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January 19, 2009

Ms. Gail Hall, CEO
Pathways Community Mental Health
200 West Spring Street
Marquette, MI 49855

Dear Ms. Hall:

You have requested a legal opinion on whether parenting time violation issues constitute reportable child abuse/neglect under Michigan law. Obviously the nature of any parenting time dispute or violation is in itself unique to the facts presented. That being said, it is my opinion that an alleged violation of a parenting time order is not, per se, reportable as child abuse or neglect.

The underlying fact situation determines the duty to report not the claim that parenting time was denied. Myriad direct enforcement mechanisms exist for a parent to complain that he or she did not receive parenting as provided in a court order or judgment. If there is an open Friend of the Court case, as is typical for most divorce judgments and custody orders, the FOC must initiate enforcement of parenting time if it receives a written complaint setting forth specific facts that constitute a parenting time order violation.

Under Michigan Compiled Law (MCL) 552.602(e), a parenting time violation means that an individual's act or failure to act interferes with a parent's right to interact with his or her child in the time, place, and manner established in the parenting time order if the individual accused of interfering is subject to the order. The Friend of the Court has 14 days to send a copy of the complaint to each party to the parenting time order. MCL 552.511b(2). The Friend of the Court, upon request, must assist the parent in preparing the written complaint.

If the Friend of the Court determines that enforcement is merited, it can do one or more of the following: (1) apply a makeup parenting time policy, (2) commence civil contempt proceedings, (3) file a motion for modification of the parenting time order, (4) schedule Friend of the Court mediation with the consent of the parties (pursuant to MCL 552.513, or (5) schedule a joint meeting under MCL 552.642a.

Ms. Gail Hall
January 16, 2009
Page Two

Modifications of parenting time orders are within the exclusive jurisdiction of the Family Court Division of the Circuit Court, including, when appropriate, the Juvenile Court and/or Juvenile Judge in a protective proceeding. If a parent believes that a denial of parenting time constitutes abuse or neglect, he or she must be prepared to alleged facts to support that claim, not merely state that parenting time didn't happen therefore it must be abuse or neglect. The mere fact that a therapist in a confidential relationship learns that a parent has denied parenting time does not vest Child Protective Services with cause to investigate, especially in the absence of a parental complaint to the Friend of the Court.

Parenting time disputes and modification of parenting time orders are decided under the Michigan Child Custody Act. See MCL 722.27. If there is a post-judgment parenting time dispute in an open Friend of the Court case, after conducting an evaluation commensurate with the dispute, the Friend of the Court may file a motion for modification of the parenting time order to ensure parenting time, unless contrary to the best interests of the child. MCL 552.641(1)(c) and 552.517d(1). Thus, CPS does not even have primary jurisdiction to investigate denials of parenting time, especially when there are no factual allegations of harm to the child. A conclusory allegation that denials or parenting time equates with abuse or neglect would only be referred by CPS back to the complaining parent to invoke the Friend of the Court process.

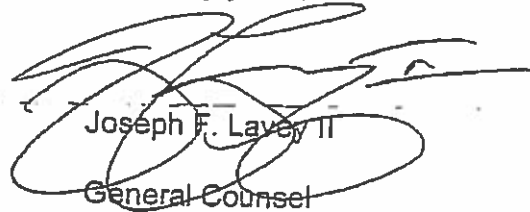
The Family Division of the Circuit Court has jurisdiction over proceedings under the Child Custody Act, which includes parenting time issues, and exclusive jurisdiction over cases involving Personal Protection Orders. The court with jurisdiction in domestic relations cases may issue ex parte and temporary orders with regard to any matter within its jurisdiction, including protective orders against domestic violence and/or contempt citations for unjustified denials of parenting time. Even in domestic abuse cases, if a parent's custody or parenting time rights will be adversely affected by a PPO, the issuing court must determine whether conditions should be specified Order to accommodate the respondent's rights or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions.

In essence, the direct Court enforcement mechanism, whether through the Friend of the Court or the parent, is expeditious compared to filing a Protective Services Complaint, awaiting investigation, interviews, written reports, etc. The parent may file a motion to modify the existing custody or parenting time order with the court having jurisdiction of that order and may request a hearing. In such a case, the hearing must be held within 21 days.

Ms. Gail Hall
January 19, 2009
Page Three

In conclusion, the proposition that a mere denial of parenting time, without more, constitutes abuse or neglect is ridiculous. To hold otherwise would ostensibly require the Friend of the Court Office to report every parenting time complaint within its jurisdiction to Child Protective Services (CPS). This proposition is ludicrous because it would divest the preexisting statutory scheme that enables the Friend of the Court to investigate and recommend the appropriate sanction to the Circuit Court.

Very truly yours,



Joseph F. Lavery II
General Counsel

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