



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Winter 2012

DISTRACTED DRIVING IS DRAWING ATTENTION

Recently, the growing problem of distracted driving drew the attention of the MLive Media Group. The issue resulted in a major project involving ten reporters from MLive Media Group's news hubs. They created a multi-day series, which ran in several Michigan newspapers in February. MLive says the project was the done with assistance from the MSP's Traffic Crash Reporting Section and a decade's worth of data on distracted driving and cell phone involved crashes. Get more info about the stories at:

http://www.mlive.com/news/index.ssf/2012/02/distracted_driving_series_driv.html

One of the general sessions at this year's **Michigan Traffic Safety Summit** March 20-22, 2012 will be a presentation by Dr. Jim Hedlund, Ph.D. on "***Distracted Driving: What Research Shows and What States Can Do***".

Also, April 2012 is **National Distracted Driving Awareness Month**, so be on the look out for other programs and announcements that bring attention to this critical traffic safety issue.

More importantly, distracted driving has also drawn the attention of the Michigan legislature, and it is likely that they will soon enact a new law to prohibit a major cause of distracted driving

among teenaged drivers – cell phone usage while driving.

Just last week [March 15, 2012] the Senate passed SB 756 that would prohibit drivers with a graduated license [Level 1 or 2] from talking on their cell phones while driving. Teenagers could be stopped if they are seen talking on the phone while driving under this proposed law. The bill is now on its way to the House.

As written, the new offense would not carry SOS points for an offender, but would provide a civil fine for those still under a graduated driver's license at level one or level two who are talking on their cell phone while behind the wheel.

The bill, as reported, would also be officially known as ***Kelsey's Law*** for Kelsey Raffaele, an Upper Peninsula teen who died in 2010 trying to pass another vehicle while talking on her cell phone. Since Kelsey's death in 2010, her mother Bonnie Raffaele has been working to keep other young drivers from dying like her daughter did. She started "The KDR Challenge" and has traveled all across Michigan speaking at schools and community events to raise awareness of the dangers of distracted driving and cell phone usage while driving. www.thekdrchallenge.com

Magistrate Barthwell Publishes Book

36th District Court Attorney Magistrate Sidney Barthwell Jr. has published a book - *The Runner: Traversing the Road of Life*.

Sid is the Vice-President of our association and is an avid runner. His book is available in paperback or kindle version at www.amazon.com or you can buy it directly from Sid at www.sidneybarthwell.com

Google Group

Don't be cheated !!! If you are a MADCM member and are not on our Google Group listserv, then you are not taking full advantage of your MADCM membership privileges.

It is easy to be added to the group. Just email Kevin McKay at kevin.mckay@kentcountymi.gov and he will send you the application form. It is open to all MADCM members who have a valid email address.

The MADCM Google Group listserv is an excellent tool for district court magistrates to connect and ask questions of colleagues, and to stay informed about training events and changes in the laws that affect us.

Interested In Being an Instructor?

MJI is in need of more magistrate instructors, especially in SW Michigan. Magistrate instructors perform a vital role in the training of new magistrates. The primary function of the magistrate instructor is to host new magistrates who must complete a one-day court visitation as part of Phase 1 of the new magistrate certification process. A new magistrate is assigned to spend a day with an experienced magistrate conducting informal hearings in civil infractions. The magistrate instructor walks the new magistrate through the process, and answers questions the new magistrate might have; both substantive and procedural. Normally, this amounts to no more than three or four visitations per year.

If you think you might be interested in acting as a magistrate instructor, please discuss and get approval from your chief judge and court administrator and contact Pete Stathakis at MJI. stathakisp@courts.mi.gov (517) 373-7607.

Don't Forget to File Your Financial Report for 2011

Remember, all District Court Magistrates (full or part-time) are required to submit a **2011 ANNUAL FINANCIAL REPORT** to their Regional Office of the State Court Administrative Office by April 15, 2012. The form can be found at:

<http://courts.michigan.gov/scao/courtforms/scao/scao17.pdf>

Note: Your Chief Judge cannot file their Report until they receive a copy of each of their magistrate's report(s).

Magistrate Houseal Makes the News !!

Attorney Magistrate Stephen I. Houseal from Midland County was recently featured in the Midland Daily News. His court [75th District Court] was trying to clean up their open warrants for unpaid traffic offenses, and published the names of the people with bench warrants.

Check out the article at:

http://www.ourmidland.com/content/tncms/live/ourmidland.com/police_and_courts/article_72706936-62ec-11e1-953a-0019bb2963f4.html

Put It In Writing!

By Brian Monton
Attorney Magistrate, 78th District Court

The Michigan Court of Appeals recently reminded Magistrates of the importance of the final written order. In most civil infraction cases, the informal hearing is the end of the case. It usually does not make economic sense for a litigant to hire an attorney to pursue an appeal on a civil infraction citation, and the failure to issue a written order usually does not come back to haunt a Magistrate. However, when you are dealing with zoning ordinances that affect important property rights of individuals the dynamics of the norm change dramatically.

In *Brooks Twp v Davis*, unpublished opinion per curiam of the Court of Appeals, issued May 17, 2011 (Docket No. 296035), Ms. Davis repaired a revetment wall located on her property, which had been damaged due to ice build up on Hess Lake. She was subsequently issued a civil infraction citation by the zoning administrator for a violation of the Brooks Township ordinance. Ms. Davis

contested the civil infraction, and an informal hearing was held before the Magistrate. The Magistrate found Ms. Davis responsible for violating the ordinance and ordered her to bring her property into compliance within 30 days. She failed to do so and was given another 30 days to comply by the Magistrate. At the final hearing before the Magistrate, it was held that Ms. Davis had failed to comply with the Court's orders and was ordered to pay a \$100 fine and was given another 30 days to comply. None of these orders by the Magistrate were ever reduced to writing.

Ms. Davis then requested a formal hearing 12 days after the last hearing before the Magistrate. The District Court Judge dismissed the appeal as being untimely filed under MCR 4.101(H)(2) and retained jurisdiction over the issue of compliance with the Magistrate's final order. Ms. Davis sought leave to appeal to Circuit Court, which exercised superintending control and reversed the District Court's decision.

Brooks Township then filed leave to appeal to the Court of Appeals. The Court of Appeals held that the Circuit Court's exercise of superintending control was improper. Most importantly from a Magistrate's perspective, the Court of Appeals held that the Magistrate erred in failing to issue any written orders to reflect his decision to provide a basis for appeal. On this issue, the Court stated the following:

MCL 600.8719(4) requires the magistrate to enter an order upon finding a defendant responsible for a civil infraction, and MCR 2.602(A)(1) requires that orders be in writing. Until the magistrate enters a written order, its decision has no legal effect, because "a court speaks through its written orders and judgments, not through its oral pronouncements." *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009).^{FN2} By failing to enter an order, the magistrate failed to perform a clear legal duty. Further, there is no legal remedy because Davis may not properly

appeal the magistrate's decision until a written order subject to appeal has been entered.

The Court of Appeals also stated that the District Court was correct in dismissing Ms. Davis' appeal. However, it stated that the appeal from the informal hearing was not too late (beyond the 7-day requirement), but that it was filed too soon (before a written order was entered by the Magistrate). The entire case was then remanded to the Magistrate, who was ordered to issue a written order so that the entire appeal process could properly take its course.

The moral of this case is patently obvious: Whenever a Magistrate hears a contested matter at an informal hearing, the Magistrate must issue a written order to reflect his or her decision.

Mark Your Calendars!

**MJI Magistrate
Specialty Seminar
July 25, 2012 at HOJ**

~~~~~  
**MADCM Annual Conference  
September 12-14, 2012  
Tree Tops Resort  
Gaylord, MI**

## **New Magistrates Trained in March**

The Michigan Judicial Institute and faculty recently conducted the Annual New Magistrate Training Seminar, March 6<sup>th</sup> - 8<sup>th</sup>. Twenty-three new District Court Magistrates completed the course and now have their full authority from SCAO. They are:

**Ms. Yvonna Abraham** - 20th D.C. (Dearborn Hghts)  
**Ms. Pamela Anderson** - 22nd D.C. (Inkster)  
**Ms. Nicole Auten** - 65A D.C. (St. Johns)  
**Mr. James Becker** - 7th D.C. (South Haven)  
**Ms. Shirley Beeman** - 74th D.C. (Bay City)  
**Mr. Robert Brown** - 86th D.C. (Traverse City)  
**Ms. Amy Clolinger** - 67th D.C. (Flint)  
**Ms. Beth Dean** - 56B D.C. (Hastings)  
**Mr. Adel Harb** - 19th D.C. (Dearborn)  
**Ms. Kristy Hardies** - 89th D.C. (Rogers City)  
**Mr. Frank Hillary** - 56B D.C. (Hastings)  
**Ms. Laura Kruse** - 81st D.C. (Tawas City)  
**Mr. Timothy McMahon** - Barry Co Trial Court  
**Mr. John Mead** - 19th Circuit (Manistee)  
**Mr. Michael Milroy** - 63rd D.C. (Kent Co.)  
**Ms. Pam Palmer** - Barry Co. Trial Court  
**Mr. Ryan Smith** - 3B D.C. (Centreville)  
**Ms. Ines Straube** - Barry Co. Trial Court  
**Mr. David Thompson** - 85th D.C. (Manistee)  
**Ms. Melissa Wahl** - 2A D.C. (Adrian)  
**Ms. Nicole Winston** - 72nd D.C. (Port Huron)  
**Ms. Jennifer Wood** - 65B D.C. (Ithaca)  
**Mr. Claude C. Woods** - 84th D.C. (Cadillac)

## **Small Claims Jurisdiction Increase?**

**SB 269** [which we fought against in the Senate but it passed with an \$8,000 increase], is on the move in the House. The House Judiciary Committee took testimony on March 15, 2012, and MDJA again strongly opposing it. It appears that they may set it for another hearing because everyone did not get to testify.