

Referees' Quarterly



A publication of the Referees Association of Michigan

Since 1984

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Photos by Kenneth D. Randall

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2006 AND BEYOND, A VISION FOR RAM'S FUTURE

What is in the stars for the Referees' Association? Clearly, we are an evolving group. But what does the future hold?

It is easy to answer that question in the near term. One of our immediate goals is an extensive expansion of our web site, **Referees-Association.org**. Increased visibility is deemed to be a desirable goal. To that end, one of our web site's new features will include newspaper articles about RAM or RAM members in conjunction with the organization. A newly created Public Relations Committee will draft press releases to reinforce this section. Also planned is a list of all publications by RAM members, with links to their publications. Other upgrades will include the following: a membership directory or all RAM members; current salary and benefits surveys; a RAM apparel section where members can order RAM logo ("RAM wear") items; and general updating to keep our site current. In the more distant future, we may include a chat room to hold cyber meetings, or to have spirited discussions among the members, thereby increasing our communication. For the interim time, however, we will rely on our site's listserv for email.

Another goal is an upgrading of *RAMblin' On*. As we become more

visible to the legal community and general public, we must be cognizant of maintaining a dignified and professional decorum. The first change will be our newsletter name from "*RAMblin' On*" to a more formal "*Referees' Quarterly*."

Others will likely judge us by our publication, so this is a key area to scrutinize. A new program, asking guest authors to submit articles and essays, will begin in the summer of 2005. In the summer of 2006, in an attempt to further our visibility, "*Referees' Quarterly*" will be bound and donated as a periodical publication to various libraries across the state.

A third goal is increasing membership. This is a perennial goal with any organization, and ours is no different. There is a clear demographic change in attitudes toward joining groups and associations. The "silent generation" and "baby boomers" are joiners. However, "generation X" and the "millennial generation" are harder sells. One need look no farther than your local bowling alley to see this. Leagues are dying because it is unfathomable to gen Xers and millennials that they would have to commit to every Tuesday for 39 weeks! Solutions for RAM may include the idea of making all referees automatic members of the

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A Letter from the Chief Justice

June 6, 2005

To the Members of the Referees Association of Michigan:

At the end of 2005, when I reflect upon my first year as Chief Justice, RAM's Spring Conference will stand out as one of the highlights. The spirit of the event and the beauty of Mackinac Island in May are still with me. I was honored to address you, and it was a pleasure to meet and talk with referees from all over the State. Thank you for inviting me.

After hearing some of your concerns about the current system, I want to reiterate my awareness, especially for those who did not attend the Conference, that Michigan's family courts could not function without you. Each day, you carry the burden of juvenile justice and family litigation. The cases on which you work are as difficult and draining as any form of dispute the courts are required to decide. All of the Justices are deeply grateful for the excellent work and unselfish service you have given to the Judicial Branch.

Winston Churchill once said, "Democracy is the worst form of government except for all those others that have been tried." His comment comes to mind when I contemplate the adversities of being a referee. While confronting the worst of family litigation, you function with Constitutional, statutory, and federal regulatory limitations on your authority. These constraints occasion delay in the implementation of your opinions, and they sometimes offer comfort to those who would exploit the system for personal advantage.

We have worked together, in recent years, to remove some of these encumbrances, and we have made progress; but I know that many of you feel we must do more to improve the efficiency of the system and enhance the effectiveness of your labor. Having begun a dialogue on these issues, the Supreme Court and the State Court Administrative Office will continue to seek your counsel in pursuit of constructive change.

In the meantime, please be assured that your dedication and expertise are recognized as one of our most valuable resources in the quest to bring justice and support to the children and families of Michigan.

~ Clifford W. Taylor, Chief Justice
Michigan Supreme Court

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Association – Thereby greatly increasing our numbers and inclusiveness. If we did that, our funding would come through our conference registration fees. To increase attendance, we may open our conference to others, for example family lawyers, magistrates or others who may benefit from our program. Among the referees, there should always be an attempt to bring everyone into our “circle,” to reward membership and activity as a member, to increase communication and support, to solicit input, and to reinforce what we all already know – that the Referees’ Association is not only a worthy organization, it is OUR organization. It gives us a voice greater than the sum of our individual members. It gives us a place to call home.

In terms of our long-range future, it is entirely conceivable that we (or members from our group) will initiate a regional or national association of referees and commissioners (though we’d have to come up with a better name than “NARC”!). There are some very pragmatic reasons for forming such an organization. The group would, by definition, be “national,” and thus attract the best of “national” speakers who could in turn be funded by a pool of money from numerous state organizations as well as a potentially large membership. A national referees’ association conference would provide a tremendous opportunity for networking, and provide a deep pool of “best practices” to explore. Wouldn’t it be nice if RAM started the national association of referees?

~ Ken Randall, President

A Note on the Ingraham Scholarship

May 24, 2005

Dear Ken,

Congratulations to you and the members of RAM for establishing the Ingraham Scholarship at WSU. Phil was a wonderful leader and a cherished friend.

I know he would have been very moved by this honor. As a Past President of RAM, I am delighted with the organization’s progress and wish you continued success.

Linda Hallmark

Probate Judge, Oakland County



A moving moment...Ken Randall and Jean Dohanyos share a hug as Jean receives an award for her service as Conference Chair



Hear Ye, Hear Ye — Listen Up

By Nancy J. Diehl

President, State Bar of Michigan

Listen. It seems so easy just to listen. Then why is it so difficult? We don't listen because we are usually preoccupied with something else — thinking we already know where the story is going, listening in our own head to our next comment or question, plotting our winning strategy, or dreaming of our next vacation. Listening is one of a lawyer's most important skills, but rarely do we actively cultivate this ability. And, the emphasis in law school is on other communication skills such as writing and speaking. However, sometimes the nature of our work shouts at us to improve our listening capacity.

I spent many years in the Prosecutor's Office working with children twelve and under where there was an allegation of sexual or physical abuse. I discovered early on that I needed to let the children do the talking, to carefully listen to what they had to say, and give them a full opportunity to speak without interruption. When you ask the right questions, ones that do not call for a yes, no or very short answer, it is remarkable the detailed information you receive. Psychiatrist, Dr. Karl Menninger said, "Listening is a magnetic and strange thing, a creative force. The friends who listen to us are the ones we move toward. When we are listened to, it creates us, makes us unfold and expand." Through the children, I learned about the great and powerful tool of listening.

Of course, listening to children has an added dimension than listening to adults. Because children perform differently at each developmental level, you must be careful not to misinterpret or jump to conclusions about

what they are saying. There is an amusing story that illustrates the importance of listening and giving someone the opportunity to fully explain. There was a Michigan teacher who was helping one of her kindergarten students put on his boots. He asked for help and she could see why. Even with her pulling and him pushing, the little boots still didn't want to go on. Finally, when the second boot was on, she had worked up a sweat. She almost cried when the little boy said, "Teacher, they're on the wrong feet." She looked and sure enough, they were. It wasn't any easier pulling the boots off that it was putting them on—this time on the right feet. He then announced, "These aren't my boots." She bit her tongue rather than get right in his face and scream "Why didn't you say so?" like she wanted to. And, once again she struggled to help him pull the ill-fitting boots off his little feet. No sooner than they got the boots off and he said "They're my brother's boots. My Mom made me wear them." Now she didn't know if she should laugh or cry. But, she mustered up the grace and courage she had left to wrestle the boots on his feet again. Helping him into his coat, she asked, "Now, where are your mittens?" He said, "I stuffed them in the toes of my boots..." Her trial begins next month.

If only the teacher had taken a little more time at the front end and let the child explain! As attorneys and Counselors (or a teacher in Michigan), giving good advice and making good decisions depends on receiving full and complete information. Oliver Wendell Holmes said, "It is the province of knowledge to speak. And it is the privilege of wisdom to listen." So, hear ye, hear ye,—listen up!



THE MOVEMENT FOR NON-ADVERSARIAL PROCEEDINGS

By Daniel J. Wright
Director, Friend of the Court Bureau
State Court Administrative Office

During the past year, family court referees and friend of the court offices have been hearing increased advocacy for non-adversarial proceedings in divorce and paternity cases. Some of you may have wondered why this is happening now and how the initiative got started in Michigan.

Those who toil in our family courts have known for many years that caseloads were expanding toward unmanageable levels and that proceedings had become unduly contentious. With a few exceptions, however, this problem was not on the mind of state officials.

The situation changed dramatically in 2001, when the federal government, with the threat of a crippling financial penalty, forced Michigan to convert to a single statewide child support computer system (MiCSES) in less than three years. Because Michigan's 83 counties and 57 judicial circuits each had their own distinct systems, this edict required us to accomplish a more difficult conversion in less time than any other state.

Suddenly, the Governor's Office, the Legislature, and the Attorney General's Office were inundated with complaints from litigants whose cases had been disrupted by glitches related to the conversion. At the same time, the Budget Office was warning the Supreme Court of the loss of \$150 million in federal funding, and the circuit courts were protesting that the new system was a nightmare that could destroy Michigan's reputation as one of the nation's top child support programs. The media, of course, began to promote these difficulties as a "state orchestrated train wreck"

And to criticize governmental officials for the accumulation of an \$8 billion statewide arrearage in child support payments.

Because the Judicial Branch employs the largest number of MiCSES users, former Chief Justice Maura D. Corrigan took the lead in promoting the conversion and responding to criticism of the child support program. She was stunned to learn that, according to the federal Office of Child Support Enforcement (OCSE), Michigan had more than one million open child support cases, indicating that as many as one-third of our citizens were having their lives overseen by the friend of the court.

In May 2003, while Michigan was beginning the last lap of the conversion, Justice Corrigan attended an OCSE Symposium in Chicago. One of the key speakers examined the child support arrearage, which nationally was approaching \$100 billion. A study had determined that most of this was uncollectible because it was owed by persons who had an income of less than \$10,000 per year. The study attributed the crisis to the high rate of default orders in child support cases. (A subsequent survey showed that Michigan's arrearage carries the same characteristics resulting from the same cause). Several experts emphasized that the traditional system of adversarial justice was not working well in family litigation.

Later that year, Justice Corrigan attended a board meeting of the International Centre on Healing and the Law, an organization sponsored by the Fetzer Institute in Kalamazoo. One of the members was an Indiana lawyer named Charlie Asher. In

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collaboration with judges, lawyers, psychologists and social workers, Mr. Asher had developed a method for non-adversarial divorce in St. Joseph County, Indiana, including a court rule that enunciates the procedure and the duties of the parties.

Mr. Asher's work has produced three interactive instructional websites. The first, which is entitled www.UptoParents.org, provides the same direction for conducting a non-adversarial paternity action. The third, www.WhileWeHeal.org, offers assistance to parents who have become estranged but are attempting to reconcile. These websites may be of interest to referees. In 2003, the Dispute Resolution Section of the American Bar Association honored Charlie Asher with the "Lawyer as Problem Solver Award".

At the former Chief Justice's invitation, Charlie Asher visited the Hall of Justice and spoke to an audience from the State Court Administrative Office. He encouraged persons from the Michigan Judicial Institute, the Office of Dispute Resolution, and the Friend of the Court Bureau to experiment with non-adversarial dispute resolution for families in Michigan. That marked the beginning of the current initiative.

Three pilot projects are underway. Community Dispute Resolution Centers in several counties have begun taking parenting time dispute referrals from friend of the court offices. With Charlie Asher's permission, judicial circuits that have divorce mediation divisions have been asked to use some of his techniques and track their effectiveness. The Wayne County Friend of the Court, with the assistance of the Friend of the Court Bureau, has applied for a federal grant to enlist process servers in the effort to reduce defaults in paternity cases. In the Wayne County

program, the process server will engage the putative father in a discussion of the case; and, in simple terms, will explain the system, the possibility of a genetic test, and the advantages of participation in the proceedings. Where the defendant is not persuaded, the server will still obtain information to permit follow up contacts by court staff.

The Friend of the Court Bureau also is considering a Small Claims Divorce pilot for circuits with a high number of uncounseled family court litigants. By agreement, the parties would appear before a judge or referee who will function as a facilitator, mediator, and decision maker. After setting a non-adversarial tone, the judge or referee will assist the parties in identifying all issues on which they can agree and will rule on whatever remains in dispute.

The creation of an effective non-adversarial option in Michigan's family courts will require a close collaboration between the SCAO, judges and referees, friend of the court offices and the private bar. New ideas are welcome, and it is my hope that the RAM and its members will play a leading role.



Daniel Wright receives a RAM shirt from President Randall as a thank you for speaking at the Annual Conference

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 pjacokesr@yahoo.com for instructions on how to join!



Bicycles on Mackinac Island

GET INVOLVED! ATTEND ONE OR ALL OF RAM'S UPCOMING BOARD MEETINGS



**Thursday, July 21, 2005, 10:00 a.m.
State Bar Building, Lansing**

**Thursday, September 8, 2005, 10:00 a.m.
State Bar Building, Lansing**

**Thursday, November 10, 2005 10:00 a.m.
State Bar Building, Lansing**

Thursday, December 8, 2005 Noon



**Norm Early speaks at the Annual
Conference**

WAR STORIES

“PAWS” to Read This One...

In a recent Oakland County case, Plaintiff-father filed a motion to terminate dog support. The following is the Defendant-mother’s written pleading filed in response to the motion...

Defendant says:

1. The property settlement of the Judgment of Divorce provides in part as follows:

The Golden Retriever, “Bob”, belongs to the minor child. The parties shall equally divided the food and veterinary expenses for the dog.

Plaintiff seeks to terminate this provision because Bob does not visit Plaintiff. Visitation rights with Bob, however, were not preserved in the Judgment, which was entered April 13, 2003, nearly two years ago. It is not in the best interest of Bob that Plaintiff be allowed visitation, because Plaintiff has threatened to kill him. Moreover, it is well established that support cannot be predicated upon visitation. *Richardson vs Richardson*, 122 Mich App 531 (1983).

2. The Judgment into which this provision was incorporated was a consent judgment.

“Absent fraud, mistake, or unconscionable advantage, a consent judgment cannot be set aside as modified without the consent of the parties.” *Walker v Walker*, 155 Mich App 405 (1986). Property allowances made in divorce judgments are final and conclusive, and cannot be altered except under extraordinary circumstances, none of which exist in this action. *Norman vs Norman*, 201 Mich App 182 (1993). The property settlement cannot now be modified to include visitation between Bob and Plaintiff. In any event, during a weekend last November, Bob was at Plaintiff’s home. Plaintiff told Defendant that Bob had misbehaved, and that if Bob ever came over again, Plaintiff would kill him. Bob was remorseful.

3. Bob is past the age of majority, in canine years, and thus this Court cannot modify, but can only enforce, Plaintiff’s obligation to support him. MCR 652.605(b). Further, termination of Bob’s support would be detrimental to Bob not only physically, but also psychologically, as Bob’s treating physician and therapist, Dr. John Doolittle, Ph.D., will attest.

4. Plaintiff owes \$179.52 for Bob’s outstanding food and veterinary expenses. Receipts are attached.

Accordingly, Defendant asks; A) Plaintiff’s motion be dismissed; B) Plaintiff pay Defendant the sum of \$179.52, immediately, for current expenses. C) Plaintiff be required to pay suitable costs and attorneys fees which Defendant has incurred as a result of this merit less motion. Defendant has incurred costs and fees in the past   in seeking to enforce this provision of the Judgment.

I declare the above statements are true to the best of  my knowledge, information and belief:

Bob

Another

WAR STORY

My Chief Judge has a courtroom conduct policy. It applies to hearings before magistrates and referees. It has been in effect for about a year. The FOC sends a copy of it to all parties along with the notices for FOC hearings. The policy is posted outside the door of the referee hearing rooms and courtrooms. My security officer instructs people before they enter that they are to turn off all cell phones and dispose of all gum. (You know where I am going with this).

I recall one hearing in particular that involved a Support Rule to Show Cause wherein I was asking some particularly pointed questions to a party. It became evident during the exchange that she was chewing gum. The more I inquired of her the harder she chewed. At one point, she cracked bubbles in the gum. Needless to say, that was it. There was silence in the hearing room. I asked my security officer to step forward to the bench. I pulled a waste can out from under the bench and had the party deposit her gum in the basket. A fairly lengthy “instructional” lesson was then given by me on the parallel between her inability to comply with a simple conduct directive and her failure to follow the court order. When I had concluded, the other party meekly said that he had “parked” a piece of gum in his cheek and perhaps he should get rid of it, too. For a moment, a wave of nostalgia swept over me. I was back in first grade, only this time I was the teacher and I was correcting the students. It also confirmed my suspicions that some people don’t mature, they just get older.

~ Toni McAlhany, Domestic Relations Referee, Branch County

If you have a war story to share, please e-mail it to :

deborah.mcnabb@kentcounty.org

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Wayne Kristal, Jon Ferrier, Ronald Foon, Marie Johnson, Hon. Linda Hallmark, Wendlyn Machnik, Karen Liwinski, Vincent Welicka, Philip Ingraham, Zaira Maio, Mark D. Sherbow, Deborah L. McNabb

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* Look at conference photos on page 5 to see example of long sleeve denim. The same logo is on both .

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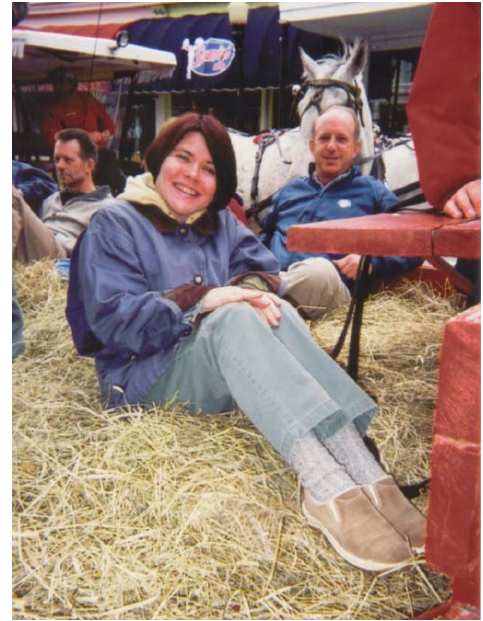
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More Photos from the Annual Conference



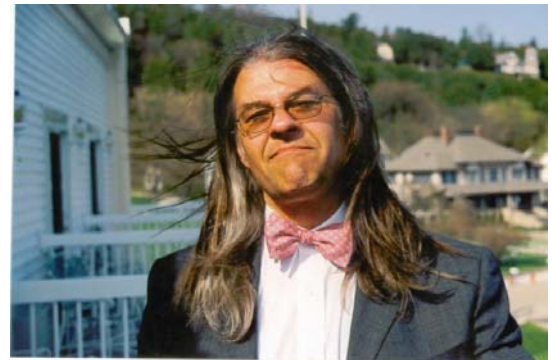
RAM Members play a rousing game of Euchre



Nancy Thane and Dennis Mikko enjoying the hay ride



Members Paul Jakokes, Dennis Mikko and Dan Loomis listen in rapt attention as Nancy Diehl shares her tips on interviewing children



Jon Ferrier on the Chippewa Balcony



Nancy Thane and Helen Hartford—two of RAM's "Win-some Women"



Blue Morning Wharf—a view from the Chippewa Hotel

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