



The General Practitioner

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EDITOR'S NOTES

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Editor's Note: We Practice in a Dangerous Time

By Howard Yale Lederman, Editor

Introduction

We practice in a dangerous time for our world, our nation, our profession, and ourselves. As a nation, we are living or reliving through several crises at once. Any one of these crises would impact our lives, our practices, our social relations tremendously. Confronting and overcoming any one of these crises would compel us to change how we live, how we relate to others, and how we practice law. In introducing this newsletter issue, I focus on the coronavirus crisis. This crisis will be a future newsletter issue focus. But we have been living through it for over six months, and we are living through it today.

If we had a real national leader, in January 2020, he or she would have aroused us to the fact that as a nation and as a world, we are in this coronavirus crisis together. He or she would have spoken like President Roosevelt did on December 9, 1941, two days after the Japanese attack on Pearl Harbor:

“We are now in this war. We are all in it—all the way. Every single man, woman, and child is a partner in the most tremendous undertaking of our American history. We must share together the bad news and the good news, the defeats and the victories—the changing fortunes of war.

“This Government will...trust in the stamina of the American people, and will give the facts to the public just as soon as two conditions have been fulfilled: first, that the information has been definitely and officially confirmed; and, second, that the release of the information at the time it is received will not prove valuable to the enemy directly or indirectly. Most earnestly, I urge my countrymen to reject all rumors.

“If you feel that your Government is not disclosing enough of the truth, you have every right to say so. But in the absence of all the facts, as revealed by official sources, you have no right in the ethics of patriotism to deal out unconfirmed reports in such a way as to make people believe that they are the gospel truth.

“Every citizen, in every walk of life, shares this responsibility. The lives of our soldiers and sailors—the whole future of this nation—depend on the manner in which each and every one of us fulfills his [or her] obligation to our country.”¹

But we do not have such national leadership. Until October 2, 2020, on the state level, we had Governor Whitmer's executive orders. Even before the Michigan Supreme Court held the 1945 and 1976 state laws providing the legal authority for these executive orders unconstitutional, our state had been greatly divided on whether to implement them. So, we wake up to daily counts of world and national coronavirus cases. During some weeks, the coronavirus afflicts more people, others fewer. Hard as we might try to “get used to it,” we cannot do so 100 percent. We go to some places but not to others. We see more of our friends and family members online. We do not vacation as much or go as far. We wear masks. We put them on and take them off. We socially distance. We wash our hands more often. When walking outside, we are aware of how far or how close every single person is to us.

In our practices, as one attorney recognized, “in just two weeks we got booted 20 years forward from the traditional practice of law[.]”² This recognition is most true regarding the use of remote videoconferencing technology, like Zoom, TeamViewer, AnyDesk, and Cisco Webex, for bench trials, court hearings, arbitration hearings, mediation hearings, depositions, client and potential client meetings, bar association meetings, and other legal organization meetings. The technology has been there for at least 12 years. But there was no need and thus no push to change from in-person to remote videoconferencing technology. Over six months ago, that changed. Over six months ago, that need arrived, and soon afterward, that push arrived. So, almost all our bench trials, court hearings, arbitration hearings, mediation hearings, depositions, client and potential client meetings, bar association meetings, and other legal organization meetings are virtual. “Videoconferencing, working remotely, and adapted marketing efforts are enabling...law firms to continue...serving their clients.”³ Indeed, for about two months, most attorneys worked far more at home and far less at the office. Even now, many attorneys divide their time between the two.

The coronavirus crisis has impacted on litigators in general and on specific practice areas. Litigators representing contingency fee clients are among the most severely impacted. They collect their fees only after their cases are resolved.⁴ Though “pilot programs for civil jury trials have emerged,” nobody knows their “long-term” impacts.⁵ “In anticipation of defaults, forbearances, and alterations of short-term payment plans, business owners are likely to ramp up collection efforts[,]” leading to more work for collection attorneys.⁶ With more layoffs of professional employees, and with many starting their own new businesses, noncompetition provision cases will probably increase.⁷ Lawyers specializing in helping start-up companies will probably see more business.⁸

The impact of the coronavirus crisis on our economy has also impacted on our practices. As one North Carolina criminal defense attorney experienced, before the coronavirus crisis, “she was going to court daily, visiting upwards of two to three courtrooms a day. Now she attends emergency hearings about once per week related to Department of Social Services cases. “We have really gone from 90 miles per hour to maybe 10,” she said.⁹ Due to the coronavirus crisis, her “criminal caseload has stopped. Mediation in civil and family cases is out of the question because of social distancing protocols. . . . The caseload could also change—and quickly. Tens of thousands of North Carolinians have already filed unemployment insurance claims, and many more have reported a steep reduction in income after state and local governments closed restaurants and businesses for nearly two months.”¹⁰ Increased unemployment would impact on that state’s Indigent Defense Services and other states’ similar organizations, because more criminal defendants would be indigent, and these organizations would not have enough attorneys to handle the larger number of cases.¹¹

Some solo practitioners “have taken second jobs, like driving for Uber or running food delivery services, to pay their bills. In other cases, they’re shifting their law practices to meet clients’ needs specific to the pandemic, like drawing up wills for first responders and frontline workers. In more dire situations, solo attorneys and small law firms are facing the prospect of downsizing or shuttering their practices altogether.”¹² In North Carolina, according to the Administrative Office of the Courts, from the first week of March 2020 to the first week of April 2020, criminal case filings dropped from 42,624 filings to 13,695 filings, and civil case filings dropped from 14,561 filings to 4,470 filings.¹³ When criminal defense attorneys cannot obtain appointments to represent criminal defendants and complete their work on the criminal cases, they do not get paid. Some courts have granted interim fee applications, but others have not.¹⁴

One attorney saw the worst sign of trouble: “The phones

have stopped ringing, which is disconcerting to say the least.”¹⁵ Another attorney said that meeting with people, including potential clients, had become harder. Some kinds of cases, like motor vehicle accident cases, decreased, because people were driving far less. As the first attorney recognized, “We are in completely new and uncharted territory right now. There are still an awful lot of logistics to work out.”¹⁶

While the coronavirus has not caused the earth-shattering impact on our practices that some have predicted, it has changed the way we operate. Some changes, like technology and remote locations, are here to stay. Other changes, like less legal business in some areas, are probably short-term.

Our next issue will feature articles from attorneys on their personal practice experiences during the coronavirus crisis.

For this issue, we have Michael E. Williams’s excellent adoption law article. He introduces us to a practice area foreign to most of us: Direct Placement Adoption Law. He lists several kinds of adoption different than Direct Placement Adoptions. Then, he outlines the Direct Placement Adoption procedure. Further, he summarizes the most important Michigan Court Rules and Michigan Compiled Laws statutory provisions to the adoption process. Finally, he discusses some Direct Adoption situations that could occur. If, like most of us, you know nothing about Direct Placement Adoptions, you will learn a lot about them. Even if you never handle a Direct Placement Adoption case, you will know the basics about Direct Placement Adoptions. Such knowledge can only be good. ■

Endnotes

- 1 Miller Center, *Presidential Speeches/Franklin D. Roosevelt Presidency, December 9, 1941 Fireside Chat 19: On the War with Japan, Transcript*, available at <https://millercenter.org/the-presidency/presidential-speeches/december-9-1941-fireside-chat-19-war-japan>, pp 3, 4, 6.
- 2 Marua Mazurowski, *Using data to analyze COVID-19 impact on law firms*, Virginia Lawyers Weekly (August 17, 2020), available at <https://valawyersweekly.com/2020/08/17/using-data-to-analyze-covid-19-impact-on-law-firms/>.
- 3 Mitchell J. Panter, *The Effects of COVID-19 on Law Firms*, Attorney at Law (June 8, 2020), available at <https://attorneyatlawmagazine.com/the-effects-of-covid-19-on-law-firms>.
- 4 Panter, *supra*, p 3.
- 5 Panter, *supra*, p 3.
- 6 Panter, *supra*, p 3.
- 7 Panter, *supra*, p 3.
- 8 Panter, *supra*, p 4.
- 9 Melissa Boughton, *Uncharted territory: Solo attorneys*,

small law firms struggle with impacts of COVID-19, NC Policy Watch (April 30, 2020), available at <http://www.ncpolicywatch.com/2020/04/30/uncharted-territory-solo-attorneys-small-law-firms-struggle-with-impacts-of-covid-19/>, pp 1-2.

10 Boughton, *supra*, p 2.

11 Boughton, *supra*, p 3.

12 Boughton, *supra*, p 3.

13 Boughton, *supra*, p 2.

14 See Boughton, *supra*, p 5.

15 Boughton, *supra*, p 6.

16 Boughton, *supra*, p 6.

Direct Placement Adoption Law in Michigan

By Michael E. Williams

For the general practitioner, adoption law may be a foreign area of the law or at least a difficult area of the law. The reason is likely due to the lack of practice resources, treatises and manuals. The problem is compounded by each circuit doing something a little bit differently. Larger circuit courts have an adoptions division, but small counties do not. Staff and clerks (as well as perhaps the judge) are likely to be unfamiliar with the process of adoption.

A leading authority that is easy to navigate is the *Adoption Proceedings Benchbook* published by the Michigan Judicial Institute. The latest edition is the third edition for 2020 and is available online in pdf. Referencing the benchbook will assist the practitioner in handling the courts with little adoption experience and use it as a tool to educate the court as is sometimes necessary.

Michigan law allows several types of adoptions: step-parent adoption, direct placement, agency, foster care (state ward), relative, guardianship, adult adoption, and international. This article discusses direct placement adoptions as they appear to be most relevant to the general practitioner and discusses immediate temporary placement. It also discusses termination of parental rights to allow for the adoption. This article does not cover any adoptions which include Indian children.

In a direct placement adoption, the biological parents choose what they consider a suitable adoptive family for their children. The number of adopting individuals can be one or more. The adopting individual(s) must be eligible persons. Eligible persons include single or married persons, but not unmarried couples adopting together.

The first step in initiating the procedure is filing a myriad of documents along with the petition for adoption. Because so many documents must be obtained prior to

filing, it is important to explain to the client that near-perfection of the documents is necessary when the adoption is filed. Frequently, clients will believe that if an adoption (or any other case for that matter) has no case number and is not filed, the attorney is not taking the required action on their behalf. In reality, filing is a step down the road and for a successful adoption, the most important work is pre-filing, which could take several weeks. Personally, this writer explains at the client intake that multiple documents must be completed or obtained to file. The Oakland Adoptions unit (by way of example) is very detailed and will not file the case, and indeed will send all documents back, if there is a problem with one document.

The list of documents necessary to file for a direct placement is found at <https://www.oakgov.com/courts/circuit/family/adoption/Pages/forms.aspx>. Make sure to click on each link as it may lead you to the form. The list online is exhaustive and provides the referencing SCAO number for each requisite form. The filing fees due at the time of filing the petition are:

- Adoption petition filing fee ONLY: \$175
- Order fee: \$12
- With a Michigan birth with new birth certificate: \$235
- With a Michigan birth without new birth certificate: \$185
- Out-of-state birth: \$185 (if applicable)
- Foreign birth: \$235 (if applicable)
- Motions and petitions: \$20

The direct placement can be immediate through two mechanisms and on a temporary basis. First is a transfer

order (not an order entered by the court) by way of signing PCA 330. That form recites the statutory requirements but note that a home study (a/k/a preplacement assessment) must be done on the prospective adoptive parents within the last year. PCA 330 may be used although there is no filed adoption and no case number. The second is by way of a Power of Attorney Delegating Parental Authority, which is valid for six months. If everything is in order, the transfer can occur at birth and at the hospital. The temporary direct placement can be made unilaterally by the mother if the father is unknown or not in agreement.

The biological parent's rights must be terminated to allow for adoption. In direct placement this is less of an issue as the parents have themselves placed the child. The consent for adoption of itself terminates the biological parent's rights. Consent can only be given 72 hours after the child's birth.

The court must schedule a consent hearing within seven (7) days of filing the home study. Note this may be held by video conferencing. In fourteen (14) days after filing of the home study, the court must accept or deny the consent based on whether the consent is genuine, the person making the consent has authority to do so (i.e. the biological parent or legal guardian), and if accepting the consent is in the best interest of the child.¹

MCL 710.44(e) contains the list of requirements that are incorporated into form PCA 308, Consent for Adoption. The Michigan Judicial Institute's Adoption Proceedings Quick Reference Material contains a checklist of the requirements for consents. In the consent hearing, the judge fully explains the parent's enumerated rights and if satisfied that the parent has consented, the court will sign the consent.

However, in direct placement adoptions, Michigan law allows for another option, which can be used instead of an in-court consent hearing. This other option is an out-of-court consent hearing, which can be done at the attorney's office. PCA 355 is the proper form to use but the adoption attorney representing the parent or guardian who witnessed the out-of-court consent and a caseworker from the child placing agency who witnessed the out-of-court consent "shall fully explain to the parent or guardian his or her legal rights and the fact that the parent or guardian by virtue of the out-of-court consent voluntarily relinquishes his or her rights to the child." MCL 710.44(6). It is important for an attorney to have a relationship with a child placing agency so a witness from the agency may be obtained promptly. If the biological mother and father consent to the adoption in accordance with the applicable Michigan Court Rules and statutes, then their rights to the child at issue are terminated.

In out-of-court consent, the role of the attorney, who is often represents the potential adoptive parents, can become tricky. MCL 710.55a(1) forbids an attorney from representing both the adoptive parent and biological parent for obvious reasons. The best way to solve this problem is to hire separate counsel to represent the biological parent for the out-of-court consent. That attorney then bears the responsibility of explaining everything as required in MCL 710.44(e). If the biological mother and father consent to the adoption, their rights are terminated.

A biological parent can revoke his consent to the direct placement adoption within five days of signing his or her consent to the adoption, by notifying the attorney representing the adoptive parent(s) or the child placing agency in writing of the desire to revoke. That attorney or



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child placing agency must then assist the revoking party to file the petition to revoke with the court as soon as possible, even if that attorney has a conflict of interest. But the statute requires this assistance. MCL710.44(9). If the revoking party wishes to revoke his or her consent without any attorney or child placing agency assistance, he or she must complete and file his or her petition to revoke within 5 days of signing his or her consent to the adoption. On a showing of good cause to believe the consent was not voluntary, the court will grant the petition.

The practitioner must thoroughly review MCL 710.44 prior to conducting an out-of-court consent. Although the statute does not require a hearing to terminate the biological parents' rights, requesting a consent hearing may be advisable. There, the court's duty is to ensure the consent is valid. This hearing relieves the attorney of the duties relating to out-of-court consents.

In the ideal situation, both biological parents are identified and consent to the direct placement. But as any good lawyer (or anyone over 18 for the matter) knows, situations can frequently fall below the standard of ideal. When the mother can neither determine the father's identity or location, she "must file proof of the efforts made to identify or locate the father in a statement verified under MCR1.109(D)(3)." At a termination hearing, the court must decide whether such proof of efforts are reasonable efforts to identify and locate the father. Also, the court will judge whether and what kind of future proceedings regarding the biological father and the child are necessary.

If the biological father's identity is unknown, he made no provision for the child's care, and did he not provide support for the mother during her pregnancy or during her confinement, the court may terminate the biological father's rights regarding the child. If the biological father's identity is known, but he cannot be located and has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care for at least 90 days preceding the hearing, the court may also terminate the biological father's rights regarding the child. If there was no reasonable attempt, to identify and locate the biological father, the court will adjourn the hearing with specific instructions ordered to identify and locate the biological father within the time period between the original hearing and the adjourned hearing. Termination of a biological parent's rights regarding a child does not terminate that parent's duty to support that child.

After termination of parental rights, the court will conduct a finalization hearing. The order for adoption is signed and a new birth certificate issued. A finalization hearing is a great day to be a lawyer and a fulfilling experience I hope all of us general practitioners will experience at some point in their careers. ■

Endnote

- 1 Note the court may extend the fourteen days for another fourteen days for good cause

Moving? Changing Your Name?

Don't forget to update your member record. In order to safeguard your member information, changes to your member record must be provided in one of the following ways:

- [Login to SBM Member Area](#) with your login name and password and make the changes online.
- [Complete contact information change form](#) and return by email, fax, or mail. Be sure to include your full name and P-number when submitting correspondence.
- [Name Change Request Form](#)—Supporting documentation is required

