

RAMblin' On...

REFEREES ASSOCIATION OF MICHIGAN

Since 1984



UPCOMING BOARD MEETINGS:

To be held at the State Bar Building, Lansing, unless otherwise noted.

- 10/10/02, 10:45 a.m.
- 12/5/02, Noon, Restaurant TBD, Ann Arbor
- 2/13/03, 10:45 a.m.
- 4/10/03, 10:45 a.m.
- 5/23/03, 9:00 a.m. Shanty Creek Resort Bellaire

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PRESIDENT'S MESSAGE

It is with great humility and honor that I assume the role of President of the Referees Association of Michigan. I look forward to the challenges and triumphs that are to come. On behalf of the entire membership, I wish to thank Mark Sherbow, our immediate Past President for his efforts on behalf of RAM during his tenure. Through his leadership, RAM's visibility and influence has increased significantly. He was also especially successful in obtaining superlative national speakers for our Annual Conference and I am thrilled that he is willing to continue his efforts in that capacity this year.

One of RAM's purposes enumerated in our constitution is to "promote positive

changes in the Family Division in the interest of children and families through programming, legislation and communication." I invite all RAM members to become more active in pursuing this purpose. Referees are the back-bone of the Family Division. We routinely make decisions that dramatically affect the lives of children and families throughout this State.

The past several years have been turbulent and filled with many changes in the Family Division and I do not believe that we have seen the end of such changes. The tinkering will continue and referees need to offer thoughtful and informed commentary to those in positions of power. Our

greatest tasks lie ahead. Add your voice. Do not be left behind.

In this issue of *RAMblin' On...* you will find a list of RAM committees and committee chairpersons. Add your talents to those committees which capture your interest by contacting that committee chairperson. Check the schedule of upcoming Board meetings. Come to a Board meeting and you will find that along with the satisfaction that comes from actively pursuing positive change, you will leave feeling rejuvenated by your communion with other referees from around the State, many of whom will quickly become your friends.

~ Deborah L. McNabb

MEMBER NOTES

Congratulations and best wishes to primary election winner Referee Martha Anderson in her judicial campaign for Oakland County Circuit Court!

Please e-mail personal and professional announcements to:

deborah.mcnabb@kentcounty.org

for inclusion in the next issue of *RAMblin' On...*



REFEREE TESTIMONY and OTHER INPUT TO THE COURT

by

Referee Jon T. Ferrier, Family Division, 17th Circuit Court



*“...the best course is for Referees **not** to testify at **de novo** hearings or other judicial proceedings whose purpose is to review what the Referee has done...”*

The issue has recently arisen of whether a Referee may be subpoenaed as a competent witness at a hearing to review the Referee’s activity in the case. As I understand it, a Referee in a Domestic Relations matter was assigned to hear a motion concerning discovery. The Referee proceeded to commence a hearing which all believed was being recorded. The matter was truncated when a decision was made to bring the matter before the Judge assigned, rather than continuing before the Referee. Thereafter, following the discovery that a record had inadvertently not been created of the Referee’s proceeding, counsel subpoenaed the Referee to testify concerning what happened at the truncated hearing. A motion to quash the subpoena was filed on behalf of the Referee, but not granted by the Judge. Evidently the matter was resolved with the Referee testifying under oath in Court, but without the parties or counsel present, concerning statements at the earlier hearing.

And so: Should a Referee be called to testify in a proceeding convened to review the Referee’s proposed disposition of a case? Short of testifying, should a Referee consult with the assigned Judge, on or off the record, about a matter heard by the Referee and under review by the Judge?

Under MCR 9.201, the definitions of the subchapter concerning the Judicial Tenure Commission provide that: “...’judge’ means judge of an appellate or trial court or a magistrate or referee of a court appointed or elected under the laws of this state.” The rules have been interpreted to mean that Referees are governed by the ethics rules that govern Judges for purposes of behavioral standards and discipline. Judicial Ethics Opinions have consistently been promulgated indicating that activities prohibited to Judges (partisan political activity, free practice of law and charitable activities, for example) are also prohibited to Referees. The prudent Referee thus always consults the Canons of Judicial Ethics before acting. The

Michigan Code of Judicial Conduct (MCJC), Canon 2 C provides: “A judge should not appear as a witness in a court proceeding unless subpoenaed.” Michigan Rule of Evidence 605, “Competency of Judge as Witness,” provides: “The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.” And finally, MCJC Canon 3A (4) (c) states: “A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities or with other judges.” The Second Canon clearly contemplates testimony by a Judge (Referee), but only in response to a subpoena. The Rules of Evidence, analogized to Referees presiding over motion hearings, would seem to rule out testimony of a Referee on the subject matter of the Referee hearing, but perhaps *only* within the Referee hearing itself. The Third Canon appears to condone informal discussion between Judges (Referees) and Court Staff whose function is to aid the Judge in carrying out adjudicative responsibilities. Taken together, I think the best course is for Referees *not* to testify at *de novo* hearings or other judicial proceedings whose purpose is to review what the Referee has done; on the other hand, Referees should expect to be called upon by their fellow Judges (in the sense of MCR 9.201) to discuss cases that might be up for review, in an informal manner, and probably not on the record. Is this the correct course? Does it offend due process? Are the issues different in a Juvenile Division proceeding from a Domestic Relations proceeding? What do you think?

Submit comments and responses to:

deborah.mcnabb@kentcounty.org

for publication in the next **RAMblin’ On...**

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Mark D. Sherbow
Barbara Kelly
Dennis M. Swain
Judah Garber

Legislative Committee

Jon T. Ferrier, Chairperson
Thomas G. Doetsch

Membership Committee

Ken Randall, Chairperson
Kathleen Oemke

Wages and Benefits Committee

Deborah L. McNabb, Chairperson
Kathryne O'Grady

Professional Relations Committee

Dennis Swain, Chairperson

Annual Conference Committee

Jean L. Dohanyos, Chairperson
Mark D. Sherbow

Work First Committee

Kathleen Oemke, Chairperson

Scholarship Committee

Mark D. Sherbow, Chairperson

State Bar Family Law Section Co-Liaisons

Barbara Kelly
Jon T. Ferrier

State Bar Judicial and Professional Ethics

Subcommittee on Judicial Ethics
Jon T. Ferrier

PRESIDENTIAL CHALLENGE

I challenge each RAM member to recruit at least one colleague from your Court or elsewhere to join RAM this year. A membership application is included on this page for your use in this endeavor...

~ Deborah L. McNabb

RAM NEEDS YOU!

If you are interested in serving as an Associate Member of the State Bar's Judicial and Professional Ethics Committee Subcommittee on Judicial Ethics, please contact Deborah McNabb ASAP prior to the Board Meeting on October 10, 2002.

Calling all frustrated writers and publishers...

If you have always wanted to be published, or you have ideas for articles or suggestions regarding what you would like to see in *RAMblin' On...* please contact Deborah McNabb at:

deborah.mcnabb@kentcounty.org.



ANNUAL CONFERENCE UPDATE

MARK YOUR CALENDARS NOW!

RAM's Annual Conference will be held May 21–23, 2002 at the Shanty Creek Resort in Bellaire, Michigan. Please contact Mark Sherbow at (248) 975-4448 if you have suggestions for topics or speakers. Stay tuned for future updates!

PLEASE REPORT!

Please let us know if you are a current member of any State Bar Committees. We will be publishing a "RAM Visibility Update" in the near future. E-mail or call Deborah McNabb with the pertinent information.

REFEREES ASSOCIATION OF MICHIGAN

Membership Application

Mail your check for \$25.00 payable to *Referees Association of Michigan* to:

David T. Elias
Macomb County Friend of the Court
40 N. Main Street
Mt. Clemens, MI 48043-5661

RENEWAL _____ NEW _____

NAME _____

TITLE _____

COURT _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE _____ FAX _____

E-MAIL _____

**Agenda for October 10, 2002 Board Meeting
10:45 A.M., State Bar Building , Lansing**

I. Welcome/Introductions

II. Minutes

III. Correspondence

IV. Financial

- A. Treasurers Report – since Annual Conference
- B. Audit - By-laws, (page 6) Article IV, §2(b)(5)

V. Standing Committee Reports

- A. Law and Court Rule Revision and Advancement Committee – M. Sherbow
- B. Legislative Committee – J. Ferrier
- C. Annual Conference Committee – J. Dohanyos, M. Sherbow

VI. Special Committee Reports

- A. Work First Committee – K. Oemke
- B. Scholarship Committee – M. Sherbow
- C. State Bar Family Law Section Liaison – J. Ferrier, B. Kelly
- D. State Bar Judicial & Professional Ethics Committee Subcommittee on Judicial Ethics
- J. Ferrier

VII. Unfinished Business

- A. Appointment of associate member to State Bar Judicial Ethics Subcommittee
 - B. Location of Holiday Meeting
 - C. Other
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