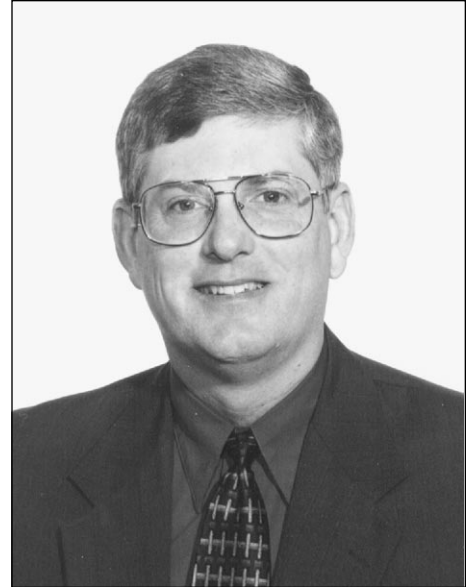


Court Rule and Legislative Changes

by **Kevin M. Oeffner**
Circuit Court Administrator



Several court rules and laws have been promulgated recently that will affect the way that courts and law practitioners do business. Some of the changes are minimal, others more significant. Others will have no discernible effect but are noteworthy for various reasons. What follows are brief highlights of the changes.

Several new laws affect the Friend of the Court. Public Act 565 of 2002 creates an administrative process to effectuate a lien against, and to levy the bank account of, a payer of child support who is two or more months in arrears. The law permits a Title IV-D agency to serve a financial institution with a notice of lien and levy. The institution will send the money to the state, which will disburse the money to the child support payee. The payer may object to the lien and levy, in which case an administrative hearing will be held.

Public Act 568 of 2002 contains several new provisions. The term "parenting time violation" is newly defined as "an act or omission that interferes with a parent's right to interact with a child as governed by the court order." Additionally, the Friend of the Court has the right to refuse to enforce parenting time violations when 1) the complaint is not timely; 2) the order does not address the issue in the complaint; or 3) the party complaining has two or more unwarranted complaints, was assessed costs, and has not paid the costs.

Also included in Public Act 568 are provisions that allow the court to 1) order a person found in contempt for violating a parenting time order to participate in a community corrections program, and 2) assess sanctions against a person who engages in a parenting time dispute in bad faith. The sanctions range from \$250 for the first violation to \$1,000 for the third.

Public Act 569 of 2002 allows a person seeking health care reimbursement to demand payment from the other parent within 28 days after insurance coverage has paid its share. The complaint must be submitted to the Friend of the Court within one year of the date the expense was incurred, with some exceptions. The Friend of the Court will submit the complaint to the applicable parent. If no objection is filed within 21 days, the amount will be added as a medical support arrearage.

Perhaps the most notable change to the Friend of the Court process is that Public Act 571 of 2002 allows parties to opt out of the Friend of the Court. In new cases, parties may request to opt out with their initial pleading. In current Friend of the Court cases, the parties may request to opt out by filing a motion before the court. The court may approve the motion unless there exists evidence 1) of domestic violence, 2) of uneven bargaining positions, 3) that a party has not applied for Title IV-D services against the best interest of a party or child, 4) that the case is a Title IV-D case because of past or current public assistance, or 5) that the parties have failed to file with the court the SCAO-approved form agreeing to forgo Friend of the Court services. When parties opt out, the Friend of the Court will discontinue all enforcement activities. All of the Public Acts referenced above took effect on December 1, 2002.

Effective October 1, 2003, courts and jury boards must exclude convicted felons from jury service, pursuant to MCL 600.1307a(1)(e). Up to this point, a felony conviction has not been a mandatory exclusion from jury service. While on the topic of jury service, a series of bills aimed at increasing juror compensation were enacted into law late in 2002. Jurors will be compensated at the rate of \$25 per day of service for the first day (up from \$15 as previously set by statute) and \$40 for each day of service after the first day. The State of Michigan will compensate counties for the increase in juror per diems via an increase in the jury demand fee from \$60 to \$85 (Public Act 605 of 2002), and an increase in the Driver License Clearance fee from \$25 to \$45 (Public Act 741 of 2002). Both Acts took effect on January 1, 2003. The court will be required to submit a report to the SCAO semi-annually identifying the expenditure incurred for each preceding six-month period due to the increase in juror compensation.

Public Act 682 of 2002 requires each chief circuit judge and chief probate judge in a judicial circuit to adopt a family court plan for that circuit. Many of you will recall that we adopted a family division plan in 1997, a few months prior to the family division's implementation on January 1, 1998. Much of the work necessitated by Public Act 682 has

already been done, however, changes to our plan will be required to conform to the provisions of the Act.

The Supreme Court adopted Michigan Court Rule 8.123 to take effect on January 1, 2004. The rule requires each trial court to adopt a local administrative order that presents the court's procedures for selecting, appointing and compensating indigent defense counsel. As in the case of the family court plan, some of our work may be done in that we have a Supreme Court-approved plan for appointing counsel on adult criminal cases. That plan will be modified to conform to the new court rule. Additionally, plans will be developed pertaining to the appointment of defense counsel on juvenile and probate cases. I will devote future columns to a more detailed explanation of the changes that will occur when the plans related to the appointment of indigent defense counsel and the family court are finalized.

As you may know, legislation was approved in 2002 halting the state's 25-year practice of imposing mandatory minimum sentences for drug crimes. The legislation (Public Acts 665, 666, and 670 of 2002) took effect on March 1, 2003. Judges will now have more discretion in the imposition of drug-related sentences. Additionally, the maximum amount of drugs involved related to specific charges has been increased. The legislation also eliminates references in the criminal code to "life probation" and requires the court to take into account a pattern of criminal behavior arising from drug use when the amounts are equal to or in excess of 50 grams.

Public Acts 203 and 204 impose changes on the manner in which violations of personal protection orders are

processed. Law enforcement agencies must fingerprint persons arrested for violations. The disposition of such charges must be reported to the Michigan State Police who, in turn, must collect and file criminal history information on those convicted of violations. The PPO changes noted above became effective on October 1, 2002.

Finally, the Supreme Court adopted Administrative Order 2002-4 that requires each circuit court to develop a plan for reviewing cases involving children who are absent from court-ordered placements without permission from the court. The Family Independence Agency (FIA) is responsible for supervising children who are under the jurisdiction of the court because of abuse or neglect. The family division is entrusted with protecting the welfare of children under its jurisdiction. Accordingly, the FIA and Circuit Court will coordinate efforts to locate missing children. A special docket has been created under the supervision of the chief circuit judge so that these cases may be afforded priority and a timely review. Please see Lisa Langton's column in this edition of LACHES for more information.

Those are the highlights. I'll reserve space from time to time to keep you informed of new court rules and laws that will impact the court or your practice before the court.

Until next month...

NOTE: Some of the Public Act descriptions above related to the Friend of the Court changes were compiled by the Office of the State Court Administrator and are reproduced for this article with its permission.



Racing against time

*to make the courthouse
filing deadline?*

Use the OCBA File-by-Fax Service!

Circuit Court Mediation Summaries • Praecipes • Acceptances/Rejections • Witness Lists
Appearances • Briefs • Motions • Civil Actions • Driver's Restoration • **AND MUCH MORE!**

Phone: (248) 858-1585 – Fax: (248) 338-9540

Copies only 10 cents/page • Fax services discounted for OCBA members • We bill you for copies & faxes