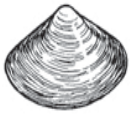
Family Law News

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

Maryland State Bar Association, Inc. May 2008

Table Of Contents



EDITOR: WALTER A. HERBERT, JR.

CHAIR'S MESSAGE - MAY 2007

It is with very mixed feelings that as my term as chair of the Family Law Section Council comes to an end, I write this final message. My feelings are mixed for several reasons: on the one hand, I will be grateful to have the time back to spend on my practice that I have devoted to the Section Council. On the other hand, however, I have served on the Section Council in two different terms for a total of nine (9) years. My work on behalf of the Section Council has been among the most gratifying moments that I have experienced as a lawyer.

Each year, the activities of the Section Council become more demanding and time consuming, but the results are worth those efforts as our visibility and credibility as a section increases. This year, we had attempted to build upon the tradition of hard work of prior Section Councils and prior chairs, to expand the Council's visibility and activities. Many section members have heard me on any number of occasions talk about how important our legislative efforts are, and I cannot leave without reiterating that notion. Over the last several years, we have made a concerted effort to become more proactive in Annapolis. Past messages have detailed the hard work and unbelievable amount of time required by this activity. Those efforts continued this year, when the Section Council was part of a larger group in promoting and "sponsoring" a statute that would have codified existing case law regarding custody for the very first time. While those efforts failed this year, it was an important effort, and at least began a discussion of a very important topic. Undoubtedly, those efforts will continue in the future, and will actually be the focus of our annual program. We also continued to reach out to individual legislators in an effort to educate and impress upon legislators who have no professional experience in family law, of the importance and ramifications of what they do, and that family law legislation deserves a reasoned discussion with some deference to those of us who work and live in the trenches on a daily basis. In addition to our legislative efforts, we continue to be a co-sponsor of the MICPEL family law programs, and had another very successful year, including record attendance at Family Law University. The Family Law Newsletter, thanks to the herculean efforts of Walter Herbert, continues to expand and be among the most well received newsletters of all of the sections. Walter also has begun to add to and work with the folks at MSBA to redesign our portion of the website to make it more interesting and educational. We have made a special effort this year to reach out to individual section members, local bar associations and the like. These efforts have included Section Council members reaching out to younger lawyers who have posted inquiries on the listserv in an effort to share the benefit of our experience with them and to help to steer them in the right direction. I have traveled to individual family law committees of various bar associations in different areas of the state, and by the time of publication of this edition of the newsletter, a survey of all section members will have been launched on the listserv in an effort to determine what section members would like to see with respect to section activities. Space does not permit me to list in excruciating detail all of the time and effort involved in all of these activities, but suffice it to say that it was only made possible by the dedicated efforts of the very able and talented lawyers of the Section Council. It has been my distinct honor and privilege to have served with the present and past members of the Section Council. There is simply no easy way for me to express my gratitude and appreciation to them for all of their time, effort and energy that has made the work of the Section Council the success that it is and that it will undoubtedly continue to be in the future.

The Family & Juvenile Law Section is one of the most active, important and necessary sections of the Maryland State Bar Association. I urge those who are not members to join this section; those who are members to get involved with the section's activities; and those who are involved to do even more. We really do make a difference, and we must continue to do so.

Marc B. Noren
Chari 2007-2008
Baltimore, MD

DISCLAIMER

Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Maryland State Bar Association, its officers, Board of Governors, the Editorial Board or the Family & Juvenile Law Section Council.

The FJLSC makes every effort to check the accuracy of the articles submitted, but does not warrant accuracy.

LEGISLATIVE COMMITTEE UPDATE

By: Dorothy Fait

I know you members of the Maryland State Bar Association Family Law Section have been waiting with baited breath to find out what good things the Legislature did for us this session. The short answer is: not much. On the positive side, several bills we supported did make it through and will be signed by the Governor.

The following Bills passed:

HB 149 was basically a technical amendment to existing law concerning the fees of a Best Interest Attorney. The Bill provides that counsel fees for a Best Interest Attorney may be assessed against one or more parties to the action (not just the parents). HB183/SB392 provides that law enforcement has the right to use reasonable force to enforce custody provisions contained in a Protective Order. HB182 provides that a permanent Protective Order may be issued in a case if the individual against whom the original Protective Order was entered was convicted and served a term of imprisonment of at least five years for the underlying designated serious crime that led to the issuance of the Protective Order in the first place.

Bills which were supported by the Family Law Section, but which did not pass were more numerous. The most important Bill which we supported and did not pass was HB1147, relating to child custody determinations. This Bill was a detailed codification of the existing case law regarding the factors a Court is to consider in making a custody determination. Many believed there was simply not enough time to educate the Legislature on the background and necessity for the Bill. The Bill will be studied over the Summer, amended as necessary, and re-introduced after sufficient time to educate various members of the Legislature on the Bill. HB500/SB516, the so-called "paternity rape" Bill failed again this year. This Bill would provide that the father of a child who committed a specific sexual crime against a child's mother would be excluded from participating in guardianship, adoption, or custody proceedings. HB 181/SB394 was defeated and would have provided that a temporary Protective Order in favor of a victim be issued automatically once the abuser had been arrested. HB1116/SB700 was defeated and would have provided for GPS monitoring once there was a violation of a Protective Order for certain respondents. HB1257/SB615 was defeated and would have provided that in addition to other relief a respondent, in a Protective Order proceeding, could be ordered to remain away from a pet or service animal of the victim. Various gun bills which would have provided the confiscation of firearms in a Temporary Protective Order and the restriction on the possession of firearms in a final Protective Order were also defeated.

(continued on page 33)

Message from the Editor

Are we going to see you at the beach in June? We have our usual extravaganza planned for June 13, yes I know, Friday the 13th, seems appropriate. We have our business meeting, legislative up-date and The Show…hope to see you there!

We continue the work of revising our MSBA webpage, trying to make it more useful, and in the next few weeks we hope to complete this phase. Look for more articles, the Chair's current message, and a deeper archive.

We cover quite a few topics in this issue. We have Morriah Horani on dividing the pets during divorce, Stuart Skok returns with an article on indefinite alimony and Ellen Callegary on school discipline hearings. Our former Chair Leslie Billman reviews a recent, hair-raising AGC case and Steve Moss discusses appellate practice.

Enjoy, and let's see you in OC.

Herbertlaw@att.net
301.952.0707

Next issue: September 2007

Website of the Month

www.dumblittleman.com

"Welcome to Dumb Little Man. Each week we provide a handful of tips that will save you money, increase your productivity, or simply keep you sane."

They do, too: recent topics include…
"Ten Things You Can Do To Cheer Yourself Up"
"7 Insanely Simple Ways to Ensure Your Projects Get Done"
"11 Odd But Simple Ways to Improve Your Health"

Bonus Site:

www.compujurist.com

The blog of Nerino Petro, Esquire, the Practice Management Advisor of the State Bar of Wisconsin.
"Legal Tech, Practice Management and Items of Interest to Lawyers"

Legislative Update...

(Continued from page 3)

Toward the close of the Legislative session, a Bill which the Family Law Section opposed was filed. HB1605 would have provided that a Court be prohibited from granting a decree of divorce to any individual on the grounds of voluntary separation or two years separation, unless the other party agreed, if the parties had a child or one of the parties was pregnant. Thankfully, this Bill was defeated almost immediately.

While it is difficult to predict what Bills may be filed in the 2009 Legislative session, we do know that a comprehensive child support revision Bill, with new guideline numbers will be filed. It is also predicted that some form of the custody Bill will re-emerge for the Legislature's consideration. One of the things that the Family Law Section Council has been discussing for the last several years is proposing a Bill which would require the Court to issue an Order, along with the service papers, in a domestic relations case, ordering all parties to refrain from expenditures other than for reasonable and ordinary living expenses. Many states issue these types of Orders in order to establish a *status quo* for purposes of future litigation.

The Family Law Section Council appreciates any questions or comments with regard to legislative issues. If any member of the Family Law Section has an idea for legislation which would benefit the practice of family law, please feel free to contact me directly at: (301) 2510100 or by email at: dfait@faitandwise.com with your thoughts.

News from the Center for Families, Children and the Courts

The University of Baltimore School of Law's Center for Families, Children and the Courts (CFCC) is a national leader in promoting the concept of a unified family court (UFC) system informed by a therapeutic and ecological perspective. This framework enables the court to address family law matters holistically. CFCC brings the classroom into the community by creating relationships with neighborhoods, the court system, and local and national foundations. In turn, the community is linked to the law school classroom through the CFCC Student Fellows Program—an experiential course described below that is offered by the law school to students interested in family law and its practical applications.

CFCC operates community-based projects, including the Truancy Court Program (TCP), now in its third year of operation. Truancy and its impact have become a topic of great interest in Baltimore and throughout Maryland. CFCC is spearheading efforts to keep the issue at the forefront of Baltimore City's agenda. Funded by the Annie E. Casey Foundation, CFCC has convened two truancy roundtable discussions that have brought together Baltimore community leaders to discuss developing and implementing a continuum of interventions and services for truant students and their families. CFCC plans to release a report on the roundtables this month, including recommendations for spearheading and creating a full range of truancy intervention initiatives.

CFCC has developed partnerships both with local court systems, by way of its collaboration with Maryland's Administrative Office of the Courts (AOC), as well as with efforts across the country. The Maryland court partnership involves funding from the AOC to support the TCP (along with funding from the Charles Crane Family Foundation); the Unified Family Court Connection, a national newsletter on Unified Family Courts (UFC); and The ABA/CFCC Summit on Unified Family Courts Final Report.

CFCC plans to publish the third edition of its newsletter, Unified Family Court Connection, this spring. It includes a preview of Professor Barbara Babb's updated national survey of UFCs, an article on substance abuse and family courts, and an article describing the use of technology to enhance court operations, among others. The newsletter, the only one of its kind in the nation devoted exclusively to UFCs, is a source of valuable information for family court judges, court personnel, academics, and lawyers. CFCC has received numerous requests for copies of this publication and has an extensive mailing list that includes a wide network of constituents.

The ABA/CFCC Summit on Unified Family Courts Final Report, due for publication in May, includes a complete summary of the proceedings of the successful co-sponsored May 2007 "ABA/CFCC Summit on Unified Family Courts: Serving Children and Families Efficiently, Effectively and Responsibly." It also includes articles focused on topics discussed at the Summit, such as court evaluative protocols, judicial leadership, state-specific approaches to UFC structural and functional issues, and research findings with respect to court-related parenting programs.

CFCC staff members have engaged in consulting projects on a national scale. Recently, a team of three traveled to Memphis, Tennessee, to make a presentation on UFCs to the Shelby County Family Court Task Force, family and juvenile court judges, law enforcement officials, and attorneys.

The CFCC Student Fellows Program is an innovative law school course that provides students with theoretical and experiential learning. The theoretical component of the program includes an in-depth exploration of the UFC model and its various applications in state court systems, the ecology of human development and its relationship to improved family law jurisprudence, and an overview of therapeutic jurisprudence and its relevance to family law decision-making and family court function.

In sum, CFCC's activities embody its commitment to improve the family justice system by educating law students, practicing lawyers, judges, court personnel and community service providers about innovative court structures and programs that are informed by a multidisciplinary theoretical perspective. CFCC's partnerships with community leaders, agencies, local and state governments, and institutional funders enable CFCC to have a positive impact on the theory and practice of family law.

For further information about CFCC or for copies of any of its publications, please contact us: Barbara Babb, bbabb@ubalt.edu; Gloria Danziger, gdanziger@ubalt.edu; Judith Moran, jmoran@ubalt.edu. Also, please visit our website: www.ubalt.edu/cfcc.

MARK YOUR CALENDARS:

Prince George's County Bar Association
Family Law Committee

Our section meets on the third Wednesday of each month at 4:45 p.m. in the Circuit Court Law Library. Each meeting includes a Guest Speaker . . . all are welcome. Upcoming topics include:

June 18: TBA
July: No Meeting
August 20: Planning Meeting

For Information Contact:
PGCBA, Family Law Committee
Co-Chair: *Justin J. Sasser, Esq.* 301.627.4300
Co-Chair: *Elveta M. Martin, Esq.* 301.322.2711

Anne Arundel County Bar Assocaition
Family Law Committee
2007-2008 AGENDA

MAY 2008: Issue Roundup: Contempt (When it is useful & effective); Granting an award of attorney fees (When it is appropriate); Legislative & Case law update.

JUNE 2008: End of year social meeting at Galway Bay and election of officers for 2008-2009 committee year.

*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.

2007-2008 Officers
Jennifer L. Merrill, Chair
Timothy Thurtle, Secretary
Erin Darner Gable, Assistant Chair
Robert Erdmann, Assistant Secretary

Howard County Bar Association
Family Law Committee

May 30, 2008, 1-4:30 p.m. Howard County Public Schools building, Route 108, A program on contested custody cases. We will have a speaker from the National Family Resiliency Center to speak on impact of contested custody on children; a demonstration of a collaborative law interaction; a panel discussion on which cases are appropriate for BIA or for custody evaluation; and a Q and A with the Howard County judges and masters on contested custody issues.

Meetings are held on the second Friday of the month in the jury assembly room of the Howard County Circuit Court. Lunch is available for $6.50 with prior RSVP. RSVPs should be sent to HCFLC@agclaw.com.

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

Baltimore County Bar Association
Family Law Committee

Family Law Committee Forum: Third Party Custody and Visitation: Koshko v. Haining Update and Status
May 22, 2008, 4:30PM
Circuit Court for Baltimore County, Courtroom No. 2
Speaker: *Hon. Robert N. Dugan*, Case Law Update
Speaker: *Richard Jacobs, Esquire*, Legislative Update Master *Richard Gilbert*
BCBA members Free, Non-members $15

Kristine K. Howanski, Esquire
Law Offices of Kristine K. Howanski, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(O) (410) 296-8166, ext. 102
(F) (410) 296-4527

Montgomery County Bar Association

May 2, 9:00 a.m.: Family Law Section: A Symposium on Defining the Family: Marriage, Civil Unions, Same-Sex Marriage, Domestic Partnerships and More

(continued on page 8)

Divorce Gets Even Hairier: Pets and Marital Dissolution

By: Morriah Horani

Pets are becoming the new beasts of burden in divorce as more and more couples wage bitter wars over their animals. Much of the conflict stems from genuine care, concern, and love litigants have for cherished family pets. Indeed, some have reported spending in excess of $140,000 on pet-focused divorce litigation. (Sally Kalson, "When Marriages End, Who Gets the Pets?" Oakland Tribune, July 2, 2006.) Unfortunately, Pets can also be used to avenge a partner, and sparring over pets in court and in divorce negotiations appears to be an increasingly viable and employed method of antagonizing a partner. This practice is exemplified by a report that one woman secured "custody" of her husband's dog only to have it promptly euthanized after the divorce became final. (P.J. Huffstutter, "Wisc. Divorce Bill Sets Rules for Pet Custody,"Los Angeles Times, July 15, 2007). Whatever the motivation of the contesting parties, it is undeniable that issues surrounding pets are becoming considerably more conspicuous in divorces and, consequently, more relevant to family law practitioners.

The rising number of domestic disputes involving pets—which range from the pedestrian cat, dog and bird, to frogs (Ann Hartwell Britton, Bones of Contention: Custody of Family Pets, 20 J. Am. Acad. Matrimonial Law 1, 3 (2006)) and even wallabies (In the Matter of Patchett, 964 P.2d 1114 (Pa. 1998))—dovetails with petkind's contemporary, landmark success in human society. People are hiring clergy to officiate at their pets' funerals (Carol Morello, "For Furry Family Members, Religious Rites of Passage," The Washington Post, September 4, 2005), retaining psychics to commune with their pets' inner beings (Alexandra Zissu, "After the Breakup, Here Comes the Joint-Custody Pet," The New York Times, August 22, 1999), and even straightening their pets' teeth with animal orthodontia (http://www.dentalvet.com). For their pets, Americans spend billions annually (Helena Oliviero. "Who Gets Fido?" Atlanta Journal Constitution, April 12, 2006). The veterinary industry has not only survived five former recessions, but is projected to keep growing through the looming 2008 economic downturn. (Reshma Kapadia, "Oasis of Growth,"SmartMoney, April 2008).

The law has, to some degree, begun to track this unabashed animal enthusiasm. Family law jurisprudence is one area that is participating in this ideological transformation. Recent cases from around the country seem to be straddling two competing philosophies about the disposition of pets in divorce. The traditional view (adopted by Maryland, Virginia, and the District of Columbia) considers pets as units of personal property—no different than a fishing pole or a mattress. In this ideology, pets must be categorized as marital or separate property and disposed of accordingly. In Maryland, if both of the parties own the pet, a court, under MD. CODE ANN. FAM. LAW §8-202(2002) may only "order a partition or a sale instead of partition and a division of the proceeds," which puts pet owners in quite an untenable position.

The alternative viewpoint eschews this static standard in favor of a more sensitive approach, often touted as "the best interest of the pet" test (Elizabeth Paek, "Fido Seeks Full Membership in the Family: Dismantling the Property Classification of Companion Animals by Statute, 25 U. Hawaii L. Rev. 481-524 (2003); In re the Marriage of Stewart, 356 N.W.2d 611(Iowa 1984); Raymond v. Lachmann, 264 A.D.2d 340 (N.Y. 1999)). A facsimile of the ubiquitous best interest standard applied in child custody cases, the best interest of the pet test asks where and with whom the pet would have the best life. It requires the judge to evaluate work schedules, domiciles, attachment, availability of medical care and the like. Even evidence about who paid the vet bills, cleaned up the messes, and ingratiated themselves more successfully with the pet may all be relevant to issues of pet custody, pet visitation, and even pet support. This can involve making documentaries of the pet's daily life, hiring animal behaviorists to perform "bonding" analyses, (Danna Harman, "A Fiercer Battle in Today's Divorces: Who'll Get the Pooch?" The Christian Science Monitor, January 26, 2004) and subpoenaing veterinarians.

Most trial courts that adopt the best interest test are deviating from existing statutes and case law, and many appellate courts have reversed decisions based on the best interest test. However, appellate courts in the D.C. metro area have issued opinions that recognize this tension between the mind of the law and the heart of the matter, such as in the recent Supreme Court of Virginia case, Kondaurov v. Kerdasha, 629 S.E.2d 181 (Va. 2006) where the Court remarked: "an emotional bond may exist with a pet resembling that between parent and child, and the loss of such an animal may give rise to grief approaching that attending the loss of a family member. The fact remains, however, that the law in Virginia…regards animals, however beloved, as personal property." (See also, Pederson v. Wirth, 2003 D.C. Super. LEXIS 33).

With courts laboring under antiquated and conceptually limited laws surrounding pets, some legislatures, such as Wisconsin's, have tackled the problem head-on. Wisconsin 2007 Assembly Bill 436 authorizes parties to request determination of pet placement in a suit for divorce. Under this bill, the trial court may not order shared placement without agreement of both parties, but may transfer the pet to one party or compel the animal to be surrendered a local humane society. The Michigan legislature introduced a similar measure (HB 5598). Both bills, as of March 2008, were still in committee.

(continued on page 8)

Divorce Gets Even Hairier...

(Continued from page 5)

In addition, bills concerning pets and domestic violence have been gaining popularity and momentum in legislatures as of late; the aforementioned Michigan and Wisconsin bills both have provisions prohibiting judges from placing pets with a party restrained under a protective order. Connecticut recently passed a law (SB 215, Public Act No. 07-78) that makes pets eligible for relief in protective orders. Similarly, Maryland Senate Bill 615 (cross filed with House Bill 1257) grants judges the authority "to order a respondent to remain away from a certain pet or service animal, to refrain from cruelty or aggravated cruelty toward the pet or service animal, or, in certain circumstances, to give the pet or service animal to a certain person." The Council of the District of Columbia considered a bill (B17-0089) with a comparable clause in 2007.

Thus, although change appears to be on the horizon, the current state of the law regarding pets makes it risky to bring a pet issue before a judge in a divorce case, both because the law is still evolving and because many judges still refuse even to entertain such matters. (See Britton at 5 on uninterested judges). Settlement is almost always the better approach. Practitioners should start thinking of pets as cogs in the wheel of divorce negotiation. Consider the example of a Tennessee couple who agreed that the husband would pay $30 a month in pet support ("petimony") for the balance of the family dog's life in exchange for the Wife's waiver of a portion of his retirement account. (See Britton). In addition, other couples have purportedly wagered cars, cash payments, and season tickets for rights to a pet. (See Oliviero).

Even when parties settle, however, they may still end up in court over enforcement issues. Courts appear to be more willing to enforce agreements providing for pet custody, visitation, or support than to adjudicate parties' rights to an animal companion in the first instance. (Bennett v. Bennett, 655 So.2d 109 (Fla. 1995)). Maryland law furnishes avenues for incorporating settlement provisions regarding pets into divorce decrees in MD. CODE ANN. FAM. LAW §8-101(2006) (permitting husband and wife to "make a valid and enforceable settlement… of property rights, or personal rights"), which courts "may enforce by power of contempt" under MD. CODE ANN. FAM. LAW §8-105(2006) if incorporated in the decree. Evidence indicates that Maryland judges have exercised these powers to enforce animal-related settlement provisions. For example, in the Montgomery County Circuit Court, Judge S. Michael Pincus enforced a custody and visitation order providing for summer visitation with a dog despite the wife's refusal to abide by the order because she claimed that the husband had negligently let the dog ride in the trunk of his car and eat a plastic garbage bag, necessitating emergency surgery. (Katherine Shaver, "Whose Best Friend is She Anyway? Divorce Judge Asked to Enforce Visitation—for Pet Dog," The Washington Post, December 4, 1999 pg. A01.)

In sum, pets are stampeding their way into family disputes and courts of law. It is time that domestic attorneys take note, prepare to incorporate pet-based conflicts into their practices and galvanize legislatures to find solutions to legal pet issues. Despite the folly of it, with its flock of innocents and recession-proof character, a pet-conscious domestic practice may not be for the birds after all.

Morriah Horani is an associate in the Divorce and Family Law group at Pasternak & Fidis, P.C. in Bethesda, Maryland. Ms. Horani received her A.B. in Public Policy and American Institutions from Brown University and her J.D. and health law certificate from the University of Maryland School of Law. She is admitted to practice in Maryland and Virginia.

Mark Your Calendars...

(Continued from page 6)

Planning Committee

Bar CLE Classroom

June 26, 5:30 p.m. Family Law Section Planning Meeting for all Committee members and those interested in joining a Committee

Section Co-Chairs:
Vicki Viramontes-LaFree, Esquire
Pasternak & Fidis, PC
7735 Old Georgetown Road, Suite 1100
Bethesda, Maryland 20814-6183
Tel (301) 656-8850; Fax (301) 656-3053
vlafree@pasternakfidis.com

Stuart Muntzing Skok, Esquire
Gimmel, Weiman, Ersek, Blomberg & Skok, P.A.
4 Professional Drive, Suite 145
Gaithersburg, Maryland 20879
Tel (301) 840-8565; Fax (301) 590-9784
sskok@gweblaw.com

School Discipline: What To Do When the Call Comes in that Your Child (or Client) Has Just Been Suspended from School

By: Ellen A Callegary, Esq. and Sally Fite Stranfield, Esq.[1]

I. Introduction

This Article provides a brief overview of the school discipline process in a Maryland public school setting.[2] Because there are greater legal protections for students with disabilities under the Individuals with Disabilities Education Act (IDEA)[3], we walk you through two scenarios – the first scenario describes the discipline process for a student without a disability and the second scenario describes the process and protections available for a student with a disability.

A. Scenario 1 (Student in Regular Education with no Disability):

Seventeen year old Suzy Student proudly drives the family station wagon to Jolly Acres High School on the Friday before the big Memorial Day Weekend and parks in the school lot. When Assistant Principal Ida Rule walks to her car during her brief lunch break, she can't help but notice the case of National Bohemian Beer in the back of Suzy's car. The next thing Suzy knows is that she is in the Principal's office being suspended after hearing the announcement "will the owner of a blue Ford wagon with tag number Y., please come to the office." What should Suzy do? What are her rights? Should she give a statement? Call her parents? Call a lawyer?

Answer: She should ask to call her parents and have someone with her during questioning. She should not give or sign any statements until she has had a chance to consult with her parents or an attorney. Depending on the local public school system's policies, she could be suspended and then, recommended for expulsion[4] for possessing alcohol on school grounds.

B. Possible Disciplinary Actions: Suzy could receive an in-school suspension for up to ten days, a short term suspension for up ten days, an "extended" suspension and/or be expelled. Suzy's possession of alcohol on school property may form the basis for the harshest penalty which is expulsion.

C. Due Process Rights? Yes, Suzy actually has some due process rights.[5] Every local school system has a slightly different approach to discipline. It is essential that you obtain a copy of the local school system's regulations in the county or city where the alleged violation occurred.

II. Summary of Due Process Rights for Non-disabled Student

A. In summary, Suzy's rights are: 1) Notice - oral or written notification of the alleged disciplinary violation; 2) "Promptly" Given a Conference with the Principal -usually within 3-5 days and includes student and parents. At that time, Suzy has the right to an explanation of the evidence supporting the disciplinary action and must be given an opportunity to present her side of the story.

B. Additional Due Process Rights for Suspensions of More than 10 Days or Expulsion: If "extended" (greater than 10 days) suspension or expulsion is recommended by the Principal, Suzy has much greater due process rights than if a short-term or in-school suspension is recommended. In those cases, the principal must immediately send a written report to the local superintendent. Once the report is received, the local superintendent or designee must promptly make a "thorough investigation" of the matter. If the local superintendent or designee finds that a longer suspension or expulsion is warranted, a conference must be arranged with the student and the student's parent.

C. Practice Tip: As a practical matter, most of these conferences are held with the superintendent's designee rather than the superintendent. These conferences are usually held in an informal manner with the student, her parents and, in Suzy's case, Ida Rule who would present Jolly Acres perspective on the beer in the car, Suzy's school record and any prior disciplinary infractions. This would be the second time[6] for Suzy's parents to explain that they, not Suzy, purchased the beer and accidentally left it in the car in preparation for the Memorial Day Weekend "down the Ocean".

D. Appeal Rights If Superintendent's Designee Finds that Extended Suspension or Expulsion is Warranted: If the designee finds that a suspension of more than 10 school days or expulsion is warranted, the student or the student's parent may:

(1) Appeal to the local board of education within 10 days after the determination;

(2) Have a Hearing before the local board or its designated committee; and

(3) Bring counsel and witnesses to the hearing. The decision of the local board is final. However, the student can appeal to the State Board of Education or to Circuit Court. The possible grounds for Appeal are:

Whether the local school board violated state or local law, policies or procedures?

(continued on page 9)

The Birthday List

April

Vera Jayne Palmer: Singer, actress, gifted comedienne…she studied drama and physics at SMU and later starred on Broadway in Will Success Spoil Rock Hunter and won a Golden Globe for The Wayward Bus. The first mainstream actress to do a nude scene, in Promises!Promises!, she was said to have an IQ in excess of 160 and to speak 5 languages. Her career only took off after she left her first husband, Paul Mansfield: she did keep his name and it was as "Jayne Mansfield" that she died in an automobile accident in 1967.

Bonus Point: Three of Mansfield's children were with her when her car hit a tractor-trailer, all survived including the youngest, Mariska: we know her as Mariska Hargitay, and she's the female lead on Law & Order: SVU.

May

T. Berry Brazelton: Pediatrician and Author, awarded the Library of Congress Living Legend award, author of What Every Baby Knows and Infants and Mothers, creator of the Brazelton Neonatal Assessment Scale (BNAS), a tool to assess the physical and neurological responses of newborns. "Babies are born with a strong individuality and their behavior provides their parents with many clues."

A. Mitchell Palmer: The Fighting Quaker, Attorney General of the United States under President Woodrow Wilson and arch opponent of anarchists and communists everywhere…apparently they felt the same about him, as they destroyed his Washington, D.C. home with a firebomb placed on his front porch and twice tried to assassinate him…Developed the plan for "The Palmer Raids" with J. Edgar Hoover, these raids and seizures resulted in the arrest of over 10,000 radical leftists and communists, the largest mass arrest in U.S. history…it's just never a good idea to bomb the AG's house…

School Discipline...

(Continued from page 7)

Whether the local school board violated the due process rights of the student?

Whether the local school board acted in an otherwise unconstitutional manner?

III. Scenario 2 (Students with Disabilities in Public Schools)

Little Ricky is a 4th grader in the Farm Elementary School who has recently been diagnosed with ADHD. He's an engaging, adorable child. During Little Ricky's early years at Farm Elementary, he had minor conflicts with other students and his teachers were frequently reminding him to "pay attention". Three months into 4th grade, Little Ricky had already been suspended twice: once for defying teacher directions; and the second for kicking a student while waiting in line to enter the cafeteria for lunch. Three days before winter break, Little Ricky and a student at the adjacent desk, were "getting into it" when the teacher's back was turned. The boys' behavior escalated, culminating in Little Ricky's punching Freddie in the eye.

A. What should the parents do? What are Little Ricky's rights?

Answer: Little Ricky should immediately ask to call his parents and not write a statement. He should ask to have a parent with him before he talks to school staff or to a police officer. Depending on school policies, the police may be summoned to assume responsibility for the investigation. As soon as possible after Little Ricky's parents are notified, they should tell the school that Little Ricky is not to be questioned and is not to write any statement until a parent or an attorney is present.

B. Possible Disciplinary Actions: All of the same disciplinary options described in Scenario 1 are available in this Scenario even though Little Ricky may be a student with a disability. He simply has more protections during the disciplinary process than Suzy has. Little Ricky's prior suspensions and the seriousness of his punching Freddie in the eye may provide the school system with a sufficient basis to seek a long-term suspension or expulsion.

C. Who is entitled to the additional protections afforded to students with disabilities? If Ricky has been identified as a "student with a disability"[7] through an IEP Team Process,[8] he is entitled to these additional protections. Even though Ricky has been diagnosed with ADHD, he is not considered to be a "student with a disability" under IDEA unless the IEP Team determines that his ADHD is having an adverse impact on him in school. A student with a disability is treated the same way as students without disabilities for suspensions of not more than 10 consecutive school days.[9]

D. Students with Disabilities Who Are Not Yet Eligible for Special Education: If Little Ricky has not been determined to be a "student with a disability" by an IEP Team, he will be treated the same as a child without disabilities who has violated the school disciplinary code unless he meets the criteria outlined in this section. Even if Little Ricky has not yet been identified as a "student with a disability", he may be eligible for these additional protections during the disciplinary process if: (1) His parent wrote to supervisory or administrative personnel of the school system or his teacher that Ricky needs special education and related services because of his ADHD; (2) His parent requested an evaluation of Ricky; or (3) Ricky's teacher or other school personnel expressed specific concerns about Ricky's pattern of behavior to the director of special education or other supervisory personnel.[10]

E. Change of Placement – Suspensions of greater than 10 days: If Ricky is suspended for more than 10 days, this action is considered a change in school placement and additional protections are triggered. An IEP Team Meeting must be held within 10 days to determine whether his behavior was a manifestation of his disability.

F. "Manifestation Determination" Meeting: The underlying reason for the "manifestation determination" process is to prevent the punishment of students for behaviors that arise from their disabilities and to encourage the school team to focus on proactive measures to help the student. At a manifestation determination meeting, the IEP team must determine whether Ricky's behavior was: (1) caused by or had a direct and substantial relationship to his disability; or (2) the direct result of the public agency's failure to implement his IEP.[11] If Ricky's behavior is determined to be a manifestation of his disability, the IEP Team must conduct any assessments needed to develop and implement a behavioral intervention plan and return him to his school unless his parent and the school agree to a change of placement.[12] Even if Ricky's behavior was found not to be a manifestation of his disability, he still must be provided a free appropriate public education (FAPE).[13]

G. Drugs, Weapons or "Serious Bodily Injury" Exceptions: A student with a disability may be sent to an "interim alternative educational setting" for up to 45 days if, while at school, on school premises, or at a school function, the student:

(1) Carries or possesses a weapon; (2) Knowingly possesses or uses an illegal drug; (3) Sells or solicits the sale of a controlled substance; or (4) Inflicts serious bodily injury on another person.

(continued on page 10)

School Discipline...

(continued from page 9)

None of these exceptions would apply to Ricky's case. His punching of the other student does not meet the definition of "serious bodily injury" which requires a severe degree of harm.[14] If the student's behavior meets one of these exceptions, the IEP team determines the interim alternative educational setting where the student is placed for up to 45 days. The setting must enable the student to progress in the general curriculum; receive the services and modifications included in the student's IEP; meet the goals of the student's IEP; and receive services and modifications designed to address the behavior to prevent its recurrence.[15]

H. Dangerousness Exception and Expedited Due Process Hearing:

If the school system believes the behavior of a student with a disability is likely to result in injury to the student or others, it may request a due process hearing to seek the removal of the student to an interim alternative educational setting. The school system may request an expedited due process hearing, if it believes that it is dangerous for the student to be in the current placement during the pendency of the due process hearing. Under this dangerousness provision, an administrative law judge may order a change in placement to an interim alternative educational setting for not more than 45 school days.[16]

[1] As attorneys in the law firm of Callegary & Steedman, P.A., Ellen A. Callegary and Sally Fite Stanfield represent children and adults with disabilities throughout Maryland.

[2] In this Article, we are not discussing the protections that students with disabilities have in private schools under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and in public schools (and federally funded private schools) under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.

[3] 20 U.S.C. §1400 et seq.

[4] A 'Expulsion' means "the removal of the student from the student's regular school program and may be further defined by a local board of education." COMAR 13A.08.01.11

[5] "Each local board of education shall adopt a set of regulations designed to maintain an environment of order and discipline necessary for effective learning. These regulations should provide for counseling and standards for appropriate disciplinary measures, and may permit suspension or expulsion." Id.

[6] The first time for this explanation would have been in the meeting with the Principal at Jolly Acres High School. Obviously, the Principal did not believe their story or is choosing to ignore it and that is why Suzy's case is now before the superintendent's designee.

[7] "Student with a disability" means a student who has been evaluated as having at least one of the following disabilities: Autism, Deaf-blindness, Emotional disturbance, Hearing impairment, Mental retardation, Multiple disability, Orthopedic impairment, Other health impairment, Specific learning disability, Speech or language impairment, Traumatic brain injury, or Visual impairment, and who, because of the impairment, needs special education and related services. COMAR13A.05.01.03B

[8] "IEP team" means a group of individuals responsible for: (a) Identifying and evaluating students with disabilities …"; An IEP is an "Individualized education program" for a student with a disability that is developed, reviewed, and revised by an IEP Team to meet the student's needs. Id.

[9] COMAR 13A.08.03.03A

[10] COMAR 13A.08.03.10

[11] COMAR 13A.08.03.08

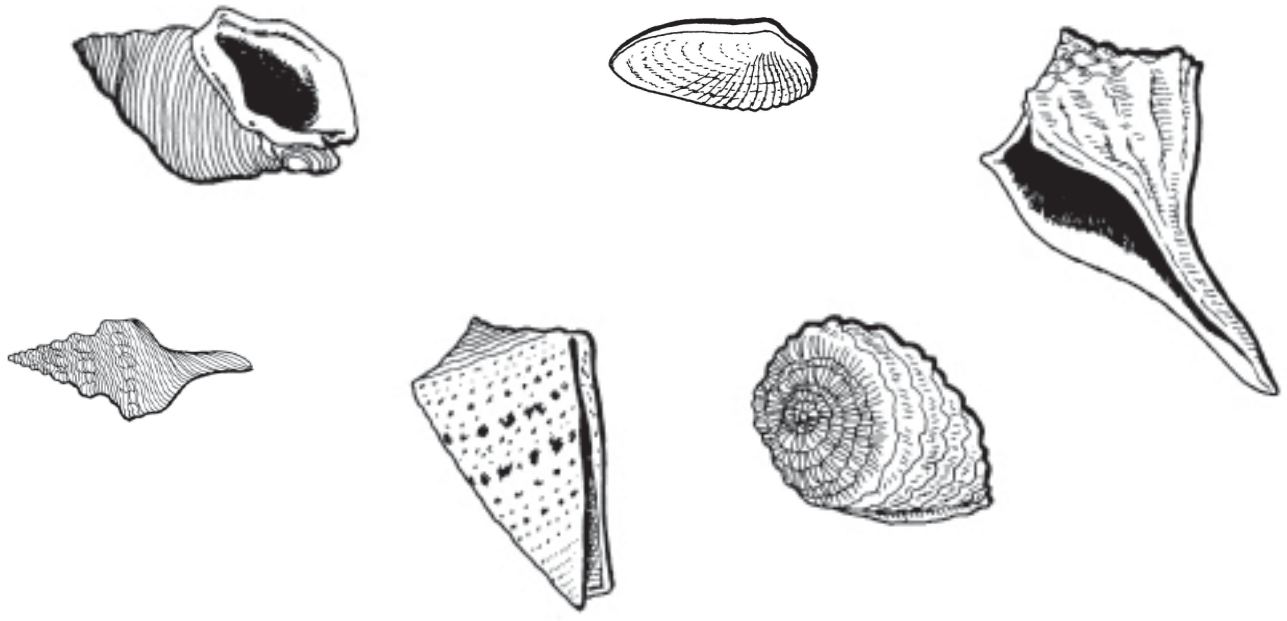
[12] Id.

[13] "Free appropriate public education (FAPE)" means special education and related services that are provided at public expense. COMAR13A.05.01.03B

[14] "Serious bodily injury" means an injury inflicted on another individual that results in a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty

[15] COMAR 13A.08.03.06; A student with a disability may be removed to an interim alternative educational setting without regard to whether the behavior is determined to be a manifestation of the student's disability.

[16] Id.



Call to Service: Judicare Opportunites for Family Law Attorneys

By: Harriet Robinson

In response to the critical need to assure the administration of justice for low-income litigants so that they have appropriate representation in divorce, custody, visitation and other contested family law matters, the Maryland Legal Services Corporation (MLSC) in partnership with the Administrative Office of the Courts (AOC) has revived the "Judicare" program, which was so successful in the 1970s and 1980s.

Access to lawyers for contested family law cases is critical for litigants to achieve just outcomes and equally important for the judicial system and society as a whole. Recent reports by the Maryland State Bar Association and the Maryland Judiciary document the plight of self-represented family litigants, unmet legal needs of low-income persons in the state and the past success of efforts by lawyers paid reduced fees to serve low-income persons who otherwise would be unrepresented.[1]

The revival of the Judicare model in its present form compensates private attorneys accepting Judicare cases in family law matters at the rate of $80 per hour with a cap of $1,600 for 20 hours of work. Furthermore, the project will pay an additional $80 an hour, up to an additional $800 ($2,400 total cap), for every hour over 25 hours that the attorney spends on the case (thus 5 hours must be pro bono).

This updated Judicare program presents a wonderful opportunity for the private bar to help fill the gap of unrepresented low-income clients. The benefits of this delivery model to Judicare attorneys are guaranteed compensation, support of litigation expenses, malpractice insurance and mentoring support if needed. In order to be a panel member, attorneys must be licensed in Maryland and either have family law experience or be supervised or mentored by an experienced family law attorney. Participating attorneys must affirm that they are in good standing and have not been disciplined by the courts or Attorney Grievance Commission.

In January 2008 MLSC and AOC began the Judicare Family Law Pilot Project, initially funding legal services organizations serving Allegany, Harford, Prince George's and Washington Counties[2] to administer the project and screen and place cases in cooperation with local bar associations, family courts and pro bono committees. The pilot project, which will soon be expanded to Baltimore City, Montgomery County and five counties on the Mid-Shore, will continue through June 2009. AOC will conduct an evaluation of the pilot project with the anticipation of expanding services to all jurisdictions in the future.

Since 1999, through a project initiated by MLSC and AOC, services have been provided throughout the state by private attorneys representing low-income persons in complex child custody cases at significantly reduced rates.[3] The Judicare Family Law Pilot Project is an extension of these services to litigants in any contested family law matter. In FY 2007, over 200 private attorneys handled 366 contested custody cases throughout the state for reduced fees.

In a recently reported case, a private, reduced-fee attorney helped a single mother get custody of her two children. The father, to whom she was never married, was subject to a protective order and incarceration for significant violence during the relationship. The children had witnessed the domestic violence and required therapy. The father, represented by an attorney, filed for joint physical and legal custody or alternatively open and reasonable visitation. The mother was fearful of him, and although a good witness when prepared, she really needed the assistance of an attorney to keep her focused on the proper issues when on the stand. The reduced-fee attorney was able to convince the court that joint legal or physical custody was not proper or in the best interests of the children in this case, and that supervised visitation was appropriate given that the children had not seen their father in 3 years, coupled with their witnessing the domestic violence and the therapy needed as a result. The court ordered 1-day-a-week supervised visitation with a review by the court in 6 months.

Although this is a fairly routine case for a family law attorney, a self-represented litigant would likely have difficulty in achieving these results, while also placing an undue burden on members of the bench and our state's entire judicial system.

MLSC is issuing a "Call to Service" to all family law practitioners to participate in the Judicare project. The reduced fees you will be paid for your services will be justly supplemented with the gratification that comes from making a significant contribution to access to justice for low-income family law litigants.

Harriet Robinson is deputy director of the Maryland Legal Services Corporation, which was established by the Maryland General Assembly in 1982 to receive and distribute funds to nonprofit organizations that provide civil legal assistance to low-income persons

[1] Final Report and Recommendations on the Potential Use of Private Lawyers, Michael Millemann, University of Maryland School of Law for Maryland State Bar Association Section Council on Delivery of Legal Services and the Administrative Office of the Courts, May 2007; Clearing a Path to Justice: A Report of the Maryland Judiciary Work Group on Self-Representation in the Maryland Courts, Maryland Judiciary, August 2007.

[2] The four pilot projects to expand representation in family law matters at reduced fees from January 1 through June 30, 2008 were awarded to Allegany Law Foundation, Community Legal Services of Prince George's County, Harford County Bar Foundation and Maryland Volunteer Lawyers Service for a pilot in Washington County.

[3] A complementary component of the Child Custody Project is operated by the Legal Aid Bureau through staff attorneys in various county offices.

CLE Notes: Indefinite Alimony (According to Judge Patrick L. Eoodward, Court of Special Appeals of Maryland)

By: Stuart Muntzing Skok, Esq.

On November 15, 2007, the Honorable Patrick L. Woodward, Court of Special Appeals of Maryland, presented a Breakfast CLE on "Indefinite Alimony" to a packed room in the Montgomery County Bar Building. Did you miss this seminar or forget all of the practice pointers? If so, here is a summary, with the Judge's gracious permission to paraphrase his comments, on how preparation of an indefinite alimony case is as "simple" as:

I. Reading 5 Cases:

There are countless reported cases on alimony in Maryland and you can most certainly find a case to support your particular facts. However, if you want to know the status of the current law on indefinite alimony, nothing more or less, then read the following five (5) cases:

Roginsky v. Roginsky, 129 Md. App. 132 (1999) [indefinite alimony was appropriate where the standard of living during the marriage was not enjoyed by either party prior to the marriage and was established during the marriage with the joint efforts of the parties].

Solomon v. Solomon, 383 Md. 176 (2004) [the court must determine whether and the extent to which the spouse seeking alimony contributed to the other spouse's success in building a career; if an unconscionable disparity of income exists, the court's award of alimony must "fix" the disparity – does this create a "third" step in determining indefinite alimony?].

Simonds v. Simonds, 165 Md. App. 591 (2005) [the court erred in denying indefinite alimony to the wife given the vast disparity of income, duration of marriage, husband's adultery and the wife's primary care of the children].

Hart v. Hart, 169 Md. App. 151 (2006) [the court must make a finding of disparity of income in order to award indefinite alimony].

Whittington v. Whittington, 172 Md. App. 317 (2007) [a marriage type relationship may be considered for determining future resources for purposes of alimony but does not create a waiver of alimony; the court must exercise discretion in awarding alimony].

II. Preparing a Proof Chart:

With all of the statutory and case law alimony factors, one way to prepare your case is to outline the evidence in a Proof Chart. On page 32 is a copy of the sample Proof Chart provided at Judge Woodward's program, revised after the program to add some of his additional comments during the program.

III. Hiring An "Effective" Vocational Expert/Counselor:

When reviewing the cases on alimony, the awards can often be attacked on appeal for lack of expert testimony to support findings on current and future earning capacities of both spouses. Too often, the future earning capacity of the payor spouse is overlooked because of the focus on proving the earning capacity of the recipient spouse. Just as the payee's income may increase in the future, affecting that spouse's future standard of living, the payor's income may likewise increase, raising his/her future standard of living.

To be an "effective" expert in the case of the recipient spouse, consider hiring a Vocational Rehabilitation expert not just to pull job listings (which the client can do without an expert) or just to rebut the payor's expert, but also as a "counselor" to help the payee develop a realistic career plan, from which the future earning capacity can be established. In many cases, the payee spouse has "no plan" because the parties had "agreed" that spouse would not have to work, that spouse gave up a career to raise the children, that spouse has not been in the workplace for many years and, as a result, that spouse does not believe returning to the workforce should be required.

The problem with the "no plan" approach is that the Court is left to speculate on what is or is not realistic for the payee spouse, leaving open the possibility of appeal, reversal and remand of the award for lack of evidence. The court must make a finding on the earning capacity of the payee spouse, so if you represent that spouse, you should act proactively with experts to put forth proof in support of the finding that best serves your client's interests.

IV. Offering Alimony Guidelines:

There are two (2) Alimony Guidelines – the American Academy of Matrimonial Lawyers (AAML) Guidelines and the Kaufman Guidelines (also referred to as the Women's Law Center Guidelines – the organization that funded the independent research and development). By the time this article goes to print, the Kaufman Guidelines, which are in the form of a user friendly computer program, may already have been circulated to MSBA members for attorneys, masters and judges to download.

(continued on page 14)

CLE Notes...

(continued from page 10)

Each of the Guidelines offer a different approach to formulating recommended alimony in a particular case. The AAML Guidelines is primarily a mathematic formula that calculates the alimony amount by multiplying the payor's gross income by 30% and deducting 20% of the payee's gross income (or potential income). The duration of alimony is determined by multiplying a fraction by the number of years, with marriages over 20 years recommended for indefinite alimony. There are "deviation" factors in the Guidelines that can be argued to increase or decrease the recommended award.

The Kaufman Guidelines takes an approach that considers various factors, including payee's education and skills, custodial status, tax status, incomes from all sources and child support Guideline expenses paid by each spouse. With the data, the program provides estimated "net" income after recommended alimony, child support and taxes are deducted from both spouses' incomes. The program recommends the amount and duration of alimony based on the data provided.

The AAML Guidelines produce higher alimony awards than the Kaufman Guidelines, and of course there is no "right" or "wrong" formula. The problem with there being no "right" or "wrong" formula is that there is no predictability of alimony awards in court, which makes settlement out of court particularly difficult. One way to increase predictability is for practitioners to start using the Alimony Guidelines in negotiations and offering them in Court in argument. If the Court relies upon the Guidelines, which many Judges are already doing, a case will eventually go up on appeal for the appellate courts to give us guidance on the Guidelines and may lead to judicially mandated Alimony Guidelines. There is a slim likelihood that Alimony Guidelines will be mandated through legislation.

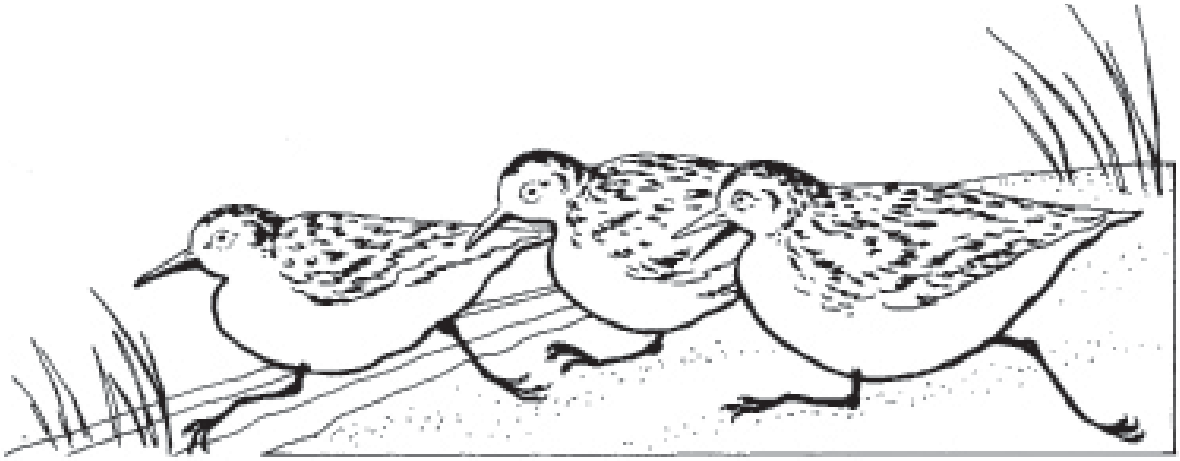
But is there a "legal" basis to offer Alimony Guidelines at trial since they are not endorsed by the Courts? As a matter of fact, there is. Under Family Law Article, §11-106(b), the rehabilitation factors that must be considered in determining rehabilitative or indefinite alimony are non-exclusive: "the court shall consider all the factors necessary for a fair and equitable award, including…." Therefore, Alimony Guidelines may be offered as an "other" factor for determining a fair and equitable alimony award.

V. Avoiding "Too" Much Zealous Advocacy:

Is there such a thing as too much zealous advocacy? Unfortunately for Mrs. Whittington in Whittington v. Whittington, just one word was too much according to the Court of Appeals. At the trial level, counsel for Mrs. Whittington argued that the income disparity is so unconscionable ($150,000 verses $35,000), that the Court "must" award indefinite alimony. The Judge accepted counsel's argument and stated in his opinion that the "Court finds that not only is alimony appropriate in this case, it finds that indefinite alimony is required." (Emphasis added) Whittington, 172 Md. 317, 334. Since the record did not reflect the Judge exercising his discretion in awarding alimony, the case was remanded for further proceedings.

Practice considerations: Read fewer cases, focus on the factors that are required, organize your evidence, hire effective experts, use Alimony Guidelines, be careful how you say what you want and, if you do just these things, you will save time preparing your alimony case, insulate your award from being overturned or remanded on appeal and might settle it out of court (so says Judge Woodward).

Stuart Muntzing Skok is a principal in the Law Firm of Gimmel, Weiman, Ersek, Blomberg & Skok, P.A. www.gweblaw.com, 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:
WHO'S YOUR DADDY?

By: Justin J. Sasser

BURDEN v. BURDEN, CSA No. 0077, September Term (2008)

Hot off the presses is a case that deals with disestablishment of paternity, DNA testing, and Conflict of Laws. But for the fact that this case involves South Dakota, it almost sounds like an episode of CSI. Mt. Rushmore's many faces are a mere foreshadowing of the convolutions of the Conflict of Laws analysis performed by our Court of Special Appeals. In a mortal attempt to reduce to clarity the obfuscated principals of Conflicts of Law analysis as it applies to paternity and the support obligation flowing there from, I give you:

BURDEN v. BURDEN, CSA No. 0077, September Term (2008)

ISSUES ON APPEAL:

1) "Whether the Trial Court's finding, by implication, that the Appellee's paternity had not been established under the laws of South Dakota was clearly erroneous?"

2) "Whether the Trial Court erred in failing to give full faith and credit to the acts and records of the State of South Dakota Health Department?"

BACKGROUND/ PROCEDURAL POSTURE:

In 2000 in South Dakota, Husband, Michael L. Burden, with the consent of his then Wife, Christine R. Burden, signed and filed with the South Dakota birth records agency a voluntary acknowledgement of paternity of a child born to Wife before the couple had met. Subsequently the parties separated, Husband relocating to Florida, and Wife relocating to Baltimore, Maryland. A divorce action was filed by the Wife six years later in Maryland, including therein a request for child support for the child that Husband previously voluntarily acknowledged as his own. The trial court for Baltimore County, Maryland denied ordering support from Husband because the child was not his biological offspring, and based upon the fact that the South Dakota paternity affidavit and birth certificate were not court judgments to which full faith and credit could potentially be applied. In rendering its opinion the Court of Special Appeal of Maryland considered the two issues on appeal as one, and rendered its opinion as such.

HOLDING:

1) & 2) Yes. Reversed and Remanded. South Dakota and Maryland statutes providing for voluntary acknowledgement of paternity, that are entitled to full faith and credit, are conditions of federal funding for child support enforcement. The federal statute required participating states to limit disestablishment of paternity to challenges filed within sixty (60) days of acknowledgement, except for fraud, duress, and material mistake of fact. Under the South Dakota statue, acknowledgement of paternity became conclusive three years thereafter. If the Maryland statute applies, there is no evidence of fraud, duress, or material mistake of fact.

DISCUSSION:

Wife contended that the presumption of paternity, arising from Husband's acknowledgement, was irrebuttable because the time set under pertinent South Dakota statues 9A South Dakota Codified Laws (SDCL) (1999 rev., 2007 supp.) §25-8-52 and §25-8-59 concerning "Rebuttable presumption of paternity – signed and notarized affidavit" and "Actions contesting rebuttable presumption of paternity" had passed.

At issue are the following laws:

Article IV, § 1 of the Constitution of the United States reads: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Social Security Act, Subchapter IV "Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services," Part D, "Child Support and Establishment of Paternity." 42 U.S.C. §651 et seq., as revised by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the Federal Act), P.L. 104-193, effective July 1, 1997.

9A South Dakota Codified Laws (SDCL) (1999 rev., 2007 supp.)
§25-8-52 "Rebuttable presumption of paternity – signed and notarized affidavit"
§25-8-59 "Actions contesting rebuttable presumption of paternity"

Maryland Code (1984, 2006 Repl. Vol.)
Family Law Article
Subtitle 10, "Paternity Proceedings"
Subtitle 5, § 5-1048 and § 5-1028(d) "Children"

(continued on page 17)

Case Notes- Who's Your Daddy? . . .

(continued from page 16)

Under 42 U.S.C. §666(a), each state, in order to qualify for federal funds, must have in effect laws requiring the use of statutorily prescribed procedures to improve the effectiveness of child support enforcement. In addition to genetic testing, these procedures include, under §666(a)(5)(C) and (D), voluntary paternity acknowledgment. The ultimate issue before the Court was whether the purported Father, in Maryland, may disestablish paternity, based on the agreed fact that he is not the biological father of the child at issue, the natural fatherhood that he voluntarily acknowledged in South Dakota. This raised the question, "Which state's law applies?" In evaluating this Conflict of Law as to the appropriate state's law to be applied, either that of South Dakota or Maryland, the CSA looked to 42 U.S.C. §666(a)(5)(C)(iv) regarding Title IV-D child support and paternity cases, FL § 5-1048 which regards the application of 42 U.S.C. §666(a)(5)(C)(iv) in Maryland, and the pertinent South Dakota laws concerning paternity and the disestablishment thereof.

In evaluating South Dakota law, ultimately the CSA held that South Dakota treats the presumption of legitimacy as unrebuttable after three years, and that it would not decline to apply that state's conclusive presumption statute to a voluntary acknowledgment of paternity in a case raising no constitutional issues.

In evaluating Maryland law, the CSA held that FL § 5-1048 which states that " a finding of paternity established in any other state shall have the same force and effect in a proceeding under this subtitle as in any other civil proceeding in this State." As such FL § 5-1028(d) is applied which holds that an executed affidavit of parentage constitutes a legal finding of paternity, subject to the right of any signatory to rescind the affidavit in writing within sixty (60) days after execution of the affidavit or in a judicial proceeding relating to the child in which the signatory is a party, and that occurs before the expiration of the 60 day period. After the expiration of the 60 day period, an executed affidavit of parentage may be challenged in court only on the basis of fraud, duress, or material mistake of fact. The CSA, finding that none of these thing occurred, reversed the trial courts finding that child support was barred due to the lack of biological connection between the Husband and the child, and remanded the matter for further hearing.

Practice Consideration:

It is prudent to advise clients as to the non-biological parent's potential liability for the future support of children that they "acknowledge" as their own, even though these children are not their biological issue. It is highly unlikely that a non-biological father shall be able to "disestablish" paternity after the statutory period allowing disestablishment to run. The subject case speaks only to the resolution of the conflict of laws between Maryland and South Dakota, however, as all states who receive federal assistance for child welfare programs have very similar laws, it is highly likely that this would be the ultimate outcome of any other dispute regarding the disestablishment of paternity. The moral of the story is that if you intend to step up and "do the right thing" by acknowledging children that are not your natural issue, then you are likely to be held to that decision regardless of your actual biological connection to the child(ren) at issue.

Justin J. Sasser, LLC is located in Upper Marlboro, Maryland, and is a member of your Family and Juvenile Law Section Council focusing his practice in the area of Family Law. If you have any questions or comments related to this article, he can be reached at (301) 627-4300 or jsasser@chesapeake.net

(continued on page 10)

CASE NOTE

Afaf Nasser Khalifa, et al v. Michael Shannon,

No. 56, September Term 2007 (Court of Appeals, APril 9, 2008)

On April 9, 2008, the Court of Appeals of Maryland issued an opinion in the case of Khalifa, et al v. Shannon, which will have wide spread implication throughout the practice of family law. The Court upheld the lower court's ruling of a jury award of over three million dollars ($3,000,000.00) for a father when his former spouse unlawfully absconded with the parties' two minor children to Egypt. In upholding the lower court's ruling, the Court recognized the tort action of interference with custody and visitation rights of children. In appealing the jury's award, the Defendants asked the Court to address the following issues:

(1) Did the trial court commit reversible error when it denied the defendant-appellants' motion to dismiss Count One of the Complaint by recognizing the tort of interference with custody and visitation rights of children?

(2) Did the trial court commit reversible error when it denied the defendant-appellants' motion to dismiss Count Two of the Complaint by recognizing the tort of civil conspiracy?

(3) Did the trial court commit reversible error when it denied the defendant-appellants' motion for a new trial, and/or for remittur, because the punitive damages awarded by the jury were grossly excessive and there was no evidence on the record of defendant-appellants' ability to pay?

Michael Shannon and Nermeen Khalifa were married on March 3, 1996 and two children were born as a result of the marriage, Adam Osama Shannon on February 9, 1997 and Jason Osama Khalifa on January 10, 2001. In January of 2000, prior to the birth of Jason, the parties separated. Following Jason's birth in February of 2001, the parties entered into a Consent Order resolving the custodial issue of their two sons. Mr. Shannon was to have sole custody of Adam with visitation rights with Jason and Nermeen was to have sole custody of Jason with visitation rights with Adam. Six (6) months after the Consent Order, Nermeen's mother, Afaf Nassar Khalifa flew to Washington, D.C. Thereafter, the grandmother and Nermeen asked permission for both boys to visit with cousins in New York City to which Mr. Shannon agreed. Without consent or knowledge, the grandmother and Nermeen had previously arranged for the boys to fly to Egypt and they have never been returned to the United States or to their father. At the time of their abduction, Jason was four (4) years old and Adam was eight (8) months old. Following the abduction, the grandmother, Afaf Nassar Khalifa was extradited to Maryland and was sentenced to a ten (10) year prison sentence which was reduced to three (3) years.

In March of 2004, Shannon initiated a civil suit against his former spouse, Nermeen Khalifa, her mother, her father, Mohammed Osama Khalifa, and her older sister, Dahlia Khalifa. The Complaint included four counts: (1) Interference with Custody and Visitation Rights of Children, (2) Civil Conspiracy, (3) Loss of Society of Children, and (4) False Imprisonment. The grandmother was served with the Complaint while serving her jail sentence and by court order Nermeen was served by alternate service by publication in the Cairo Times. The complaints against the father and sister were dismissed. Both the grandmother and Nermeen moved to dismiss the Complaint for lack of personal jurisdiction and insufficiency of service of process. Nermeen also moved for dismissal for lack of subject matter jurisdiction, and failure to state a claim upon which relief can be granted; the trial court denied all the motions. The case went to trial in December of 2006. Only the counts of Interference and civil conspiracy were forwarded to the jury. After deliberating, the jury awarded Shannon $17,500 in attorney fees and costs; $500,000 in compensatory damages against each defendant; $900,000 in punitive damages against the grandmother and $1,100,000 in punitive damages against Nermeen. The court denied the defendants' motions for new trial and remittur. The Court of Appeals issued a writ of certiorari prior to any proceedings in the Court of Special Appeals.

Appellants argue that Maryland does not recognize the tort of interference with custody and visitation and if Maryland does recognize the tort, then the lower court should have dismissed the action because Shannon must plead and prove a loss of a child's services. The Court examined and explored the fact that our common law is a derivative of English common law.

One of the earliest and most frequently cite case on abduction is from South Carolina, Kirkpatrick v. Lockhart, 4 S.C.L. (2 Brev.) 276 (1809). This case was primarily concerned with whether the tort of abduction should be plead in trespass vi et armis or in trespass on the case. However, the Court emphasized that this case was based on a 1600 English case of Barham v. Dennis, 78 Eng, Rep. 1001 which held that a father could "sustain an abduction action not only for his son and heir, but for the abduction of any one of his children."

In examining prior Maryland case law, the Court referred to Baumgartner v. Eigenbrot, 100 Md. 508, 60 A.2d. 601 (1904) in which an aunt, who had legal custody, sued a married couple with whom the child had chosen to live with. In this case, the lower court did not allow the case to go to the jury as no force was used but that the court had acknowledge the viability of the claim. Several other states have also recognized the vi-

(continued on page 19)

Case Notes- Khalifa v. Shannon . . .

(continued from page 18)

ability of a the tort of abduction, North Carolina in Howell v. Howell, 78 S.E. 222, (N.C. 1913) and New York in Pickle v. Page, 169 N.E. 650 (N.Y. 1930).

"What we glean from these case, and in particular those case discussing the English common law, is that the torts of abduction and harboring existed in England prior to 1776, and that, therefore, we adopted them as part of our common law under Article V of the Maryland Declaration of Rights, which states in pertinent part that 'the Inhabitants of Maryland are entitled to the Common Law of England…according to the course of Law, and to the benefit of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six.' "

The second question that was present to the Court by the appellants was whether Shannon was required to plead and prove an economic loss of services by the child in order to maintain an action for interference. Old English common law required a party to plead their cause of action in trespass which contained two subparts: (1) trespass on the case or (2) trespass vi et armis ("with force and arms" or simply trespass). When the cause of action was based on trespass on the case the parent's recovery for damages was tantamount to the right of master to sue for injury to his servant. An action in simply "trespass" was premised on the injury to the parent. "A cause of action alleging abduction in trespass, therefore, included allegations that the father was directly wronged by the abduction because he was deprived of the comfort and society of the child, which as lawful custodian he had the right to expect and enjoy." The Court explained that the archaic requirement of choosing whether to plead trespass on the case or simple trespass which forced a parent to choose between claiming damages directly related to his loss of comfort and society with the child and claiming damages for loss of services "no longer serve to define the elements of the tort of interference with a parent-child relationship and loss of services was never a substantive element."

Next, the appellants argue that Shannon cannot maintain an action for interference with Jason as he only had visitation rights and was not the custodian of the child. The Court held that visitation privileges with a child instilled in the parent a legal right and the interference by another was synonymous to destroying a pre-existing legal right.

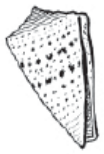
Lastly, the appellants challenge the court's refusal to reduce the amount of damages awarded by the jury as the amount was excessive. In reviewing punitive damage awards, the Court referred to nine, non-exclusive, legal principles. The Court addressed seven of the nine principles.

(1) The defendant's ability to pay;
(2) The relationship of the award to statutorily imposed criminal fines;
(3) The amount of the award in comparison to other final punitive damage awards in the jurisdiction, and in particular, in somewhat comparable cases;
(4) The gravity of the defendant's conduct;
(5) The deterrent value of the award both with respect to the defendant and the general public;
(6) Whether compensatory damages, including litigation expenses, sufficiently compensate the plaintiff;
(7) Whether a reasonable relationship exists between compensatory and punitive damages.

In addressing the first principle, the Court noted that according to unconverted testimony, Shannon testified as the extreme wealth of the Defendants. The appellants contend that in referring to principle two, the jury award is 180 times greater than the criminal fine of $5,000. The Court held that because "the fine called for under Section 9-307(b) of the Family Law Article bears no relationship to the purpose for committing the crime of abduction, which is aimed at individuals, and the fine is nominal in relation to the three-year prison sentence, it is not helpful in determining the appropriateness of punitive damages here." Next, the court addressed the appellants' contention that the punitive award is excessive in comparison to other awards and in reviewing prior precedent, the court concluded that the damages were not.

In addressing the last four principles, the Court highlighted that the Defendants' conduct in this case was particularly heinous and that neither of the Defendants have taken any action to rectify the situation. The Court noted that the high punitive award could be a deterrent for other individuals who are considering engaging in this type conduct. In speaking to Shannon, the Court empathized that no amount of damages would be able to compensate him for the loss of society and companionship that he has suffered at the hands of the Defendants.

In a concurring opinion by Judge Raker, she disagreed with the Court interpretation of Hixon v. Buchberger, 306 Md. 72, 507 A.2d 607 (1986) and asserted that the Court did not recognize the cause of action. However, Judge Raker contends that if the Court wants to recognize a new cause of action then they can do so but it should be stated and reasons for it provided.


Nightmares

By: Leslie Billman, with Michael McCarthy

The stuff I was scared about in college still comes back in nightmares to torment me, lo, these decades later. More often than seems warranted, I awake in the middle of the night having dreamed the same dream: it is the last semester and graduation looms, but my failure to attend a mandatory astronomy class star-gazing field trip has just been announced to me as the reason for my ineligibility for graduation. No amount of cajoling, begging, pleading, or offers of vast sums of money serve to sway a rigid and unyielding administration. I burst into tears as my classmates begin their victorious march into the crowded stadium to the familiar melody of Pomp and Circumstance. That's usually when I wake up, haunted by the past, and concerned that the stuff I'm scared about now will permeate my dreams into my (fast-approaching) dotage. If that silly astronomy thing has plagued this current phase of my life, will the law stuff wake me up, terrified, when I'm 90? Will I trade a stern college administrator for a leering Mel Hirschman in my nightmares at the nursing home? Heaven help us all. Please, please, can someone direct us to a guidebook for behavior now, as practicing lawyers, that will assure us sound, uninterrupted sleep during the next phase of our lives?

The answer is good news: yes, there is such a guidebook. The bad news, however, is that the guidebook takes the form of the unusually long (70 pages) and painful attorney grievance case of Attorney Grievance Commission vs. Kreamer, recently reported on April 17, 2008, and available for download from the Maryland Judiciary website. The case is painful because it chronicles the sad demise and disbarment of one of our own. It is unusually long because unfortunately, and for probably very complex reasons perhaps unrelated to the practice of law, the attorney violated an incredibly long list of tenets of the Rules of Professional Conduct as to a rather broad spectrum of clients, and many of the violations occurred more than once. The only good that comes out of it is that we can learn from it and save ourselves from sleepless nights in assisted living. What follows is a catalogue of reminders and lessons for family law practitioners lifted from the pages of Attorney Grievance Commission vs. Kreamer. As used below, MRPC stands for Maryland Rules of Professional Conduct.

MRPC 1.1 – Competence : As to one of her clients, Ms. Kreamer, not understanding the operation of the Maryland Child Support Guidelines, simply invented her own formula. While this is creative, it is appallingly and incomprehensibly incompetent to blunder ahead to the detriment of a client when confronted with an unfamiliar legal concept. Know that you don't know, and either seek assistance from a mentor in the form of a more experienced and knowledgeable attorney, or turn the matter over to someone else. (Also, recognize that it is probably always bad judgment to invent your own substitutes for binding statutes, but that is perhaps too obvious to merit committing to print…). The Attorney Grievance Commission also took a rather dim view of Ms. Kreamer's failure to advise a client of a court Order for three months after its entry and deemed that failure to be incompetence. Ms. Kreamer was also found to have been incompetent as to a different client for her failure to appear at a hearing, and for her failure to appear at a conference, despite being counsel of record. It's always a fairly sound practice to show up at scheduled court appearances; with the advent of cell phones, at the very least it is possible at almost any time to notify the court of your flat tire, your aunt's sudden death, or of the traffic jam on the Beltway. Do yourself a favor and be in court when you're supposed to be there, and call when the unavoidable is going to make you late.

MRPC 1.3 – Diligence: Ms. Kreamer failed to act with diligence with regard to at least three clients. "Diligence" is one of those terms they played with you about in law school. If you fail to begin work on a new client's case within two days of retention, have you failed to act with due diligence? Two months? Two years? Where is that line? Ms. Kreamer's failure to take action on a client's behalf for over a year was deemed violative; similarly, she was found to have failed to act diligently after telling a client in September of one year that she would start on the Separation Agreement, but did not actually start working on it until April of the following year. Begin working on a matter "when retained", says the Court in Kreamer. You probably have a day or two, but if you let months go by, your night nurse at the Home will be trying to calm you after your nightmares…

MRPC 1.4 – Communication: Here's one for night terrors: Ms. Kreamer did not provide her client with accurate billing statements, failing to bill one client for ten months, and that was deemed to have been a violation of her obligation to maintain communication with her client. She did the normal scary stuff, like failing to return phone calls, but in her case, she failed for five months to return a phone call. Again, this is like prunes: is one enough; are six too many? Just where is the line? Obviously, the answer is different for each case. We've all had clients who generate three (or more) emergencies per day. You simply have to pay attention and be responsive in accordance with the client and the situation if you want to stay out of trouble.

MRPC 1.5 – Fees: Money is the root of all evil, as the saying goes. Ms. Kreamer engaged in some questionable (well, ok,

(continued on page 21)

Nightmares . . .

(continued from page 20)

completely unacceptable) billing practices such as charging for file organization and, most astonishingly, billing for billing, which is to say that she charged a client for the time she spent calculating how much the client owed. Understandably, as she apparently only engaged in billing every ten months, it would have been quite time consuming as she raked through old records reconstructing the time she had spent. However, time-consuming as it might have been, it was deemed to have been unbillable. She also charged the client for that invention and application of her own child support formula. That, too, was deemed to have been, um, wrong.

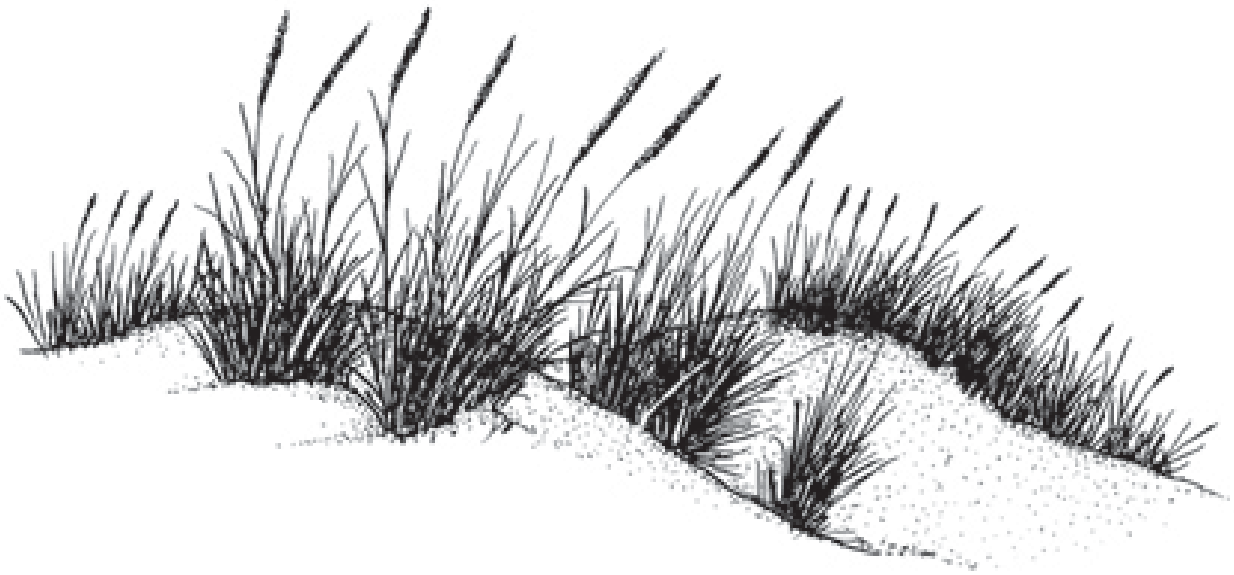
MRPC 8.4 – Misconduct: Separate and apart from the fee violations cited above, Ms. Kreamer was found to have taken money from a client, having no intent to pursue his case, and needless to say, the Attorney Grievance Commission (AGC) had a bit of a problem with that. The AGC was also less than thrilled about her having told a client that she was waiting for a ruling by the Court on something that she had in fact failed to file at all.

I am not making this up. All of the above violations (and more) were cited in one disbarment case. A second case, Attorney Grievance Commission vs. McCulloch, was published on the MSBA website within weeks of the Kreamer case, and I broke out in a sweat, reading about many of the exact same violations, which resulted in the disbarment of Ms McCulloch as well. It thus appears that reminders such as this are warranted and necessary.

My eighth grade health teacher once noted that mental illness is normal behavior, taken to extreme. I daresay we all put off phone calls, put unpleasant tasks on the back burner, and confer "creatively" with clients when we aren't sure what the answer is. At some point, however, those "normal" practices, if taken to the extreme, become actionable and have the potential for taking away your livelihood and for changing your life forever. The Kreamer case is a collection of normal practices, taken to the extreme, which had the unfortunate consequence of costing Ms. Kreamer her law license.

Be vigilant. You have undertaken a huge responsibility to represent clients and you must do so diligently, competently, and in compliance with our Rules of Professional Conduct. Chances are, if you start feeling uncomfortable about something in your practice, you should pay attention to it and take immediate steps to resolve the discomfort. Ignoring it can lead to and be that which causes your own demise. Let's face it, if it's making you uncomfortable now, you'll be dreaming about it long after it has ceased to matter, much like me, wishing I'd just sucked it up and gone on the damned Astronomy field trip and saved myself countless nightmares. I implore you to read the Kreamer case and learn from it. It's pretty clear I'll have plenty of my own troubles staying asleep at the nursing home; I don't need you in the next room screaming from your own night terrors.

Leslie Billman, Esquire, is the former Chair of the MSBA Family & Juvenile Law Section Council; she practices in Annapolis, Maryland with Trainor, Billman, Bennett, Milko & McCabe LLP, Michael McCarthy, Esquire, is an associate with the firm.



Appellate Procedures and Strategies in Maryland Domestic Relations Cases

By: Stephen Moss, Esq.

This article examines the various appellate opportunities currently available in Maryland, both under its statutes and case law. Special emphasis is made of the means to appeal in domestic relations cases, particularly thru interlocutory appeals.

Before proceeding with our legal analysis, we should consider how to enhance your chances of success and the strategic aspects of a domestic appeal. An appeal should not merely be the reaction to an adverse decision. Rather, a successful appeal is planned from the moment a case is accepted. Pragmatically, the cost of a potential appeal must be factored into your fee arrangements with the client. More importantly, a potential appeal must be considered when you establish your client's objectives and how you will accomplish them. Does Maryland law currently support your theory of the case and if not, what do you need to do to enhance your chances of a persuading a trial judge or appellate tribunal that the law should provide the remedy or benefit you desire for the client. Predicates for a successful appeal are established at the outset and your willingness to go to the "appellate mat" will, by itself, enhance your chance for a successful result, either by an appellate decision or settlement obtained due to your pursuit of an appeal.

Not enough has been said of the impact that an interlocutory appeal can have on the trial and divorce process. Many appeals are not resolved for a year or more. During this time, the desire of a client to move on with his or her life or, indeed, re-marry must be put on hold. More significant is the fact that during this time marital property may be consumed or will be developed thru the accumulation of income or assets, either of which can affect a monetary award. While a simple solution is bifurcation of the issues, permitting the separate trial of the divorce, this approach is burdensome to the courts and not generally acceptable to our administrative judges. More problematic is the stress on the trial court by having to consider delaying a trial while an appeal proceeds. Because of a desire to timely try cases, and maintain statistical parity with other counties, trial courts are reluctant to stay trials pending appeal. This is likely to promote error and another appeal, particularly when financial claims are the subject of an interlocutory appeal. For example, the ultimate monetary award equitably dividing marital property would be significantly affected if it turns out that one party owes the other thousands of dollars in *pendente lite* support or attorney fees. The net worth of each of the parties and the marital property which they own is materially altered if such an appeal is ultimately successful. And the law has typically required a reconsideration of a monetary award if there is a reversal of any financial issue. See ,e.g., Compolattaro v. Compolattaro, 66 Md. App. 68, 502 A.2d 1068 (1986).

Accordingly, the mere pendency of a *pendente lite* financial appeal unleashes a tidal wave throughout every aspect of a domestic relations case. These forces may or may not be beneficial to a particular client's objectives. By itself, an appeal will alter the strategic balance of a case; it may accelerate on slow the prospect for settlement and will change the posture of the case at final trial.

Thus, a good working knowledge of the appellate process is critical to the success of a domestic relations practitioner. We now explore the bases for appeals in domestic relations cases in Maryland.

I. **Appealable Domestic Relations Orders**: Only a final judgment is appealable with a few exceptions. CJP § 12-301

A. *What is a final judgment?* If a ruling of the court is to constitute a final judgment, it must have at least three attributes:

(1) it must be intended by the court as an unqualified, final disposition of the matter in controversy

(2) unless the court properly acts pursuant to M.R. 2 602(b), it must adjudicate or complete the adjudication of all claims against all parties, and

(3) the clerk must make a proper record of it in accordance with Md.Rule 2 601.

Rohrbeck v. Rohrbeck, 318 Md. 28, 566 A.2d 767 (1989).

B. No just reason for delay

1. You usually cannot appeal an order that adjudicates fewer than all the claims or rights of parties because it is an order that is not a final judgment, ... M.R 2-602(a). An example is East v. Gilchrist, 293 Md. 453, 445 A.2d 343 (1982), where the court held that a counterclaim is not an appealable final judgment if the complaint and counterclaim involve the same facts or the same cause of action. .

2. **Exception**: If a court determines there is no just reason for delay, it can issue a written order that is a final judgment although it addresses fewer than all of the claims or parties to an action. M.R.2-602(b).

C. Final judgments you can appeal

1. **Divorce** - After a final order of a limited or an absolute divorce (even if court reserves any power), this order can be appealed. FL § 8-213(b); Davis v. Davis, 97 Md.App. 1, 627 A.2d 17 (1993).

2. **Domestic Violence Orders** – An appeal de novo may be made to the Circuit Court from the grant or denial of relief by the District Court. Suter v. Stuckey, 402 Md. 211, 935 A. 2d 731 (2007). The appellant may then appeal the decision of the Circuit Court, including thru the

(continued on page 23)

Appellate Procedures . . .

(continued from page 22)

use of an in banc appeal. See Suter v. Stuckey, *supra*.

3. Disqualification of an attorney: This issue can be appealed post trial and the disqualified attorney's former client is given a presumption of prejudice. Harris v. Harris, 310 Md. 310, 529 A.2d 356 (1987)

a. By giving appellant a presumption at post trial appeal, immediate review is not a necessity.

b. The law may differ in District of Columbia.

4. Order of circuit court transferring plaintiff's action to district court upon finding of lack of subject matter jurisdiction based on failure to satisfy amount in controversy requirements completely terminated case in circuit court and was "final judgment" for purposes of appeal. Ferrell v. Benson, 352 Md. 2, 720 A.2d 583 (1998).

5. When a trial court denies an appellant's motion to quash the summons and issues the summons, no issue remains before the trial court and its order is appealable as a final order. Randall Book Corporation v. State, 49 Md.App. 131, 430 A.2d 624 (1981).

6. Trial court order directing arbitration of alimony dispute is a final and appealable judgment. Horsey v. Horsey, 329 Md. 392, 620 A.2d 305 (1993).

D. Appealable interlocutory orders: CJP § 12-303 provides that certain interlocutory orders entered by a circuit court in a civil case can be appealed.

1. If order deprives a Aparent, grandparent, or natural guardian of the care and custody of his child, or chang[es] the terms of such an order,@ it is appealable as an interlocutory order under CJP § 12-303(3)(x). Examples are:

a. An ex parte order in Magness v. Magness, 79 Md.App. 668, 558 A.2d 807 (1989).

b. A *pendente lite* custody award in Shunk v.Walker, 87 Md.App. 389, 589 A.2d 1303 (1991).

c. An order modifying custody.

d. But in Frase v. Barnhart, 379 Md. 100,118 n. 8, 840 A.2d 114 (2003), the Court of Appeals stated "we do not believe the Legislature, in creating this limited exception to the normal rule precluding immediate appeals from interlocutory orders, intended for the custodial parent to be able to take an immediate appeal" from pendente lite custody orders granting visitation.

2. Payments of money under CJP § 12-303(3)(v) are appealable interlocutory orders. Examples are:

a. A *pendente lite* alimony award in Frey v. Frey, 298 Md. 552, 471 A.2d 705 (1984) was appealable.

b. A child support award was appealable in Pappas v. Pappas, 287 Md. 455, 462, 413 A.2d 549 (1980). The Court permitted an immediate challenge to an inadequate support award although "the payment of alimony and child support are not expressly covered by the statute, ... our cases make clear that such orders are orders '[f]or ... the payment of money' under §12-303."

3. "An order entered with regard to the possession of property" under CJP § 12-303(1) is an appealable interlocutory order. An example would be an order granting a party use and possession of the family home under FL §8-208.

4. "An order granting or dissolving an injunction...or refusing to dissolve an injunction," is appealable under CJP § 12-303(3)(i)-(ii).

5. Denial of an immunity claim is an appealable interlocutory order because the right not to be tried is lost absent immediate appeal. Bradley v. Fisher, 113 Md.App. 603, 688 A.2d 527 (1997).

6. An order "granting a petition to stay arbitration pursuant to M.R. 3-208" is appealable under CJP § 12-303(3)(ix). However, a denial of a petition to stay arbitration is not immediately appealable under this section nor under the section of CJP § 12-303(3)(iii) providing for appeal from the refusal to grant an injunction. Town of Chesapeake Beach v. Pessoa Construction Co., 330 Md. 744, 625 A.2d 1014 (1993).

7. "Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order..." CJP § 12-304(a).

a. This section does not apply to an adjudication of contempt for violation of an interlocutory order for the payment of alimony. CJP § 12-304(b).

b. The appeal must be prosecuted by the person adjudged to be in contempt. Becker v. Becker, 29 Md.App. 339, 347 A.2d 911 (1975).

c. If the responsibility to pay the other party's attorney's fees is also imposed on the payor party's attorney, then an order to pay is immediately appealable because the failure to pay could result in the attorney being held in contempt. Yamaner v. Orkin, 310 Md. 321, 529 A.2d 361 (1987).

8. Importantly, an appealable interlocutory order, can be appealed after the case is over, according to M.R. 8-131(d) and Rocks v. Brosius, 241 Md. 612, 217 A.2d 531 (1966).

E. Immediately Appealable Collateral Orders

1. Collateral orders are immediately appealable. To meet the test for collateral orders, four requirements must be met for the order to be final. Harris v. Harris, 310 Md. 310, 529 A.2d 356 (1987); *citing* Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 545 47, 69 S.Ct. 1221, 1225 26, 93 L.Ed. 1528, 1536 37 (1949):

(1) conclusively determines the disputed question,

(2) resolves an important issue

(3) is completely separate from the merits of the ac-

(continued on page 24)

Appellate Procedures . . .

(continued from page 23)

tion, and

(4) is effectively unreviewable on appeal from a final judgment.

2. Denial of motion to enforce settlement immediately appealable under collateral order doctrine. Kinkaid v. Cessna, 49 Md.App. 18, 430 A.2d 88 (1981).

3. Trial court's order, which refused to enforce an executory oral agreement to settle a pending lawsuit, is immediately appealable under collateral order doctrine. Clark v. Elva, 286 Md. 208, 406 A.2d 922 (1979).

4. Trial court's order refusing to rule on an application to adopt, on ground that applicant was not married to natural mother when application was filed, is reviewable under "collateral order" doctrine, as an order which conclusively resolved important question which was totally separate from merits of case, i.e., whether parties could all have same name when applicant and natural mother married. In re adoption No. 9007/2022/CAD in the Circuit Court for Baltimore City, 87 Md. App. 630, 590 A.2d 1094 (1991).

5. An order finding a person in civil contempt is immediately appealable, even if not accompanied by a sanction. Bryant v. Howard County Department of Social Services Ex Rel. Cassandra Costley, 387 Md. 30, 874 A.2d 457 (2005).

F. Final judgments you cannot appeal

1. Consent judgment: no appeal lies from a consent decree: Dietz v. Dietz, 351 Md. 683, 695, 720 A.2d 298 (1998), citing Mercantile Trust Co. v. Schloss, 165 Md. 18, 166 A. 599 (1933).

2. A trial court no longer has jurisdiction to modify a judgment after it has been affirmed on appeal. Buffin v. Hernandez, 44 Md.App. 247, 408 A.2d 393 (1979).

G. Orders not immediately appealable

1. Forum non convenience

a. Order denying change of venue on the ground of inconvenient forum is not immediately appealable. Lennox v. Mull, 89 Md.App. 555, 598 A.2d 847 (1991).

b. Order denying a motion to dismiss civil action on ground of inconvenient forum is not immediately appealable. Pittsburgh Corning Corporation v. James, 353 Md. 657, 728 A.2d 210 (1999).

c. Law may differ in the District of Columbia.

2. Order for a party to pay other party's attorney's fees not immediately appealable. Yamaner v. Orkin, 310 Md. 321, 529 A.2d 361 (1987). But see I(D)(7)(c) of the outline: Note there is a different result when an attorney is also the payor.

3. An order granting or denying the right to remove a civil case from the circuit court of its origin to another court in the State is not immediately appealable. Old Cedar Dev. Corp v. Jack Parker Construction Corp., 320 Md. 626, 579 A.2d 275 (1990).

4. An interlocutory order involving a violation of a privilege is generally not appealable under the collateral order doctrine. See Electronic Data Sys. Fed. Corp. v. Westmoreland Assocs., Inc., 311 Md. 555, 556, 536 A.2d 662 (1988). But see Ashcraft & Gerel v. Shaw, 126 Md.App. 325, 728 A.2d 798 (1999), where the Court found order that violated privilege did meet prongs of collateral order test.

5. "[D]iscovery orders, being interlocutory in nature, are not ordinarily appealable prior to a final judgment...." Montgomery County .v Stevens, 337 Md. 471, 654 A.2d 877 (1995). Though, the Court in Ashcraft & Gerel v. Shaw, 126 Md.App. 325, 728 A.2d 798 (1999), held a discovery order directing a party to produce documents in its possession was immediately appealable because it met the prongs of the collateral order test.

II. What can affect an appeal right?

A. Timely filed motions for judgment notwithstanding the verdict (M.R. 2-532), for new trial (M.R. 2-533), and to alter or amend a judgment (M.R. 2-534) will stay the time of filing an appeal. M.R. 8-202; Davis v. Davis, 97 Md.App. 1, 627 A.2d 17 (1993).

B. Motion seeking reconsideration under M.R. § 2-535 does not toll the running of period for appeal absent order staying effect of final judgment. Hardy v. Metts, 282 Md. 1, 381 A.2d 683 (1978). An appeal from a denial of a motion to revise or "motion for reconsideration," pursuant to Rule 2 535(a), does not serve as an appeal from the underlying judgment.

C. Acceptance of the benefits of the trial court's judgment. The "right to an appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." Rocks v. Brosius, 241 Md. 612, 217 A.2d 531 (1966).

1. Alimony - appellant may appeal alimony award although he or she has accepted alimony payments. Lewis v. Lewis, 219 Md. 313, 149 A.2d 403 (1959).

2. Child support - Court in Dietz v. Dietz, 351 Md. 683, 695, 720 A.2d 298 (1998) in dicta wrote that "Lewis presents a very limited holding circumscribing application of the acquiescence rule in support cases where the support awarded is challenged on appeal." Thus, acceptance of child support payments pending appeal should also fall under this category.

3. Monetary award:

a. Appellant can accept the benefit of a monetary award pending appeal if there is no cross-appeal and the appellant seeks only an increase in an undisputed minimum. This is a case where the wife received a small lump sum portion of her overall award and then fifteen years of monthly payments. Dietz v. Dietz, 351 Md. 683, 720

(continued on page 25)

Appellate Procedures . . .

(continued from page 24)

A.2d 298 (1998).

b. Appellant cannot appeal a monetary award if he has accepted payment of the award in full. Appellant tried two different arguments here. Chimes v. Michael, 131 Md. App. 271, 748 A.2d 1065, cert. denied, 359 Md. 334, 753 A.2d 1031 (2000).

i. Vested v. Nonvested stock options - marital property, no matter the form or proportion, is lumped together for equitable distribution and therefore cannot be separated for attack on appeal if appellant has accepted an award that encompasses all the marital property.

ii. There was no cross-appeal and appellant seeks only to increase an undisputed minimum. Meets standard of Dietz except Court here found that the appellant's acceptance of the entire, large, lump sum monetary award does not have the support-like effect of the payments in Dietz.

4. Multiple awards: "Unless the decree also adjudicates a separate and unrelated claim in favor of a litigant, [a litigant] cannot, knowing the facts, both voluntarily accept the benefits of judgment or decree and then later be heard to question its validity on appeal." Suburban Dev. Corp. v. Perryman, 281 Md. 168, 377 A.2d 1164 (1977).

5. Consent judgment: A party cannot appeal from a judgment entered by consent. Suter v. Stuckey, 402 Md. 211, 935 A. 2d 73 (2007).

III. **Issues to be considered on appeal**: Issues of jurisdiction of trial court may be raised and decided by appellate court whether raised in trial court or not. Typically, all other issues will not be decided by appellate court unless it appears on the record to have been raised in or decided by the trial court. However, appellate court can decide issues to guide the trial court or avoid the delay and expense of another appeal even if not preserved at original trial. M.R. 8-131(a).

IV. **Standards of review**

A. Section 1.01 The clearly erroneous rule

1. Generally, domestic relations cases are usually governed Maryland Rule 8-131(c) since the action is tried without a jury. The appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

2. Definition of clearly erroneous: to be "clearly erroneous," the decision of trial court must have been reached on the basis of facts that are not legally sufficient to support the decision, which makes it a mistake one of law. Danz v. Schaefer, 47 Md.App. 51, 422 A.2d 1 (1980).

B. For alimony, it is important whether you are appealing the grant/refusal of alimony or the amount:

1. If it is the amount, it is clearly erroneous standard. Freese v. Freese, 89 Md.App. 144, 154, 597 A.2d 1007 (1991).

2. If it is the granting or refusal of alimony, it is an abuse of discretion standard. Freese v. Freese, 89 Md.App. 144, 154, 597 A.2d 1007 (1991).

a. The standard is also defined in Brodak v. Brodak: "an alimony award should not be disturbed unless the chancellor's discretion was arbitrarily used or his judgment was clearly wrong." Brodak v. Brodak, 294 Md. 10, 28 29, 447 A.2d 847 (1982). But if the trial court declines to modify alimony as a matter of law, the decision is not entitled any deference. Jensen v. Jensen, 103 Md. App. 678, 654 A.2d 914 (1995).

b. The standard of review for trial court's refusal to grant indefinite alimony is still abuse of discretion standard. Benkin v. Benkin, 71 Md.App. 191, 524 A.2d 789 (1987).

3. The Court in, Caccamise v. Caccamise, 130 Md. App. 505, 747 A.2d 221 (2000), recently upheld the Freese standards for reviewing alimony.

C. Regarding the modification of an alimony award: Blaine v. Blaine, 336 Md. 49, 646 A.2d 413 (1994), is an unusual case illustrating the standard of review because reviewing court is reviewing the trial court's *modification* of a rehabilitative alimony award to an indefinite award. The standard is the same as Freese for reviewing the trial court's decision to grant alimony, which is an abuse of discretion standard.

1. FL § 11-106(c) provides the ability to award alimony for an indefinite period.

2. FL § 11-107(a) provides for the extension of a period of alimony.

D. For child support, the standard for review of the amount awarded is did judge act arbitrarily in administering his discretion or was he clearly wrong. John O. v. Jane O., 90 Md. App. 406, 601 A.2d 149 (1992). *See also* Caccamise v. Caccamise, *supra*.

1. Child support under guidelines is disturbed only if there has been a clear abuse of discretion. Voishan v. Palma, 327 Md. 318, 609 A.2d 319 (1992).

2. It is not an abuse of discretion to include gifts in a parent's actual income when determining the parent's income for child support purposes. Petrini v. Petrini, 336 Md. 453, 648 A.2d 1016 (1994). See FL § 12-201(c)(4)(iii).

E. For modification of child support award, the standard is that an award is left to the sound discretion of the trial court and will not be disturbed unless the discretion was arbitrarily used or the judgment was clearly wrong. Moore v. Tseronis, 106 Md.App. 275, 664 A.2d 427 (1995).

(continued on page 26)

Appellate Procedures . . .

(continued from page 25)

F. For counsel fees, the standard of review for the award or denial of fees is an abuse of discretion standard. Doser v. Doser, 106 Md.App. 329, 359, 664 A.2d 453 (1995). *See also* Caccamise v. Caccamise, 130 Md. App. 505, 747 A.2d 221 (2000); *See also* Petrini v. Petrini, 336 Md. 453, 648 A.2d 1016 (1994), which held that the award of fees will not be reversed unless a court's discretion was exercised arbitrarily or the judgment was clearly wrong.

G. For a monetary award, the standard of review defers if you are appealing the amount or the grant/refusal of the award:

1. The standard of review for amount awarded is clearly erroneous with due regard given to judge's opportunity to judge credibility of the witnesses. Gallagher v. Gallagher, 118 Md.App. 567, 580-1, 703 A.2d 850 (1997).
2. An appellate court should give a trial court's decision to grant/deny a monetary award broad discretion. On this question of review the appellate court need only ask "whether there [wa]s any evidence legally sufficient to support those findings," by the trial court. Long v. Long, 129 Md. App. 554, 743 A.2d 281 (2000).
4. The designation of property as marital will not be set aside on the evidence unless clearly erroneous with due regard given to the judge's opportunity to judge the credibility of the witnesses. Benkin v. Benkin, 71 Md.App. 191, 524 A.2d 789 (1987).

H. Child custody has three distinct aspects. Davis v. Davis, 280 Md. 119, 372 A.2d 231 (1977):

1. Clear abuse of discretion standard applies when conclusion of lower court has been founded upon sound legal principles and based upon factual findings that are not clearly erroneous.
   a. Clearly erroneous standard for review of factual findings
   b. Harmless error standard for review of matters of law.
2. Same standard of review for pendente lite custody. Shunk v.Walker, 87 Md.App. 389, 589 A.2d 1303 (1991).

I. The standard of review for awarding the use and possession of the family home to a party is an abuse of discretion standard. See Painter v. Painter, 113 Md.App. 504, 688 A.2d 479 (1997). Unless the issue to be reviewed is the finding that the home in question was the family home, then the standard would be clearly erroneous. Hughes v. Hughes, 80 Md.App. 216, 560 A.2d 1145 (1989).

V. Different kinds of appeals

A. Expedited appeal: M.R. 8-207 allows for an expedited appeal request within 20 days of filing of notice of appeal or within time specified in order entered pursuant to scheduling conference (M.R. 8-206(c)).

1. Must be a joint election by the parties filed with the Court.
2. Expedited filing dates for briefs
3. Adoption, guardianship, or child access cases
   a. Applies to every appeal to Court of Special Appeals from:
      i. Judgment granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of minor or disabled person and
      ii. Judgment granting, denying or establishing custody of or visitation with a minor child.
   b. Pay attention to special expedited filing times.
   c. Confidentiality - M.R. 8-122
      i. Child's name, natural parents' names, and adopting parents' names will not be used in appeal records for adoptions.
      ii. Unless by order of Court, access to record of appeal is limited to Court and authorized personnel.

B. In banc review under M.R. 2-551 is also called "Poor man's" appeal.

1. This request permits review of appealable orders by three judges of the circuit, other than the judge who tried the action.
2. No further right of appeal after in banc review except:
   a. The party who filed for in banc review can still file a notice of regular appeal to Court of Special Appeals if:
      i. filed within 30 days after entry of the judgment or order from which appeal is taken and
      ii. notice for in banc review is withdrawn before notice of appeal is filed and prior to any hearing before or decision by in banc court. M.R. 8-202(d).
   b. Opposing party may be entitled to an appeal.

C. Appellate review by Court of Appeals - can be obtained three ways under M.R. 8-301:

1. Direct appeal or application for leave to appeal where allowed by law;
   a. Leave to appeal is for M.R. 8-306 capital cases
2. Pursuant to the Maryland Uniform Certification of Questions of Law Act; See M.R. 8-305 or
3. By writ of certiorari in all other cases. See M.R. 8-302-303

D. Motion for Reconsideration under M.R. 8-605 can be filed in Court of Special Appeals or Court of Appeals after either Court disposes of an appeal. See also M.R. 8-602(c).

VI. Time requirements for appeals

A. Court of Special Appeals: under M.R. 8-202(a), a notice of appeal to Court of Special Appeals shall be filed within 30 days after entry of judgment or order from which the appeal is taken.

B. Cross-appeals : The time requirement in Rule 8 202(e) is not jurisdictional in nature but rather serves simply to limit

(continued on page 27)

Appellate Procedures . . .

(continued from page 26)

the scope of review:

1. if an appeal is timely noted, this Court acquires appellate jurisdiction over the entire case;
2. if a timely cross appeal is not filed, ordinarily review is limited only to those issues properly raised by the appellant;
3. if a cross appeal is, in fact, filed, but is not timely under Rule 8 202(e), the Court ordinarily will regard the issues sought to be raised in the cross appeal as not being properly preserved for appellate review and thus dismiss the cross appeal for that reason; but
4. if good cause exceedingly good cause is shown for the untimeliness, the Court may excuse the untimeliness and consider issues raised in the cross appeal. Maxwell v. Ingerman, 107 Md.App. 677, 670 A.2d 959 (1996).

C. Notice for in banc review must be filed within 10 days of entry of judgment or within 10 days of entry of order pursuant to 2-533, or disposing of motion pursuant to 2-532 or 2-534.

VII. Pending an appeal

A. The continuing jurisdiction of trial court when an appeal is taken allows a trial court to continue to act with reference to matters not relating to the subject matter of, or matters not affecting, the appellate proceeding; it may also act in furtherance of the appeal. State v. Peterson, 315 Md. 73, 553 A.2d 672 (1989).

1. Contempt
   a. An appeal is taken from a motion to quash a subpoena but before appeal is decided, time expires for the production of documents. The trial court can still issue a contempt order. In re Special Investigation No. 281, 299 Md. 181, 473 A.2d 1 (1984).
   b. The trial court can compel the payment of alimony and counsel fees pending appeal. Link v. Link, 35 Md.App. 684, 371 A.2d 1146 (1977).
2. A filing of an appeal from interlocutory orders relating to discovery and continuance does not divest trial court of jurisdiction to proceed with trial of a civil case. Smiley v. Atkinson, 12 Md.App. 543, 280 A.2d 277 (1971).
3. The trial court retains the power to modify decrees pending appeal. Link v. Link, 35 Md.App. 684, 371 A.2d 1146 (1977). In Garland v. Garland, 22 Md.App. 80, 321 A.2d 808 (1974), support payments were modified pending appeal.
4. *Pendente lite* relief
   a. Alimony may be awarded pending an appeal. Wright v. Phelps, 122 Md.App. 480, 712 A.2d 606 (1998). *See also* Dougherty v. Dougherty, 189 Md. 316, 55 A.2d 787 (1947).
   b. Suit fees, including counsel fees, may be awarded pending appeal. Minner v.Minner, 19 Md.App. 154, 310 A.2d 208 (1973), *citing* Dougherty v. Dougherty, 189 Md. 316, 55 A.2d 787 (1947).

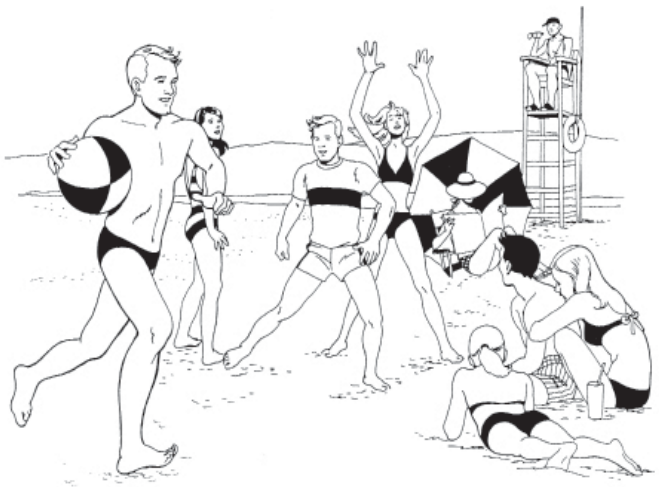
B. Injunction pending appeal is covered by M.R. 8-425

2. Court of Special Appeals or Court of Appeals may issue an order:
   a. Staying, suspending, modifying, or restoring an order entered by lower court or
   b. An injunction, even if injunctive relief was sought and denied in lower court.
3. Unless not practicable to do so, party requesting relief should request relief in circuit court pursuant to M.R. 2-632 before requesting relief under this rule.

This article was prepared by Stephen E. Moss, Esq., a Fellow in the American and International Academies of Matrimonial Law. Mr. Moss maintains a mediation and arbitration practice as of counsel to Deckelbaum, Ogens and Raftery, Chtd., of Bethesda, Maryland. He appreciates the assistance he received in the preparation of this article from Heather Q. Hostetter, Esq., a partner at Strickler, Sachitano & Hatfield, P.A., Bethesda, Maryland, and Sandra Castro, of Deckelbaum, Ogens and Raftery, Chtd.

Conclusion

It should be apparent from the foregoing that there are numerous opportunities for appeal in domestic relations cases. However, the Maryland Courts of Appeal have severely limited review by supporting the discretion of the trial court or by presuming that the trial court knew and acted in accordance with the law. Thus, the preferable approach, wherever possible, is to challenge the actions of the trial court as contrary to law. This requires study and careful planning and the desire to create and expand the law of Maryland.



MARYLAND COLLABORATIVE PRACTICE COUNCIL

1st Annual Symposium
Friday, June 6, 2008
Turf Valley Resort Hotel
2700 Turf Valley Road
Ellicott City, MD. 21042
(410) 423-0808

8:15 a.m. to 8:45 a.m. – Registration and Continental Breakfast
9:00 a.m. to 4:30 p.m. - Symposium

Presentation by:
Suzanne Brunsting
IACP Board of Directors Member
"Collaborative Advocacy—How is This Different and
Why is the Distinction So Important?"

Meet and Greet Lunch (Bring at least 10 business cards)

With Special Guests:
The Honorable Diane O. Leasure and The Honorable Anne Sundt

Presentation by:
Gabriella Salvatore
Vantage Partners, a recognized world leader in teaching relationship management processes and participant in the Harvard Negotiation Project "Difficult Conversations Workshop" Based on the best selling book; Difficult Conversations: How to Discuss What Matters Most, by Patton, Stone & Heen.

Co-Sponsored by National Family Resiliency Center, Inc.
Category I CEU 6 Credits - Approved by MD Board of Social Work Examiners
CDFA's will also receive CE's for the Symposium
Questions? Contact Chair, Jolie G. Weinberg at jgw@wssfamilylaw.com or (410) 997-0203.

Please send registration to:
MCPC, Attn: Darcy Shoop
25 W. Middle Lane
Rockville, MD 20850
(301) 838-3228

MCPC members, before 5/1/08 = $150
Non-MCPC members before 5/1/08 = $160
After 5/1/08: $160 for MCPC members
$175 for non-MCPC members

Registration Form on Next Page

MARYLAND COLLABORATIVE PRACTICE COUNCIL

1st Annual Symposium Registration

PLEASE PRINT THE FOLLOWING:

Name _____

Mailing Address _____

E-mail Address _____

Work Phone _____

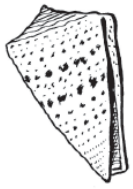
* * * * * * * * * * * * *

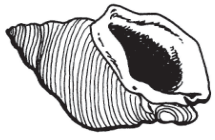
Open to all interested professionals. No Collaborative training is required.

Please make checks payable to: MCPC
MCPC members, before 5/1/08 = $150
Non-MCPC members before 5/1/08 = $160
After 5/1/08: $160 for MCPC members
$175 for non-MCPC members
Any questions? Contact Jolie G. Weinberg @ jgw@wssfamilylaw.com

Return completed Registration and check to:

MCPC Attn: Darcy A. Shoop, Esquire
25 W. Middle Lane
Rockville, Maryland 20850





Circuit Court for Baltimore City Procedures for Contested Divorce Cases

The Circuit Court for Baltimore County has a very well-defined Case Management Plan. To initiate a family law case, the Plaintiff files a Complaint accompanied by a Domestic Case Information Report. The Court will then issue a writ of summons which must be served with a copy of the Complaint on the Defendant by private process, sheriff, certified mail or alternative service. Defendant is required to file their Answer within 30 days of service of the Complaint (or 60 days if out of state). The Answer also should be accompanied by a Domestic Case Information Report.

After the Answer is received by the Court, the file will be sent to the office of the Case Manager. The Case Manager then determines whether it is a contested or uncontested case. This article addresses only the procedures for a contested case.

A contested case is one in which the Answer denies at least one allegation in the Complaint and/or prays that the Complaint be dismissed. Upon determination that the case is contested, the Case Manager shall determine what services are appropriate for the case. If custody and/or visitation is contested, all necessary parties will be scheduled for parenting education, children's education and/or mediation. Mediation will not be ordered in cases involving child or spousal abuse or if there is a fee waiver. Mediation will not be ordered in cases involving child or spousal abuse or if there is a fee waiver.

All contested cases are set for a Scheduling Conference. The Scheduling Conference is set with a Master within 30 days after the filing of the Answer or as soon as possible thereafter. The Scheduling Conference is an opportunity for the parties to settle some or all of the contested issues in their case with the assistance of the Master. In addition, the Master will be able to assist in determining the need for any specific services, such as substance abuse evaluation, custody evaluation, supervised visitation, referral for neutral exchange for visitation, etc. Also, a party may request that a pendente lite hearing be scheduled to address alimony, child support, custody or visitation while the case is pending.

After the Scheduling Conference, the Court will issue a Scheduling Order which sets forth all dates, deadlines and referrals.

If the case fails to settle at mediation, the parties and their counsel shall attend a Court Ordered Settlement Conference and/or a Pre-Trial Conference. The Court Ordered Settlement Conference occurs approximately one month before trial. This provides yet another opportunity for the parties to reach a settlement before proceeding to trial.

AVAILABLE SERVICES:

PRO SE PROJECT

a. room 114
b. staffed by Baltimore City Circuit Court (Two attorney & one paralegal)
c. hours of operation – 8:30 a.m. – 4:30 p.m. Monday through Friday (must check in before 4:00 p.m.)
d. purpose is to assist pro se litigants fill out pleadings, not to provide legal advice
e. no fee for the service

PARENTING CLASSES

a. COPE
   1. married individuals
   2. can attend together unless evidence of substantial violence or some other factor prevents the parties from attending
   3. classes held Friday from 8:30 a.m. – 2:30 p.m. at the courthouse and on Saturdays from 8:30 a.m. – 2:30 p.m. at Sheppard Pratt
b. SHAPE
   1. not married individuals
   2. parties attend separately
   3. all classes held on Saturdays from 8:30 a.m. – 2:30 p.m. at Sheppard Pratt
c. PATH
   1. third Party Custodians
   2. classes held Thursdays from 9:00 a.m. – 3:00 p.m. at Courthouse East
d. Children's Group
   1. ages 6 – 15 years old
   2. fee-$5.00 per child or $7.00 when two or more children are scheduled
   3. sessions are held at Sheppard Pratt on Saturdays from 8:30 a.m. – 2:30 p.m.

MEDIATION

a. Sheppard Pratt Family Mediation Services
   1. sessions held at Sheppard Pratt, day, evenings and weekends
   2. fee is $50.00 per hour per party, unless the court upon timely motion determines a different fee
   3. typical case is maximum of two sessions
   4. co-mediation format
b. In House Mediation
   1. currently scheduled Tuesdays at 9:30 a.m. – 3:30 p.m. and Thursdays 9:30 a.m. – 3:30 p.m.
   2. can be referred during the scheduling conference
   3. no fee
   4. staffed by Sheppard Pratt Mediators and volunteer mediators
   5. typical session 1-2 hours

(continued on page 31)

Baltimore City Procedures. . .

(continued from page 30)

6. voluntary and confidential (but by court order)
7. opportunity for the parties to create a schedule that is in everyone's best interest

c. Pro Bono Mediation Project
1. volunteer attorneys and mediators
2. mediate custody and visitation issues
3. currently scheduled on specific Thursdays at 9:30 a.m. – 3:30 p.m.
4. no fee

COURT ORDERED SETTLEMENT CONFERENCE
a. parties should sign-in in room 108E
b. heard on Tuesdays and Wednesdays from 9:30 a.m. – 11:30 a.m.
c. staffed by experienced attorneys on a volunteer basis
d. mandatory for attorneys and parties to appear
e. must come prepared and in good faith to settle

SOCIAL SERVICES
a. Kathy Coleman-Social Services Coordinator
b. Room 108E
c. Hours – 9:00 a.m. – 5:00 p.m.
d. Assessment and referral to family counseling
e. Substance abuse evaluation and referrals for treatment
f. Monitors referrals and participation in treatment
g. Locate parenting programs for referrals
h. Resources for free programs – waiting list of 6 months or longer
i. Develop and maintain a list of community resources
j. Community based programs (without insurance_ are harder to locate
k. Verify parties insurance and assist them with getting necessary services

MEDICAL SERVICES
a. Beverly Wise – Deputy Administrative Director
b. Room 100 E
c. Hours 8:30 a.m. – 4:30 p.m.
d. Custody/visitation evaluations (3 month turnaround time)
1. maximum fee for working individuals - $300 per person
2. no additional fee for children

e. supervised visitation
1. standard of 12 sessions. May be extended by court order or at staff's discretion
2. 5:00 p.m.- 6:45 p.m. Monday – Friday and 9:00 a.m. – 1:00 p.m. on Saturday
3. report to court-matter will be reviewed by the court
4. no fee

f. child exchange
1. Friday from 6:00 p.m. – 6:30 p.m. to drop off, court medical office room 100
2. Sunday from 3:00 p.m. – 3:30 p.m. to pick up, court medical office room 100

g. ability to work (allow 4-6 weeks for reports)
1. Appointments usually at 9:00 a.m.
2. no fee

ADOPTION AND CUSTODY
a. Deanna Whittington-Supervisor
b. Room 302E
c. Home studies and factual investigations (allow 4 months to complete)
d. Report due prior to trial
e. No fee

CHILDREN'S WAITING ROOM
a. Raven Williams
b. Rom 108E
c. Monday – Friday 8:30 a.m. – 4:30 p.m.
d. Closed for lunch 12:30 p.m. – 1:30 p.m.
e. No fee

FAMILY LAW JUDGES AND MASTERS
Judge-in-Charge of the Family Law Division:
Judge Audrey J.S. Carrion
Current Family Law Judges (one year term)
Judge Pamela J. White
Judge Barry G. Williams
Judge George L. Russell, III
Family Law Masters
Andrea F. Kelly
Theresa A. Furnari
Robert Bloom

OTHER SPECIALIZED PERSONEL
Associate Administrator, Family: Sue German – (410) 545-6220
Clerk, Family Division: Paulette Suares - (410) 333-3711
Case Manager – Robin Travis
Domestic Violence Coordinator – Karin Green

COSTS

Unless Otherwise Waived by Court:
a) Filing Fee = $105 if unrepresented, $125 with counsel
b) Answer - $20 if represented by counsel
c) Service Fee = $40
d) Family Court Services on Custody Evaluation or Psychological Evaluation – less than or equal to $300 per person

The article was authored by Carol G. Cooper, an associate attorney at Adelberg, Rudow, Dorf & Hendler, LLC, who is the incoming chair of the Family Law Committee of the Bar Assn of Baltimore City, with the assistance of T. Sue German, Esq., Associate Administrator, Family Division of the Circuit Court for Baltimore City.

PROOF CHART

RE: Jones v. Jones

Issues	Elements	Defenses	Witnesses	Exhibits	Authority
Alimony (indefinite)	12 rehabilitation factors + ---------- **1.** age, illness, infirmity, disability prevents self-supporting *or* ---------- **2.** unconscionably disparate standards of living (*including paramour resources available in future*) in future after the party seeking alimony will have made as much progress towards becoming self-supporting as can reasonably be expected, considering: **a.** present earning capacity of recipient (*Roginsky, Whittington*) ---------- **b.** future earning capacity of recipient at time of maximum financial progress (*Roginsky, Whittington*) ---------- **c.** comparing the relative standards of living of parties at that future time (including	Underlying Maryland's statutory preference is the conviction that the purpose of alimony is not to provide a lifetime pension ---------- Disparity must offend the conscience of the court to be considered unconscionable				Caselaw Statutes

Issues	Elements	Defenses	Witnesses	Exhibits	Authority
	income and other resources) (*Roginsky, Whittington*) ---------- **d.** whether standard of living was established during marriage with joint efforts (*Roginsky, Whittington*) ---------- **e.** extent recipient spouse contributed to other spouse's career success (looking at parties' actual incomes or earning potentials as of date of marriage and date of divorce) (*Solomon*) ---------- **f.** whether recipient earns 16- 46% of payor's income (*Solomon*) ---------- *and:* **3.** If an unconscionable disparity exists, the amount of alimony must "fix" the disparate condition (*Solomon*)				