

Referees' Quarterly



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PRESIDENT, KENNETH D. RANDALL
EDITOR, DEBORAH L. MCNABB

THE PENTAGON'S NEW "RULES OF ENGAGEMENT"



In the "strange but true" department, the Pentagon has developed a program called "How to Avoid Marrying a Jerk." Under this project, also called "P.I.C.K." (Premarital Interpersonal Choices and Knowledge), U.S. Army chaplains counsel troops how to pick a compatible

spouse. According to a February 2006 Associated Press article drafted by Pauline Jelinek, "The matchmaking advice comes as military family life is being stressed by two tough wars." Further, the "Defense Department records show that 56,000 (troops) have divorced since the campaign in Afghanistan started in 2001." Currently, approximately half of our 740,000 active troops remain unmarried.

Army chaplains use a "RAM" chart to aid their counseling. In this context, the acronym "RAM" stands for "Relationship Attachment Model," a method of instructing troops not to let their sexual involvement exceed their level of commitment or knowledge of their partner. The fact that Uncle Sam is now in the premarital counseling business, though odd at

first blush, is no doubt a good thing. Who couldn't use counseling at that age, especially given the stresses of military life?

Yet, the "pro-marriage" counseling represents a fundamental shift in Pentagon policy. Traditionally, commanders discouraged marriage. Thus, as Pauline Jelinek points out, "The old saying, If the Army wanted you to have a wife, it would have issued you one."

Any war-time counseling of our troops will be helpful. They need it. After all, we are fighting two wars. We have now been "fighting terrorism" in Afghanistan and Iraq longer than our combat operations in World War II. Long deployments on new (or even long-standing) marriages, not to mention the very real possibility of life altering mental or physical injuries, can stress even the best of relationships.

While counseling is a good thing, I can't help but hear the irrelevant voice of M*A*S*H hero Hawkeye Pierce stating the obvious: "Counseling is no substitute for the real cure, "peace."

~ Ken Randall

February 24, 2006

IN THIS ISSUE

Tarred with the PPO Brush 3
By Jon T. Ferrier

Stabenow Fights for MI Families 6
By U.S. Senator Debbie Stabenow

Show Me the Money 8
By Susan Thorman

Conference Registration 10

Proposed Law to Ban Smoking in Car with Children 12
By Ken Randall

Attorney General's Child Support Division 13
By Norman W. Donker

America Divorces Tobacco 15
By Ken Randall

Jon Ferrier Nominated for Frank Kelley Award

In February 2006, RAM's executive board voted unanimously to nominate Kent County Referee, Jon Ferrier, for the Frank J. Kelley Distinguished Public Servant Award. The Kelley Award, a creation of the State Bar of Michigan, recognizes extraordinary governmental service by a member of the State Bar. Jon is the first referee to be nominated for this award.

Jon will retire this year after a stellar twenty-five year career as referee. Throughout his career, Jon has positively impacted the practice of family law in his community, and indeed, across the state. For those who know Jon, we can attest to his 1960s idealism, high intellect, good humor and altruistic nature. These attributes have served him well.

Jon's resume is too long for an article, but the highlights include his service as Chairman of the State Bar Family Law Section; President (and co-founder) of the Referees' Association of Michigan; Vice Chair of the Michigan Supreme Court's Domestic Relations Court Rules Committee (where he authored MCR 3.213 and changes to MCR 3.200). Jon has also served on a plethora of committees, including the SCAO Subcommittee studying the desirability of joint custody; the State Bar Children's Justice Committee; FOCA Legislation Committee; Open Justice Commission; Domestic Violence Committee; Michigan Family Law Journal Editorial Board; Michigan Supreme Court Family Division Implementation Task Force; and the Family Law Section Advisory Board.

At a time when he could coast into retirement, Jon continues to volunteer his time and expertise. On a state level, Jon continues to serve as an active member of the RAM executive board. He also continues to serve on the State Bar Ethics Committee. On a local level, Jon teaches a monthly domestic relations education program at his court.

Jon has always been a prolific author, as evidenced by his contribution to this edition of *Referees' Quarterly*. He has been published by many organizations including: Michigan Law

yers Weekly, Michigan Family Law Journal, Michigan Bar Journal, the Atlantic Monthly, and the New York Times. Jon has also been an "author" of the airwaves. He has appeared on WOOD - AM radio in Grand Rapids on "Lawyers' Brunch" (as recently as January 2006). He appeared on a PBS Television broadcast entitled, "The Forgotten Father" as well as "Frontline." And in his time off, he appeared on the television game show, Jeopardy.

At heart, Jon is a professor. Just about everyone knows Jon to be a wonderful lecturer, as he possesses an intriguing intellect, sharp wit, and cogent verbal skill enough to wow any crowd. Jon has, for years, lectured all over the state as well as the United States. His lecture list includes: the National Child Support Enforcement Association, American Institute for Paralegal Studies, National Judicial College, Michigan Judicial Institute, Institute for Continuing Legal Education, Friend of the Court Association, National Center for State Courts, and the Michigan Family Support Council.

Jon's nomination for the Frank J. Kelley Public Servant Award was supported by many individuals throughout Michigan who drafted letters of support. The winner of the award will be announced at the State Bar's annual meeting in September.

~ Ken Randall
Feb 26, 2006



Pictured from left to right: Valerie Ferrier, Kayne Ferrier and Jon Ferrier



"Tarred With the PPO Brush"

By Referee Jon T. Ferrier

I have a hunch not too many Referees deal with Personal Protection Order (PPO) cases, even though these have been in the Family Division's jurisdiction since the beginning, in 1998: MCL 600.1021(1)(k). In the 17th Circuit, Kent County, Referees in the Family Division hear motions to terminate, modify or extend PPOs. It's my understanding that there are some jurisdictions in which Referees screen *ex parte* applications for PPOs, making recommendations to the Judge whether to issue PPOs *ex parte*. There may be other jurisdictions of which I am unaware where Referees are involved in PPO decision making.

Surprisingly, once word got out (as I assume it has) that Kent County's Referees hold PPO hearings, there was not a statewide off-load of these cases through referrals from Judges to Referees. Let's face it, PPO hearings are irreverent, loud and often dangerous. Why *wouldn't* a Family Division Judge want to refer such cases to Referees, where they stood a good chance of being resolved without taking up the Judge's time?

But, as any Family Division Referee who has been on the job for just a few fortnights knows, if

there's one thing people ain't, it's predictable – and isn't that really the sauce with which we savor our careers?

Maybe the Judges have realized, like the Referees in these parts, I think, that although PPO cases are something of an *acquired* taste, they are a delicacy as sublime as *sushi* for those with the palate for it.

In addition to the unpredictable (often, unimaginable) nature of the disputes between the petitioners and respondents, the field also offers Referees who enter it the refreshing lack of any clear standards of review by the Judge assigned. For, these are neither cases that fall within the rubric, "Domestic Relations Matters," MCL 552.502(l), over which Referees have authority under MCL 552.507, nor cases within the Juvenile Code MCL 712A.1, *et seq.*, or any of the other cases which came into the Family Division from the Probate Court's former jurisdiction, such as name changes, status of minors, etc., where a Referee's authority comes from the Code or other former Probate sections – these are cases, like the "bite cases," that were folded into the Family Division without attention to their inclusion's impact on Referees.

So what else is new? What, you mean Referees were *ignored*? Say it ain't so! So, rather than the cool, reasoned provisions of MCL 552.507 and MCR 3.215 on *de novo* hearings to review Referees' Domestic Relations decisions, or of MCR 3.912(4), 3.913, and 3.991 involving Referee jurisdiction and review of

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Referee decisions in Juvenile cases, we're left with who knows what, in terms of the appropriate time frames, grounds, and standards or scope of review when a Referee hears a PPO case.

For those unafraid of working without a net, the opportunity to serve in these cases is often its own reward. Remember, although PPO cases are within the Family Division of the Circuit Court, they often involve people who have no familial or quasi-familial relationship, as in the anti-stalking PPO context of MCL 600.2950a, where you see neighbor against neighbor, Vertex A of the Love Triangle vs. Vertex B, with the *object du desir*, Vertex C usually conspicuously, and prudently absent from the hearing, and any number of other possible combinations of one or more humans with gripes against one or more other humans over, who knows what? I've held hearings where the petitioner was alleging the respondent used weaponized religion in the form of attack voodoo (my analysis, not hers) to effectuate the alleged harassment. I've had one neighbor obtain a PPO because the next-door neighbor was throwing fish over the fence into the "victim's" yard. Man, in 8 years of these cases, I think I've had it all, until the next interplanetary visitor lands in my courtroom, and I have to reset all the dials again.

But the one thing that has remained fairly consistent over the years has been the low-level expression of annoyance and resentment at the "record" that the respondent feels that the PPO has given them.

Now, we all know that allegations do not equal proof. And I have spent a lot of time with

disgruntled respondents, whether I've agreed that a PPO should be terminated, or sustained, explaining that the only "record" they need to be worried about is if they are found in contempt of court, basically, convicted, of a PPO violation. Only then is there a finding by a court that the court's order for protection has been violated.

Besides, I know of no method to "expunge" the fact that a PPO case was filed, the respondent served, and an order issued, usually *ex parte*, in my experience. The fact that the PPO is sustained following a motion to terminate it is also part of that record.

In this context, it is important to note that the statute, MCL 600.2950(7), for domestic relationship PPOs, requires the court to state the reasons it refused to issue a PPO, so there is a slight stacking of the deck in favor of issuance of this kind of PPO, since no explanation of the decision to issue a PPO is required of the court. And it is only natural, when faced with essentially a swearing contest, for a decision maker to err on the side of protection or caution, and give the benefit of the doubt to the petitioner

Although a similar tilting of the playing field is not mandated by the provisions of the anti-stalking PPO statute, under which the court must state its reasons for issuing or refusing to issue a PPO, MCL 600.2950a(4), I believe the "safety-first" kind of mindset built into domestic PPOs is often held in the anti-stalking context – indeed, in "Love Triangle" PPO cases, it's hard to distinguish the two kinds of cases, where although the parties do not "enjoy" a domestic

..continued from page 4

relationship or are enjoying it with a common third party (Mr. or Ms. Nowhere-around, at the time of hearing).

But what about the respondent who successfully manages to convince the court to terminate the PPO issued against them? Is the order terminating the PPO really enough to undo the damage of its being sought (maybe even fraudulently) in the first place? In many contexts, notably applications for credit, we are asked if we have been party to a lawsuit. Prospective employers may take a dim view of a job candidate against whom a PPO was issued, even where that PPO has been terminated.

It is unrealistic to imagine that the world at large has as sophisticated a response to PPOs as us jades in the courts and law offices. Where we realize that PPOs are sometimes fired as "shots across the bow" of an inattentive spouse (as one petitioner confided in a hearing), the public at large is apt to see the defendant/respondent in a PPO case as a kind of monster, a vile human being who cannot control his/er violent, sexually deviant impulses without a court order of protection to keep them in line.

So, what do you think? Do we need some mechanism for "expunging" the record that a PPO was issued, upon a finding that there were slim or no, or fraudulent grounds for its issuance in the first place? I used to think the file, including the order terminating the PPO, if entered, should be "expungement" enough. Now I'm not so sure. Maybe the expressions of annoyance need to get a

little louder; maybe someone has to demonstrate actual damages resulting from the issuance of a PPO. Maybe something a little stronger than the provisions of MCL 600.2950(28) and MCL 600.2950a(21) is called for. Or will we simply let both the bad eggs and the good continue to be tarred by the PPO brush?

NEW PROCEDURES FOR RAM'S 2006 ELECTION

2006 is an election year for RAM. This will mark the first time we will follow new procedures outlined in the 2004 amendments to our by-laws. In the "old days," nominations and elections were held at the annual meeting at our spring conference. RAM's by-laws were amended to allow all members to vote, whether or not they attend the annual conference.

Under the new procedure, RAM will send out a request for nominations with the February 16, 2006 board minutes. Nominations must be submitted to our executive secretary, Deb McNabb, prior to or at RAM's April 20, 2006 board meeting. Written ballots will then be mailed to the general membership within seven days after our April board meeting. Members may vote for executive board officers and members-at-large by either mailing them to Deb McNabb (post dated no later than 7 days prior to our conference), or by hand delivering them to a ballot box at the conference by Thursday, May 25, 2006 - the day before our annual meeting.

All officers and five members-at-large positions are up for election. Officer positions include: president, vice president, executive secretary, recording secretary and treasurer. All positions are two year terms.

The May 2004 changes to our by-laws were made prior to the existence of RAM's web site, www.referees-association.org. Because of the considerable cost savings in postage by using the internet, our Constitution and By-Laws Committee is considering tweaking the procedure to allow for posting of ballots on our web site, if not actual elections.



Stabenow Fights for Michigan Families

By U.S. Senator Debbie Stabenow

As a State Legislator, I had the privilege of working with referees and other committed professionals involved in our juvenile justice and family law system in the 1980's and early 90's on many critical legislative efforts to improve the lives of children and families in our state.

As you may know, I sponsored one of the first warrant less arrest domestic violence laws in the nation. I also authored the law that established the Michigan Children's Trust Fund for the prevention of child abuse and some of the first reforms to our foster care system providing permanent plans and homes for children languishing in the foster care system.

The Referees Association of Michigan was founded shortly after the passage of landmark legislation I authored reforming Michigan's Friend of the Court system. These were the first reforms of the system since the Friend of the Court was established in 1919, and they became a model for our country.

Whether it was divorce, domestic abuse, child abuse, adoption, mental health or juvenile justice, I remained actively involved in family law issues throughout my state legislative career.

This history has given me a deep appreciation for the work you do on the frontlines everyday for the families of our state and has helped me to fight in Congress on behalf of the families we serve.

Since my election to the US House in 1996 and then to the US Senate in 2000, I have continued to advocate on behalf of families and children, and I recognize the very difficult challenges we face today. I am fighting to preserve the good paying jobs and benefits that families depend upon for basic economic security and to preserve the critical services many families need just to survive.

I have watched our state go through tough times over the years. But I know that what we are experiencing today is different. What is happening in Michigan isn't just another economic cycle. What is happening to our economy is threatening our entire way of life.

People are afraid -- for their jobs, their retirement and their health care. Many don't know how they are going to pay next week's bills, let alone afford college for their children. I know you see this stress and fear in the faces of people you serve.

Like many in our state, I am frustrated by this administration in Washington who just doesn't understand the challenges and struggles families face today. They just don't get it.

They don't get it that cuts in federal services have a critical impact on the every day lives of people.

Today, I am fighting to restore \$4.9 billion in cuts proposed by this administration to federal matching funds for child support enforcement. This would mean that Michigan families could lose \$537 million in uncollected child support over the next 10 years. This funding ensures that both parents support their children, not taxpayers.

This administration has also proposed significant cuts in foster care and a 43% cut from last year's budget for juvenile justice programs. The federal government is an important partner with state and local governments in providing a safety net for families and basic protections for our children. I get the impact these cuts would have on families and I know you do too.

This Administration doesn't get that failing to enforce our trade laws costs American

...continued from page 6

jobs and is having a devastating impact on Michigan's manufacturing economy. We did not become the country we are today by outsourcing our jobs to countries like China and Mexico and leading a race to the bottom in wages, benefits and job security. We did it by creating an economy and standard of living that other countries envy.

They don't understand that rising gas prices are not only hurting families, but they're killing our economy. Instead, they protect the drug companies and oil companies, as they report record profits at the expense of families and small businesses.

They don't get it that their proposed cuts in student loans mean middle class families can't send their children to college.

I was born in Michigan. I grew up here, went to college here, raised my children here and I intend to retire here. I get what's important to Michigan.

I get that investments in education and innovation give our children the opportunities they deserve and keep our Michigan workforce on the cutting edge.

I get that we need to enforce our trade laws and stop countries like China and Japan from cheating so that Michigan businesses have a level playing field to compete.

I get that common sense health care reforms like bulk purchasing of prescription drugs and investments in health technology can bring down costs so families can afford health care.

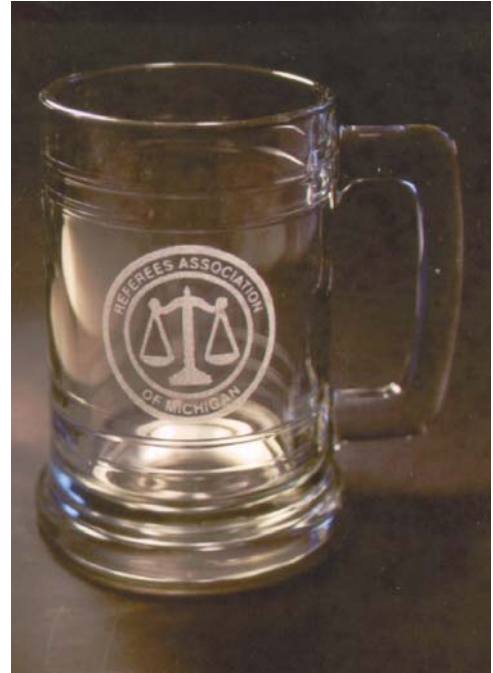
I get that families need our help, support and opportunities to succeed.

Referees are on the front lines in supporting the families of our state. I know you get it and I commend you for the work you do everyday.

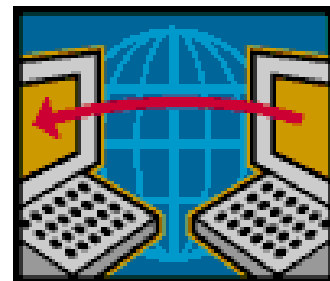
My commitment to the children and families of our state is longstanding and you can count on me to continue fighting on their behalf in the U.S. Senate.

Visit the RAM Website and check out our Shopping Page. There's something for everyone!

www.referees-association.org



Join Our Listserv!



If you are not already a member, please consider joining the RAM Listserv. Its purpose is to provide a confidential forum for our members to discuss issues relevant to Michigan referees. This listserv is private and limited to member referees. It is secure from the eyes of non-referees (except, of course, the IT department of your County!). Only those persons who are current members of RAM and who have been approved by the list moderator may participate in the listserv. I encourage you to take advantage of this valuable resource today! Just send an email to pjacokessr@yahoo.com for instructions on how to join!

Show Me the Money!

**By Susan Thorman, Shiawassee County Friend of the Court
President, Michigan Friend of the Court Association**

As we struggle to absorb the funding cuts coming from the U.S. House Budget Reconciliation Bill of 2005, I am reminded of the quote from Ken Hakuta, who introduced that sticky glob, the Wacky Wall-walker, to America. He said, "Lack of money is no obstacle. Lack of an idea is an obstacle." How will our program make up fifty-eight (\$58) million or twenty-three (23%) percent of our budget in less than nine months? All hands on deck, as we are going to need ideas.



Many people don't realize that Michigan's child support program dates back to 1918. We were one of the first social programs in the country to address separated families. When the federal government decided to become involved in child support programs in the late 1980's, Michigan's successful program was mined for ideas. Our long and honorable history served the country well in crafting the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) that brought the federal government firmly into our world. I believe it will be our history of leadership and ideas that will guide us into a new era of supporting families.

Two federal revenue streams fund our program. First, the Cooperative Reimbursement Program (CRP) provides contracts with each county for the federal government to pay sixty-six (66%) percent of administrative expenses and the state and counties to pay the remaining thirty-four (34%) percent. The second funding source is the federal incentive. This incentive or bonus is paid through a performance-based system. All states compete for one pot of incentive money. The better we perform in the five performance measures, the more bonus money we collect. For 2004, Michigan's share was twenty-nine (\$29) million dollars.

This carefully designed system has given states the incentives and resources they need to improve their child support enforcement programs. President Bush's 2006 budget cites the child support program as one of the highest rated block/formula grants of all government-wide programs. According to the President's budget, "This high ranking is due to its strong mission, effective management and demonstration of measurable progress toward meeting annual and long-term performance measures."

How does such a highly ranked system get the financial ax? Unfortunately, our use of incentive money was labeled "double dipping," a term that caught on and was repeated over and over. However, the manner in which we use the incentive money to "draw-down" on the CRP money was set up by the federal child support office. In my opinion, since the program has always

..continued on page 9

...continued from page 8

been funded by using the incentive to match the CRP, this is working as designed; not some loophole that we have taken advantage of in error. Other programs such as food stamps have their administrative costs funded as much as 100 percent by the federal government. The Budget Act not only cut our funding, it contained additional requirements that will strain our MICSES two-year plan dollars and force us to implement even more changes into MICSES that are guaranteed to cost money.

So how does the funding cut work? Quick math: if your county budget is one-thousand (\$1000) dollars the federal share via CRP is six-hundred and sixty-six (\$660) dollars leaving the state/county share at three-hundred and forty (\$340) dollars. Your incentive is one-hundred (\$100) dollars. Under the old method, the county would use the \$100 incentive to pay the first \$100 of their \$340 share, thus the county share is only \$240. Under the new method, the \$100 can be used, but it comes off the top. Therefore the feds CRP responsibility is \$594 and the county's share is \$306. ($\$1000 - \$100 = \900; 66% fed, 34% state/county).

Because we have not yet found a good way to share the pain of these cuts, and we don't anticipate the state or many, if any, counties to make up the cut, we need to quickly begin discussions with all our partners as to the future of our program. I hate the cliché of "working smarter, not harder" because I don't see smarter work as the answer. (Who can call MICSES smart?!) What we need to commit to is redesigning the method we use to provide services. Maybe there is a referee system in one county that manages caseloads well and that system would benefit another? Perhaps the Office of Child Support delivery of services model needs to be tweaked to perfection. Can the Prosecutor's offices learn from the Dads-from-Day-One program that Wayne County is developing? Should the Friends of the Court continue to offer every conceivable program at no cost to the consumers of those programs? And finally, is there room for non-adversarial proceedings?

Our task is not going to be easy, but let's face it, we are not a give-up-the-ship kind of people or we wouldn't be in this type of work. So rather than worrying about our lack of money let's put our efforts in making sure we have no lack of ideas. Your commitment and dedication to children and families will go along way in being part of the solution.





22nd ANNUAL RAM CONFERENCE - MAY 24, 25, 26, 2006

THE 22nd ANNUAL RAM CONFERENCE IS JUST AROUND THE CORNER and is packed with speakers who will provide useful information on topics geared toward both Juvenile Division Referees and Domestic Relations Referees!

● **May 24, 2006:** (Wednesday) **PROFESSOR CARL S. TAYLOR**

Professor Taylor is a professor at Michigan State University and he is an expert on urban youth, culture and gangs. Professor Taylor has published numerous articles on urban youth culture and gangs and the successful development of African American and Latino male adolescents. Professor Taylor has presented lectures nationally and his presentation will focus on "Citizens, Non-Citizens, and Anti-Citizens!"

● **May 25, 2006:** (Thursday) **DR. MARK SLOAN, JAMES HENRY, MSW, & FRANK VANDERVORT, J.D.**

These three professionals work together on children's issues: **Dr. Mark Sloan** is a board certified pediatrician and is an expert in diagnosis of pediatric disorders of mood, behavior, learning and attention. He is founding member of the Southwest Michigan Children's Trauma Assessment Center (CTAC) at Western Michigan University. Dr. Sloan works with **James Henry, MSW**, at the clinic. **Frank Vandervort, J.D.** is the head of U of M's Advocacy Clinic. Their presentation will focus on Child Traumatic Stress Disorders and Fetal Alcohol Spectrum Disorders: Focus on Juvenile Justice!

● **May 25, 2006:** (Thursday) **LANNIE MCRILL, M.A.**

Lannie McRill is one of the premier substance abuse testers in the state of Michigan and he specializes in substance abuse assessments and testing for family law professionals. His presentation will focus on substance abuse assessments and/or testing, when assessments and tests should be ordered, the different types of testing, and how to interpret the results!

● **May 26, 2006:** (Friday) **KAROL L ROSS, M.A., J.D.**

Karol Ross is the head of psycho-diagnostic clinic in Macomb County. Her presentation will focus on psychiatric evaluations and will address a variety of issues, such as the purpose of an evaluation, when an evaluation should be conducted and how to interpret the results!

** The **Registration Fee** includes your attendance at the RAM Conference, Conference Materials, One Continental Breakfast, One Group Breakfast Buffet, One Group Dinner, and a Special RAM Gift. The Registration Fee also includes entry into the **Hospitality Suite** for some after hour fun and relaxation (Euchre Anyone?! For a small additional fee, you can participate in the **Annual RAM Golf Outing**. See the **Registration Form** on the next page for detailed information regarding conference registration fees and the cost of hotel accommodations.

And if the Conference itself isn't enough to entice you to Register, CHECK OUT THE LOCATION!!!

The 22nd Annual RAM Conference will be held at the *Stafford's Perry Hotel* which is located in the historic gaslight district of Petoskey, Michigan. The *Stafford's Perry Hotel* is located across the street from Lake Michigan and boasts 30 miles of hiking and biking trails. Additionally, some of the best golfing in the country is located within a few miles of the hotel. There are also tennis courts and an outdoor fitness par course located half a block from the hotel. For shopping enthusiasts, the *Stafford's Perry Hotel* is located within walking distance of Petoskey's signature shops and unique art galleries. There are also coffee houses, restaurants, desserts shops and pubs that line the streets. The Victories Casino is located only a few miles from the *Stafford's Perry Hotel*.

Check out the hotel website: www.theperryhotel.com

Referees' Association of Michigan
22nd Annual Conference
Petoskey, Michigan
May 24, 25, 26, 2006

CONFERENCE REGISTRATION FORM

NAME: _____

TITLE: _____

COURT & COUNTY: _____

ADDRESS: _____

TELEPHONE: _____

CONFERENCE FEE: Conference Fees include registration, materials, group dinner, group breakfast, and RAM membership for non-member Referees. **Please CHECK the option(s) selected below.**

RAM Members: _____ Registration Fee \$150.00 if paid on or before April 15, 2006, \$200.00 if paid after.

Non-Members: _____ Registration Fee \$175.00 if paid on or before April 15, 2006, \$225.00 if paid after.

Per Diem Rate: _____ \$75.00 per day for RAM Members (Day(s) Selected: Wednesday, Thursday, Friday)

_____ \$85.00 per day for Non-Members (Day(s) Selected: Wednesday, Thursday, Friday)

Guest Meal Rate: Wednesday Group Dinner(s): \$33.00 each _____ (# of additional persons)

Friday Group Breakfast(s): \$13.00 each _____ (# of additional persons)

REGISTRATION FEE ENCLOSED: \$ _____

GUEST MEAL(S): \$ _____

TOTAL AMOUNT ENCLOSED: \$ _____

Please send this Registration Form, along with a **CHECK MADE PAYABLE TO: R.A.M.**, to the following:

RAM c/o Referee Paul Jacokes
Macomb County Circuit Court
40 North Main, 6th Floor
Mt. Clemens, Michigan 48043-8606

* * * * * **Do NOT send your conference form and fees to the hotel** * * * * *

The *Stafford's Perry Hotel* is offering Conference Attendees a special Room Rate of \$75.00 per night, plus tax. Hotel reservations can be made by contacting the hotel. For more information visit: www.staffords.com

Stafford's Perry Hotel
Corner of Bay and Lewis Streets
Petoskey, Michigan 49770
Room Reservations: 1-231-347-4000 or 1-800-737-1899



On November 8, 2005, Michigan State Representative John Moolenaar introduced House Bill 5407, making it a civil infraction to smoke tobacco in a vehicle in the presence of a minor. Under the proposed House Bill, police officers would be able to issue a citation if a person possesses a “lit tobacco product” in a motor vehicle when an individual less than 18 years of age is occupying the same vehicle. Points will not be assessed for a violation.

The proposal of House Bill 5407 is interesting in several aspects. How will it impact Family Court and referee hearings? Does this give courts a stronger argument to use smoking as a factor in custody? Should courts now use the doctrine of *parens patriae* to protect children from smoking? How far will restrictions to smoking go?

House Bill 5407 reflects a clear social trend in attitudes against smoking tobacco. The bill will likely receive token civil liberty debate, much as the “helmet law” and “mandatory seatbelt use” law did, but will become law. (The bill is currently in committee at the time of the drafting of this article).

To date, more than 80,000 scientific publications have linked cigarette smoking with various fatal diseases. According to a 1986 report of the U.S. Surgeon General, smoking is responsible for 15% of all deaths in the United States, killing more than 430,000 citizens each year – more than AIDS, cocaine, heroin, homicide, suicide, auto accidents and fire combined.

Whereas smoking is the leading cause of death in the United States, breathing secondhand smoke is the third leading cause of preventable death. Children, because their bodies and organs are still developing, seem to be particularly susceptible to disease caused by secondhand smoke. The EPA estimates that secondhand smoke causes as many as 26,000 new cases of childhood asthma every year; and as many as 300,000 cases of pneumonia or bronchitis in children less than 18 months of age, every year.

The snowballing anti-tobacco trend makes clear the question of smoking as a factor in custody and parenting time. Today, tobacco use as a factor seems like a novel question. Ten years from now, it will seem odd that it wasn’t already law; just as it now seems odd that referees once smoked in their offices, secretaries smoked in their cubicles, and lawyers smoked in the courtroom.

Michigan courts have yet to deal with the issue of tobacco use as a custody/parenting time factor, but there is much guidance from decisions in our sister states. In In Re Wilk v Wilk, 781 S.W. 2d 217 (Mo. App. 1989), the Missouri Court of Appeals upheld the trial court’s decision to grant primary custody of the children to the mother when one of the children was asthmatic, father smoked, and a doctor had advised that the child should not be exposed to smoking. Also, in In Re Aubuchon, 913 P. 2d 221 (Kan Ct App, March 22, 1996), the trial court properly awarded custody to the ex husband after finding that the children were harmed by the ex-wife’s smoking.

Judge William F. Chinnock, a former judge of the Cuyahoga County, Ohio Juvenile Court, drafted an opinion in In re Julie Ann, 121 Ohio Misc. 2d 20, 780 N.E. 2d 635, 2002 - Ohio - 4489 (2002), where he fervently states that family courts have a mandatory duty, using the doctrine of *parens patriae* (the state as parent), to restrain parents and other persons from smoking around children.

Smoking will increasingly become a significant factor that referees must consider when recommending custody and parenting time. Given the social, and now legal, trend that is changing the very culture of smoking from glamour days of yore (remember the sexy movie stars who smoked on screen?) to near pariah status in the 21st Century, one may seriously ask: will smoking eventually become outlawed in the United States?

The answer is blowing in the wind.

Ken Randall
February 27, 2006



THE ATTORNEY GENERAL'S CHILD SUPPORT DIVISION

By Norman W. Donker

Division Chief

In 2002, candidate Mike Cox campaigned for the Office of Attorney General. A central platform of his campaign was the need to enforce Michigan's Felony Non-Support statute. As a trial prosecutor and Chief of the Wayne County Prosecutor's Homicide Unit, Mr. Cox had seen only too often the end results for hundreds of teenagers who did not have the presence or financial support of their fathers in their lives. These young men became involved in violent crime, too often homicides, and wasted their lives in the commission of crime. Not only would these young people face long sentences in prison, but they, and their families became or continued to be the financial responsibility of the State of Michigan.

In April, 2003, that promise became reality. The Attorney General's Child Support Division began operations. At first, there was only one attorney and three investigators assigned to the Division. That has grown to today's complement of 7 attorneys, 12 investigators, and 12 support personnel. The unit is funded for 66% of its expenditures by a grant from the Department of Health and Human Services, administered by the Michigan Office of Child Support. The remaining 34% is State general fund monies.

The goal of the Division has remained the same: Target those non-custodial parents who have the means to pay their support, but refuse to do so. To that end, the investigative process is geared to the identification of assets that would allow an NCP to make payments. Once a

referral is received by the Division, or is internally generated, a thorough review of records takes place. The Judgment of Divorce is secured, and it is confirmed that the NCP received notice of the hearing that led to the imposition of the support order. All of the MICSES records pertaining to that case are obtained. The Division then obtains two credit histories of the NCP. Contracts are in place with Experian and Accurint for these histories. The Data Warehouse is also reviewed for the NCP's work history and records of income. Tax intercept records are also reviewed. Upon a determination that the NCP can make payments, or larger payments than they are currently making, a warrant is issued.

The criminal charge is negotiated in a fashion typical of most criminal cases, with one exception. As the focus of the unit is the collection of the support, greater consideration is given to that factor, than the ultimate adjudication of the case. For instance, it is not unusual for the NCP to make contact with our Division. We send them a letter indicating that we are reviewing their case for prosecution. If it is possible to negotiate with an NCP at that time, we do so. Being mindful of the financial constraints of our unit, we try to recover the entire arrearage without having to resort to starting a criminal case. The perfect case for us is when a NCP is contacted, the entire arrearage is paid in a lump sum, the existing support obligation is paid regularly, and a warrant is never issued. Again, the focus is entirely upon obtaining compliance with the support order and payment of the arrearage.

In the early days of the operation of the Division, it was not unusual to see very large lump sum payments made to settle cases. One suspect made a lump sum payment of \$274,000 to avoid prosecution. While those large payments are getting rarer all the time, the assets are out there. In 2005, 28 individual NCPs made one time, lump sum payments in excess of \$40,000 to address their arrearages.

The Child Support Division has been able to collect over \$24 million in its existence. \$11,600,000 was collected in 2005. Importantly, once a case is adjudicated or settled, the NCP is monitored to ensure that the support payments continue. Each investigator monitors all of the files that they have been assigned to biannually, to ensure that the NCP is continuing to meet their obligations.

Of course, every case does not produce the intended result. One of the very interesting aspects of these cases, is the small, but adamant group, that simply will not pay their child support obligations regardless of their means to do so. We currently have a defendant awaiting trial who was extradited from New York. He has the means to pay his \$75,000 arrearage easily. Yet he chooses to sit in jail and refuses to meet his obligations. He will go to trial, be convicted, and will eventually return to New York as a convicted felon, unable to be licensed in his current profession. The depth of the animus that is present in some of these cases is truly hard to fathom.

One aspect of support enforcement that has created a greater challenge for us is the increasing sophistication of NCPs in hiding their assets. In a pattern very similar to drug dealers in the 1980s when the forfeiture laws were first being applied, so to do the NCPs of today hide

their assets. Investigators have become more savvy in following the money trail and the property title chains to accurately assess an NCP's financial status. It is more common that property will be titled in the name of a new spouse, or family member, or trusted friend. However, in the majority of circumstances, an NCP who claims to have no assets can still come up with large payments to avoid extradition.

The Attorney General is proud to be a partner with the Office of Child Support, Friends of the Courts, county prosecutors, and custodial parents to obtain compliance with support orders. We recognize that we are a niche player, dealing with only a small part of the overall child support continuum of payers. We strive to work with all agencies to obtain the best results we can. In these days of budgets and human resources stretched to the limit, we welcome the chance to work with all the players in the support system.

Attorney General Cox believes in the cooperation of all aspects of the enforcement system. Through cooperation we create a synergy. Acting together, we are truly greater than the sum of our parts, and collections for families that desperately need the support is increased. If you wish to refer a case, or would like more information on the operation of the Division, please contact me at (517) 373-1111 or a ndonker@michigan.gov. Together, we can make a difference.



AMERICA DIVORCES TOBACCO

By Ken Randall

What follows is intended to be a companion article to *No Smoking in a Car with Children Law Proposed*. While most of what appears in *Referees' Quarterly* is legally based, this article is more historical in nature. When it comes to tobacco and understanding where our laws and social values are going, it is helpful to look at where we have been. So light 'em if you've got 'em, and let's examine America's love affair with tobacco gone bad.

The history of tobacco is inextricably intertwined with the fabric of American culture. Tobacco is, indeed, as fundamentally American as baseball and apple pie. The very colonization and development of our country owes homage to the plant. It is doubtful that the United States would be English speaking today but for the presence of tobacco. And lest we forget, even before European colonization, Native Americans had consumed tobacco and made use of the plant in ceremonies and rituals for thousands of years.

In 1492, when Christopher Columbus "discovered" the New World,¹ he also "discovered" tobacco. Upon his arrival on San Salvador Island, the indigenous Arawaks offered gifts, including tobacco. Columbus returned to Europe with dried tobacco leaves and seeds. Europeans slowly developed a taste for the plant (literally – snuff and chew were the original methods of consumption along with pipe smoking). Later European colonization of the New World focused on many economic enterprises, including tobacco cultivation.

It is no accident that in Plymouth in the autumn of 1621, when the pilgrims celebrated what would become America's "first" Thanksgiving, the festivities included the consumption of tobacco. Of course our first Thanksgiving did not occur in Plymouth. The actual first Thanksgiving was celebrated on December 4, 1619 in Jamestown – a fact long since forgotten by most history books and American folklore. But in Jamestown too, they celebrated with tobacco. (There may have been an earlier Thanksgiving celebrated by Sir Walter Raleigh's "lost colony" in the 1500s. We may never know. "Thanksgivings" were simply harvest celebrations, a tradition brought over from the old country.

Sir Walter Raleigh's colony also grew tobacco, so if they did celebrate, they too may have consumed tobacco.)

In 1732, a century after the pilgrims first Thanksgiving, George Washington was born on a tobacco farm in the Virginia colony. Tobacco was omnipresent throughout Washington's life. Even in his later Mount Vernon years, he grew tobacco. The plant was of critical importance during the American Revolution, when it was used as collateral to borrow currency from France to fund the war.

Moving forward another century, the Civil War ended on April 26, 1865, not at Appomattox, but at a tobacco vendors farm (Bennett place) outside of Durham, North Carolina. (Lee's Appomattox surrender to a cigar smoking Grant only ended the northern campaign. The Southern campaign continued as Confederate General Joe Johnston – who Michiganders may know as a former lighthouse keeper at Whitefish Point – tried to elude a persistent General William T. Sherman).



The history of Durham is a microcosm of American manifest destiny and tobacco. Durham was a sleepy hamlet, not much more than a railroad stop, at the end of the Civil War, yet this is where the world's greatest rags to riches tobacco story took place.

As the legend goes, Washington Duke, after his service in the Civil War, returned to the area destitute. He owned only a broken wagon and two blind mules. Yet, through hard work, and the accidental discovery of curing tobacco into "brightleaf," he was able to market his product, buy a farm, then a company, and by the time of the end of his life, his family had cornered the world tobacco market. Even today the "Duke family" is known philanthropically as one of America's elite families. The Dukes donated a large sum of money to Durham's little known Trinity College, which gratefully changed its name, and is now known as Duke University.

For more than a century after the Civil War, Durham thrived as a tobacco town. At harvest time, farmers hauled countless wagonloads and truckloads of fragrant brightleaf tobacco to giant red brick warehouses to be auctioned to cigarette companies. Both Liggett & Meyers and the American Tobacco Company manufactured cigarettes in town, producing such brands as Chesterfield, Lark and L&M. Because of tobacco money, the town was able to attract a minor league baseball team called the Durham Bulls (which many of you may know from the 1988 movie *Bull Durham*, starring Kevin Costner and Susan Sarandon). The Bulls pitchers warmed up in a penned in area under a large sign advertising Bull Durham Chewing Tobacco. The stadium broadcaster would refer to the warm-up area as the “bullpen,” and a new tobacco-derived word entered the American lexicon.

Nationally, cigarettes gained popularity in the 20th Century, overtaking cigars, and traditional snuff and chew. In World War II, the U.S. Government made sure that American troops were given C-rations that included a small pack of cigarettes. It was both a reminder of home and a brilliant marketing ploy, as tens of thousands of new smokers were hooked.

Hollywood glamorized smoking cinematically. It even became a symbol of having just engaged in sexual activity. On television, American sweethearts Lucille Ball and Dessie Arnez would pitch Phillip Morris cigarette commercials during their “I Love Lucy” shows. Broadcast anchors and game show hosts smoked on the air. At the workplace, secretaries and bosses would smoke in offices. Who didn’t smoke? It was hard to find a place where someone couldn’t smoke. Smoking and tobacco were completely accepted. After all, our grandfathers smoked, and tobacco had been with us since the time of Columbus, and before.

But then it happened.

In 1952, *Readers Digest* published an article titled, “*Cancer by the Carton*” which, for the first time, detailed the dangers of smoking in a popular periodical. The controversial article was followed by a trickle of additional “smoking is dangerous” articles. The tobacco industry countered, of course, with their own “studies.”

In 1964, the Surgeon General published a report on “*Smoking and Health*.” For the first time, the United States government linked cigarette smoking to chronic dis-

ease. This was the true tipping point in America’s relationship with tobacco. From this point on, laws would be passed to curtail unbridled tobacco consumption from an unwitting public.

In 1965, Congress passed the Federal Cigarette Labeling and Advertising Act, requiring the Surgeon General’s warning on all cigarette packages. In 1971 federal law prohibited television ads for cigarettes. In 1977, the first national “Great American Smokeout” was held. In 1979, the Surgeon General reported the “Health Consequences of Smoking for Women.”

In the 1980s, hundreds of lawsuits were filed against the tobacco industry. In 1982, the Surgeon General reported on the cancerous effects of secondhand smoke, and municipalities slowly began to ban smoking in public areas. In 1986, in what must have been a slow day, Surgeon General Koop asked Hasbro to stop making a pipe for Mr. Potatohead. In 1987, Congress banned smoking on all domestic flights lasting less than two hours. By 1990, smoking is banned on all domestic flights (except to Alaska and Hawaii) as well as buses.

In 1994, Mississippi filed the first of 22 state lawsuits seeking to recoup millions of dollars from tobacco companies for smokers Medicaid bills. In 1995, President Clinton announces FDA plans to regulate tobacco marketed to minors (no “Joe Camels” or candy cigarettes) and ban the use of cigarette vending machines. In 1999, the Michigan legislature passed House Bill 4343 banning tobacco advertising on billboards effective January 1, 2000.

In the weeks that I’ve considered drafting this article, I’ve been amazed by the barrage of newspaper articles reporting new restrictions on tobacco. In that time, the Midland County Commissioners banned smoking in public buildings, and Canada and England voted to restrict tobacco use. Michigan’s pending House Bill 5407, banning lit tobacco in a car with a minor present, is just the latest in what will be a long line of snowballing anti-tobacco restrictions in the years to come.

So, when will smoking tobacco become illegal?

That we can even seriously ask the question represents a paradigm shift in our relationship with cigarettes. Clearly, America’s love affair with tobacco is over.

The fact that cigarette companies stipulated to billion dollar settlements with various states Attorney Generals was both a sign of weakness and wisdom. Cigarette companies have traditionally been among the best managed corporations. Some thought that corporate settlement was crazy! Yeah, crazy like a fox. By offering billions of dollars to states, cigarette companies have guaranteed tobacco production for at least one more generation. After all, what senators are going to vote to ban tobacco production when such a vote could cost their state billions of dollars?



When it comes to the future of America's relationship with tobacco, there remains no reasonable likelihood that the marriage can be preserved.

Footnote 1. Columbus deserves much credit for his brave voyage(s) to the New World. But to say he "discovered" the New World is, of course, mythological. What his voyage did represent was permanent European interest and settlement in North America – a fact not lost on the many Native Americans who protest Columbus Day as a holiday.

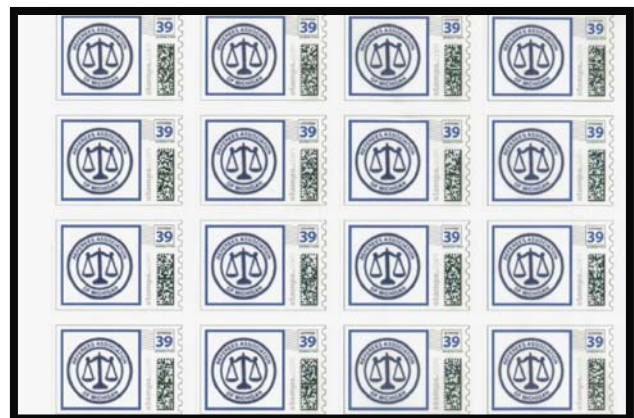
By the time Columbus made his 1492 voyage, there may have already been New World expeditions from the three known populated continents (Asia, Europe and Africa). From Asia, according to author-historian Gavin Menzies, Chinese exploration may have occurred in 1421 under Admiral Zheng He. And there was, of course, the "Native American" population that migrated from Asia across the Bering Strait some 15,000 – 20,000 years earlier.

Europeans had known about the New World for centuries. In the year 982, the Vikings settled and mapped parts of Greenland under the leadership of Erik the Red. The Vikings also settled into "Vineland" or Eastern Canada up until around 1100 A.D. The best known Viking ruins are located at L'Anse Aux Meadows in Newfoundland. Some Vikings may have remained in Canada, mixing with the Inuit, thus explaining the phenomenon of "blond hair Eskimos." Prior to the Vikings, there may have been Irish exploration by St. Brendan as early as the 7th Century.

Even in the time of Columbus, a fellow Italian, Amerigo Vespucci, claimed that it was he who had

"discovered" the New World. At least one German cartographer believed Vespucci, and when labeling newly mapped areas in 1507, called the Continent "America," as the feminine of "Amerigo" (Names of continents are in the feminine. Had the cartographer been kinder to Columbus, we would be living today in the United States of Columbia).

From Africa, there is evidence that the Egyptians explored Central and South America. Tests on 3,000 year old mummies from the 21st dynasty revealed traces of both cocaine and nicotine. Cocaine comes from the coca plant that grows only in South and Central America. Similarly, nicotine must have come from tobacco, also from the Americas. Some historians have hypothesized that Egyptians carried with them a pyramid building culture, explaining the pyramids of South and Central America. National Geographic filmed the Ra II, an Egyptian replica reed boat, as it proved it could make a trans-Atlantic voyage. Also from Africa, it is possible that ancient Carthaginians explored the Americas.



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