Family Law News

A newsletter published by the Section Council of the Section of Family & Juvenile Law

Maryland State Bar Association, Inc. **February 2009**

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EDITOR: WALTER A. HERBERT, JR.

CHAIR'S MESSAGE- FEBRUARY 2009

Off We Go!

The New Year is off to a very fast pace in the world of Family and Juvenile Law Section Council.

First, the Legislative session began January 14, 2009. On January 15, testimony on SB70 (**Family Law – Child Support Enforcement – Medical Support for Children**) was heard by the Senate Judicial Proceedings Committee. SB70 is part of the overhaul of the child support guidelines, having to do with medical support. Section Council represented the interests of family and juvenile lawyers at the hearing, testifying about needed adjustments to the bill. We are closely following child support guidelines bills, custody bills, and other bills of interest to family lawyers. To keep abreast of bills as they are filed, you can go to http://mlis.state.md.us (the General Assembly website) and click on "Bill Information and Status." Feel free to call or email me with questions or concerns.

On February 19, MICPEL will present "Hot Tips/Topics for the Family Law Practitioner." The luncheon speaker at the program will be the Honorable Alan. M. Wilner, Judge, Court of Appeals (Retired). Judge Wilner is the current Chair of the Court of Appeals Standing Committee on Rules of Practice and Procedure. Of special interest to family lawyers and litigants are the questions of how to provide personal and financial information required by the Code and the Rules without sacrificing privacy and security. Considerations include whether the Court should limit what goes into court records (for example, sensitive information including personal identifiers) and access to the information in those records (including whether there should be a difference between remote electronic access and in-person access to court records). The resolution of these questions has sweeping implications for those who practice family law and the people they represent. Judge Wilner will discuss the efforts being undertaken to address these concerns, and will be looking for suggestions from those in attendance. The exchange of ideas is very important to the success of the effort to revise court processes to accommodate modern information technology. Please join us!

Other developments of interest are a proposed Rule governing the appointment and duties of Parent Coordinators, and a potential Rule governing the appointment and duties of Custody evaluators. There is also consideration being given to reworking the MSBA Board of Governors' membership to include representatives from the five largest substantive Bar sections, initially as non-voting members.

Finally, for this issue: did you know that every week, a Section Council members monitors the MSBA Family and Juvenile Law Listserve, providing responses to questions both on and off the listserve? It's just one more way that we follow through on our commitment to serve the Maryland Family and Juvenile Law community.

Please – get involved. There is much to do, and Section Council can't do it without your help!

Cindy Callahan
301-340-9090
ccallahan@draggacallahan.com
Rockville, Maryland

Message from the Editor

Yes, as our esteemed Chair has noted, our legislative session is in full swing and we have several articles of interest, including former Chair Barbara Trader's analysis of the proposed child support revisions and Dorothy Fait's Legislative up-date: I urge you to read these articles carefully and also track the progress of all legislation at the address provided above.

Custody Evaluations can have a great impact on the resolution of your custody and visitation disputes: we go behind-the-lines with Jeanne Allegra for a candid look at what goes into a custody evaluation.

We also have several Case Notes, and Rene Sandler's very informative primer on protective order litigation.

E-mail me at Herbertlaw@att.net, and visit us on-line at: http://www.msba.org/sec_comm/sections/family/

301.952.0707
Next issue: May 2009

Protective Order Litigation: Consequences in a Changeing World

By: Rene Sandler, Esquire

INTRODUCTION

Practitioners representing a party in protective order proceedings must understand the law of domestic violence and be skilled in identifying collateral legal issues which may impact their client. To effectively represent an individual in a protective order proceeding, a practitioner must be able to recognize collateral issues applicable to the particular client and be thoughtful about how best to minimize the effect of the process. In some situations it is also important to understand those issues affecting the opposing party as well. Practitioners should understand the interplay between family, criminal, juvenile, immigration, and administrative laws as well as the rules of evidence before accepting a protective order case. Each case requires an investigation and strategy and is handled on an accelerated timeframe due to the emergency nature of the relief sought.

A protective order hearing can bring into play consequences for the individual and the family in the areas of criminal law, child protective services, CINA , immigration, employment , security clearance, and affect one's professional license. It is important for a practitioner to identify a client's objectives in a protective order matter. The stigma associated with the issuance of a protective order is real and must be utilized only where the need for protection is clear and to ensure protection against future harm. *Katsenellenbogen v. Katsenellenbogen*, 365 Md., 122 (2001, *see also Coburn v. Coburn*, 342 Md. 244 (1996) past abuse relevant to determine what protection should be ordered. Practitioners should never use the protective order process for posturing in a domestic case and should discourage this process where a client indicates the purpose to be anything other than those specifically enumerated under Family Law Article §4-501. A person's motivation in seeking a protective order is relevant and important to understand so as to provide proper advice to the client.

WHAT IS A PROTECTIVE ORDER?

Protective orders are civil in nature; however a violation of a protective order carries criminal consequences punishable of up to ninety (90) days in jail and/or a $1000 fine for a first offense with enhanced penalties for a subsequent violation Family Law Article § 4-509. State's Attorney's Offices throughout the State have "domestic violence dockets" each week at which violations of protective orders and other cases involving domestic violence are regularly prosecuted. Protective orders have received widespread attention in the State of Maryland over the past several years. Some of those cases involved the denial of a protective order followed by egregious acts of domestic violence committed against the individual who sought the order. Other cases involved serious acts of domestic violence during the pendency of the protective order. Protective order proceedings involve bench trials only, never a jury, and require a comprehensive presentation of evidence, generally with a week's notice for the Respondent and less time for an attorney representing a Petitioner after an act of domestic violence. The burden of proof in a temporary protective order hearing is reasonable grounds, with the burden in a final protective order hearing requiring clear and convincing evidence.

SEVEN DAYS TO BE PREPARED

Protective Orders are fast paced cases often beginning and ending within seven (7) days however carrying far reaching consequences for the parties involved. Case preparation includes not only a comprehensive client interview but may also include more than one court appearance, issuing subpoenas both for individuals to appear in court and to produce documents, witness interviews, and retrieval and review of relevant documents from your client and third parties.

Being prepared for trial is essential for representation of a protective order client, whether representing a Petitioner or Respondent. An attorney should never accept a protective order case with the belief that a party will "consent" to the order. Certainly, consent is an option for a Respondent after careful consideration and proper advice. Considering whether to consent to an entry of a protective order without a factual finding when representing a Respondent should only be considered after a thorough review of all collateral consequences; and with appreciation that any right of appeal is lost with consent to the entry of an order. *Suter v. Stuckey*, 2007 WL 3355486. This loss of right to appeal must be thoroughly reviewed on a case by case basis.

In December, 2002, the law was modified to allow victims of domestic violence to obtain an Interim Protective Order twenty four hours a day, seven days a week from a District Court Commissioner. An Interim Protective Order is only effective until the 2nd business day after the Court reopens at which time a Temporary Protective Order Hearing (formerly called "Ex Parte Order") is held. For example, if a person obtains an Interim Protective Order on a Saturday, the Order is only in effect until Tuesday.

All Temporary Hearings are held in the District Court. The Commissioner's findings are not binding upon the District Court judge. The burden of proof in a Temporary Protective Order is "reasonable grounds" and if issued is issued for a

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Protective Order Litigation...

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seven (7) day period at which time a Final Protective Order Hearing is held.

A Temporary Order may be extended by the District Court judge for up to thirty (30) days. Under these circumstances, the parties often utilize this time period to either work towards a broader resolution of issues between them or to prepare their respective cases for trial. Occasionally, if a report was ordered by the court to be completed by the Department of Social Services, they will require additional time to complete the investigation. This can also be a helpful "cooling off" period for the parties in some cases. Practitioners may use this available time to negotiate through a Consent Order issues related to custody, visitation and support. Practitioners must understand that this Consent Order is simply an Addendum to the Protective Order and cannot be entered without entry of a protective order itself.

A Final Protective Order may be issued for up to a year and may be extended for an additional six (6) months. The standard at a Final Protective Order Hearing is clear and convincing evidence. Attorneys must demonstrate an understanding of the different standards of proof in the protective order process and be prepared to argue and apply the facts of their case to such standards before the court.

Attorneys must be prepared to respond to a Judge's inquiry as to whether the client will forego the Temporary Protective Order Hearing and move into a Final Protective Order Hearing on the first court appearance. The decision to skip the Temporary Hearing stage and commence the Final Protective Order Hearing should be made carefully with an emphasis in the shifting burden of proof and how that burden affects the prosecution or defense of your case. There is an obvious tension where a judge wants to go to a Final Hearing when parties and their respective counsel are all present. A practitioner must only consider this option after the attorney has thoroughly reviewed the case, including any defenses, before making the decision to move immediately into a final hearing.

COLLATERAL CONSEQUENCES OF A PROTECTIVE ORDER

Practitioners must be skilled in identifying collateral consequences that may flow from consent to or entry of a Final Protective Order. If a Temporary Protective Order is based upon allegations of injury to a child, the court may require an investigation and report from the Department of Social Services, Child Protective Services ("CPS") to be conducted between the Temporary and Final Hearing dates. Often CPS investigations are conducted by social workers from CPS in conjunction with police detectives. Investigators may interview a child at school, without prior notification to the child's parents. Strict confidentiality laws prevent a parent from obtaining a copy of a child's statement to investigators. *

Depending on the nature of the allegations, CPS must commence an investigation within 24 hours of the report. CPS social workers have broad authority and discretion in how to proceed in an investigation. Safety of a child is the primary objective. In extreme cases a child may be determined to be a child in need of assistance ("CINA") with court intervention imminent for placement of the child.

Clients have Fifth Amendment rights not to incriminate themselves in such investigations. Attorneys must weigh any adverse consequences from a client's failure to talk during such investigation and likewise must be aware of potential use of any statement given during an investigation. Statements made by the client during the investigation may be used to develop probable cause for the client's arrest on child abuse, assault or other criminal charges and will also be used in the protective order hearing.

Criminal charges involving assault and child abuse are deportable offenses under Federal immigration laws. The effect of an underlying protective order proceeding containing allegations of domestic violence or assault on a child may also be reviewed by immigration officials. Attorneys must identify and appreciate the interplay between the consequences for some individuals triggered by the protective order process. Consultation with immigration counsel should be recommended both for the client and practitioner and should take place before any tactical decisions are made in the protective order case.

The findings of a CPS investigation may impact the outcome of a protective order hearing. CPS findings are subject to an internal Central Registry which is part of the Maryland Department of Human Resources computer database now known as Maryland CHESSIE. CHESSIE contains information about child abuse and neglect investigations conducted by the Department. CPS investigations may result in one of three findings; indicated, unsubstantiated or ruled out. Indicated or unsubstantiated may be appealed within sixty (60) days to the Office of Administrative Hearings. When the Department makes a finding of "indicated" child abuse or neglect, information related to the investigation is stored in CHESSIE . Information stored in Maryland CHESSIE is confidential with no access allowed except for Child Welfare Services personnel on a limited basis. Some limited disclosures are permitted. The public cannot access the Central Registry on the internet. Maryland does not provide the information from the Central Registry to any national database.

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MARK YOUR CALENDARS:

Anne Arundel Bar Association
Family Law Committee

February 17, 2009: A member of the Anne Arundel County Police Department Domestic Violence Unit will be available to answer questions.

March 14-15-16: AABA Bar Weekend at the Nemacolin Woodland Resort in Pennsylvania.

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*Unless otherwise noted, all meetings will be held on the third Tuesday of each month at 5:00 p.m. in the Attorney's Lounge at the Circuit Court. Email reminders for each meeting will be sent out monthly. To be added to the email list, please send your email address to jmerrill@dalnekoffmason.com. A minimum of one meeting this year will be held in Glen Burnie and advance notice will be sent out prior to the meeting.

All bar members are welcome at the committee meetings. The meetings are well attended by the Bench and provide an excellent opportunity for discourse between the Bar and the Judges and Masters.

Howard County Bar Association
Family Law Committee

Meetings are held on the first Friday of the month in the jury assembly room of the Howard County Circuit Court. Lunch is available with prior RSVP. RSVPs should be sent to HC-FLC@agclaw.com.

Feb 6, 2009, Noon, jury assembly area of court house: Judge Becker: Domestic Violence and High Conflict Divorce

March 6, 2009 Noon, jury assembly area of court house: Judge Leasure: Public access to court records and the attorney's role in protecting confidential client information

April 3, 2009 Noon, jury assembly area of court house: Evidentiary issues involving electronic/computer generated evidence: Master Patrick, Brenda Fishbein, and Mark Muffelotto

May 15, 2009: !;30 to 4:30 our annual family law judges forum at the Charles Ecker Business Center in Columbia: Topic: Children in Court

Master Mary Kramer
Circuit Court Howard County
410-313-4857
mary.kramer@courts.state.md.us

Montgomery County Bar Association

February 26, 2009 CLE (7:45 a.m.): Top Ten Practice Tips for Crafting Perfect Prenuptial Agreement

March 26, 2009 CLE (5:30 p.m.): Arbitration in Family Law

All take place at the BAMC Offices, CLE Classroom, 27 West Jefferson Street, Rockville, MD 20850

Please contact me for details.

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SAVE THE DATE!
Friday, May 8, 2009
Montgomery County Divorce Roundtable, Inc. presents:
Parenting Together After Separation
How to Keep It Out of Court -- Strategies for Interdisciplinary Professionals
Produced with support from the Maryland Mediation and Conflict Resolution Office
When: Friday, May 8, 2009 **Time**: 8:00 AM to 4:15 PM

Where: The Universities at Shady Grove, Rockville, Montgomery County, MD

What: A full day Conference presented in nine break-out sessions via interactive, interdisciplinary speaker panels. Each presentation is designed to teach skills, explain research find-

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Mark Your Calendars...

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ings, explore and share best practices in different modalities (including mediation, collaborative law, parenting coordination, parenting education) for transforming custody litigation and potential litigation into alternative forms of dispute resolution. A key focus will be on developing effective strategies for managing parental conflict in child custody matters.

Keynote Speaker: Andrew I. Schepard, Professor of Law, Hofstra University School of Law, Director of the Hofstra University's Center for Children, Families and the Law; author of Children, Courts, and Custody: Interdisciplinary Models for Divorcing Families; Editor in Chief of the Family Court Review, which is sponsored by the Association of Family and Conciliation Courts.

Who should attend: family law attorneys of all experience levels, judges, mediators, mental health professionals, school counselors, court and private custody evaluators, and educators.

Cost: $175 regular registration after 4/1/09; $150 early registration before 4/1/09; $95 students, county or state agency staff, nonprofit staff.

Choose one of three 2 hour morning presentations: A. Resolving the Impasse Issues of Relocation; B. Parenting 101- The missing high-school AP course - a necessary support to successful ADR; C. Developing Successful Parenting Plans -- Theory and Practice

Choose two from six 1.5 hour afternoon presentations: D. Overnights for Young Children -- Don't Paint by the Numbers; E. "I won't go!" -- What to do when the child rejects an access schedule; F. Custody Evaluations -- Help or Harm?; G. Parenting Coordinators -- What are they and how can they help?; H. Get it from the web: parenting tools available on the internet; I. Learning Disabilities and ADD in Parenting Plans.

Protective Order Litigation...

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An indicated finding of abuse or neglect is maintained indefinitely by the Department of Social Services and cannot be expunged, however an unsubstantiated finding will be expunged five (5) years after the matter was first reported so long as no other report was made, and a ruled out finding will be removed from the Central Registry and file destroyed after 120 days from the day the matter was first reported if no other reports are received.

At the final protective order hearing, statements included in the CPS investigative report will be reviewed by the judge. If there is a pending criminal charge initiated contemporaneous with the issuance of a temporary protective order or if criminal charges are likely, in only the rarest of circumstances should the client testify at the protective order hearing. Attorneys must understand the implications of a client's testimony under oath. There is little good to come from a client with pending or impending criminal charges testifying in a protective order proceeding. Judges will often advise an individual of the use of incriminating statements against the individual in a subsequent prosecution. It is not up to the judge to advise the client, it is up to the attorney to identify this collateral issue in advance and advise accordingly. The resulting damage from a person's testimony in a protective order hearing in a subsequent criminal case is devastating. Attorneys must recognize that such testimony will be used in the subsequent proceeding and may seriously damage the ability to negotiate a favorable result in the subsequent criminal process. Attorneys must concentrate on a strategy to proceed absent the client's testimony. This will require time and thoughtfulness, but can be done effectively.

One of the more difficult but typical scenarios caused by the initiation of a protective order is one where one parents obtains a Temporary Protective Order with an underlying allegations of abuse of children over a period of time by the other parent. In this scenario, a CPS investigation is ordered by the court to be completed between the temporary and final hearings. Importantly, should a CPS investigation be conducted, both parents will be asked to participate in the investigation. An investigation may reveal a pattern of conduct which amounts to abuse by a parent over a prolonged period of time. The investigation may turn to the non offending parent who had knowledge of the conduct that constituted abuse. The CPS investigation may then additionally include one of neglect for the non offending parent, who initiated the protective order in the first place. Both parents are now under a microscope and both require representation. Depending on the particular allegations, the children could become CINA or a safety plan may be required of the non offending parent in order for the children to remain in the home. Both parents are now subject to CPS "findings." All CPS cases are conferenced with the local family crimes division of the police department and State's Attorney's Offices to decide whether to formally charge a case. In this scenario, each parent now has separate administrative rights for their re-

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Protective Order Litigation...

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spective findings from the CPS investigation. This scenario is important to illustrate because practitioners must make the appropriate inquiry of their client in an initial meeting to understand the family history.

An often overlooked consequence of the protective order process is simply which boxes are checked when a Petitioner fills out the protective order forms. Nowadays we are a country of online public access to court proceedings and documents. Maryland Judiciary Case Search includes docket entries for protective order and other cases in Maryland courts. If the box for "child abuse" is checked off on the protective order form either intentionally or accidentally the Respondent may be labeled as such in the database. There is no expungement process available to remove a protective order filing from the court records like there is in criminal cases.

All of the above consequences are compounded if an individual is a noncitizen. To protect the practitioner and client, retainer agreements should reflect the recognition of the client's specialized status and a recommendation for separate, independent counsel from an immigration attorney should be recorded in the agreement. Check your local bar associations for an immigration section and become familiar with those that regularly practice immigration law in your area.

Clients who have security clearances or who require use of a firearm in the course of their employment face other consequences should a protective order issue against them. The issuance of a protective order against a person requires the relinquishment of firearms. Protective Orders with finding s of facts surface on background checks, including abuse, being the basis for denial of clearance or other employment advancement. The stigma associated with being labeled an abuser is serious. Counsel should recognize this stigma and discuss this with the client so that the client is informed fully.

Practitioners should know the practice of the particular judge handling the protective order hearing. Each judge has a different practice and interpretation of evidentiary standards applicable in a protective order proceeding. Some judges adhere to more formal rules of evidence while others loosely apply the rules allowing hearsay and documents without the custodian into evidence. Do your homework on the judge, the judge's practice, and the jurisdiction so that you are informed and advised in advance while you are preparing your case. These cases are emotional for the parties often with a long history of issues in the family. The cases are taken very seriously by judges and will be given careful attention during a hearing.

Do not advise your client to consent to the entry of an order simply because you do not like the judge. This is malpractice. Consenting to an order in a District Court Final Protective Order Hearing gives up your client's right to appeal the order. The same applies to a negotiated Consent Order between the parties which expands the relief and specifies additional terms. Judges can only enter a negotiated Consent Order as an Addendum to the Final Protective Order. If there is a pending domestic matter in the Circuit Court any District Court protective order may be transferred and consolidated with that Circuit Court case. This may not be the desired place for the protective order and counsel should be certain to advise the client of this procedural maneuver by a party.

CONCLUSION

Domestic violence is a serious problem in this country. Often times, the need for protection from domestic violence is necessary and court intervention is required. Practitioners representing individuals in the protective order process, must understand the interrelationship between laws and possess the requisite competence to advise clients of collateral consequences that will affect them or the opposing party so that the client can both identify their own individual objectives and those that are best for their family.

Rene Sandler, Esq., is the managing partner at Sandler Law LLC in Rockville, MD. Ms. Sandler's practice includes representation of clients in protective order proceedings, child protective service investigations, and criminal defense.

Footnote:

* Discovery in a contested hearing in which the decision of DSS is appealed allows for records to be obtained, however often times such records are heavily redacted.

2009 Hot Tips/Topics for the Family Law Practitioner

Thursday, February 19th, 2009
8:45 a.m. – 3:30 p.m.
Sheraton Columbia Town Center Hotel
10207 Wincopin Circle
Columbia, Maryland

MICPEL and the MSBA Section of Family and Juvenile Law, in cooperation with the University of Maryland School of Law and the University of Baltimore School of Law, have joined forces to present "2009 Hot Tips/Topics for the Family Law Practitioner". The program will be presented on Thursday, February 19th at the Sheraton Columbia Town Center Hotel.

One of Maryland's most popular and practical family law seminars, this year's Hot Tips seminar focuses on proposed revisions to child support guidelines, alimony, domestic violence, prenuptials, de facto parents, immigration, juvenile justice, attacking and defending a financial statement, sealing and shielding financial documents, mediation, military benefits, non-qualified benefits, collecting fees, and dealing with difficult clients.

As always, the written materials will be an excellent resource for the practitioner's law library. In addition, attendees can purchase MICPEL's leading family practice book Maryland Divorce and Separation Law, 9th Edition at a 50% discount. If you practice family law, this is a MUST seminar.

AGENDA
8:45 - 9:00 Introductions

Hot Tips for Substantive Legal Issues

9:00 – 9:20 Proposed Revisions to Child Support Guidelines
Cynthia Callahan, Esq.
Dragga, Callahan, Hannon, Hessler & Wills, LLP

Deborah E. Reiser, Esq.
Lerch, Early & Brewer, Chtd.

Margaret J. McKinney, Esq.
Delaney McKinney, LLP

9:20 – 9:40 Looking into the Crystal Ball of Alimony
Mary R. Sanders, Esq.
Turnbull, Nicholson & Sanders, P.A.

Christopher W. Nicholson, Esq.
Turnbull, Nicholson & Sanders, P.A.

9:40 – 10:00 Domestic Violence
Dorothy Lennig, Esq.
House of Ruth

10:00 – 10:20 Prenuptials, You Want Me to Sign WHAT?
Linda J. Ravdin, Esq.
Pasternak & Fidis, P.C.

10:20 – 10:30 Break

10:30 – 10:50 What happened to De Facto Parents?
Mark F. Scurti, Esq.
Hodes, Pessin & Katz, P.A.

10:50 – 11:10 Immigration
Jonathan S. Greene, Esq.
The Greene Law Firm, LLC

11:10 – 11:30 Juvenile Justice
Master Leah Seaton
Circuit Court for Wicomico County

Carlotta A. Woodward, Esq.
Law Offices of Carlotta A. Woodward

11: 30 – 12:30 Lunch

12:30 – 1:30 Hot Tips for Litigation
Attacking and Defending a Financial Statement
Craig J. Little, Esq.
Hodes, Pessin & Katz, P.A.
Sealing and Shielding Financial Documents
Stuart M. Skok, Esq.
Gimmel, Weiman, Ersek & Blomberg, P.A.
Ready, Set, Mediate
Walter A. Herbert, Esq.
Law Office of Walter A. Herbert, Jr.
Justin Sasser, Esq.
Pitrof & Starkey, P.C.

1:30 – 1:40 Break

1: 40 – 2:20 *Hot Tips on Benefits*
Military Benefits
Maureen Glackin, Esq.
Sasscer, Clagett & Bucher
Non-qualified Benefits
Stuart Rosenberg, CPA
Aronson & Co.

2009 Hot Tips...

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2:20 – 2:30 Break

2:30 – 3:30 *Hot Tips on Firm Management*

Collecting Fees: time to get creative!
Stacy LeBow Siegel, Esq.
Stacy LeBow Siegel, LLC

When to Say When: Dealing with Difficult Clients
Steven D. Silverman, Esq.
Steven D. Silverman, P.A.

Things I Pretend to Know about Family Law
E. Todd Bennett, Esq.
Trainor, Billman, Bennett, Milko & McCabe, LLP
James D. Milko, Esq.
Trainor, Billman, Bennett, Milko & McCabe, LLP

Tuition

Family and Juvenile Law Section Members	$279
Young Lawyers Section Members	$279
MSBA Members	$299
All others	$329
MICPEL Passport Holders	$0
Video Replay	$279

Continuance Policy Updates

By: David S. Bruce

Generally, in Anne Arundel County, all motions for continuances must be filed with the Clerk, in writing, pursuant to the Maryland Rules and the Court's DCM Plan at least 10 days prior to the scheduled event. Upon receipt, the Clerk will forward the Motion to the Court's Postponement Coordinator (410-222-1350) for review. In Family Law matters, however, the initial Scheduling Conference in the case or a properly served Show Cause Order hearing may be reset with agreement of all parties by conference call with the Assignment Office to an agreed upon date. All such requests must be made by not later than noon the day prior to the hearing. Postponement requests for all other scheduled events, including Pre-trial Settlement Conferences, will be handled on a case-by-case basis by the Administrative Judge or the designated DCM Family Law "Continuance" Judge, and will not be granted merely by consent of the parties or because discovery, ADR, or other Court ordered services have not been completed. In rare cases specially assigned to a particular Judge, all continuance requests will be referred by the Clerk to the specially assigned Judge.

In Allegany and Garrett Counties, there are no published procedures concerning continuance requests which are otherwise expected to be presented in accordance with the Maryland Rules. In Allegany County, new cases are alternately assigned when filed to the two sitting Circuit Court Judges. Continuance requests will be considered by the assigned Judge on a case by case basis, or by the Court's Master if the scheduled event is set before the Master. In Garrett County, a similar process is followed by the one sitting Judge in the County, except that in most instances, new cases filed in the Court are first routinely reviewed by the Court's Master for initial scheduling purposes, with events set before the Judge or Master as the circumstances of the case require.

David S. Bruce is a Master in Chancery for the Anne Arundel Circuit Court and a member of the MSBA Family & Juvenile Law Section Council.

Birthdays

January:

Sadie T. M. Alexander:

Longtime family law and estate attorney in Pennsylvania, she was the first black woman to earn a Ph.D in the United States, doing so in 1921, then she went to law school, becoming the first black woman admitted to practice in the state of Pennsylvania, eventually became the Assistant City Solicitor of Philadelphia… most impressive.

February:

Abraham Lincoln:

Happy 200th…

March:

William Pinkney:

7th Attorney General of the United States, native Marylander, practiced in Baltimore and served in the Maryland House before his appointment by President James Madison. Post-AG he served as Minister to Russia and commanded a rifle battalion in the War of 1812, where he was wounded in the Battle of Bladensburg… those litigators really were tough back then…

Elements of a Custody Evaluation

By: Jeanne F. Allegra, Ph.D.

Five years ago, after being hired by PG County Circuit Court to perform custody evaluations, my first case arrived …the mother in the case was seeking custody of her fifth child. What was the issue? Since she had KILLED her third baby, there was a question of whether or not she could handle custody of her fifth! And believe it or not, that case was probably the easiest…others that followed have been much more challenging.

But, needless to say, **I was hooked…and continue to be hooked** by the challenge of helping children, whose custody is their parents' prize. In divorce and parental separation, children are the Pawns between the King and the Queen on the chess board of life, sacrificed to save the game's royalty. So that the children NOT be sacrificed, I keep the following principle in mind when doing this difficult work:

Children should be raised in an emotionally and physically SAFE environment, which gives them access to both parents.

My 30-year private practice, has given me a window into the world of many young adults, who are the products of parental separation and alienation. Their early experiences are clearly tied to their subsequent, difficult adjustments to the demands of life. Children make healthy transitions to adulthood, when they have been given stable, consistent and predictable environments in which to grow. The Custody Evaluator helps the Court identify where such an environment exists for the affected children.

What follows is a guide to the Custody Evaluation, written in a question-answer format. Hopefully, it will serve as a quick reference to understanding the process followed in completing such an evaluation.

When are Custody Evaluations necessary?

The following conditions provide the necessary prerequisites for a Custody Evaluation to be performed:

- When parents have a minor child or children and are: 1) divorcing, 2) separating after living together or 3)seeking access to them after either limited or no involvement AND
- When at least one litigant questions the other's psychological stability and therefore, ability to be an effective parent

When the above conditions are met the couple might agree to a private Custody Evaluation, performed by a psychologist, retained for this purpose. The clients' attorneys are often instrumental in helping their clients identify a psychologist, who is experienced in performing this type of evaluation. When there is no agreement to perform a private custody evaluation, but the psychological issue still exists as an impediment to custody/visitation arrangements, the Court steps in and orders its own Custody Evaluation. In PG County, custody evaluations are completed by contracted licensed clinical psychologists. The goal of the psychologist is to make reasonable recommendations to the Judge, who will decide the custody/visitation arrangements of the minor children involved.

What is the difference between a private evaluation and a court-ordered one?

There are several differences between them.

- Selection of evaluator: When the couple agrees to have a private evaluation, they agree among themselves, often with the input of their attorneys, to choose a psychologist, from a large pool of potential evaluators. When the court orders the evaluation, they will assign one of their limited number of contract psychologists to the case.
- Cost: PG County currently charges its litigants $1000. per person for a custody evaluation. Private evaluations are at least twice that amount and often considerably more than that. The ultimate cost of the private custody evaluation is contingent on the psychologist's hourly fee structure, the number of interviews scheduled, the number of collateral visits scheduled with significant others in the case, and the fee for review of significant paperwork.
- Depth of the evaluation/time required to complete: A private evaluation may take as long as three months to complete, whereas the Court Evaluation is almost always completed within the 6-week time frame. Interviewing, testing and the write-up for the Court Evaluation may take as much as 20 hours to complete. The amount of time required for the Private Evaluation varies according to the style of the psychologist, hired to perform the task.

What is a "home study" and when might it be ordered?

A "home study" is different from a psychological/custody evaluation in several respects:

- A "home study" is often performed by a Social Worker, who has expertise in evaluating the appropriateness of a home en vironment for the child/children involved in the custody battle. He/she visits the home environments of the two litigants and reports about the appropriateness of each of these for minor children.
- A "psychological evaluation" is performed by a psychologist, who has a special understanding of psychopathology. This psychologist must also be able to assess the child/children's psychological needs at present and project into the future for the purpose of making recommendations about custody/visitation. These recommendations will likely impact the child/children's development for years to come.

What are the basic elements of a custody evaluation?

Different jurisdictions may have different requirements for psychological/custody evaluations and reports. In PG County the following elements are usually included in the evaluations:

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Elements of a Custody Evaluation...

(continued from page 12)

- Summary/Recommendations for custody/visitation
- Review of documents, related to the case
- Individual interview summaries of each litigant and MMPI-2 test results
- Family Interview and observations

Give an example of the documents reviewed for the evaluation.
A review of relevant documents provides the psychologist a way of substantiating claims made by litigants about one another. All documents will be specific to the case. The following list, while not all-inclusive, represents a good sample of such documents:

- Court documents related to divorce and separation
- Temporary custody arrangements
- Protective Orders pertinent to the case
- Litigants' medical/psychiatric/psychological records
- Children's medical/psychiatric/psychological records
- Children's school records

What methods are used to understand the pertinent facts of the case?
In the Court-appointed evaluation each litigant is interviewed separat ely, with the goal of getting an overview of the litigant's social history before he/she met their estranged partner, school/work history, background concerning the litigants' relationship "ups and downs", and their past and current involvement with their child/children. It is very important to cover issues of physical and mental abuse as well as issues related to drug and alcohol use. If the litigants are currently remarried or living with a new partner, those individuals are also interviewed and tested separately.

In the private evaluation, similar interview data is collected. However, interviews with each litigant might take longer and focus on more in-depth information. Private custody evaluations might also offer the opportunity to include more "collateral visits" with those familiar with the case (e.g. relatives, teachers, friends, other professionals, etc.), who may be able to offer the evaluator a new perspective on the case.

How is the litigants' fitness for parenting evaluated?
In P.G. County, the Court requires that each litigant (as well as a live-in boyfriend/girlfriend, and new spouse, if applicable) be tested using the Minnesota Multiphasic Personality Interview – II (MMPI-2). The MMPI-2 is psychology's "gold standard" of personality inventories because it has been so extensively researched and validated. It is widely used in many jurisdictions to assess mental fitness because it has come to be so highly respected. P.G. County Circuit Court requires use of the long form (567 True-False questions) in Custody cases.

Proper interpretation of the test allows the identification of individuals who have psychological problems and their concurrent diagnoses. Since the test has been validated on populations seeking child custody, it is particularly useful for Custody Evaluations. While private evaluations often employ the MMPI-2 to assess litigants,=2 0other inventories might also be included.

How are the children involved in the evaluation process?
In court-ordered evaluations, children are included in the evaluation process by means of the Family Interview. It is often the case that the children are uninformed about the purpose for the interview and think they are going to see "a doctor without a stethoscope." It is then left to the Psychologist to help the children understand the process.

Since the children are usually aware that their parents have separated and are living in different places, the psychologist might say something like, "Your parents live in different places right now, because they may have found it difficult to get along. But even though they might have a hard time living together, they love you very much and want to be sure that they get to see you as much as possible. It i s my job to help the Court (and a discussion of what the Court is follows) find a schedule that works best for all of you." After this simple explanation, the children involved usually relax, are happy they won't be getting a shot (remember, they thought the Psychologist was a Doctor without a white Coat) and are willing to talk about what has been "going on".

Children, who are preverbal, will play with a "family of dolls" in the therapist's presence. A great deal of information about family relationships can be derived from children's doll play. Regardless of the children's ages, it is important to observe the children in an activity with their father and their mother. Much can be learned in an observation of this set of interactions. Similar discussions and observations occur in the Private Evaluation. Once again the difference will be in the number of such observations and the length of the sessions used.

What happens to the evaluation once it is completed?
In P.G. County, the completed Court-ordered evaluation goes to the Assistant Director of the Office of Mental Hygiene, who in turn makes the report available to the attorneys, representing the litigants. When one or both of the litigants is Pro Se, results are available to the individuals. The Judge, assigned to hear the case, will also be given a copy of the evaluation.

What sorts of recommendations might a Custody Evaluation contain?
A Custody Evaluation will contain recommendations about the following:

- Residential custody arrangements
- Legal custody arrangements
- Visitation arrangements

(continued on page 14)

2009 Legislative Update

By: Dorothy Fait, Esquire

The Maryland Legislature started its 2009 session on January 14th. The Family Law Section Council of the Maryland State Bar has been monitoring prospective legislation since the end of the 2008 session. Additionally, members of our section council have been working with the Maryland Department of Human Resources on a comprehensive revision of the Child Support Guidelines. The Bill has not yet been introduced and so there is no Bill number at the present time. However, we will get the Bill information out, including Bill number, dates of hearing on the Bill, etc., as soon as this information becomes available. The Child Support Guidelines have not been revised in twenty years and it goes without saying, that the cost of living has substantially increased since that time.

The Comprehensive Custody Bill introduced last year did not pass. There will be another attempt this year to have a custody bill. There will be, no doubt, efforts again to provide for a presumption of joint custody. The Section Council has historically opposed any effort to impose a presumption of joint or shared custody.

As reported in the Daily Record on January 12th, Senator Jamie Raskin of Montgomery County plans to introduce a Bill providing for the establishment of a "parent by estoppel." Senator Raskin said he is drafting legislation that would enable courts to recognize the parental relationship that can develop between a child and a non-legal parent and to award visitation when appropriate. This legislation would seek to circumvent the Court of Appeals' recent ruling in Janice M. v. Margaret K., 404 MD 661 (2008): see the Case Note analysis of this important case elsewhere in this issue. The Court in that case, refused to adopt the concept of a de facto parent, and found that a person acting in a parental role is like any other third party in seeking custody or visitation of a child and must show that the biological parent is either unfit or that exceptional circumstances exist.

In the area of domestic violence, legislation will be introduced allowing firearms to be removed from a respondent at the temporary protective order stage of the proceedings. Additional legislation will also propose that rifles, shotguns and other "long guns" should be confiscated from a respondent, in addition to other firearms, after the issuance of a final protective order. Another Bill will increase the period of time from thirty days to six months for which a judge is authorized to extend a temporary protective order to effectuate service of process.

The legislative session is a quick ninety days. Adjournment will take place on April 13th. Any members of the Section who wish to follow Family Law Bills can track the progress of Family Law Legislation on the Legislature's web site, which is located at www.mlis.state.md.us. The Bill can be identified by Bill number or subject matter and easily tracked.

Bills of interest to the Family Law Section in almost every circumstance will go before the Judiciary Committee of the House and the Judicial Proceedings Committee of the Senate. Delegate Kathleen Dumais, an active member of our Section, is especially helpful to us, as she is a member of the House Judiciary Committee and Chair of the Family Law Subcommittee of the House Judiciary Committee.

If any member of the Section has questions or comments about family law legislation this session, please contact me directly at: (301) 251-0100 or by email at dfait@faitwisedilima.com with your thoughts.

Dorothy Fait, Esquire, chairs the Legislative Committee for the MSBA Family & Juvenile Law Section Council.

Elements of a Custody Evaluation...

(continued from page 13)

- Recommendations about therapeutic interventions needed for the father, mother, child/children

How does the Court use the Custody Evaluation?

A Judge will often use the recommendations of the psychologist, who performed the evaluation, as a guide to determining Custody and Visitation arrangements for the future. If the litigants want to pursue the case, they are free to subpoena the Psychologist to testify in the case.

There has been some confusion on the part of some attorneys when subpoenaing a psychologist, who has performed a custody evaluation in a case. In P.G. County, once Court-appointed psychologists complete their reports and hand them into the Court, their contract work has end ed. If, then they are called to become a witness in the case, the psychologist becomes an "expert" and will charge their expert witness fees for this service.

Dr. Jeanne Allegra has been a clinical psychologist for 30 years, and is licensed to practice in D.C. and Maryland. Her private practice is located in Silver Spring, MD. She has special expertise in working with couples, families and children in distress. She received her initial training and Ph.D. in Clinical Psychology from the Catholic Universit y of America. Dr. Allegra has been a custody evaluator for the Circuit Court of Prince George's County for the past 5 years and also performs private custody evaluations. She can be reached by phone at 301-445-1573 or by e-mail at DocAllegra@aol.com.

Center for Famlilies, Children and the Courts Launches "Urban Child Symposium"

The University of Baltimore School of Law Center for Families, Children and the Courts (CFCC) will launch the first annual Urban Child Symposium on April 2, 2009. The symposium, "Solving the Drop-out Crisis: Getting the Other Half to Attend and Achieve," will feature a series of panel discussions devoted to issues affecting the education of inner-city children. Panelists will discuss the challenges facing urban children, the issues presented by chronic truancy, and the programs and methods that enhance a child's likelihood to complete high school.

Confirmed symposium panelists include: Dr. Andres Alonso, Chief Executive Officer of the Baltimore City Public Schools; Dr. Robert Balfanz, Johns Hopkins University Center for Social Organization of Schools; Donald DeVore, Secretary of the Maryland Department of Juvenile Services; Hathaway Ferebee, Executive Director of Safe and Sound; Susan Leviton, University of Maryland Professor of Law; Sylvia McGill, Director of Experience Corps; Dr. Ken Seeley, President of the National Center for School Engagement; Kate Walsh, President of the National Council on Teacher Quality; and the Honorable David Young, Circuit Court for Baltimore City. The Honorable Catherine Curran O'Malley, First Lady of Maryland and Judge of the District Court for Baltimore City, will be the luncheon speaker. They symposium is free and open to the public. All events are scheduled in the School of Law's Venable Baetjer Howard Moot Court Room at 1415 Maryland Avenue. More information about the symposium and registration can be found at http://law.ubalt.edu/template.cfm?page=1117.

CFCC, in collaboration with the National Center for State Courts (NCSC), recently presented a two-day Unified Family Court (UFC) workshop for the New Mexico court system. The workshop, which took place December 15-16 in Santa Fe, covered the development and implementation of UFCs, including their theoretical and structural components, physical attributes, operation, advantages, evaluation, court services, and challenges. Attendees included judges, court administrators, family law attorneys and social service providers. The presentation was designed to introduce the UFC concept as an alternative to New Mexico's current family justice system structure, which is among the reforms that the state's Supreme Court is slated to undertake as part of its strategic planning initiative.

CFCC, in collaboration with the Association of Family and Conciliation Courts (AFCC), facilitated two two-day workshops in December 2008. The first workshop was conducted by Christine A. Coates, M.Ed., J.D., for professionals who work with high-conflict families. The second workshop was conducted by Marsha Kline Pruett, Ph.D., M.S.L., for professionals who work with fathers in intact, separated, or divorced families. CFCC's partnership with AFCC began in 2003 as a vehicle to provide multi-disciplinary trainings on a variety of topics to family law attorneys, judges, court personnel and mental health professionals.

CFCC has published the fifth edition of its newsletter, the Unified Family Court Connection. The Fall 2008 issue includes articles devoted to UFC implementation by two different jurisdictions. The Honorable Howard Lipsey, a Rhode Island Family Court judge, writes about how the nation's first UFC manages family law matters with maximum efficiency. The Honorable Bobbe Bridge (retired, Washington Supreme Court), president of the Center for Children and Youth Justice, and the Honorable Paula Casey, a Thurston County (Washington) Superior Court judge, contribute two articles about Washington's UFC initiatives. The next issue, which is due out in March, focuses on issues related to children and the court system. The Unified Family Court Connection is mailed to 2,000 judges, attorneys, court administrators, law school deans, legislators, and other family court experts around the country.

For further information about CFCC and any of its initiatives, or if you would like to receive the Unified Family Court Connection, please contact Professor Barbara Babb at 410-837-5661, bbabb@ubalt.edu, or consult CFCC's Web site at: www.law.ubalt.edu/cfcc/

CASE NOTE:

Lornicz v. Lornicz, No. 2030, September Term 2007, decided 12/3/2008

By: Mary M. Kramer

FACTS: The parties were married and had twins. When they separated in 2003, Mother was a graduate student a Johns Hopkins University, receiving a stipend of $24000 per year. Father was at that time, and at all relevant times afterward, an employee of T. Rowe Price, earning $40,000 per year. The parties divorced in 2004. By agreement, Mother was awarded primary custody of the twins and Father paid $650 per month in child support. In 2006 Mother filed for modification of child support.

Mother asked the court to award an increase in child support based on the following changes in circumstances: She had left Johns Hopkins to pursue a law degree at University of Virginia, where she did not receive a student stipend, and did not work during the school year. The children were in daycare while she attended school, at a cost of $1100 per month. Mother had a summer job with a large law firm in New York, where she earned a total of $36,424, and paid $600 per week in child care.

At the master's hearing, the master determined that the $1100 in child care incurred while Mother was a full time student was not an appropriate expense to be included in child support. In addressing the appropriate amount of child support, the master divided the year into two segments to reflect the varying circumstances during the school year and during the summer months. Child support was recommended to be in separated amounts for each of the two periods. Mother excepted to the master's findings and recommendations, and the exceptions were denied by the Circuit Court judge. Mother filed an appeal.

HOLDINGS: On review, the Court of Special Appeals agreed with the Circuit Court that the daycare costs incurred by Mother while she was a full time student did not satisfy the requirements of the Family Law Article Section 12-204(g)(1) as a "child care expense" since those costs were not incurred "due to employment or job search." Although both the trial and appellate courts commended Mother's goals in improving her earning capacity through her education, the plain language of the statute does not include education or training for employment. The summer daycare expense was to be included in the child support calculation, as it was incurred while Mother was working.

Turning to the other issues, the Court of Special Appeals addressed the two-pronged child support award. Noting that such a situation has not previously been reviewed in Maryland, the appellate court looked to other rulings for guidance. It noted that in prior caselaw addressing voluntary impoverishment, actual and imputed income had always been addressed on an annual basis. Further, in *Smith v. Freeman*, 149 Md. App. 1, 814 A.2d 65 (2002), in which the father was a professional football player earning 3.2 million dollars per year, the income was considered per annum. *Johnson v. Johnson*, 152 Md. App. 609, 833 A.2d 46 (2003), was a case in which the payor earned an $80,000 annual salary, and a $41000 bonus. That bonus was annualized by the court. The CSA commented on the absurdity in those cases if the court had divided the year, so that Mr. Freeman was presumed to be voluntarily impoverished during the off-season, or so that Mr. Johnson paid child support at one level for 11 months, and a far higher level during the month in which the bonus was paid. The CSA concluded that setting child support on an annual basis is far more logical than splitting the year into two or more segments with differing amounts of child support payable in each.

Father argued that the year should be divided into distinct parts for the purposes of determining Mother's voluntary impoverishment. The master had imputed $2000 per month in income to Mother during the school year, reasoning that she had voluntarily left her studies at Johns Hopkins where she received a stipend of $24000 per year. The CSA responded that Mother in fact was earning more, in terms of her summer associate position that was available to her only because of her law school studies during the remaining 9 months of the year. The CSA further pointed out that the $24000 was a stipend, which would not be available to her after she left her graduate program, and therefore would not be her "potential income" for the purposes of imputing income. When Mother's income is annualized, she had an increase of over 50%. In assessing all of the factors set out in John O. v. Jane O., it was determined that Mother was not voluntarily impoverished. Looking at the entire contest of her decision, Mother's goal in changing career paths was to overall improve her earning capacity by a significant amount.

The clear impact of this decision is that child support should be set at one rate for the entire year, where the factors applied in calculating child support, including at least the parents' income and the child care, are annualized, and a monthly amount is set based on the 12 month average of all of those factors.

Mary Kramer is a Master for Domestic Relations and Juvenile Causes with the Howard County Circuit Court.

CASE NOTE:
GRANDPARENT VISITATION

Aumiller v. Aumiller, No. 29, Sept. Term 2008, 2008 Md. App. Lexis 137

By: Stuart Muntzing Skok, Esq.

Two years ago, the Maryland Court of Appeals in *Koshko v. Haining*, 398 Md. 404, 921 A.2d 171 (2007), raised the standard in grandparent visitation cases to require a threshold finding of parental unfitness or exceptional circumstances before the Court may apply the best interest standard. This standard is the same standard that has always applied in third-party custody cases.

The case of *Aumiller v. Aumiller*, No. 29, Sept. Term 2008, 2008 Md. App. Lexis 137, started out as a pre-*Koshko* case where the paternal grandparents were awarded visitation by the trial court. While the mother's appeal was pending, *Koshko* was decided and consequently, upon remand, the grandparents were denied visitation for lack of *prima facie* proof of exceptional circumstances.

ISSUES ON APPEAL:

1) Did the paternal grandparents establish a *prima facie* case of exceptional circumstances, under *Koshko*, which requires a trial court in grandparent visitation cases to make a threshold determination of parental unfitness or exceptional circumstances before applying the best interest standard?

2) Is there a bright line definition or set of exhaustive relevant factors for determining "exceptional circumstances" in a particular case?

HOLDINGS:

1) NO. The grandparents failed to present legally sufficient evidence that the children would suffer future harm absent visitation, thereby failing to meet the threshold requirement of exceptional circumstances under *Koshko*.

The mother has a fundamental right as a parent to withhold information from the children about their deceased father and to decide with whom the children may associate. In this case, there was only a limited relationship between the grandparents and grandchildren and, consequently, no evidence of current harm to the children from discontinuing the relationship. There was also no evidence of future harm other than the grandparents' view as to what and when the children should be told or that might be inferred from the lack of visitation. The record in this case offered only speculative evidence of future harm. Until the court can determine a *prima facie* case of exceptional circumstances, the best interest standard cannot be applied.

2) NO. Exceptional circumstances are determined on a case-by-case basis. Thus the court cannot formulate a bright line definition or delineate all relevant factors that might exist in a given case. However, the *Ross v. Hoffman,* 280 Md. 172, 372 A.2d 582 (1977), factors "may" be relevant in grandparent cases:

> *[T]he length of time the child has been away from the biological parent, the age of the child when care was assumed by the third party, the possible emotional effect on the child of a change of custody, the period of time which elapsed before the parent sought to reclaim the child, the nature and strengths of the ties between the child and the third party custodian, the intensity and genuineness of the parent's desire to have the child, the stability and certainty as to the child's future in the custody of the parent.*

In making the determination of exceptional circumstances, a court may consider future as well as current deteriment to the child, absent visitation, but a finding of exceptional circumstances must be based on evidence, not mere speculation. In addition, if the grandchildren have a long and frequent history of visitation with the grandparents, lay and/or expert evidence of a detrimental physical or emotional effect on the children as a result of the cessation of visitation may make obtaining visitation easier. Absent a prior relationship, when the evidence is solely that visitation was and is not being permitted, exceptional circumstances do not exist.

BACKGROUND/PROCEDURAL POSTURE:

Appeal from Baltimore County, Sounder, J.
Attorneys: Laura V. Bearsch for appellant, John J. Condliff for appellee

The biological parents, Kevin and Sumintra Aumiller, had two (2) children born in 1998 and 1999. The parents were divorced in 2001. The paternal grandparents, Thomas and Valerie Aumiller, had limited visitation after the divorce. The father died of a drug overdose in February of 2004. Thereafter, the mother would not allow visitation with the grandchildren. In August of 2004, the grandparents filed a complaint for grandparent visitation. In October of 2004, the trial court ordered three-hour visits once per month for three months, followed by six-hour visits on the third Saturday of every month. Upon mother's motion, the Court granted a new trial and in June of 2006, the trial court concluded that visitation was in the best interests of the grandchildren. The mother appealed and was granted a

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Case Notes- Grandparent Visitation...

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stay of the visitation order pending appeal.

While the appeal was pending, the Court of Appeals issued its decision in *Koshko*, addressing the constitutionality of the grandparent visitation statute under Family Law Article § 9-102, finding that the statute requires a threshold showing of parental unfitness or exceptional circumstances before applying the best interest standard. The parties conceded in oral argument that *Koshko* modified the analysis required in this case and agreed to a remand for further proceedings.

In February of 2008, on remand, the trial court heard evidence limited to the existence of exceptional circumstances. At the close of the grandparents' case, the court concluded that the grandparents failed to produce legally sufficient evidence of exceptional circumstances and granted the mother's motion for judgment.

The grandparents appealed contending that the trial court misinterpreted the test for third party visitation and erred in concluding that exceptional circumstances were not proven by the mother's past refusal of visitation and withholding of information from the children about their deceased father. The Court of Appeals rejected the grandparents' arguments and affirmed the judgment of the trial court, finding that if a fit parent's mere refusal of visitation or withholding of information about a deceased parent amounted to exceptional circumstances, it would render the Koshko threshold requirement superfluous and allow third parties to reach the best interest analysis in virtually every case.

PRACTICE CONSIDERATIONS:

Keep in mind that for grandparent visitation cases decided before *Koshko*, the standard for modification of the Order is "material change in circumstances affecting the best interest of the children." The *Koshko* threshold requirement of unfitness or exceptional circumstances only applies to cases decided after the decision.

In Footnote 23 of *Koshko*, the Court of Appeals gave guidance on filings post-*Koshko*:

> *In cases filed after this opinion, the petitioners, in order to avert or overcome a motion to dismiss their petition, must allege a sufficient factual predicate in the petition so as to present a prima facie case of unfitness or exceptional circumstances, as well as invoking the best interest standard....[citations omitted]. At any evidentiary hearing on a petition, the petitioners must produce evidence to establish their prima facie case on the issue of either parental unfitness or exceptional circumstances as well as evidence sufficient to tip the scales of the best interests balancing test in their favor. We appreciate that there may be circumstances where evidence proffered for the satisfaction of a threshold element also may have relevance in the determination of the best interest standard. We do not intend to foster a "trial within a trial." At the end of the day, petitioners, in order to be successful, must shoulder the burdens to adduce at least a prima facie case on both the unfitness/exceptional circumstances standard and the best interests standard.*

After *Aumiller*, grandparents must not only make their *prima facie* case in their initial pleading but, in order to prevail on the merits, grandparents should present lay and expert testimony on exceptional circumstances. The evidence must establish the specific current and future harm to the grandchildren that will occur by the cessation of visitation. A mere inference of potential harm without visitation will not suffice. In addition, if there was a limited prior relationship between the grandparents and grandchildren before the proceeding, it will be difficult to prove future harm will result without visitation. In fact, without evidence of parental unfitness, grandparents will face strict evidentiary standards that favor a parent's constitutional right to raise his or her own children without interference from third parties. If there is evidence of unfitness, grandparents should consider seeking custody, which has the same standard of proof as visitation.

Fit parents are presumed to act in the best interest of their children, even if those parental acts include a decision to deny grandparent visitation. If a parent does not want a grandparent visitation order granted, the parent should be careful not to allow visitation that will create a grandparent relationship that can be used to prove exceptional circumstances. Parents defending grandparent petitions should consider filing a motion to dismiss the petition for lack of a *prima facie* case. Parent should also consider requesting a motion for judgment at the end of the grandparents' case if there is a lack of exceptional circumstances shown by specific evidence of future harm.

Stuart Muntzing Skok is a principal in the Law Firm of Gimmel, Weiman, Ersek, Blomberg & Skok, P.A. located in Gaithersburg, Maryland, focusing her practice in the area of family law. She can be reached at (301) 840-8565 or sskok@gweblaw.com.

CASE NOTE: "DE FACTO PARENT NO LONGER EXISTS"

By: Deborah L Webb, Esq.

Janice M. v. Margaret K., 404 Md. 661 (2008)

No. 122, September Term 2006, Opinion by Bell, C.J. (Court of Appeals, filed May 19, 2008)

ISSUES

Janice M. petitioned the Court of Appeals to address the following issue:

"Does an exceptional circumstances standard rather than a best interests standard apply to visitation with a *de facto* parent?"

Margaret K. cross-petitioned the Court of Appeals to consider the following issues:

"1. Must a *de facto* parent prove that a legal parent is unfit or that exceptional circumstances exist for the *de facto* parent to obtain custody of his or her *de facto* child?

2. Is a *de facto* parent entitled to visitation with his or her *de facto* child if it is in the child's best interest?"

HOLDING

On May 19, 2008, the Court of Appeals of Maryland issued its opinion in the case of *Janice M. v. Margaret K*. The appellate court determined that Maryland law does not recognize *de facto* parenthood. Moreover, it held that a legal parent* has the constitutional right to govern the care, custody and control of his or her child. An individual who would otherwise qualify as a *de facto* parent and who seeks custody or visitation rights over the objection of the legal parent, must prove exceptional circumstances or unfitness as an initial threshold to a court's consideration of the best interests of the child.

FACTUAL AND PROCEDURAL BACKGROUND

The petitioner, Janice M., and the respondent, Margaret K., were involved in a committed same sex relationship for approximately 18 years. During their relationship, Janice M. adopted a daughter, Maya. Margaret K. never attempted to adopt Maya. (The Court of Appeals declined to express an opinion on whether or not same-sex couples may adopt a child in Maryland). Maya lived with both parties for approximately 4 1/2 years and, during that time, the parties shared most of the duties regarding Maya's care.

After the parties' separation, Margaret K. initially saw Maya between three and four times a week, mostly unsupervised. Thereafter, when the parties' relationship became increasingly strained, Janice M. placed certain restrictions on Margaret K.'s visitation. When Margaret K. became dissatisfied with those conditions, she had her attorney send Janice M. a letter concerning her visitation with Maya. In response, Janice M. denied Margaret K. all visitation with Maya. Given that this was unacceptable to Margaret K., she filed a complaint requesting custody, or in the alternative, visitation of Maya.

The Circuit Court for Baltimore County denied Margaret K.'s request for custody but granted her visitation rights because it was adjudicated that she was a *de facto* parent. The trial court determined as an initial matter that Janice M., as the adoptive parent, was entitled to a presumptive right of custody. Moreover, the trial court found that there was no evidence as to the lack of fitness on the part of Janice M. However, in relying on the Court of Special Appeal's decision in *S.F. v. M.D*., 132 Md. App. 99, 751 A.2d 9 (2000), the trial court did find that Margaret K. was Maya's *de facto* parent and visitation would be in Maya's best interests.

Janice M. appealed the trial court's decision to the Court of Special Appeals and the intermediate appellate court affirmed the judgment of the trial court and its finding that Margaret K. was a *de facto* parent. *Janice M. v. Margaret K*., 171 Md. App. 528, 910 A.2d 1145 (2006). The Court of Special Appeals relied on *S.F. v. M.D*., 132 Md. App. 99, 111-112, 751 A.2d 9, 15 (2000) in reaching its decision:

> ' In determining whether one is a de facto parent, we employ the test enunciated in *In re Custody of H.S.H.-K*., 193 Wis. 2d 649, 533 N.W. 2d 419 (1995) and *V.C. v. M.J.B*., 163 N.H. 200, 748 A.2d 539 (2000).
>
> Under that test, "the legal parent must consent to and foster the relationship between the third party and the child; the third party must have lived with the child; the third party must perform parental functions for the child to a significant degree; and most important, a parent-child bond must be forged." …. Consequently… a non-biological, non adoptive parent, … [who] is a de facto parent,… is not required to show unfitness of the biological parent or exceptional circumstances… [to be] entitled to visitation.'

The Court of Appeals granted Janice M.'s petition for writ of certiorari and Margaret K's cross petition to consider the standard a trial court should employ when considering visitation and custody matters under the circumstances set forth in this case.

ANALYSIS

Reliance on prior jurisprudence

In reaching its decision, the Court of Appeals relied heavily on the fact that the United States Supreme Court has long recognized that the Due Process Clause of the Fourteenth Amendment protects the rights of parents to govern the care, custody and control of their children. *See Troxel v. Granville*, 530 U.S. 57, 69-70, (2000), *Sanotosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Pierce v. Society of*

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Case Notes-De Facto Parent...

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Sisters, 268 U.S. 510, 534-35 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923).

Since *Troxel*, the Court of Appeals has addressed a parent's due process rights regarding custody and visitation on several occasions including the cases of *McDermott v. Dougherty*, 385 Md. 320, 869 A.2d 751 (2005) and *Kohsko v. Haining*, 398 Md. 404, 921 A.2d 171 (2007). In *McDermott*, the Court of Appeals resolved a custody dispute between a child's father and the child's maternal grandparents. In that case, the Court of Appeals identified three circumstances in which the "best interest of the child" standard may arise: (1) disputes between fit legal parents, each of whom has equal constitutional rights to parent; (2) disputes in which the State interjects itself into the parent situation as a *parens patriae*, to protect the child; and (3) disputes involving third party custody cases, i.e., those cases in which individuals other than the legal parents or the State attempt to gain or maintain custody or visitation of children of legal parents. With respect to the third category, the Court of Appeals explained:

> "Where the dispute is between a fit parent and a private third party… both parties do not begin on equally footing in respect to rights to 'care, custody, and control' of the children. The parent is asserting a fundamental constitutional right. The third party is not. A private third party has no fundamental constitutional right to raise the children of others. Generally, absent a constitutional statute, the non-governmental third party has no rights constitutional or otherwise, to raise someone else's child."

Id. at 353, 869 A.2d at 770.

The Court of Appeals in *McDermott* determined that, before a trial court may consider the "best interest of the child" standard in deciding a custody dispute between fit parents and a third party, the trial court must first determine the legal parents unfit to have custody or extraordinary circumstances that could result in serious detriment to the child if that child were to remain in the custody of the parents. *Id*. at 374-75, 869 A.2d at 783.

Next, in examining the existence of exceptional circumstances, the Court of Appeals reiterated the factors set forth originally in *Ross v. Hoffman*, 280 Md. 172, 372 A.2d 582 (1977):

> "[1]length of time the child has been away from the biological parent, [2] the age of the child when care was assumed by the third party, [3] the possible emotional effect on the child of a change of custody, [4] the period of time which elapsed before the parent sought to reclaim the child; [5] the nature and strength of the ties between the child and the third party custodian, [6] the intensity and genuineness of the parent's desire to have the child, [7] the stability and certainty as to the child's future in the custody of the parent."

McDermott, 385 Md. at 419, 869 A.2d at 809 (quoting *Hoffman*, 280 Md. at 191, 372 A.2d at 593).

In *McDermott*, it was made clear that parental unfitness and exceptional circumstances are prerequisites in third party custody determinations, whereas, *Koshko* made clear that those same considerations apply in third party visitation disputes.

The de facto parent concept

Prior to *Margaret K*., the Court of Appeals had not addressed the concept of *de facto* parenthood in the context of either a custody or visitation dispute. Consequently, the Court of Appeals had not yet determined what legal status, if any, a person had with respect to a non-biologically related or non-adopted child with whom he or she established a relationship under the requirements of *de facto* parent.

The Court of Special Appeals considered the *de facto* parent concept in the context of visitation rights in the case of *S.F. v. M.D.*, 132 Md. App. 99, 751 A.2d 9 (2000). However, it considered this concept prior to the U.S. Supreme Court's decision in *Troxel* and the Court of Appeals decisions in *McDermott* and *Koshko*.

In *S.F.*, the Court of Special Appeals determined that a third party seeking custody will prevail only if that party demonstrates that a legal parent is unfit or that exceptional circumstances exist. *Id*., at 110-111, 751 A.2d at 15. However, it further held that neither element is necessary to prove in order to grant visitation where the third party is a *de facto* parent to the child. *Id*. at 111-112, 751 A.2d at 15.

In the *Margaret K.* case, the Court of Appeals held that it will not recognize *de facto* parent status as a legal status in Maryland. It refused to do so because, *assuming arguendo* that it did recognize such a status, it would short circuit the requirements to show unfitness or exceptional circumstances which is contrary to Maryland jurisprudence as set forth in *McDermott* and *Koshko*. The Court of Appeals further noted that a de facto parent should not be treated differently from other third parties; therefore, before the best interests of the child standard is considered, the *de facto* parent must establish that the legal parent is either unfit or that exceptional circumstances exist. Accordingly, *S.F.* is overruled because it no longer reflects Maryland law.

In the instant case, Margaret K. maintains that the Court of Appeals had previously recognized *de facto* parent status as

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Case Notes- De Facto Parent ...

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a subset of exceptional circumstances in the case, *Monroe v. Monroe*, 329 Md. 758, 621 A.2d 898 (1993). Margaret K. argues that the putative father satisfied the requirements for exceptional circumstances because he was a *de facto* parent. The Court of Appeals commented that Margaret K. misread *Monroe*. In that case, the Court of Appeals held that there was evidence to support a finding of exceptional circumstances necessary to overcome a legal parent's presumptive right to control her child's upbringing. However, the appellate court did not conclude that a person who qualifies as a *de facto* parent is not required to establish exceptional circumstances. Although the Court of Appeals, in *Monroe*, commented that a psychological bond may form between a child and a third party; the court did not suggest that this bond alone will necessarily overcome the right of the legal parent to custody and control over visitation. Nor did it hold that *de facto* parent status necessarily overcomes such parental rights. The Court of Appeals further determined that *Monroe* is not inconsistent with its holdings in *McDermott*, *Koshko* or *Margaret K*.

With respect to a finding of exceptional circumstances, the Court of Appeals noted, that it is determined by analyzing all relevant factors in the particular case. As such, while a psychological bond between a child and a third party is a factor in finding exceptional circumstances and while a finding that one would meet the status of a *de facto* parent, if such status were to be recognized, neither is determinative as a matter of law.

CONCLUSION

The Court of Appeals held that the trial court erred in granting visitation to Margaret K. on the grounds that she was a *de facto* parent without first finding that Janice M. was either an unfit parent or that sufficient exceptional circumstances existed to overcome Janice M.'s liberty interest in the care, custody and control of Maya. Although the Circuit Court found that exceptional circumstances did not exist, the case was remanded for reconsideration on the matter because the trial court based its conclusion on an improper standard. The case was remanded to the Circuit Court to determine whether exceptional circumstances exist.

DISSENTING OPINION

Judge Raker wrote the dissenting opinion. She stated that she would recognize a *de facto* parent status, and she would find that a *de facto* parent stands in legal parity with a legal parent, whether biological, adoptive or otherwise, for the purposes of visitation. Judge Raker further commented that she would not apply the prerequisites of parental unfitness or exceptional circumstances as required in *McDermott* or *Koshko*. "A party who has demonstrated that he or she is a child's *de facto* parent should be entitled to visitation rights if such a result is in the best interest of the child." A party should not have to prove parental unfitness or exceptional circumstances once that party establishes that he or she is a *de facto* parent.

Deborah L. Webb is a principal of Lerch, Early & Brewer, Chtd. located in Bethesda, Maryland and is a member of your Family and Juvenile Law Section Council focusing her practice in family law. If you have any questions or comments related to this article, please contact Ms. Webb at (301) 657-0725 or dlwebb@lerchearly.com.

Footnote:

* The Court of Appeals defined the term "legal parent" as any party who is recognized as a parent by law. See AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS, Sec. 2.03(a) at 107 (softcover ed. 2003). It includes both natural and adoptive parents.

CASE NOTE

By: Morriah Horani

***Krebs v. Krebs*, 183 Md. App. 102 (2008)**

A child custody jurisdiction dispute and the application of the UCCJEA (Uniform Child Custody Jurisdiction and Enforcement Act) to that dispute constitute the central concerns in the *Krebs* case. From a practitioner's perspective, the *Krebs* case may be useful for its articulation and application of an analytical framework for the interpretation of some qualitative UCCJEA terms and for its method of untangling and evaluating a complex procedural chronology.

Facts

Ms. Krebs and Mr. Krebs lived as married couple in Arizona until their June 2006 separation, whereupon Mr. Krebs moved to Maryland. Ms. Krebs kept their two young boys with her in Arizona. In July 2007 Mr. Krebs filed a Maryland divorce suit while the children were visiting him in the state. Shortly thereafter Mr. Krebs filed a motion for emergency custody in the divorce case. Mr. Krebs was not immediately successful in serving Ms. Krebs with either the complaint or the motion. On August 23, 2007, notwithstanding service deficiencies and Ms. Krebs's absence, Mr. Krebs secured *pendente lite* legal and physical custody of the children.

Meanwhile, earlier in the month of August, Ms. Krebs had filed her own child custody suit in Arizona. In order to resolve the resulting jurisdictional conflict, a Maryland master and an Arizona judge telephonically conferred in September and determined the following: 1) Arizona was the children's "home state"; 2) Maryland was the more convenient forum; 3) the children had "significant connections" to Maryland; and 4) Arizona would decline to exercise its jurisdiction in the case.

Thereafter, litigation proceeded in the Maryland case. Prior to the merits trial, Ms. Krebs moved for and received a postponement of the trial date by several months. However, her motions for review of the temporary custody order and for scheduling of a *pendente lite* custody hearing were both denied. At the merits hearing, which Ms. Krebs attended with her counsel, Mr. Krebs ultimately won custody of the children.

Issues on Appeal

1. Was it error to grant custody of the children ex parte and additional error to not conduct a *pendente lit*e hearing?
2. Was it error to conclude that Maryland had jurisdiction to adjudicate the custody dispute under the UCCJEA?

Holdings

Due Process

The Court of Special Appeals deemed Ms. Krebs's due process arguments about the *ex parte* grant of custody and the denial of a *pendente lite* hearing moot, in part relying on the fact that Ms. Krebs attended a merits hearing on the matter after these proceedings. On this point, the Court relied heavily on the corpus of cases surrounding injunctive relief.

UCCJEA Jurisdiction

The Maryland statute codifying the UCCJEA (MD. CODE ANN. FAM. LAW §9.5-101 *et seq.*) provides that Maryland may render an initial custody determination if, in short, the home state declines to exercise jurisdiction, the child and a parent have a "significant connection" to Maryland, and Maryland has "substantial evidence" available to it regarding the child's care, personal relationships, and other relevant data.

Arizona declined to exercise jurisdiction on the basis that Maryland represented a more convenient forum, and Ms. Krebs argued that the UCCJEA's factors for assessing forum inconvenience were not applied or improperly applied. The Court of Appeals held that whether the Arizona court properly exercised its discretion to decline jurisdiction in light of the UCCJEA's forum inconvenience factors was a question solely for an Arizona tribunal and deferred on the question.

The Court of Special Appeals paid more attention to Ms. Krebs's arguments concerning the adequacy of the evidence supporting the finding of a "significant connection" to Maryland and the presence of "substantial evidence" concerning certain aspects of the children's lives pursuant to the UCCJEA . The Court grappled with whether the operative time for evaluating these factors should be at the time the Arizona court declined jurisdiction or at the time of the merits hearing. The Court concluded that, in this case, the evidence supported attachment of jurisdiction at either juncture and was a nonissue. Using head-to-head factual comparisons with other UCCJEA cases, the court determined that the record supported the conclusion that the "significant connection" and "substantial evidence" factors were satisfied. In support of its reasoning, the Court noted the length of Mr. Krebs's residency in the state, his employment status, and his relationship with a woman in the State, as well as the length of the children's attendance in Maryland schools and the presence of a relative nearby.

Therefore, the Court of Special Appeals affirmed the lower court's judgment.

Morriah Horani is an associate at Pasternak & Fidis P.C. in Bethesda, Maryland. She practices in Maryland and Virginia.

Congratulations Are In Order...

Congratulations to **Christopher W. Nicholson**, a former Chair of the Family and Juvenile Law Section Council, and current principal of the firm of Turnbull, Nicholson & Sanders, P.A., who was honored on Thursday, January 22, 2009 at the Baltimore County Bar Black Tie Function. Mr. Nicholson received the J. Earle Plumhoff Professionalism Award which is awarded by the Baltimore County Bar Association annually to an attorney who demonstrates dignity, integrity and civility in their practice. In addition, Mr. Nicholson was commended for his contributions of time and resources that have gone largely unnoticed. Mr. Nicholson has donated countless hours to the Family and Juvenile Law Section of the Maryland State Bar and this is a well-deserved award.

Congratulations also to former Section Council member **Paula Price**, Somerset County's newest District Court Judge!

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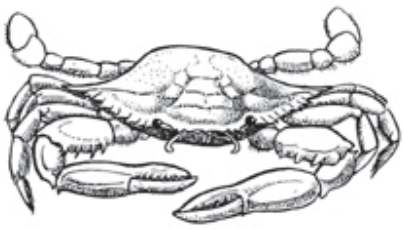

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CHILD SUPPORT GUIDELINES: IS CHANGE REALLY HERE?

By Barbara R. Trader

Twenty years ago, in order to make the determination of an appropriate child support award less complicated (and also to be in compliance with Federal requirements that were imposed on the State in 1987 and 1989), Maryland enacted child support guidelines. Twenty years have passed without any major changes to the guidelines, although the expense of child rearing has increased.

Following an unsuccessful attempt at revising the Guidelines in 2004, the Maryland Department of Human Resources, the Family Law Section Council and other interested stakeholders formed an advisory committee to make recommended changes to the guidelines for consideration by the legislature. A series of meetings were held beginning in 2007 and continuing into 2008, and as a result of that, DHR is expected to file, with the sponsorship of Delegate Dumais, a bill to revise the existing guidelines.

The Child Support Guidelines Advisory Committee (CSGAC) includes members of the judiciary, the general assembly, CSA leadership and key staff members, representatives from the State's Attorney's office in Harford County and from the office of the Attorney General, private family law attorneys, University of Maryland School of Social Work personnel, and child support stake holders. The CSGAC worked with the Center for Policy Research to review the schedule of basic child support obligations and to extend the Guidelines to include incomes of up to $30,000 a month.

The economic data upon which the guidelines are currently based dates back to approximately 1988. Recommended changes to the guidelines include updating the schedule to reflect the cost of raising children in 2008 instead of 1988, and adjusting the schedule to account for Maryland's above-average housing costs, which are about 25% more than the national average.

There also are changes recommended for low income parents. The self-sufficiency reserve is increased to current property levels of $867, and the minimum discretionary order will apply to incomes of $1,250 per month instead of $900 per month. This brings the minimum income up to what will be the minimum wage as of July, 2009.

The recommended changes are not just to the guidelines. They also include the statutory language. The goal of the CSGAC was to create more family-friendly language by using words such as "obligor" instead of "non-custodial parent" and to allow an adjustment in the guidelines for multiple-partner families so that there is a procedure in place for acknowledging obligations to children other than the children in the existing case. This change will hopefully decrease litigation regarding how obligations to other children are calculated.

Other changes to the guidelines include the increase of extraordinary medical expenses to mean costs for medical treatment in excess of $250 in any calendar year. This eliminates the argument over "single illness or condition". Furthermore, the definition of extraordinary medical expenses has been changed to mean "the medically necessary medical, dental and vision care expenses as defined by IRS publication 502" (this publication is available at http://www.irs.gov/pub/irs-pdf/p502.pdf).

As of the writing of this article, the bill has not been filed. When the bill number is known, that information will be circulated on the list serve, and as it progresses through the legislature, we hope to keep you updated about it. Please contact me by emails at btrader@thatsmylawyer.net if you need any more information.

Barbara R. Trader, Esquire, is the former Chair of the MSBA Family & Juvenile Law Section Council.

SURVEY FOR
FAMILY LAW ATTORNEY

The Judicial Administration Counsel and the Family Law Section Counsel Pro Se Project are interested in your input and opinion relating to representing clients when there is a Self Represented Litigant (SRL) as the opposing side. We are seeking to understand the circumstances and methods by which individuals are currently representing themselves and the challenges it presents to attorneys. The goal is identify and define areas that attorneys find difficult when facing an SRL and to provide guidelines and best practices to Maryland attorneys when the opposing party is self-represented. Please answer the survey to the best of your ability.

Your answers are completely confidential.

Survey: Self-Represented Litigants

1. Approximately, what percentage of family law cases in which you are involved has at least one self-represented litigant?
   ❒ 5% or less ❒ 5-10% ❒ 10-20% ❒ 20-30% ❒ 40-50% ❒ Over 50%

2. In the past five (5) years have you seen an increase in the number of people trying to represent themselves in Family Law matters?
   ❒ Yes ❒ No

3. When representing a party where the opposing side is a Self Represented Litigant (SRLs) how do you communicate directly with the SRL?

Check all forms of communication that apply:

Method	Always	Usually	Sometimes	Almost never
Telephone				
E-Mail				
Regular Mail				
Fax				
Other				

4. Do you speak directly to SRLs for:

Method	Always	Usually	Sometimes	Almost never
Negotiating Major Issues (Alimony, Custody, Property Division, Etc.)				
Negotiating Minor Issues (Visitation, Transitions, Obtaining Appraisals, etc.)				
Scheduling:				
Court matters				
Postponements				
Discovery				
Discovery Issues				

Pr-Trial Issues				
Others - List				

5. Do you adjust or change discovery techniques with SRLs?
   - ❒ Yes
   - ❒ No

   If yes, check which forms you change and describe the change:

Method	Always	Usually	Sometimes	Almost never
Interrogatories				
Request for Production of Documents				
Request for Admissions				
Depositions				
Third Party Subpoenas or Depositions				

Description of change(s):

6. If discovery responses are incomplete, have you been successful in seeking sanctions?
   - ❒ Yes
   - ❒ No

7. Have you been successful in seeking an award of attorney's fees?
   - ❒ Yes
   - ❒ No

8. Do you adjust your trial preparation when there is a SRL?
   - ❒ Yes
   - ❒ No

   If yes, describe your adjustment(s):

9. Do you adjust your trial presentation when there is a SRL?
   - ❒ Yes
   - ❒ No

   If yes, describe your adjustment(s):

10. In your experience, do you experience differences in Motions practice in cases with SRLs?

❒ Yes
❒ No

If yes, describe your adjustment(s):

11. In your experience, have judges treated SRLs in comparison to represented individuals:

	Always	Usually	Sometime	Almost never
More Leniently/-Deferentially				
Equal				
More critically				
Other				

12. In your experience, have judges equally applied / enforced in cases with SRLs:

	Always	Usually	Sometime	Almost Never
Scheduling Orders				
Discovery Orders				
Rules of Evidence				
Testimony				
Exhibits				
Sequestration				
The Law				
Other				

13. Have you experienced any issues regarding *ex parte* communications between SRLs and the court? (Such as filing of documents in court without copies, direct communication with judge, letters to judge)

❒ Yes
❒ No

If yes, please describe the issue(s):

14. Describe any other challenges you have experienced in representing clients against SRLs.

15. What if anything have you seen a Master or a Judge do or say that is helpful with the SRL, if so – explain.

16. What if anything have you seen a Master or Judge do or say that is not helpful – explain.

17. Does having an SRL involved in a case affect the legal time spent on a family law matter?

❒ Always ❒ Usually ❒ Sometimes ❒ Almost Never

THANK YOU FOR HELPING WITH OUR SURVEY!

Please return by email to mary@TNSFamilyLaw.com, or fax to 410.339.5298 or mail to –

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