Pennsylvania Family Lawyer

Your Other Partner

VOLUME 34 ISSUE NO. 3 October 2012

IN THIS ISSUE

FROM THE CHAIR

By Christine Gale, Esq.
gale@fbmgg.com

I am honored to begin my one year term as the Chair of the Pennsylvania Bar Association Family Law Section, a Section with which I have been involved since my very early years as an attorney practicing in the field of family law. When I first started practice, the Pennsylvania Divorce Code had just been passed and all of the family law practitioners were learning together how to practice family law pursuant to the 1980 Divorce Code. I grew up with the Section and learned from wonderful mentors such as **Robert Raphael, Harry Gruener** and **David Ladov,** among many others. I am truly honored to have benefited from membership in this illustrious Section while growing in my practice over the last three decades. I am proud, honored and humbled to serve as Chair and promise to tirelessly impress upon family law practitioners throughout our commonwealth as to the values of being a member of this wonderful section.

Christine Gale, Esq.

I am just returning from my 53rd semi-yearly meeting, hosted by my good friend **Joseph Martone** from Erie. We had a banner attendance of approximately 200 attorneys; with a total of 386 in attendance, 55 of whom were children 12 years and under. It was a great family event, not only dealing with family law matters, but dealing with family relations among all of the attendees. We were honored to have in our presence many sponsors and vendors who have assisted throughout the years in making these anjnual meetings a success. We

(continued on Page 148)

Christine Gale is a Shareholder with the Pittsburgh firm of Frank Gale Bails Murcko and Pocrass PC; Chair, PBA Family Law Section; three prior terms, member of Council ACBA Family Law Section; Co-Author Pennsylvania Family Practice Manual with Frederick N. Frank, Esq., in 1990; authored Tax Aspects of Divorce in Pennsylvania in 1993; and currently serves on the Board of Directors for Smokefree Pennsylvania.

FROM THE CHAIR
(continued from Page 147)

heard from Philadelphia County **Judge Doris A. Pechkurow** and learned about military law, tax issues, the latest in paternity issues, immigration matters, disciplinary issues and marketing, as well as updates concerning the latest legislation, rules and court decisions. **Joanne Ross Wilder,** who sadly passed away this past year, was awarded the Eric Turner Award, with her husband, **Bruce Lord Wilder,** accepting this honor on her behalf.

I am now thrilled to take on the task of preparing the annual meetings for the 2013 season. Please mark your calendars and plan to attend the Winter Meeting Jan. 18-20, 2013, at the Westin Convention Center, Pittsburgh. The Summer Meeting will be July 11-14, 2013, at the Gaylord National Resort in National Harbor, Md., just across the Potomac from Washington, D.C. We are in the planning stages for a wonderful set of programs for 2013 and I hope that many of you will plan to attend and begin to reap the wonderful benefits that the Pennsylvania Bar Association Family Law Section has to offer. Not only do we offer wonderful continuing legal education, but fabulous camaraderie among family practitioners throughout the state.

It is also my hope and plan this year to address pertinent legislative matters, such as the possibility of reviving the prior, almost-passed alimony legislation, as well as potential legislation concerning paternity matters. We will also address the possibility of certification of lawyers in the family law field.

So please spread the word among your fellow family practitioners to join the section, get involved and attend these fabulous meetings. I hope to see new fresh faces as well as familiar ones this coming year.

CLOSING STATEMENT: From the Outgoing Chair

Joseph P. Martone, Esq.

Allow me to take this opportunity to thank the many people who made the past year so successful, particularly the program committee, including **Jessica Moyer, Stephanie Winegrad, Lindsey McClay, Julie Colton, Missy Boyd** and **Sally Miller.** I also must recognize the assistance and guidance of this past year's executive committee and council, who made the year productive and enjoyable. For those of you who could not attend the Summer Meeting in Hershey, I trust that all who were there agree that it was a rousing success, both for the continuing education programs and for the social events.

The most important memory I will have of my year as Chair is the realization that family law attorneys really do strive to represent, with integrity, the families that so often come to us in disarray. While we often times argue strenuously for our clients, we must always strive to maintain the professionalism and congeniality so often lacking in the practice of law. Our focus cannot be just the case at hand, but the continuing evolution of family law for the betterment of all members of the community. We must also vigorously defend our positions within the courts and bar association and make known to those unfamiliar with family law practice that we have important contributions to the jurisprudence of Pennsylvania that must be heard and respected.

I would certainly be remiss in my duties if I did not acknowledge the contributions made by **David Pollock,** the editorial board, PBA staff **Patricia Graybill, Michael Shatto** and **Janelle Klein,** and **Andrea Mumma** and **Sabina McCarthy** of the Pennsylvania Bar Institute, and the plethora of other staff associated with the Section. It has been a pleasure and an honor to serve as your Chair.

Family Law Trivia: Most people wait at least three years after divorce to marry a second time.

Joseph P. Martone is a member of the Erie law firm of McCarthy, Martone and Peasley. He is the immediate past chair of the PBA Family Law Section, a fellow of the American Academy of Matrimonial Lawyers, and currently serves on the Board of Managers of the Pennsylvania Chapter. He is an adjunct professor in Family law at Gannon University in Erie.

Published by the Pennsylvania Bar Association in conjunction with the Family Law Section as a service to the profession. Mailing Address: Pennsylvania Bar Association, 100 South St., P.O. Box 186, Harrisburg, Pa. 17108. Telephone: 800-932-0311 or (717) 238-6715.

From time to time, the *Pennsylvania Family Lawyer* will publish articles that it receives for submission. The views expressed in those articles are solely those of the authors of the articles and do not reflect the views or policies of the editors, the *Pennsylvania Family Lawyer*, the Family Law Section or the Pennsylvania Bar Association, and no endorsements of those views should be inferred therefrom.

EDITOR'S COLUMN

By David S. Pollock, Esq.
dpollock@pollockbegg.com

Life is distracting. Somehow we are supposed to be lawyers paying attention to everything on our platters and ignore all that is in our lives. We cannot. Obviously, family is first. Those of us in small firms can live by that creed. I am very interested in our small matrimonial and general practice firms and the lawyers and staff who are caring for their families. And as we get older we become our parents' caregivers so we have additional responsibility, for which we should all be thankful. We have lots to do in the office; lots to do at home; lots to do with our extended families; and lots to do with our friends, groups, neighborhoods, communities, churches/temples/synagogues.

But in the office we must limit the distractions, put on the seat belt, finish the task before us and then go to the next thing. If the task is too huge to finish, do small pieces at a time. Carve out the times that you will do the small chunks and before you know it the full project has been accomplished. Do not let the size of the mountain daunt you. You cannot climb it unless you start with the foothills. It is the same with all big projects. There are lots of significant and relevant tasks. Do not go on tangents. Do not just do the collateral stuff. Do the substantive and important things. Avoid making other things more important than the task at hand. It is so easy to get up, get coffee, get water, etc. Once you leave your seat you potentially do not get back to the project.

I think email and the Internet is like the *World Book* from the 1950s and 1960s. When we were kids our research was done in the *World Book.* We were looking for "antelope" but ran in to "aardvark" and then we were on a safari. We were off in never-never land looking at all kinds of things and never really did get to the project. But we were kids and that was a part of the learning process. We are lawyers. We are being paid to be efficient so we must settle down. We have to avoid the email and the Internet. There are times when we need a document or information from the email so we have to resist the urge when looking for one thing in our email to end up doing a thousand emails. The email will wait. Maybe it will even teach your clients, opposing counsel and the office that everything is in its due time. The only things that are not in due time are court-mandated dates and/or court communications. Those are now.

Disable those pesky sounds and screen notifications of emails, alerts, news and sports items, cell phone calls and texts. The sounds and screen notices are not needed. On the other hand, if a family member is ill, due or arriving, obviously the alerts are essential. But the general rule is that when you are working at the computer there should be no distracting notifications.

Be mindful of your neighbor. Cut out the cell, text and email tones. Turn off the music and the head phones. Whoever said people can multi-process with efficiency using headphones is a charlatan. Focus – not diversion. One of my partners reminds me that it is diligence and focus that wins the day. So discard, turn off and avoid the distractions.

And, if you do get distracted and do not get the projects done, stay late. Get it done; do not let it wait. If you want to be a divorce lawyer, you have to work long hours, nights and weekends.

Having so much to do in our lives is a blessing, but it is a distraction and it is a distraction that can very well interfere with client work. Everything works if we work and earn an honest day's living.

The foregoing said, it is thus important to minimize the distractions and maximize the efficiency. So at least we can minimize the distractions here at the office as follows:

A. Distractions:
   1. No tone notification when you get an email.
   2. Turn off the email and only view when needed or at specific times.
   3. No tones for emails or texts from your phone.
   4. No notifications for emails or texts to be viewed in Lock Screen (consider continuing to have telephone notification in Lock Screen but no tone).
   5. Do not permit clients to call or text on the cell phone. If they do, tell them that you use the cell phone for your convenience and specifically for their cases, but that this is not an invitation to them to call or text you. Actually, that should be written in your retainer letter.
   6. Stop obsessively responding to emails and texts. They can wait for the proper time. Immediately responding all of the time to everything is just obsession and not very practical. If you cannot deal with having your email off, turn your computer off.
   7. Your workspace when working on the computer should be at your computer. Your workspace when not working on the computer should not be at your computer. Do not let it haunt you. We know not to leave the television on while we are working so why would we leave the computer on?
   8. Minimize the office intrusions. This is especially difficult because staff, associates and partners all want it now and maybe deserve it now. But be responsive; do not be nasty. Maybe just leave the door shut periodically throughout the day. That should keep people away.
   9. Respond to mail on a timely basis. Do not set aside any project. Respond to telephone calls on a timely basis. Do not set them aside.

(continued on Page 150)

David S. Pollock is a Co-Founder of the Pittsburgh firm of Pollock Begg Komar Glasser & Vertz LLC, Editor-in-Chief of Pennsylvania Family Lawyer, Past Chair of PBA Family Law Section, Past Chair of ACBA Family Law Section, Treasurer of Pa. Chapter of AAML, and Fellow of both the AAML and IAML (and U.S. Chapter Board of Governors).

(continued from Page 149)

10. Diary immediately upon receipt of information (email, text, cell call, regular call, fax, letter, discussion) so that court dates, meeting dates and other important dates are always in your calendar from the first time that you are informed. Nothing is more distracting than realizing that a letter, a call, a meeting, a court event or a pleading deadline is now when it should have been on your calendar with appropriate diarying in advance.
11. Avoid chaos, which is consistent with the foregoing. If you live in chaos, your life will be chaos. Small obsessions are good such as keeping case information separate on computers, emails, desks or work areas. Be organized. Disorganization and chaos are distracting.
12. Do not surround yourself with distracting tchotchkes. Keep them at a distance from your workspace. Maybe bankers do have a good idea. When you go through a bank, every single work desk is clean in the early morning and late afternoon. They always have a clean desk. It is just the matter that is before them that is getting their attention.
13. Do not sweep your desk into your drawer. Never put things away because out-of-sight is out-of-mind. Files in drawers, stuff in drawers, information in drawers is a problem just waiting to happen, which will again become a terrible distraction on the day that the realization occurs that the matter should have been attended to earlier.
14. Music, radio, other goofy noises? Maybe a good Beethoven symphony but not rock music. Maybe a continuous beat music that does not interfere with one's concentration.

B. Associates:
   1. I call your attention to a well-written article by one of our associates, **Joseph R. Williams,** who wrote a recent article in *The Legal Intelligencer,* Sept. 4, 2012, titled "The Art of Balancing Work for Multiple Partners." This article is a great read for associates dealing with multiple partners. Actually, it is a great read for the partners, too.

C. This Issue:

Please peruse the following well-written and interesting Case Notes:

a. *S.M.C. v. W.P.C.* – Aaron P. Asher
b. *Goodemote v. Goodemote* – Darren Holst
c. *C.R.F. v. S.E.F.* – Joo Y. Park
d. *Kimock vs. Jones* – Elizabeth J. Billies
e. *Orfield v. Weindel* – Hilary A. Bendik

Additionally, you will find the following varied Articles and Comments:

a. "Carried Interest and Performance Fee Incentives" by Brian R. Potter, CFA, CFE and Jason E. Bodmer, CPA/ABV, ASA
b. "Custody Modification" by James W. Cushing
c. "Dumpster Diving the Family Court Files" by Gregory S. Forman
d. "DOMA Decision and Impact on Case Law" by Aaron D. Weems
e. "Converting 401(k) Assets to an In-Plan Roth Account" by Alex M. Kindler, CPA
f. "Re: *Kimock* case" by Brian C. Vertz
g. "Cloud Computing – A Shift in Pennsylvania Sales Tax Policy by Stephen Blair, CPA, JD
h. "Health Care Law Revisited" by Sarah Lockwood Church and Joni Landy
i. "Maintaining Lien Priority After Obtaining a Judgment is Incredibly Easy but Should not be Overlooked" by Raymond P. Wendolowski Jr.
j. "Capital gains and losses: New year-end strategy" by Joan Ellenbogen, CPA, Crawford Ellenbogen LLC
k. 2012 Annual Summer Meeting:

Our Summer Meeting vendors were exceptional. Pictures of their vending tables and presentations can be found at www.pabar.org/public/sections/famco/Meetings. You must go into the pabar.org website and work your way in to the Family Law Section members' section to see pictures from annual meetings, as well as the *Pennsylvania Family Lawyer* and the indices prepared by Joel H. Fishman, Ph.D. Our vendors were:

Alpern Rosenthal CPAs
Tricia Egry – (412) 281-2501

Family Law Software Inc.
Mark Rogers – (215) 766-9475

Pension Analysis Consultants Inc.
Mark & Carol Altschuler – (215) 782-9845

Pritchard, Bieler, Gruver & Willison
Todd Jarden – (215) 997-7247

Rocket Matter LLC
Michael Miceli – (561) 288-0680

Value Management Inc.
Susan Wilusz – (215) 343-0500

Rita and I wish you a happy New Year, happy fall school year, happy fall foliage and a happy football season. Go Steelers!

Case Notes:

David L. Ladov, Esq., Co-Editor, dladov@cozen.com
Lori K. Shemtob, Co-Editor, lshemtob@shemtoblaw.com

IN AN ISSUE OF FIRST IMPRESSION, INCREASE IN VALUE DURING MARRIAGE OF VETERANS' DISABILITY BENEFITS FOUND TO BE MARITAL PROPERTY IN LIGHT OF THEIR CONVERSION INTO A PERMANENT INVESTMENT

BY DARREN J. HOLST, ESQ.

GOODEMOTE V. GOODEMOTE,
44 A.3rd 74 (Pa. Super. 2012).

In this equitable distribution action originating in the Court of Common Pleas of Mercer County (St. John, J.), a panel of the Superior Court of Pennsylvania (Musmanno, Donohue and Colville, J.J.) considered whether Judge Christopher J. St. John properly found appellant's veterans' disability benefits lost their exemption from marital property by virtue of being converted into a permanent investment. In considering this issue of first impression, the Superior Court of Pennsylvania (Superior Court) affirmed Judge St. John's decision that the increase in value during marriage constituted marital property subject to equitable distribution and that wife was entitled to one-half of the increase.

The facts before the Superior Court were undisputed. Appellant, John R. Goodemote (husband), and Appellee, Vicki J. Goodemote (wife), married on July 13, 1991 and separated in October 2007. This was husband's second marriage. Judge St. John entered a divorce decree on March 28, 2011. Husband, a veteran of the Vietnam War, has received monthly veterans' disability benefits (VA payments) since his discharge in 1969 for injuries suffered during his tour of duty.

Husband's first marriage ended in divorce in 1978. In 1971, during his first marriage, husband opened an investment account in his name into which he deposited his VA payments. Husband stopped depositing his VA payments into the investment account in 1978. Thereafter, including throughout his second marriage, Husband deposited his VA payments into his individual checking account to use for his day-to-day living expenses. Husband never withdrew any funds from the investment account and the funds were not used for his support and maintenance.

When husband married wife in 1991, his investment account had a value of $74,374.67. During the parties' 16-year marriage, the investment account grew as a result of market activity such that, at the time the parties' separated in October 2007, the investment account had a value of $158,932.52, an increase of $84,557.85. Judge St. John appointed a divorce master in November 2009, and after a hearing on the underlying economic issues, the master issued a report (and a subsequent amended report) in which he concluded that, even though the investment account increased in value during marriage, no portion of the account was subject to equitable distribution in light of existing law. Principally, the master relied upon Section 3501 of the Pennsylvania Divorce Code, which provides that marital property does not include veterans' benefits exempt from attachment. See 23 Pa.C.S.A. § 3501(a)(6) (2010). Additionally, the master followed the case of *Carney v. Carney,* 673 A.2d 367 (Pa. Super. 1996), in which the Superior Court stated that veterans' disability benefits generally are exempt from marital property and not subject to equitable distribution. Finally, the master cited federal law, which provides that veterans' disability benefits are not assignable, except as specifically authorized by law, and are exempt from taxation, creditors and seizure by any legal or equitable process. See 38 U.S.C.A. § 5301(a)(1) (2010).

On exceptions to the trial court, wife argued the master erred in concluding that the increase in value of the investment account was not marital property subject to equitable distribution. In disposing of the parties' exceptions, Judge St. John ruled that husband had converted his VA payments into a permanent investment by maintaining them in the investment account; thus, Judge St.

(continued on Page 152)

David L. Ladov is a Partner in the West Conshohocken office of the law firm of Cozen O'Connor, Case Notes Co-Editor of Pennsylvania Family Lawyer and Past Chair of the PBA Family Law Section. Lori K. Shemtob is a partner in the Blue Bell law firm of Shemtob & Shemtob, Case Notes Co-Editor of Pennsylvania Family Lawyer and member of Council of the PBA Family Law Section.

Darren J. Holst is a Partner at the Harrisburg law firm of Howett, Kissinger & Holst PC, and a member of Council and the Executive Committee of the PBA Family Law Section.

John concluded the VA payments were not exempt from marital property, and the increase in value of the account was subject to equitable distribution. Judge St. John awarded one-half of the increase to wife. Husband filed a timely appeal with the Superior Court.

Husband argued that Judge St. John erred as a matter of law in finding that the VA payments had converted into a marital asset subject to equitable distribution. The Superior Court noted the issue of whether the increase in value during marriage of invested VA payments is an issue of first impression. Before addressing the merits of the issue, the Superior Court commented that the question of whether an asset is marital property subject to equitable distribution is a matter reserved to the sound discretion of the trial court, but the issue in question is purely legal in nature, over which the Superior Court's review is plenary.

According to the Superior Court, and both parties agreed, the U.S Supreme Court's decision of *Porter v. Aetna Casualty Insurety Company,* 370 U.S. 159 (1962), was controlling to the issue before the Superior Court. In *Porter*, the U.S. Supreme Court addressed whether veterans' disability payments retained their exempt status under federal law after being deposited into a federal savings and loan account. In that case, the guardian of a veteran had deposited the veteran's disability payments into the account for the veteran's support and maintenance, but a creditor of the veteran sought to attach the funds to satisfy a judgment. In holding that the benefits retained their exempt status and thus could not be attached by the creditor, the Supreme Court opined that the legislation at issue should be liberally construed to protect the veterans for whom the funds were granted by Congress for their support and maintenance and the Court felt that Congress intended veterans to be able to utilize normal modes within the community to maintain their benefits for safe keeping so they can be readily available to support and maintain the veteran. In *Porter*, the monies retained their exempt quality as they had not been converted into permanent investments. The Supreme Court found persuasive that the funds, despite the fact that they were deposited into a savings account, "were subject to immediate and certain access and thus plainly had the quality of monies." *Porter*, 370 U.S. at 161-62. The Court continued by finding that the payments had not been converted into a permanent investment as the funds were not of a speculative character and, more importantly, monies were withdrawn from the account for the ongoing support and maintenance of the veteran.

The Pennsylvania Superior Court noted that the *Porter* case created a three-part test for determining whether VA payments retain their exempt status after payment. Specifically, the funds must be found to: 1) be readily available for the veteran's support and maintenance; 2) actually retain the qualities of monies and 3) have not been converted into permanent investments. On appeal, husband asserted he met all the requirements of Porter as the VA payments had not been converted into a permanent investment inasmuch the funds within the account were subject to immediate and certain access. Husband insisted the fact he had never accessed the monies was irrelevant. The only relevant consideration is whether the monies within the account are available to the veteran.

In considering husband's argument, the Superior Court found he failed to meet the third prong of the *Porter* test. The Superior Court agreed with Judge St. John that the VA payments had been converted into a permanent investment. The Superior Court found several key distinguishing facts between *Porter* and the case at bar. Unlike the veteran in *Porter*, husband maintained full-time employment throughout the time he received his veterans' benefits, from which he earned pension entitlements that he began to receive upon his retirement in 2006. More importantly, husband never withdrew any of the funds within the investment account and never utilized any of the VA payments within the account for support and maintenance. The Superior Court further cited husband's own testimony at the equitable distribution hearing, in which he referred to his investment account as his "retirement account," as evidence that husband intended the VA payments to act as an investment.

The Superior Court also felt the nature of the investments within the account supported its determination. The investment account was not a simple savings account. Instead, it was comprised of numerous investment portfolios (i.e., securities, mutual funds and annuities) subject to investment gains and losses. Thus, the money within the account was not subject to immediate access; investments needed to be sold to generate cash. Accordingly, the Superior Court agreed with Judge St. John that husband's VA payments lost their exempt status and had been converted into permanent investments. The Superior Court further found husband's reliance upon the U.S. Supreme Court's decisions of *Lawrence v. Shaw,* 300 U.S. 245 (1937), and *Mansell v. Mansell,* 490 U.S. 581 (1989), to be unavailing. The *Lawrence* decision actually undermined husband's argument as the benefits at issue in *Lawrence* had not been converted into a permanent investment, and *Mansell* was inapplicable as husband's VA payments were not received in lieu of military retirement pay. Accordingly, the Superior Court affirmed Judge St. John's decision in all respects.

CASE NOTE AUTHOR'S EDITORIAL COMMENTS

The *Goodemote* decision illustrates how a change in character of a generally exempt asset can pull the asset within the ambit of the definition of marital property. The three-prong *Porter* test, particularly its third prong, is extremely fact specific and, in this case, the facts clearly established that Husband had converted his benefits into a permanent investment. Husband certainly handicapped his case by referring to his investment account as his "retirement account" during trial.

THE RELOCATION FACTORS SET FORTH UNDER THE NEW CHILD CUSTODY STATUTE, 23 PA.C.S.A §5337(H) MUST BE CONSIDERED FOR ALL RELOCATION HEARINGS, EVEN IF THE UNDERLYING PETITION WAS FILED PRIOR TO THE EFFECTIVE DATE OF THE STATUTE.

BY JOO Y. PARK, ESQ.

C.R.F. III v. S.E.F., 45 A.3d 441 (Pa. Super. 2012).
(Donohue, Lazarus and Ott, J.J.)

Opinion by Donohue, J. This is a custody relocation matter filed before the effective date of the new Child Custody Act, 23 Pa.C.S.A. §5321 *et seq.* (the act) but heard by the Common Pleas Court of Washington County, DiSalle, J., after the act's effective date. Judge DiSalle applied the relocation factors set forth in *Gruber v. Gruber,* 5834 A.2d 434 (Pa.Super 1990), which by the time of the hearing, were subsumed by the act, under §5337(h), which provides a list of factors a trial court must consider in determining whether relocation is warranted. Upon appeal by the non-relocating parent, the Superior Court of Pennsylvania (Superior Court) vacated the trial court's decision and directed the trial court to render a decision applying all of the relocation factors set forth under §5327(h) of the act.

FACTS

C.R.F III (father) and S.E.F. (mother) were married on June 16, 2007 in Washington, Pa. They are the parents of two minor children, N.F. (d.o.b. 4/10/06) and C.F. (d.o.b. 4/16/10). N.F. was born prior to the parties' marriage. On Sept. 18, 2008, father filed a divorce complaint. On or about Oct. 16, 2008, the parties entered into a consent order for joint legal custody and shared (50/50) custody of N.F. The parties subsequently reconciled and went on to have their second child, C.F., but father never withdrew his divorce complaint. The parties' relationship deteriorated after the birth of C.F. On July 6, 2010, mother filed a petition to modify custody and for relocation to Somerset county. On July 7, 2010, father filed an amended divorce complaint, wherein he included the parties' younger child, C.F. under the custody count. On Sept. 28, 2010, another interim consent custody order was entered, giving mother partial physical custody and scheduling a relocation hearing. The relocation hearing was held on April 7, 2011, approximately four months after the Jan. 24, 2011 effective date of the act. On June 16, 2011, Judge DiSalle entered an order granting mother's petition, allowing her to relocate with primary physical custody of the children. In doing so, Judge DiSalle considered the relocation factors set forth in *Gruber v. Gruber,* 5834 A.2d 434 (Pa.Super 1990), which have essentially been replaced by the act under §5337(h).

ISSUES

Father appealed the trial court's decision and raised the following two questions for the Superior Court's review:

1. Did the lower court err by granting mother permission to relocate to Somerset County, when a consideration of the evidence and relocation factors did not support such a decision?
2. Did the lower court err in granting mother primary physical custody of the minor children when the evidence and custody factors did not support such a finding?

ANALYSIS

In reviewing a custody order, the Superior Court's scope is of the broadest type and its standard is abuse of discretion. The test is whether the trial court's conclusions are unreasonable as shown by the evidence of record. The Superior Court may reject the conclusions of the trial court only if they involve an error of law or are unreasonable in light of the sustainable findings of the trial court. See *A.D. v. M.A.B.,* 989 A.2d 32 (Pa. Super. 2010).

The key question in this case for the Superior Court was whether the trial court should have applied the Section 5337(h) relocation factors set forth in the act although mother's relocation petition was filed prior to Jan. 24, 2011, the effective date of the act. In answering this question, the Superior Court first looked to the legislative intent behind the act. The Superior Court explained that the Legislature intended that "[a] *proceeding* under the [prior custody act], which was commenced before the effective date of the section shall be governed by the law in effect at the time the proceeding was initiated. 2010 Pa. Legis. Serv. Act 2010-112 (H.B. 1639) (emphasis added). The question then became whether the word "proceeding" refers to the entire custody action (i.e. from the initial filing of a request for custody) or it is distinguished from the entire custody action, such that various "proceedings" (e.g. for

(continued on Page 154)

Joo Y. Park is an Associate at High Swartz LLP in Norristown. She graduated from Syracuse University School of Law in 2004, and is a member of the Pennsylvania and New Jersey bars. Ms. Park is active in the Pennsylvania Bar Association and serves as the Vice Chair of the Montgomery Bar Association's Pro Bono Committee. Ms. Park also enjoys participating in local running events benefitting various nonprofit organizations.

CASE NOTES
(continued from Page 153)

relocation, modification, and enforcement) take place within the context of a "custody action." If the word "proceeding" refers to the entire custody action, then the old custody law would apply to all relocation requests made prior to Jan. 24, 2011. If the word "proceeding" refers to specific requests within a custody action, then all such proceedings initiated after Jan. 24, 2011 would be decided under the act. The Superior Court had considered this dilemma in *E.D. v. M.P.,* 33 A.3d 73 (Pa.Super. 2011), and found that the statute does not expressly define the word "proceeding" and to the contrary, appears to use the terms "action," "proceedings" and "matter" interchangeably. The Superior Court in *E.D. v. M.P.* went on to consider the practical consequences of a particular interpretation of the word "proceeding" and held that the Legislature intended to distinguish between an "action for custody and subsequent proceedings" in connection therewith. The Superior Court opined that this interpretation provides for the broadest possible application of the procedures and legal standards in the act. Further, under the alternative interpretation, the provision of the old act would continue to apply to all aspects of every custody action filed before Jan. 24, 2011, and would continue to apply in those actions for many years into the future, yielding an absurd and unreasonable result. Therefore, the Superior Court in *E.D. v. M.P.* held that in its view, the Legislature intended for the provisions of the act to apply to all matters relating to child custody after the act's effective date, *i.e.* Jan. 24, 2011.

In addition to its own decision in *E.D. v. M.P.*, the Superior Court considered the *Black's Law Dictionary* definition of the word "proceeding," which in pertinent part is as follows:

> Proceeding 1. The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment. 2. Any procedural means for seeking redress from a tribunal or agency. 3. An act or step that is part of a larger action. 4. The business conducted by a court or other official body; a hearing.

Black's Law Dictionary (9th ed. 2009).

Based on the *Black's Law Dictionary's* definition of the word "proceeding" and the Superior Court's own analysis in *E.D. v. M.D.,* the Superior Court held that there is no doubt that by definition, a hearing is a proceeding and accordingly, if the evidentiary proceeding commences on or after the effective date of the act, the provisions of the act apply even if the request or petition for relief was filed prior to the effective date. Accordingly, the Superior Court held that upon review of the record, the trial court did not include in its analysis the first, second, fourth, fifth, ninth and 10th factors set forth in §5337(h) of the act. Therefore, the Superior Court vacated Judge DiSalle's order and remanded the matter for the trial court to render a decision applying the provisions of §5337(h) of the act.

CASE NOTE AUTHOR'S COMMENTS

As we get further away from date of enactment, cases like this should all but be non-existent. For those that may remain, attorneys should be prepared to present a thorough analysis of the underlying relocation as per the factors set forth under §5337(h) and not under *Gruber*. Attorneys should also be requesting judges render decisions on all factors under §5337(h).

CORRECTION NOTICE

In Mark Sullivan's "The Missing Military Annuity – Case Continued," in the March 2011 issue of the *Pennsylvania Family Lawyer,* Vol. 33, Issue No. 1, the following language was proposed to give the former spouse coverage under Survivor Benefit Plan (SBP) –

Mary Doe, the plaintiff, shall also be awarded former spouse coverage under the Survivor Benefit Plan, with defendant's retired pay as the base amount.

The author advises that, in light of a recent ruling by the Defense Finance and Accounting Service (DFAS) that denied SBP coverage to a former-spouse applicant due to unclear wording of the court order, the following language should be used to secure SBP coverage instead of the above clause:

John Doe, the defendant, shall immediately elect former-spouse coverage for Mary Doe, the plaintiff, under the Survivor Benefit Plan, with his full retired pay as the base amount.

SUPERIOR COURT RULES THAT TRIAL COURT DID NOT HAVE JURISDICTION TO GRANT FATHER'S MOTION FOR RECONSIDERATION TO ORDER FINDING FATHER IN CONTEMPT FOR FAILURE TO PAY SUPPORT AFTER 30-DAY PERIOD ENDED

BY HILARY A. BENDIK, ESQ.

ORFIELD V. WEINDEL,
____ A.3D ____, 2012 PA. SUPER. 135 (PA. SUPER. 2012)

On June 29, 2012, the Superior Court of Pennsylvania (Superior Court) (Stevens, Bowes and Strassburger, JJ.), in an opinion written by President Judge Stevens, and a concurring opinion by Judge Strassburger, affirmed in part and vacated in part a Berks County order (Bucci, J.) holding the appellant-father in contempt of his arrears-only child support order. Judge Bucci sentenced appellant-father to six months incarceration and set the purge condition at $4,244, representing the entire balance of arrears due. The father had been ordered to pay on his arrears-only child support order at the rate of $300 per month; however, he had not made any payments since April 1, 2009. A contempt hearing was scheduled for Feb. 22, 2011, at which time father did not appear. Father did appear at the Sep. 9, 2011 hearing. At the hearing, father acknowledged that during the prior two years, he had earned some money working under the table as an automobile mechanic and ice cream truck driver, but no evidence was presented by either side as to the amount of money father had earned. Father testified that he was currently unemployed, had no assets and was living with his sister. Father indicated that he could pay $1,000 toward his arrears, which he was borrowing from his family. The trial court rejected father's offer, stating it was "[t]oo little, too late" and instead found father to be in civil contempt, sentenced him to six months incarceration and ordered a purge condition of $4,244, which was the entire balance of arrears due.

Hilary A. Bendik is an Associate at the Pittsburgh matrimonial law firm of Bunde, Gillotti, Mulroy & Shultz PC. She volunteers with the Neighborhood Legal Services of Western PA Protection From Abuse Pro Bono Program and Family Law Legal Clinic, along with the Uptown Legal Clinic. She is active in the Family Law Section of the Pennsylvania Bar Association (PBA), and in the Family Law Section and the Young Lawyers Division of the Allegheny County Bar Association (ACBA). Bendik has also acted as a moderator for the ACBA Children's Issues Committee, has been a presenter for the PBA Family Law Section, and has prepared materials for both the PBA and ACBA. Ms. Bendik sits on the Executive Board of Angels' Place, Inc., and is a proud foster parent with Every Child Inc. She received her Juris Doctor from New England School of Law in Boston.

On Sept. 19, 2011, father filed a motion for reconsideration, arguing that Judge Bucci failed to consider his ability to pay the purge condition. Judge Bucci did not immediately enter an order on appellant-father's motion for reconsideration, so he filed a timely appeal on Oct. 7, 2011. Even though an appeal was pending and over 30 days had elapsed since Judge Bucci's order, on Oct. 31, 2011, the trial court held a hearing on father's motion. On Nov. 2, 2011, Judge Bucci granted father's motion, lowering the purge condition to $1,000, the amount originally offered by father.

The Superior Court, when considering father's appeal, first determined whether Judge Bucci had jurisdiction to grant father's motion for reconsideration. The Superior Court stated that although the general rule is that a trial court loses jurisdiction over a proceeding once a notice of appeal is filed, there is an exception when a party files a timely motion for reconsideration "within the time provided or prescribed by the law." Pa.R.A.P. 1701(b)(3)(ii); *see also* Pa.R.A.P. 1701(a). Although father filed a timely motion for reconsideration, Judge Bucci did not act on father's motion for almost two months. Pennsylvania Rule of Appellate Procedure 1701(b)(3)(ii) requires the trial court to enter an order expressly granting the reconsideration within the 30-day appeal period, which would then render the appeal inoperative and allow the trial court to proceed to the merits of the motion. Pa.R.A.P. 1701(b)(3). Because Judge Bucci did not act on the motion within 30 days, the Superior Court held that he did not have jurisdiction to reduce the father's purge condition, and that Judge Bucci's Nov. 2, 2011 order was therefore a legal nullity.

The Superior Court next considered whether the issue was moot, as father had already served his six-month sentence and had been released from incarceration. The Superior Court referred to *Warmkessel v. Heffner*, 17 A.3d 408 (Pa. Super. 2011), in which the court stated:

> As a general rule, an actual case or controversy must exist at all stages of the judicial process, or a case will be dismissed as moot. An issue can become moot during the pendency of an appeal due to an intervening change in the facts of the case or due to an intervening change in the applicable law. In that case, an opinion of this Court is rendered advisory in nature. An

(continued on Page 156)

CASE NOTES
(continued from Page 155)

> issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect.
>
> This Court will decide questions that otherwise have been rendered moot when one or more of the following exceptions to the mootness doctrine apply: 1) the case involves a question of great public importance, 2) the question presented is capable of repetition and apt to elude appellate review, or 3) a party to the controversy will suffer some detriment due to the decision of the trial court. *Warmkessel v. Heffner*, 17 A.3d 408, 412-413 (Pa. Super. 2011).

The Superior Court determined that, despite father having served the entire sentence of incarceration, he had not paid off his arrears and was still subject to a support order. Because his noncompliance with that order could once again subject him to civil contempt proceedings, the Superior Court found this issue to meet a mootness doctrine exception set forth in *Warmkessel* and proceeded with the merits of father's appeal.

The Superior Court affirmed Judge Bucci's finding that father was in civil contempt, agreeing that father had willfully violated the order to pay on his child support arrears for failing to make payments even though he acknowledged having earned some income. However, the Superior Court found that the trial court failed to consider father's ability to pay the purge amount when it set the purge amount at the full balance of arrears, despite evidence by father regarding his unemployment and living situation. The Superior Court stated that the purpose of a civil contempt order is to coerce the contemnor to comply with the court order, with the applicable punishment outline in 23 Pa.C.S. § 4345. The Superior Court also referred its decision in *Hyle v. Hyle,* 868 A.2d 601 (Pa. Super. 2005), which emphasized that "a court may not convert a coercive sentence into a punitive one by imposing conditions that the contemnor cannot perform and thereby purge himself of the contempt." *Id.* at 605–606, citing *Barrett v. Barrett,* 368 A.2d at 621(Pa. Super. 1977). The Superior Court held that there was insufficient evidence for a finding that father had the ability to pay the purge condition ordered, and the matter was remanded back to the trial court for an evidentiary hearing to determine conditions that would be "sufficiently coercive yet enable [father] to comply with the order."

In his concurring opinion, Judge Strassburger outlined the differences between the statutes for civil contempt and criminal contempt, clarifying that the trial court could have characterized the contempt of father as criminal since he did not appear at the Feb. 22, 2011 hearing.

CASE NOTE AUTHOR'S EDITORIAL COMMENTS

Although Judge Bucci corrected his error in setting the purge condition above the appellant-father's ability to pay, he did so after the 30-day appeal period had passed, forcing the appellant-father to endure an appeal with the Superior Court and then a remand hearing, even though his motion for reconsideration was granted. The motion for reconsideration was presented in a timely manner, so is appellant-father's attorney or the trial court to blame? Attorneys must keep this case in mind when filing motions for reconsideration, as judges often take such matters under advisement. Attorneys must make sure that there is an actual order entered granting the reconsideration within the 30 days, even if the judge is taking longer to consider the merits of the motion.

POST-SEPARATION RELATIONSHIP NOT GROUNDS FOR FAULT-BASED DIVORCE
BY AARON P. ASHER, ESQ.

S.M.C. v. W.P.C., 44 A.3d 1181 (Pa. Super. 2012).

The Superior Court of Pennsylvania (Superior Court) (Dononhue, Lazarus and Ott, JJ) affirmed the ruling of the Allegheny County trial court (Mulligan, J.) granting S.M.C. (wife) spousal support and an award of counsel fees, despite allegations by W.P.C. (husband) that wife deserted husband by voluntarily leaving the martial residence and exposed husband to indignities.

The parties, who had one child, had been married for 16 years when wife left the marital home on June 9, 2010. Wife testified before the hearing officer that she was forced to leave the marital home because husband had become verbally abusive and was particularly angered over wife's decision to go on a cruise with wife's female friends in April 2010. On June 12, 2010, three days after leaving the marital residence, wife met another man (boyfriend). Wife testified that the relationship with boyfriend began only after the parties' separation and that she resides solely with the parties' daughter.

During his testimony before the hearing officer, husband admitted that wife's decision to go on cruise without him was a "boiling point" in the parties' relationship and that husband objected to wife going on this cruise. Husband learned of wife's relationship with boyfriend shortly before the hearing, and the hearing officer sustained wife's objections to questions about her conduct with boyfriend because the relationship began post-separation.

Ultimately, the hearing officer recommended that husband pay wife $7,783 per month, with $2,211 accounting for child support and the remaining $5,562 as spousal support. Arrearages were set at $32,897 and husband was ordered to pay a lump sum of $30,000 towards said arrears within 10 days of the hearing. Additionally, wife was awarded $3,500 in counsel fees.

Husband filed exceptions to the hearing officer's recommendations, which were denied by Judge Mulligan after oral argument. Husband then appealed Judge Mulligan's entry of the final order in the matter and raised four issues on appeal to the Superior Court.

On appeal, husband's first three issues raised focused primarily on his claim that wife is not entitled to spousal support due to post-separation conduct.

Aaron P. Asher is an attorney in the Office of General Counsel of K&L Gates LLP, where he focuses on ethical legal issues, including conflicts of interest. He is a member of the Allegheny County Bar Association and a Young Lawyers Fellow of Allegheny County Bar Foundation.

First, husband contends that evidence related to wife's post-separation relationship should have been allowed by the hearing officer. In deciding this issue, the Superior Court closely reviewed a similar Superior Court case in *Jayne v. Jayne,* 663 A.2d 169 (Pa. Super. 1995). In *Jayne*, wife alleged that husband was involved in an extra-marital affair commencing after the parties' separation. The Superior Court noted, however, that "any misconduct in which husband may have engaged after separation is not to be considered unless it goes to support misconduct occurring prior to the accrual of the right to divorce." In so finding, the Superior Court in *Jayne* ruled the testimony of husband's post-separation conduct should have been excluded. The Superior Court in this matter also agreed that, because there was no indication that wife's post-separation conduct is indicative of any pre-separation misconduct, Judge Mulligan properly excluded testimony on post-separation relationship with her boyfriend.

Husband next argues that by going on a cruise without him during their marriage, wife's conduct gives rise to a claim of indignities. If successful, such a claim would provide grounds for a fault-based divorce and preclude wife from receiving spousal support. While the Superior Court notes there is no precise definition of indignities, it clearly confirms that a single act, in this case going on a cruise with friends instead of a spouse, does not support the finding of indignities against wife. Indignities must be a "course of conduct" that makes the life of the innocent party "intolerable and his or her life burdensome." The Superior Court found that husband's testimony that he was angered and insulted by wife's actions in going on a cruise with friends instead of husband did not make husband's life in any way intolerable.

The Superior Court also disposed of husband's claim that wife deserted husband when she left the marital home. In deciding whether one spouse has deserted another, the departing spouse must present evidence of "an adequate legal cause for leaving" *Clendenning v. Clendenning,* 572 A.2d 18, 20 (Pa. Super. 1990). Again, like indignities, desertion does not have a specific definition but must be based on facts of each case. In ruling that wife had adequate legal cause for leaving, the Superior Court relied on the fact that wife had attended marriage counseling for three years before separation and that husband did not participate in the counseling sessions. The Superior Court also considered wife's testimony that husband was verbally abusive and wife and the party's child were fearful when husband was home. These factors ultimately convinced the Superior Court that wife had adequate legal cause for leaving the marital home, thereby disposing of husband's claims

(continued on Page 158)

that wife deserted him.

Husband challenged the $30,000 lump-sum payment on support arrears on the basis that wife was not entitled to spousal support due to the indignities and desertion claims. The Superior Court determined that because the indignities and desertion claims were not supported by facts of the case, there was no basis for husband's challenge to the arrears payment.

Husband's final challenge of Judge Mulligan's order was of the award of $3,500 in counsel fees to wife. In reviewing the totality of the circumstances, the Superior Court found the award of fees was proper given the substantial disparity in the parties' monthly income and the reasonableness of the fees requested.

CASE NOTE AUTHOR'S EDITORIAL COMMENTS

All family law practitioners know the importance of the date of separation as if effects valuation of assets to be distributed. However, this case underscores the importance of the date of separation relative to parties' conduct (or misconduct in some cases). Had wife's relationship begun prior to separation, it's likely the outcome would have been much different and would have drastically affected wife's right to collect spousal support.

SUPERIOR COURT FOUND THAT ORDER SEVERELY RESTRICTING FATHER'S CUSTODIAL RIGHTS DID NOT AFFECT HIS SUPPORT OBLIGATION IN *KIMOCK V. JONES.*

BY ELIZABETH J. BILLIES, ESQ.

KIMOCK V. JONES, 47 A.3d 850 (Pa. Super. 2012).

The Superior Court of Pennsylvania (Superior Court) (J.J. Gantman, Shogan, and Wecht), affirmed the decision of the Northampton Court of Common Pleas (Roscioli, J.) and held that a custody order severely restricting father's custodial rights did not provide a basis for modification or termination of his child support obligation. In making this determination, the Superior Court resoundingly rejected father's assertion that his custody order was analogous to the termination of his parental rights pursuant to Pennsylvania's Adoption Act. Instead, the court's decision, authored by the Judge Susan P. Gantman, reaffirmed Pennsylvania's longstanding public policy that a parent's obligation to pay support continues regardless of his or her relationship, or lack thereof, with the child.

The facts of this case are as follows: Catherine Kimock (mother) and Thomas Jones (father) are formerly husband and wife, having been married in 1993. One child, a daughter, was born of the marriage. The parties separated in 2004 after several incidents of verbal and physical abuse against mother and the child at the hands of father. At that time, the child remained with mother, and father had no contact with her. In 2005, father filed a custody complaint and the parties entered into an agreed order wherein the parties agreed to share legal custody, that mother would have primary physical custody, and that father and child would attend reunification therapy to repair their relationship. Father and child did attend such therapy but it proved unsuccessful. Shortly thereafter, father and mother underwent a custody evaluation wherein the evaluator determined that father suffered from bipolar disorder, a claim that father denied.

Following the custody evaluation, father ceased all contact with the child until September 2009, when he again petitioned Judge Roscioli to modify custody and order further reunification therapy. In response, Judge Roscioli ordered that father must attend individual counseling before they would consider his request for any additional reunification therapy. Father did attend such counseling, and in January 2011, Judge Roscioli held a hearing on father's petition. At the hearing, mother testified regarding the child's severe aversion to reunification therapy and how the ongoing custody litigation has harmed her daughter. The child also testified, stating that she would harm herself or run away if she had to participate in further counseling with her father or spend any time with him. The child's therapist supported both mother's and the child's testimony, stating that the potential harm that would result if reunification therapy was continued severely outweighed any potential benefits to the child. In contrast, father testified in support of his position and stated that he has continually attempted to contact the child but she has rebuked all efforts. Despite this, father testified that he still wanted another attempt at reunification therapy.

On Feb. 8, 2011, Judge Roscioli issued an order denying father's petition to modify and entered an order of court granting

(continued on Page 159)

Elizabeth Billies is an associate in the Lansdale firm of Dischell, Bartle & Dooley and a member of the Family Law Sections of the Montgomery County Bar Association and the Pennsylvania Bar Association, where she is a member of the Family Law Council.

(continued from Page 158)

mother sole physical and legal custody of the child. Father did not appeal the order of court. Instead, father filed a petition to terminate child support. At the time of his filing, father's obligation was approximately $628 per month and the child was 17 years old (though all parties agreed that the child had some mental health issues that may have prevented her from graduating high school on time). In his petition, father argued that because the Feb. 8, 2011 order effectively terminated his parental rights to the child, his support obligation should likewise be terminated. Following a hearing, father's petition was denied and he filed an appeal of same to the Superior Court.

Father raised only one issue on appeal: whether Judge Roscioli committed an abuse of discretion or committed an error of law when it denied his petition for termination. More specifically, father argued that the Feb. 8, 2011 custody order's severe restriction of his custodial rights to the child was analogous to an involuntary termination of parental rights under the Adoption Act. Father further argued that because such termination of parental rights also terminates one's support obligation under Pennsylvania law, his duty to pay support should likewise be extinguished. The Superior Court responded with clear disagreement.

In denying father's appeal, the Superior Court first addressed the basic differences between custody cases under 23 Pa.C.S.A. §5321 *et seq.* and termination cases under the Adoption Act. Father argued that although termination cases require a higher burden of proof (clear and convincing evidence) than custody cases, the difference was "irrelevant." The Superior Court disagreed and found such difference significant. The Superior Court further explained that the best interest of the child is not the first consideration in termination cases as it is in custody cases. In termination cases, courts must first examination if statutory procedures have been adhered to and satisfied prior to engaging in a "best interests" analysis. The Superior Court explained that "the best interest standard applicable in custody cases requires the court to weigh which parent will be best able to serve the needs of the child. In a termination case, only after the court, in a bifurcated process has determined within the same proceeding that the parent has or has not forfeited his right to parent the child, must the court turn to review of the needs and welfare of the child." 47 A.3d at 854 (citing *In re B.L.L.* 787 A.2d 1007, 1012-14 (Pa. Super. 2001)). Here, Judge Roscioli was never asked to determine whether there was clear and convincing evidence that father's parental rights should be terminated; he was only asked to determine whether it was in the child's best interest for father to have legal and/or physical custody of her at that time.

The Superior Court then turned to the most important difference between custody cases and termination cases. The Superior Court explained that in termination cases the parent-child relationship is forever severed and as such the duty to pay child support is also terminated. This is not so in custody cases as custody is always modifiable. The Superior Court stated simply that, "the obligation to support one's child does not depend on a parent's custodial rights." 47 A.3d at 856. In making such a statement, the Superior Court relied on numerous cases such as *Luzerne County Children and Youth Services v. Cottam,* 603 A.2d 212 (Pa. Super. 1992) wherein the Superior Court held that a father still had a duty to support his child who had been placed in the care of CYS. As stated above, father's rights to the child in the instant matter have not been severed. Rather, Judge Roscioli simply determined that it was not in the child's best interests for father to have custody. This finding did not preclude father from filing a petition to modify custody at a later date.

After determining father's analogy to be flawed, the Superior Court next examined whether father's loss of his physical or legal custodial rights to the child constituted a substantial change in circumstances warranting a modification or termination of his support obligation. The Superior Court found that the terms of the Feb. 8, 2011 order provided no such basis for modification under Pennsylvania statutes, rules or case law. It was clear from the record that father's conduct was the reason for his estrangement from the child and the restriction of his custodial rights. The Superior Court found that he should not get to benefit from his misconduct by "escap[ing] his absolute duty to support [the] Child." *Id.* at 858. Further, the Superior Court agreed with Judge Roscioli's assertion that to allow father to terminate his support obligation under such circumstances would open the door for other parents, who have no interest in having custody of their children, to willingly relinquish their custodial rights in exchange for the termination of their support obligations. This could leave many children of the commonwealth without proper support and would certainly place a heavy financial burden on the custodial parent. The Superior Court reasoned that such precedence would be contrary to Pennsylvania's long-held public policy that parents have a responsibility to support their children and such an obligation cannot be bargained away.

CASE NOTE AUTHOR'S COMMENT

So often our clients question why support and custody are treated separately in the court system. For example, how many times have we had a client complain that a father is behind on his support payments yet his custodial time with the children is not affected whatsoever because of his non-compliance? The Superior Court's decision in this matter makes the reasoning for such separation clear. If the Superior Court had granted father's request for termination or modification of his support obligation, the trial courts would have been immediately deluged by cases involving "deadbeat" parents who are suddenly willing to sign over their custodial rights in expectation that the courts will likewise terminate or drastically modify their support obligations. As the Superior Court pointed out its decision, such a finding would reward parents desiring to shirk their obligation and leave many children without adequate financial support. Therefore, this decision reaffirms that a parent's custodial rights and support obligation need to continue to be evaluated separately for the benefit of Pennsylvania's children.

Comments:

Harry M. Byrne, Esq., Co-Editor, hbyrne@byrnelaw.net
Amy J. Phillips, Esq., Co-Editor, aphillips@hoffsemm.com

RESTRICTIVE CUSTODY ORDER DOES NOT TERMINATE CHILD SUPPORT OBLIGATION
BY BRIAN C. VERTZ, ESQ.

KIMOCK V. JONES, 47 A.3d 850 (Pa. Super. 2012). — Last month the Superior Court considered the plea of a father whose custody rights were severely restricted due to his alienation from his teenage daughter. Mother and father were divorced when the child was 10 years old, after a decade of physical and emotional abuse perpetrated by father. Father had no contact with his daughter for a year, until he initiated a custody action. The court ordered reunification counseling with a goal of establishing regular visitation and partial custody. The counseling ceased after only five sessions, but it is not clear whether father or the child refused to continue.

A year later, father requested a custody conciliation, which resulted in a consent order requiring father to submit to psychiatric evaluation. The evaluation revealed that father suffered from bipolar disorder and recommended therapy before resuming the reunification counseling. Father denied that he had bipolar disorder and refused treatment or further evaluation.

Father had no contact with the child until she was 16 years old. He presented a petition to resume reunification therapy, which was granted. After six weeks of individual therapy with father and child, the therapist reported that the child threatened to harm herself if forced to participate in reunification therapy. The trial court conducted a hearing, in which the child described her adverse reaction to seeing father five years earlier and threatened to run away or harm herself if forced to see him. The child's individual therapist described several stress-related disorders suffered by the child, and recommended that the court deny father's request for custody and/or reunification counseling.

The trial court entered an order denying father any contact with the child except as permitted by mother. The order also terminated father's legal custody rights and access to school and medical records. Father reacted by filing a petition to terminate child support, reasoning that his parental rights had been effectively terminated. The trial court denied his petition, holding that an involuntary termination of parental rights involves a different set of criteria and higher standard of proof that had not been applied in this case. The Superior Court affirmed, adding that father was not precluded from future contact with his daughter if he would address his own mental health issues. The court also held that the custody order did not constitute a material change in circumstances under Rule 1910.19, as it did not affect the incomes of the parents or needs of the child. Importantly, the court observed that father's own misconduct was the primary source of the estrangement, which could not be rewarded by a termination of the support obligation.

Harry M. Byrne Jr. is the Founder of the Law Office of Harry M. Byrne Jr. in Bala Cynwyd, Past Chair of the Pennsylvania Bar Association Family Law Section and Articles/Comments Co-Editor of the Pennsylvania Family Lawyer. Amy J. Phillips is an Associate in the York firm of Hoffmeyer Semmelman LLP., Articles/Comments Co-Editor of the Pennsylvania Family Lawyer and a member of the Family Law Sections of the American Bar Association, Pennsylvania Bar Association and York County Bar Association.

Brian C. Vertz, Esq., MBA, AVA, is a Partner in the Pittsburgh firm of Pollock Begg Komar Glasser & Vertz LLC, a Fellow in the AAML, active in the Family Law Sections of the PBA and Allegheny County Bar Association and publishes a Web site and blog devoted to business and financial issues in divorce at www.pollockbegg.com, formerly www.bvsource.com. bvertz@pollockbegg.com

Articles:

Harry M. Byrne, Esq., Co-Editor, hbyrne@byrnelaw.net
Amy J. Phillips, Esq., Co-Editor, aphillips@hoffsemm.com

CARRIED INTEREST AND PERFORMANCE FEE INCENTIVES
BY BRIAN R. POTTER, CFA, CFE AND JASON E. BODMER, CPA/ABV, ASA

EXECUTIVE SUMMARY
Many family law practitioners may find themselves so deep in a sea of technical terms and winding fund structures that efficient and effective resolution of such cases may prove elusive. However, a general understanding of private equity and hedge funds, their manager incentives and the valuation of these assets can assist the family law practitioner in cutting the Gordian knot created in these matters.

The prospect of valuing privately held assets held in a marital estate can greatly increase the complexity of a typical domestic relations matter. Further, when these assets consist of financial incentives, such as a carried interest in a private equity fund or a performance fee in a hedge fund, the complexity of a case can increase exponentially. Many family law practitioners may find themselves so deep in a sea of technical terms and winding fund structures that efficient and effective resolution of such cases may prove elusive. However, a general understanding of private equity and hedge funds, their manager incentives (i.e., carried interests and performance fees) and the valuation of these assets can assist the family law practitioner in cutting the Gordian knot created in these matters.

PRIVATE EQUITY AND HEDGE FUNDS DEFINED

Private equity and hedge funds are professionally managed pools of capital that invest in the equity, debt and other securities issued by companies (both public and private), derivative investments (such as futures and options in indexes), currencies or commodities, and other securities. These vehicles are usually funded by pension funds, endowment funds and accredited investors with the goal of generating a higher rate of return than is typically available in other asset classes. Given the strategies employed by the funds and the asset classes in which they invest, these vehicles can also provide a greater degree of diversification than their investors may otherwise enjoy.

Private Equity Funds

Private equity funds typically fall into three categories, including venture capital, buyout, and mezzanine and distressed funds. Funds generally make controlling equity investments in private or public companies while focusing on long-term appreciation in these assets (i.e., maximizing exit multiples) over a three- to 10-year investment horizon. For many of these investments, a fund will employ significant leverage (i.e., debt financing) to enhance equity rates of return.

Private equity funds are usually organized as limited partnerships with investors (the limited partners) providing capital and the managers of the fund serving as the general partners. As illustrated in the adjacent table, a common private equity fund structure includes two management-related entities: a general partner and an investment manager. Additionally, some funds employ a master feeder structure whereby investors contribute capital to onshore and offshore feeder entities, which then invest this capital in a master fund that makes all portfolio investments on behalf of the fund.

(continued on Page 162)

Brian R. Potter, CFA, CFE is a Director in the Dispute Advisory & Forensic Services (DAFS) Group at Stout Risius Ross (SRR) and is the co-Head of the firm's Illinois Family Law Valuation & Consulting practice. Jason E. Bodmer, CPA/ABV, ASA, is a Manager in the DAFS Group at SRR. SRR's Family Law Valuation & Consulting practice handles high-stakes divorce matters throughout the United States, providing expert testimony and other services in complex matters involving business valuation, real estate appraisal, forensic accounting, and e-discovery. Brian Potter can be reached at (312) 752.3352 or bpotter@srr.com. Jason Bodmer can be reached at (312) 752.3320 or jbodmer@srr.com.

(continued from Page 161)

The managers of a private equity fund, through the general partner and investment manager, are responsible for making all decisions surrounding the activities of the fund, including acquisitions, capital calls, divestitures, etc. In exchange for this oversight, the managers receive a management fee (often 2 percent of committed capital/assets under management), reimbursement for fund expenses and a carried interest. Conversely, the investors in the private equity fund (i.e., the limited partners) receive a preferred return on their contributed capital, which accrues until the fund begins making distributions. Preferred returns generally range from 7 to 10 percent per annum.

Hedge Funds

Hedge funds operate similarly to mutual funds in that investors can buy and sell interests in a fund at a price based on the underlying net asset value of the fund. However, hedge funds are able to invest in a broader array of securities than mutual funds, such as derivatives, and can also take short positions in these securities. These funds are often set up as limited partnerships or limited liability companies, with the investors comprising the limited partners or members of the fund and the managers acting as the general partner or manager. Hedge funds are also characterized by the investment strategies they employ, with common fund strategies including: 1) equity long/short; 2) tactical trading; 3) relative value and 4) event-driven.

Unlike private equity funds, hedge funds often employ shorter-term investment strategies, with some funds even focusing on executing high-volume, small-margin trades hundreds or thousands of times per day. Moreover, many hedge funds develop extensive trading algorithms to analyze information and aid in the direction and execution of proprietary trading strategies.

Like a private equity fund, the managers of a hedge fund make all substantive decisions regarding the fund's operations and investment activities. For their services, the managers receive a management fee, reimbursement for fund expenses and a performance fee or allocation, which represents a percentage of the fund's returns over a high-water mark or other hurdle.

INCENTIVES FOR MANAGERS OF PRIVATE EQUITY AND HEDGE FUNDS

The purpose of a private equity or hedge fund is to raise capital, invest that capital and earn a rate of return higher than conventional investments. The success or failure of a private equity or hedge fund is highly dependent upon the capabilities of the manager. Accordingly, certain vehicles have been developed in order to reward the managers of these funds for the successful deployment of the fund's capital. These vehicles include a carried interest in a private equity fund and a performance fee in a hedge fund.

The Private Equity Fund Carried Interest

A carried interest in a private equity fund represents an economic benefit that accrues to the general partner independent of the general partner's investment contribution. A typical carried interest receives 20 percent (but this amount can range between 10 and 40 percent) of the private equity fund's distributions after: 1) all investment and management expenses have been paid; 2) invested capital has been returned to all partners and 3) accrued preferred returns have been paid to the limited partners. Effectively, the carried interest holder only receives distributions when the private equity fund generates an annualized return in excess of the preferred return.

The Hedge Fund Performance Fee

A performance fee in a hedge fund also represents an economic benefit that accrues to the manager. Performance fees are generally 20 percent of fund returns, but may range as high as 50 percent in some instances. Further, to ensure that managers only receive performance fees when the value of a hedge fund is rising, these fees are generally only paid out when the net asset value of the fund is above the level at which the performance fee was last paid. This level is commonly referred to as the high-water mark.

VALUATION OF CARRIED INTERESTS AND PERFORMANCE FEES

Carried Interests

The value of an asset is derived from its expected future cash flow after consideration of the risk associated with realizing this cash flow. A carried interest represents a share in the residual claim on a private equity fund's distributions after the return of invested capital and the payment of management fees and accrued preferred returns. As such, the cash flow potential of a carried interest is dependent upon the fund generating a sufficiently high rate of return. Two commonly used methods to value carried interests include a discounted cash flow method and an option pricing method.

Discounted Cash Flow Method

The discounted cash flow method projects a carried interest's expected future cash flows and discounts them at a rate of return commensurate with the risk inherent in realizing those cash flows. This approach requires making assumptions regarding the private equity fund's rate of return and investment holding period, and then applying an appropriate rate of return to these cash flows over the specified holding period.

The rate of return used to discount the projected cash flows is correlated with the expected portfolio return for the entire fund and, thus, can be derived in part from this return. Further, since the fund's investors receive preferred returns before any net proceeds are paid to the carried interest holders, the projected cash flows

(continued on Page 163)

(continued from Page 162)

attributable to the carried interest are riskier than the projected cash flows associated with the invested capital. As a result, the rate of return applicable to the carried interest is generally higher than the gross portfolio rate of return of the underlying assets.

Option Pricing Method

A carried interest may also be valued using standard option pricing theory. A carried interest is similar to a simple call option as it gives the holder the right to the value of an asset over a specified threshold (i.e., the strike price) for a specified period of time. As it relates to a carried interest, the strike price is the capital contributed by investors plus the accumulated preferred return at fund termination.

Option pricing models are arbitrage pricing models that were developed using the premise that if two assets have identical payoffs, they must have identical prices to prevent arbitrage opportunities (i.e., riskless profit). These models consider five variables in calculating the price of a traditional call option, including: 1) asset price; 2) strike price; 3) time to maturity; 4) risk-free rate of return and 5) the price volatility of the underlying asset (i.e., risk). The following chart details the inputs used for each of these variables in the valuation of a carried interest.

Option Model Variable	Input
Asset Price	Based on the amount of contributed capital of the fund
Exercise Price	Based on the contributed capital plus preferred return distributions at termination
Time to Maturity	Expected life of the fund
Risk-Free Rate	U.S. Treasury Bond with equivalent duration
Price Volatility	Estimated based on index returns, prior fund results, hedge fund index returns

Performance Fees

Similar to a carried interest, the value of a performance fee in a hedge fund is derived from its expected cash flow after consideration of the risk associated with realizing the expected cash flow. However, a performance fee in a hedge fund can differ from a carried interest in a few ways. First, many funds do not have a return hurdle that must be met before distributions are made to the performance fee holders. Second, unlike private equity funds, many hedge funds do not have specific termination dates. Finally, while private equity investors' capital is locked up for the duration of a fund, hedge fund investors can usually withdraw their capital after meeting certain fund-specific requirements. Thus, while a discounted cash flow method may be used to value a performance fee, the option pricing method is generally not applicable.

Discounted Cash Flow Method

Similar to the valuation of a carried interest, applying a discounted cash flow method requires making assumptions about the hedge fund's expected returns and the risk associated with realizing those returns. However, as discussed above, there are three areas where a performance fee valuation may differ from a carried interest valuation, including the term of the fund, the hurdle rate that must be met before distributions are made and investor redemptions.

Term of the Fund

Most private equity funds have a finite life specified in the fund's private placement memorandum or operating/partnership agreement. The term of the average private equity fund is between three and 10 years. Conversely, many hedge funds do not have a specific term and some hedge funds are perpetual (*i.e.*, no termination date). Thus, while a carried interest may be valued using a discrete or finite set of projected cash flows, the valuation of a performance fee may require the use of a discrete set of cash flows coupled with a residual period that is capitalized into perpetuity.

Hurdle Rate

As discussed above, a carried interest is a residual interest in the cash flows of a private equity fund because the fund must return investors' contributed capital and the accrued preferred return before making distributions to the carried interest holders. Thus, a carried interest has no value unless the underlying private equity fund generates a return in excess of the preferred return.

A typical hedge fund only requires that a high-water mark is met before distributions are made to the performance fee holders. The high-water mark feature ensures that the performance fee is only paid when the hedge fund's net asset value (*i.e.*, the net value of all the fund's underlying investments) has increased since the last time the fee was paid out. In effect, the holder of the performance fee receives distributions on all positive returns generated by the fund since the last performance fee distributions was made.

Investor Redemptions

Investments in private equity funds are generally illiquid as most funds forbid the withdrawal of limited partner capital prior to the termination of the fund.[1] Thus, in projecting the returns expected to be generated by the fund, no consideration needs to be given to redemptions of investor capital. In a typical hedge

(continued on Page 164)

(continued from Page 163)

fund, however, investor redemptions are generally allowed upon written request of the investor and after a relatively short lock-up period has been met. As such, a reduction in capital due to investor redemptions must be considered when projecting the future returns of the fund.

CONCLUSION

The existence of complex financial incentives in a marital estate can create hurdles to the efficient and effective resolution of marital dissolution matters. However, an understanding of the structure and purpose of these incentives, as well as the underpinnings of the valuation of these assets, can add a great deal of clarity to a case.

[1] Many institutional investors have recently begun selling their private equity limited partners interests in private, secondary market transactions. While this may be an option for some private equity fund investors to gain liquidity, there are still several steps that must be taken such as getting approval of the general partner of the fund, finding a buyer, etc., before an interest can be sold. Further, this would have no effect on the aggregate invested capital of the fund as these sales are executed on the secondary market and are not redemptions by the fund.

CUSTODY MODIFICATION
BY JAMES W. CUSHING, ESQ.

In January 2011, the Pennsylvania Legislature passed a new statute regarding child custody. Since its passage, Pennsylvania courts have attempted to navigate its new provisions when applying it to the various custody cases that have come before them. One such case is the recent Superior Court matter of *J.R.M. v. J.E.A.*, 2011 Pa.Super. 263, 33 A.3d 647 (2011), which was litigated pursuant to the new Pennsylvania custody statute.

The matter of *J.R.M. v. J.E.A.* went to trial regarding petitions for custody by both the father, J.R.M., and the mother, J.E.A., with regard to their child. The trial court entered an order awarding the mother primary physical custody and the father partial physical custody according to a very complicated arrangement that relegated J.R.M. to what is known colloquially as "visitation" to account for the child's need to nurse and a very restrictive custody arrangement upon the child's weaning.

Upon the issuance of the above-described custody order, J.R.M. filed an appeal to the Pennsylvania Superior Court. His appeal was based upon the failure of the trial court to file a written opinion pursuant to the requirements of the new custody statute (see Pa.R.A.P. 1925(a)(2)(ii)). J.R.M. also appealed on the basis that the trial court failed to "engage in a fact-specific, case-specific analysis of the best interest factors and made no findings to support its legal conclusion" and failed to make "findings that such severe restrictions [after the child no longer needed to nurse] were necessary," according to the opinion.

Pursuant to 23 Pa.C.S.A. §5328(a), a section of the new custody statute, a trial court, when making a ruling on a custody issue, must specifically address and consider 16 different factors that impact the custody of a child. The trial court simply failed to address specifically and consider the aforementioned factors when making its ruling as described above. The Superior Court noted that the trial court merely focused on the child's need to nurse and the parties' difficulty communicating and did not mention any of the other factors as required by the new custody statute. Indeed, the Superior Court specifically stated that all 16 factors must be considered by a trial court entering a custody order. By failing to consider all of the factors, the Superior Court concluded that the trial court erred as a matter of law, and consequently vacated the trial court's order and remanded the case for further findings of fact.

J.R.M.'s appeal also argued that the trial court's restrictions on his custody periods were imposed without any stated justification by the trial court. The Superior Court noted that an award for partial custody generally does not include any significant restric-

(continued on Page 165)

James W. Cushing is an Associate at the Law Office of Faye Riva Cohen PC, with a focus on family law. He is licensed to practice law in both Pennsylvania and New Jersey; he is a regular contributor to the Philadelphia Bar Association's publication, Upon Further Review, *a PA Superlawyer's Rising Star, an ezinearticles.com Expert Author, and a top rated attorney on Avvo.com. He is also a volunteer attorney for the Christian Legal Clinics of Philadelphia, Inc. jwc@fayerivacohen.com*

(continued from Page 164)

tions unless there would be some detriment to the child at issue without them as justified by the evidentiary record.

The Superior Court observed that the trial court never indicated why the restrictions are necessary; indeed, "the trial court made no finding that father was unfit or unable to care for child on his own, or that he posed any sort of threat to child if left entirely unattended," according to the opinion.

Similarly, despite ruling that it was a long-term goal for J.R.M. to have custody of the child at his residence and/or overnight, the trial court did not allow him to have custody at his home and/or overnight immediately, without offering any explanation as to why. The Superior Court again observed, "The trial court made no finding that visitation in father's home would be detrimental to child, that father's home was not equipped to have child visit during the day or for overnight visitation, or that father or his fiancée posed a threat to child."

The Superior Court also noted there was nothing on the record indicating issues with J.R.M's cohabitating fiancée or why the child could not travel to his home once weaned. Considering the above, the Superior Court ruled that the above restrictions upon J.R.M. were unreasonable in light of the evidence presented at trial.

Ultimately, after consideration of all of the above, the Superior Court ruled that the trial court's order was vacated and the matter was remanded because the trial court failed to adequately and expressly consider all 16 factors pursuant to 23 Pa.C.S.A. §5328(a) and additionally failed to provide any justification for any of the restrictions placed on J.R.M.'s custody periods.

The matter of *J.R.M. v. J.E.A.* is, perhaps, the first of many cases to be appealed in the near future in order to secure adequate adherence by Pennsylvania's trial courts to the standards set by the new custody statute. Therefore, Pennsylvania's custody judges must be vigilant and expressly and clearly address all required aspects of the new custody statute when entering custody orders. Otherwise, their orders are likely to be overturned.

THE JOANNE ROSS WILDER MEMORIAL FAMILY LAW SECTION SCHOLARSHIP BY DANIEL J. CLIFFORD III, ESQ.

In July 2008, then-Section Chair **Carol Behers** appointed a Subcommittee consisting of Section Secretary **Christine Gale**, then-Treasurer **Daniel J. Clifford III** and then-Council Member **Sandra Davis** to review the possibility of creating a scholarship program to assist qualified Section Members by defraying some of the costs of attending Section Conferences.

At the January 2009 Council Meeting in Pittsburgh, Council voted in favor of establishing a Membership Incentive Program that designates $2,000 annually for scholarships.

The scholarships will cover the payment of registration fees for attendance at one of the annual Conferences.

Eligible recipients are Section Members who are:

(a) young/new to the practice;
(b) from solo practice or small firm; and/or
(c) from counties that have been under-represented at Section Conferences.

The Resolution passed Council unanimously and the first set of scholarships were available for the Winter 2010 meeting in Hershey.

In December 2011, Council voted to rename the scholarship The Joanne Ross Wilder Memorial Family Law Section Scholarship.

For the Winter 2013 Meeting at the The Westin Convention Center, Pittsburgh,, the Membership Incentive Program will be administered by Chair-Elect **Daniel J. Clifford III** and First Vice Chair **James P. Helvy**, who will make a recommendation to Chair **Christine Gale** for Executive Committee approval.

Interested applicants should forward their CV and a brief statement as to why they believe they are eligible for the scholarship to the attention of Janell Klein, PBA, P.O. Box 186, Harrisburg, PA 17108-0186.

Applications should be submitted no later than Friday, Dec. 14, 2012.

DUMPSTER DIVING THE FAMILY COURT FILES
BY GREGORY S. FORMAN, ESQ.

When I first started practicing family law an early mentor, William J. Hamilton III, told me that, "the evidence for a thousand divorces lies in the family court files." What he meant is that many an adultery divorce was obtained without the spouse of the other party to the adultery being aware of the infidelity. His greater point was that other folks' family court files often have information helpful to one's cases.

This is largely because many people go through more than one divorce or have children with more than one parent. There are myriad ways that such old files can provide useful information for current litigation.

One party's previously filed financial declarations and final orders are obvious items to obtain. Financial declarations provide sworn testimony to that party's financial condition at a certain moment of time. Divorce decrees or final orders of separate maintenance can show what property one party might have owned and whether that party was then capable of self-support. Such orders might also contain evidence of past fitness concerns regarding custody and visitation.

The affidavits from such cases can also provide useful impeachment information, not only against the opposing party based on his or her previous affidavits but also for that party's witnesses. For example if a couple with children are going through a divorce, and one or both parties had previous custody litigation involving other children, that party's witnesses might have provided affidavits in the prior case attesting to the good qualities of the stepparent in order to support the parent. With the parties now divorcing, friends and family who once praised the stepparent will now attack him or her. These previous affidavits can often impeach and limit the impact of the now-adverse testimony.

The parties' previous litigation material is even more useful. With any modification case a sharp first step is to obtain a complete copy of the previous family court files. Partially this is essential to demonstrate what the circumstances were at the time of the previous final order, which is vital to showing or disproving a substantial change of circumstances. Such information is also needed to insure that one's own client does not submit sworn statements that contradict previously filed information. Finally these files often provide useful impeachment information against opposing parties. In modification cases in which I have the complete previous file(s) and opposing counsel doesn't, I operate at a tremendous advantage.

In any contested litigation a good first step is to determine what might exist in the family court files that help or hurt each party's claim. Such "dumpster diving" can be an extremely productive, low-cost discovery method.

Gregory S. Forman is is a Family Law Attorney and Certified Family Court Mediator and the founder of Gregory S. Forman P.C., 171 Church Street, Suite 160, Charleston, S.C. 29401, (843) 720-3749, (843) 614-5086 (fax), attorney@gregoryforman.com. He is an guest lecturer on evidence and family law at the Charleston School of Law and serves as a volunteer mediator in Charleston County Department of Social Service abuse and neglect cases and on the Attorney Fee Dispute committee for the Charleston region.

In 2009, Mr. Forman qualified to become a mentor to newly licensed attorneys as part of the South Carolina Supreme Court Lawyer Mentoring Second Pilot Program. As part of that program he has mentored newly licensed attorneys in the practice of family law. Also in 2009 he undertook a formal 40-hour program in Family Law Mediation Training offered by the South Carolina Bar and is certified as a Family Court Mediator with the State of South Carolina. He is the Treasurer for the Charleston County Family Court Liaison Committee and the Past-President of the South Carolina Bar Trial and Appellate Advocacy Council.

Please make sure that you have provided the PBA with your email address (office or home) so we can notify you when a new issue of the newsletter has been published.

Use the PBA online membership update form at www.pabar.org/demo/edit.asp OR simply type "Member email address update" in the subject line of an email and send to jodi.wilbert@pabar.org.

If you know of fellow Section members who have not supplied their email addresses, please urge them to do so.

DEFENSE OF MARRIAGE ACT DECISIONS AND IMPACT ON PENDING EASTERN DISTRICT OF PENNSYLVANIA CASE, *COZEN O'CONNOR, P.C. V. TOBITS AND FARLEY* (NO. 11-00045-CDJ)

BY AARON D. WEEMS

Earlier this year, two decisions were rendered which considered the constitutionality of applying the Defense of Marriage Act (DOMA) to state and federal benefits. The decisions of the U.S. Court of Appeals for the First Circuit (Massachusetts) and the Southern District of New York, as well as the U.S. Court of Appeals for the Ninth Circuit declining to rehear en banc their decision to strike down California's gay marriage ban (Proposition 8), are indicia of the momentum moving this issue through the appeals system and towards the Supreme Court. They will undoubtedly influence the Eastern District of Pennsylvania's forthcoming decision in *Cozen O'Connor, P.C. v. Tobits and Farley* (No. 11-00045-CDJ), which will consider a complicated blend of contract interpretation, federalism and the constitutionality of DOMA. Though neither the First Circuit Court of Appeals or Southern District of New York cases directly attack DOMA per se, each case chisels away at the constitutionality of DOMA through the courts' consideration of the disparate results and access to federal benefits by same-sex couples compared to heterosexual couples. If the Eastern District gets to the issue of DOMA's constitutionality, the *Cozen* case has the potential to further define the application of DOMA to private contracts and employers.

In order to understand the impact the Massachusetts and New York decisions may have on the *Cozen* case, it is important to first understand the sections of DOMA being considered. Section 2 of the DOMA revises Chapter 115, Title 28 of the U.S. Code, by adding Section 1738C which essentially exempts all states, territories, Indian tribes or possessions of the United States from recognizing the legally recognized same-sex marriage of any other state, territory, Indian tribe or possession. Section 3 actually defines the word "marriage" as "only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife." There is no fourth section. The bill, in its entirety, barely reaches two pages in length and was largely devoid of floor debates or fact-findings; yet those two sections conceivably impact thousands of pieces of state and federal legislation, regulation and rules.

Aaron D. Weems is an Associate in the Blue Bell office of Fox Rothschild LLP. Aaron is the Editor of Fox Rothschild's Pennsylvania Family Law Blog and currently serves on the Conshohocken Borough Planning Commission. He is a graduate of Villanova University and the Villanova School of Law.

The brevity of DOMA demonstrates its narrow and specific purpose, but its creation as a federal definition of marriage and spouse has infringed upon states' traditionally reserved powers to regulate domestic relations. In defining marriage and authorizing the states to ignore or abstain from extending full faith and credit to the domestic relations laws of their sister states, the federal government invited the consideration of whether it could pass and enforce this law, particularly when it was applied to taxation, estate and other state issues in which the federal government's definition of marriage conflicted with the state's definition.

The First Circuit Court of Appeals in Massachusetts' rendered their opinion in *Massachusetts v. United States Department of Health and Human Services, et al.,* on May 31, 2012. The decision arises from a challenge to Congress's ability to limit individuals' access to federal benefits (*i.e*. filing joint tax returns, health insurance for federal employees, collecting Social Security survivor benefits). The Massachusetts case is actually two cases consolidated on these issues; specifically, a suit brought by seven same-sex couples married in Massachusetts and three surviving spouses who were seeking federal benefits. The second case was brought by Massachusetts to address the state's concern that their recognition of same-sex spouses and marriage would result in the revocation of federal funding and refusal of the federal government to extend benefits to surviving same-sex spouses in programs such as Medicaid and veterans' cemeteries due to the federal government following DOMA's definition of "marriage" and "spouse." Losing federal funding or forcing the state to apply two interpretations of the same law is a valid concern for states passing same-sex marriage laws: to legalize same-sex marriage is to invite the federal government's definition of "marriage" and "spouse" to supersede their own.

The First Circuit Court of Appeals considered arguments on the basis of equal protection, federalism and the legislative intent and history of the DOMA. The court recognized that they have a limited basis to consider an equal protection argument due to a 1972 Supreme Court decision in *Baker v. Nelson,* 409 U.S. 810 (1972), which failed to find a substantial federal question in the appeal of Minnesota's definition of marriage as that between a man and a woman. The First Circuit also declined to apply an "intermediate" level of scrutiny to DOMA, having found that it could not be struck down applying a "rational basis" test to the law. The opinion does recognize that while DOMA "does not pre-

(continued on Page 168)

(continued from Page 167)

vent same-sex marriage where permitted under state law; but it will penalize those couples by limiting tax and social security benefits to opposite-sex couples in their own and all other states." The court goes on to cite that where one same-sex spouse is in federal service, the other will be unable to "take advantage of medical care and other benefits available to opposite-sex partners in Massachusetts and everywhere else in the country."

The First Circuit's application of the concept of federalism is simultaneously cited, rejected and enforced in this opinion. To the extent that the Spending Clause of the Constitution and the 10th Amendment apply, the First Circuit does not find that either invalidates DOMA. However, it does recognize the intrusion of DOMA into states' regulation of domestic relations and the definition of lawful marriage. Unlike other acts of Congress that apply a definition limited to a particular law, DOMA represents the unprecedented step of establishing a definition of marriage intended for broad application to the U.S. Code and federal programs. The First Circuit does not go so far as to say that the federal government has "commandeered" the regulation of domestic relations in a state and, in fact, indicates that it avoids doing so by pointing out that Section 3 only governs federal programs and funding. That being said, the court cannot ignore the reality that Section 3 denies federal benefits to same-sex spouses and, while not superseding the state's authority to regulate its domestic relations, is a way for Congress to "put a thumb on the scales and influence a state's decision as to how to shape its own marriage laws. …" Ultimately, the First Circuit considered the legislative intent and history of DOMA and concluded that while federalism promotes a "diversity of governance based on local choice" the denial of federal benefits to lawfully married same-sex spouses is not adequately supported by a federal interest.

A short time later in June, the Southern District of New York rendered a decision departing from the First Circuit Court of Appeals to the extent that they offer a stronger application of the Equal Protection Clause of the Fifth Amendment than the First Circuit was inclined to do by applying a rational basis test to Section 3 of DOMA. Edith Windsor is the surviving spouse of a same-sex marriage and was assessed $363,053 in federal estate tax after being left her spouse's estate via a written will. Windsor sought summary judgment on the basis of strict constitutional scrutiny that considers homosexuals to be a "suspect class" with a history of discrimination; an immutable characteristic upon which the classification is drawn; political powerlessness, and; a lack of relationship between the characteristic in question and the class's ability to perform in or contribute to society. *see e.g. Windsor v. USA,* 10 Civ. 8435 (S.D.N.Y. 2012 (stating Windsor sought a strict scrutiny review based on Attorney General Eric Holder's belief that a heightened standard of scrutiny should be applied to classifications based on sexual orientation). Much like the Supreme Court in an earlier case, the Southern District declined to extend this classification to homosexuals and instead decided the case under a rational basis review of DOMA. The Bipartisan Legal Advisory Group of the House of Representatives (BLAG) opposed *Windsor* and the Southern District rejected its arguments point-by-point as the court failed to connect a rational basis between DOMA and a cautious approach to the preservation of the traditional institution of marriage; childbearing and procreation concerns, or; consistency and uniformity of federal benefits. This third category raised by BLAG is, in fact, the only discernible link the court found between DOMA's intent and its application, but that due to its incursion into the states' regulation of domestic affairs fails to conform to the principles of federalism and justifies the invalidation of Section 3 of DOMA.

In essence, the Southern District found that Section 3, while not precluding states from recognizing same-sex marriage, forces the federal government — through the extension of federal benefits to citizens of a same-sex marriage state — to essentially validate the state's position or express its contrary position through the denial of federal rights. This amounts to the federal government enacting a law limiting a state's ability to fully legislate its domestic relations which is an impermissible act considering that domestic relations are long the province of the states and not the federal government.

Pennsylvania's role in this debate is being shaped by a dispute over the proceeds of a private employer profit-sharing plan winding its way through the Eastern District of Pennsylvania. *Cozen O'Connor P.C. v. Tobits and Farley* (No. 11-00045-CDJ) deals with the definition of "spouse" and whether the "spouse," Jennifer Tobits, of deceased Cozen partner, Sarah Farley, is entitled to receive the proceeds from the profit-sharing plan absent her designation as the beneficiary on the beneficiary designation form. The application of Section 3 of DOMA is due to the Cozen plan's reliance on ERISA law for the interpretation of the plan language, thus pulling into the debate whether Tobits — as Farley's spouse — needed to sign a spousal acknowledgment when the plan benefits were assigned to Farley's parents.

Tobits and Farley were legally married in Canada in 2006 while Farley was an attorney in Cozen's Chicago office; she was diagnosed with cancer shortly thereafter. A day before Farley died, she purportedly signed a beneficiary designation form naming her parents as the beneficiaries of her profit-sharing plan, listing herself as "single," and did not obtain Tobits' signature on the spousal consent portion of the beneficiary designation. Farley's parents presented this form to Cozen after her death. Thereafter, Tobits informed Cozen that she intended to make a claim for the benefit. After receiving Tobits' claim, Cozen — who, notwithstanding Pennsylvania law, which does not recognize same-sex marriage, considered Farley and Tobits married — filed an interpleader action seeking a determination as to which party is entitled to the profit-sharing proceeds.

(continued on Page 169)

(continued from Page 168)

The Eastern District is tasked with considering a complicated factual background, contract interpretation and application of federal law to a private employer plan. Among the questions the court will consider, it may first consider whether Cozen necessarily has to apply DOMA's definition of "marriage" and "spouse" if its protocol is to refer to ERISA law for enacting its private employer plan provisions? If they, in fact, need to use DOMA's definitions when applying ERISA to their plan, are they violating Tobits' constitutional rights by essentially invalidating her marriage and designation as Farley's spouse? The court will even consider whether Cozen breached a fiduciary duty by failing to properly notify Farley that Tobits may not be considered her spouse under their private plan.

Tobits' argument tries to avoid the court from having to tackle those questions — she argues that ERISA and DOMA can coexist by virtue of the fact that DOMA requires ERISA to provide a benefit to opposite-sex spouses, while the private plan can still extend the benefit of a spousal death benefit to same-sex couples and not violate ERISA. Basically, Cozen can accommodate opposite sex couples by following ERISA and DOMA and accommodate same-sex couples by simply deciding to take the extra, voluntary step of including same-sex spouses as default beneficiaries.

If the Eastern District chooses to invalidate the beneficiary form and reach the merits of the application of ERISA and DOMA's definition of "spouse" the opinions of the First Court of Appeals and the Southern District of New York provide much of the ammunition to strike down DOMA as unconstitutional. The court would need to decide and justify the appropriate level of review; could the court find that by applying DOMA to ERISA, there is a rational basis for denying a same-sex spouse the plan proceeds? If DOMA controls in this case, does it violate the Due Process Clause and, by extension, does Pennsylvania's version of DOMA violate federal due process and equal protection rights or Pennsylvania's Equal Rights Amendment? As seen in the earlier cases, the inclination would be that the relative lack of legislative findings and study associated with DOMA hinders their ability to identify a causal link denying the benefit to the spouse as the default beneficiary. It is doubtful the Eastern District would go a step further than its colleagues in New York, Massachusetts or California by finding that homosexuals are a "suspect class" due greater protections, but as seen in New York, that does not mean the court's analysis is devoid of recognizing the realities of how the application of DOMA to federal programs and benefits affects same-sex couples compared to heterosexual couples.

An appeal to the Supreme Court appears to be a foregone conclusion. If the Eastern District chooses to invalidate the beneficiary form and recognize Tobits as Farley's spouse, then they would necessarily need to reject importing DOMA's definition of "marriage" and "spouse" into ERISA. If the Eastern District applied DOMA's definition of "spouse" to the interpretation of Cozen's profit-sharing plan terms. In either instance, this case will be appealed. Twenty-six amicus briefs were filed in the Massachusetts case; the competing interests of all involved marks the application of DOMA as a benchmark decision for the Supreme Court.

CONVERTING 401(k) ASSETS TO AN IN-PLAN ROTH ACCOUNT
BY ALEX M. KINDLER, CPA/ABV/CFF/PFS, CVA, MBA

The tax law now permits 401(k) plans to offer eligible plan participants the option of transferring certain amounts from their regular 401(k) accounts to designated Roth accounts within the plan. If your plan has the conversion option, you may wonder how it works and whether making such a move would be advantageous for you.

Qualifications

You must be eligible for a distribution from the plan to make a conversion. As a result, if you are currently employed, you will be able to convert to a Roth account only in limited situations.

Generally, you must be at least age 59½ to take an in-service distribution of pretax deferrals from a 401(k) plan.* But exceptions apply. For example, if you are disabled or receive what is considered to be a "qualified reservist distribution," you generally would be able to complete an in-plan conversion.

Some plans also permit the distribution of vested employer contributions (and related earnings) after five years of plan participation or after the contributions have been in the plan for at least two years. This may open another opportunity for an in-plan Roth conversion.

Current Versus Future Income-tax Liability

Like a Roth IRA conversion, an in-plan Roth conversion triggers an income-tax liability on the taxable amount converted. So there's a tradeoff: Pay taxes now to get tax-free treatment later when you receive qualified Roth distributions from the plan. How do you know which approach makes more sense from a financial planning standpoint? Without the luxury of hindsight, deciding whether or not to convert traditional 401(k) amounts to a Roth account within the plan is not always easy. Your future tax situation is uncertain, as is federal tax law itself.

Alex M. Kindler, CPA/ABV/CFF/PFS, CVA, MBA, is Horovitz, Rudoy & Roteman's Business Valuation and Litigation Support Partner and concentrates his practice in these areas as well as divorce tax planning, business forecasting and mergers and acquisitions. He has prepared over 1,000 business valuations in a variety of industries and professional practices.

Kindler is an author and frequent speaker at professional and educational seminars. He has been admitted in court and master's hearings as an expert witness in business valuation, disposable income, fairness opinions and economic damage cases in U.S. District Court, U.S. Bankruptcy Court, and the Pennsylvania counties of Allegheny, Beaver, Butler, Cambria, Dauphin, Erie, Greene, Indiana, Venango, Washington, and Westmoreland.

Cash Flow and Marginal Rates

If you convert and pay taxes currently, you'll have less money available for investment. However, if you expect your marginal income-tax rate to be significantly higher in the future, it may be worthwhile to pay the tax liability associated with a conversion now. On the other hand, if you expect to pay income taxes at lower rates in the future, you may prefer to stick with your traditional, pretax 401(k) account and continue to defer taxation. And, of course, it is always possible that the tax-free treatment of qualified Roth distributions may change in the future.

** Your employer may have amended your plan's document to permit the distribution of pretax amounts upon attaining age 59½ only if you intend to roll those amounts to the in-plan Roth account.*

CLOUD COMPUTING — A SHIFT IN PENNSYLVANIA SALES TAX POLICY
BY STEPHEN BLAIR, CPA, JD

The Pennsylvania Department of Revenue (DOR) surprised many people recently with a sales tax ruling that indicates a reversal of its previous policy regarding taxation of a very popular form of software. In Legal Letter Ruling Number SUT-12-001, issued May 31, 2012, the DOR stated its intention to impose sales tax on transactions involving web-hosted software or "cloud computing." This new policy calls for software vendors selling licenses to use software that is accessed via the Internet (rather than downloaded onto the customer's computer) to collect sales tax on all such transactions if the customer uses the software in Pennsylvania, regardless of where the software may be physically stored. Previously the DOR's policy had been that such sales were subject to Pennsylvania sales tax only if the server on which the software resides was located within Pennsylvania (see Ruling SUT-10-005). In this latest ruling, however, the DOR is asserting that the location of the server is irrelevant, and that charges for accessing canned software are taxable if the user is located in Pennsylvania.

Some practitioners were surprised by this ruling because it is not entirely clear that the DOR actually has a sound legal basis for this new position. This ruling cites the statutory rule that sales tax is imposed upon retail sales of tangible personal property. The issue here is: can something that is accessed only via the Internet be considered "tangible" property?

This ruling cites a 2010 decision of the Pennsylvania Supreme Court *(Dechert LLP v. PA),* which relied in part on a 2005 Commonwealth Court decision *(Graham Packaging Co. LP v. PA).* Prior to 2005, the DOR's position had been that software was taxable only if it was delivered on some form of tangible storage media, such as a CD; and canned software was not subject to sales tax if customers downloaded it directly from the vendor's website and saved it on their own computers. The *Graham Packaging* decision, however, held that even such downloaded software should be deemed to be tangible property (and therefore taxable) since the presence of such software on the users' hard drives could be perceived and measured, at least by the computer. While the dissenting opinion in *Dechert* challenges the validity of this conclusion, the majority of the *Dechert* justices seemed to be tacitly endorsing the *Graham Packaging* approach.

What the Department of Revenue is now doing in Ruling SUT-12-001, however, is an extension of the *Graham Packaging/Dechert* rationale by applying the rules associated with downloaded software to sales of software that is not downloaded because it never leaves the "cloud" where it is hosted. Not only is the mode of delivery now irrelevant, but it no longer matters whether the software is actually delivered at all to the customer's computer in any sort of permanent way. According to this ruling the only thing that matters for Pennsylvania sales tax purposes is that the software is being used in Pennsylvania.

This new rule will have an impact not only on companies selling canned software, but also on the users of such software as well. Sellers of canned software are now required to collect Pennsylvania sales tax from all customers using the software within the state, regardless of where the sellers' server may be located. All Pennsylvania consumers of such software are now required to self-assess and pay the use tax to Pennsylvania if their vendors do not charge the tax on their invoices. The only good news here for software consumers is that this ruling explicitly provides for an exemption from Pennsylvania tax to the extent that the actual use of the software is outside the state. While the ruling states a presumption that all users are located within this commonwealth if the invoice for the software license is sent to a Pennsylvania billing address, if there are multiple points of use this presumption can be overcome with the appropriate documentation that states the percentage of users located within Pennsylvania.

Stephen J. Blair, CPA, JD is Senior Tax Manager, State and Local Tax Group, Alpert Rosenthal CPAs, Pittsburgh; 412-281-2501 or sblair@alpern.com.

THE BENEFITS GAME©
A PUBLICATION OF THE EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION PRACTICE OF THORP REED & ARMSTRONG LLP

BY SARAH LOCKWOOD CHURCH, ESQ.; PAUL KASICKY, ESQ.; JONI LANDY, ESQ. AND KEVIN WIGGINS, ESQ.

The Health Care Reform Playbook: The SBC

Now that the Supreme Court has issued its opinion, it is time for plan sponsors to focus on new compliance obligations under the Affordable Care Act[1] (ACA) that impact the upcoming open enrollment season. One of those biggest compliance obligations will be providing eligible employees with the Summary of Benefits and Coverage (SBC), especially for self-insured group health care plans. Some plan sponsors may find this especially challenging if they were waiting for the Supreme Court ruling to move forward in planning for this requirement.

So, what is an "SBC?"

A SBC is a document written in plain language that contains specific information about the group health care coverage available to your employees.[2] There are prescribed formats that must be used, specific content requirements and the SBC must be printed in 12-point type. This disclosure document must be no longer than four pages (front and back). The SBC can be its own stand-alone document or can be combined with your plan's Summary Plan Description (SPD), so long as it is prominently displayed at the beginning of the SPD. In addition to the actual SBC, access must be provided to a Glossary of Health Insurance and Medical Terms (glossary). Just as with the actual SBC, the agencies[3] have also provided the specific language and format for the standardized glossary.

What is the purpose behind the SBC distribution requirement?

According to the preambles in regulatory guidance, issuance of the SBC "…will enable consumers, both individuals and employers, to better understand the [group health care] coverage they have and make better coverage decisions, based on their preferences with respect to benefit design, level of financial protection, and cost."[4]

(continued on Page 173)

Prior to joining Thorp Reed & Armstrong, LLP, Sarah Lockwood Church was the Director, Compensation and Benefits, for KPMG's Pennsylvania Business Unit and a resident in KPMG's Philadelphia office. She has over 20 years experience serving clients on a wide variety of issues related to employee benefits. Before joining KPMG, Church was a partner with two Pittsburgh-based law firms, engaged in the full range of employee benefit representation. She has also worked as an Associate Counsel and Assistant Vice President for Mellon Financial Corporation and as in-house ERISA counsel for Westinghouse Electric Corporation (now known as Viacom). schurch@thorpreed.com; (412) 394-7731.

For the past 18 years, Paul Kasicky's practice has been largely focused on ERISA and tax issues related to employee benefits and executive compensation. Before that he practiced in a broader area of federal income tax. Kasicky has experience with qualified retirement plans (including ESOPs), equity incentives, and many other employee benefits. Clients represented in the past include those in the primary steel, forging, rail, pharmaceuticals, real estate lending services industries. A significant part of his practice includes representation as to transactional matters and industry restructuring. pkasicky@thorpreed.com; (412) 394-441.

Joni Landy is a member of the firm's employee benefits group. An attorney since 1990, she has focused her practice on health and welfare plan benefit matters since 1996. Landy has a lawyer peer review rating of AV® Preeminent™ assigned by Martindale-Hubbell®. This is the highest rating assigned by this organization reflecting a ranking by the lawyer's peers at the highest level of professional and ethical excellence. She has been recognized as one of the top-rated Pittsburgh attorneys in employee benefits and health care. jlandy@thorpreed.com; (412) 394-2554.

Kevin Wiggins has practiced in employee benefits, executive compensation and ERISA litigation for over 14 years. In 2008, the U.S. Secretary of Labor appointed Wiggins to the ERISA Advisory Council, where he advised the Secretary on her functions under ERISA. Recently he was appointed as the Chair for the ERISA Advisory Council's 2010 study of Employee Benefit Plan Auditing and Financial Reporting Models. Wiggins is a graduate of Cornell Law School and the University of North Florida. kwiggins@thorpreed.com; (412) 394-2401.

(continued from Page 172)

When do we have to comply with the requirement to provide eligible employees with an SBC?

The SBC requirement applies to your group health plans the first open enrollment period beginning on or after Sept. 23, 2012. For calendar-year plans, this means the SBCs must be provided this fall (unless, of course, your open enrollment season begins before Sept. 23, 2012). Distribution of SBCs is an ongoing obligation that must be satisfied when an employee is first eligible for coverage, during open enrollment for a new plan year, upon request and when there is a change that affects a previously distributed SBC.

If we have several group health plan options available, do we have to provide an SBC for each option during open enrollment?

If you have multiple health coverage options, an employee must automatically receive an SBC for the health plan option in which he or she is enrolled immediately prior to the open enrollment period. SBCs for coverage options for which the employee is eligible, but not enrolled, must only be provided on request within seven business days. However, employees who are newly eligible at the time of open enrollment, and presumably employees who have been eligible but not enrolled at the time of open enrollment, will need to be provided with SBCs for each health coverage option for which they are eligible.

Is it possible for us to combine certain group health plan options together into one SBC?

It is possible in some instances to combine the required SBC content into one document: for example, where the only difference in the benefit package is the participant's ability to elect a level of deductible, copayments and/or co-insurance. In addition, if your group health plan has certain "carve out arrangements" or "add-ons" to coverage, it may be possible to combine these or reflect these arrangements in the SBC for the basic health plan option.[5] However, because of the size and formatting limitations, as well as a requirement that the SBC be understandable to the average person, it may be easier to just prepare a separate SBC for each option.

How do we distribute the SBC?

In general, the SBCs will need to be provided by paper unless the Department of Labor rules for electronic distribution (including online posting) are first satisfied. The good news is that the rules for providing SBCs electronically (including posting them online) are more relaxed than the rules for providing SPDs electronically. More specific guidance about acceptable methods of delivery appear in the final regulatory guidance as well as in the FAQs noted in footnote 5.

How do we make the glossary available?

The requirement to provide the uniform glossary can be satisfied by including in each SBC an Internet address where an individual may review and obtain the uniform glossary, a contact phone number to obtain a paper copy of the uniform glossary and a disclosure that paper copies are available upon request. The Internet address may be a place where the document can be found on the plan's or issuer's website, or the website of either the Department of Labor or Health and Human Services. However, a plan or issuer must make a paper copy of the glossary available within seven business days upon request.

Who is responsible for preparing and providing the SBCs?

If your group health plan is fully-insured, then your insurance carrier is required to prepare SBCs. If you have a self-insured plan, you must determine if your third-party administrator (TPA) will prepare or assist in preparing the SBCs. Complications may arise if you maintain any separate program that is not administered by your TPA that is subject to the SBC requirement. In some cases those types of programs may be integrated within the SBC prepared by your TPA. In any case, you will need to ensure that the SBCs are prepared properly and distributed timely. The responsibility for providing the SBC is on both the plan and insurance carrier, even if the plan is fully-insured; and on the plan sponsor or designated plan administrator if the plan is self-insured.

What are the penalties for non-compliance with the SBC distribution requirement?

Penalties of up to $1,000 day per employee apply for failures, but government regulators say they don't intend impose penalties for this first compliance year if there is a good faith effort to comply with the SBC distribution rules.

[1] The Patient Protection and Affordable Care Act (P.L. 111-149, or the PPACA, as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), or the Reconciliation Act. The PPACA and Reconciliation Act are collectively referred to as Health Care Reform or the Affordable Care Act. (ACA).

[2] Note that you will not need to provide an SBC with respect to "excepted" benefits under the Health Insurance Portability and Accountability Act (HIPAA), such as dental and vision care benefits that are offered under separate contracts. While a separate SBC may not be necessary, the impact of a medical flexible spending account or health reimbursement plan that is integrated with a group health care plan must be reflected in some of the SBC scenarios.

[3] There are three agencies responsible for issuing regulations and other guidance with respect to the SBC: Treasury, the

(continued on Page 174)

(continued from Page 173)

Department of Labor and Health and Human Services.

[4] See: Preamble to Final Regulations issued on Feb. 14, 2012.

[5] See: Parts VIII and IX of the FAQs About Affordable Care Act Implementation, issued jointly by the Departments of Labor, Health and Human Services and Treasury.

IRS CIRCULAR 230 NOTICE:

TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, WE INFORM YOU THAT ANY U.S. TAX ADVICE CONTAINED IN THIS COMMUNICATION (OR IN ANY ATTACHMENT) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED IN THIS COMMUNICATION (OR IN ANY ATTACHMENT).

Photos from the PBA Family Law Section Summer Meeting in Hershey are on our website!

See them, and many more meeting photos, at www.pabar.org/public/sections/famco/meetings.

HOW TO FIX TAX RETURN ERRORS
BY JOAN ELLENBOGEN, CPA

Suppose you discover a mistake or omission of an item on the 2011 federal tax return you recently filed. Should you ignore the error? Although it can depend on the nature and significance of the item, the answer is generally "no." But the matter may be resolved by filing an amended 2011 return.

Clearly, you should file an amended return right away if you've paid less tax than the amount you actually owe for 2011. If the IRS eventually detects the mistake, it can require you to pay the difference in tax liability plus substantial interest and penalties. As a general rule, the IRS has three years in which to audit a return, but the statute of limitations is extended to six years if you underreport income by more than 25 percent. And there's no time limit if fraud is involved.

When a change works in your favor, consider all the ramifications. If you stand to receive only a few extra dollars back, it's probably not worth the effort. This also gives the IRS another chance to scrutinize your return. On the other hand, if you expect a sizable refund in return, it usually makes sense to pursue this action.

One of the common reasons for amending a return is to change your tax filing status or dependency exemptions. For instance, there could be some confusion over claiming exemptions for children following a divorce. Similarly, you may have overlooked special deductions or credits available on 2011 returns.

Department of the Treasury Required Disclosure: In accordance with IRS Circular 230 we are required to advise you that any written advice we provide to you cannot be used for the purpose of avoiding penalties under the Internal Revenue Code.

CAPITAL GAINS AND LOSSES: NEW YEAR-END STRATEGY
BY JOAN ELLENBOGEN, CPA

The end of the year is the traditional time for securities investors to "harvest" capital losses for federal income tax purposes. But there's an added wrinkle in 2012: Due to pending tax law changes, you might try to reap more capital gains than losses. Thus, the usual strategy of harvesting losses could be turned upside down.

Here's a recap of the basic rules. The capital gains and capital losses you realize during the year are "netted" under complex rules when you file your tax return. A gain or loss is treated as being long-term if you've held the securities for more than one year. For 2012, net long-term capital gain is taxed at a maximum tax rate of 15 percent (0 percent for investors in the regular 10-percent and 15-percent tax brackets).

If you're showing a net capital gain on paper as year-end approaches, any capital losses you realize will reduce the amount of the taxable gain or offset it completely. An excess loss can then offset up to $3,000 of highly taxed ordinary income before any remainder is carried over to next year. However, the usual strategy of harvesting losses is complicated this year by three key tax law changes scheduled for 2013.

The maximum tax rate for net long-term capital gain will increase to 20 percent (10 percent for investors in the lower tax brackets).

Ordinary tax rates are going up. For example, the top rates of 33 percent and 35 percent will increase to 36 percent and 39.6 percent, respectively.

A special 3.8 percent Medicare surtax will apply to the lesser of net investment income for the year or the amount by which modified adjusted gross income (MAGI) exceeds $250,000 ($200,000 for single filers).

Barring any late legislation by Congress, investors may be inclined to harvest capital gains instead of losses at year-end. As a result, you can benefit from the favorable tax rates in effect for 2012. If you've already realized short-term gains in 2012, you might want to realize short-term losses to offset those gains. But don't use short-term losses to offset long-term gains, if you can help it, because long-term gains are taxed at a maximum rate of only 15 percent in 2012.

Other considerations may come into play. The best approach is to do what's best for your situation.

Joan Ellenbogen is a third-generation owner and CEO of Crawford Ellenbogen LLC. Her expertise is grounded in a lifetime of experience dealing with closely-held businesses and their owners.

She advises family-owned and closely-held businesses and their owners, providing business consulting, tax, estate and succession planning, as well as traditional accounting and tax services. In addition, she has been appointed by different courts to serve in various capacities including Administratrix, Trustee, Guardian and Special Master.

Ellenbogen serves on the boards of INAA Group, an International Association of Independent Accounting Firms, Pittsburgh Zoo & Aquarium and its Finance Committee, and Magee-Womens Research Institute & Foundation. She chairs the County Executive's 2012 Financial Sustainability Vision Team. She previously served on the board of Port Authority of Allegheny County, chaired its Stakeholder Relations Committee and prior, the Finance Committee. She is a past president of the Executive Women's Council of Pittsburgh and co-chaired its Women on Boards Committee. She is a past president and trustee of the Allegheny County Bar Foundation. She is also a past president of the Pittsburgh Chapter of the Pennsylvania Institute of Certified Public Accountants and the Pittsburgh Tax Club. She has served as Treasurer of the Allegheny County Bar Association and as a member of its Board of Governors, as a director of the Estate Planning Council, and as a member of the Pennsylvania Bar Association's House of Delegates. She also served on the Budget & Finance Committee of former County Executive Jim Roddey's transition team for Allegheny County.

She was named 2008 Distinguished Accounting Alumnus by the accounting faculty of the A.J. Palumbo School of Business Administration at Duquesne University and an honorary member of the Beta Alpha Psi accounting honors society. She was a finalist for the 2008 ATHENA award recognizing professional excellence, dedication to community service and efforts in assisting other women to attain professional excellence. In 2008, Joan was also honored by Celebrate & Share as a Woman of Achievement. In 2007 she was honored as one of the Commonwealth's Best 50 Women in Business by the Pennsylvania Department of Community & Economic Development.

Ellenbogen holds at Bachelor's Degree in Accounting, summa cum laude from Duquesne University (Valedictorian). Juris Doctor magna cum laude, from Duquesne University School of Law.

Contact her at (412) 731-1500 (phone); (412) 731-9620 (fax); jellenbogen@ce-cpa.com

MAINTAINING LIEN PRIORITY AFTER OBTAINING A JUDGMENT IS INCREDIBLY EASY BUT SHOULD NOT BE OVERLOOKED

BY RAYMOND P. WENDOLOWSKI JR.

After a judgment is entered a judgment creditor typically begins execution efforts in order to collect on the judgment; but sometimes a debtor genuinely has nothing for a judgment creditor to collect. In these cases our firm typically recommends that the judgment creditor should cease execution efforts and come back to the judgment at a later date. When the economy is suffering, like it has been for the last few years, this situation arises with much more frequency. Judgment creditors who obtained judgments at the very beginning of the current economic downturn are now approaching a deadline that must be addressed in order to maintain lien priority on their judgments. If you are a judgment creditor and you would like to ensure that you can execute on your judgment lien at a later date, then you must follow the procedures outlined below.

The entry of judgment in Pennsylvania acts as a lien on all real property of the judgment debtor in the county in which the judgment has been entered. In Pennsylvania, a judgment lien is fully effective for five years, and is governed by the five-year statute of limitations. 42 Pa.C.S.A. § 5526. The term "fully effective" is more appropriate here than the term "valid" in describing the effect of the statute of limitations on a judgment lien, because a judgment lien will still be a lien on real property after the five-year period has expired but it will not maintain its original priority. *See, Home Consumer Discount Company of Wilkes-Barre v. Hashagen,* 35 Pa D & C 668 (Common Pleas 1985), *Mercer County State Bank v. Troy,* 27 Pa D & C 3rd 751 (Common Pleas 1983), *Popatak v. Evans,* 1995 WL 864523, 26 Pa. D & C 4th 244, (Common Pleas 1995).

To maintain the priority of a judgment lien a judgment creditor must revive the judgment itself within the five-year period after judgment has been entered. In order to revive the judgment lien a judgment creditor must file a Praecipe for Writ of Revival. See, Pa.R.C.P. 3025. The Writ of Revival (writ) is the "equivalent of a complaint in civil action," however there are a few subtle differences. Pa.R.C.P. 3029. The judgment creditor must file the Praecipe for Writ of Revival and then the writ will be issued and indexed against each judgment debtor. *See*, Pa.R.C.P. 3027. At this point the writ must be served within 90 days, instead of the 30-day period permitted for a complaint. Pa.R.C.P. 3028. The judgment debtor will then have time to respond and dispute the validity of the judgment or the amount currently owed, and a default judgment may be entered against the judgment debtor for failure to do so, which will prevent the judgment debtor from objecting to the revival at a later date. Pa.R.C.P. 3031. This does not create another judgment, but merely governs the rights of the judgment debtor to object to the revival. Entering the default judgment is a very important step that can be easily overlooked, and failure to do so can create unnecessary headaches during later attempts to execute on the revived judgment lien.

This does not mean that a judgment lien will be effective forever without revival, as some courts have held that a judgment lien cannot be revived more than 10 years after the date of entry. For instance, in *US v. Shadle,*1992 WL 551290, 16 Pa D & C 4th 297 (Common Pleas 1992) the court, in interpreting § 5526, held that a judgment lien is fully valid for five years from the date of entry and § 5526 begins running after that period for another term of five years. *Id.* at 302. If the judgment lien is then not revived before 10 years have passed from the original date of entry " 'the lien created by the judgment is forever lost.' " *Id.* quoting *Dauphin Deposit Bank & Trust Co. v. Verhovshek,* 18 Pa. D. & C.3d 108 (1980). This case appears to be an outlier, but its existence should make judgment creditors very wary of not reviving within 10 years of the date of entry of a judgment, or else a judgment creditor may end up having to appeal a decision on a judgment which has been fully litigated once already or forever losing the judgment lien.

Reviving a judgment lien is a relatively simple procedure that will ensure that a judgment creditor still has the same judgment lien priority against a judgment debtor's real property when the economic climate eventually changes for them. You should be certain to follow the guidelines listed above as well as the remaining rules governing revival of judgments. See, Pa.R.C.P. 3025-32. This paper has been focused on the general process for reviving a judgment and maintaining judgment lien priority, but there are other nuances for which the Rules of Civil Procedure, particularly the comments, can provide much more detailed guidance. Failure to do so may result in a judgment lien that has lost all priority at best, or a judgment lien that has been completely lost at worst.

Raymond Wendolowski is an associate in the Creditors' Rights group at Bernstein-Burkley PC in Pittsburgh. He focuses mainly on commercial collections and has participated in some receivership work in bankruptcies. Wendolowski is a 2011 graduate of the University of Pittsburgh School of Law. While earning his law degree, he completed a legal internship at the City of Pittsburgh Zoning Board of Adjustment.

Federal/Military Corner:

MARK E. SULLIVAN, ESQ
mark.sullivan@ncfamilylaw.com

GETTING GOVERNMENT RECORDS INTO EVIDENCE
BY MARK SULLIVAN, ESQ.

1. **Q. How do you get government records into evidence if you have to go to trial and the other side won't stipulate to their admissibility?**
   A. You'll need to check your state's rules of evidence to find out the requirements for admission of business records. Each state is different. Some have adopted the Federal Rules of Evidence (FRE), and some have their own evidence codes. The business records rule is contained at FRE 902 (11), but your rule might be slightly or entirely different. Make sure you know what is needed as essential statements in the affidavit.

2. **Q. Don't these agencies have a template they can use for the affidavit? I'm being told that I have to submit to the agency a sample of what the wording should be.**
   A. "One size fits all" is not the rule in this area. There are no standard affidavits that are universally used among the agencies. It is a common practice to require the applicant's attorney to draft the affidavit, which is then reviewed and revised by the legal office in the agency. You must submit the wording to the federal office that has the records, which can adopt or adapt the language as needed.

3. **Q. So do they just say that they've provided the records and they're accurate?**
   A. In terms of trial practice, that would be a major mistake. How will the court know what records were provided? How will the judge know that the documents you have are the ones that the agency sent to you? The records must be attached to the affidavit, not merely referred to.

4. **Q. But the agency sends the affidavit to me, right? Or is it sent to the court?**
   A. That's your decision. If the records and affidavit — the "packet" — is sent to the court under seal, then there can be no legitimate question as to whether you have substituted documents or altered them. The judge is the one who will open the packet and determine what records have been provided. On the other hand, unless you get an extra copy of what's in the packet, you won't know what is in the records until the court opens them. This leads to three alternatives:
   - Get a copy from the agency (by consent of the individual concerned or by court order or judge-signed subpoena). Then request the documents again, along with a business records affidavit that accompanies your request.
   - Get the documents (as above) from the agency, and then send them back to the agency with your business records affidavit, so they can certify that these are indeed the records provided,and then can attach them to the affidavit.
   - Have the agency send the packet to the court but also send copies to the attorneys.

5. **Q. This is all so complicated. Do you have an example that I can use for these affidavits?**
   A. Of course. It's on the next page…

Mark E. Sullivan, a retired Army Reserve JAG colonel, practices family law in Raleigh, N.C., and is the author of The Military Divorce Handbook *(ABA May 2006), from which portions of this article are adapted. He is a Fellow of the American Academy of Matrimonial Lawyers and has been a board-certified specialist in family law since 1989. He works with attorneys nationwide as a consultant on military divorce issues and to draft military pension division orders. He can be reached by e-mail (above) or at (919) 832-8507.*

(continued on Page 178)

(continued from Page 177)

	DEPARTMENT OF VETERANS AFFAIRS Regional Office 123 Green Street Blacksboro, North Carolina Phone: 919-832-6677

BUSINESS RECORDS DECLARATION
Pursuant to 28 U.S.C. §1746

This is a certification of authenticity of domestic business records pursuant to Federal Rules of Evidence 902 (11).

I, Larry G. West, attest under the penalties of perjury (or criminal punishment for false statement or false attestation) that:

1) I am employed by the United States Department of Veterans Affairs (DVA).
2) My official title is Paralegal.
3) I am a custodian of records for the DVA.
4) Each of the records attached hereto is the original record or a true and accurate duplicate of the original record in the custody of the DVA, and I am a custodian of the attached records.
5) The records attached to this certificate were made at or near the time of the occurrence of the matters set forth.
6) The records attached were made by (or from information transmitted by) a person with knowledge of those matters.
7) Such records were kept in the course of a regularly conducted business activity of the DVA.
8) Such records were made by the DVA as a regular business practice.

The enclosed records are:

- Letter to Jacob Harris Stein, XXX-XX-5566, dated April 12, 2010, titled "Your Original VA Disability Rating and Reasons for the Rating" and
- Letter to Jacob Harris Stein, XXX-XX-5566, dated June 15, 2012, titled "Your Revised VA Disability Rating and Reasons for the Rating."

Dated: July 13, 2012

Larry G. West
Larry G. West, Paralegal

Subscribed and sworn to before me this ____ day of _____, 2012.

_____
Notary signature My commission expires: _____

Technology Corner:

Joel B. Bernbaum, Esq.
jbernbaum@timoneyknox.com
Alicia A. Slade
slade@plummerslade.com

FACEBOOK 'FRIENDS'
BY JOEL B. BERNBAUM

An interesting opinion was recently issued by the Common Pleas Court of Allegheny County (*Trail v. Lesko,* No. GD-10-017249, Allegheny C.P. July 3, 2012, Judge Wettick), which resulted from cross Motions to Compel Discovery consisting of requests by both parties to an automobile injury case to have access to the other party's Facebook accounts, including user name and passwords.

In what might be called an "un-Friendly" decision, Judge Wettick discussed what Facebook is, how it is used and what information is available to its users. The opinion also identified and discusses federal, Pennsylvania and other state court cases in which parties have requested access to information on Facebook.

The judge denied both party's motions and based the opinion on "… the protections that PA R.C.P. No 4011 (b) affords Facebook content. …"

Rule 4011 (b) bars discovery that would cause "unreasonable annoyance, embarrassment, oppression …" The court further stated that the Rule "… will reach intrusions that are not covered by any constitutional right to privacy or any common law or statutory privileges."

> "A Court Order which gives an opposing party access to Facebook postings that were intended to be available only to persons designated as 'Friends' is intrusive because the opposing party is likely to gain access to a great deal of information that has nothing to do with the litigation and may cause embarrassment if viewed by persons who are not 'Friends.'..."

"In determining whether an intrusion is unreasonable, a court shall consider the level of the intrusion and the potential value of the discovery to the party seeking discovery." The judge found the level of intrusion in this case to be very low since the party seeking to resist the discovery made the information available, voluntarily, to many people or "Friends."

The judge denied both requests "... because the intrusions that such discovery would cause were not offset by any showing that the discovery would assist the requesting party in presenting the case. …"

Not discussed in the opinion is the issue requiring the preservation of "all accessible paper and electronic repositories of evidence." This would arguably apply to Facebook. Note, a Virginia court imposed sanctions on a plaintiff and plaintiff's lawyer for deleting information on Facebook and engaging in a cover-up related to the deletions. (*Lester v. Allied Concrete Co.,* CL.08-150, CL09-223 (Va Cir. Ct. Sept 1, 2011). The sanctions included an award of attorney's fees in the amount of $722,000 of which the plaintiff's lawyer was responsible for the amount of $542,000! The court found that the plaintiff's lawyer, upon receiving the discovery request, told his paralegal to tell the plaintiff to "clean up" his Facebook account and remove anything that "… might blow up … at trial. …" The lawyer believed this was not wrong if done prior to the date the plaintiff signed the Answers to the Discovery request. The court found that there was intentional spoliation which justified the sanctions.

Be careful out there, my Friends.

Joel B. Bernbaum is a Partner in the Ft. Washington law firm of Timoney Knox, Technology Corner Co-Editor of the Pennsylvania Family Lawyer and a member of Council of the PBA Family Law Section. Alicia A. Slade is a Technology Consultant and the President of Plummer Slade, Inc., a computer networking firm that has been specializing in providing computer networking and business solutions to law offices since 1988 and Technology Corner Co-Editor of the Pennsylvania Family Lawyer. She can be reached at (412) 261-5600.

Legislative Update:

Steve Rehrer, Esq.
srehrer@legis.state.pa.us

This article updates the legislative history of the bills summarized in the Legislative Updates of March, June, September and December 2011; and March and June 2012. In addition, this article summarizes several other domestic relations bills introduced in the 2011-12 legislative session of the Pennsylvania General Assembly. Status of each bill is provided as of Aug. 28, 2012. The full text of the bills, as well as their legislative history, may be found by following the link "Session Info" at www.legis.state.pa.us.

Enactment

As previously noted in the June 2012 Legislative Update, **Senate Bill No. 1167** (custody) became **Act No. 32** of 2012. The act took effect on June 11, 2012.

Updates

The following bills, summarized in the Legislative Updates of March, June, September and December 2011; and March and June 2012, have not advanced further in the legislative process:

House Bills: Nos. 321 (relatives' liability), **327** (liability for the tortious acts of children), **447** (adoption), **448** (adoption), **449** (adoption), **450** (adoption), **525** (custody), **557** (adoption), **594** (adoption), **708** (marriage), **762** (child abduction prevention), **909** (marriage), **963** (adoption), **1106** (support), **1127** (support), **1133** (custody), **1275** (custody), **1283** (educational guardianship), **1395** (custody), **1434** (marriage), **1512** (liability for the tortious acts of children), **1709** (custody), **1710** (support), **1835** (marriage), **1932** (intergenerational family care), **2136** (child abduction prevention), **2259** (divorce), **2282** (family litigation), **2283** (family litigation) and **2329** (adoption).

Senate Bills: Nos. 69 (adoption), **131** (marriage), **186** (funds for the Children's Trust Fund), **188** (funds for victims of domestic violence), **194** (adoption), **315** (child endangerment), **439** (relatives' liability), **461** (marriage), **497** (support), **665** (adoption), **720** (paternity), **1078** (divorce), **1104** (funds for victims of domestic violence), **1161** (marriage), **1231** (paternity), **1454** (adoption) and **1482** (support).

Stephen F. Rehrer is Counsel with the Joint State Government Commission in Harrisburg and the Legislative Editor of the Pennsylvania Family Lawyer.

Adoption

House Bill No. 451 (Printer's No. 3594; Prior Printer's No. 422) was reported as amended from the House Children and Youth Committee and received first consideration on May 23, 2012. The bill amends, repeals or adds the following provisions of the Adoption Act:

- The bill amends section 2503 and mandates that a voluntary relinquishment hearing occur not fewer than 10 days, nor more than 20 days, after the filing of the relinquishment petition.
- Under section 2504(b) (alternative procedure for relinquishment), the bill provides that the hearing must occur not fewer than 10 days, nor more than 40 days, after the filing of the petition.
- The bill provides that a putative father (defined as an alleged birth father of a child conceived or born out of wedlock whose parental status has not been legally established) must be given notice, in the manner prescribed, of a proceeding regarding the termination of parental rights with respect to the child.
- New section 2514 specifies the notice requirements if the identity or whereabouts of a parent or putative father are unknown.
- The bill provides that a putative father's parental rights may be terminated if he fails to 1) file with the court a written objection to the termination of parental rights prior to the hearing or 2) appear at the hearing to object to the termination of his parental rights.
- The bill amends section 2511(a) (grounds for involuntary termination) by, among other things:

(1) Adding the requirement under paragraph (2) that the parent's remedial action cannot or will not occur "within a reasonable period of time."

(2) With respect to a newborn child under paragraph (6), adding "putative father," removing the phrase "has not married the child's other parent" and shortening the period from four months to three months regarding reasonable efforts to maintain substantial and continuing contact with the child and to provide substantial financial support for the child.

(3) Amending paragraph (7) such that it reads as follows: "The parent is the perpetrator of a rape or sexual assault or of incest, which resulted in the conception of the child."

(4) Amending paragraph (9) to provide that the parent has been convicted of a specified offense in which the victim was a child "of the parent or another child residing in the household."

(continued on Page 181)

(continued from Page 180)

(5) Amending paragraph (9) to add rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault and incest to the list of specific offenses of which the parent has been convicted.
(6) Adding a new paragraph (10) regarding a parent or putative father whose identity or whereabouts are unknown and who was given notice of the termination hearing but failed to 1) file with the court a written objection to the termination of parental rights prior to the hearing or 2) appear at the hearing to object to the termination of parental rights.
(7) Adding a new paragraph (11) regarding the child, another child of the parent or another child residing in the parent's household being the victim of physical abuse resulting in serious bodily injury, sexual violence or aggravated physical neglect by the parent.

- The bill specifies that the consent to an adoption is irrevocable after 20 days following the child's birth, thereby shortening the current 30-day period.
- The bill provides that if a putative father executes a consent to an adoption prior to the child's birth, further notice of the adoption hearing is unnecessary, and further notice of the adoption hearing is not required to the natural mother or her husband if consent was timely executed.
- The bill provides that an individual who executed a consent to an adoption may challenge the validity of the consent only by filing a petition alleging fraud or abuse prior to the termination of parental rights, thereby amending the current provision that permits such a challenge within the earlier of specified time frames (60 days after the child's birth or the execution of the consent, whichever occurs later, and 30 days after the entry of the adoption decree).
- The bill explicitly provides that once the individual's parental rights are terminated and the individual has executed a consent to an adoption, the individual has no further standing to contest the adoption or revoke the consent.
- The bill repeals section 2712 (consents not naming adopting parents).

Child Abduction Prevention

Senate Bill No. 1449 (Printer's No. 2027) was reported as committed from the Senate Judiciary Committee and received first consideration on May 8, 2012. The bill creates a new Chapter 52 of the Domestic Relations Code containing uniform child abduction prevention provisions. The legislation includes sections concerning the following: cooperation and communication among courts, actions for abduction prevention measures, jurisdiction, contents of petitions, factors to determine the risk of abduction, provisions and measures to prevent abduction, warrants to take physical custody of a child and the duration of abduction prevention orders. This bill is identical to **House Bill No. 2136** (Printer's No. 2981).

Newly Introduced Legislation

Adoption

House Bill No. 2513 (Printer's No. 3840), in the House Judiciary Committee, amends section 2511(a) (grounds for involuntary termination) by adding a new paragraph (10) as follows: "The repeated and continued abuse of alcohol or a controlled substance by the parent has placed the health, safety or welfare of the child at risk and the abuse of alcohol or a controlled substance cannot or will not be remedied by the parent." The bill also amends section 6351(f) and (f.2) of the Juvenile Act to specify that 1) at each permanency hearing, the court must determine whether the parent's use of alcohol or a controlled substance places the health, safety or welfare of the child at risk and 2) the failure of, or the refusal to participate in, a drug test requested by the county agency constitutes prima facie evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk.

Divorce

House Bill No. 2473 (Printer's No. 3744), in the House Judiciary Committee, amends sections 3301 and 3302 of the Divorce Code. Under the bill, new section 3301(b.1) provides that the court may grant a divorce if 1) an irretrievably broken marriage is alleged, 2) 90 days have elapsed from the date that the divorce action was commenced and 3) a party files an affidavit along with any other relevant supporting documentation evidencing that the other party has been convicted of or has pleaded guilty or no contest to a "crime against spouse" (defined in new subsection (f) as an offense under the Crimes Code where the party filing the affidavit was the victim of the offense). If grounds for divorce are thereby established, the court must grant a divorce without requiring a hearing on any other grounds. Amended section 3302(c) provides that the court may not order counseling sessions if a party files an affidavit along with any other relevant supporting documentation evidencing that 1) the party was or is protected by a Protection from Abuse order in which the other party is the named defendant or 2) the other party was convicted of or has pleaded guilty or no contest to a "crime against spouse."

Property Rights

House Bill No. 2394 (Printer's No. 3567), in the House Judiciary Committee, amends section 3502 of the Divorce Code to add a new subsection (a.1) regarding military pay. Under the bill, the court may treat disposable retired pay or retainer pay that is payable to a military member either as property solely of the member or as property of the member and his or her spouse. If the

(continued on Page 182)

(continued from Page 181)

court determines that such pay is marital property, the court must calculate the amount consistently with the rank, pay grade and time of service of the member at the time of separation.

Support

House Bill No. 2528 (Printer's No. 3869), in the House Judiciary Committee, amends the Divorce Code to add a new section 3707(b), which provides that upon the death of a parent of a minor and unemancipated child, the obligation of an estate to pay child support continues. Under the bill, the court must order an amount set aside in reasonable proportion to the extent necessary for support of the child in accordance with the amount available from the assets of the estate.

Section News:

Jay A. Blechman, Esq.
blechman@steinerblechman.com
William L. Steiner, Esq.
steiner@steinerblechman.com

The Hershey Summer Meeting of the PBA Family Law Section took place on Thursday, July 12, through Sunday, July 15.

On Thursday, the AAML program, "Trial Advocacy Hot Tips" was moderated by **Sophia P. Paul** and **Lori K. Shemtob.** The Section's Governing Council met at 3:30 p.m. A Welcome Reception for the meeting attendees and guests followed.

On Friday, after a breakfast buffet, the Eric David Turner Award presentation took place. A plenary session, "What Family Law Attorneys Need to Know About Military Issues," featured **Matthew T. Wilkov.**

After a short break were two workshops, including, "What Family Law Attorneys Need to Know About Immigration," moderated by **Stephanie H. Winegrad** and featuring **Deborah L. Culhane, Jill C. Engle** and **Marcia Binder Ibrahim,** and "What Family Law Attorneys Need to Know About Dealing with the IRS," moderated by **Lindsay Gingrich Maclay** and **Charles A. Stambaugh III,** and featuring **Joseph U. Metz** and **Jayne M. Engelman Wessels**.

Attendees, families and guests were then able to enjoy some free time for exploring and relaxing. A golf tournament was held at 1 p.m. After an afternoon of sightseeing, a dessert hospitality was made available, at which time the attendees were able to socialize while enjoying the after-dinner treats from 9:30 p.m. until 11 p.m.

On Saturday morning, after a breakfast buffet, a plenary session, "What Family Law Attorneys Need to Know About Lawyer and Judicial Discipline," featured **Paul J. Killion, Joseph A. Massa, Jr., James H. Richardson Jr.** and **Samuel C. Stretton,.**

After a short break were two workshops, including "What Family Law Attorneys Need to Know About Paternity," moderated by **Amy J. Phillips** and featuring **Richard B. Bost, Judge Doris A. Pechkurow** and **Kathleen J. Prendergast,** and "What Family Law Attorneys Need to Know About Marketing," moderated by **Julie R. Colton** and featuring **Les Altenberg, A.L.T. Legal Professionals Marketing Group; Mark Britton, CEO and founder of Avvo,** and **David S. Pollock.**

Attendees, families and guests then again had free time for exploring, relaxing and enjoying lunch and dinner. After another day of touring Hershey, a Farewell Party was offered.

On Sunday, a continental breakfast was served for early risers. A Section Business Meeting was conducted during breakfast by the chair, **Joe Martone**. Following breakfast, Case Law and Rule Updates were moderated by **Sarinia M. Feinman**. The Equitable Distribution Updates were provided by **Paula Munafo Borradaile**. The Custody/Adoption Updates were provided by **Anthony M. Hoover**. The Support Updates were provided by **Joseph R. Williams**. The Legislative Updates were provided by **Mary H. Burchik**. The Rules Updates were provided by **Gail C. Calderwood.**

The weekend was both an educational and entertaining one. Any suggestions for future seminars and suggested meeting locations, should be provided to the chair-elect, **Daniel J. Clifford III**. Questions regarding Section business may be addressed to any Officers, or members of Council, at any time during the meetings, or thereafter.

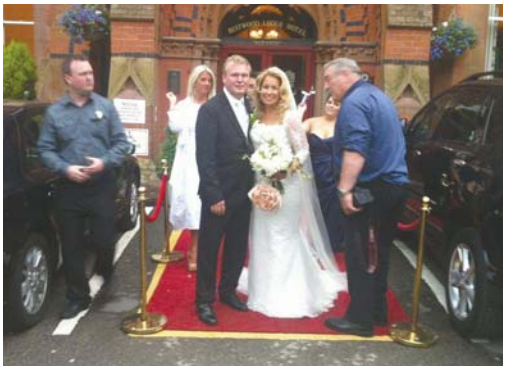
Reservations for attendance at the next meeting of the Section at The Westin Convention Center in Pittsburgh should be made directly with The Westin by calling (412) 281-3700. Room reservations should be made early to assure the special rate provided to Section members. The meeting will take place from Jan. 18 – Jan. 20, 2013. Put the dates on your calendar today.

Jay A. Blechman is a Partner with the Pittsburgh law firm of Steiner & Blechman, Section News Co-Editor of the Pennsylvania Family Lawyer, Past Chair of PBA Family Law Section and Past President and Treasurer of Allegheny County Bar Association. William L. Steiner is a Partner with the Pittsburgh law firm of Steiner & Blechman, Section News Co-Editor of the Pennsylvania Family Lawyer, past member of Council of PBA Family Law Section, past Chair of Allegheny County Bar Association Family Law Section and Fellow in the AAML.

Sidebar:

Gerald L. Shoemaker, Esq.
gls@hangley.com

Congratulations to **Paula Munafo Borradaile** of Wayne's **Bennett & Associates** on her recent appointment to the executive board of the Doris Jonas Freed American Inn of Court.



Congratulations to **Candice L. Komar** who recently married **Ivor Hill** in a ceremony at Newstead Abbey in Nottinghamshire, England. Candice is at Pittsburgh's **Pollock Begg Komar Glasser & Vertz LLC**.

Congratulations to **Harry J. Gruener,** of counsel to Pittsburgh's **Gentile, Horoho & Avalli PC**, on receiving the Robert T. Harper Excellence in Teaching Award from the University of Pittsburgh's Class of 2012.

Charles J. Meyer has joined the Philadelphia firm of **Hofstein & Weiner PC**. The firm is now called **Hofstein Weiner & Meyer PC**.

Also at **Hofstein Weiner & Meyer PC**, **Ellen Goldberg Weiner** has been named president of Temple Sinai in Cinnaminson, New Jersey.

Ann G. Verber of Philadelphia's **Obermayer Rebmann Maxwell & Hippel LLP** has been re-appointed to the Domestic Relations Procedural Rules Committee.

Voelker & Gricks LLP in Pittsburgh has announced the addition of a new attorney, **Jonathan Voelker**.

Judge Mason Avrigian Sr. of Blue Bell's **Wistler Pearlstein LLC** has been re-appointed as chair of the PBA Senior Lawyers Committee.

Angelica L. Revelant of Pittsburgh's **Pollock Begg Komar Glasser & Vertz LLC** has been named to the list of 2012 Lawyers on the Fast Track by *The Legal Intelligencer*. And, congratulations to Angel and Tim on the birth of their third daughter, Paige.

At Norristown's **High Swartz LLC**, **Mary Cushing Doherty** has been re-appointed chair of the Review and Certifying Board.

Jack A. Rounick has opened his own law firm, **Law Offices of Jack A. Rounick LLC.** Jack's offices are based in Norristown. Congratulations Jack!

Congratulations to **Dana A. Levine** formerly of Pittsburgh's **Pollock Begg Komar Glasser & Vertz LLC** on her engagement. Dana has relocated to Baltimore to be with her fiancé. She is continuing family law at the **Law Offices of Sally B. Gold, 201 N. Charles Street, #1630, Baltimore, Md. 21201, (410) 962-8343, (412) 962-8319 (fax), dana@sallybgoldlaw.com.**

Our condolences go **Madeline H. Lamb's** family. Madeline passed away this summer. She will be greatly missed by both the bench and bar. Her office was in West Chester.

Our condolences go to **Bruce Lord Wilder** on the passing of his son, **Charlie**. Bruce's wife and Charlie's mother, **Joanne Ross Wilder,** died recently.

David Rasner of **Fox Rothschild LLP** recently lost his mother. Our sympathies go to him.

Our condolences go to **Jeffrey Williams** of Doylestown's **Williams & Hand** on the recent passing of his mother.

Gerald Shoemaker is Sidebar Editor of the Pennsylvania Family Lawyer, *and a Shareholder in the Norristown office of Hangley Aronchick Segal Pudlin & Schiller, a past member of the Councils of the PBA and ACBA Family Law Sections and active in the Montgomery County Bar Association Family Law Section.*

INDEX OF PBI'S *CURRENT ISSUES FOR CHILD ADVOCATES* VOLUMES 1-16 (1997-2012)

By Joel Fishman, Ph.D. and David T. Leake[1]

This is another bibliography of Pennsylvania Bar Institute publications dealing with family-law related issues. For multiple authors, we have listed each author and identified the main author with an asterisk (*). In some cases we have added the title of the chapter at the end of the title to better identify the scope of the shortened chapter title.

[1] Joel Fishman, B.A., M.A., M.L.S., Ph.D., Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/ Allegheny County Law Library, Pittsburgh, PA; David T. Leake, Duquesne University School of Law, J.D. Candidate, 2014. David T. Leake, Duquesne University School of Law, Jris Doctor Candidate, 2014.

I. AUTHOR INDEX

(continued on Page 186)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 185)

(continued on Page 187)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 186)

(continued on Page 188)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 187)

(continued on Page 189)

II. TITLE INDEX

(continued on Page 190)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 189)

(continued on Page 191)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 190)

(continued on Page 192)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 191)

A Judicial Perspectives on Guardians Ad Litem. Stephanie Domitrovich. 8:363-370 (2004).

Judicial Perspectives on Guardian Ad Litem—Guardians Ad Litem - "Methods of Appointment." Samuel A. Kline. 8:173-180 (2004).

Juvenile Delinquency. Laval Miller-Wilson. 3:1-33 (1999).

Juvenile Dependency—Reunification Issues. Doreen M. Graziano. 2:308-323 (1998).

Legislation. Lisa Freese. 12:77-149 (2008).

Legislative Update. Eleanor L. Bush. 8:83-170 (2004).

Legislative Update. Eleanor L. Bush. 9:117-208 (2005).

Legislative Update. Eleanor L. Bush. 10:279-304 (2006).

Liability Trends of Public and Private Adoption Agencies, Foster Parents and Guardians Ad Litem. Jason P. Kutulakis, Craig B. Bluestein, Mary Coyne Pugh. 13:5-1-5-26 (2009).

Materials for Mock Hearing. David P. Rovner. 6:273-279 (2002).

Miscellaneous Case Summaries. Laval Miller-Wilson. 12:69-75 (2008).

New Sex Offender Registration Laws: Issues for Children. Jennifer Lutz Turner and Michael Sontchi. 16:125-130 (2012).

Notification Provisions of Act 101 of 2010 [Chapter One Act 101 Section: Three]. Melissa H. Shirey. 15:63-68 (2011).

Open Courtrooms in Dependency Cases. Jason P. Kutulakis. 7:121-267 (2003).

Pennsylvania Indigent Juvenile Defense Assessment. Laval Miller-Wilson. 7:267-287 (2003).

Permanency Planning for the HIV-Infected Parent. Cathryn Miller. 2:90-140 (1998).

Promoting the Well-being of Older Youth in Substitute Care and Youth Discharging to Independence. Lourdes M. Rosado and Jennifer K. Pokempner. 8:291-362 (2004).

Proposed Pennsylvania Supreme Court. Jason P. Kutulakis. 7:289-401 (2003).

Recent Cases in Juvenile Delinquency. Laval Miller-Wilson. 6:1-88(2002).

Recent Cases in Juvenile Dependency. Marsha L. Levick. 6:89-198 (2002).

Recent Juvenile Dependency Cases. Marsha L. Levick. 8:1-82 (2004).

Recommendations of the Conference on Ethical Issues in the Legal Representation of Children [Chapter Three Ethical Issues: Section Two]. Bruce Green and Bernardine Dohrn. 1:67-89 (1997).

Representing Siblings in Dependency Conflicts and Conflicting Goals. Jean Speiser-Polen. 4:217-224 (2000).

The Role of the Child Advocate in Domestic Relations Proceedings—Lackawanna County: Local Practice and Procedure. Doreen M. Graziano. 4:225-294 (2000).

The Role of the Guardian at Litem: A Ten Year Review. Ann Marie Lancour. 14:221-296 (2010).

The Roles and Content of Best Interests in the Client-Directed Lawyering for Children in Child Prospective Proceedings [Chapter Three Ethical Issues: Section Three]. Jean Koh Peters. 1:90-137 (1997).

Rules of Juvenile Court Procedure-Dependency Matters. 11:381-512 (2008).

Rules of Juvenile Court Procedure—Dependency Matters—Ethics in Child Advocacy: You be the Judge. Craig B. Bluestein. 11:513-547 (2007).

Sample Agreement-Post Adoption Contract Agreement [Chapter One Act 101: Section One]. Craig B. Bluestein. 15:3-14 (2011).

Section One [Chapter Four Hot Tips for Your Practice]. Dana E. Greenspan. 15:213-261 (2011).

Section Three [Chapter Four Hot Tips for Your Practice]. Mary Coyne Pugh. 15:319-326 (2011).

(continued on Page 193)

Section Two [Chapter Four Hot Tips for Your Practice]. Jennifer Staley McCrady. 15:263-317 (2011).

Standard for Removal of Child. Lynn R. Miller. 2:302-307 (1998).

Statutory Role of a Gaurdian Ad Litem. Stephanie Domitrovich. 5:206-214 (2001).

Summary of Procedures for Act 21 of 2003, 42 Pa. C.S. [Sections] 6401-6409. Jill E. Rangos. 11:361-380 (2007).

Supplemental Security Income/Childhood Disability Program. Larry G. Maasanari. 2:1-89 (1998).

Techniques for Interviewing Children. Kenneth France. 1:1-10 (1997).

Termination of Parental Rights. Myles A. Kaufmann. 10:401-410 (2006).

Thoughts from the Bench Regarding Emergencies. Samuel A. Kline. 10:377-380 (2006).

Tips from the Bench. Samuel A. Kline. 10:439-443 (2006).

Update on Agency and Foster Parent Liability. Lucy Johnston-Walsh and Jennifer K. Pokempner. 15:327-352 (2011).

Walk with a Child: Child Advocacy [Chapter Three Ethical Issues: Section Four]. Frank P. Cervone. 1:138-140 (1997).

III. SUBJECT INDEX

A.B.A Standards of Practice

A.B.A. Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases. 2:141-176 (1998).

American Bar Association. American Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases. 1:11-39 (1997).

Abuse

Cosner, Robert E. Effects of Abuse on Child Development. 3:196-229 (1999).

Adoption

Bluestein, Craig B. Sample Agreement-Post Adoption Contract Agreement [Chapter One Act 101: Section One]. 15:3-14 (2011).

Bush, Eleanor L. Implementing the Adoption and Safe Families Act in Pennsylvania. 3:171-195 (1999).

Cross, Katharine M., Jo Ann R. Lawer, Lucy Johnston-Walsh. Adoption and Safe Families Act. 5:215-302 (2001).

Domitrovich, Stephanie. Judicial Perspectives—Surrogacy Parenting Contracts: Status After the Flynn Case and Where do We go from Here? 9:211-230 (2005).

Greevy, Charles F., III, and Lucy Johnston-Walsh. Implementation of the Adoption and Safe Families Act (ASFA). 4:1-41 (2000).

Kutulakis, Jason P., Craig B. Bluestein, Mary Coyne Pugh. Liability Trends of Public and Private Adoption Agencies, Foster Parents and Guardians Ad Litem. 13:5-1-5-26 (2009).

Miller, Cathryn. Permanency Planning for the HIV-Infected Parent. 2:90-140 (1998).

Adult/Child Communication

Bullock, Jennifer, Ruby D. Weeks, Susan A. Docktor. Communications with Youth. 5:303-305 (2001).

France, Kenneth. Techniques for Interviewing Children. 1:1-10 (1997).

Keller, Emily C. Fostering Connections and Transition Planning : Improving Outcomes for Older Youth in Care. 14:135-176 (2010).

Rosado, Lourdes M. and Jennifer K. Pokempner. Promoting the Well-being of Older Youth in Substitute Care and Youth Discharging to Independence. 8:291-362 (2004).

Appeals

Lally-Green, Maureen. Frederick N. Frank, Scot R. Withers. Children's Fast Track Appeals. 13:1-1-1-23 (2009).

(continued on Page 194)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 193)

Confidentiality

Bluestein, Craig B. Confidentiality Concerns Regarding Children: Relevant Statutes and Fact Patterns. 14:177-220 (2010).

Custody

Greenspan, Dana E. Andrea Marceca-Strong, Jennifer A. Staley. Hot Practice Tips. 13:3-1-3-51 (2009).

Greenspan, Dana E. Section One [Chapter Four Hot Tips for Your Practice]. 15:213-261 (2011).

Malloy-Good, Julia. Determining the Best Interests of the Child in Custody Cases. 1:149-197 (1997).

Delinquency

Levick, Marsha L. Delinquency Case Updates. 14:1-14 (2010).

Miller-Wilson, Laval. Hot Topics in Juvenile Delinquency Proceedings. 4:42-114 (2000).

Miller-Wilson, Laval. Hot Topics in Juvenile Delinquency. 7:1-41 (2003).

Miller-Wilson, Laval. Hot Topics in Juvenile Delinquency. 10:137-278 (2006).

Miller-Wilson, Laval. Hot Topics in Juvenile Delinquency. 11:235-344 (2007).

Miller-Wilson, Laval. Hot Topics in Juvenile Delinquency—Case Summaries. 12:57-67 (2008).

Miller-Wilson, Laval. Juvenile Delinquency. 3:1-33 (1999).

Miller-Wilson, Laval. Recent Cases in Juvenile Delinquency. 6:1-88(2002).

Rosado, Lourdes M. Hot Topics in Juvenile Delinquency. 5:1-71 (2001).

Welshonce, Thomas C. Delinquency Case Law Update [Chapter One 2011 Case Law Update: Section Two]. 16:61-124 (2012).

Dependency

Bluestein, Craig B. Fifteen Hot Tips in Thirty Minutes: Dependency, Delinquency, CPSL and Adoption. 9:279-382 (2005).

Bluestein, Craig B. Rules of Juvenile Court Procedure—Dependency Matters—Ethics in Child Advocacy: You be the Judge. 11:513-547 (2007).

Domitrovich, Stephanie. Statutory Role of a Gaurdian Ad Litem. 5:206-214 (2001).

Domitrovich, Stephanie. A Judicial Perspectives on Guardians Ad Litem. 8:363-370 (2004).

Domtrovitch, Stephanie. Discussion on Two Recent Significant Cases in the Dependency Area: In Re: S.E.G. and In the Interest of K.C. 11:345-359 (2007).

Graziano, Doreen M. Juvenile Dependency Reunification Issues. 2:308-323 (1998).

Guy, Hope. Dependency Law Updates. 14:15-34 (2010).

Kline, Samuel A. Judicial Perspectives on Guardian Ad Litem—Guardians Ad Litem - "Methods of Appointment." 8:173-180 (2004).

Kutulakis, Jason P. Open Courtrooms in Dependency Cases. 7:121-267 (2003).

Lancour, Ann Marie. The Role of the Guardian at Litem: A Ten Year Review. 14:221-296 (2010).

Levick, Marsha L. Appeals in Dependency Cases. 4:115-169 (2000).

Levick, Marsha L. Hot Topics in Juvenile Dependency. 5:72-205 (2001).

Levick, Marsha L. Recent Cases in Juvenile Dependency. 6:89-198 (2002).

Levick, Marsha L. Recent Juvenile Dependency Cases. 8:1-82 (2004).

Miller-Wilson, Laval. Hot Topics in Juvenile Delinquency & Dependency. 9:1-116 (2005).

(continued on Page 195)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 194)

Miller-Wilson, Laval. Hot Topics in Juvenile Dependency. 7:43-119 (2003).

Miller-Wilson, Laval. Hot Topics in Juvenile Dependency. 10:1-136 (2006).

Miller-Wilson, Laval. Hot Topics in Juvenile Dependency. 11:1-234 (2007).

Miller-Wilson, Laval. Hot Topics in Juvenile Dependency—Case Summaries. 12:39-56 (2008).

Miller-Wilson, Laval. Miscellaneous Case Summaries. 12:69-75 (2008).

Miller-Wilson, Laval. Pennsylvania Indigent Juvenile Defense Assessment. 7:267-287 (2003).

Speiser-Polen, Jean. Representing Siblings in Dependency Conflicts and Conflicting Goals. 4:217-224 (2000).

Staley, Jennifer A. 2008 Wrap Up of Dependency Case Law, Legislation and Appellate Rule Changes. 13:2-1-2-28 (2009).

Welshonce, Thomas C. Dependency Case Law Update [Chapter One 2011 Case Law Update: Section One]. 16:1-60 (2012).

Disability

Maasanari, Larry G. Supplemental Security Income/Childhood Disability Program. 2:1-89 (1998).

Domestic Relations

Graziano, Doreen M. The Role of the Child Advocate in Domestic Relations Proceedings—Lackawanna County: Local Practice and Procedure. 4:225-294 (2000).

Domestic Violence

Biesecker, John L. Dynamics of Domestic Violence and Substance Abuse on Children. 7:403-417 (2003).

Miller, Lynn R. Standard for Removal of Child. 2:302-307 (1998).

Ward, Wynona. Growing Up Scared: The Impact of Domestic Violence on Children. 9:269-278 (2005).

Education

Feierman, Jessica and Maura McInerny. Educational Right of Dependent Children. 12:179-317 (2008).

Feierman, Jessica R. and Janet F. Stotland. Fostering Education—Old and New Tools for Helping Dependent Children Learn. 13:4-1-4-29 (2009).

McCrady, Jennifer Staley. Section Two [Chapter Four Hot Tips for Your Practice]. 15:263-317 (2011).

Stocco, Janet A. Education Rights of Children in Foster Care. 9:241-268 (2005).

Workman, David R. Guardians Ad Litem—"Educational Responsibilities." 8:181-186 (2004).

Evidence

Bluestein, Craig B. Evidentiary Issues Affecting Children—Evidentiary and Other Selected Statutes Relating to Proceedings Involving Children. 8:187-246 (2004).

Flower, James D., Jr. Is Hearsay Testimony Admissible in Juvenile Dependency Matters? 8:247-252 (2004).

Gibbons, Maria Etzrodt. Cross Examination. 10:433-437 (2006).

Mapes, Bruce E. Expert Opinions Concerning Bonding and Attachment: Are They Admissible or Necessary? 8:259-282 (2004).

Miksic, Stephen. The Five Axes of Psychological Diagnosis, Bonding, Tips on Cross Examining the Psychologist. 12:319-360 (2008).

Immigration

Corpuz, Cherylle C. Immigration and Naturalization. 6:199-272 (2002).

Judicial Commentary

Bradley, John F. Family Court Survey. 4:170-216 (2000).

Bush, Eleanor L. Combined Goal Change/TPR Hearings. 16:261-266 (2012).

Domitrovich, Stephanie, Kevin M. Dougherty, Carol A. Hanna, Richard A. Masson. Judicial Perspectives. 16:131-260 (2012).

(continued on Page 196)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 195)

(continued on Page 197)

INDEX TO CURRENT ISSUES FOR CHILD ADVOCATES
(continued from Page 196)

Rights. 9:231-240 (2005).

Kaufmann, Myles A. Termination of Parental Rights. 10:401-410 (2006).

Practice of Law

Bluestein, Craig B., Andrea Marceca, James W. Martin, Tiffany L. Palmer, Jennifer A. Staley. Hot Practice Tips. 12:1-38 (2008).

Pugh, Mary Coyne. Section Three [Chapter Four Hot Tips for Your Practice]. 15:319-326 (2011).

Rovner, David P. Materials for Mock Hearing. 6:273-279 (2002).

Rules of Juvenile Court Procedure—Dependency Matters. 11:381-512 (2008).

Sacks, Stuart S. Direct Examination. 10:427-432 (2006).

Shienvold, Arnold T. Direct and Cross Examination of a Psychological Expert in a Termination of Parental Rights Case Fact Pattern. 10:411-415 (2006).

Welshonce, Thomas C. 2010 Case Law Update. 15:187-210 (2011).

Psychological Bonding

Hatfield-Wise, Joyce A. Bonding and Attachment Assessment—Discussion Questions. 8:255-258 (2004).

Hatfield-Wise, Joyce A. Cases Relating to Bonding. 8:371-426 (2004).

Shienvold, Arnold T. Bonding and Attachment. 10:417-424 (2006).

Ziegler, Donna L. Bonding Assessments. 8:283-290 (2004).

Sex Offender Registration

Turner, Jennifer Lutz and Michael Sontchi. New Sex Offender Registration Laws: Issues for Children. 16:125-130 (2012).