

# Referees' Quarterly



A publication of the Referees Association of Michigan

Since 1984

PRESIDENT, KENNETH D. RANDALL  
EDITOR, DEBORAH L. MCNABB  
Photos by Kenneth D. Randall

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## RAM DONATES to the RED CROSS

We all witnessed the horrors of the breakdown of law and order in New Orleans in the wake of Hurricane Katrina. Thugs shot at rescue helicopters and doctors. Agencies failed to act in unison. People died. Even when authorities stabilize the area, there is the aftermath to consider. According to a September 2, 2005 letter drafted by State Bar President, Nancy Diehl, "It is estimated that a third of the lawyers in Louisiana have lost their offices, law libraries and files. The records and evidence in courthouses throughout the region are either missing or under water."

Donations by the Referees' Association, a non-profit organization, are highly unusual, but these are extraordinary times. RAM has donated \$500 to the American Red Cross to help the victims of Katrina. The executive board voted unanimously in favor of the contribution at the September 8, 2005 board meeting.

Referees are public servants with a "calling" to help others. I have no doubt that many, if not most, of us have already donated to help the victims of Katrina. For those interested in making a donation, there are many excellent web sites to choose from, including the State Bar of Michigan (where Nancy's letter is posted) at [www.michbar.org](http://www.michbar.org).

There you will also find a link to the American Red Cross at [www.redcross.org](http://www.redcross.org).

Law and order is such a valuable commodity, yet we often take it for granted. One of the more misused quotations in literature is a Shakespearian line from Henry VI, "The first thing we do, let's kill the lawyers." Comedians and pundits alike have misinterpreted this quotation as fodder for lawyer bashing. But those who use the phrase pejoratively against lawyers are as misguided in their Shakespeare as they are to our profession. The great bard was simply stating that lawyers ensure stability, law and order.

There are many ways we can (and have) help victims of Katrina. We can donate our money, our goods and our services. Perhaps, in a small way, we can also offer hope by simply doing what we do best - our work as referees. To those suffering in anarchy and chaos, we offer solace in the knowledge that law and order does exist, and the promise that it will soon prevail in the hurricane-stricken Gulf coast.

~ Ken Randall

September 11, 2005

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## ***Making Progress in the Fight Against Michigan's Unpaid Child Support Epidemic***

**By Mike Cox**

**Michigan Attorney General**

We face an epidemic in Michigan. More than 600,000 children in our state do not receive the child support they deserve. Of that group, more than 400,000 receive no support at all – not a dime. According to the Federal Office of Child Support Enforcement, unpaid child support arrearages in Michigan for 2004 exceeded \$8 billion, the third worst in the country. More important than dollar amounts are the Michigan children and their custodial parents these figures represent, those who have to face each day without the certainty of child support. This is an epidemic which not only has serious financial ramifications for families and our state, but one which I believe will spawn severe social consequences in Michigan's future if we do not tackle this problem head on today.

I spent more than 13 years as a prosecutor. In virtually every case where I prosecuted a violent criminal, two factors were almost always present: 1) the offender had not graduated from high school, and 2) at some point in their life, the offender had a parent who ceased to support them financially. A parent who neglects their duty in supporting their child puts that child at risk, and, in doing so, puts us all at risk.

When I became Michigan's 52<sup>nd</sup> Attorney General, I was determined to address the epidemic of unpaid child support in our state by resurrecting the felony non-support statute for parents who have the ability to pay, but choose not to pay. In April 2003, I founded a first-of-its-kind Child Support Division. To date, that division has collected more than \$17.5 million for more than 1,800 children. We are currently pursuing another \$88 million that will help thousands more. In one month's time this summer, we collected \$270,000 for almost 40 Michigan children, 94% of them under the age of 18.

The key to the success of my Child Support Division has been using the credible threat of prosecution to secure unpaid child support from those parents with the means, but not the morals, to pay. Let me be clear, that is what this issue is all about: non-custodial parents who refuse to pay. This is not a witch hunt against parents who may have lost a job, or who have fallen on hard times. This is not about those who struggle; this is about those who have the means and refuse to pay. This is about the non-custodial parents who skip town, falsify records, place property in their family's name, avoid payments and dodge their responsibilities as a parent.

Beyond the dollars collected, we are also changing the way we as a society view the child support obligation. In two short years, thousands of Michigan residents have been made aware of the problem of unpaid child support to Michigan's children. We remind non-custodial parents of their obligation to pay child support, and of the very real consequences should they fail to do so. While this deterrent effect may never be accurately measured, I am confident that it serves as an incentive for parents to do the right thing, to support their children.

I know there are many in Michigan who feel as passionately about this issue as I do. I know each of you deals with these issues on a daily basis and understands firsthand the impact a parent's failure to support their child has on that entire family. I know we have already made a difference in the lives of thousands of children, and working together, I am confident we will take the necessary steps to ensure that every Michigan child is given the support they deserve.





## The Dark Side of DNA: Paternal Discrepancy

By Kenneth D. Randall

As referees, we are all familiar with the statistic that one of every three children is born out of wedlock. As disturbing as the implications are, we are used to the phenomenon. It seems almost normal. But now a new disturbing phenomenon is statistically revealing itself as a by-product of DNA technology. Thousands of husbands are inadvertently discovering that they are raising another man's child. This discovery, known as "paternal discrepancy" or "PD," occurs when a child is scientifically identified (in ways other than paternity testing) as being fathered by someone other than the man who believes he is the father. DNA data can come from such sources as organ donations, male infertility treatment, disease screening and DNA profiling in police investigations.

According to an August 2005 issue of the *Journal of Epidemiology and Community Mental Health*, about 4 percent of fathers are raising a child that is not their own. The report indicates that "A 4% PD would affect far more than 1 in 25 families. Given an average of two children per family, more families will be affected within just a single generation..." If on average there are two children per family, every 6<sup>th</sup> house in your neighborhood could be affected by paternal discrepancy, the house with the child as well as the house with the biological father. The 4% figure is a median number. The percentage is much higher, as high as 30%, depending on socio-economic factors, age and ethnicity.

The journal's conclusion notes that "most inadvertently identified PD is ignored along with the associated consequences to people of not knowing the correct parentage..." Little consideration has been given to the affects of

newly discovered PD on families, or what services and support should be provided or sought when PD is exposed. Discovery of PD often leads to an increase in domestic violence as well as a breakdown of marriage (or relationships) of both the mother and biological father. In effect, one PD discovery could harm the relationships of two couples. Finally, there is also an issue of health regarding genes and family diseases passed on to children.

As referees we've always known that approximately one third of children in the United States are born out of wedlock. Now we also must recognize that many children thought to be born "in wedlock" are not the issue of the marriage. The article in the *Journal of Epidemiology* was the first of its kind. More research and study needs to be devoted to this once hidden aspect of American sexual behavior as well as to the resulting social consequences.





## OVERVIEW OF THE TITLE IV-E REVIEW

**By Kathryn A. O'Grady, J.D., Director  
Child Welfare Services Division  
Michigan Supreme Court  
State Court Administrative Office**

The Title IV-E Foster Care Eligibility Review was conducted from March 22-26, 2004 by the Department of Health and Human Services Administration of Children and Families (HHS/ACF), in collaboration with the Michigan Department of Human Services (DHS), formerly known as the Michigan Family Independence Agency (FIA). The purpose of the review was to determine whether payments were made on behalf of eligible children and to eligible homes and institutions between the period of April 1, 2003-September 30, 2003.

The regulations (45 CFR 1355, 1356, and 1357), which went into effect on March 27, 2000, (with a 12 month grace period for provisions pertaining to permanency planning requirements) incorporated provisions of the Adoptions and Safe Families Act and the Multi Ethnic Placement Act and added new requirements for state compliance with Title IV-B and Title IV-E of the Social Security Act.

Pursuant to the regulations, the courts must take an active role to guarantee that children are not unnecessarily removed from their homes; that efforts are made to reunify them with their families; and that permanent homes are found timely, if those efforts are unsuccessful. The courts are charged with overseeing hearings and issuing judicial findings in several areas to further this purpose.

Referees play a significant role in Michigan's compliance with the Title IV-E regulations, since many of the required judicial findings are facilitated through their recommendations. Although judges are ultimately responsible for the orders issued, referees conduct many of the hearings at which the judicial determinations are required. Failure to provide timely, accurate

findings can seriously jeopardize Michigan's funding.

In addition to income eligibility, and other preliminary requirements that must be determined by DHS, there are four required judicial findings for a child to be Title IV-E eligible:

\*In the first order of removal, the court must find that it is contrary to the welfare of the child to remain in the home.

\*In the first order of removal, and subsequent orders, the child must be placed with DHS for care and supervision.

\*Within 60 days of removal, the court must make a judicial determination that reasonable efforts were made to prevent the removal or that reasonable efforts were not required based on enumerated exceptions, such as aggravated circumstances in the case.

\*Within 12 months from the time the child enters foster care and every twelve months thereafter, the court must find that reasonable efforts to finalize the federally recognized permanency plan have been made.

During the 2004 review, a total of 80 cases (DHS case files) were audited. No more than eight cases could contain errors for Michigan to pass the audit. HHS/ACF found that 12 cases were in nonconformity with federal standards. The cases included alleged DHS licensing errors and incorrect eligibility determinations, as well as alleged deficient

...continued on p 6

court orders. Accordingly, the State failed the audit.

Eight of the twelve cases have been appealed. Recently a stipulation was entered into between HHS/ACF and DHS. Only seven error cases remain, of which three must be determined to be IV-E eligible to prevail on the appeal. The appeal is still pending.

Since Michigan failed the first audit, the State is currently operating under a required Program Improvement Plan (PIP), which includes state-wide training, legislative changes, modification to DHS and court policy, and review of cases to transfer from federal to county funding, where appropriate. The Foster Care Review Board is assisting with these reviews, which will be conducted at local DHS offices, beginning with Wayne County in October 2005. The FCRB will determine if DHS files contain the appropriate judicial findings and provide this information to DHS. If the DHS file is deficient, DHS will either obtain the required information from the court, if already available, or remove the case from the Title IV-E rolls.

A second federal review is tentatively scheduled for early 2007. The review will include 150 DHS cases that are receiving Title IV-E funding from April 1, 2006- September 30, 2006, regardless of when the child was removed from the home. This second review was previously aimed at cases that received funding from April 1, 2005- September 30, 2005, but through the efforts of Representative Dave Camp and Michigan Supreme Court Justice Maura Corrigan, an extension was granted.

In the next review, if more than 15 cases are found to be non-compliant, a penalty will be assessed equivalent to the rate of error as extrapolated to the entire population of cases receiving Title IV-E funding. Using 2004 as an example, with a 15 percent error rate, Michigan will be liable for approximately \$37.2 million. This penalty is exclusive of the \$2.5 million the

could lose if it fails the second Child and Family Services Review scheduled for 2006. If a case is found to be ineligible for Title IV-E funding, the net effect is that the approximately 50 percent paid by the federal government transfers to the local government as a Child Care Fund expenditure. Michigan's share of the cost (the other 50 percent) is the same if cases are eligible or ineligible for Title IV-E funding.

Although DHS paid the amount owed from the 2004 review (approximately \$280,000), this will not be the case for the next review. DHS has indicated that the counties will be expected to match each federal dollar lost due to IV-E ineligibility, and that each county will also be responsible for its share of the penalties, which could total millions of dollars from the County Child Care Funds.

The portion to be shared by each county has not yet been determined by DHS, but it is anticipated that the penalty will be based on the percentage of funds provided to each county. Wayne County currently accounts for 40 percent of the children in foster care in Michigan. Using a very rough estimate, Wayne County alone could be liable for almost \$7.5 million, if DHS uses this method to calculate the penalties.

Key personnel in all counties are being trained on the legal requirements of the Title IV-E regulations; training will conclude mid October. If your county would like additional training or needs technical assistance, please contact Kathrynne O'Grady at the State Court Administrative Office at [ogradyk@courts.mi.gov](mailto:ogradyk@courts.mi.gov).



## CHANGES ON THE EXECUTIVE BOARD

After many years of dedicated service to the organization, Jean Dohanyos has resigned her position on the RAM executive board. Jean served as recording secretary, and, for the last three years, as conference chairperson. As many of you will recall, Jean received the 2005 Service to the President Award. Thank you Jean for your years of exceptional service!

Pursuant to RAM's by-laws, Nancy Thane has been chosen by presidential appointment to fill the unexpired term of Jean's position (elections for all officers will be held in the Spring of 2006). Nancy Thane is a hybrid FOC/Juvenile referee from Tuscola County. She has served as a referee since 1988, and she even has previous experience on RAM's executive board. Because of her obvious skills in the area, Nancy has also been appointed as RAM's parliamentarian. Welcome Nancy, and thank you for volunteering!

Ken Randall

September 8, 2005

## 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](mailto:pjacokessr@yahoo.com) for instructions on how to join!

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



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

**Thursday, December 8, 2005 Noon**  
**Location TBA**

### *Past Presidents of the Referees Association of Michigan*

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



## SHOW ME THE MONEY!

### Funding the IV-D Program in Michigan

By Marilyn F. Stephen, Director

Michigan Office of Child Support

To understand the funding of the IV-D program, a bit of history is helpful. The child support program in Michigan formally began in 1919 with passage of the first Friend of the Court Act. It was a community-based program with no ties to the state or federal governments. In the late 1940's, in recognition that many soldiers had lost their lives in World War II, the federal government substantially stepped up their cash assistance efforts, and inaugurated other welfare programs. By the early 1970's, it was becoming clear at all levels of government that the issue was no longer deceased parents, but had shifted to able-bodied parents not living in the home. In the mid-1970's, federal laws were passed requiring the provision of child support services as reimbursement for Aid to Families with Dependent Children (AFDC) expenditures. Soon thereafter, the laws were expanded to require provision of services to all applicants without regard to their receipt of assistance.

The federal and state leaders were interested in child support for several reasons, but one stands out – AFDC reimbursement. This is because cash welfare assistance, today called Temporary Assistance to Needy Families (TANF), is funded approximately 50/50 between the state and federal governments. Every dollar collected by the child support program for customers receiving TANF is retained by the state and federal governments as reimbursement for their share in the cost of the TANF program.

The federal government is by far the largest source of revenue for operation of the IV-D program. States and counties providing IV-D ser-

vices can earn revenue in two different ways: the first is reimbursement for program expenditures and the second is payment for program performance known as incentive payments. For many years, the federal reimbursement rate has been 66% for all qualified IV-D expenditures at the state and county levels. There is no cap on the federal reimbursement, so the only limit is the ability of the state and counties to provide their 34% share. In recent years, providing the 34% share has become a significant hurdle.

In Michigan, the reimbursement process begins when the state reimburses the counties 66% of the counties' IV-D expenditures via a cooperative reimbursement contract. The federal government then reimburses the state for payments the state made to the counties plus 66% of any direct state IV-D expenditures. To facilitate this exchange of funds, the state must appropriate the expected federal amount each year during the legislative budget cycle. Because it is all federal funds, it is not subject to depletion during difficult budget years. The same, of course, cannot be said of the state or counties' 34% share of expenditures.

The second source of federal funds is incentives. Federal law provides a pool of money, funded from TANF reimbursement, for distribution to the states based on five performance factors. The actual amount Michigan receives is based on a comparison of Michigan's performance relative to all other states. For FY2004, the pool is \$454 million dollars, down from \$461 million in FY2003. It will decrease by another \$8 million in FY2005, and then begin increasing

again. These fluctuations are apparently the result of negotiations when federal legislation that created the incentive pool was passed. The five performance factors are: The number of paternities established in the current year compared to the number of non-marital births in the previous year; The number of cases with established court orders for support; The dollars collected for current support; The number of cases in which at least \$1 was collected on arrears, and the cost effectiveness ratio of dollars collected compared to dollars expended to operate the IV-D program in the state.

At the end of each fiscal year (September 30), Michigan reports these performance measures, on a statewide basis, to the federal government. The federal Office of Child Support Enforcement (OCSE) then conducts Data Reliability Audits (DRA) in each state to ensure that the reported performance numbers are substantiated by the data in the statewide automated system. Generally, in Michigan this audit involves a review of about 200 cases. Michigan passed the DRA for all five factors for FY2003 and 2004. As a result, Michigan will be eligible to receive full funding for each incentive factor. Lower scores in the DRA results in lower earnings or perhaps a penalty if scores are low enough. Failure to either achieve the minimum score required for each performance factor or failure to pass DRA for a factor would cost Michigan \$5 to \$6 million per factor.

Once the DRAs are completed for all states, the federal government determines the incentive payments. Because the process of reporting and the audit takes many months, the final incentive amounts for the states are not released until approximately 14 months after the end of the fiscal year. This means that in November 2005, Michigan's IV-D program will learn the amount of its FY2004 incentive payment. For the last four fiscal years, Michigan's incentive payments have been:

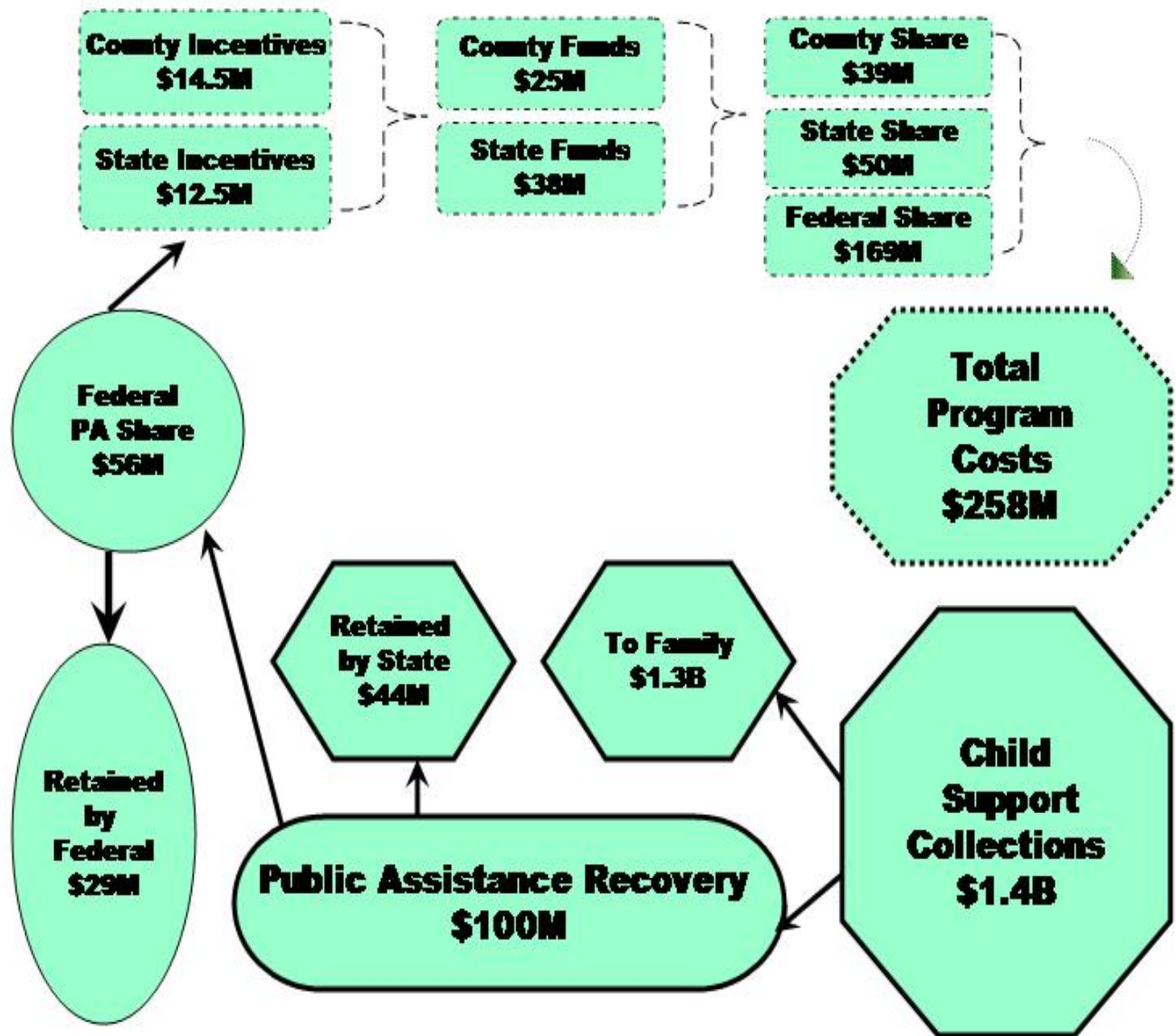
2000 - \$23.3 million  
2001 - \$21.3 million  
2002 - \$30.1 million  
2003 - \$27.3 million

For FY2004, Michigan child support leaders anticipate receiving approximately \$26 million because the pool of money has decreased, and the performance of all the states has improved.

Incentives earned are split between the state and the counties. The split is outlined in the Department of Human Services annual budget act in a section commonly referred to as "boilerplate." While the actual language is convoluted, the result in recent years has been the state sharing a total of \$19 million with the counties. Boilerplate, and the distribution of incentives, is a topic of discussion each year in state budget negotiations.

The state splits the incentives between the counties based on the same federal performance measures that those incentives were earned by the state. A word of caution is necessary regarding the split of incentives. Unlike Michigan, which provides nearly universal IV-D services, some states provide IV-D services in only a portion of their total family law caseload. This results in what some perceive as an uneven playing field with the high IV-D percentage states in a more favorable position. Within Michigan, some counties have demographics that support high performance on the incentive measures, while others will not achieve the same results no matter how great the effort. The Child Support Program Leadership Group will have discussions regarding this issue in the future.

A simplified diagram of the funding sources and expenditures follows on the next page. Thank you for the opportunity to address this topic for the Referees Association of Michigan.



## Child Support Flow FY 04

**Referees' Association of Michigan  
22nd Annual Convention  
Petoskey, Michigan**

**May 24, 25, 26, 2006**



The Referees' Association of Michigan is pleased to announce the location of the 22nd Annual Convention. The Convention will be held at the *Stafford's Perry Hotel* located in the historic Gaslight district of Petoskey, Michigan. The *Perry Hotel's* turn-of-the-century charm offers phenomenal views of Lake Michigan and is set against the Little Traverse Bay.

The 22nd Annual RAM Convention will be packed with key speakers and useful information for both Juvenile Referees and Domestic Relations Referees. Detailed information about Conference Registration, Agenda and Speakers will be announced on the RAM Website and in future editions of the Referees Quarterly. Plan ahead and put the dates of the Convention into your day timer, calendar or palm pilot today!

Not only will the 22nd Annual RAM Convention offer legal updates and feature keynote speakers, but the Convention will be held in the picturesque town of Petoskey, Michigan, where there is plenty to see and do.

The *Stafford's Perry Hotel* is located across the street from Lake Michigan which boasts 30 miles of hiking and biking trails to Harbor Springs and Charlevoix. Some of the best golfing in the country is located within a few miles of the hotel. For more active exercise, there are tennis courts and an outdoor fitness parcourse located half a block from the hotel. For an extra workout, try climbing the steps to the bluff at Sunset Park for a panoramic overlook towards Harbor Springs.

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 many coffee houses, restaurants, ice cream/desserts shops and pubs that line the streets.

For those who are looking for a little "rest and relaxation", the lovely Pennsylvania Park located near the *Stafford's Perry Hotel* is a peaceful spot to sit, people watch, picnic or read your conference materials. Too much to eat? Try strolling the streets and meander through acres of "gingerbread houses" located in the historic Little Traverse Bay.

If you are feeling lucky, you can hop aboard a shuttle bus to test your luck at The Victories Casino, which is located only a few miles from the *Stafford's Perry Hotel*.

The *Stafford's Perry Hotel* has offered attendees of the 2006 Annual RAM Convention a phenomenal room rate of **\$75.00 per night** plus tax, single or double occupancy. Check out the hotel website at: [www.the.perryhotel.com](http://www.the.perryhotel.com)  
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