SCAO
- Robert L. Goldenbogen, Esq., St. Clair County
- Rod Johnson, Program Representative, SCAO Foster Care Review Board
- Tom Kissling, Manager-Retired, SCAO Foster Care Review Board
- William Ladd, Attorney, Staff Attorney, Legal Aid and Defender Association
- Alexander Luvall, former Court Administrator, 3rd Circuit Court

- Myrna McNitt, Executive Director, MFAPA
- Honorable Eugene Moore, Judge, Oakland County Probate Court
- Ernestine Moore, Governor's Task Force on Children's Justice
- Katha Moye, Office Assistant, SCAO
- Honorable Frederick R. Mulhauser, Chief Judge, Emmet/Charlevoix Probate Court
- William Newhouse, Assistant Director, SCAO Trial Court Services
- James Novell, Program Representative, SCAO Foster Care Review Board
- Gayle Robbert, Program Representative, SCAO Foster Care Review Board
- Kevin Sherman, Program Representative, SCAO Foster Care Review Board
- Frank Vandervort, Program Manager, Michigan Child Welfare Law Resource Center
- Dee Van Horn, SCAO Regional Administrator, Region I

The first scheduled advisory group meeting was held November 13, 2001. The ABA evaluation team provided and presented members of the Advisory Group with outlines of proposed survey instruments, interviews protocols, use of focus groups, and information concerning other research issues.

The purpose of that initial meeting was to also address the following issues:

- To solidify the goals and the objectives of the evaluation plan;
- To discuss the proposed evaluation plan and to address the concerns of Advisory Group members;

- To discuss and agree upon a sampling plan for data analysis and surveys to ensure adequate representation of courts and the Michigan population;
- To discuss the nature and method of documenting and/or measuring change since implementation of the statute;
- To discuss the proposed direction of survey instruments and use of focus groups;
- To inform the ABA evaluation team as to what specific information the Advisory Group wished to elicit from the focus groups and groups to be surveyed; and
- To reach agreement with Advisory Group members as to how the evaluation plan and methods were to be amended or revised.

The advisory group was divided into subcommittees and each of those subcommittees was asked to provide input on the various instruments. The committees submitted their comments to ABA project staff two weeks after the meeting. The ABA evaluation team used these comments to continue the revision process. Based upon the discussion at the initial meeting, the ABA revised the evaluation plan as agreed upon and submitted a final protocol and proposed instruments to the Advisory Group.

There were periodic telephone conferences and e-mail correspondence between ABA project staff and members of the Advisory Group during the duration of the project. This evaluation report was prepared in draft form for the Advisory Board meeting scheduled for Thursday, August 29th. This meeting was held near the end of the project to discuss tentative

findings and recommendations. The presentation of the draft evaluation report and findings was used to solicit input from the Advisory Committee for inclusion in the final report.

Structure of This Report

A variety of research methods were employed to conduct this evaluation, providing for a wealth of information from many sources. The ABA project team decided that the most efficient presentation of that information was not by the method used but rather by subject area.

This report is structured to address major topics individually. Chapter 2 will discuss the administration of the statute and the compensation of lawyer-guardians ad litem. Chapter 3 will discuss information regarding the experience of lawyer-guardians ad litem, knowledge about their role, and the availability of training. Chapter 4 will discuss the extent to which lawyer-guardians ad litem conduct independent investigations. Chapter 5 addresses issues associated with representation such as visiting the client before each hearing and proceeding, and being involved in case plan development and monitoring. Chapter 6 discusses access to case-related information. Chapter 7 examines issues related to the "best interests versus wishes" debate. Chapter 8 will focus on implementation issues. Finally, Chapter 9 will present the report's findings and recommendations in detail.

CHAPTER 2: ADMINISTRATION OF THE STATUTE AND COMPENSATION OF LAWYER-GUARDIANS AD LITEM

Introduction

Among the most contentious issues concerning the role and practice of lawyer-guardians ad litem in Michigan are the manner in which they are appointed and the level of their compensation. Surveys were sent to presiding judges and administrators of all circuit courts in Michigan to determine which methods are generally used for appointing children's representatives and which issues are most pressing in this area.

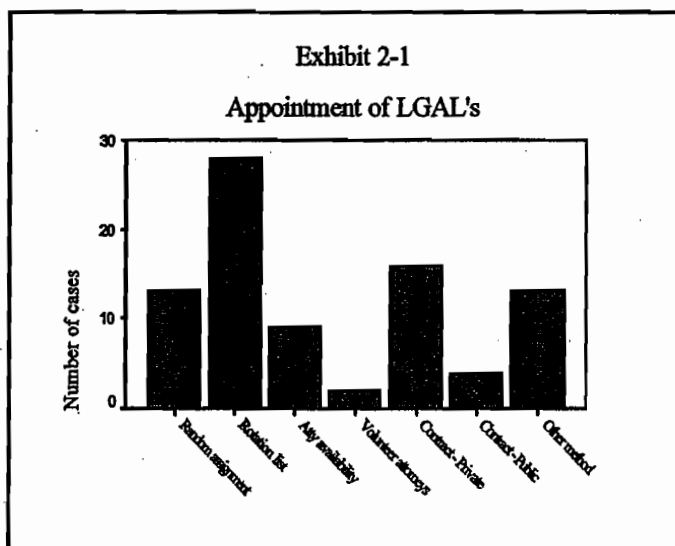
Methods of Appointment

Counties and circuit courts in Michigan report various methods of selecting lawyer-guardians ad litem, ranging from random selection to contracting with law firms and individuals. Counties and circuits also report varying experience with requiring specific qualifications from these individuals.

The Appointment Process^{xx}

Exhibit 2-1 shows the responses received by the project team. Counties and circuits were asked to indicate their primary method of appointment. However, some respondents may be counted in both "lists" categories or in both "contract" categories.

The most common method of appointment of LGALs is to draw from a list of eligible or interested attorneys. Fifty



percent of reporting courts make rotating appointments from such a list, and 23 percent appoint from a list randomly. Sixteen respondents (nearly 29 percent) indicate they have contractual arrangements with private firms, which appears to be a growing practice in Michigan based on other evidence collected in the study.

Nearly one-fourth (23 percent) of the respondents indicate they use some "other" method of appointing lawyer-guardians ad litem. These other methods include: monthly rotating appointment by the judge; rotation or random assignment from a list after an attorney has completed training from the local bar association; a panel of attorneys assigned to each family division judge with a managing attorney for each panel; a Public Defender Contract managed by a local attorney; and judicial assignment based on complexity of case. There is little variation in the reported methods of appointment when the size of the reporting county or circuit was considered.

The vast majority (89 percent) of the courts reported that the method of appointing lawyer-guardians ad litem is governed by court rule or court preference. Very few courts indicate that they rely on any guidance from the state statute on appointing lawyer-guardians ad litem. Again, there is little variation when population was considered.

The vast majority (80 percent) of courts report that their method of paying LGALs has not changed since the implementation of the Binsfeld legislation. However, transitional or suburban circuits (100,000 to 400,000 in population) report having changed their method of paying

LGALs at a rate of 40 percent, versus 6 percent for rural circuits (under 100,000) and 25 percent for urban circuits (over 400,000).^{xxi} Those who report they have changed methods of payment indicate that fees have increased, or that they now pay for out-of-county attorney travel, or that they have moved from a flat per hour fee to a case fee or that they have initiated a hourly fee to encourage visiting with the child client.

Attorney Background and Special Requirements

The majority of respondents (nearly 80 percent) indicate that a lawyer's past performance and background are taken into account when the lawyer is considered for appointment as a child's lawyer-guardian ad litem. Transitional and urban circuits report such consideration at higher rates than rural circuits. Surveys and evidence from focus groups indicate that courts tend to use a core group of attorneys, many with years of experience and who understand the local process. Some courts report that judges' frequently apply their personal criteria in selecting attorneys to act as lawyer-guardians ad litem, and frequently meet with them in face-to-face interviews. Many judges state that they are willing to remove, and have removed, attorneys from eligibility rosters.

Less than one-half (41 percent) of the responding courts state that they have specific requirements for appointment as a lawyer-guardian ad litem. Such requirements include attending appropriate training, shadowing an experienced child protection lawyer, having county residency, and having specific child protection

experience. The likelihood of making specific attorney requirements appears to increase with the population of the reporting jurisdiction.

Methods of Payment

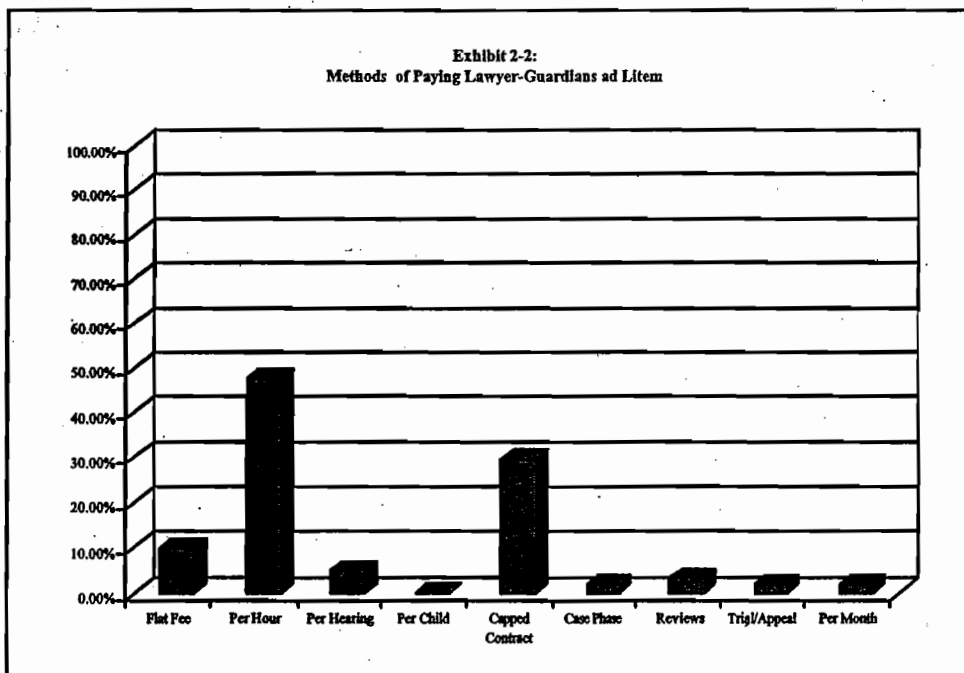
Counties and circuit courts in Michigan also have various methods of paying LGALs. Exhibit 2-2^{xxii} details the methods used across Michigan to reimburse lawyer-guardians ad litem. Ten of the responding courts indicated that they used a mixture of two of the listed methods. Nearly one-half (47 percent) of courts said they use a per-hour basis to reimburse LGALs, and nearly a third (30 percent) reported that they have capped contracts in place. Capped contracts are more often than not on an annual basis. Per hour rates ran from the low end at \$35 per hour to a higher rate of \$60 per hour. Two courts reported

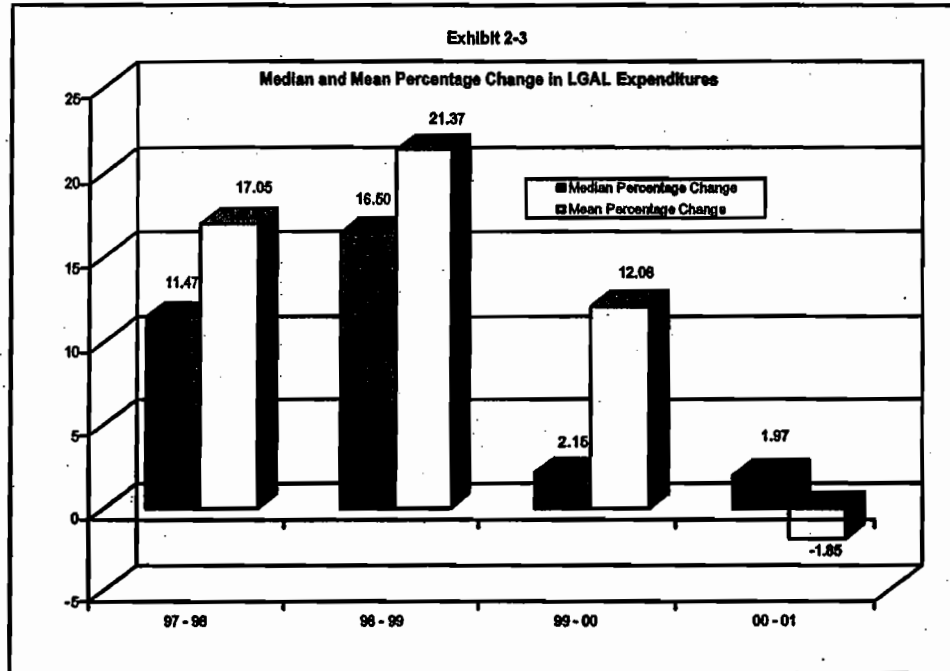
paying for review hearings at separate rates.

Annual or capped contracts are reported as being very diverse. Some courts contract with the public defender; others contract with private law firms. At times, the contract is for inclusive legal services, at other times for specific activities. Some counties use the same contract to provide representation for both children and parents.

Payments to Lawyer-Guardians ad Litem

Assessing the financial impact of payments to lawyer-guardians ad litem proved to be a somewhat difficult task for the project team. Of the 54 unduplicated circuit responses, only 20 or nearly 37 percent are able to furnish any information about payments to LGALs. The remaining 34 or nearly 61 percent indicated that they are unable to separate out LGAL costs from



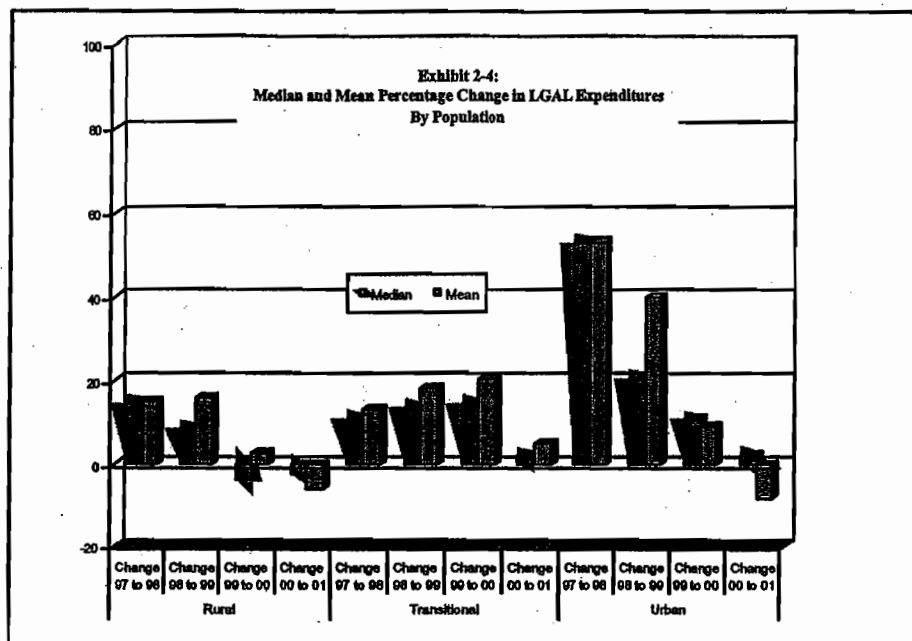


all other attorney and proceeding costs or furnished no information at all. Some reported costs, for example, include juvenile delinquency proceedings, parent representation and other payments.

In order to provide any information on resources that are used to pay lawyer-guardians ad litem, the ABA project team examined only those circuits where it is clear that the information provided is specifically on child protection matters. Twenty circuits were included in this analysis, a fact that should be kept in mind when reviewing the analysis. However, the project team is comfortable in that those circuits reporting are geographically

representative. Rural circuits represent 35 percent of the respondents, transitional or mixed circuits comprise 50 percent of the results, and urban circuits represent 15 percent of the total respondents.

As Exhibit 2-4 indicates, from 1997 to 1998, and again from 1998 to 1999, those circuits reporting expenditure information experienced rather large increases in payments for lawyer-guardians ad litem. From 1999 to 2000 and from 2000 to 2001 increases in expenditures associated with the representation of children appear to slow in their growth.



The trend varies when payments are disaggregated based on a circuit's size. Circuits were categorized into rural (100,000 or less), transitional (100,000 to 400,000), and urban (over 400,000) circuits. These disaggregated trends are shown in Exhibit 2-4. Transitional or suburban circuits experienced the smallest initial change in expenditures (11 percent), while urban circuits experienced the largest increase (53 percent). Rural circuits experienced the smallest second period growth, followed by two periods of reduced expenditures. Transitional circuits experienced a progressive growth in expenditures followed by reduced growth, while urban circuits experienced an initial growth followed by a steady pattern of reduced growth and even reductions in spending.

The increases, in and of themselves, even presented in current dollars (no

adjustment for inflation) are not surprising, but given the lack of data the project team was able to collect on expenditures, we can only offer some conjecture. There are any number of reasons behind the increases and the slowed growth in expenditures. Additional responsibilities assigned by the statute might have truly resulted in increased billings from attorneys, and thereby initially increased spending for the circuits. The slowing growth can also be attributable to the possible "plateauing" of billing and expending – specifically, expenditures for LGALs have or are reaching their new levels, and future growth will be minimal. Attorney billing could now have accounted for all of the additional responsibilities, thereby stopping growth. Or, conversely, courts have done what they can about the increased expenditures and can provide no more additional revenues and expenditures have been limited.

Further, there are differential experiences based on the size of the circuit. Rural or smaller circuits may have been particularly affected by the addition of these new LGAL responsibilities without the benefit of new state funding. Smaller circuits are less able to respond to new revenue demands, especially in an environment of budgetary shortfalls, therefore forcing them to keep increases in check or to eliminate them completely. Transitional or suburban circuits are generally wealthier than rural communities and consequently more able to take on additional demands. Large urban circuits, with significantly larger caseloads, face greater initial increases due to the addition of these new LGAL responsibilities.

A final contributory explanation may be that the decrease in expenses is partially related to termination of parental rights proceedings. Under other aspects of the Binsfeld legislation, TPRs occur more quickly and parents are thus no longer parties requiring county-provided representation.

However, information collected from other sources during the evaluation suggests

that the reason for all of this might be a combination of these and other factors. During a three-county site visit to the state it was apparent that, like most other states, Michigan is experiencing state budget shortfalls. Judges and administrators spoke about compliance with aspects of the Binsfeld legislation driving costs up. Some responded that the financial impact has been great enough in their location that they have had to switch tactics and come up with different arrangements, particularly moving from an hourly fee to a contractual relationship with attorneys.

Perceived Sufficiency of Payments to Lawyer-Guardians ad Litem

Judicial representatives and lawyer-guardians ad litem were both asked if they found compensation of LGALs to be adequate given the increased responsibilities mandated by statute. Seventy-seven percent (77.8%) of lawyer-guardians ad litem responding to the mail survey state they found compensation to be inadequate. As shown in Exhibit 2-5, only 19 percent of court representatives believe that current compensation is sufficient to achieve the level of representation mandated by the Binsfeld statute. Responses from LGALs and judicial representatives do not differ

**Exhibit 2-5:
Judicial and Administrative Perception of Sufficiency of Payments to Lawyer-Guardians ad Litem**

Current compensation is not sufficient or more funding is needed to achieve the level of representation for children required by the Binsfeld legislation	81%
Current compensation is sufficient to achieve the level of representation for children required by the Binsfeld legislation	19%

when population is considered.

Interestingly enough, answers from the administrative and compensation mail survey provide a somewhat different perspective. Fifty percent of respondents (which included a range of individuals from chief judges to administrators to accounting managers) feel payments to LGALs are sufficient. Forty-one percent (41%) indicated that payments are not sufficient, while 7 percent answered both "yes and no" or "not relevant." Over three-fourths (77.3%) of circuits asserting that payments are not sufficient are rural areas. Individuals who believe payments are sufficient indicate that their ability to seek additional funding for additional hours, keeping such items in the budget, and/or the dedication of the pool of available or contracted lawyers on contract as things muting the payment amount issue.

When asked why they believe funding is insufficient, both judicial representatives and lawyer-guardians ad litem presented similar basic arguments. Essentially, all agreed that the statute created additional responsibilities without providing funding for LGALs. More specifically, courts responded that they have cut payments to lawyers-guardians ad litem in areas such as travel and attending foster care review board meetings.

The following are typical responses from lawyer-guardians ad litem to mail surveys:

- I am asked to do work for which I am not compensated.
- Court appointed rates in the county are outdated.

- It's not even close to being sufficient. The travel involved and all other court issues that come up – the time isn't even close to what I would bill them.
- A lot more time is required to accomplish the same goal. And with budget cuts we are never fully reimbursed for our time.
- Our county has recently implemented a new contract with only eight attorneys or firms handling the entire docket. We now have more cases and less time to devote to each one.
- If one is to perform at least adequately for the child client, there are many duties to perform outside the courtroom for which there is never any payment.

The following are typical responses by judges to the mail surveys:

- There is not enough money to pay for representation as prescribed by statute.
- The LGAL is underpaid for the work required to really do the job right. Since most counties cannot afford more pay, we need state funding to assist.
- The statute puts demands on the counties to pay lawyers more because they are expected to do more to represent the best interest of the child. It sounds good, but without more money being provided to the counties, full implementation won't be possible.

A General Discussion Regarding Issues of Payment and Public Interest Attorneys

Work has been conducted on compensation for public interest attorneys, specifically on defense of the indigent, which is a reasonable point of comparison for court-appointed attorneys handling child

protection proceedings in Michigan. There is also information available on the fees and salaries of private attorneys. Further, while available information primarily covers public criminal defense, the argument can be made that similar issues surround the payment and appointment of all public interest attorneys. The information provided below is offered to place the compensation for LGALs in Michigan into perspective, and not to offer advice or guidance as to which comparison is the most favorable or which method previously discussed is preferred or more effective.

As reported, counties in Michigan pay LGALs from \$35 to \$60 per hour. In reporting on compensation for defense of indigent criminal defendants in Michigan, Bruce Necker states:

Counties that pay by the hour vary from a disgracefully low \$40 per hour in some counties to \$80 per hour in others. To be sure, the compensation scheme for our prosecutors is also county-based and in many respects parallels that for criminal defense in arbitrariness and inadequacy. But, unlike our prosecutors, lawyers appointed to represent indigent clients must bear all the overhead costs themselves.^{xxiii}

The Michigan Bar Association conducted a poll in 2000 that assessed practices of attorneys in private practice across the state. The results of that study indicate that median hourly billing rates for attorneys in private practice range from \$135 to \$180 per hour based on experience.^{xxiv}

As the use of contracting for the services of public interest lawyers has grown, so has the attention focused upon it become more intense. Robert Spangenberg recounts an Arizona Supreme Court case that dealt with the issue.

In *State v. Smith*, the Arizona Supreme Court found this type of system, which was in use in several Arizona counties, unconstitutional for the following reasons:

- (1) The system does not take into account the time that the attorney is expected to spend in representing his share of indigent defendants;
- (2) The system does not provide for support costs for the attorney, such as investigators, paralegals, and law clerks;
- (3) The system fails to take into account the competency of the attorney. An attorney, especially one newly admitted to the bar, for example, could bid lower in order to obtain a contract, but would not be able to adequately represent all of the clients assigned ...; and
- (4) The system does not take into account the complexity of each case.^{xxv}

A special report released by the Bureau of Justice Assistance provides an overview of deficient and effective contract systems for providing indigent defense. Again, while focused on indigent defense, many of the arguments are certainly applicable to LGALs and the provision of services to children in Michigan.

Deficient contracting systems have the following characteristics according to critics:

- Place cost containment before quality.

- Result in lawyers with fewer qualifications and less training doing a greater percentage of the work.
- Offer limited training, supervision, or continuing education to new attorneys or managers.
- Reward low bids rather than realistic bids.
- Provide unrealistic caseload limits or no limits at all.
- Do not provide support staff or investigative or expert services.
- Do not provide for independent monitoring or evaluation of performance outside of costs per case.
- Do not include a case-tracking or case management system and do not incorporate a strategy for case weighting.^{xxvi}

Characteristics of effective contract systems include:

- Minimum attorney qualifications.
- Provisions for support costs such as paralegals, investigators, and social workers.
- Independent oversight and monitoring.
- Workload caps.
- Limitations on the practice of law outside the contract.
- Provisions for completing cases if the contract is completed but breached or not renewed.
- Caseload caps.
- Case management and tracking requirements.
- Guidelines on client contact and notification of appointment.
- A mechanism for oversight and evaluation.^{xxvii}

The American Bar Association also expresses some of the same concerns about public defense of juveniles. In its 1995 report *A Call for Justice* the authors report the concerns of a juvenile judge:

As the presiding juvenile court judge in a large California metropolitan area, ...noted that advocacy for children frequently loses out in the competition for scarce public dollars. Budget constraints result in high caseloads, which, in turn, leave children's lawyers with insufficient time to investigate and prepare their cases. ...[C]hildren's attorneys often have the least experience and the lowest status in the legal community.^{xxviii}

That same judge goes on to state that lack of training, lack of commitment, and inadequate allocation of resources has a direct and significant impact on the representation of children.^{xxix}

Finally, abuse and neglect and juvenile justice standards issued by the American Bar Association both call for the adequate compensation of attorneys representing children.^{xxx}

Summation of Key Findings Concerning Administration of the Statute and Compensation of Lawyer-Guardians ad Litem

The multiple sources of information used in the evaluation (e.g., focus groups, mail surveys, phone surveys, etc.) revealed several common issues concerning administration of the statute and payments

made to lawyer-guardians ad litem. Those issues include:

- ❑ While appointment from an existing list or pool, randomly or otherwise, appears to be the most common among Michigan circuit courts and counties, there is no consistency among the counties and no statewide standards.
- ❑ The majority of individuals providing input into the evaluation do not perceive compensation to LGALs as being adequate.
- ❑ Although the LGAL statute specified additional duties and responsibilities for LGALs, no additional state funding is attached to the LGAL statute.
- ❑ With no additional funding supplied, counties and circuits must find their own methods to deal with increased financial requirements for paying LGALs. Responses from counties and circuits are based on their differential ability to handle increased expenditures.
- ❑ Counties have responded to increased expenditures in several ways. Some counties no longer pay LGALs to travel or to travel out of county to see their child clients. Other counties do not reimburse for LGAL attendance at foster care review board meetings. Some counties have moved toward contractual agreements with attorneys as a cost containment measure. Differential ability to respond to the increased requirements can adversely affect the quality of representation by location.
- ❑ Judges and attorneys expressed frustration that the Family Independence Agency frequently places children in out-of-county placements. This placement, coupled with lack of reimbursement due to no additional

funding, adversely affects the quality of representation provided to children in Michigan.

ENDNOTES

ⁱ Mark Hardin, Diane Boyd Rauber & Robert Lancour, *Representing Clients* Volume 1 State Court Assessments 1995-1998: Dependency Proceedings (Veronica Hemrich, ed., American Bar Association, Center on Children and the Law) (1999).

ⁱⁱ *Id.*

ⁱⁱⁱ MCL 712A.17d(1)(d)

^{iv} MCL 712A.17d(1)(k)

^v Albert E. Hartmann, *Crafting an Advocate for a Child: In Support of Legislation Redefining the Role of the Guardian ad litem in Michigan Child Abuse and Neglect Cases*, 31 U. Mich. J.L. Reform 237, 239-255 (1997).

^{vi} MCL 712A.17d(2); Frank E. Vandervort, *Representing Children in Protective Proceedings: Learning from Michigan's Experience*, 19 Child Law Practice 153 (2000).

^{vii} Jessica M. Eames, *Seen but not heard: advocating for the Legal Representation of a Child's Expressed Wish In Protection Proceedings and Recommendations for New Standards in Georgia*, 48 Emory L.J. 1431, 1449 (1999).

^{viii} MCL 712A.17d(1)(h); Jessica M. Eames, *Supra* note 7, at 1451.

^{ix} *Id.*

^x *Supra* note 7, at 1451.

^{xi} *Supra* note 7, at 1452.

^{xii} *Id.*

^{xiii} Frank E. Vandervort, *Representing Children in Protective Proceedings: Learning from Michigan's Experience*, 19 Child Law Practice 153 (2000).

^{xiv} Albert E. Hartmann, *Supra* note 5.

^{xv} The information contained therein regarding the Hartmann publication was primarily gained from Albert E. Hartmann, *Crafting an Advocate for a Child: In Support of Legislation Redefining the Role of the Guardian ad litem in Michigan Child Abuse and Neglect Cases*, 31 U. Mich. J.L. Reform 237, 239-255 (1997).

^{xvi} Frank E. Vandervort, *Supra* note 13, at 154-156.

^{xvii} Frank E. Vandervort, *Supra* note 13, at 155, citing in re E.P., 595 N.W.2d 167 (Mich. Ct. App. 1999).

^{xviii} Frank E. Vandervort, *Supra* note 13, at 155, citing MCLA 722.23.

^{xix} The information contained therein regarding the Vandervort publication was primarily gained from Frank E. Vandervort, *Representing Children in Protective Proceedings: Learning from Michigan's Experience*, 19 Child Law Practice 153, 154-156 (2000).

^{xx} "Random Assignment" means selection of an attorney from a list of eligible attorneys without regard to when the attorney last served. "Rotation list" means selection of an attorney from a list of eligible attorneys with the court moving to the next name on the list when a subsequent selection is made. "Attorney availability" means selection of an attorney merely because he or she is present in court and available to take the case, and there is no systematic method of assignment. "Volunteer attorneys" indicate a situation where the common practice is attorneys offer their services to the court for child protection cases. "Contractual arrangement with private firm" indicates the county or circuit have an existing contract with a local law firm. "Contractual arrangement with public interest firm(s) or organization(s)" means the county or circuit has an arrangement with an organization such as the Legal Aid and Defender Association.

^{xxi} Circuits were categorized into rural (100,000 or less), transitional or suburban (100,000 to 400,000), and urban (over 400,000) circuits. This categorization was created using input from analytical staff from the Michigan Judiciary.

^{xxii} "Flat fee" indicates the county pays an LGAL a fixed amount for handling the child's case. "Per hour" means the county or circuit pays the LGAL on an hourly basis for his or her work. "Per hearing" means the county or circuit has established a payment schedule based on the LGAL's attendance at a hearing. "Per child" means the same as per case; the LGAL is paid for each case he or she accepts for the duration. "Capped contract," means the county or

circuit has a contractual agreement with an attorney or firm and pays a fixed amount for their services.

^{xxiii} Bruce W. Neckers, *It's A Crime: Michigan's System Of Compensation For Criminal Defense Of The Indigent Is Inadequate*, Michigan Bar Journal, January 2002, at 8.

^{xxiv} Applied Statistics Laboratory, Inc. (sponsored by the State Bar of Michigan), *The 2000 Desktop Reference on the Economics of Law Practice in Michigan*, Michigan Bar Journal, November 2000, 1545-1573.

^{xxv} Robert L. Spangenberg, & Marea L. Beeman, *Indigent Defense Systems in the United States*, 58 Law and Contemporary Problems 31 (Winter, 1995) at http://www.pili.org/library/access/law_and_contemporary_problems.htm

^{xxvi} Robert L. Spangenberg et al, U.S. Department of Justice, Contracting for Indigent Defense Services: A Special Report 13 (2000).

^{xxvii} Ibid 13.

^{xxviii} Patricia Puritz et al, American Bar Association, A Call For Justice 24-25 (1995).

^{xxix} Ibid 25.

^{xxx} American Bar Association Juvenile Justice Standards Annotated: A Balanced Approach 71-72 (1996) and American Bar Association *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* 24-25 (1996).

^{xxxi} The overall relationship has an adjusted $R^2=.15$ and is significant at the .01 level. This indicates that the awareness of powers and duties explains on 15 percent of the LGAL rating of compliance. For rural jurisdictions, this relationship has an adjusted $R^2=.066$ which is not significant, for transitional or suburban jurisdictions the adjusted $R^2=.088$ and is not significant, and for urban jurisdictions the adjusted $R^2=.288$ which is not significant. Significance is measured at the .01 level.

^{xxxi} American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, approved by the ABA House of Delegates, February 5, 1996, C-2.

^{xxxi} American Bar Association, *Standards of Practice for Lawyers Who Represent Children in*

Abuse and Neglect Cases, approved by the ABA House of Delegates, February 5, 1996, section C-2.

^{xxxi} It is interesting to note that despite this LGAL comment, the statute does not prescribe a specific time frame in which the child-client must be visited. The statute states that the LGAL must "before each hearing, ... meet and observe the child."

^{xxxi} State Bar of Michigan Ethics Committee, Informal Opinion RI-318 (2000) (discussing the preparation of a report by the LGAL at the court's direction).

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY
JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E.
RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E.
RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH
TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor;
MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next
Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY
BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND,
as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next
Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L.
RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L.
RUBY, as Next Friend of WILLIAM and WESLEY D., Minors;
PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN
S., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Case No.
Hon.

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

AFFIDAVIT OF JEREMY BRAND

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

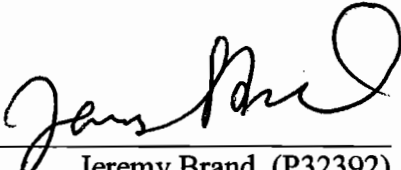
JEREMY BRAND, being first duly sworn, deposes and says that:

1. I am an attorney, in good standing, licensed to practice law in the State of Michigan since 1981.
2. I am a member of TLAWCJC, and have, for the past 20 years, specialized in the representation of juveniles and parents in child protective cases and juveniles in delinquency cases, primarily in Wayne County, Michigan. I have, over the course of my professional career, represented more than a thousand minor children as LGAL in more than a thousand child protective cases.
3. I am and have been at all relevant times qualified for assignment as counsel for indigent children/or their parents in the Third Circuit Court Family Division-Juvenile Section.
4. On January 11, 2001, I was appointed to represent Terri N. in a child protective proceeding in the matter of the Camper children, filed in the Third Judicial Circuit Court.
5. On September 19, 2004, I was appointed to represent Naomi S. in a child protective proceeding in the matter of the Smith children, filed in the Third Judicial Circuit Court.
6. On October 14, 2006, I was appointed to represent Kyishia R. in a child protective proceeding in the matter of the Rogers children, filed in the Third Judicial Circuit Court.
7. In January of 2007, I was removed as attorney LGAL for Terri N. and replaced by Michigan Children's Law Center (MCLC), with no individual attorney named.
8. In January of 2007, I was removed as attorney/LGAL for Naomi S. and replaced by Michigan Children's Law Center (MCLC), with no individual attorney named.
9. As of this date, no one from MCLC has identified themselves as the attorneys, who are representing my former clients, Terri N. and Naomi S.
10. I have been informed that a hearing has been scheduled for June 6, 2007, regarding Kyishia R., where I expect to be removed as her attorney/LGAL. The removal is pursuant to LAO 2006-08.
11. I have not filed a "Motion to Strike Orders of Removal," because such a motion would be futile and inadequate, insofar as I am precluded from challenging the court's legal authority to remove me as counsel for my clients. The writing and filing of such a motion on individual cases for individual clients would not solve the underlying problem arising from the unlawful general practice of the court.
12. Under the former attorney assignment system governed by Local Administrative Order 2006-01, more than 200 attorneys of diverse race, age, sex, ethnicities and religions represented children of varying backgrounds, in both child protective and delinquency proceedings in the Third Judicial Circuit, Family Division, Juvenile Section.
13. Each year the Juvenile Court system has between 8000 and 10,000 children under their jurisdiction for abuse and neglect cases. Each year approximately 1500 new child protective cases, protecting about 5000 children, are filed. In addition, about 9000

delinquent children enter into the system. All of these children require legal representation.

14. Under the current contract system recently implemented by Chief Judge Kelly, only 40-50 full-time equivalent attorneys will be representing this same group of about 20,000 children in the Third Judicial Circuit Family Division, Juvenile Section.
15. In 2006, I was appointed to represent the mother in a child protective proceeding in the matter of the Robertson-Hensley family, Case #06-457805.
16. In November 2006, the individual attorney originally assigned to represent the children as their LGAL was removed and replaced by the Legal Aid and Defender's Association (LADA), with no individual attorney named.
17. Between December 15, 2006 and February 28, 2007, there were four hearings before the referee in this matter, at which the minor children have been represented by three different attorneys, all identifying themselves as "LADA" attorneys.
18. As of this date, it is unclear whether any individual attorney has established a relationship or is taking responsibility to ensure that these children's rights are represented, as required by MCL 712A.13a (1) (c) and MCL 712A.13a (1) (g).
19. On December 15, 2006, LADA attorney Loraina Jaquette appeared for the children and testimony was taken. On December 20, 2006, LADA attorney William Ladd appeared for the children and testimony was taken. On February 21, 2007, LADA attorney William Ladd appeared for the children and testimony was taken. The court issued orders on all of these dates.
20. On February 28, 2007, LADA attorney Ms. Reynolds appeared for the children for the first time. At that time, based on the evidence obtained from prior hearings, I moved to allow the mother to visit the children under the supervision of the father. Ms. Reynolds appeared to have no knowledge of the prior proceedings and, contrary to the testimony that had been elicited at the prior hearings, objected to allowing the children to visit with the mother. She requested agency supervised visits only.
21. Although the court granted my motion, this experience is indicative of the problems with inconsistent representation and attorneys who are not familiar with the needs and histories of their own juvenile clients. The children are deprived of counsel who are able to best represent their interests.

Further Affiant sayeth naught.


Jeremy Brand (P32392)
Dated: 4-9-07

Subscribed and sworn to before me
on 9 day of April, 2007


My commission expires 7-31-2011

OREGON J. AUERLO
NOTARY PUBLIC, STATE OF OR
COUNTY OF TULARE
MY COMMISSION EXPIRES
ACTING IN COUNTY OF OSHELAND

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE
COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.;
SUE E. RADULOVICH, as Next Friend of NADIA E., a
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Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD;
MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a
Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of
NAOMI S., a Minor; JEREMY BRAND, as Next Friend of
KYISHA R., a Minor; JEREMY BRAND, as Next Friend
of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY,
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as Next Friend of WILLIAM and WESLEY D., Minors;
PATRICK DEVINE; PATRICK DEVINE,
as Next Friend of JUSTIN S., on behalf of themselves
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JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

AFFIDAVIT OF SUE E. RADULOVICH

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

SUE E. RADULOVICH, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past twenty-six years and have represented over one thousand children over that period of time.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. I am aware, through anecdotal information, that with the exception of LADA, the groups selected by the Chief Judge operate by hiring independent sub-contractors and pay the independent sub-contractors a flat fee based on per diem service contracts, without regard to caseload or duties performed (e.g. one attorney may only work Mondays, another Wednesdays, another Mondays and Thursdays, etc.).
5. I am further aware that a flat annual fee amount is paid in monthly installments to the sub-contractors, depending upon the number of days the sub-contractor agrees to work. There is no relationship between time spent, caseload, extraordinary services, complications, etc., and compensation; the same flat fee is paid to all sub-contractors within each contractor group.
6. When I attempted to bring the problems with the flat fee system, the lack of continuity of counsel and the impropriety of assigning a group as an LGAL, to the attention of the Chief Judge in my Motion to Strike Orders of Removal, she indicated, in essence, that the fee arrangements between the contractor groups and their individual sub-contractors were not the Court's concern. Rather, I was told to report any improprieties to the appropriate State Bar agencies.

7. On numerous occasions, I have observed the part-time independent contractor group attorneys indicate that they only work in Wayne County Juvenile Court one day per week. Those seeking continuity of counsel find setting a date is virtually impossible when limited to one day per week. Those that just set dates without regard to continuity of counsel, drastically impact the representation of the children. Whoever is on duty for the day represents all children. This denies continuity of counsel, familiarity with the client and case, and makes being prepared virtually impossible.
8. Under the previous system, the judges had the ability to choose qualified, experienced, reliable counsel from a pool of over 200 attorneys to represent children. Under the new system, it is my understanding and belief that, now, a small number of attorney groups, up to five, have been awarded contracts by the Chief Judge, and that these groups (except for LADA), are retaining a small, limited number of independent contractor attorneys, without regard to pay, skill, experience or reliability.
9. The contractor groups are now exclusively assigned the very sensitive and important role of attorney and LGAL in Wayne County's Juvenile Court. The independent contractor attorneys retained by the groups are not appointed by "the Court." The law mandates that the Court must appoint an LGAL; there is no provision to delegate this duty to non-profit, non-legal corporations.
10. Under the new group system, children are not appointed individual counsel; rather, the courtroom is appointed counsel. If a case is administratively transferred from one jurist to another, the attorney or LGAL does not follow the case. Whichever group, (and its independent contractors), is assigned to the new courtroom will represent the child. Administrative reassignments are routine in Juvenile Court.

11. The part-time independent contractors are routinely late for hearings and holding up trials. When the courtroom pages for "any available ____ attorney report to courtroom ____ immediately" and no one responds, the jurist has no ability to remove the attorney or appoint a substitute per administrative directive.
12. I have been forced to wait for tardy group attorney/contractor to appear for cases and have been told by jurists that they cannot be replaced. I have overheard a jurist call Attorney Assignment employees to report the problems and I was told the jurist could not call Emergency House Counsel (EHC) to replace the group.
13. I am aware of a case where one group contractor/attorney started a permanent custody trial. The first attorney opposed the termination of the parents' rights. On the continuing trial date another group attorney/contractor appeared for the in-progress trial and supported termination of parental rights.
14. Conflicts of interest are ignored. I am aware of newly hired group attorneys appearing as the attorney for children on the same cases in which they, or other attorneys from their contractor group, had previously represented either the State or parents.
15. I am also aware that members of groups continue to represent parents in courtrooms where other members of the same group are representing the children.
16. I am aware that in 2004, approximately 600 cases were removed from the caseload of LADA, at LADA's request, because they were overwhelmed with an excessive caseload at that time.
17. I am further aware that a large percentage of these 600 cases were re-assigned to at least two of the "groups" that have now been awarded contracts pursuant to LOA 2006-08. Prior to this time in 2004, these two "groups," MCLC and the Child and Family Law

Center, and their primary attorneys (Fred Gruber, Amy Hartman, William Schooley and Judith New), had little or no experience representing children in Wayne County Juvenile Court.

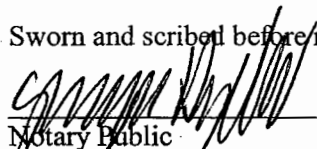
18. At that time, in 2004, I personally informed Chief Judge Kelly that I was available to take on the representation of some of the children who were being re-assigned from LADA.
19. Her response to me was that she was only assigning these cases to attorneys who had never practiced in Wayne County Juvenile Court, because she wanted to see "new faces."

Affiant can testify to the above if called as a witness.



Sue E. Radulovich

Sworn and scribed before me this 9 day of April, 2007


Notary Public
My Commission Expires:

7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES JUL 31, 2011
ACTING IN COUNTY OF

OShtland

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

VS.

Case No.
Hon.

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

AFFIDAVIT OF MURIEL H. SHILLINGFORD

[illegible]

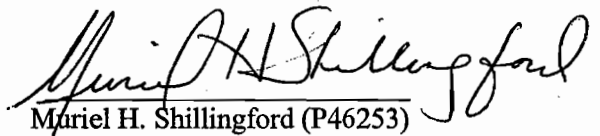
MURIEL H. SHILLINGFORD, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past fifteen years.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. I am and have been at all relevant times qualified for assignment as counsel for indigent children/or their parents in the Third Circuit Court Family Division-Juvenile Section.
5. Based on the demographic population of Wayne County, Michigan, approximately 80% of the children under the jurisdiction of the Wayne County Circuit Court Family Division, Juvenile Section, are African-American.
6. Under the new contract assignment system, the number of African-American attorneys available to represent children has decreased from approximately 85 to approximately 25.
7. There is no system to check for conflicts of interest where attorney "group" members have previously represented the State or parents. I am aware of cases where an attorney from a "group" (e.g., MCLC) has been an Assistant Attorney General or an attorney for the parents and the "group" now represents the child in the same case.
8. I have not filed a "Motion to Strike Orders of Removal", because such a motion would be futile and inadequate, insofar as I am precluded from challenging the

- court's legal authority to remove me as counsel for my clients. The writing and filing of such a motion on individual cases for individual clients would not solve the underlying problem arising from the unlawful general practice of the court.
9. In June, 2005, I was appointed to represent the child in a child protection proceeding in the matter of the Kimberly S., Case #98-369166.
 10. Kimberly S. has a diagnosed mental health condition that requires her to take medication and to regularly see a psychiatrist. She needs and benefits from consistent legal representation as well to help maintain her stability.
 11. During the time that I was her LGAL, between June 2005 and the present time, I visited with Kimberly S at least two (2) times at the Circle of Life Psychiatric Facility, met with her at least eight (8) times at the court, immediately prior to each of the court hearings at which I appeared on her behalf, and spoke with her treatment team on the telephone at least three times.
 12. As a result of LAO 2006-08, I, the third attorney assigned to represent the child as her LGAL, was removed in January 2007 and replaced by Michigan Children's Law Center (MCLC), with no individual attorney named. However, I never received an Order of Removal from Kimberly's case until April 5, 2007, effective date April 9, 2007.
 13. Despite Kimberly's difficulties establishing a trusting relationship with adults, her mental and emotional problems and the generally recognized unique vulnerabilities of abused and neglected children, she had begun to bond with me after two (2) years of continuous contact, the disruption of which will now quite likely undermine the progress she has begun to make.

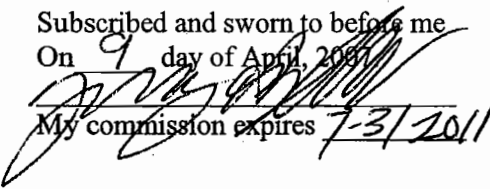
14. It is my understanding that no individual attorney has identified him or herself to my former client, Kimberly S, as her current LGAL, or has visited with her.
15. No relationships are being established and no individual attorney is taking responsibility to ensure that this child's rights are represented, as required by MCL 712A.13a (1) (c) and MCL 712A.13a (1) (g).
16. On or about April 5, 2007, I received approximately 19 e-mails from Leonard Branka, each with an "Order of Removal of Assigned Counsel and Appointment of New Counsel" attached, removing me as attorney and/or LGAL from those cases.
17. Since November 2006, I have personally observed, in other child protective cases in which I represent parents, court hearings at which different attorneys from a single group, such as MCLC, have appeared on behalf of the same children at different hearings, without complying with the court rule governing substitution of attorneys, MCR 3.915(D), without having familiarized themselves with the facts and circumstances of the children's situations and best interests, and without any individual attorney consistently representing the children. This creates a "revolving door" system of representation for these children, which goes against their best interests.

Further Affiant sayeth naught.


Muriel H. Shillingford (P46253)

Dated: April 9, 2007

Subscribed and sworn to before me
On 9 day of April, 2007


My commission expires 7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY
JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E.
RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E.
RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH
TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor;
MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next
Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY
BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND,
as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next
Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L.
RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L.
RUBY, as Next Friend of WILLIAM and WESLEY D., Minors;
PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN
S., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Case No.
Hon.

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

AFFIDAVIT OF DEBORAH TRENT

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

DEBORAH TRENT, being duly sworn, deposes and says:

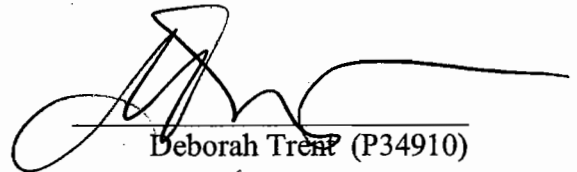
1. I am an attorney licensed to practice law in Michigan.

2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past twenty-two years.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. Based on the demographic population of Wayne County, Michigan, at least 80% of the children under the jurisdiction of the Wayne County Circuit Court Family Division, Juvenile Section, are African-American.
5. Under the new contract assignment system, the number of African-American attorneys available to represent children has decreased from approximately 85 to approximately 25.
6. Based on my twenty-two years of experience of representing children in juvenile court, the importance of having a sufficient number of African-American attorneys and attorneys who are experienced in the Wayne County Juvenile Court system cannot be overstated.
7. The role of the children's attorney is to protect the children. I believe African-American children need to see African-American attorneys in that role. In many instances, African-American attorneys are better able to communicate with these children as they have a common cultural background. Further, African-American children benefit from seeing African-American people who they perceive as successful.
8. I am aware of cases where an attorney from a "group" (e.g., MCLC) has been an Assistant Attorney General or an attorney for the parents and the "group" now represents the child in the same case.
9. I have not filed a "Motion to Strike Orders of Removal", because such a motion would be futile and inadequate, insofar as I am precluded from challenging the court's legal authority to remove me as counsel for my clients. The writing and filing of such a motion on individual cases

for individual clients would not solve the underlying problem arising from the unlawful general practice of the court.

10. As of the date of the filing of this Complaint, I have been removed from every one of the cases in which I was representing children before referees, including the ^{nineteen} (19) most recent group of "Orders of Removal and Appointment of New Counsel" received via email from the Court on or about April 5, 2007, effective as of April 9, 2007.

Further Affiant sayeth naught.


Deborah Trent (P34910)

Dated: 4.9.07

Subscribed and sworn to before me
On 9 day of April, 2007
My commission expires 7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF Macomb

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S.,
on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Docket No. 133616

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIALCIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

SUPPLEMENTAL AFFIDAVIT OF JEREMY BRAND

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

JEREMY BRAND, being first duly sworn, deposes and says that:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past twenty-five years.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
5. Up until I started receiving Notices of Removal, starting in November 2006, I had been led to believe by Court representatives that we individual attorneys who had been appointed to represent children would not be removed from our ongoing cases even after Judge Kelly started to implement the new group contract appointment system.
6. In response to all allegations, claims, and other assertions, please be advised that I am unable to completely respond to all the particular details because I do not have access to the statistics and other detailed information that is available to the authorities represented in the Third Judicial Court.
7. However, from reviewing the excerpts from the docket printout, attached to the Affidavit of Bernard Kost (Def. Exh. I), I was the duly appointed lawyer guardian ad litem (LGAL) for my former client Terri N, Case #01395330, from January 2001 until January 24, 2007, when I received an Order of Removal with Chief Judge Kelly's signature on it.
8. Between January 2001 and January 2007, (6 years), according to the docket printout attached to Bernard Kost's Affidavit, (Def. Exh. I), there were a total of 31 hearings regarding my former client.
9. Although the printout shows that substitute counsel appeared on the record 12 times, and although I do not have access to the same statistics and records that the Third Circuit Court

has, I believe that the records will reflect that I was present in the courthouse on all, or most, of the dates which indicate that substitute counsel appeared.

10. With respect to the hearings after January 25, 2005 and before October 11, 2006, alluded to by Chief Judge Kelly at ¶10 of her Affidavit (Def. Exh. A), I was in the courthouse on every one of those dates and had checked in with the courtroom.
11. As is a common occurrence in the Juvenile Court, after I checked in with the courtroom on the dates of my clients' hearings, prior to the case being heard I was required to leave the courtroom to attend other hearings in the courthouse. However, before leaving for the other courtrooms, I made sure to speak with all the relevant parties regarding Terri N's situation, ensuring that her specific needs and circumstances were addressed and that outstanding issues were resolved.
12. When I returned to the courtroom, the hearings had either begun or had been called without me. The substitutions that occurred were based on the decisions by the referee's clerk to proceed with those hearings without paging me or waiting for me to return to the courtroom.
13. Regardless of whether a substitute counsel appeared on the record at those, or any other hearings, I was present in the courthouse and in many instances in the courtroom, I made sure that Terri N's best interests were represented on each and every date that a hearing took place in her case.
14. Despite having been issued an Order of Removal on November 28, 2006, the records show that I was still considered to be attorney of record until March 2, 2007. (See docket printout attached to Bernard Kost's Affidavit, Def. Exh. I).
15. On April 10, 2007, nearly three months after the date of the Order of Removal in Terri N's case, replacing me with "MCLC" as the attorney of record, the docket printout reflects that a substitute attorney appeared at the scheduled hearing instead of "MCLC."
16. Whenever I did need to have a substitute appear for me in my absence, I made sure that the

substitute attorney was familiarized with the case and with the current circumstances surrounding the particular hearing for that day, in compliance with MCR 3.915(D)(2).

17. In addition, if I was dissatisfied with the outcome of any hearings from Terri N's case on a date when a substitution was utilized, I would immediately file a Petition for Review in front of a judge of the court.
18. During the two week period identified by the Chief Judge Kelly and Bernard Kost, (April 17-21 and August 7-11, 2006) where I supposedly "had substituted counsel appear for [me] in eight cases," (Def. Exh. A, Kelly Affidavit, ¶ 12), this is not true. In fact, during those two one-week periods, there were six hearings, not eight, where it was necessary for me to have substitute counsel, as indicated by the same dates (April 21, 2006 and August 9, 2006) and case numbers, Case #06450872 and Case #04426879, each appearing twice in the same docket printout.
19. Prior to being removed from my cases, during any single week, I appeared at an average of approximately 35-40 hearings on behalf of my clients in Juvenile Court. Therefore, the six substitutions referred to above by Chief Judge Kelly during the aforementioned two week period, indicate I attended more than 90% of the hearings scheduled in my cases.
20. Whenever I did need to have a substitute appear for me in my absence, I made sure that the substitute attorney was familiarized with the case and with the current circumstances surrounding the particular hearing for that day, in compliance with MCR 3.915(D)(2).
21. In every instance I make a diligent effort to vigorously represent my clients' interests, maintain the confidentiality of attorney-client relationship and proceed in the clients' best interest.
22. In the Wayne County Circuit Court Juvenile Section, the number of "assignments" that allegedly appear on a court record during any given year is not an accurate reflection of the number of cases to which I was actually assigned or the number of children that I actually

represented during that year and is very misleading. The fact that Bernard Kost's Affidavit, ¶7 (Def. Exh. I) alleges that I received 216 "assignments" in 2006 does not mean that I actually represented 216 children in child protective proceedings for that year.

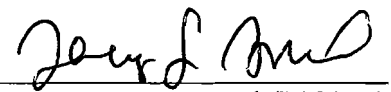
23. Many "assignments" do not actually become cases; rather, in many instances, an abuse and neglect petition that results in an "assignment" frequently ends up being withdrawn before it actually becomes a case. Also, many "assignments" may include re-assignments to ongoing cases when new petitions are filed.

24. In addition, the number of "assignments" in the record does not distinguish between child protective proceedings and delinquency proceedings, or violations of probation in delinquency proceedings.

25. In further response, I would indicate that my representation of all clients assigned to me through the Third Judicial Court Indigent Counsel System, have been represented in accordance with all concern for upholding my ethical responsibilities under the Michigan Code of Professional Conduct.

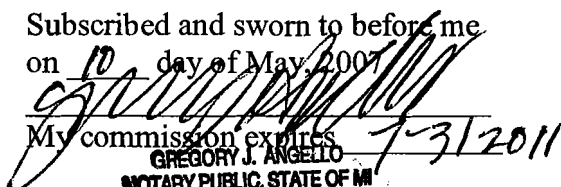
26. In my experience since November 2006, when the Court's "group" contract system was implemented under LAO 2006-08, with the exception of LADA's representation of children, the remaining "group" contractors do not laterally follow any of their cases. In the overwhelming majority of child protective hearings that I have attended, representing parents, a different contract group lawyer has appeared on behalf of the child.

Further Affiant sayeth naught.


Jeremy Brand (P32392)

Dated: 5/10/07

Subscribed and sworn to before me
on 10 day of May, 2007


My commission expires 7-31-2011
GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF OAKLAND

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Docket No. 133616

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIALCIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

AFFIDAVIT OF PATRICK DEVINE

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

PATRICK DEVINE, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in the State of Michigan since 1978.
3. For the past 29 years, I have specialized in the representation of parents and children in child protective and delinquency proceedings in Wayne County.
4. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
5. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
6. In the Wayne County Circuit Court Juvenile Section, the number of “assignments” that allegedly appear on a court record during any given year is not an accurate reflection of the number of cases to which I was actually assigned or the number of children that I actually represented during that year. The fact that Bernard Kost’s Affidavit, ¶7 (Def. Exh. I) alleges that I received 135 “assignments” in 2006 does not mean that I actually represented 135 children in child protective proceedings for that year.
7. Many “assignments” do not actually become cases; rather, in many instances, an abuse and neglect petition that results in an “assignment” frequently ends up being withdrawn before it actually becomes a case. Also, many “assignments” may include re-assignments to ongoing cases when new petitions are filed.
8. In addition, the number of “assignments” in the record does not distinguish between child protective proceedings and delinquency proceedings.
9. With respect to the “four” substitutions listed in the attachments to Bernard Kost’s Affidavit, those numbers are inaccurate and misleading. I only missed two hearings, but there were two petitions heard at each of the hearings, and the Court has listed those separately.
10. While I have always avoided using substitute counsel when I am able, in the cases where it has been unavoidable (for example, where I have had hearings in two different courtrooms at the same time or I have been out of town), I have met with my substitute counsel, helped them become familiar with the case, given them the case file to review when appropriate and otherwise complied with MCR 3.915(D).
11. On April 19, 2007, I was representing a parent on the matter set for permanent custody adjudication. The children were represented by MCLC attorneys. The particular MCLC attorney scheduled to appear did not show up. A replacement MCLC attorney eventually showed up about an hour later. After the MCLC attorney finally showed up, he was brought up

to speed on the case by the other attorneys involved in the matter. We had to schedule another court date at which time the MCLC attorney stated to the Court that the attorney for the children or MCLC only appears in Juvenile Court on given days of the week. (For example only Tuesday or Thursday.)

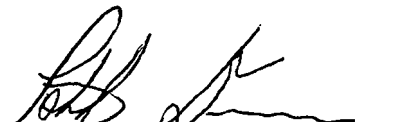
12. On two occasions I have been requested by court personnel to substitute or stand in for different attorneys, who are members of the contracted groups, who had not shown up for a scheduled matter.

13. Representatives of the Wayne County Juvenile Court told me that children would not be deprived of counsel that had already been assigned to them. Rather, "group" assignments would only be given to children entering the Court's jurisdiction.

14. I attempted to contact representatives of the Court to raise my concerns when it became apparent that the contract system was negatively impacting the rights of children.

15. Due to the confidentiality of the proposals and contracts themselves, it has been difficult to determine exactly how the new system is being administered. Regardless, I have been gathering information on the new system by my experiences in the courthouse.

Further Affiant sayeth naught.


Patrick Devine (P28479)

Dated: 5-11-07

Subscribed and sworn to before me
On 15 day of May, 2007

My commission expires 7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF Adrian

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Docket No. 133616

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIALCIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

AFFIDAVIT OF JULIE H. HURWITZ

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

JULIE H. HURWITZ, being duly sworn, deposes and says:

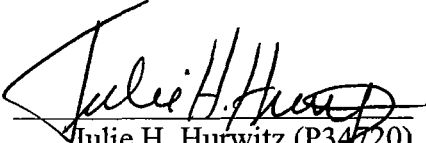
1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in the State of Michigan for 24 years, since 1983, after graduating from the University of Michigan Law School.
3. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
4. I have been a solo practitioner in Pleasant Ridge, Michigan until April, 2007, under the name of JULIE H. HURWITZ, P.C. In April, I started a small law partnership with William H. Goodman who has practiced civil rights and constitutional law in Michigan and New York for 42 years. The name of that partnership is GOODMAN & HURWITZ, P.C.
5. Since I started practicing law, I have specialized and have developed an expertise in the theory and practice of civil rights and constitutional law. In that regard, I have published articles relating to those subjects, have lectured to professional groups on topics related to those matters and currently teach the course on Civil Rights Litigation at the University of Detroit Mercy School of Law.
6. I have successfully litigated many cases on behalf of persons who have alleged violations of their constitutional rights. In those areas of litigation I have represented individuals, as well as representing large numbers of plaintiffs and classes in class actions and other complex litigation. This litigation has been undertaken in Wayne County Circuit Court and other courts throughout Michigan, in federal courts, in particular, the Eastern District of Michigan, in the U.S. Court of Appeals for the 6th Circuit and in appellate courts throughout Michigan and the United States, as both attorney for a party and on behalf of *amici*.
7. I write this affidavit, fully cognizant of the need and the responsibility to protect privileged information, in particular that protected by the work product and the attorney/client privileges and believe that I can instruct this Court with regard to the timing of the filing on this case without waiving privileges that I or my clients may wish to assert at some time in the future.
8. On November 11, 2007, I was first contacted by the Plaintiffs in the above-captioned matter. I was asked to investigate and research whether the plaintiffs' rights had been violated and whether and how the violations of those rights, if any, could be best rectified and remedied.
9. Since the factual background was both complex and vast, I undertook numerous intensive interviews and other investigation and research. I have also spent many hours researching issues of liability, jurisdiction, standing and other critical issues.
10. While I am routinely careful and precise before I commence any litigation, I am fully cognizant of the implications of signing my name, as counsel for the Plaintiffs, to a complaint against any judicial officer, let alone the Chief Judge of the Wayne County Circuit Court. Thus both care and precision in both research, pleading and written submissions to the Court, is of great importance, not only to me as an officer of the Court, but particularly to my clients, many of whom are also attorneys and officers of the Court.

11. This is particularly true when taking the extraordinary step of seeking superintending control from the Michigan Supreme Court.

12. Being thus aware of the implications and importance of this case, I been very careful, meticulous and precise in the work undertaken to date. In that regard, I have so far expended more than 200 hours since mid-November 2006 in all of the work I have done on behalf of these Plaintiffs.

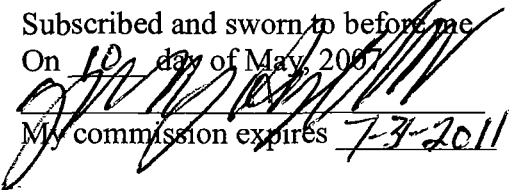
13. In addition to the sheer number of hours, this project has required of me, I, as a solo practioner until April of this year have had sole responsibility for other cases and clients. Regardless, given all that has been required of any attorney to bring such an action, this case has been handled professionally, carefully and with due diligence, under all the circumstances that have prevailed, as set forth herein and in the affidavits of the named Attorney Plaintiffs/Next Friends in this action.

Further Affiant sayeth naught.


Julie H. Hurwitz (P34720)

Dated: 5/10/07

Subscribed and sworn to before me
On 10 day of May, 2007


My commission expires 7-3-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF OKLAHOMA

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE
COUNTY JUVENILE COURT; SUE E. RADULOVICH, P.C.;
SUE E. RADULOVICH, as Next Friend of NADIA E., a
Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE
P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as
Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD;
MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a
Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of
NAOMI S., a Minor; JEREMY BRAND, as Next Friend of
KYISHIA R., a Minor; JEREMY BRAND, as Next Friend
of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY,
as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY,
as Next Friend of WILLIAM and WESLEY D., Minors;
PATRICK DEVINE; PATRICK DEVINE, as Next Friend of
JUSTIN S., on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

Docket No. 133616

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

AFFIDAVIT OF JOHN B. OWDZIEJ

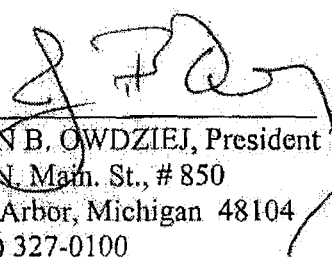
JOHN B. OWDZIEJ, being sworn, says:

1. I am the current President of the Trial Lawyers Association of Wayne County Juvenile Court and a practitioner in the Wayne County Juvenile Court for the last 17 years.

2. The Trial Lawyers Association of Wayne County Juvenile Court was formed in 1988 to provide training and support to the members of the private bar practicing in the Wayne County Juvenile Court and to promote the administration of due process and justice in the Court.
3. The Association has worked in unison with past chief judges of the Wayne County Circuit Court on issues ranging from compensation for attorneys, continuing legal education for the practitioners, as well as offering suggestions to improve efficiency in the court while maintaining the quality of legal representation.
4. On April 18, 2006, at the request of the Wayne County Circuit Court, I along with attorney and board member Raymond McDonald met with, Bernard Kost, Kelli Moore, Leonard Branka, Greg Kocab and Kelly Ramsey, here after "Circuit Court", to discuss the Trial Court's request for proposals to provide legal services for Juvenile Representation to the Juvenile Division of the Third Judicial Circuit Court under a "pod" system.
5. The "Circuit Court" requested that the Trial Lawyers Association of Wayne County Juvenile disseminate to the practitioners at Juvenile Court the "Circuit Court's" request for proposals.
6. The "Circuit Court" during the April 18, 2006 meeting represented to myself and Raymond McDonald that the future "pod" attorneys would only be assigned the children in new cases, as wards and delinquents with open cases would retain their existing counsel.
7. Although we were very concerned about the impact of this new "pod" system on the rights of the juveniles under the court's jurisdiction, and as President of the Trial Lawyers Association of Wayne County Juvenile Court, I knew that submitting a proposal by the Association may appear as acquiescing to the new system, I felt that, as an association of the most qualified and most experienced attorneys representing children under the Court's jurisdiction, the Association should show that we remain interested in providing effective assistance of counsel to children.
8. On November 9, 2006, when it became apparent that the Chief Judge was going to terminate the existing client relationships and replace counsel with a "pod" counsel, Ms. Hurwitz was retained to research the law, obtain the necessary facts and take steps to file a legal challenge to this new system.
9. The "Circuit Court" should have been placed on notice our intent to challenge this system since at least November 2006, when several articles that quoted Chief Judge Mary Beth Kelly and myself appeared in the press indicating that the Trial Lawyers was "considering taking legal action against the court, including a possible lawsuit." (Detroit Free Press, November 13, 2006).
10. Since that date, I have assisted in gathering information regarding the administration of

the new system, but contract terms are not available to the public, so obtaining such information took a substantial amount of time.

Dated: May 11, 2007

By 
JOHN B. OWDZIEJ, President TLAWCJC
101 N. Main. St., # 850
Ann Arbor, Michigan 48104
(734) 327-0100

Subscribed and sworn to before me on
May 11, 2007


Notary Public, MACOMB County

My commission expires: 7-31-2011

Affidavit

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF ARLIND

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY
JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E.
RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E.
RADULOVICH, as Next Friend of TOMMIE P., a Minor;
DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY
B., a Minor; MURIEL SHILLINGFORD; MURIEL
SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor;
JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI
S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a
Minor; JEREMY BRAND, as Next Friend of TERRI N., a Minor;
SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of
CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of
WILLIAM and WESLEY D., Minors; PATRICK DEVINE;
PATRICK DEVINE, as Next Friend of JUSTIN S.,
on behalf of themselves and all others similarly situated.

vs.

Docket No. 133616

Defendants.

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

SYDNEY RUBY, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in the State of Michigan since 1961.
3. For the past three years, I have specialized in the representation of parents and children in child protective and delinquency proceedings in Wayne County.
4. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
5. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
6. Until 2004, Cyril Levenson was my law partner and had been for more than 30 years. Mr. Levenson also specialized in the representation of children in the Wayne County Juvenile Court.
7. During the course of my partnership with Mr. Levenson, he would frequently substitute for me on my Juvenile Court cases, and even now that we are no longer law partners, until we were removed from our cases, he continued to substitute for me when necessary or when there was a conflict in my schedule.
8. I always made sure that Mr. Levenson, or whoever was substituting for me, would be fully familiarized with my cases and with the current circumstances surrounding the particular hearing for that day, in compliance with MCR 3.915(D)(2).
9. As of November 2006, prior to being removed from the cases in which I represented the children, I had been appointed counsel during that calendar year in approximately 19 child protective proceedings, representing juveniles and parents, and 19 children in

delinquency proceedings.

10. In the Wayne County Circuit Court Juvenile Section, the number of "assignments" that allegedly appear on a court record during any given year is not an accurate reflection of the number of cases to which I was actually assigned or the number of children that I actually represented during that year. The fact that Bernard Kost's Affidavit, ¶7 (Def. Exh. I) alleges that I received 83 "assignments" in 2006 does not mean that I actually represented 83 children in child protective proceedings for that year.

11. Many "assignments" do not actually become cases; rather, in many instances, an abuse and neglect petition that results in an "assignment" frequently ends up being withdrawn before it actually becomes a case. Also, many "assignments" may include re-assignments to ongoing cases when new petitions are filed.

12. In addition, the number of "assignments" in the record does not distinguish between child protective proceedings and delinquency proceedings.

13. I never represented more than 100 children a year as LGAL in child protective proceedings.

14. I never represented more than 100 children a year in delinquency proceedings.

15. In the case of William and Wesley D, after I was removed as their LGAL on or about January 5, 2007, and replaced by "MCLC," I was contacted by an MCLC attorney over the telephone. I responded to the telephone message, returned the call and left a detailed voice mail message in turn, indicating that I would give her all the information she needed, and advised her that she should go visit the clients and, because of Wesley's severe emotional problems, that she should meet with him and his therapist prior to the next scheduled hearing, which I did on numerous occasions. No one from MCLC ever

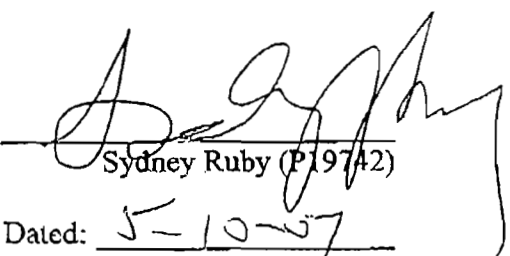
returned my telephone call.

Further Affiant sayeth naught.

Subscribed and sworn to before me
On 10 day of May, 2007.

My commission expires 7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF OAKLAND


Sydney Ruby (P19742)

Dated: 5-10-07

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Docket No. 133616

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIALCIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

SUPPLEMENTAL AFFIDAVIT OF SUE E. RADULOVICH

STATE OF MICHIGAN)
) ss:
COUNTY OF WAYNE)

SUE RADULOVICH, being first duly sworn, deposes and says that after reviewing the

response of Defendant and the supporting exhibits, responds to the inaccurate statements as follows:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past twenty-six years.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
5. After receiving removal orders, I filed a Motion to Strike the Removals with the Chief Judge. That motion was denied, but the Chief Judge conducted a “good cause” hearing and, after two hearings, permitted me to remain on the majority of my cases.
6. However, although the Chief Judge signed at least 20 orders for me to remain on cases representing children, complimenting my zealous advocacy and dedication to children, at every subsequent hearing, the computer system produces a new Order of Removal with the generic signature of the Chief Judge.
7. The Court administration has deleted all appearances of private attorneys from the computer system. Officially, therefore, neither I nor any other attorney, has actually been reinstated on the cases heard by the Chief Judge. Even if manually reinstated, the computer removes us through the generic removal orders at every subsequent hearing, which override the reinstatement orders of the Chief Judge. Contrary to the Chief Judge and Administrations’ affidavits (Def. Exhs. A and I), that we are reinstated, no one is reinstated.
8. Under the current removal system, the removed attorney is compelled to draft and file a motion and argue before the Chief Judge without compensation. The extraordinary fees provision is a red-herring. The Court does not grant extraordinary fees.

9. I requested extraordinary fees for time spent defending my right to remain on my cases, and for time which far exceeded the ordinary duties of an LGAL, and the request was denied. The Chief Judge wrongfully indicated my work was performed outside of the Juvenile Court, which was inaccurate. All fees requested were for Juvenile Court work. (See Pl. Exh. 27) The request for fees was denied. (See Pl. Exh. 28)

10. I first received information that the Court was planning to hire groups to represent children in April 2006. At that time, I had learned that the groups “pre-selected” had been invited for interview opportunities with the Court. When I learned of the then secret RFP, I requested an interview and was told there was no time available. Insistent, I sent the request in writing and was given a date shortly before the RFP deadline. I overheard an Administrator say that I would be the last person to receive a contract. When a comment was made regarding my being selected by the Chief Judge to participate on her various committees/task forces, an Administrator remarked that the Chief Judge foolishly surrounded herself with camels that “piss into the tent.” Although, I find it offensive to be compared to a pissing camel, or one who would “piss” on a Chief Judge, I found it more offensive that the groups had been pre-determined and that the RFP was a sham.

11. At my interview, the Court assured me that there would be no removal of counsel and that the system would be “phase-in” as to all newly filed cases, agreeing with me that the Court could not remove assigned counsel or LGALs. I believe that I was deceived with this information, so that I and the other private attorneys would be blind-sided by the sudden removal orders and that my proposal would not fit with administration’s true strategy. My proposal was premised on the plan that no attorney would be removed and that individuals would be full-time LGALs, responsible for their own caseload, with no part-time, court-hopping attorneys playing musical chairs with childrens’ lives.

12. Having been ignored by Administration for the RFP relating to LGALs, I sent an inquiring Email to the Chief Judge to get an earlier start on the process, if group expansion were, in fact, the plan of the Chief Judge. I received information that the Chief Judge was planning to use the group plan at Frank Murphy for criminal assignments and was told that the Chief Judge planned to use groups for parents. I was also told that the Chief Judge appreciated my representation of “borderline” mothers suffering from mental illness and planned to implement a program assigning me to all mentally ill parents. I have never been contacted regarding that plan.

13. I am aware of the horrors occurring in Wayne County Juvenile Court under the group plan. With no individual attorney assigned by the Court as LGAL for a child, there is no accountability.

14. I have personal knowledge regarding the following case involving a group, *In re Amanda Crow*--07-466540:

- a. An eleven year old girl was diagnosed with genital herpes and the parent’s attorney stated he tried desperately to find out who the attorney for the child was.
- b. He said he called MCLC on several occasions and that they had no idea who was assigned to the case. Group attorneys are assigned to courtrooms, not children.
- c. Parent’s attorney requested the case be dismissed, DHS said the medical proof was inconclusive.
- d. The MCLC attorney of the day, did not object to dismissal of a likely sexual abuse case, even though he admitted he had never seen or interviewed the child.

15. With the attorney of the day system, implemented by the new groups, who routinely switch cases, days, courtrooms, there is no responsibility and no accountability. They are not appointed by the court as required by law, but, rather, paid a flat rate per diem by the group.

16. During the two weeks in 2006 selected by Defendants, April 17-21 and August 7-11, in all of my cases I only used a substitute one time.

17. Whenever I did need to have a substitute appear for me in my absence, I made sure that the substitute attorney was familiarized with the case and with the current circumstances surrounding the particular hearing for that day, in compliance with MCR 3.915(D)(2).

18. In the Wayne County Circuit Court Juvenile Section, the number of "assignments" that allegedly appear on a court record during any given year is not an accurate reflection of the number of cases to which I was actually assigned or the number of children that I actually represented during that year. The fact that Bernard Kost's Affidavit, ¶7 (Def. Exh. I) alleges that I received 121 "assignments" in 2006 does not mean that I actually handled 121 children in child protective proceedings for that year.

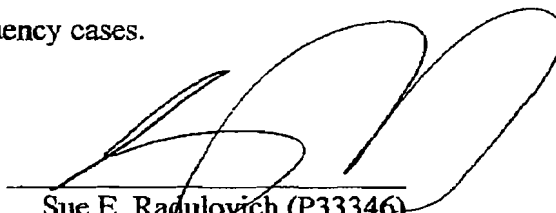
19. Many "assignments" do not actually get authorized; rather, in many instances, an abuse and neglect petition that results in an "assignment" frequently ends up being dismissed after DHS makes further inquiry, and many are transferred to another county. Also, many "assignments" may include re-assignments to the same ongoing cases when new petitions are filed. It would not be uncommon to receive two to three assignments for the same child.

20. In addition, the number of "assignments" in the record does not distinguish between child protective proceedings and delinquency proceedings.

21. I never represented more than 100 children a year as LGAL in child protective proceedings.

22. I never represented more than 200 children a year in delinquency cases.

Further affiant sayeth naught.


Sue E. Radulovich (P33346)

Dated: May 10, 2007

Subscribed and sworn to before me
On 10 day of May, 2007


My commission expires 7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF CAV/IN N

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

Docket No. 133616

Defendants.

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

[illegible]

MURIEL H. SHILLINGFORD, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past fifteen years.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. I am and have been at all relevant times qualified for assignment as counsel for indigent children/or their parents in the Third Circuit Court Family Division-Juvenile Section.
5. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
6. In the Wayne County Circuit Court Juvenile Section, the number of “assignments” that allegedly appear on a court record during any given year is not an accurate reflection of the number of cases to which I was actually assigned or the number of children that I actually represented during that year. The fact that Bernard Kost’s Affidavit, ¶7 (Def. Exh. I) alleges that I received 102 “assignments” in 2006 does not mean that I actually represented 102 children in child protective proceedings for that year.
7. Many “assignments” do not actually become cases; rather, in many instances, an abuse and neglect petition that results in an “assignment” frequently ends up being withdrawn before it actually becomes a case. Also, many “assignments” may include re-assignments to ongoing cases when new petitions are filed.
8. In addition, the number of “assignments” in the record does not distinguish between

child protective proceedings and delinquency proceedings.

9. I never represented more than 100 children a year as LGAL in child protective proceedings.

10. I never represented more than 200 children a year in delinquency cases.

11. Up until I started receiving Notices of Removal, starting in November 2006, I had been explicitly told that we individual attorneys who had been appointed to represent children would not be removed from our ongoing cases even after Judge Kelly started to implement the new group contract appointment system.

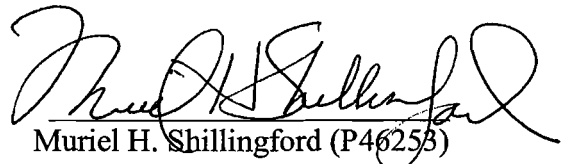
12. During the two week period identified by the Chief Judge Kelly and Bernard Kost, (April 17-21 and August 7-11, 2006) where I supposedly “had substituted counsel appear for [me] in four cases,” (Def. Exh. A, Kelly Affidavit, ¶ 12), this is not true. In fact, there were no substitutions for me in the April week, and there were only two hearings, not four, where it was necessary for me to have substitute counsel in the August week, as indicated by the same date and case number, August 7, Case #03415715, appearing three times in the same docket printout.

13. During the week of August 7-11, 2006, the reason that I needed substitute counsel for those two hearings was because I was preparing to take a group of more than 50 underprivileged children to a summer camp in Howell, Michigan (Camp Talahi), the following week, August 13-17. This program is sponsored by the Plymouth Congregational Church in Detroit.

14. Whenever I did need to have a substitute appear for me in my absence, I made sure that the substitute attorney was familiarized with the case and with the current circumstances surrounding the particular hearing for that day, in compliance with MCR 3.915(D)(2).

15. Regarding the assertion by Chief Judge Kelly that “few motions or trial briefs would ever be filed by assigned counsel,” (Kelly Affidavit ¶9), this is highly misleading, because in the Wayne County Juvenile Court system, motions are only required to be filed in two instances: a) when seeking to present an alibi witness in a delinquency case; and 2) when seeking to determine competency in a delinquency case. The failure to file written motions regarding other matters is not a reflection of the “level of representation.”

Further Affiant sayeth naught.


Muriel H. Shillingford (P46253)

Dated: 5/11/07

Subscribed and sworn to before me

On 11 day of May, 2007.

My commission expires 7-31-2011

GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF CHARLENO

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

[illegible]

DEBORAH TRENT, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in Michigan.
2. I have actively practiced law in Wayne County Circuit Court-Juvenile Division for the past twenty-two years.
3. I am familiar with the court rules, statutes, case law, procedures and obligations concerning attorney and Lawyer-Guardian Ad Litem (LGAL) assignments to represent children.
4. The facts stated in this Affidavit are within my own personal knowledge and if I am called upon to testify, these facts would be admissible as evidence.
5. Up until I started receiving Notices of Removal, starting in November 2006, I had been explicitly told by Chief Judge Kelly that we individual attorneys who had been appointed to represent children would not be removed from our ongoing cases even after Judge Kelly started to implement the new group contract appointment system.
6. During the two weeks in 2006 selected by Defendants, April 17-21 and August 7-11, in all of my cases I only used a substitute one time.
7. Whenever I did need to have a substitute appear for me in my absence, I made sure that the substitute attorney was familiarized with the case and with the current circumstances surrounding the particular hearing for that day, in compliance with MCR 3.915(D)(2).
8. I was the duly appointed lawyer guardian ad litem (LGAL) for my former client Tony B, Case #0038631, from March 2000 until November 28, 2006, when I received an Order of Removal with Chief Judge Kelly's signature on it.
9. Between March 2000 and January 2007, (nearly 7 years), according to the docket printout attached to Bernard Kost's Affidavit, (Def. Exh. I), there were a total of 42 hearings regarding my former client, (not including Preliminary Hearings [PRH], because we do not receive notice of those hearings), at which I made 35 appearances on the record and substitute counsel appeared

on the record 7 times, on average once a year.

10. Contrary to Chief Judge Kelly's Affidavit, ¶11, (Def. Exh. A), between October 26, 2004 and February 3, 2006, there were only three hearings, not four, and the records will reflect that although a substitute attorney is shown to have appeared on the record, I was in the courthouse on all of those dates and I had actually checked in for those hearings and had spoken with all the relevant parties regarding my former client Tony B's situation. Prior to my case being heard on those dates, however, I was required to leave the courtroom to attend other hearings in the courthouse. When I returned to the courtroom, the hearings had either begun or had been called without me. The substitutions that occurred were likely based on the decisions by the referee's clerk to proceed with those hearings without paging me or waiting for me to return to the courtroom. My client Tony B was not in the courtroom for any of those hearings.

11. Despite having been issued an Order of Removal on November 28, 2006, the records show that I was still considered to be attorney of record until April 10, 2007. (See docket printout attached to Bernard Kost's Affidavit, Def. Exh. I).

12. I appeared at two hearings between November 28, 2006 and April 10, 2007, one on December 6, 2006 and one on January 10, 2007.

13. I appeared on those dates because no one from MCLC, the "group" that was appointed to replace me as Tony's LGAL, had come forward to identify him or herself as Tony's attorney, and Tony and his foster mother were in constant contact with me during that time.

14. Subsequently, some time at the end of January 2007, when I appeared in the referee's courtroom to try to deal with an emergency situation regarding Tony's placement, (an appearance that is not even listed on the docket printout), I was directed to speak to MCLC attorney Ben White, who told me, "that's not my case and I'm not going to deal with it."

15. Later that day, another MCLC attorney came into the courtroom, Brenda Springs, who did

White, who told me, "that's not my case and I'm not going to deal with it."

15. Later that day, another MCLC attorney came into the courtroom, Brenda Springs, who did not hesitate to authorize me to communicate directly with Tony's foster mother to attempt to resolve his crisis.

16. In the Wayne County Circuit Court Juvenile Section, the number of "assignments" that allegedly appear on a court record during any given year is not an accurate reflection of the number of cases to which I was actually assigned or the number of children that I actually represented during that year. The fact that Bernard Kost's Affidavit, ¶7 (Def. Exh. I) alleges that I received 118 "assignments" in 2006 does not mean that I actually represented 118 children in child protective proceedings for that year.

17. Many "assignments" do not actually become cases; rather, in many instances, an abuse and neglect petition that results in an "assignment" frequently ends up being withdrawn before it actually becomes a case. Also, many "assignments" may include re-assignments to ongoing cases when new petitions are filed.

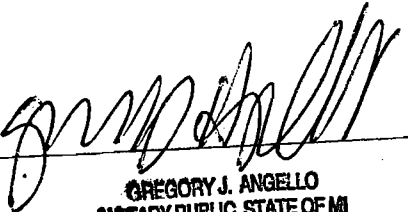
18. In addition, the number of "assignments" in the record does not distinguish between child protective proceedings and delinquency proceedings.

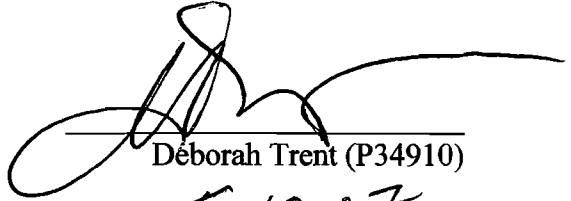
19. I never represented more than 100 children a year as LGAL in child protective proceedings.

20. I never represented more than 100 children a year in delinquency cases.

21. As of November 2006, prior to being removed from my cases, I represented approximately 86 children in 63 child protective proceedings.

Further Affiant sayeth naught.


GREGORY J. ANGELLO
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jul 31, 2011
ACTING IN COUNTY OF *TRACLMAN*


Deborah Trent (P34910)
Dated: *5.10.07*

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Attorneys at odds with Wayne Co. judge reassigning children cases

DETROIT -- Hoping to speed up juvenile cases in Wayne County Family Court, hundreds of abused, neglected and delinquent children soon will get new representation in court _ a move some attorneys say is illegal.

Circuit Court Chief Judge Mary Beth Kelly has begun replacing attorneys previously assigned to handle these cases with new teams of lawyers assigned to specific courtrooms, the Detroit Free Press reported Monday. Kelly said the changes will improve legal representation for children.

But attorneys who have been representing the children on a case-by-case basis _ called lawyers-guardians ad litem _ say the change will disrupt the continuity of legal representation. And many say they are offended that they will be asked to turn over their files to new attorneys.

"It's illegal and it's contrary to the court rules, at a minimum," John Owdziej, president of the Trial Lawyers Association of Wayne County Juvenile Court, said. "The request to turn over your files is really unprecedented."

Owdziej predicts the new LGALs soon would find themselves overwhelmed with cases and unable to follow a court mandate to visit child clients every three months.

Kelly's idea, which has been approved by the Michigan Supreme Court, is to have teams of LGALs working in the same courtrooms so that all of the cases heard by a referee would have the same set of lawyers representing the children. Kelly said about 15 lawyers would be involved.

"Having specific teams of lawyers assigned to specific courtrooms allows the court to implement docket management schedules that will allow us to be more efficient," Kelly said. "If children's lawyers are assigned to a specific courtroom, their schedules are going to match the schedule of the judge or referee."

So far, the court has contracts with two groups of lawyers to do the work: the Michigan Children's Law Center and the Legal Aid and Defender Association. Kelly said the county is in negotiations for three more contracts to cover all 13 referee courtrooms. The contracts will cost about \$4.7 million this fiscal year and cover about 5,682 petitions representing an unknown number of children, Kelly said.

Information from: Detroit Free Press, <http://www.freep.com>

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She had no idea they'd help her shape her future.



Published: November 13, 2006 3:00AM

WAYNE COUNTY

Court reassigns cases involving kids

Some attorneys call move illegal

November 13, 2006

BY JACK KRESNAK
FREE PRESS STAFF WRITER[Email this](#) [Print this](#)

Hundreds of abused, neglected and delinquent children in Wayne County soon will get new attorneys to represent them in court -- a move some attorneys say is illegal.

Hoping to speed up the handling of cases in the juvenile division of Wayne County Family Court, Wayne County Circuit Court Chief Judge Mary Beth Kelly has begun replacing attorneys previously assigned to handle these cases with new teams of lawyers assigned to specific courtrooms.

Kelly said the changes will improve legal representation for children who are either the victims of abuse or neglect or who have committed crimes or other offenses.

But attorneys who have been representing the children on a case-by-case basis -- called lawyers-guardians ad litem (LGALs) -- say the change will disrupt the continuity of legal representation. And many say they are offended that they will be asked to turn over their files to new attorneys.

John Owdziej, president of the Trial Lawyers Association of Wayne County Juvenile Court, said the move violates the rights of children and the group is considering taking legal action against the court, including a possible lawsuit.

"It's illegal and it's contrary to the court rules, at a minimum," Owdziej said. "The request to turn over your files is really unprecedented."

Owdziej predicted that the new LGALs soon would find themselves overwhelmed with cases and unable to follow a court mandate to visit child clients every three months.

Kelly's idea, which has been approved by the Michigan Supreme Court, is to have teams of LGALs working in the same courtrooms so that all of the cases heard by a referee would have the same set of lawyers representing the children. Overall, about 15 lawyers would be involved, Kelly said.

So far, the court has negotiated contracts with two groups of lawyers to do the work: the Michigan Children's Law Center and the Legal Aid and Defender Association, which has represented a large percentage of children in Wayne County's juvenile court for years.

Kelly said the county is in final negotiations for three more contracts to cover all 13 referee courtrooms. The contracts will cost about \$4.7 million this fiscal year and cover about 5,682 petitions representing an unknown number of children, Kelly said.

Kelly said the court is taking the action to increase the percentage of cases that meet strict time requirements in juvenile cases. According to Michigan

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HOTTEST CONCEPTS
in the restaurant industry
now available in Detroit.



Supreme Court guidelines, juvenile courts should adjudicate 90% of their cases within the time standards. Kelly said the court in Wayne County meets the standards only about 50% of the time.

"Having specific teams of lawyers assigned to specific courtrooms allows the court to implement docket management schedules that will allow us to be more efficient," Kelly said. "If children's lawyers are assigned to a specific courtroom, their schedules are going to match the schedule of the judge or referee."

Kelly said changing children's attorneys would occur only after a trial where the court takes legal jurisdiction over a child or after the first quarterly review of a case.


The cases of all children who are court wards because of abuse or neglect are reviewed every three months and LGALs are required to visit their clients before each hearing.

Kelly said she doesn't believe there is a solid attorney-client relationship between many children and their lawyers.

"We find that many times because of the high rate of substitution, our children don't know who their lawyers are to begin with," the judge said. "We believe that the representation of children will be greatly enhanced by the new system."

Contact **JACK KRESNAK** at 313-223-4544 or jkresnak@freepress.com.

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• BERNARD J. KOST
Executive Court Administrator

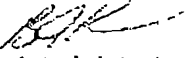


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DETROIT, MICHIGAN 48226-3413

MEMORANDUM

To: All Third Judicial Circuit Staff

From: Bernard J. Kost 
Executive Court Administrator

Date: March 23, 2007

Re: Media Contact

Chief Judge Rule MCR 8.110(C)(2)(e) states that as the presiding officer of the court, a chief judge shall represent the court in its relations with the Supreme Court, other courts, other agencies of government, the bar, the general public, and the news media, and in ceremonial functions.

Therefore, in accordance with this rule, any matter relating to the news media shall be referred to the Chief Judge's office.

cc: Chief Judge Mary Beth Kelly

JULIE H. HURWITZ, P.C.
ATTORNEYS AND COUNSELORS

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DETROIT OFFICE
1930 BALMORAL DRIVE
DETROIT, MICHIGAN 48203

OF COUNSEL
REOSTI, JAMES AND SIRLIN, P.C.

May 10, 2007

Clerk to the Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa Street
Lansing, Michigan 48909

Re: Trial Lawyers Association of Wayne County Juvenile Court v Hon.
Mary Beth Kelly, et al
Docket No. 133616

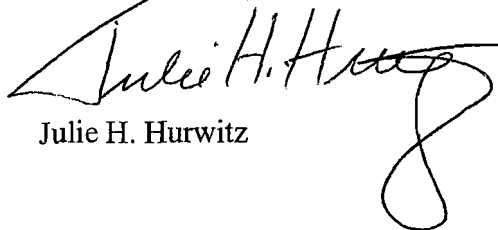
Dear Clerk of the Court:

Enclosed for filing please find an original and 7 copies of the Motion for Appointment of Next Friends, List of Exhibits for the Motion for Appointment of Next Friends and Certificate of Service and the \$75.00 filing fee made payable to the State of Michigan in the above-referenced matter.

Thank you for your attention to this matter.

Very truly yours,

JULIE H. HURWITZ, P.C.



Julie H. Hurwitz

JJH:gja
Enclosures
cc: Gregory J. Kocab, Esq.

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

TRIAL LAWYERS ASSOCIATION OF WAYNE COUNTY JUVENILE COURT; SUE E. RADULOVICH P.C.; SUE E. RADULOVICH, as Next Friend of NADIA E., a Minor; SUE E. RADULOVICH, as Next Friend of TOMMIE P., a Minor; DEBORAH TRENT; DEBORAH TRENT, as Next Friend of TONY B., a Minor; MURIEL SHILLINGFORD; MURIEL SHILLINGFORD, as Next Friend of KIMBERLY S., a Minor; JEREMY BRAND; JEREMY BRAND, as Next Friend of NAOMI S., a Minor; JEREMY BRAND, as Next Friend of KYISHIA R., a Minor, JEREMY BRAND, as Next Friend of TERRI N., a Minor; SYDNEY L. RUBY; SYDNEY L. RUBY, as Next Friend of CLARENCE S., a Minor; SYDNEY L. RUBY, as Next Friend of WILLIAM and WESLEY D., Minors; PATRICK DEVINE; PATRICK DEVINE, as Next Friend of JUSTIN S., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Docket No. 133616

HON. MARY BETH KELLY, CHIEF
JUDGE THIRD JUDICIAL CIRCUIT COURT,
in her official administrative capacity; THIRD
JUDICIAL CIRCUIT COURT, jointly and severally,

Defendants.

JULIE H. HURWITZ (P34720)
JULIE H. HURWITZ, P.C.
Attorney for Plaintiffs
23880 Woodward Avenue
Pleasant Ridge, Michigan 48069
(248) 691-4200

GREGORY J. KOCAB (P31584)
Office of the Judicial Assistant
Third Circuit Court
Attorneys for Defendants
2 Woodward Avenue, Room 742
Detroit, Michigan 48226
(313) 224-5262

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon all parties of record to their respective business addresses via First Class Mail Delivery hereon May 10, 2007.

I declare that the above-statement is true to the best of my knowledge, information and belief.



Gregory Angello