

NJ Laws Email Newsletter E373

Kenneth Vercammen, Attorney at Law

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Greetings Kenneth Vercammen,

1. Termination of Child Support after High School Graduation and Upon Emancipation.

Child support is usually paid through a wage withholding garnishment at the parent's job. Child support orders and wage withholding continue forever against you until a Superior Court Judge signs a Formal Court Order terminating or modifying support. It is not sufficient for the payor to simply wait for a child to finish school. Many Divorce decrees and Property Settlement Agreements state that child support will end upon emancipation.

For example, the term "emancipation" is sometimes defined as follows:

(i) The completion of the child's formal education on a matriculated basis, whether it be graduation from a four year undergraduate school or high school, it being understood that so long as the child is diligently pursuing his formal education through a four year undergraduate college education and obtaining passing grades the child shall not be considered emancipated.

(ii) Upon the completion of any of the aforesaid segments of the child's education, and upon the failure to commence the next segment of his education, or upon leaving school, the child

Office Phone Number:

(732) 572-0500

www.njlaws.com

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**Thermometer
Used to Test
Alcotest.**

**4. ABA Elder Law
Seminar Saturday,
August 6, 2011 at
2:00pm - 3:30pm,
Metro Toronto
Convention
Centre**

**5. Kenneth
Vercammen
nominated for
ABA Delegate At-
Large. The
Election will be
held at the ABA
Annual Meeting.**

shall be deemed emancipated unless failure to continue on with his education has resulted from injury or illness or some other cause beyond the child's control.

(iii) The marriage of the child.

(iv) Entry into the military or armed forces by the child.

Your attorney can draft the appropriate Motion to terminate child support if the child is emancipated. You will need to provide your attorney with relevant papers including a copy of the Final Judgment for Divorce, any other Child Support Orders, copy of birth certificate if available, proof of graduation from school or working full time, etc.

Sometimes the child support recipient, usually the mother, will sign a Consent Order, which your attorney can file without the need for a formal Motion. However, generally a Formal written Notice of Motion must be filed in the County Superior Court where the child support Order was entered.

The requirements of the Motion are detailed and must include the correct filing fees. Child support does not end merely if the child reaches 18 and graduates high school. Most child support Order continue child support if the child is in college full time. However, don't give up. In the unreported Appellate Division decision of *Kozak v Kozak* __ NJ Super. __ (App. Div. decided January 9, 2003) the court reduced child support during the period of time the child resided at the college campus. The judge properly determined it was appropriate to calculate child support only for the period of time the child was not residing at college.

2. If no Exigency, no Warrantless Search even if Report of Gun. State v Witczak __NJ Super. __ A-2735-10T2

The court reviewed an interlocutory order denying defendant's motion to suppress a handgun seized from his residence. The primary question presented is whether the community caretaker exception enunciated in Cady v. Dombrowski applied to a warrantless search in the home. Defendant contended that the motion judge erred by applying the exception, and urged the court to follow the rationale expressed in Ray v. Township of Warren, which held that the exception does not extend to searches of homes. The court declined to follow Ray and continued to apply New Jersey precedent, which permitted the exception in the home context on a case-by-case, fact-sensitive basis. The court reversed, however, because no exigencies existed for the warrantless entry into defendant's home and the State did not demonstrate that the search was performed for the legitimate purpose of fulfilling a community caretaker responsibility. 4-12-11

3. Hearings Ordered to Determine Reliability of Different Thermometer Used to Test Alcotest. State v Holland __ NJ Super. __ A-4384-09T3

In appeals from DWI convictions, the court held that Alcotest results are not per se inadmissible simply because the device has been calibrated with a Control Company temperature probe instead of the Ertco-Hart thermometer validated by the Supreme Court in State v. Chun. Because the record in these matters, however, is insufficient to support a finding that the digital thermometer used was substantially similar to the

Ertco-Hart device, the court remand to the Law Division for a consolidated hearing to determine the reliability of the Control Company probe, including whether differences between the two had any impact at all on the accuracy of the ultimate results. 4-05-11

4. Elder Law, Estate Planning & Probate- New Ideas to Expand & Excel Your Practice, ABA Annual Meeting Toronto, Canada , Saturday, August 6, 2011 at 2:00pm - 3:30pm, Metro Toronto Convention Centre

Learn from nationally recognized experts on using new techniques to improve service to Elder Law & Estate clients. Forms & briefs will be provided to all attendees.

Speakers: Parag Patel, Esq. Iselin, NJ Chair ABA GP Tax Committee

Kenneth A. Vercammen, Esq. - Chair ABA GP Elder Law Committee & co-author "Nuts & Bolts of Elder Law", Edison, NJ

New Speaker: Catherine Seal
Kirtland & Seal LLC
Colorado Springs, CO

Elder Law program Primary Sponsors: General Practice Section
Co-sponsors: ABA Commission on Law & Aging, Health Law Section, YLD, Senior Lawyers Division, Real Probate & Trust Section, Tax Law Section

<http://kennethvercammen.com/toronto.htm>

5. Kenneth Vercammen nominated for ABA Delegate At- Large. The Election will be held at the ABA Annual Meeting.

2011 Delegate-at-Large Election in Toronto

Pursuant to §6.5 of the ABA Constitution, six Delegates-at-Large to the House of Delegates will be elected at the 2011 Annual Meeting for three-year terms beginning with the adjournment of that meeting

Under the Constitution, no more than one nominee from a particular state, territory or possession may be elected in the annual election.

Voting will take place in the registration area of the Toronto Convention Centre. The polls will be open during the same hours as registration, except that the polls will close on Monday, August 8, 2011, at 5:00 p.m. The votes will then be tallied and the six nominees with the highest number of votes (taking into account that no more than one may be elected from the same state, territory or possession) will be declared elected as Delegates-at-Large.

All attendees of the Annual Meeting can vote for six candidates.

Details on my ABA leadership positions and volunteer work for the General Practice Section, LPM and YLD since 1985 is set forth on my website resume:

<http://www.njlaws.com/resume1.htm>

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KENNETH VERCAMMEN & ASSOCIATES, PC
ATTORNEY AT LAW
2053 Woodbridge Ave.
Edison, NJ 08817
(Phone) 732-572-0500
(Fax) 732-572-0030
website: www.njlaws.com

Admitted to practice law in New Jersey, New York, Pennsylvania, US Supreme Court and Federal District Court

Facebook: <http://www.facebook.com/kenneth.vercammen?ref=name>

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Kenneth Vercammen Law Office | 2053 Woodbridge Avenue | Edison | NJ | 08817