



# Friends of the Court

Published by the Arkansas Administrative Office of the Courts

Volume 11, Number 1  
July, 2003

## Domestic Relations, Probate, and Juvenile 2003 Legislative Highlights

### Grandparent Visitation

**Act 652**, amending Arkansas' grandparent-visitation provision, passed with an emergency clause to become law on March 25, 2003. In 2002, the Arkansas Supreme Court declared our grandparent visitation law unconstitutional as applied in two separate cases, *Linder v. Linder* and *Seagrave v. Price*, relying upon *Troxel v. Granville*, a 2000 U.S. Supreme Court case holding a Washington state visitation statute unconstitutional. In both Arkansas cases, the Court invited the General Assembly to address the issue, and Act 652 is the legislature's response.

Act 652 establishes a rebuttable presumption that a custodian's decision denying or limiting visitation with a grandparent is in the best interest of a child. To rebut the presumption, a grandparent must show that he or she has established a significant and viable relationship with the child, that visitation is in the best interest of the child, and what constitutes each of those under the Act. Orders granting or denying visitation must be in writing, must state any and all

factors the court considered in granting or denying visitation, and are final orders for purposes of appeal.

### Joint Custody

**Act 92** addresses the award of custody at divorce, and provides that joint custody of a child is one custody alternative for a court to consider.

### Guardianship of Children

**Act 760** amends Ark. Code Ann. 28-65-214 to allow guardianship orders involving minor children to provide for visitation and child support as in other cases involving child custody.

### Domestic Violence

Two Acts of 2003 made substantive changes to domestic violence laws. **Act 651** provides full faith and credit for out-of-state, Tribal, and territorial orders of protection, eliminating Arkansas' requirement that out-of-state protection orders be registered to be enforceable, and bringing us into compliance with federal law. **Act 1221** expands who may file a petition for an order of protection

and for whom, adding that any adult or household member may file on behalf of a married minor, and an employee or volunteer of a domestic violence shelter or program may file on behalf of a minor, including a married minor.

### Adoption

**Act 650** amends numerous portions of the Adoption Code. It mandates criminal background checks of potential adoptive families in their residence state and a national fingerprint-based criminal background check for adoptive parents and household members aged 16 or older; requires central registry maltreatment checks on all household members aged 10 or older; requires that adoption records be maintained by the person or agency that handled the adoption for 99 years, or if that person or agency ceases to function, be transferred to DHS with notice to them. The Act adds that a child under 6 months is considered a resident of Arkansas for adoption purposes if, in the case of a nonresident adoptive family, upon receipt of ICPC approval, the child and adoptive parents go back to their

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state and return to Arkansas for a hearing on the adoption petition. Passed with an emergency clause, the Act took effect on March 25, 2003.

### **Child Support**

Several Acts of 2003 address child support. **Act 337** requires that, any time a court orders child support, a non-custodial parent must be ordered to provide a custodial parent and, if applicable, the Office of Child Support Enforcement (OCSE), with proof of income for the previous year. A modification order based upon a change in gross income is effective upon the date the motion for modification is filed, unless the court orders otherwise. Passed with an emergency clause, Act 337 became law on March 10, 2003.

**Act 1020** increases the rate of withholding to satisfy child support arrearages from not less than 10% to not less than 20%; provides for termination of child support automatically upon the marriage of the child's parents to each other; and adds "every motorized cycle" to those licenses that can be suspended for failure to pay child support. **Acts 1176** and **1177** provide that custodial or noncustodial parents may authorize disclosure of child support payment records.

### **Decedents' Estates**

**Act 177** increases the statutory allowances of spouse and minor children and provides that notice need not be given unless property is valued at more than \$10,000 (up from \$1,500) when a decedent's property is sold, mortgaged, or leased.



### **Adult Abuse**

**Act 1034** amends various sections of the Code concerning the custody of abused adults, and **Act 1046** amends various sections of the Code regarding adult abuse, including the introduction of the term "adult maltreatment" instead of "adult abuse."

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### **Families In Need of Services (FINS)**

**Act 1319** and **Act 1809** limited family services paid by DHS and clarified family services as rehabilitative or preventive. Family services paid by DHS shall be limited to:

Rehabilitate the juvenile and his or her family, if the department is the provider for family services, the family services shall be limited to those services available by the DHS community based providers or contractors, excluding DCFS contractors, and DHS services for which the family applies and is determined eligible.

Prevent removal and the department is the provider of family services, the court shall, make written findings outlining how each service is intended to prevent removal. The court can order DCFS to provide family services, but the order must include findings of how that service is intended to prevent removal of the child from home.

FINS foster care placement is limited to a finding that it is in the juvenile's best interest and because of acts or omissions by the parent, guardian or custodian that removal is necessary to protect the juvenile's health and safety.

### **Interstate Compact on the Placement of Children (ICPC)**

**Act 1809** amended the ICPC by putting the regulations regarding parents, relatives and guardians into the ICPC. It also provides that if the home study is denied, the sending state shall present the study to the judge who shall review the study and make specific findings of fact regarding the concerns outlined in the home study. If the court finds that the health and safety concerns cannot be addressed or cured by services, the court will not make the placement.

This amendment was drafted by DHS in response to the Arkansas Supreme Court's ruling in *Arkansas Dep't of Human Servs. v Huff*, 347 Ark. 553, 655 S.W.3d 880 (2002). The Court held that the ICPC was intended to govern the placement of children in substitute arrangements for parental care, such as foster care or adoption. ICPC does not apply when a child is returned by the sending state to a natural parent residing in another state.

The decision of the Arkansas Supreme Court in the *Huff* case resulted in challenges for DHS to provide out-of-state home studies, services and supervision for cases involving parents and relatives. Act 1809 of 2003 will place parents and relatives back into ICPC. However, the challenges of interstate placements have existed for many years. Constant problems continue with the length of time taken to request and receive home studies through ICPC and delay permanency for children. This is especially problematic with the Adoption and Safe Families Act (ASFA) which is designed to place children in safe and permanent homes in a timely fashion. The AOC and DHS are working at the national level

to make improvements to ICPC.

### **Juvenile Sex Offender Assessment & DNA Sampling**

**Act 1265** moves the juvenile sex offender assessment and registration provisions to the juvenile code and reduces the number of offenses for which a juvenile is subject to assessment and registration. It provides due process and hearing prior to registration. Registration remains discretionary with the court. It also moves the DNA sampling provisions to the juvenile code and reduces the offenses eligible to sex offenses and violent Y felonies.

### **Historical Society Displays New Exhibit**



**Chief Justice Elbert Hartwell English (served as Arkansas Supreme Court Chief Justice under four of the five State Constitutions)**

The Arkansas Supreme Court Historical Society has elected new officers. Bill Jones, Reporter of Decisions for the Supreme Court has been chosen as President.

Frances Ross, Professor at UALR/History Department is Vice President, and J.D. Gingerich, AOC Director, is Secretary.

A new exhibit by the Historical Society can be seen in the Justice Building. Information on the Arkansas Supreme Court during the Confederacy is being featured. On display are pictures of

Supreme Court Justices during that time period and a recounting of the move of the Court from Little Rock to Washington, Arkansas (Hempstead County) while the war was occurring. The exhibit will officially open October 17<sup>th</sup> and be on display through December.

### **New AOC Employees**

Three new employees have been hired by the Administrative Office of the Courts. Jewell “Cricket” Harper, the former Ad Litem Coordinator resigned in early July to become an attorney in private practice. She has been replaced by Teri Hays. Hays comes to the AOC from the Department of Human Services where she was a supervising administrative law judge for the Office of Chief Counsel.

Jamillaah Carmichael, Assistant CASA Coordinator, has left that position to become the Education and Awareness Coordinator for the Arkansas Coalition Against Domestic Violence. Erin Stone has been hired as the new Assistant Coordinator. Stone recently received her Masters in Public Service and Administration from Texas A & M and worked as a Graduate Assistant while there.

Marty Sullivan is now the Judicial Education Specialist for the AOC. Before assuming his new duties, Sullivan worked in a private

law firm in Little Rock and attended graduate school. ■

### **AOC Research Analyst Participates In Court Executive Development Program**

Kellye Milam Mashburn, a research analyst with the Administrative Office of the Courts and responsible for statistical research published for the state’s court system, was selected to participate in the Court Executive Development Program (CEDP) offered by the National Center for State Courts in Williamsburg, Virginia. CEDP courses develop and enhance the knowledge, skills, and abilities of court administrators and provide instruction in areas of functional responsibility associated with court administration.

Mashburn’s attendance was supported by a scholarship awarded by the State Justice Institute (SJI), a non-profit organization established by Federal law to award grants to improve the quality of justice in State courts nationwide, facilitate better coordination between State and Federal courts, and foster innovative, efficient solutions to common problems faced by all courts. More information about the Institute is available on the SJI web site. [www.statejustice.org](http://www.statejustice.org)

### **Justice Building Holds Blood Drive**



**Court of Appeals Judge Andre Roaf is assisted by a Red Cross employee after giving blood at the Justice Building Blood Drive in May.**



## New Faces in the Judiciary

### District Court Clerks

Jasper - **Lori Sharp** replaces Annette Brassel.  
England - **Darla Cole** replaces Bob Winkler.

### Court Reporters

6th (Moore) **Ellen Hart** is the new court reporter.

### Circuit Clerks

Lonoke County - **Carol DePriest** replaces Becky Wilson.

### Public Defender

19th East - **Rachel Runnels** is the new public defender.

### AOC Staff

Judicial Education Specialist - **Marty Sullivan**  
Ad Litem Coordinator - **Teri Hays**  
Assistant CASA Coordinator - **Erin Stone**

## CALENDAR

### September

District Judges Fall College (Eureka Springs) **25-27**

### October

Fall Judicial College/Judicial Council Meeting (Little Rock) **15-18**

Official Court Reporters Conference (Little Rock) **17-18**

Juvenile Officer Certification Training-Part One (Little Rock) **22-24**

Juvenile Officer Certification Training-Part Two (Little Rock) **29-31**

### November

District & City Court Clerks Certification (Little Rock) **21**

Juvenile Judges Conference (Red Apple Inn - Heber Springs) **12-14**



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**Friends of the Court** is a bi-monthly publication by the Arkansas Administrative Office of the Courts. Contributions, comments, and inquiries are welcome. Please submit to **Friends of the Court**, A.O.C., Justice Building, 625 Marshall, Little Rock, AR 72201. Tel. (501) 682-9400. Karolyn Bond, Editor.

Address  
Correction  
Requested