**Next RAM Board Meetings:**

**July 24, 2008** – SBM Building, Lansing, 10 a.m.

**September 18, 2008** - @ SBM Annual Conference, Dearborn, Michigan (Time TBA)

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**Article – Tuscola County Advertiser, May 31, 2008**
Nancy Thane, Tuscola County Referee Receiving RAM Award
http://referees-association.org/articles/26.html

*Congratulations, Nancy!*

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**Article – Detroit Legal News, June 30, 2008**
New RAM President, Art Spears -
http://referees-association.org/articles/25.html

*Congratulations, Art!*

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I have a reminder of our conference sitting on my desk. It is a little chicken key chain ornament that plays the chicken dance. It makes me smile when I look at it. It also reminds me of the time I tried to learn to juggle. I am still in the learning mode. I have mastered two scarves, but have a difficult time getting all three on a regular basis. My plan is to have my step-son who is a master of juggling with tennis balls help me while we are on vacation in a few weeks.

It is interesting how juggling takes your mind off all of the other bothers in life for the moments you are concentrating on it. In that respect, it is very helpful to refresh your brain after listening to the complaints of the litigants that come before us with their various family problems.

I wonder how many referees have tried jogging. I know there are many who jog but combining the two recreations would certainly be a challenge. Maybe we have a future juggling champion in our midst.

Aside from juggling, the conference added to my repertoire of tools for hearings. One of the high points for me is to compare notes with other referees. Each of us has our own style in dealing with the cases we handle, and each jurisdiction and judge has their own peculiarities. Yet, we all work in the same field doing the same job. I learned about different approaches to docket control and the length of time for hearings.

The speakers were very informative. We were very lucky to have such experts make presentations for our organization. I think that the speakers addressed issues related to both juvenile and domestic areas. Jerry Price did a great job of providing a unique look from his perspective as child therapist to dealing with families in difficulties. Both of his books are very helpful when evaluating the role of therapist with families. Elliot Glicksman posed thoughtful questions for consideration about the state of the law and the use of evidence. He was both entertaining and knowledgeable. Suzanne Hollier brought to life the complications of having child support ordered in a child protection matter. See specifically: MCR 3.973(F)(5). She gave helpful pointers about dealing with the MICSES system and the collection of support.

It was also the pleasure of the Referees’ Association to have two guest judges participate in the conference. Judges Linda Hallmark and Martha Anderson were appreciated additions to the attendees. We also had Jennifer Warner from SCAO join us and attend the workshops.
THE PRESIDENT’S CORNER, Con’t

We concluded the conference with the awards. There are many referees who have served for great lengths of time, all of whom are willing to share their experience with others. Two of our members have retired, Lynn Jakubiak and Ivy Arbuckle.

Our organization has many valuable members who make contribution in many different valuable ways. These folks came to our attention due to their service in our field and organization. Ron Foon was the recipient of the Distinguished Service Award for his work on the child support panel. Nancy Thane received the Outstanding Executive Award for her work as Recording Secretary who keeps the board on its toes by sending out to-do lists as well as being a delight with whom to work. Helen Hartford was determined to be the most valuable member for her work on previous conferences and her continued availability to mentor the conference chair, Bob Hotchkiss. Mark Sherbow received the Unsung Hero Award for continuing to attend the Board meetings as well as procuring our speakers for the conference. Ed Messing, Jr. contributes to our current knowledge of the law by providing updates on the case law not only for our members but at several seminars. He received the President’s Award for his fine work.

There are many others not named here that contribute to the improvement of RAM as an organization. I thank all of the board members for their service during the past two years I have been honored to serve as president. I look forward to the coming years as RAM grows as a professional organization to assist the members in performance of their duties as referees. With the growing responsibilities placed on Referees, this will be a challenge with which all members will need to help.

Kathleen M. Oemke,
June, 2008
Welcome everyone to a new year with the Referees’ Association, from the new kid on the block. I want to begin by thanking Kathy Oemke for her outstanding leadership as President for the last two years. I hope to be able to draw upon her skills and experience as I wind my way through the next two. I also want to thank and recognize Mark Sherbow, Linda Weiss, Ken Randall and Nancy Thane and all the members of our board for their ongoing help and institutional memory regarding what needs to be accomplished and when.

Under our prior administrations, we have built up a remarkable organization which, despite its relatively small size, is quite effective. Our online list serve (unlike others I have observed) is very efficient at answering the questions of our members and helping solve the nitty gritty (I use the technical legal terms whenever possible) problems we face on a regular basis. Not only that, but we’ve got a terrific shopping page on our website and who wouldn’t want to be a member of an organization with such great swag to show off?

We just finished our last conference (very successful in our professional training and we all now know how to juggle!) and like good political conventions, it’s time to start organizing the next one. We’re looking at a couple sites in Traverse City this time around so stay tuned for developments and locations.

I would also like to address that “relatively small size” issue in the coming months, with all of your help. We really should be close to full participation by all the referees of this state, so let’s put our heads together and reach out and sign someone up. Jon Ferrier’s analysis of an issue on our list serve is worth the price of admission all by itself.

We also have a new issue that has recently popped up – the SCAO financial report, which is required of all judicial officers. Is the completion and filing of this report going to cause any problems for referees? Let me and the rest of our membership know what your thoughts are on this issue.

So going forward, let’s remember that we are members of one of the most effective bar organizations in the state. We put on a first rate conference every year, our inter-connectedness is a tremendous value in our daily jobs and most of all, we know how to have fun! I hope to see and hear from all of you.
WASHINGTON — The Internal Revenue Service today announced an increase in the optional standard mileage rates for the final six months of 2008. Taxpayers may use the optional standard rates to calculate the deductible costs of operating an automobile for business, charitable, medical or moving purposes.

The rate will increase to 58.5 cents a mile for all business miles driven from July 1, 2008, through Dec. 31, 2008. This is an increase of eight (8) cents from the 50.5 cent rate in effect for the first six months of 2008, as set forth in Rev. Proc. 2007-70.

In recognition of recent gasoline price increases, the IRS made this special adjustment for the final months of 2008. The IRS normally updates the mileage rates once a year in the fall for the next calendar year.

"Rising gas prices are having a major impact on individual Americans. Given the increase in prices, the IRS is adjusting the standard mileage rates to better reflect the real cost of operating an automobile," said IRS Commissioner Doug Shulman. "We want the reimbursement rate to be fair to taxpayers."

While gasoline is a significant factor in the mileage figure, other items enter into the calculation of mileage rates, such as depreciation and insurance and other fixed and variable costs.

The optional business standard mileage rate is used to compute the deductible costs of operating an automobile for business use in lieu of tracking actual costs. This rate is also used as a benchmark by the federal government and many businesses to reimburse their employees for mileage.

The new six-month rate for computing deductible medical or moving expenses will also increase by eight (8) cents to 27 cents a mile, up from 19 cents for the first six months of 2008. The rate for providing services for charitable organizations is set by statute, not the IRS, and remains at 14 cents a mile.

The new rates are contained in Announcement 2008-63 on the optional standard mileage rates.

Taxpayers always have the option of calculating the actual costs of using their vehicle rather than using the standard mileage rates.
CASELAW, STATUTE AND COURT RULE UPDATE
(Citation to the Court docket number and date of decision)
Contributed by Ed Messing

ADOPTION

The lower court erred in In re Keast __Mich App__ (2008) (#279820 pub 4/1/08) when it found that MCI Superintendent arbitrarily and capriciously denied consent to the grandparent’s adoption petition; grandparents had previously allowed unsupervised contact with the birth mother and her boyfriend, and the grandfather admitted to use of marijuana with the birth mother with the children present and despite her substance abuse problems, while children had done well with the foster parent also seeking adoption.

The Supreme Court determined that the lower court’s decision in In re Zimmerman __Mich__ (2008) (#135812 3/8/08) was not a custody decision but a temporary child placement to the father after a hearing on mother’s adoption petition, affirming the balance of the decision (which allowed the court to consider placement with father when hearing mother’s motion to terminate his rights) and remanding the matter back to the trial court for a custody determination.

JUVENILE LAW

In re Kyle __Mich__ (2008) (#135465 4/4/08) Where the sole purpose of a petition was to seek a medical assessment, the child was not in temporary custody and placement was not requested, the Family Court cannot order a medical assessment of the child for sexual abuse prior to trial. During the Preliminary Inquiry the Court can only grant or deny authorization to file the petition, or refer the matter to alternative services, not grant the relief requested in the petition.

Where the state investigated unsubstantiated abuse allegations against one parent but in the process reports all of the parents in the household as illegal aliens to ICE, resulting in their deportation, and then fails to provide services and court ordered visits prior to their deportation, the termination of parental rights was reversed, In re Diaz Orozco __Mich App__ (2008) (#279462 5/3/08). The court held that in these unique factual circumstances, the state cannot take action which creates grounds for termination of parental rights, and must reunite the children with their parents.
An arbitrator must properly record the arbitration proceedings pursuant to MCL 600.5071 according to Kirby v Vance __Mich__ (2008) (#136050 6/11/08), and the court erred in failing to either require a recorded arbitration or conduct its own evidentiary hearing, as an independent review was not possible without a record. The Supreme Court in Hearschfus v Hearschfus __Mich__ (2008) (#135788, 135794 6/6/08) denied leave to appeal, but separately remanded for a Parenting Time Schedule that accommodated both parties religious beliefs. The unpublished Court of appeals case affirmed the finding of proper cause to change shared custody as Defendant had filed for bankruptcy, instigated Plaintiff’s arrest and 4 CPS referrals, and the parties arguments over the child’s education, health care, religion, and parenting time adversely affected the child.

Hayford v Hayford __ Mich App__ (2008) (#276176 6/10/08) held that although a PPO may adversely affect parenting time, it’s issuance need not comply with the Custody Act in certain circumstances, and further the Custody Act did not apply to the Petitioner in this case (Respondent’s son) as he had reached 18 years of age and was no longer a “minor child”. Rivette v. Rose-Molina __Mich__ (2008) (#280922 3/27/08) requires that referees conducting child custody cases must consider the best interest of the child factors in making the custody recommendation, although a referee’s findings need not be as extensive as that of a judge. Appellant had stated he was not requesting custody at the beginning of an apparent parenting time hearing, but at the end of the hearing the referee responded to his inquiry about joint legal custody stating if the referee had to address custody, the motion would be denied due to the lack of involvement in the child’s life.

Although mother’s proposed move was less than 100 miles in Powery v. Wells __Mich App__ (2008) (#280622 4/8/08), the court held that the trial court properly determined that the move was a change in the established custodial environment because the parties had exercised substantially equal time. The court properly conducted an evidentiary hearing addressing the best interest factors, determining that mother had not carried her burden of proof and ordered that if mother moved, father would be granted weekly physical custody during the school year.

In Lemmen v. Lemmen __Mich__ (2008) (#135405 6/4/08) the Supreme Court held that the trial court may modify the child or spousal support provisions in a Divorce judgment after a claim of appeal has been pending or leave to appeal has been granted if it finds there has been a change in circumstances since entry of the judgment. Malone v. Malone __Mich App__ (2008) (# 272327 6/3/08) held that, except for violation of due process, MCR 2.612 does not allow a court to grant a party relief from a support order by retroactively modifying court-ordered child support, as the as the statute, MCL 552.603, supersedes the court rule in substantive matters.

The court in Smith v. Smith __Mich App__ (2008) (#273547 3/18/08) held the lower court properly determined that the defendant and her boyfriend were not cohabitating denying the plaintiff’s motion to terminate the $3,500/mo spousal support, as they had a long-distance interstate relationship with frequent overnights together, but were not living together for a sustained duration and sharing expenses.
DOMESTIC RELATIONS, Con’t

In Wright v. Wright __Mich App__ (2008) (#281918 pub 6/3/08), the trial court properly declared a postnuptial agreement void as against public policy, because it anticipated and encouraged the plaintiff’s filing for divorce 8 months later. The court further properly granted defendant sole custody of the children, and awarding $200 a month alimony after a 10 year marriage as plaintiff had an MBA and earned $64,000/yr while defendant only earned $33,000/yr.

And in Kasben v. Hoffman __Mich App__ (2008) (#272999 4/1/08) the court determined that ex-wife’s attorney cannot be held jointly liable to return attorney fees paid from an escrow account when the Court of Appeals later determined that the fund should have be payable to the ex-husband, as the transfer was proper at the time and the attorney fee payment became the property of the attorney when received.

COURT RULES, STATUTES, AND ADMINISTRATIVE MEMORANDUM

2008 PA 113

$25 Federal DRA Fee shall be assessed against, and retained from, payment received by a Custodian Parent unless the parent or the dependants on the IV-D Case have been on, Public Assistance.

MCR 3.928 Effective 5/6/08 pending comments

Increases the maximum contempt sentence for juvenile who is at least 17 years old to 93 days in jail; they need not be kept separately from the adult prisoners.

MCR 3.204

Unless good cause is found, if the court has a pending action, or continuing jurisdiction over an action, involving support, custody, or parenting time of a child, a new action regarding the same child must be filed as a motion or supplemental complaint in the prior action; a new divorce, annulment or separate maintenance action involving the support of that child must be filed in the same county and assigned to the same judge if that county has jurisdiction over the same action. Any other new action regarding a different child of the same parents must be filed as a supplemental complaint in the prior action if there is jurisdiction in the original county to do so. MCR 3.203(A)(2) governs service, MCR 2.108 governs answers, and supplemental motion fees are the same as if a new action was filed.
COURT RULES, STATUTES, AND ADMINISTRATIVE MEMORANDUM, Con’t

If cases are pending in more than 1 county having have jurisdiction, a new action must be filed: 1) in the county which has the divorce, separate maintenance or annulment case, or if none exists, then 2) in the county where a judgment has entered regarding the majority of the parents children, if none exists, then 3) in the county of the most recent judgment. The Court may administratively and without hearing consolidate cases involving the same or different children of the same parents.

MCR 3.212

Requires the FOC to request a transfer of the older case to the county in which the new judgment was entered if neither parent, any of their children who are affected by the judgment in the older case, nor another party resides in the county in which the older case was filed, allowing a court to consolidate multiple cases involving different children of the same parents in a single court so that all issues between the parents can be decided in one case. It also requires the transferee FOC to review the incoming file and allows the FOC to obtain ex-parte orders to change county-specific orders to the transferee county.

MICHIGAN CONFINEMENT OBLIGATION FORMULA- DHS/OCS AT 2008-24

Effective 6/9/08 all Orders requiring the reimbursement of the reasonable and necessary costs of birth and confinement must be based on the new Confinement Obligation Formula. In summary, the first part of the Confinement Obligation Formula continues to apply the Extraordinary Medical Percentage to the Reasonable and Necessary expenses incurred by or for the mother in connection with her pregnancy, related to birth of the child. If Medicaid paid for the birth, the amount reimbursed by the father is limited to the following maximums based on father’s income and the National Poverty Guidelines (NPG):

- If father’s gross income is 150% of NPG or higher ($15,600 in 2008), reimbursement shall not exceed 5% of his monthly income for 36 months, or 15% of annual gross income.
- If father’s gross income is between 110% and 150% of NPG ($11,440-$15,599 in 2008), reimbursement shall not exceed 4% of monthly income for 36 months, or 12% annual income.
- If father’s gross income is between 67% and 110% NPG, ($6,968-$11,439 in 2008) reimbursement shall not exceed 3% of monthly income for 36 months, or 9% of annual income.
- If father’s gross income is less than 67% NPG, he pays 0% confinement.

Mandatory language outlined in the above memo must be used in all orders for reimbursement of confinement. Monthly reimbursement is as outlined in the Michigan Child Support Formula/ Arrearage Reimbursement provisions.
For the third year in a row, the RAM Spring Conference was held at the Perry Hotel in beautiful Petoskey.

As always, the hotel’s facilities and hospitality were wonderful, and their historic location made a great backdrop for the Conference activities. Petoskey had, as usual, much to offer in the way of entertainment, relaxation, and beauty.

The pages that follow show just a sampling of the events and activities which were part of the 2008 Conference.

Enjoy!
2008 RAM Spring Conference Highlights

During the late nineteenth and early twentieth centuries, city-dwellers from the Midwest sought to escape the heat of the summer months in the fresh air of northern Michigan. The Hotel Perry, constructed in 1895, catered to these vacationers with its location near Lake Traverse Bay and the Grand Rapids and Indiana Railroad Depot. At the Perry, a popular social hub, guests and local citizens attended dances and enjoyed the hotel orchestra. One of the city’s earliest brick buildings, the hotel was advertised in 1896 as “fire proof” and boasted steam heat, electric service, a barber shop, a buffet restaurant, and a newsstand. The Hotel Perry is included in the Petoskey Downtown National Register Historic District.
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