



# THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Post Conference Issue, 2005

## NEW SCAO RULING ON MAGISTRATE ARRAIGNMENT AUTHORITY

**SCAO Issues Opinion** *by James Pahl, Magistrate, 55<sup>th</sup> District Court, based upon materials provided by SCAO.*

A question was asked recently of SCAO, concerning the authority of a magistrate to conduct arraignments for probation violations. After study by SCAO staff attorneys, the following is the answer that was provided:

Magistrates are authorized to conduct arraignments per section 8513 of the Revised Judicature Act, being MCL 600.8513. MCL 600.8513 allows the magistrate to conduct arraignment only for the first appearance of a defendant before the court. It is the opinion of SCAO that this statute does not authorize any arraignment subsequent to the first one. As a probation violation is not a first appearance in court on that matter, a magistrate does not have authority to conduct a probation violation bench warrant arraignment.

A follow up question was discussed with Sandra Hartnell by this author, concerning fail to appear bench warrants and fail to comply bench warrants. Her response was: "So the bench

warrant for FTA for pre-trial, trial, jury selection, or whatever other appearance was ordered, is not the first appearance described in the statute, and the arraignment must be conducted by a judge."

She further explained that a judge cannot authorize a magistrate to conduct such arraignment. She pointed out that a judge cannot grant authority to a magistrate that is not specifically found in the statute. (MCL 600.8541)

Magistrates who currently do such arraignments need to discuss this immediately with their chief judge.

**Court Rule 4.101 Amended**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

After some apparent debate by the Supreme Court and public hearings, including testimony provided by our own Krista Krause, the Supreme Court has amended MCR 4.101, effective January 1, 2006. There are a few changes that will impact how some courts operate traffic

informal hearings. The significant changes include:

- \* Only the prosecuting official for the plaintiff may amend the complaint (officer at informal, prosecutor or city attorney at formal).
- \* Attendance of the officer at an informal may not be waived.
- \* Courts may accept electronic filings and do not need a paper citation filed with the court if they choose not to.
- \* Failure of an officer to appear for a hearing, unless the court is notified before the commencement of a hearing of an emergency preventing an on-duty officer from appearing, failure of the officer to appear shall result in dismissal without prejudice.

You can view the entire administrative order (2005-16) at the Supreme Court web site at: <http://courts.michigan.gov>

## **Social Security Numbers**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court*

The Michigan Social Security Number Privacy Act, MCL 445.81, was passed back in 2004. However, key provisions of this act take effect January 1, 2006. The impact of this statute is that you may not publicly display more than four sequential digits of a person's social security number.

SCAO has redesigned the Uniform Law Citation to accommodate this. Amy Byrd of SCAO issued a memorandum that this new form was effective October 1, 2005. Agencies could continue to use old forms until exhausted, but may only put the last four digits of a social security number on an appearance citation.

This statute may also impact civil filings and what part of a file may be inspected by a member of the public. There are several exceptions to

this prohibition, so each court needs to examine the requirements of the statute and make a determination how they are going to implement this requirement. I am informed by SCAO that the Supreme Court may be issuing further directives concerning the impact of this statute.

## **Distinguished Service Award** *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

As the recipient of this year's Distinguished Service Award, I desire to thank the anonymous person who nominated me, the board of directors who approved the award and then kept it secret until the banquet. (I will get even) Nothing like this is possible without a great support staff and a group of people who work behind the scenes to make each of us look good.

The list of previous award winners is a who's who list of great magistrates in our history. I have been honored to know them all. Our previous award winners are:

- 1992 John Butler
- 1993 Vince Lauria
- 1994 Joyce Bucher
- 1995 Clyde Guthrie
- 1996 Sonny Erdman
- 1997 Charlie Pope
- 1998 Dennis W. Hall
- 1999 Darlene Bates
- 2000 John VanSlambrouck
- 2001 Krista Krause
- 2002 A. Thomas Truesdell
- 2003 Jennifer Bennon
- 2004 Cindy Cope

## **2006 Officers**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

The following will serve as association officers for the 2006 year.

President: Tom Bleau, 74<sup>th</sup> District  
 Vice President: James Pahl, 55<sup>th</sup> District  
 Secretary: Krista Krause, 55<sup>th</sup> District  
 Treasurer: Tom Truesdell, 14A District  
 Past President: Dena Altheide, 67<sup>th</sup> District  
 Board of Directors:

Term of office expires 2006:  
 Dennis Hall, 70<sup>th</sup> District  
 Charles Anderson, III, 36<sup>th</sup> District  
 Robert Clark, Berrien County Trial Court  
 Angie Ballard, 65<sup>th</sup> District

Term of office expires 2007:  
 Cora Gregory, 67-2A District  
 Charles Pope, 14B District  
 Cindy Cope, 96<sup>th</sup> District  
 Jennifer Bennon, 96<sup>th</sup> District

### **Mexican Licensed Drivers**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court*

Attorney General Mike Cox has issued opinion 7181, stating that those who possess a valid drivers license issued by Mexico and are 18 years of age or older, may legally drive a vehicle in Michigan on their Mexican driver's license. They do not need any further supporting documents, such as an international driver license.

Even though Mexico did not sign the 1949 United Nations Convention on Road Traffic, they did sign a separate treaty, the 1943 Convention on the Regulation of Inter-American Automotive Traffic.

The 1943 treaty is still in effect as to Mexican drivers. Michigan Secretary of State was not aware of this situation. Their legal office is studying this issue. There is a possibility that other Central and South American countries may be covered by the 1943 treaty. Once this is

determined, SOS will publish a list of all such countries, along with the list of countries covered by the 1949 convention that we are all aware of.

### **Intersection Safety**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

One of the presenters at the 2005 annual conference was Tim Colling, PE, with Michigan Tech. University. He gave a very interesting presentation on intersection safety and traffic control devices - how they work together (or don't). This is part of a larger, one day seminar, offered through the Local Technical Assistance Program. This course is titled: "Common Sense Solutions to Intersection Safety Problems".

I would encourage anyone who desires to know more about how design issues and traffic control devices can impact traffic crashes, should watch for this one day seminar in their area and attend. You can contact Tim directly at: [tkcollin@mtu.edu](mailto:tkcollin@mtu.edu).

### **Stay at the Scene of the Crash! (or maybe not)**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

Section 617 and 618 of the Vehicle Code has been amended, effective April 1, 2005, through PA 3 of the Public Acts of 2005. If the motorist has a reasonable and honest belief that remaining at the scene will result in further harm, the motorist may leave the scene of a traffic crash without fulfilling the requirements of section 619, so long as they immediately report the accident to the nearest or most convenient police agency or officer.

### **Consular Notification**, *by James Pahl*

The United States has entered into various treaties with foreign governments, which requires a law enforcement agency who arrests a foreign national, to notify that foreign national they have the right to call their local consular official. In some cases, those treaties require the law enforcement agency to affirmatively notify the local consular official that one of their nationals has been arrested.

While the court does not have a specific duty in these areas, it is a good idea to be aware of these requirements. When doing an arraignment of a foreign national that is still in custody, I make sure they are aware they may contact their consular official.

Further information is available at:  
[http://www.state.gov/www/global/legal\\_affairs/ca\\_notification/ca\\_prelim.html](http://www.state.gov/www/global/legal_affairs/ca_notification/ca_prelim.html).

## **2006 Conference**, *by James Pahl*

Crystal Mountain - exact date not yet determined, as we want to try to ensure that we do not conflict with the State Bar meeting. Watch this space for further details.

Questions were raised at the last meeting of the board of directors about the possibility of holding our annual educational conference at a hotel that has a casino attached. They are bidding for our business and offer very competitive rates. The board feels that some funding units may frown upon paying for lodging at a hotel that has a casino attached.

Please check with your funding unit to determine if your funding unit would object or not. Dennis Hall is gathering this information for the board, so please let him know (either way) what your funding unit thinks. If there are funding units out there that would object, we will not consider this possibility.

## **Abandoned Vehicles**, *by James Pahl, based upon materials provided by Sandy Aguirre and Peggy Leece, SOS.*

Effective October 6, 2005, law enforcement and towing agencies will partner with Michigan's Secretary of State to expedite the abandoned vehicle removal and notification processes.

Some of the major changes. Law Enforcement only tags and impounds on public roads. Vehicles on private property are removed by authority of the owner of the property. However, before the vehicle can be removed from private property, the towing agency must immediately notify local law enforcement. Law enforcement then checks to ensure the vehicle is not reported stolen. Then the abandoned vehicle is reported to SOS.

SOS now sends the notices to the last titled owner and any secured parties. The owner then has 20 days to redeem the vehicle or file an appeal.

The court may require a bond be posted if the vehicle has not been redeemed, plus there is now a hefty filing fee.

Two new civil infractions have appeared also: "Failure to Redeem Abandoned Vehicle" and "Fail to Show Proof of Vehicle Sale". If the court notifies SOS that a defendant did not comply with either of these civil infractions, SOS will indefinitely suspend the license until payment is made.

## **Motor Carrier Enforcement**, *by James Pahl*

Do you conduct hearings for violations of the Motor Carrier Safety Act or for other motor carrier violations? The Motor Carrier Division of the Department of State Police publishes a Commercial Motor Vehicle Enforcement Quarterly, that is filled with the latest updates

and other useful information. You can subscribe for this email service by contacting Lt. David Ford at [forddw@michigan.gov](mailto:forddw@michigan.gov). Lt. Ford is a frequent presenter at our Association's educational sessions and also instructs a segment at the new magistrate school.

Send your submissions to:

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Email: [jpahl@ingham.org](mailto:jpahl@ingham.org)

## **Web Site**, *by James Pahl.*

Thanks to Doug Ballard, we have a method of posting questions and concerns and receiving comments from others. It only takes a minute to register and gain access to this material.

Several categories are available. It will only be as good as the number of people registered on the site and using it. I encourage everyone to take a look. If you have any problems in getting registered or using the site, give me a call at (517) 676-8403 and I will try to help you through. For a nominal fee, I will even provide the password!

Visit is at: [www.madcm.org](http://www.madcm.org)

## **Your Stuff Here**

This is your newsletter and is only as good as what you submit. Previous issues had a letter of the month column, where "interesting" letters from motorists, commenting on their tickets, were submitted. Of course, names will be omitted. I have not received anything like this for some time.

Interesting stories of happenings at your court (like the bailiff trying to keep kids from playing with the fire alarm – and setting it off himself), interesting rulings from your judge, regional interest stories, announcements concerning our families (children or grandchildren or weddings or whatever), dirt on the magistrate from the next district and the night out last Friday – all are appropriate to be included here.