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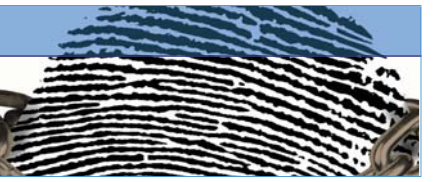

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Developing Your Referral Network

By Manos Filippou, Tanoya Greaves and David Bareno, Marketing Consultants

If you are like most family lawyers, referrals represent a significant portion of your new clients. You may thank people who send you referrals, but if you don't have a plan in place to nurture your existing referral sources and develop new ones, you are missing out on a critical opportunity to grow your practice.

Developing your referral network isn't complicated or costly. Essentially, it's a three-step process: Establish the Basic Framework, Assess Your Options, and Implement the Plan.

Step One: Establish the Basic Framework

Establish a list of goals and objectives for your plan. For example, ask yourself how many contacts you'll have in your database by August 1, October 1... and so on.

Develop a list of possible strategies and actions. What are your options? What are you comfortable doing?

Create a timeline for the execution of your plan. When will it be done? Who will help you? This may involve enrolling your staff in the project, or working with outside help. Whatever you do, make sure that there is some structure and commitment in place or your plan will remain just that: a plan.

Identify how much you'll invest in your referral development. Choose an actual dollar amount here. You may have to go back and forth among the points in Step 1 during your planning process, because your timeline may require that you adjust your actions, or your strategies may call for a higher budget.

Step Two: Know and Assess Your Options

Do more of what's working. Make a list of everything that you're currently doing to nurture and develop your referral sources. I recommend that you maximize the effectiveness of what you're currently doing before you add something new. For example, if you currently send a Thank You card (or email) when you receive a referral, ask yourself how could you make that Thank You more effective and more meaningful.

Take better care of your clients. This may mean that you ask what your clients like about your firm — and perhaps what they think can be improved. One way of doing this research is through an "Exit Survey." To learn more about this, read the article "Exit Survey" by family law lawyer Mark Chinn: www.familylawyermagazine.com/articles/exit-interview. You can also take better care of your clients by exceeding their expectations of you as their lawyer. You can give them information and resources that are not legal related but can support them through the divorce process.

Thank your referral sources three times if you can. Thank them when you first get the referral. Thank them again regardless of how the referral works out. Thank them again when the case is complete and you've done an "Exit Survey" — especially if the survey gives you something positive to report back to the referral source.

Use social media to promote your practice. We recommend that all family lawyers get on board with LinkedIn and Facebook.

- **LinkedIn.com**
  LinkedIn has 150 million members, and almost all of them are professionals. At a minimum, you should have a complete profile on Linkedin that includes up-to-date information on you, along with recommendations from clients, colleagues and professionals from related fields. Joining relevant groups on LinkedIn also connects you to hundreds and thousands of people who could be sending you referrals. Also consider joining the group we started on LinkedIn called "Marketing for Divorce Professionals", and follow or contribute to the conversations of this 1,200+ member group.

CONTINUED ON PAGE 59

REFERRAL / CONTINUED FROM PAGE 50

- **Facebook.com**
  With 901 million active users, Facebook should definitely be part of your marketing and referral development strategy. Facebook has offered pages for companies for a few years. If you're using a personal profile, it's time to start a page for your firm.

If you want to learn more about social media, I recommend that you listen to the three podcasts Divorce Marketing Group has produced on Social Media: What is Social Media, Using Social Media to Grow Your Practice, and Branding and Promoting Your Social Media Pages. They are available here: www.divorcemarketinggroup.com/transcript.htm.

Personal Networking

- **Connect with lawyers from other practice areas.** Attend Bar Association meetings and CLE for practice areas other than family law.
- **Network with other professionals.** Attend financial and mental health professionals meetings and CLE events. You can request attendees at these events provide you with information you can give to your clients and/or add to your website to further develop relationships you start at these events.
- **Make the most of your networking activities.** If you attend networking sessions, create something that would be of value to the other attendees, such as a brochure (print and/or electronic), a newsletter (print and/or electronic), articles, presentations, etc.

Stay "top of mind." Stay in touch with your new potential referral sources by sending them an enewsletter on a regular basis. In fact, you can even invite your referral sources to contribute articles. Of course you should also feature your enewsletter on your website.

Step Three: Make Your Choices and Implement Your Plan

This is where you may review your goals, your resources and your options and make a decision as to what, when and how you will get your referral development plan underway.

It is important to allocate resources to market your practice if you want to grow your client base. Divorce Marketing Group offers a FREE monthly half-hour Marketing TeleSeminar for Divorce Professionals. We recommend that you listen to them. We give marketing ideas, tips and guidance that many family lawyers find useful. Visit www.divorcemarketinggroup.com/seminar/family_lawyers.htm to learn more. For upcoming TeleSeminars dates, please email tanoya@divorcemarketinggroup.com.

Manos Filippou is the Manager of Client Services; Tanoya Greaves is the Client Services Specialist and David Bareno is the Social Media Specialist at Divorce Marketing Group. Their firm's website is www.DivorceMarketingGroup.com.

Primer on Assisted Reproductive Technology Law

By Leslie Schreiber, Esq.

This article provides a general overview of assisted reproductive technology law and identifies some "hot topic" areas.

The emerging arena of Assisted Reproductive Technology (ART) law encompasses the creation or extension of a family through non-traditional means; in other words, the utilization of methodology other than sexual intercourse to cause a live birth. Scientific advances in fertility and other related modalities have led to a plethora of legal issues. Lawyers practicing in the area will need to have a working knowledge of reproductive medicine in order to better understand the application of the law.

It is essential to bear in mind that to date there is no federal regulation governing this arena in the US. Thus, each state is left to its own devices to carve out clear statutes governing ART procedures and rules used to secure parental rights. ART law also crosses state and international borders since patients utilizing the technology to create family might travel beyond their borders to use doctors or third parties to assist them on their quest. As many state legislatures are reluctant to address these issues, local courts are left to decide complicated matters on a case-by-case basis, thereby creating a patchwork of case law. Internationally, a similar patchwork of laws exist country-by-country.

It is clear that the law has not caught up with the science or medical advances and that as fertility doctors advance their techniques and options, so the law will advance forward. In an effort to provide some guidelines, however, several legal associations have prepared proposals in the hopes that they would be enacted by the states. For example, the American Bar Association Section of Family Law Committee on Reproductive and Genetic Technology proposed a Model Act in 2008. The stated purpose of the Act is "to give ART patients, participants, parents, providers, and the resulting children and their siblings clear legal rights, obligations and protections." Additionally, the National Conference of Commissioners on Uniform State Laws have proposed amendments to the Uniform Parentage Act (UPA) intending to lend clarity to some of the parentage issues as they arise from the implementation of reproductive medicine.

The use of assisted reproduction to cause a pregnancy encompasses many modalities. It can include, but is not limited to, intrauterine insemination, gamete donation, such as egg or sperm, embryo donation, in vitro fertilization, sperm injection and surrogacy. Parties utilizing such modalities might include a single male or female who desire children without a partner; a same sex couple; and/or infertile couples. The reasons can be social, lacking a partner; anatomic, loss of a reproductive organ; physiological, an inability for a reproductive organ to function appropriately; or political, traveling to a friendly jurisdiction for medical intervention. The list expands as the science evolves.

Currently, there are several areas that comprise much of the work for an ART lawyer. They include:

- Collaborative reproduction

- Agency regulation
- Cross-border travel for ART
- Parentage orders and
- Insurance coverage issues.

Collaborative Reproduction

This is a broad category where persons who do not intend to be the parent will participate in producing the pregnancy. This scenario is also termed third party reproduction. The scenario arises when a person donates gametes (egg or sperm) or embryos to an intended parent, and which may or may not include a surrogacy arrangement. A surrogate (noun) or surrogacy (verb) comes into play when a woman carries and delivers a child for a person or couple who are themselves called intended parents or IP's.

There are two kinds of surrogates. A woman who is a "traditional" surrogate donates the egg and carries the pregnancy. A "gestational" surrogate gestates the pregnancy but has no genetic relationship to the baby she carries as the egg is from another source. In all cases, when a surrogate is relied upon, the surrogate is not intending to parent the child.

A lawyer's goal in third party reproduction is to draft clearly defined contracts so as to define the roles of and between all parties. When cross-border surrogacy arrangements are being done, the lawyer must also balance the drafting exercise to not engage in the unauthorized practice of law in a state or country where they hold no license nor are admitted pro hac vice. Additionally, the lawyer must be cognizant of conflict-of-interest risks as several parties are involved who may have differing roles with shifting legal responsibilities.

Agency Regulation

There are countless egg and sperm donation agencies in the US and abroad who may or may not facilitate collaborative arrangements by matching intended parents with donors and/or gestational carriers. Although engaged in the business of helping intended parents manifest their dreams, these agencies are often not well versed in the legal aspects of securing parental rights and can foster conflicts of interest because of multiple parties to the arrangements. As there have been disreputable agencies who embezzled or misappropriated client funds, regulation of these businesses in several states, like California, is underway. Lawyers should look closely at the agencies they are working with to ensure transactions are at arm's length and client funds are secured in separate bonded and insured trust accounts.

Cross Border Collaborative Agreements and Immigration and Citizenship

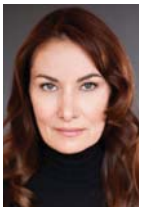
United States citizens who travel either across state or internationally for third party reproduction or who forum shop for more liberal countries or cost-effective ART procedures run the risk of entering into complex legal territory. Issues involving everything from immigration to citizenship, insurance and medical fees come into play. Similar issues arise for foreign intended parents who enter the US to utilize the medical community and services of domestic gestational carriers and gamete donors or who intend to give birth in the US. It is advisable in most cases to utilize the services of an immigration lawyer who can assist intended parents in obtaining the required travel documents to ensure a safe return to their home country with baby. Additionally, the lawyer must be well versed in the local laws for obtaining parental rights to the child when back in their home country, if necessary.

Parentage Orders

Court intervention through a pre-birth or post-birth order may be necessary to establish parentage in surrogacy arrangements. The lawyer should consider whether there is a statute governing parentage in the state where the baby is born. If there is no governing statute, parentage orders may be established through case law. Lawyers should understand the state's paternity statutes, residency requirements and adoption laws since they all have an impact on whether or not legal parentage of a child born via third party reproduction will be permitted.

Insurance Coverage Issues

Knowing which insurance companies issue policies covering surrogacy or IVF for infertility is suggested. Insurance coverage varies state by state so understanding this interplay might be important to your legal representation. Also, examine the policy contract language since it is all a matter of interpretation. Advise your client to hire an insurance professional to help navigate this area, if necessary.



Leslie Schreiber is a lawyer in private practice and devotes much of her time to the ART arena. She is an active member of the American Bar Association Committee on Genetics and Reproductive Technologies. She is licensed in Florida, New York and Washington, D.C. Her website is www.ljslaw.com.

Related Articles

I'm a Divorce Lawyer! So Why Should I Read About ART?
By Steven H. Snyder
Steven gives 9 reasons as to why family lawyers should learn about ART. Here are just two:

1. One in five couples seeking a divorce has an assisted preproduction issue.
2. Stored sperm and embryos have been characterized as "property" (or quasi-property) for purposes of ownership, control, transfer, and bailment.client who has children through ART.

www.FamilyLawyerMagazine.com/articles/steven-synder-art.

What You Should Know Before Drafting

By Linda J. Ravdin
Family Lawyer

With the advent of marriage equality, a same-sex couple, like their opposite-sex counterparts, will have the same reasons for deciding to enter into a premarital agreement. There are also additional incentives, and several drafting issues that require special attention, for same-sex couples to consider when entering a premarital agreement.

What is a Premarital Agreement?

A premarital agreement is a contract that determines spousal rights when the marriage ends by death, or divorce. It substitutes the parties' contract for the spousal rights that would otherwise apply under state law at the end of the marriage. Some couples choose to predetermine their financial rights and obligations rather than rely on state law. When a party has children from a previous relationship, or other family members he or she wishes to provide for at death, it can make sense to have a premarital agreement to allow for allocation of property among them in a way that is tailored to the needs and wishes of the parties.

Why It Matters More to the Same-Sex Couple

If an opposite-sex couple marries without a premarital agreement, state law will step in to determine their rights at the end of the marriage. Opposite-sex marriage is recognized everywhere, there will be a court that has the power to determine their rights. In a same-sex marriage, if a spouse moves to a state that does not recognize their marriage, or if a spouse owns property in a state that does not recognize the couple's status as spouses, they may not have meaningful access to a court to resolve issues arising from a death or dissolution.

A premarital agreement can remedy this problem because it can predetermine parties' financial rights; they do not need to fall back on state law. If there is a dispute about their rights under the contract, the "spouse" would be able to go into court to have a court interpret the contract.

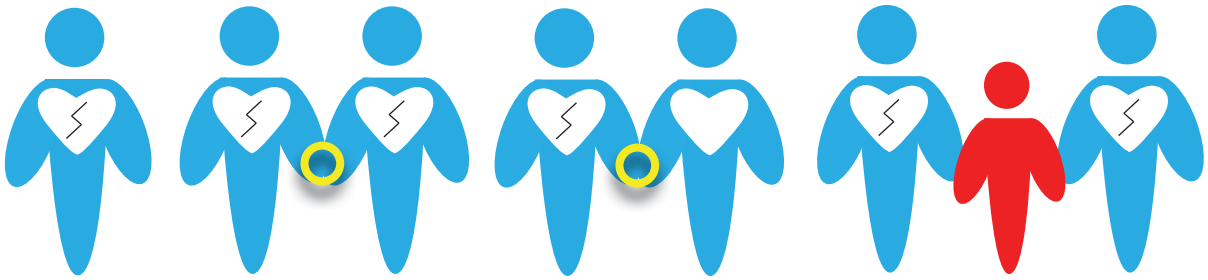
Drafting Issues Requiring Special Attention

Many of the issues requiring special attention in the drafting of a same-sex premarital agreement arise from the lack of uniform recognition of same-sex marriage and the possibility that one or both parties will move to a state that does not recognize their marriage. Issues also arise if one of the spouse own property in a state that does not recognize the couple's status as spouses. A premarital agreement can take account of this, but when it comes to same-sex marriage, there are several details to consider before it can do so:

Validity — A basic requirement for validity of any contract is consideration. Consideration is something of value given or received in exchange for something else of value. The law deems marriage itself so valuable that it is sufficient to fulfill the requirement for consideration for a valid premarital agreement.

In general, a premarital agreement may state that the consideration is the marriage; it need not identify any other consideration to be a valid contract. However, marriage alone may not be sufficient under the law of a state that considers the marriage void. A court in such a state could rule that the premarital agreement is void for lack of consideration because the marriage is void. Therefore, a same-sex premarital agreement should identify additional consideration beyond the marriage itself to better protect the agreement from an attack on its validity:

- Mutual waivers of spousal claims to division of property, spousal support, and rights as a surviving spouse;
- Mutual waivers of non-spouse claims, such as property claims based on other legal theories, *e.g.*, oral contract, quasi-contract, unjust enrichment, or business partnership;
- Agreement to share noneconomic resources, such as caring for a home and children, providing companionship, and other domestic activities;
- Agreement to make contributions, monetary and non-monetary, to acquisition of a specific asset, such as a home or a business.



a Same-Sex Premarital Agreement

Defining Marriage and Dissolution — A premarital agreement does not usually define the word "marriage" because the term has had a universally understood meaning. However, because a court in a state that does not recognize same-sex marriage, may interpret the term in a contract to refer only to a marriage that is legal, the premarital agreement should define the term. The definition can embrace: the legal status of marriage as recognized where celebrated; a registered domestic partnership if the parties' legal status is recognized as such under the laws of a state where a dispute arises; and the parties' contractual relationship as defined in the agreement.

Similarly, the word "divorce" does not usually need to be defined. However, in a same-sex premarital agreement, it is appropriate to use a more inclusive term, such as dissolution. Further, the term can be defined to include a formal divorce in a state that recognizes the marriage as well as dissolution under a different statutory scheme, such as a domestic partnership statute. It should also include a decision to end the relationship without formality insofar as no formal procedure is available at the time and in the place where the parties end their relationship.

Creating Parentage — Many same-sex couples intend to make children a part of their family and they may wish to establish legal parentage in both partners. The law regarding the rights of de facto parents varies and it is in flux. Same-sex couples who choose to enter into a premarital agreement may wish to foreclose litigation over parentage in favor of contractual terms that, to the extent permitted by law, predetermine their parentage rights. Nevertheless, a contract alone may not be sufficient to fully protect both parties and their children. Some terms to consider:

- If permitted by state law, agreement to a second-parent adoption;
- An agreement by the legal parent to a consent joint custody order during the marriage so as to create custodial rights in the other parent if permitted by law;
- A provision that both parties will be financially responsible for any child they agree to bring into their family during the marriage and in the event of dissolution;
- An acknowledgment that the parties intend that each spouse be considered the de facto parent of a child born to or adopted by the other.

The full article includes more detailed examples of premarital agreements. It also covers topics such as: Agreement Terms for Buyout of a Marital Home, Tax Consequences of Property Transfers and Retirement Benefits. To read the full, article please visit: www.FamilyLawyerMagazine.com/articles/same-sex-couples-and-premarital-agreements.

Related articles on Legal Issues

Premarital Agreements – The 7 Day Rule

By Scott N. Weston

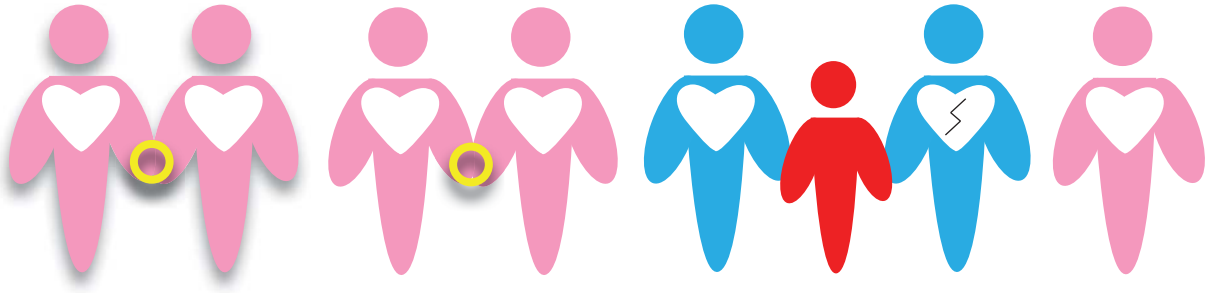
How much time must pass before parties are deemed to have considered the meaning of a premarital agreement? Scott N. Weston explains the 7-day rule. www.FamilyLawyerMagazine.com/articles/premarital-agreements-the-7-day-rule.

The Secrets of Cohabitation Agreements

By Sondra I. Harris

While there are similarities between a pre-nuptial agreement and a cohabitation agreement, there are differences that could be fatal to the unwary practitioner. www.FamilyLawyerMagazine.com/articles/secrets-of-cohabitation-agreements.

Linda J. Ravdin practices family law exclusively with the Bethesda, Maryland, law firm, Pasternak & Fidis, P.C. She is the author of Premarital Agreements: Drafting and Negotiation (2011), published by the American Bar Association Family Law Section.



Resources for Family Lawyers

Here is a small sampling of useful resources that are available at www.FamilyLawyerMagazine.com/resources.

BOOKS/CDS:

The Divorce Trial Manual: From Initial Interview to Closing Argument

By Lynn Gold-Bikin & Stephen Kolodny

Invaluable asset packed with insights, strategies and recommendations every family lawyer could use. Available at the ABA Bookstore.

How Good Attorneys Become Great Rainmakers

By Mark Powers & Shawn McNalis

Provides you with easy, practical action plan that helps you develop the marketing skills and habits needed to attract higher value clients and referral sources. Available at: www.atticusonline.com.

Valuing Specific Assets in Divorce

Edited by Robert D. Feder

Read a free excerpt by Mark K. Alstschuler entitled, "A Primer on Pension Valuation in Divorce" here: www.pensionanalysis.com/CM/Custon/TOC-WeWroteTheBooks.html. Available at: www.aspenspublishers.com.

Time Management for Attorneys: A Lawyers Guide to Decreasing Stress, Eliminating Interruptions and Getting Home on Time.

By Mark Powers & Shawn McNalis

Time-tested time management techniques learned over years of working with lawyers. The book is an easy-to-use guide just for attorneys with real-life examples, exercises, and client case studies and a CD containing over 50 practice-specific forms. Available at: www.atticusonline.com.

Divorce: The Accountant as Financial Expert (6th text)

By Kalman A. Barson, CPA/ABV, CFE, CFF

Includes new material that focus on divorce related accounting services, including investigative accounting, business valuations, funds flow tracing and related issues. All royalties go to charity. Available at: www.BarsonGroup.com.

Federal Retirement Plans in Divorce — Strategies & Issues

By Tim Voit

This insightful guide has been used in CLE programs, and paralegal studies, where it has served as an excellent resource in divorce cases involving pensions and divorce. Purchase hardcover or Ebook call (800) 248-3248 or visit www.Tax.CCHGroup.com.

Forms, Checklists, and Procedures for the Family Lawyer

By Mark Chinn

Containing over 100 forms and policies, Chinn divides this book into chapters that follow the typical progress of a case. Available at the ABA Bookstore.

101+ Practical Solutions for the Family Lawyer: Sensible Answers to Common Problems, Third Edition

By Gregg Herman

A "must have" for every family law office. Includes a CD and downloadable forms. Available at the ABA Bookstore.

Navigating Emotional Currents in Collaborative Divorce: A Guide to Enlightened Team Practice

By Kate Scharff and Lisa Herrick

Designed for use by all professionals in the Collaborative Divorce area, this book/CD package offers a roadmap for navigating the Collaborative process as it pertains to the emotional point of view. Available at the ABA Bookstore.

Premarital Agreements: Drafting and Negotiation

By Linda J. Ravdin

This clearly written primer focuses on the fundamentals of these agreements and explains the most critical aspects involved in creating a premarital agreement. Available at the ABA Bookstore.

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OurFamilyWizard

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By Judge Michele Lowrance.

Helps people who are going through divorce avoid litigation and turn negative emotions into positive action.

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PODCASTS

The Five Critical Risks of Divorce

Bari Weinberger (New Jersey)

Preparing for Mediation

Mari Frank (California)

Three Alternatives to Litigating Your Divorce

Ken Nathens & Brahm D. Siegel (Ontario, Canada)

Major Issues in Divorce and How to Deal with Them

Stanley Potter (Ontario, Canada)

Four Financial Secrets You Must Know About Your Divorce

Sharon Numerow (Alberta, Canada)

Trends in Family Law

By Gregg Herman

Over the course of 25 years practicing family law (I started quite young, if you must know), the practice has been subject to significant trends and changes. Some of these trends have been positive, and some have not. Let's examine a few of the main ones:

***Pro Se* Litigants**

Many years ago, a family law section board on which I was serving was told that Maricopa County, Arizona was experiencing a trend where nearly half their family law cases were pro se on at least one side. We were flabbergasted. There was no way a court system could survive with half of the litigants unrepresented. Yet, as it turned out, Maricopa County was just the beginning. Today, many counties have pro se rates as high as 50% on both sides, and 75% at least on one side. While the legal system has survived, there has been a substantial cost. The one near and dearest to my heart and pocketbook (no, they are not one and the same) is less revenue for divorce lawyers. While society as a whole is not likely to mourn this event, it has led to some unfortunate results. The court system, while continuing to operate, is less efficient. The competition for good clients and for getting paid is more intense, sometimes leading to unprofessional representation. And, perhaps worst of all, the number of calls received by lawyers to fix damage — usually too late — is increasing proportionately.

Alternative Dispute Resolution (ADR)

The use of ADR — unheard of 25 years ago — has exploded. First, mediation became common, and often mandated for custody and visitation disputes. Today, it is widely used for financial disagreements as well. In fact, many lawyers will not go to trial without at least suggesting some form of ADR to their clients. Later, Collaborative Divorce made an appearance. While it has grown substantially, it has yet to become more than a boutique practice area used only for relatively wealthy people. Where issues such as debts, dishonesty, substance abuse or domestic violence are involved, the use of the collaborative practice is, at a minimum, problematic. Still, the concept of a lawyer as a problem solver and not as a combatant is a welcome trend.

Settlement Rates

I was hired as an associate in my current firm out of the District Attorney's office to be the firm litigator. My litigation experience was critical as a fair number of cases went to trial — and even those that were eventually settled frequently entailed contested hearings and formal discovery. Today, thanks in no small part to the widespread use of ADR, settlement rates range from the lower to upper 90 percentiles. What has been called the "Vanishing American Trial" has become a family law trend.

Future Trends

To quote that great American philosopher, Yogi Berra: "Predictions are difficult to make — especially about the future." But, throwing caution to the wind, here are a few based on current trends:

- ADR to become mandatory for financial issues
- Child support to become an administrative procedure
- More "collaborative-type" processes
- Settlement CLE courses becoming more common and trial CLE courses rarer
- Couples will still fight and need assistance in resolving their differences

The first four predictions may or may not come true. The fifth one you can count on.

Gregg Herman is a Family Lawyer with Loeb & Herman, S.C., Milwaukee, Wisconsin. He is certified as a specialist in family law trial advocacy by the National Board of Trial. His law firm website is www.loebherman.com.

Related article

Why are there Fewer Collaborative Divorce Filings?
By Gregg Herman
Read the results of two consecutive studies on collaborative divorce. You may find the results to be disturbing, if you believe in the collaborative process. www.familylawyermagazine.com/articles/why-are-there-fewer-collaborative-divorce-filings.

Family Lawyer Magazine would like to thank all the family lawyers who have contributed to our case review section. Full reviews of other cases and the ones listed here are avaible on www.FamilyLawyerMagazine.com. To submit a case review for your State or Province, please contact: Editors@FamilyLawyerMagazine.com.

Significant Case Reviews

Contributing Editor: Laura Morgan

NATIONAL

U.S. v. Dann
Case No. 10–10191: July 22, 2011
United States Court of Appeals, Ninth Circuit
Issue: Child Support

Vasquez v. Colores
Case No. 10–3281: Aug 5, 2011
United States Court of Appeals, Ninth Circuit
Issue: Custody — Hague Convention

ALABAMA

B.B. v. M.N
Case No. 2100895: Feb 17, 2012
Alabama Supreme Court
Issue: Visitation — Grandparents

Wilson v. Wilson
Case no. 2100540: Nov 18, 2011
Alabama Court of Civil Appeals
Issue: Asset Division

Dudley v. Dudley
Case No. 2100377: December 9, 2011
Alabama Court of Civil Appeals
Issue: Property Division

ALASKA

Nelson v. Nelson
Case No. S – 13928: Oct. 28, 2011
Alaska Supreme Court
Issue: Custody — Modification

McLaren v. McLaren
Case No. S-13031: Jan 20, 2012
Alaska Supreme Court
Issue: Marital Property — Estate

Rego v. Rego
No. S–13650: August 12, 2011
Alaska Supreme Court
Issue: Custody — Relocation

Bagby v. Bagby
No. S-13785: May 13, 2011
Alaska Supreme Court
Issue: Custody — Relocation

ARIZONA

In re Marriage of Priessman
Case No. 2 CA-CV 2011 — 0071: November 18, 2011
Arizona Court of Appeals
Issues: Pensions/QDROs

CALIFORNIA

See page 68

COLORADO

In Re Marriage of Davis
Case No. 09CAl0O2: Feb 7, 2011
Colorado Court of Appeals
Issue: Child Support

In re T.L.B.
Case No. 10CA2157: Jan 19, 2012
Colorado Court of Appeals, Division I
Issue: Custody — Hague Convention

In re Marriage of Dedie & Springston
Case No. 11SA80: June 27, 2011
Colorado Supreme Court
Issue: Custody — UCCJEA

CONNECTICUT

Cottrell v. Cottrell
Case No. 133 Conn. App. 52: Jan 17, 2012
Connecticut Court of Appeals
Issue: Divorce Procedure — Asset Division

Peterson v. Sykes-Peterson
Case No.133 Conn. App. 660: Feb 21, 2012
Connecticut Appellate Court
Issue: Prenuptial Agreement

Fischer v. Zollino
Case No. 303 Conn. 661, 35 A.3d 270: Feb 7, 2012
Connecticut Supreme Court
Issue: Support — Reimbursement

Culver v. Culver
Case No. 127 Conn. App. 236: Mar 15, 2011
Connecticut Appellate Court
Issue: Child Support

Luster v. Luster
Case No. 128 Conn. App. 259: April 26, 2011
Connecticut Court of Appeals
Issue: Divorce Procedure

Bedrick v. Bedrick
Case No. 300 Conn. 691: April 26, 2011
Connecticut Supreme Court
Issue: Post-Nuptial Agreement

CALIFORNIA

In re Marriage of Margulis

By Garrett C. Dailey, CFLS, AAML

FACTS:

H and W separated after a 33-yr. marriage and, for 12-post-separation years, and continued to handle their joint finances as they had before. H had complete control of very substantial community investment accounts and paid all the bills: W trusted him to manage their finances for their mutual benefit. Just before trial, H disclosed for the first time that the investment accounts were virtually empty. Without any corroborating evidence, he attributed the dissipation of account values to proper expenditures and stock market losses.

At trial, W argued the court should charge H with the missing funds unless he proved he did not misappropriate them. Her only evidence of missing funds was a financial statement H prepared 3 yrs. after separation and 9 yrs. before trial, which showed $787,000 in investment accounts. Trial ct. concluded this was insufficient evidence the accounts had contained the stated amounts post-separation, and declined to charge H with some $602,610 of missing funds. Property division required W to make a large equalizing payment to H. W appealed and Court of Appeal reversed.

HELD:

In dissolution proceeding to divide c/p, where the non-managing spouse has prima facie evidence that community assets disappeared while in the control of the managing spouse post-separation, managing spouse has the burden of proof to account for the missing assets.

Based on Family Code provisions, equitable principles, and case law, Court of Appeal concluded the trial ct. erred in failing to shift to the managing spouse the burden of proof concerning the missing community assets.

"Once a non-managing spouse makes a prima facie showing of the existence and value of community assets in the other spouse's control post-separation, the burden of proof shifts to the managing spouse to prove the proper disposition or lesser value of those assets. Failing such proof, the court should charge the managing spouse with the assets according to the prima facie showing." (Id. at p. 1258.)

Court of Appeal carefully analyzed the statutory scheme as well as equitable principles in determining that the burden of proof had to shift to the managing spouse under these circumstances:

"Taken together, [the] Family Code provisions impose on a managing spouse affirmative, wide-ranging duties to disclose and account for the existence, valuation, and disposition of all community assets from the date of separation through final property division. These statutes obligate a managing spouse to disclose soon after separation all the property that belongs or might belong to the community and its value, and then to account for the management of that property, revealing any material changes in the community estate, such as the transfer or loss of assets. This strict transparency both discourages unfair dealing and empowers the non-managing spouse to remedy any breach of fiduciary duty by giving that spouse the 'information concerning the [community's] business' needed for the exercise of his or her rights [Corp. Code §16403 (c)(1): Fam. Code §721 (b)], including the right to pursue a claim for 'impairment to' his or her interest in the community estate [Fam. Code §1101 (a), (g) & (h)]. And most importantly for present purposes, in a trial where community assets are missing, these statutory duties of disclosure and accounting serve to shift the burden of proof on missing assets to the managing spouse. We find support for this crucial shift of the burden of proof in the recurring mandate, running throughout the statutory scheme, that the managing spouse must furnish information to the other spouse concerning the community property." (Id. at pp. 1270-1271.)

NOTES:

1 The Court of Appeal invited ACFLS to file an Amicus Brief, which it did, joined by the AAML Southern California Chapter. The Court of Appeal adopted the rule they advocated.

2 Modified 9/9/11: no change in judgment.

3 Previously modified 8/26/11: no change in judgment.

COMMENT:

This case eliminates confusion caused by the Family Code §721's statement that fiduciary duty does not "impose a duty for either spouse to keep detailed books and records of community property transactions." Some previous opinions have held that merely proving that a spouse possessed assets at separation was not enough to charge them with them in the property division. Rather than putting the burden of proof where it should have been, namely on the party with greater access to the information, the opinions placed the burden on the other spouse to prove that they were still in existence. This violated the statutory duty to account for community property and common sense. Marriage of Margulis corrects this with an easily understood and logical test.

198 Cal.App.4th 1252, 130 Cal.Rptr.3d 327 (2011)

Golinski v. U.S. Office of Personnel Management

Case No. C 10–00257 JSW: Feb 22, 2012
United States District Court,
Northern District of California
Issue: Same-Sex

In re Marriage of Sorge
Case No. 134 Cal. Rptr.3d 751: Jan 5, 2012
California Court of Appeal,
Fourth District, Division 1
Issue: Child Support

Maurizio R. v. L.C.
Case No. B229324: Dec 5, 2011
California Court of Appeal,
Second District, Division 1
Issue: Settlement Agreement

In re Marriage of Kochan
Case No. B215355, 11 Cal. Daily Op. Serv. 3066, D.A.R. 3613: Mar 9, 2011
California Court of Appeal,
Second District, Division 8
Issue: Spousal Support

Maurizio R. v. L.C.
Case No. B229324: Dec 5, 2011
California Court of Appeal,
Second District, Division 1
Issue: Custody – Hague Convention

DISTRICT OF COLUMBIA

Lasche v. Levin
Case No. 09–FM–1576: Aug 18, 2011
District of Columbia Court of Appeals
Issue: Child Support

FLORIDA

See page 70

GEORGIA

Shaw v. Shaw
Case No. S11F1586: January 9, 2012
Georgia Supreme Court
Issue: Marital Property

Hudgins v. Harding
Case No. A11A2247: Jan18, 2012
Georgia Court of Appeals
Issue: Visitation Rights

Greenwood v. Greenwood
Case No. S11A0622: April 26, 2011
Georgia Supreme Court
Issue: Divorce — Decree Enforcement

CONTINUED ON PAGE 72

FLORIDA

Kaaa v. Kaaa

By Cynthia L. Greene, Family Lawyer

One of the leading cases to come out of the Florida Supreme Court in 2011, was ***Kaaa v. Kaaa***, 58 So.3d 867 (Fla. 2011) which completely overruled a statute and changes how a court approaches whether a non-owner spouse is entitled to share in the passive appreciation of non-marital property, by way of equitable distribution.

In **Kaaa v. Kaaa,** the parties were married in 1980. For twenty-seven years, they resided in a home in Riverview, Florida that the husband purchased prior to the marriage for $36,500 with a $2,000 down payment. During the marriage, marital funds were used to pay down the mortgage as well as to improve the home by renovating the carport.

Although the home was refinanced several times during the marriage, the wife was never given a title interest in the property. At the final dissolution hearing in 2007, the parties stipulated that the current fair market value of the home was $225,000 and that the remaining mortgage balance was $12,871.46. In its final judgment, the trial court found that the marital home was the husband's non-marital real property, that the mortgage balance had been reduced by $22,279, and that the carport renovation increased the value of the home by $14,400. According to the trial court, the total enhancement value of the home (and the amount subject to equitable distribution) was $36,679. Concluding that the wife was entitled to equitable distribution of only the enhancement value of the marital home, the trial court awarded her an equalizing payment of $18,339.50 and ordered the husband to pay her this amount.

The wife appealed, arguing that the value of the passive appreciation of the marital home that accrued during the marriage was subject to equitable distribution. Relying on its decision in *Mitchell v. Mitchell,* 841 So. 2d 564 (Fla. 2nd DCA 2003), the Second District affirmed the judgment of the trial court and held that the wife was not entitled to equitable distribution of the home's passive appreciation. However, the District Court also certified direct conflict with the decision of the First District Court of Appeal in *Stevens v. Stevens,* 651 So. 2d 1306 (Fla. 1st DCA 1995). The Supreme Court resolved the conflict as follows:

1 "In order to resolve the conflict between the cases, this Court must determine whether and under what circumstances the passive appreciation of a marital home that is deemed non-marital property is subject to equitable distribution under section 61.075(5)(a)(2), Florida Statutes (2007)."

2 "For the reasons expressed below, we conclude that contingent upon certain findings of fact by the trial court, passive appreciation of the marital home that accrues during the marriage is subject to equitable distribution even though the home itself is a non-marital asset. We quash the Second District's decision in *Kaaa*, and approve the First District's decision in *Stevens* to the extent that it is consistent with this opinion."

3 "[The] language [of section 61.075(5)(a)(2), of the Florida Statutes (2007)] clearly provides that under certain circumstances, the appreciation of a non-marital asset is indeed a marital asset. We reject [the Husband's] argument that passive appreciation is not encompassed by the language in this section, and we conclude that the passive appreciation of a non-marital asset, such as the Kaaa's marital home, is properly considered a marital asset where marital funds of the efforts of either party contributed to the appreciation. Such findings are to be made by the trial court based on the evidence presented by the parties."

4 "We agree with the reasoning in *Stevens* to the extent that it concludes that the payment of the *mortgage* with marital funds subjected the passive appreciation to equitable distribution."

5 "However, we emphasize here that it is the passive appreciation in the value of the home that is the marital asset, not the home itself. As the First District Court of Appeal has noted, 'improvements or expenditures of marital funds to a non-marital asset does not transform the entire asset into a marital asset: rather, it is only the enhancement in value and appreciation which becomes a marital asset.' *Martin v. Martin,* 923 So. 2d 1236, 1238–39 (Fla. 1st DCA 2006) . . . Moreover, we emphasize that the trial court must make a finding of fact that the non-owner spouse made contributions to the non-marital property during the course of the marriage. While these contributions need not be strictly monetary and may include marital funds or the efforts of either party, they must enhance the value of the property."

6 "While the trial court and district court correctly concluded that that Kaaas' marital home is non-marital real property, the value of the passive appreciation of the property that accrued during the marriage is a marital asset because (1) the value of the home appreciated during the marriage while marital funds were being used to pay the mortgage, and (2) Katherine Kaaa made contributions to the home. Because paying the mortgage is a prerequisite to enjoying the appreciation in value of the marital home, we conclude that principles of equity do not allow an owner spouse to receive the full benefit of the passive appreciation when the nonowner spouse contributed to the property, and marital funds were used to pay the mortgage. Such inequities must be balanced by the trial court making specific factual findings regarding the contributions of the nonowner spouse and the relationship of those contributions to the passive appreciation of the property."

7 "We now turn to the method that a trial court should employ as it determines whether a nonowner spouse is entitled to a share of the passive appreciation and calculates the proper allocation. We note that the trial court's task in this regard is an extremely fact-intensive one, and there are certain steps

that each court must take. First, the court must determine the overall current fair market value of the home. Second, the court must determine whether there has been a passive appreciation in the home's value. Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2). This step must include findings of fact by the trial court that marital funds were used to pay the mortgage and that the nonowner spouse made contributions to the property. Moreover, the trial court must determine to what extent the contributions of the nonowner spouse affected the appreciation of the property. Fourth, the trial court must determine the value of the passive appreciation that accrued during the marriage and is subject to equitable distribution. Fifth, after the court determines the value of the passive appreciation to be equitably distributed, the court's next step is to determine how the value is allocated."

8 "Based on the circumstances of this case, we approve the methodology in *Stevens*, which addresses the disposition of non-marital real property assets and provides the . . . method for determining the how the appreciated value is to be allocated . . ."

9 "Applying this language from *Stevens* to *Kaaa,* we note that the home was financed almost entirely by borrowed money that was repaid almost entirely by marital funds. Moreover, there appears to be ample evidence in the record of contributions made by Katherine Kaaa that affected the passive appreciation of the home's value."

10 "In sum, when a marital home constitutes a non-marital real property, but is encumbered by a mortgage that marital funds service, the value of the passive, market-driven appreciation of the property that accrues during the course of the marriage is a marital asset that is subject to equitable distribution under section 61.075(5)(a)(2), of the Florida Statutes (2007)."

Case No. 58 So.3d 867 (2011)

FLORIDA

Robertson v. Robertson
Case No. No. 5D09 - 4060: Jan 20, 2012
Florida District Court of Appeal
Issue: Asset Division

Laussermair v. Laussermair
Case No. 4D09 4823, 36: March 2, 2011
Florida District Court of Appeal,
Fourth District
Issue: Child Support

Fuesy v. Fuesy
Case No. 2D09–3788: June 10, 2011
Florida District Court of Appeal,
Second District
Issue: Child Support

Orloff v. Orloff
Case No. 2D09–3059: March 30, 2011
Florida District Court of Appeal,
Second District
Issue: Property Division

Crawford v. Barker
Case No. SC09–1969: June 9, 2011
Florida Supreme Court
Issue: Property Division— Settlement

Niederman v. Niederman
Case No. 4D08–1731, 4D08–4147:
May 4, 2011
Florida District Court of Appeal,
Fourth District
Issue: Legal — Support — Alimony

GEORGIA cont'd from page 69

Ward v. Ward
Case No. S11A0437: May 31, 2011
Georgia Supreme Cour
Issue: Child Custody

Draughn v. Draughn
Case No. S10A1599, S10A1600:
March 7, 2011
Georgia Supreme Court
Issue: Child Support

Simmons v. Simmons
Case No. S10F1818: Feb. 28, 2011
Georgia Supreme Court
Issue: Child Support

Bellew v. Larese
Case No. S10A1334: February 7, 2011
Georgia Supreme Court
Issue: Child Custody — UCCJEA

Gallo v. Kofler
Case No. S11A0185: June 13, 2011
Georgia Supreme Court
Issue: Child Custody

Bailey v. Kunz
Case No. 2011 WL 322650: February 3, 2011
Georgia Court of Appeals
Issue: Grandparents Visitation Rights

HAWAII

Baker v. Bielski
Case No. 28732: January 31, 2011
Hawaii Court of Appeals
Issue: Property Division

ILLINOIS

Anderson

By Gunnar Gitlin, Family Lawyer

This case involved a 37-year marriage and a husband who was 80 years old and unable to work due to health issues. The former husband had been unemployed at the time of the 1999 divorce and the evidence showed that his asset base was substantially reduced from the time of the divorce. The appellate court noted that, "In Connors, 303 Ill.App. 3d at 226, 707 N.E.2d at 281, the court found that in a modification proceeding, parties are allowed to present only evidence which goes back to the latest petition for modification to avoid relitigating matters already settled." Regarding the issue of living on assets and an increase in reported gross income due to retirement account withdrawals, the appellate court stated:

"While his social security benefits have increased by $400 a month since 1999, the rest of his income consists mostly of withdrawals from his retirement funds, which are being depleted as he makes those withdrawals and according to petitioner, will last only for two years from the time of the hearing... Furthermore, while it appears that petitioner is still withdrawing the same amount from his Morgan Stanley account for himself as he did in 1999, he testified that because of the losses that he suffered during the market decline, his funds would last only two years after the date of the hearing. In contrast, petitioner in this case showed that over the course of 10 years, the value of his retirement account, which is one of his main sources of income, decreased from over $200,000 in 1999 to $63,000 in 2009. Unlike the facts in Dunseth, the record here does not indicate that petitioner's source of income merely "dipped" or decreased temporarily due to the payment of special costs or temporary circumstances. Moreover, petitioner testified that he has removed his money from the market and invested it in cash and government securities, and is therefore unlikely to benefit from a potential market recovery, even if and when such a recovery may come about."

The appellate court then summarized:

In this case, respondent has not shown why a distinction should be made between a substantial change in income and a similar change in the value of an account from which income is derived. The record indicates that petitioner's Morgan Stanley account was worth at least $200,000 at the entry of the last order, and that its value decreased to $63,000 at the time of the hearing on his motion to terminate maintenance. It is also apparent from the record that petitioner relies on that account to make his maintenance payments and for his own support. Thus, even if the value of petitioner's Morgan Stanley account may have been uncertain and subject to fluctuation, that did not preclude petitioner from seeking termination of his maintenance obligation if he could no longer rely on that account as a source of income to make those payments.

Note the discussion of the IRMO Waller decision regarding the retirement of the ex-husband at age 63 and the fact that the former husband was not successful in trying to terminate maintenance – in part since there were "bad facts."

Respondent's reliance on IRMO Waller, 253 Ill. App. 3d 360, 362, 625 N.E.2d 363, 364-65 (1993), is misplaced. In Waller, the court found that the maintenance payor's retirement at age 63 was not a substantial change in circumstances that would justify termination of maintenance where he had refused employment, albeit at a lower rate of pay, and was in good health. In denying his motion to terminate maintenance, the trial court noted that while it was contemplated at the time of the judgment of dissolution that the former husband would retire, it had no provisions for reduction or termination of maintenance. It also noted that former husband lived in a house owned by his current wife and owned another house with no mortgage while the former wife had a mortgage. In affirming the trial court's denial, the reviewing court found that the former husband:

Had not reached the customary retirement age, He was in good health, and his resignation was under his control.

But the trial court erred in this case in terminating maintenance in assuming that the ex-wife would potentially be eligible to receive public welfare assistance so as to enable her to live in an assisted living facility. The appellate court stated:

"Neither of the parties nor the court has introduced any authority to permit a court to rely upon the receipt of public welfare benefits as a substitute for spousal maintenance. In perspective, such reliance would allow a spouse to use public welfare as a substitute or supplement to his own spousal obligation and to the recipient's spousal entitlement..."

IRMO (1st Dist., March 31, 2011)

To read the full case review please visit: www.familylawyermagazine.com/articles/anderson-3.

ILLINOIS cont'd from page 73

Johnston v. Weil

By Joy M. Feinberg, Family Lawyer

In custody disputes in Illinois, the Court can order an evaluation of the parties and children by a "Court's Expert" who is to make recommendations on custody and parenting time with the child and each parent. Illinois also has a very strict mental health confidentiality law. The highest Court in Illinois held that these evaluations are *not* mental health services, meaning that the mental health confidentiality statute did not apply to these evaluations as the participants were not being provided with "mental health services". However, the court went on to state that the Illinois Divorce Statute, specifically section 604(b) limits those reports to the parties, attorneys and court involved in the particular case.

Ms. Weil endured two divorce cases and in each case, there were custody evaluations by a Psychiatrist appointed by the court. In her second divorce case, the father of her child by the second marriage sought to obtain and introduce the report from her first divorce. Ms. Weil argued that the Illinois Mental Health and Developmental Disabilities Confidentiality statute mandated that such reports were confidential, and therefore could not be disclosed or used in her second divorce.

The specific question presented to the Illinois Supreme Court was: "Whether evaluations, communications, reports and information obtained pursuant to Section 750 ILCS 5/604(b) of the Illinois Marriage and Dissolution of Marriage Act are confidential under the Mental Health and Developmental Disabilities Confidentiality Act 740 ILCS 110/1 et. seq. where the 604(b) professional personnel to advise the court is a psychiatrist or other mental health professional."

Johnston v. Weil did support the position of the trial and appellate courts that 604(b) reports are not discoverable from another case, even if they are not "confidential" under the terms of the Confidentiality Act.

2011 WL 681684 (February 25, 2011)

To read the full case review , pelase visit: www.familylawyermagazine.com/articles/johnston-v-weil-3.

INDIANA

Hardy v. Hardy

Case No. 51S01–1106–PL–366: Mar 14, 2012
Indiana Supreme Court
Issue: Insurance claim

Trabucco v. Trabucco

Case No. 944 N.E.2d 544: Mar 28, 2011
Indiana Court of Appeals
Issue: Child Support

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LOUISIANA

State v. James
Case No. 45,955 JAC: January 26, 2011
Louisiana Court of Appeal
Issue: Legal — Support

MARYLAND

Peter Paul Toland, Jr. v. Akiko Futagi
Case No. 83, Sept Term 2011: Mar 28, 2012
Maryland Court of Appeals
Issue: Custody

Apenyo v. Apenyo
Case No. 1461: December 2, 2011
Maryland Court of Special Appeals
Issue: Child Custody - UCCJEA

Lang v. Levi
Case No. 1425: April 1, 2011
Maryland Court of Special Appeals
Issue: Divorce Procedure — Arbitration

MASSACHUSETTS

Prenaveau v. Prenaveau
Case No.10–P – 1608: Mar 26, 2012
Massachusetts Court of Appeals
Issue: Custody — Relocation

Okoli v. Okoli
Case No. 81 Mass. App. Ct. 371: Mar 6, 2012
Massachusetts Appeals Court
Issue: A.R.T

MINNESOTA

Rucker v. Schmidt
Case No. A08 1730:
January 5, 2011
Minnesota Supreme Court
Issue: Liability

MISSISSIPPI

Knight v. Woodfield
Case No. IA 01371 SCT: January 6, 2011
Mississippi Supreme Court
Issue: Alienation of Affections

Carambat v. Carambat
Case No. 2010–CA–01226–SCT:
October 20, 2011
Mississippi Supreme Court
Issue: Grounds for Divorce

D.M. v. D.R
Case No. 2010–IA–01217–SCT:
March 31, 2011
Mississippi Supreme Court
Issue: Child Custody

Allgood v. Allgood
Case No. 2009–CA–00858–COA:
February 15, 2011
Mississippi Court of Appeals
Issue: Commingling Assets

MISSOURI

Short v. Short
Case No. ED 95663: Oct. 25, 2011
Missouri Court of Appeals
Issue: Appeals – Marital Property

In re Estate of Cassidy
Case No. SD 30025:
November 16, 2011
Missouri Court of Appeals,
Southern District, Division Two
Issue: Agreements

Angel v. Angel
Case No. WD 72918:
November 22, 2011
Missouri Court of Appeals,
Western District
Issue: Support - Spousal

In Re the Marriage of Lindhorst
Case No. SC90996:
July 12, 2011
Supreme Court of Missouri
Issue: Child Support— Modification

MONTANA

In re Guardianship of M.A.S.
Case No. DA 11–0231: December 20, 2011
Montana Supreme Court
Issue: Child Support

In re A.P.P
Case No. DA 10 0470: March 22, 2011
Montana Supreme Court
Issue: Child Custody

In re Marriage of Spawn and McGowan
Case No. DA 11 – 0032:
November 15, 2011
Montana Supreme Court
Issue: Asset Division

In re Marriage of Williams
Case No. DA 10–0355: April 5, 2011
Montana Supreme Court
Issue: Child Support

NEBRASKA

Alisha C. v. Jeremy C.
Case No. 283 Neb. 340, 808 N.W.2d 875:
Feb 24, 2012
Nebraska Supreme Court
Issue: Child Support

NEVADA

Rennels v. Rennels
Case No. 53872: August 4, 2011
Nevada Supreme Court
Issue: Child Custody — Visitation

Friedman v. District Court
Case No. 127 Nev. Adv. Op. 75:
November 23, 2011
Nevada Supreme Court
Issue: Child Custody — UCCJEA

NEW HAMPSHIRE

In re Goodlander
Case No. 2009 309: Feb. 25, 2011
New Hampshire Supreme Court
Issue: Property Division

In re Kurowski
Case No. 2009 751:
March 16, 2011
New Hampshire Supreme Court
Issue: Child Custody

NEW JERSEY

By Wilentz, Goldman & Spitzer P.A.
Family Law Department

Tannen v. Tannen

Opinion by L.R. Jones

Issue 1: Where wife was the beneficiary of an irrevocable discretionary trust (which generated $124,000 per year in income and historically paid real estate taxes on the marital home, one-half housekeeper fees and improvements to the home) and trustee had sole discretion to provide for her health, education and welfare, can the court name the trust as a third party and compel the trustee to make support payments to wife which will increase wife's cash flow and reduce husband's alimony and child support obligations?

Holding 1: No. The Supreme Court affirmed substantially for the reasons expressed by the Appellate Division as follows: Income from the trust should not be imputed to wife because the trustee had complete discretion. However, if Restatement (Third) of Trusts §50 was applied, wife would have an enforceable right to trust income for support despite the broad discretion of the trustee. Restatement (Third) has not been adopted by any reported decision in New Jersey and, if adopted, would operate to change the law in this State.

It was error for the trust to be named as a party. All records and evidence could have been obtained by subpoena.

On remand, the trial judge was directed to consider the historical expenses that the trust paid, such as real estate taxes, home improvements and wife's rent free use of the marital home owned by the trust. Otherwise, wife would receive a windfall and the result would be inequitable to the husband.

Issue 2: Did wife have a fiduciary obligation to husband to seek income from the trust, which would have impact on husband's alimony and child support obligations?

Holding 2: No. Although public policy requires divorcing spouses to be fair with each other (not to dissipate assets or intentionally reduce income, etc.), there is no precedent that a party to a divorce proceeding has a fiduciary duty "to act primarily for another's benefit."

Issue 3: In determining lifestyle, should an expert review at least three years of financial records?

Holding 3: No. It depends on circumstances and shouldn't be mechanical. Weishaus v. Weishaus, 360 N.J. Super. 281, 291 (App. Div. 2003).

N.J.LEXIS 1267 (2011)

Botis v. Kudrick

Before Judges Rodríguez, Grall, and LeWinn. Opinion by LeWinn.

Issue 1: Where a complaint for palimony was filed prior to the enactment of N.J.S.A. 25:1-5 (requiring that palimony agreements must be in writing and signed by the parties in order to be enforceable), should the statute be prospective or retroactive for a pending or "pipeline" case?

Holding 1: The statute should be applied prospectively. A statute will be given retroactive effect only "(1) where the Legislature has declared such an intent, either explicitly or implicitly, (2) when an amendment is curative, or (3) 'when the expectations of the parties so warrant.'" In this case, none of these elements were present and therefore the decisional law that predated the statute was applicable where a case was pending prior to the enactment of the statute.

Issue 2: Is partial performance a defense to the statute?

Holding 2: By way of dicta, the court stated that it was not error for the court to observe that the claimant may have a defense to the Statute of Frauds if there was partial performance.

N.J.Super. 107 (Ap. Div. 2011)

Van Brunt v. Van Brunt

Opinion by L.R. Jones, J.S.C.

Issue 1: Does a court order requiring an unemancipated college student to produce proof of college attendance, course credits and grades to his/her parents as a condition for ongoing child support and college contribution violate the student's right to privacy under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C.A. §§1232 (g): 34 C.F.R. § 99.31?

Holding 1: No. While FERPA prevents parents from obtaining documentation directly from institutions of higher education without the child's authorization, the act does not preclude an unemancipated child from providing a supporting parent with verifying documentation of attendance at said institution. A student cannot seek support and educational funds and simultaneously prevent the payor from verifying whether the child is emancipated.

Issue 2: When a non-custodial parent pays court-ordered child support and/or college costs for an unemancipated college student, is the responsibility to provide that parent with ongoing proof of college attendance/credits/grades that of (a) the student, (b) the custodial parent, or (c) both?

Holding 2: It is both the student and the custodial parent's responsibility to obtain the necessary documentation from the school and forward it to the non-custodial parent. In the event that this is not possible, the custodial parent must notify the non-custodial parent, therefore allowing the payor to file a motion for emancipation.

419 N.J. Super. 327 (ch. Div. 2010)

NEW JERSEY cond't from page 77

Barr v. Barr

Case Reviews by Wilentz, Goldman & Spitzer P.A. Family Law Department

Before Judges Axelrad, R.B. Coleman, and Lihotz. Opinion by Lihotz.

Issue: Should a spouse share in the substantial increase in the value of the other party's military pension that had not vested at the time of the divorce and where the increase resulted from substantial post-complaint contributions and promotions?

Holding: Maybe. The parties' Property Settlement Agreement ("PSA") in this matter provided that "wife will receive 50% of Husband's pension benefits attributable to his 11 years in the military service only. Such benefits are to be distributed when Husband commences receiving same." The trial court awarded plaintiff 50% of the marital value of the pension that was arrived at by applying a standard formula with a "coverture fraction." The Appellate Division ordered a plenary hearing to determine whether the parties intended the PSA to limit plaintiff's interest to the marital value accumulated during his eleven years of active service as a Captain in the military during the marriage rather than his post-judgment service in the reserves where he was promoted to the rank of Major. The Court concluded that "there are some extraordinary pension increases that may be attributable to post-dissolution efforts of the employee-spouse, and not dependent on the prior joint efforts of the parties during the marriage. In such instances, these sums must be excluded from equitable distribution and the application of the coverture fraction may be insufficient to accomplish this purpose." The burden falls on the pensioner-spouse to establish, with calculable precision, what portion of the increase in the pension's value should be immune from equitable distribution.

N.J. Super. 18 (App. Div. 2011)

Morgan v. Morgan

Opinion by Justice Long

Issue1: Was it error for the court to conclude, in a removal action under Baures v. Lewis, 167 N.J. 91 (2001), that the movant's reason for the move was "invalid" as opposed to the good faith standard of prong one?

Holding 1: Yes. The standard is good faith and was met by Wife's desire to move to Massachusetts to be with her fiancé, her extended family and the children and to be a "stay at home" mom if she remarried.

Issue 2: Was it error for the court to determine, in an in limine motion without a plenary hearing, that there was not a de facto shared custody arrangement warranting a "best interest" test rather than a hearing under Baures to determine if harm would come to the children?

Holding 2: No. Although the Husband claimed that his de facto parenting time was more than the 5/14ths overnight and dinner once/week provided in the MSA, the court ruled as a matter of law that the time and responsibility arrangement did not support a shared custody arrangement. "It is the nature of the interaction and not their number [of overnights] that tells the tale". Therefore, the burden of proof was on the party seeking to relocate.

Issue 3: If there is a four year delay between the trial judge's opinion related to removal, should there be a new hearing on the Baures factors?

Holding 3: Yes. The passage of time has caused changed circumstances that require that the entire record be supplemented and all Baures factors must be addressed as new.

419 N.J. Sper. 205 (Ch. Div. 2010)

Jacobson v. U.S

Before Judges Parillo, Grall, and Skillman. Opinion by Parillo

Issue: Whether the United States enjoys sovereign immunity from liability for damages arising from the Social Security Administration's (SSA) failure to withhold disability benefit payments pursuant to a proper order for garnishment of child support?

Holding: **Y**es. The Law Division entered Summary Judgment in the plaintiff's favor against the United States for compensatory damages, pre-judgment interest and counsel fees based upon its failure to garnish a $58,947.60 SSA disability payment that was awarded to the child's father who owed approximately $79,546.00 in child support arrears. The Appellate Division reversed the Summary Judgment award and remanded for the trial court to dismiss plaintiff's complaint against the government with prejudice. The panel rejected plaintiff's argument that the government's enactment of the Child Support Enforcement Act (42 U.S.C.A. § 659) should result in a waiver of its sovereign immunity against a claim for money damages.

422 N.J. Super. 561 (App2011)

E.E. v. O.M.G.R

Opinion by Sandson

Issue: Can two parties enter into a private contract regarding a self-administered "artificial insemination" procedure where one party contracts with another to terminate their parental rights without a licensed physician?

Holding: No. While the Court realized that the plaintiff and the defendant would normally be allowed to enter such a contract under N.J.S.A. 9:17-44(b), the parties failed to abide by the statute in which the donor must utilize a "licensed physician" in the transaction. The court noted that it was not expressing an opinion as to the termination of parental rights in the future.

420 N.J. Super. 283 (Ch. Div. 2011)

NEW YORK

See page 80

NORTH CAROLINA

France v. France

Case No. COA10 313, COA10 425:
February 1, 2011
North Carolina Court of Appeals
Issue: Separation Agreements

Romulus v. Romulus

Case No. COA10–1453: Sept. 20, 2011
North Carolina Court of Appeals
Issue: Property Division

Andrews v. Andrews

Case No. COA11 – 433:
November 15, 2011
North Carolina Court of Appeals
Issue: Child Support

NEW YORK

Silverman v. Silverman

By Alton L. Abramowitz and
Leigh Baseheart Kahn, Family Lawyers

Courts in New York have long held that intangible assets such as enhanced earning capacity, professional licenses, and even celebrity status may constitute marital property and, as such, may be valued and subject to equitable distribution. When this is the case, the value of such assets is properly the subject of expert testimony.

The "novel argument" at issue in Silverman v. Silverman, however, did not involve the value of such an intangible asset. Rather, in Silverman, the issue was whether the husband — who had developed business assets during the marriage worth $450 million — should be permitted to offer into evidence at trial "psychological assessments of the Husband's personality and innate intellectual talents as evidence of his contributions to the accumulation of marital assets subject to equitable distribution" in the divorce action. In seeking to have such evidence admitted, the husband sought to reduce the wife's share of the marital assets by proving his substantially greater contribution to their acquisition based on what economists would call "human capital" that the husband attributed to his self-described superior psychological make-up.

The court cited two separate bases for granting the wife's motion to exclude such expert testimony. First, the court noted the threshold question of determining admissibility of expert testimony — i.e., whether the expert has factual knowledge or skill outside the scope of that possessed by the trier of fact — and held that the expert testimony proffered by the husband would not assist the court in determining the parties' relative contributions to the accumulation of assets during the marriage. Indeed, the court held that the expert testimony which the husband sought to adduce would supplant "precisely the judgment and discretion which the court must exercise in the performance of its equitable powers pursuant to" New York's equitable distribution statute.

Second, the court cited the husband's erroneous interpretation of two of the statutory factors requiring consideration by courts in the equitable distribution of marital assets. The court rejected the husband's argument that the expert testimony he sought to introduce was relevant to the court's consideration of "the direct or indirect contribution to the acquisition of such marital property by the party not having title" (Domestic Relations Law [DRL] § 236[B][5][d][6]) because that factor required consideration of the wife's contributions to the economic partnership, not the husband's contributions.

The court also rejected the husband's argument that the expert testimony at issue was relevant to the court's consideration of "the property of each party at the time of the marriage" (DRL § 236[B][5][d][1]) based upon its erroneous assumption that the husband's personality and intellect constituted an asset to be characterized as either separate or marital property. In doing so, the court held that inherent in the analysis of intangible assets such as enhanced earning capacity is the presumption that such assets were developed during the marriage, not before. As a result, the husband's pre-marital personality and intellect did not qualify as "property" to be considered in the equitable distribution of the marital assets.

In sum, the decision in Silverman appears to reject the implied proposition advanced by the husband that the concept of intangible assets can be expanded for use as a shield by a titled spouse by scientifically linking a party's innate personality traits and abilities, through expert testimony, to the accumulation of wealth during the marriage.

Taken to an extreme, such a position could result in all assets accumulated during the marriage as the result of one party's direct efforts being either excluded from the marital estate as the fruits of separate property efforts, or found to be the result of a substantially greater contribution by the titled spouse. Such a result would undermine the goal of the equitable distribution statute, essentially eliminating its central concept of marriage as an economic partnership, and the Silverman decision deftly avoids that outcome.

301856/09, NYLJ 1202504319471, at *1 (Sup. NY, Decided July 20, 2011)

Rooney v. Rooney

Case No. 92 A.D.3d 1294, 938 N.Y.S.2d 724: Feb 17, 2012
New York Supreme Court
Issue: Child Support

M.R. v. A.D.

Case No. Slip Op. 22051: February 29, 2012
New York Supreme Court
Issue: Child Custody

Maggiore v. Maggiore

Case No. Slip Op. 00164: Jan 12, 2012
New York Supreme Court,
Appellate Division, Third Department
Issue: Asset Division

Adams v. Bracci

Case No. Slip Op. 00143: Jan 12, 2012
New York Supreme Court,
Appellate Division, Third Department
Issue: Child Custody

Miller v. Miller

Case No. Slip Op. 00028: Jan 5, 2012
New York Supreme Court,
Appellate Division, First Department
Issue: Child Support

Commissioner of Social Services ex rel. Edith S. v. Victor C.
Case No. Slip Op. 00010: Jan 4, 2012
New York Supreme Court,
Appellate Division, First Department
Issue: Child Custody

Rabinovich v. Shevchenko
Case No. Slip Op. 02093: March 20, 2012
New York Supreme Court,
Appellate Division, Second Department
Issue: Divorce — agreement

Cohen v. Cohen
Case No. Slip Op. 01870:
Mar 15, 2012
New York Supreme Court,
Appellate Division, First Department
Issue: Divorce — agreement

Seacord v. Seacord
Case No. Slip Op. 01084:
Feb 17, 2011
New York Supreme Court,
Appellate Division, Third Department
Issue: Child Custody

NORTH DAKOTA

Kelly v. Kelly
Case No. 20100388, 2011 ND 167:
Aug 22, 2011
North Dakota Supreme Court
Issue: Child Custody - UCCJEA

Pember v. Shapiro
Case No. 20100149: Feb 8, 2011
North Dakota Supreme Court
Issue: Pre-marital Agreements

OHIO

Williams v. Ormsby
Case No. 2010–1946:
Feb 23, 2012
Ohio Supreme Court
Issue: Property Division

Wilhelm Kissinger v. Kissinger
Case No. 2317: May 19, 2011
Ohio Supreme Court
Issue: Divorce Procedure

Parker v. Parker
Case No. Ohio- 5684: Nov 4, 2011
Ohio Court of Appeals, Sixth District
Issue: Child Support

In re Mullen
Case No. 2010–0276: July 12, 2011
Ohio Supreme Court
Issue: Child Support — Same-Sex

OKLAHOMA

Parker v. Parker
Case No. 107,334: Jan 31, 2011
Oklahoma Supreme Court
Issue: Divorce Procedure — Parenting

Craig v. Craig
Case No. 106,537: April 12, 2011
Oklahoma Supreme Court
Issue: Custody – Visitation: Grandparents

Thornton v. Thornton
Case No. 107,334: Jan 31, 2011
Oklahoma Supreme Court
Issue: Child Support

OREGON

In re Marriage of Maurer
Case No. DR08030082: A142251:
Sept 21, 2011
Oregon Court of Appeals
Issue: Child Custody — Relocation

In re Marriage of Leif
Case No. 98DO1874DS: A140273:
Nov 9, 2011
Oregon Court of Appeals
Issue: Child Support

Finear v Finear
Case No. 060084D3: A138783:
Feb 16, 2011
Oregon Court of Appeals
Issue: Property Division

Strauss v. Strauss
Case No.Pa. Super. 159
Sept 29, 2011
Pennsylvania Superiour Court
Issue: Marital Property

Love v. Love
Case No. 1975 EDA 2010:
Dec 14, 2011
Pennsylvania Superior Court
Issue: Spousal Support

RHODE ISLAND

Tamayo v. Arroyo
Case No.2009–34–Appeal: April 1, 2011
Rhode Island Supreme Court
Issue: Child Support

UTAH

Busche v. Busche
Case No. 20080388 App 16: Jan 20, 2012
Utah Court of Appeals
Issue: Child Support

VIRGINIA

Nkopchieu v. Minlend
Case No. 0500–11–4: Dec 20, 2011
Virginia Court of Appeals
Issue: Child Support and QDRO

Driscoll v. Hunter
Case No.0084–11–3: Oct 25, 2011
Virginia Court of Appeals
Issue: Custody — Modification

Bergaust v. Flaherty
Case No. 0650 10 4: Jan 11, 2011
Virginia Court of Appeals
Issue: Parentage — Personal Jurisdiction

Schuman v. Schuman
Case No.No. 100967: Nov 4, 2011
Virginia Supreme Court
Issue: Asset Division

Prizzia v. Prizzia
Case No.No. 1343–10–2: April 12, 2011
Virginia Court of Appeals
Issue: Child Custody - UCCJEA

WASHINGTON

Newlon v. Alexander
Case No. 29156–1–III: Mar 15, 2012
Washington Court of Appeals, Division 3
Issue: Couple's Dispute

Farmer v. Farmer
Case No. 83960–3: Sept. 8, 2011
Washington Supreme Court
Issue: Asset Division

WISCONSIN

McReath v. McReath
Case No.2009AP639: July 12, 2011
Wisconsin Supreme Court
Issue: Property Division — Goodwill

WYOMING

Swaney v. Wyoming Department of Family Services, Child Support Enforcement
Case No. S–10–0261: July 8, 2011
Wyoming Supreme Court
Issue: Child Support

Christiansen v. Christiansen
Case No.2011 WY 90:
June 6, 2011
Wyoming Supreme Court
Issue: Same-Sex — Divorce Procedure

TEXAS

Heller v. Heller

Case Reviews by Family Lawyer Emily A. Miskel of KoonsFuller Family Law

Husband and Wife entered into an agreed divorce decree containing a contractual alimony provision stating "These support payments undertaken by [Husband]. . . are intended to qualify as contractual alimony as that term is defined in section 71(a) of the Internal Revenue Code." Husband fell behind, and Wife asked the court to enter a withholding order. The appellate court held that, while the provision resembled spousal maintenance, it was not spousal maintenance under Ch. 8, and a wage withholding order would be an illegal garnishment of current wages under the Texas Constitution. The record contained no evidence or findings to indicate Wife's eligibility for spousal maintenance. The record did not evidence the parties' intent to be governed by chapter 8, nor did the alimony provision in the decree order or command Husband to make alimony payments.

S.W.3d 2012 WL 333776 (2012)

Milner v. Milner

Husband and Wife entered into a mediated settlement agreement where they agreed that Husband would transfer to Wife "all of his beneficial interest and record title in and to" two companies. The MSA had two attachments, labeled "Required Consents to Transfer of Record Title and Beneficial Ownership Interests," which had signature lines for all owners of the businesses. After the MSA was signed, one owner refused to sign the consents to substitute Wife in place of Husband as a limited partner. Husband argued that Wife was only entitled to become an assignee (a much less valuable right) under the MSA if the other owners would not agree to the substitution. The trial court entered Husband's proposed decree, with consents attached that did not match the ones in the MSA, and Wife appealed. The Texas Supreme Court held that "[t]he issue is not what [Husband] was capable of transferring, but what he promised to deliver. The answer to that question is not clear from the MSA's text and therefore the parties' intent is a question of fact." The Supreme Court remanded the case to the trial court to conduct the factual determination before entering a final decree.

No. 2-08-442-CV, S.W.3d (Tex. 2012)

Tucker v. Thomas

Father filed a modification, seeking to be appointed joint managing conservator with the exclusive right to designate the children's primary residence and an order geographically restricting the children's primary residence. Mother countered, seeking appointment as sole managing conservator of the children, modification of the terms and conditions for Father's access to and possession of the children, and an increase in Father's monthly child-support obligation. At the end of the 11 day trial, the court denied Father's modification and ordered him to pay half of the ad litem's fees and all of Mother's $82,000 in attorney's fees as additional child support.

The Father appealed, arguing that, in a modification suit with no past-due child-support obligation, the trial court has no authority to order payment of attorney's fees as additional child support. The appellate court held that the trial court had authority to order additional child support in general and, under the family code duty of support and the common law doctrine of necessaries, the court had the authority to order payment of attorney's fees as additional child support.

The court stated that a parent's duty to support his children encompasses an obligation to provide them with necessaries, which may include reasonable attorney's fees for legal services benefitting the children. The court also held that, although the child support enforcement statutes specifically authorize payment of attorney's fees by the obligor, nothing in the Family Code prohibits a court from ordering that relief in other contexts. However, the appellate court did reverse, holding that, while Mother put on evidence of the amount of her attorney's fees, she failed to put on evidence that the fees were reasonable. The court remanded for further factual determination of the reasonableness of Mother's fees.

A concurring opinion highlighted the fact that the two Houston appellate courts are now split on this issue, and called for Supreme Court review.

564 U.S. (2011)

Astrue v. Capato

The U.S. Supreme Court is considering whether a child who was conceived after the death of the biological father can receive Social Security survivor benefits due to the father's death.

Robert Capato had two children from a prior marriage, and a biological son with his wife Karen at the time of his death. His will addressed only his existing children, although a notarized document did say that future children conceived with the use of their embryos should be considered their children for all purposes.

Following his death, Karen used banked semen to conceive twins. She applied for child survivor benefits for the twins, and was denied. Under the Social Security Act, a "child" must be dependent on an insured individual at the time of the individual's death. Alternatively, a child may qualify if the child would qualify under the intestate property laws of the individual's state. Florida does not provide for children conceived after a parent's death. The administrative judge and the district court both found that the twins were not entitled to benefits. The appellate court held that the twins did qualify for survivor benefits, because they were the biological child of a married couple. The Supreme Court heard arguments on March 19, 2012, but has not yet ruled.

S.W.3d , 2011 WL 6644710 (2011)

CANADA

Schreyer v. Schreyer

By Gary S. Joseph, and Vanessa Lam
Family Lawyers

Snapshot of the Case:

Equalization is a debt owing from one spouse to another that is provable in bankruptcy. Discharge from bankruptcy releases the debtor spouse from an equalization claim. For the other spouse to proceed against an exempt asset, such as the family farm, that spouse must apply for leave. In its current form, the Bankruptcy and Insolvency Act offers limited remedies to spouses with an equalization claim and Parliament should consider amending the Act.

The parties consented to an order referring to a master accounting and valuation of their assets to determine the property equalization payment owing as of the date of separation. Before the amount was determined, the husband made an assignment into bankruptcy. The wife was not listed as a creditor and received no notice of the assignment. The husband was subsequently discharged from bankruptcy and the wife found out about the bankruptcy some time later.

The master determined that the husband owed the wife approximately $41,000 for equalization, but did not address the effect of the husband's bankruptcy and discharge. The Court of Queen's Bench confirmed the amount owing. The Court of Appeal considered that the wife's claim was provable in bankruptcy and had been extinguished by the discharge of the bankrupt.

On further appeal, the Supreme Court of Canada considered whether the Bankruptcy and Insolvency Act ("BIA") released the husband from the wife's equalization claim. Despite the apparent injustice of the outcome, the court confirmed the Court of Appeal's decision with the minor correction that the claim should be considered "released", as opposed to "extinguished".

First, the nature of the equalization claim is a monetary one that entitles a spouse to an order setting out the amount payable from one spouse to another (giving rise to a debtor-creditor relationship), but the assets themselves are not divided. Under the BIA, a provable claim is broadly defined to include all debts and liabilities that exist at the time of the bankruptcy or that arise out of obligations incurred before the day the debtor went into bankruptcy. An equalization amount is owing as of the date of separation and is determined in accordance with the family law legislation and there is limited judicial discretion to depart from the formula provided. In the circumstances, an equalization claim is a provable claim in bankruptcy. The bankrupt is released from all provable claims upon being discharged unless there is a clear exclusion or exemption (which there is for alimony / support, but not equalization).

The only way to avoid this apparently unfair outcome was for the wife to obtain an order from the bankruptcy court for leave to pursue her claim against property (such as the family farm) exempt from the bankruptcy. The problem was that the wife was unable to pursue this remedy since she was not listed as a creditor and only learned of the bankruptcy after the husband was discharged. Parliament did not however intend for an omitted creditor to deprive the discharge of its effect. Instead, a non-listed creditor may sue for the dividend that he or she would have otherwise received. Applied to this case, the wife would have receive nothing since no dividend was paid to any of the husband's creditors.

In its current form, the BIA offers limited remedies to spouses in the wife's position. Family law may provide a safer harbour in the form of alimony / spousal support, which is not provable and remains unaffected by a discharge from bankruptcy. However, the best way to address the potentially inequitable impact of bankruptcy law of the division of family assets would be to amend the BIA. The area was described as "ripe for legislative attention so as to ensure that the principles of bankruptcy law and family law are compatible rather than being at cross-purpose."

Note that an equalization regime, as opposed to a division of property regime, was chosen in Manitoba, Ontario, Quebec, Prince Edward Island, the Northwest Territories, and Nunavut. Thus, this case should be considered whenever a bankruptcy occurs before family matters are resolved in these jurisdictions.

2011 SCC 35, Decided July 14, 2011

McNamee v. McNamee

Case No. 2011 ONCA 533, Decided: July 26, 2011
Ontario Court of Appeal
Issue: Estates — Property Division — Gifts

Kerr v. Baranow / Vanasse v. Seguin

(Two cases heard together, indexed as Kerr v. Baranow)
Case No. 2011 SCC 10, February 18, 2011
Supreme Court of Canada
Issue: Common Law Spouses — Property — Unjust Enrichment and Trust Claims — Spousal Support

Work, Play and Volunteer: Living an Integrated Life

Family Lawyer Steve Mindel is a managing partner at Feinberg, Mindel, Brandt & Klein in California. He is also a frequent lecturer who volunteers at multiple organizations, has a black belt, wrote a cookbook, and is often interviewed on T.V. about celebrity divorce. With only 24 hours in a day, how does he do all this?

"I think one of the key things that every lawyer has to face is the question: do you want to be the kind of attorney that goes to work from 9 to 5 (or more like 9 to 7)? During that time you're focussed on your clients and work that you have to do — and then, the bell rings and you go home and focus on your personal life. Then you go to bed and wake up the next morning and do it again. That can be effective for certain people who don't have children, work in a straightforward environment don't have a lot of personal things, and, or their spouse doesn't work, and is able to manage all of the things in their personal life.

But I think nowadays (with the advent of text messaging and email) the model we had of the typical 1960's lawyer dad who went to work and came home to focus on the family is gone. Today, the happier, more satisfied lawyers are people that are able to integrate their personal life and their business life.

For instance, I have children who played soccer when they were younger. When there was a game, I would leave work at 2 p.m. and watch it from 3 p.m. until 6 p.m., and then go out and grab dinner with the team. I would then drive back and work 7 p.m. until midnight — whatever it took to get the work that I didn't accomplish from 2 p.m. to 6 p.m. done.

For me, integrating work and life is much more fulfilling; I think it also makes the clients happier. Because our family law clients are really busy (they have a lot of problems going on, they're getting divorced, and their job has got a lot of demands on them), they may not have time to call between 9 a.m. and 6 p.m. If you're available after hours, the clients appreciate that. My whole world has been about integrating my two lives — whether it's serving on the school parent association, watching a soccer game with my kids, or volunteering in the community.

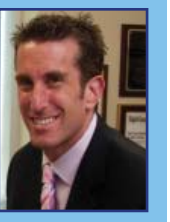
When it comes to volunteer work, I do not do it because I think I am going to gain new clients. You should be volunteering because you have a passion for whatever's happening. This doesn't mean that volunteer work cannot affect your actual work. Over the last 25 years of practice, I've learned that the by-product of integrating good volunteer work is that you are given a lot of responsibilities and opportunities. When you fulfil your tasks, clients notice. They know that you were on the board of the Los Angeles Free Clinic and that you were the volunteer of the year. Whether or not your clients are involved in the LA Free Clinic, they don't really care, they just care that you took on a task and you were able to complete it."

This is an excerpt from an interview with Steve Mindel. Learn how to better integrate your work and life. To listen to or read the entire interview, please visit www.FamilyLawyerMagazine.com/articles/steve-mindel-integrated-life.

More Interviews on Work/Life Balance

Family Lawyer Magazine **features podcast interviews with several family lawyers who shared their insights and strategies on achieving a work/life balance. To listen to these podcasts, visit: www.famlylawyermagazine.com/article-category/interviews.**

Steven R. Enis



An all-in-one family man, athlete in training, and respected family lawyer; how does Steven Enis balance all this? Find out on the podcast.

Lizanne J. Ceconi

A partner in a successful family law firm, Lizanne Ceconi describes herself as a "work in progress" chasing that "illusive" work/life balance.

Sam R. Assini

Sam Assini speaks about how meditation and prayer helped him restart his practice and achieve a better work/life balance.

Sharon A. Blanchet

Sharon Blanchet is an "A" lister family lawyer who maintains her "Zen-like" composure. Find out how she does it.

Self Management; Not Stress Management

By Mary Johanna McCurley, Family Lawyer

"It is not what lies behind us or ahead of us that matters nearly so much as what lies within us." — Ralph Waldo Emerson

Stress has been called by the medical researchers at Cornell University Medical College "the most debilitating medical and social problem in the United States today. " This "disease" is the result of how our mind, body and spirit function and interact. In other words, the disease "stress" is the direct result of the way we have consciously and unconsciously chosen to live. This disease results in an incredible variety of symptoms. From yelling at a staff member or another lawyer, to alcoholism, depression, sleeplessness, common cold, stomach problems, irritability, cancer, heart disease — and the list goes on.

To achieve the goal of stress-free living and return to balance, we must all take responsibility for our own health rather than depend on a drug, a doctor, or a drink. Our focus must be the whole person — body, mind and spirit.

Body

Diet — According to Dr. Phil Nuernberger in his book, Freedom from Stress, a poor diet is second only to emotional (or mental) events as a source of stress. Humans, unlike other animals, eat for more reasons than to sustain life physically. The psychological needs we fulfill while eating are different for every individual but is most often comfort. Therefore, rather than depriving yourself of comfort, simply eat more carbohydrates rather than fats. Unlike "fat" foods, carbohydrates do not go into fat storage in the body. It is well documented that high cholesterol is one of the major reasons for heart disease and ultimately death. Cholesterol is produced by the liver from the fats we eat. Many cancers, such as breast cancer, have been connected to high-fat diets. One out of ten women will develop breast cancer. This should be reason enough to begin a low-fat diet. For both men and women, excess fat in the body is connected to diabetes.

Exercise — As with nutrition, exercise will not be discussed in detail in this article; however, it goes without saying that one important

and mandatory ingredient in reduction of stress is exercise. Moderate exercise not only strengthens the heart (if it is aerobic) but improves the immune function. We all know by now the benefits of 20 minutes of aerobic exercise a minimum of three times a week. However, you shouldn't have your exercise stop there. You will find yourself feeling better mentally and physically if you make exercise a part of your lifestyle change.

Breathing — Breathing is something we all do, but few of us think about or appreciate its importance or how it can play a role in relieving stress. Learning to breathe properly will "enable you to: calm and settle yourself in times of stress, restore a sense of well being and bring energy and vitality." Try the following exercise for a few days and you will see the benefits of it almost immediately: inhale deeply, while sitting erect, exhale and let your diaphragm rise and press upward against the rib cage. Try and make the rhythm natural. Do this several times, several times a day. Most importantly, use it in "stressful situations" and you will be amazed at how the situation isn't nearly as difficult or irritating.

Mind

There is a general agreement that a high percentage of the primary causes of our diseases are our thoughts, attitudes and beliefs. Your body can't distinguish between your thinking about something or it actually occurring. For example, after disagreeing with an opposing counsel, you'll often go over and over in your mind, the situation. Your shoulders tense up, often your heart rate and blood pressure go up. You're just as tense as during the encounter. You become stressed!

Dr. Phil Nuernberger points out that the biggest reason for our failure to deal with stress is that we have been looking in the wrong place to try to eliminate it. "We have been operating under the false assumption that stress is a result of adverse environmental factors and we, therefore, expect to find the source of stress in organizational structures, in poor communications between people, in the educational system, or in a thousand and one other places."

If we really want to deal with our stress effectively, "the first thing we must do is recognize that external events provide only the potential stimuli for change in stress levels. They do not actually produce stress, for this is done internally. When we realize this, we can consciously choose whether or not we do something about it." From a simplistic point of view, it is truly a matter of positive thinking.

Spirit

Meditation is something that far too many of us don't practice. It is something that most of us think of as "mysterious" or "Eastern." However, in reality, most of us have experienced meditation without even knowing it. Meditation is simply a slowing down of the mind. We have experienced it when we have sat quietly and watched the ocean waves or a fireplace bum.

Meditation requires a "letting go" from the active, aggressive pace of our day and a slowing down and becoming aware of the moment. The practice of mediation has many forms. Some techniques emphasize mental imagery; some use visual forms, such as a candle or religious symbol. Still others require you to be perfectly still while meditating. Meditation can also be accomplished during a walk or jog.

During the workday, when you begin to feel tense, when you feel the onset of negative emotions (fear, worry, hostility, anger, self-rejection), pause for a moment and become aware of your breath. Starve this negative emotion by taking long, deep breaths to restore peacefulness and balance to your mind. Do it for a minimum of 2 minutes. At the same time, notice which parts of your body are becoming tense. Mentally relax your body as well and you will save yourself a lot of energy. End your tension through responses of relaxation, and experience increased energy and well-being.

If we want to be free from stress, then we must learn self-management and learn how our body, mind and spirit work together. We must then make some lifestyle changes which reflect that knowledge. If you want to do this, the tools are available. The choices are up to you.

Mary Johanna McCurley is with the firm of McCurley, Orsinger, McCurley, Nelson & Downing in Dallas, Texas. She is the co-author of A Happy Healthy You — A Woman's Guide To Happiness, Health and Harmony. *Mrs. McCurley has been a frequent local and national lecturer on family law matters, including stress management. Her firm's website is* www.momnd.com.

Read the Full Article Online

This is an excerpt from a full article written by Mary Johanna McCurley. The full article provides more in-depth information about the Body, Mind and Spirit. It also provides tips and specific exercises to reduce stress. www.familylawyermagazine.com/articles/self-management-not-stress-management.

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Is Divorce Dead?

Marriage Confidential author, Pamela Hagg explores Love in the Post-Romantic Age.

My book, *Marriage Confidential: Love in the Post-Romantic Age* was inspired by questions that many family lawyers must get glimpses of every day. What goes on behind the closed door of a modern marriage?

Semi-Happy Marriages

My "muse" for the book was the "semi-happy" union. These marriages aren't bad enough to leave, or good enough to fulfill.

Scholars of marriage have found that these discontented "low-conflict" marriages contribute a larger share to the divorce docket each year than the "high-conflict," dish-throwing, argumentative marriages.

Semi-happy marriages are not the same as "contented" marriages. Those cozy, settled marriages feel good to the spouses in them, and are generally happy unions that don't find themselves questioning whether the marriage is "enough." The passion in a contented marriage may have mellowed over time, but the spouses are both comfortable with that.

The Cause

How do modern couples end up this way? A composite portrait of the semi-happy marriage in the 21st century is somewhat different than the "sticking it out" marriage of our recent ancestors.

Today we marry people who are similar to us, in career, education and life experiences than ever before. Some spouses have married their "best friends." Of course, that's really good news for marriage, and it can make for a very fulfilling union, but it can also turn into bad news if the marriage becomes just like any other friendship, and loses traction.

Many marriages slide from happy to semi-happy with the arrival of children, especially if spouses follow the prevailing 21st century trends of hyper-parenting and perfectionist over-parenting. All of the energy in the family funnels toward childrearing. Marriage becomes the forgotten bond. And a lot of semi-happy marriages, especially with children, have lost their sexual energy. These semi-happy unions can be agonizingly ambiguous for the spouses, and they could go either way — or, another way entirely, if the couple changes the premises of their marriage, instead of just choosing between sticking it out or divorcing.

I discovered that financial and real estate stress was forcing some semi-happy couples, who otherwise might have divorced, to stay together. Simply put, these couples couldn't afford to break up the household, and even if they could, they couldn't unload their house.

And in some ways, that seemed like a better option. They were already planning on divorcing. But they weren't, at least for the moment, throwing all of the good things about their marriage out with the bad. If the spouses functioned as good parents together, they were still co-parenting. If they enjoyed financial stability, they were still enjoying financial stability, and not devastating their bank accounts by establishing two households.

Alternatives to Divorce

In the course of my work, I met divorced co-habitators. These are couples who are still divorced, but who make a decision to share a living space, usually for the sake of spending a few more years raising their children in the same place. Essentially, they live as if they're separated, with all the ensuing — *discreet* — freedoms (they don't bring new lovers home), but share the same space, at least most of the time.

Usually, it's a temporary arrangement that won't last forever — just like the marriage didn't — and it requires ex-spouses who are genuinely amiable and cooperative.

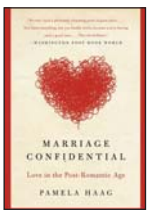
I've met a few couples whose marriages were good except that they were no longer sexually fulfilling — but they decided to stay together, and also agreed to give each other the discretion and privacy to have mistresses or lovers.

I've also encountered people who question if the ideal for the marriage is going to have to be "forever." Especially as marriage gets defined more as a co-parenting arrangement, could it be that what's now thought of somewhat judgmentally as "serial monogamy" could become an accepted ideal? Perhaps we have one marriage for raising a family, but it becomes more acceptable to think of "term limits" on marriage.

In fact, term limits on marriage licenses had been proposed by a politician in Bavaria, and by legislators in Mexico City. They introduced the idea that marriages should automatically expire after a fixed number of years, although the successful ones could easily be renewed at that time.

Whatever the case, the idea of divorce is inevitably getting transformed apace with the idea of marriage.

This is a shortened article. To Read the full article and an excerpt from *Marriage Confidential: Love in the Post-Romantic Age*, please visit www.FamilyLawyerMagazine.com/articles/marriage-confdential.



Pamela Haag is the author of Marriage Confidential. *She earned a Ph.D. in history from Yale, and has published in the American Scholar, the Michigan Quarterly Review, and NPR, among others. She is also a regular columnist at* Big Think magazine *and* Psychology Today online.

CHARITIES / CONTINUED FROM PAGE 9

make the divorce process more manageable and less emotionally traumatic. JFCS offers a number of support programs for people of all faiths. All programs are offered on a sliding scale based on ability to pay:

- *The Changing Family Program: Features a free, private and confidential half-hour legal consultation with a family lawyer and workshop to minimize the impact of divorce on children, and to diffuse high conflict divorce.*
- *Referrals: To other support programs to deal with financial matters, individual and group counseling, and more.*

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To nominate or vote for your favorite charity in this Charity Funding Challenge, visit www.FamilyLawyerMagazine.com/articles/charity-funding-challenge.

A Decade of Helping Divorced Couples Co-Parent

Family Lawyer Magazine spoke with Jai Kissoon, the founder of OurFamilyWizard.com, a website that helps divorcing couples to co-parent more effectively as well as family lawyers with their child custody and visitation cases. Over the last ten years, thousands of family lawyers have regularly recommended OurFamilyWizard.com and many Judges have ordered divorcing couples to sign up and use the service. Let's find out why.

Why did you develop the OurFamilyWizard.com program?

My mother Kathleen Kissoon has been a family lawyer in Minneapolis for over 25 years and her cousin contacted her with some personal divorce issues around holiday scheduling. She then called me because I was finishing my degree in Entrepreneurial studies, we started talking about putting together a program for divorcing parents because she was constantly running into the "he said, she said" problem in co-parenting arrangements. She believed that if some of the negative emotions could be removed from co-parenting arrangements, everything would run more smoothly.

As any family lawyer knows, dealing with divorce is not simple. Neither is trying to coordinate parenting schedules in two different homes while the emotions of the children lay in the balance.

What are some of the less obvious features of the program?

Through a variety of easy to use web features and services, our online program makes communication between parents, more efficient, and less stressful because all of the important communication can be accessed by both parents.

The OFW Calendar is one of our most popular services. It works as a concise schedule of events and leaves no room for ambiguity over the family's daily schedule. It is a quick and clear way to view the family's agenda at a glance. It's easy to set up a parenting schedule on the Calendar, which reflects who has parenting responsibilities on which days.

Holidays can shake up anyone's normal schedule, but the Calendar makes it easy to organize plans around a normal schedule. If parents swap duties over holidays, they can document that change without changing the normal parenting schedule they already have set up. The site also offers journaling, messaging, information and file storage as well as expense tracking and online payment.

We also recently launched an iPhone app to make it even easier for parents to connect.

How does OurFamilyWizard.com benefit family lawyers?

The biggest benefit to family lawyers is happy clients. But, more specifically lawyers will spend more time on resolving actual issues and spend less time fighting about "who forgot the shoes." By empowering parents with tools that can help them avoid confusion and mistakes, parents will have less conflict and children will not be used as messengers. Also, if issues arise, thorough documentation can be produced that will be accepted by the courts.

Jainarain Kissoon is the President and C.E.O. of OurFamilyWizard.com. He graduated from the Carlson School of Management at the University of Minnesota where he majored in Finance and Entrepreneurship, and minored in Philosophy.

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An Interview with Judge Harvey Brownstone: Advice for Family Lawyers

Judge Harvey Brownstone has been sitting on the family law bench in Ontario for over a decade. We ask him for some advice for family lawyers on how they can be more successful and better serve their clients. Here is an excerpt of that conversation:

Know and Respect Your Client's Emotional Stage

It's rare that divorcing spouses are at the same emotional stage. It's far more common — in fact, it's the norm with very few exceptions — for one spouse to have emotionally disengaged from the marriage months, or even years before formal divorce proceedings begin.

Family lawyers do their client — and themselves, for that matter — an immense service by paying close attention to their client's emotional stage. Are they emotionally disengaged, and therefore capable of seeing their divorce as a business transaction? Or are they reeling from having the "divorce bomb" dropped on them from above, and can't separate the emotional issues from the practical ones?

If it's the latter — and it's not difficult for a perceptive, attentive family lawyer to quickly evaluate this — then my advice is clear: family lawyers should get their client into heavy duty counseling at the earliest possible opportunity.

I won't suggest that counseling during divorce can totally heal clients — for most spouses divorce is traumatic, and it can take years for the healing to completely finish (if ever). But with that being said, counseling helps clients get to a point where they can make objective, well-considered decisions regarding their divorce. And frankly, that's what clients want, that's what their children want, that's what judges want, that's what family lawyers should want, too.

Know Who You Can't Work With

Sometimes — not commonly, but I've seen it often enough — there are family lawyers who simply cannot work with certain other family lawyers. Family lawyers are human beings, and sometimes there's a personality conflict. It happens. That's reality.

But when family lawyers cannot communicate and cooperate on a professional level, it's their clients who lose – and that's not how it's supposed to work. Indeed, I've seen family lawyers lose sight of their client's dispute, and instead replace it with their personal dispute against opposing counsel.

Obviously, this affects client outcomes because opportunities to settle or, at least, clearly understand the other side's position are overtaken by venomous volleys between family lawyers who — it must be admitted — may not even be aware how deeply they've substituted their client's fight for their own.

The negative consequences of this go far beyond the specifics of a case. There are an increasing number of unrepresented litigants in family court. When they look out from the gallery and see what some family lawyers do to each other, they come away with yet another reason why they will do everything possible not to hire a family lawyer — which is the exact opposite of what they should be doing! But who can blame them? When they see a verbal brawl break out between family lawyers who are obsessed with destroying each other, what incentive do they have to spend hundreds of dollars an hour to hire one?

Family lawyers should have a list — call it a little "black book" — containing the names of colleagues who they simply cannot work with. And then when a family lawyer engages a client during initial consultation, the very first question he or she should ask is: who is representing your spouse? If the answer received matches a name in the black

book, that family lawyers should immediately say: I'm truly sorry, but I can't take your case, as I don't think I'll be able to give you the representation you need in this matter.

Take Advantage of the Remedies Available in the Family Law Rules

There exist an abundance of remedies built within family law rules that family lawyers can and should use to advance their client's interest, and to move the case forward. These include sanctions levied against the other party for not filing or failing to comply. There are also opportunities to proceed on an uncontested basis, strike pleadings, seek costs, ask for a summary judgment, and the list goes on.

From the bench, I'm stunned by how often family lawyers fail to avail themselves — and best serve their clients — by taking advantage of these remedies. Why not? Some don't know the remedies exist in the first place. And others can't be bothered to put in the effort to research and then invoke them.

My advice to family lawyers is to get up to speed ASAP on the remedies available within family law, and learn how to apply them to advance their case. And if this sounds like blatant common sense and not even the kind of thing that should be called advice, then you know exactly how I feel, sitting on the bench, wondering the exact same thing with alarm, disappointment and pity for clients and their children who deserve better.

Make Every Court Appearance Meaningful

By meaningful, I mean that something important should be happening at every court appearance. The matter should advance forward.

Family lawyers shouldn't view court as a forum where they can "talk to each other." That's not what court is for. And it's also not what clients are paying for — many of whom are taking time off of work, and who are also paying for their family lawyer's time. Clients deserve to have their matter advanced in court — not to have their family lawyer, or the opposing family lawyer, treat it as an opportunity to serve documents at the last minute, or ask for yet another adjournment. All of this needs to happen before court. So the advice here, again, is for family lawyers to make each court appearance meaningful. If that means — and it usually does — that family lawyers communicate effectively and efficiently in between court dates, then that's what needs to happen. Frankly, it should be happening anyway. But too often, it's not.

Also, family lawyers should never lose sight of the fact that judges have the right to make an order if one or both family lawyers are failing to fully appreciate the role and function of the court. Judges view every court appearance as an opportunity to close the case, and they are looking to family lawyers to demonstrate that they're trying and have tried to make that happen.

Family lawyers should also remain mindful that their clients are taking time off work, dealing with the inevitable stress of sitting in court, and paying hundreds of dollars an hour. They need and are entitled to have their matter advanced with every court date.

Mentor New Family Lawyers

We have a serious, I'd even say severe succession planning problem in the family law bar. There are a large number of very senior family lawyers who are nearing retirement, and at the same time, we aren't seeing many young lawyers enter family law for a variety of reasons — not the least of which being that it doesn't pay as well as other areas of law, but also because one needs to have a certain personality type in order to withstand the emotional and psychological rigours of "dealing with good people at their worst."

However, unless and until we do something to make family law more lucrative or less traumatic — neither of which

seem to be on the horizon — then it's up to family lawyers to help develop mentoring programs that really strive to help new family lawyers succeed.

For example, smaller family law firms may decide to share an articling student if the alternative is to hire no student at all. Firms may also want to connect with law schools to educate students on the myths of family law vs. the realities, so that those students can really take an honest, hard look at family law, and at themselves, to see if they're the right fit.

Join Your Local Bench and Bar Communities

Family lawyers should join their local bench and bar communities, associations and committees, so that they can take advantage of the ongoing dialogue between the court and the family law bar.

This interaction is an invaluable way to both get and give feedback, and to help judges like me understand how we can do things better. It also gives family lawyers the opportunity to really get involved in the systemic issues that the field must tackle — issues like making family law affordable so that more people avoid the mistake of self-representation, how to reform and improve family law so that its intentions align more harmoniously with its application, and other critically important issues that affect real people; especially children.

Indeed, I can relay a story of my own to help family lawyers grasp the benefits — many of them perhaps unexpected — of plugging into their communities and associations. At our last judge's conference, we were told by a senior psychiatrist that the family justice system should actually be seen as part of the health care system, because our job is to use the law to, ultimately, heal people and families. This same paradigm can be certainly applied to family lawyers: their job is to make the family law process as pain free for their clients and their children.

Justice Brownstone has presided in criminal court, and since 2001 has presided exclusively in family court at the North Toronto Family Court in Ontario, Canada. In addition to his role in the court and his work as an author, Justice Brownstone frequently comments on family law and divorce issues in the Canadian national media. He can be seen on his public education talk show FAMILY MATTERS. Visit www.familymatterstv.com *for more details.*

More Advice for Family Lawyers

Interview with Justice Brownstone
Read the entire interview here: www.familylawyermagazine.com/articles/advice-for-family-lawyers-part-i.

Interview with Judge Lowrance
Read an excerpt on page 6 and listen to the entire podcast interview at www.familylawyermagazine.com/articles/an-interview-with-judge-lowrance.

Life and Debt

By Ed Portelli, Debt Relief Professional

You have probably heard of the saying, the only things in life that are certain are death and taxes. Well, we can add a new one to the list — Debt. Whether you are young or retired, single or married, you are never exempt from the threat of debt. It could stem from a marriage breakdown, the death of a loved one, or loss of a job; debt can bubble up faster than one would expect, causing stress and possible financial chaos.

As a responsible family lawyer, whatever your client requires your expertise for; your goal is to ensure your clients are protected from any emotional and/or financial jeopardy that such life turns can cause. Your role may involve:

- Dividing marital assets, and debt
- Facilitating finances for a recently deceased
- Aiding a family who has taken charge of an elderly family member, or
- Facilitating a child custody/support case.

All of the above can have a crippling financial impact on a client and their family's life; such that it can easily grow to a devastating mountain of debt. Unsettled debt is best dealt with promptly and cleanly, to avoid legal settlement proceedings being dragged out. Here are some questions you can pose to your clients who have unsettled debt:

- Are they from credit cards, lines of credit or loans?
- Is each spouse or family member involved aware of all debts?
- Are the debts shared, or is one or more in one person's name only?
- How much is the outstanding balance of each debt?
- What is the interest rate attached to each debt?
- Is there a threat of bankruptcy?

We highly recommend that your client order a credit report from one of Canada's trusted Credit Bureaus, like Equifax or TransUnion. In the case of a couple requesting a divorce, a joint credit report should be ordered. Only then can an accurate account of all of debts be attained. It is your client's responsibility to go through all of their credit cards to see what cards are active, whose name they are in, and how much debt is owed on each. Once this has been determined, you should strongly advise your clients to STOP making purchases on these cards. Continued purchases on these cards will only complicate matters in the settlement process. A good idea is to advise your clients to apply for an entirely new credit card in their own individual name from a different credit provider.

If there is a significant amount of debt involved in the divorce case, your clients should not borrow any more money, sell their home or assets, consolidate their debt or consider bankruptcy prior to having all options examined and spelled out by a consumer debt relief professional who can ensure that your clients are protected and that they pay back as little as possible to relieve their debt. Now comes the fun part. Who is responsible and who is going to pay the debt? This will entirely depend on the situation. Whether your client is going through a divorce or has recently experienced a death in the family, they will need to determine who will pay the unsettled debt.

A licensed, and reputable, consumer debt relief firm will assist your clients in resolving unsettled debt in a swift and manageable manner. They will act as your clients' representative in negotiating the terms of their debt repayment directly with your clients' creditors and the creditors' representatives. They will respond to telephone calls and letters from creditors to reduce the emotional stress on your clients. A reputable firm will offer your client a free financial assessment, in order to tailor a repayment plan that suits your client's financial needs. The goal of all debt relief firms should be to ensure your client has the money to:

- Secure a roof over their head
- Provide food for the family
- Ensure legal fees are paid
- Ensure unsettled debt is paid down!

With more than 20 years of experience, Ed Portelli is an expert in the debt relief and debt collection industry in Canada. He is the founder and President of OCCA Consumer Debt Relief, an independent and fully licensed firm in Brampton, Ontario. The firm's website is www.occa.ca.

Changing the World through Consensual Dispute Resolution – from the Legal System to the Middle East

Family Lawyer Magazine spoke to Dr. Barbara Landau not only because she is tops in her field, but because she has made significant contributions to the legal system and the mediation movement in Canada. Dr. Landau is committed to making a difference not just for people with family disputes but also on the planet through her peace work in the Middle East. Below is an edited excerpt from our interview.

From Psychology to Law to Mediation

I worked at the Clarke Institute as the Chief Psychologist at the Family Court Clinic, which was a great way of combining my interest in law and psychology. When I was there, I was dismayed with the way family law cases were handled in the court. I thought it was so short-sighted to pit parents against each other, writing horrible affidavits, lining up friends and family members for an ugly mudslinging battle. In my view, it destroyed all chances of mutual respect or parental cooperation. It was really destructive for kids. So, I created what I called "problem solving conferences," I invited both parents to meet with me, which the lawyers thought was crazy. They were always looking to hire mental health professionals to testify on one side, but I brought both parents together and worked out a parenting plan that addressed everybody's concerns.

Ten years after I graduated in psychology, I applied and went to law school. I wrote in my application that I was coming to law school to change the legal system. And to the credit of both the University of Toronto and Osgoode Hall Law School, they both accepted me. So I went to both of them.

I did practice as a conventional family law lawyer but always offered my services as a mediator as an alternative. When I was at the Family Court Clinic, I didn't know that what I was doing was called "mediation." I called it "problem-solving conferences." The year before I went to law school I learned that there was something in California called "conciliation," and then later "mediation." After 15 years, I worked my way out of the practice of law and into a total mediation practice.

Champion of the Mediation Movement in Canada

The minute I got out of law school I joined Howard Irving, Molly Knowles, John Goodwin and a handful of others, to create the Ontario Association for Family Mediation (OAFM). In 1982, I became one of the early presidents of OAFM. In 1983 I began teaching a Family Mediation course. Today, I'm still teaching Family Mediation and other conflict resolution methods.

At the time mediation was really a philosophic/social activist movement. It got stopped-up short by women's advocates who were concerned that mediation was so future-focused it ignored a past history of abuse and power imbalance. They were very successful at convincing the government that family mediation should be disallowed. So for the next five years, I created committees and conferences with women's advocates and mediators across North America. Together we framed a domestic violence policy that is still the policy across North America. It requires all family mediators — and family arbitrators — to attend a minimum of a two-day Domestic Violence Screening program. Today all clients must be screened individually for domestic violence and power imbalances

The Family Law Reforms in 2011

Over the last five years got together with lawyers, mediators, shelter workers, clients, government staff, and judges, to fashion hanges in the family law process. We invited representatives from other provinces and reached out to Australia and California. After consulting with about 130 people, I wrote the report called "Home Court Advantage: Creating a Family Law Process That Works". A number of the key recommendations were implemented in the summer of 2011 including:

A mandatory family information session for everybody to look at different dispute resolution options available and it gives an overview of family law. The second part is for parents of children under 21. The emphasis is on cooperation and behaving in a less adversarial way. Mediation services be available at every court, both on-site and off-site.

The Middle East Peace Movement

My daughter's good friend was killed by a Palestinian bomb in Tel Aviv in 1990. That sent our whole family on a search for

how we could better understand why somebody would want to kill an innocent teenager. We went on an initial Compassionate Listening mission to the Middle East in 1999, spending time in Israel, the West Bank and Gaza, compassionately listening to Jews and Palestinians to deeply hear their stories. The premise was that a terrorist is someone who feels that his/her story hasn't been heard and that maybe by listening to people we can start to shift their views and make them more open to hearing the other. Later, I started a Jewish-Palestinian dialogue group here in Toronto and joined a group of mental health professionals called Shrink the Gap.

After September 11, I was really shaken. I believed that there would be an anti-Islam backlash. I activated an organization called the Canadian Association of Jews and Muslims with its founder. We are working on the Weekend of Twinning of Synagogues and Mosques, an initiative out of New York. Together we are running programs where synagogues and mosques or Jewish and Muslim cultural centers or university students come together for the purpose of building relationships and allies. This year more than 250 synagogues and mosques and organizations around the world will participate in the Twinning.

Peace is inevitable because we all want the same thing. We want a safe world for our children. We want economic opportunities. But I think peace can't happen when people are looking at themselves as victims. I think that victims give up taking responsibility for their own actions, they wait for the other person to do something or to apologize first. I think victims need to take responsibility for changing the situation and stop dehumanizing each other.

Listen to the Entire Interview Online

This is a short excerpt of an interview. To listen to the entire interview, please visit www.familylawyermagazine.com/articles/an-interview-with-dr-barbara-landau-the-evolution-of-consensual-dispute-resolution-cdr-part-2-of-2.

Dr. Barbara Landau is president of Cooperative Solutions in Toronto. She is a psychologist, a lawyer, a mediator and a trainer, as well as an author. She has received many awards including: the lifetime title of Fellow of the Canadian Psychological Association for her outstanding contribution to the field of psychology; the Award for Excellence in Dispute Resolution by the Ontario Bar Association; the Distinguished Mediator Award from the Association for Conflict Resolution; the long-term achievement award FAMMA from Family Mediation Canada; and ADR Institute of Canada's Regional McGowan Award. Barbara is a former Vice President of the ADR Institute of Ontario and former board member and Director of the Psychology Foundation of Canada.

What's Your *Escape?*

By Dan Couvrette, Marketer and Publisher

My heart was pumping wildly as I descended the mountain on my motorcycle, taking one jarring hairpin turn after another, towards the Sea of Cortez in Baja, Mexico.

Ironically, the Eagles' song "*Take it Easy*" was blasting away through my earphones and naturally, I was singing along at the top of my lungs. It was the Eagles, after all, and it is probably the only song I know all the words to.

Left and right, right and left, the motorcycle responded to my commands with a kind of supernatural intelligence. Or maybe it was just enchanted by my beautiful singing — not likely. Whatever the case, I was feeling more and more *in the moment* with each twist and turn on one of the world's most scenic and dangerous roads.

Even now, a month after that trip, I still get goose bumps reflecting on those afternoons spent cruising the Baja. It was truly an "escape" from my norm — my work, my family and the things I usually do. There were lots of "escape" moments. It wasn't that I decided not to think of my to-do list, my clients, or some other tasks, I simply *couldn't* think of anything else. The road, the motorcycle, and the moment demanded 100% of my attention and concentration. Not 95% or even 99%. But everything. Anything less and I wouldn't be here. I'd be a statistic.

Of course, I also have other ways of escaping — ways that are far more agreeable to my family and my insurance company. For example, I escape through jogging, travel, yoga, art, snowboarding, tennis, windsurfing, movies and music. And I've now added long distance motorcycling to the "escape" list.

So that brings me to YOU.

How do you escape from life's demands and the rigors of being a family lawyer? What helps you achieve balance and gives you an essential, restorative timeout? Perhaps you play an instrument, or write, read, ride horses, cook, volunteer or meditate. We are interested in knowing about your "escapes". Please follow the instructions on this page and submit your escape stories to us.

P.S. If you're curious about how my motorcycle adventure unfolded, you can read my escape story "Long Way Down the Baja" at www.familylawyermagazine.com/articles/long-way-down-the-baja.

Share Your Escapes with Us

We would love to publish your "escape" stories and feature your art, photos, music or anything else you've created and wish to share. Simply email us at editors@FamilyLawyerMagazine.com.

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