FROM THE CHAIR

By Cheryl L. Young, Esq.
cyoung@hangley.com

As I dictate this column, I realize that my term is quickly coming to an end. I will be writing one more column — as past chair. I know that every chair of this Section says it, but it’s true: The year goes so incredibly fast. The plans for our Summer Meeting at the Sagamore in New York are quickly being finalized. Our programs are all set, the brochure is out and the sign up has already been extraordinary. We may be looking at a sell-out crowd for the Summer Meeting. We will be virtually the only occupants of the hotel. We are very excited about the programs and the special events that the Sagamore has to offer. I truly hope all of you can attend and join us for an opportunity to network, obtain great CLE credits and just relax and have fun with family and friends.

Cheryl L. Young is a Shareholder in the Norristown office of Hangley Aronchick Segal & Pudlin. She has been named the Best Lawyers Family Law Lawyer of the Year for 2009, a top 100 Attorney in Pennsylvania by Pennsylvania Super Lawyers, 2004–2010. She is a fellow, American Academy of Matrimonial Lawyers; Fellow, Pennsylvania Chapter Academy of Matrimonial Lawyers; and a Member of its Board of Examiners, 2009-present; PBA At-large Governor; PBA Board of Governors, 2009-present; Montgomery Bar Association, President, 2004; Treasurer, Montgomery Child Advocacy Project, 2006–present; Board, Legal Aid of Southeastern Pennsylvania, 2008-present.

(continued on Page 56)
subcommittee, headed by Melissa Boyd, is busily at work helping to draft forms that can be used across the state. We need to be diligent and responsive as we are sought out for practical advice.

Watch for a video that we hope to showcase at the Sagamore, then show at the judicial conference in July and across the state. Judge Jeanine Turgeon is leading a group of family lawyers and psychologists in preparing this video about partial custody. This is a great project as we so often see supervisors appointed with little or no training and without clear knowledge of their duties and obligations.

We want to hear from you with regard to our decision to have the Pennsylvania Family Lawyer quarterly available online, as opposed to in hard copy through the mail. Please give us any comments, concerns or suggestions you may have. Hopefully everyone is finding the website to be user-friendly.

WE THANK OUR PBA FAMILY LAW SECTION WINTER 2011 MEETING SPONSORS

Platinum Sponsor — BNY/Mellon

Lanyard Sponsor — Easy Soft, L.L.C.

Alpern Rosenthal
Avvo
Easy Soft, L.L.C.
Family Law Software
Monard Testing, L.L.C.

Pension Analysis Consultants, Inc.

Pritchard Bieler Gruver & Willison, P.C.
Stumar Investigations
The OurFamilyWizard Website
Value Management, Inc.

Weber Gallagher Simpson Stapleton Fires & Newby L.L.P. was a Summer Meeting sponsor we failed to mention.
Thank You!

EDITOR’S COLUMN

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

Somehow the Pittsburgh Penguins did not play all summer, but the Pittsburgh Pirates are really playing well! I know the Philadelphia Phillies fans have perennial winners, but when I was young during the late ‘50s through the early ‘60s, and then again in the 70’s, the Pirates were great. In the ‘70s the Steelers were a true Hall of Fame dynasty. Well, I guess we do not have the NFL anymore either and Pittsburgh is not a basketball town. There is no NBA and the Pitt Panthers did not even get that far in March Madness. So I will have to make my own way with fan sports or maybe I should be the player. There is swimming, cycling, Little League baseball, soccer, golf and tennis. There is just so much to do and sometimes it is hard to concentrate on our work. Our practices are stressful, our clients are stressful, but our lives need not reflect that stress. It is good to walk at lunchtime or to play a quick nine holes at the end of the day or jog or cycle early in the morning. Just get outside and enjoy the fresh, clean air (it should be clean after all this rain). Enjoy all the wonderful things growing in your gardens. And the best flowers in the garden that keep blooming are our children and grandchildren. Rita and I are blessed with our granddaughter Madeleine. Many of our staff have children and grandchildren that make them so happy. I guess Madeleine is our reward for having children. Life is good — very good.

Please note the several case notes in this issue as follows:

b. Harrell v. Pecynski — Joseph R. Williams
c. Warmkessel v. Heffner — Christine Gale
d. Childress v. Bogosian — Joanna K. Conmy
e. Wetzel v. Heiney — Ann M. Funge
f. In Re: B.R.S. — Joo Y. Park
g. Durning v. Balent/Kurdilla — Ann M. Funge

Also note the Articles and Comments in this issue. We are especially pleased to have Judge David Wecht’s offerings. Judge Wecht served the Allegheny County Family Division as Judge and Administrative Judge and now is serving in the Civil Division.

a. Some Tips for New Lawyers … And Some Reminders for Veteran Lawyers — Judge David N. Wecht
b. Some Reservations About Sealing Divorce Records — Judge David N. Wecht and Jennifer H. Forbes

(continued on Page 57)
EDITOR’S COLUMN
(continued from Page 56)

c. No Credit for Time Served in Jail While Awaiting Sanction for Civil Contempt for Failure to Pay Support — Jennifer Zofcin
d. Benefit to Minor Children in the Nature of Home Schooling Not to be Considered in Alimony Analysis — Jennifer Zofcin

Additionally, our newest section: Federal/Military Corner by Mark E. Sullivan brings to us the final installment in a three-part series on the Survivor Benefit Plan. In the Technology Corner Alicia Slade provides Data Backups: Is Your Data Really Being Backed Up? We all should take heed ...

This is the second issue that has been online only. Also online but separate and apart from this issue are all the photographs from the Annual PBA Family Law Section Winter Meeting, as well as other photographs and the comprehensive index of all of the past 32 years of the Pennsylvania Family Lawyer prepared by Joel H. Fishman, Ph.D. These can be accessed at the PBA website Family Law Section tab at www.pabar.org. This comprehensive index of every issue of the first 32 volumes of the Pennsylvania Family Lawyer is easily searchable by keywords, concepts and case names. Dr. Fishman has accomplished a masterpiece work for easy use by all of us. We commend Dr. Fishman whose first Pennsylvania Family Lawyer index comprised volumes 1 through 20, and thereafter he continued on a tri-annual basis. This is easy and a pleasure to use. Thank you Dr. Fishman for all that you have accomplished and continue to accomplish for the Pennsylvania Family Lawyer.

Case Notes:

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

INTERPRETATION OF “SEXUAL OR INTIMATE PARTNERS” UNDER PFA ACT
BY JANE K. CHENG, ESQ.

EVANS V. BRAUN

Pennsylvania’s Protection from Abuse Act provides individuals with relief from abusive behavior occurring “between family or household members, sexual or intimate partners or persons who share biological parenthood.” 23 Pa.C.S.A. § 6102(a). In its Dec. 14, 2010 opinion, the Pennsylvania Superior Court (Bender, Shogan and Cleland, JJ.) extended the act’s standing requirement to provide that the definition of “sexual or intimate partners” is inclusive of persons “who mutually chose to enter relationships.” In short, a mutual decision made by two persons to enter into a “dating relationship” provides sufficient standing for one to petition for PFA protection, even where the relationship consisted of only two dates.

In reaching this decision, the court, per Bender, J. considered the following facts: The dating relationship between Ms. Evans and Mr. Braun, who were co-workers, began in the summer of 2009. However, an uninvited visit by Mr. Braun to Ms. Evans’ home a few days following the parties’ first date caused Ms. Evans to terminate the relationship.

A few months following the initial date, the parties reconciled and attended a play in Harrisburg on Dec. 5, 2009, which effectively constituted their second date. During this outing, Mr. Braun informed Ms. Evans he was carrying a Colt 45 semi-automatic pistol. When the parties returned to Braun’s home later that night, Mr. Braun removed the gun from his waistband, handed it (continued on Page 58)

Jane K. Cheng is an Associate with Gallagher, Schoenfeld, Surkin, Chupein & Demis P.C., Media. Prior to joining GSSCD as a law clerk in 2008, Ms. Cheng was a Judicial Intern for Judge Barry C. Dozor of the Court of Common Pleas of Delaware County. She also interned with HIAS & Council Migration Service of Philadelphia through Drexel Law’s co-op program. Ms. Cheng is an active member of the Delaware County and Pennsylvania Bar Associations.
to Ms. Evans, remarked on its weight and told her it could put a very big hole in her.

Less than two weeks following this second date, Ms. Evans invited Mr. Braun to a Christmas party to make amends for an ongoing quarrel. During this encounter, Mr. Braun became increasingly short tempered, sarcastic and aggressive. In an attempt to end the confrontation, Ms. Evans walked away from Mr. Braun, who then called her name. When she turned around, Mr. Braun proceeded to pull back his jacket and expose his gun, informing Ms. Evans to remember he still had the gun and was not afraid to use it. Compelled by fear due to their shared workplace, Ms. Evans reported Mr. Braun’s threatening behavior to her employer the following day. An employee assistance counselor referred her to the police, who in turn referred her to the office of Women in Need (WIN). WIN filed a PFA action on behalf of Ms. Evans, alleging standing under the “sexual or intimate partners” requirement of the Act.

Following Ms. Evans’ case in chief during the PFA hearing on Jan. 21, 2010, Mr. Braun moved for a Directed Verdict on the basis that Ms. Evans lacked standing under the Act. The motion was immediately denied, and Franklin County Judge Carol Van Horn entered a final PFA Order requiring Mr. Braun to surrender his handgun as well as other firearms he kept in his home.

Mr. Braun appealed the trial court’s order, raising the following issues: (1) Whether the trial court erred in denying Mr. Braun’s Motion for Directed Verdict because Ms. Evans failed to present sufficient evidence to support her contention that she had sufficient standing under the Act; and (2) Whether the trial court erred, as a matter of law, in granting Ms. Evans’ petition for protection from abuse despite Ms. Evans’ failure to demonstrate that she is a member of the protected class as defined under the Act.

When determining whether Ms. Evans had provided sufficient evidence to support her contention that she had sufficient standing under the “sexual or intimate partners” requirement of the Act, the Superior Court turned to the intent of the Legislature as set forth in Scott v. Shay, 928 A.2d 312 (Pa. Super. 2007), a 2007 Superior Case also dealing with the issue of standing in PFA matters. In Scott, the Superior Court noted the Legislature’s intent in enacting the Act was “to prevent domestic violence and to promote peace and safety within domestic, familial and/or romantic relationships.” Id. Those who “share some significant degree of domestic, familial and/or intimate interdependence” often share “an obvious emotional bond.” Id. Specifically, “even in a dating relationship, where the functional interdependence might not be as substantial as in a family, the participants have elected some measure of personal interaction. This interaction often involves emotional or private concerns not unlike those found in family settings, albeit not normally as extensive or intense.” Id.

Accordingly, the Superior Court noted that by construing the word “partners” to include “those persons who mutually chose to enter relationships,” the Scott court gave “effect to the provisions of the [PFA Act] in a way that promotes its purpose of preventing violence among people with a domestic, familial or romantic bond, past or present.” Id. In other words, such interpretation means that persons who choose to have intimate or sexual relationships are within the purview of domestic relations law, and as such, have sufficient standing to petition for relief under the Act. Id. at 316.

By applying this line of reasoning to the facts set forth by the trial court, the Superior Court concluded that Ms. Evans had presented sufficient evidence to establish that she and Mr. Braun were “sexual or intimate partners” as required by the Act. Specifically, the court took note of Ms. Evans’ testimony at the PFA hearing before the trial court, during which she stated that “after going to a play on their second date, Braun drove her back to his house because he wanted her to meet his son.” Id. Ms. Evans further testified that on the night that Braun threatened her with the gun, she wanted to apologize to him for comments which he may have interpreted as unkind, explaining she had lost her husband and was “trying to go very slow in relationships,” but that Mr. Braun was “very pushy and wanted things [she] was not ready for.” A friend of Ms. Evans further testified that Ms. Evans had confided in her about Mr. Braun, indicating that Mr. Braun had told her that he loved her. Id.

Based on the testimony presented by Ms. Evans to the trial court, the Superior Court concluded that the parties “mutually chose to enter a dating relationship,” which, albeit short-lived, qualifies as a “sexual or intimate partnership” under the PFA Act. The Superior Court further noted that although dating relationships such as this may not have a “functional interdependence” as substantial as that of familial relationships, the fact that Ms. Evans and Mr. Braun “elected some measure of personal interaction” was sufficient to provide Ms. Evans with the requisite standing to seek relief under the Act.

Lastly, the Superior Court noted that its decision was further supported by the fact that the Act was “passed because criminal law was sometimes an inadequate mechanism for dealing with violence that arose in the intimate environs of domestic life.” Id. Here, criminal law proved ineffective in providing the protection Ms. Evans sought. Despite the fact Mr. Braun twice showed Ms. Evans his gun and made threatening comments, the police did not pursue a criminal investigation and instead directed Ms. Evans to WIN to file for PFA protection. In concluding its opinion, the Superior Court noted that “this is precisely the type of scenario that the Legislature intended the PFA Act to address,” further bolstering the conclusion that Ms. Evans had standing to seek protection under the statute.

(continued on Page 59)
Interestingly, when deciding that the parties were “sexual or intimate partners” under the PFA Act, the Superior Court did not make a finding that Evans and Braun were involved in a sexual relationship. On the contrary, the court’s Dec. 14, 2010 opinion does not reference or take into account any sexual relationship that the parties may have engaged in. As such, by expanding the standing requirement of “sexual or intimate partners” under Pennsylvania’s PFA Act, the Superior Court essentially extends PFA protection to those involved in short-lived “dating relationships” which may not have resulted in a physical and/or sexual relationship.

However, it is important to note that although the parties, in effect, had participated in only two successful dates, a number of additional factors bolstered the court’s conclusion that the parties were in fact “sexual or intimate partners” as defined by the Act. For example, although the parties’ relationship consisted of only two established dates, the second date occurred approximately five or six months following the first date, and during this period, the parties shared the same workplace and employer.

Further, the court noted in Footnote 1 of its opinion that Mr. Braun’s testimony, although not relied upon, provided even more support for its conclusion that the parties were involved in a “sexual or intimate relationship.” Specifically, Mr. Braun testified that he and Ms. Evans had dated several times; they first went on a date in the summer of 2009 when he went to Ms. Evans’ house to watch a movie and get Chinese food, and that “things got a little close” on that date, which caused him to mistakenly believe that it was acceptable to visit Evans’ house unannounced several days later. He further testified that in December 2009, the parties went on a second date to a movie, during which Ms. Evans was “very touchy feely.” Mr. Braun also testified that on another occasion, he went to Ms. Evans’ house because she was upset, and that he sat with her and they talked about his prior marriage and divorce.

While it appears expansive, the Court’s decision to extend the protection afforded by the Act to two-date relationships is actually limited by specific facts of a case. By noting Mr. Braun’s testimony, the court points out that in addition to their two dates, the parties had actually interacted on a more personal and emotional level, discussing personal matters, providing companionship, and even physically getting “a little close.” Although this testimony was found not credible by the trial court, it did serve as additional support for the Superior Court’s affirmation of the trial court’s final PFA Order.

As such, the Court’s opinion does not extend the definition of the “sexual or intimate partner” standing requirement so much as to provide standing for any litigant involved in a two-date relationship, as it is clear from the Evans opinion that a number of factors were considered when determining whether Evans had sufficient standing under the Act. Accordingly, practitioners should keep in mind the application of relevant factors as they work through matters which do not fall definitively under the purview of either the Act or criminal law.

PBA FAMILY LAW SECTION MEMBERSHIP INCENTIVE PROGRAM
BY DANIEL J. CLIFFORD, ESQ.

In July 2008, then-Section Chair Carol Behers appointed a Subcommittee consisting of Section Secretary Christine Gale, then-Treasurer Dan Clifford 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.

For the Summer 2011 Summer Meeting at the Sagamore, N.Y., the Membership Incentive Program will be administered by Chair-Elect Joseph Martone and First Vice Chair Christine Gale, who will make a recommendation to Chair Cheryl Young 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 Michael Shatto, PBA, P.O. Box 186, Harrisburg, PA 17108-0186.

Applications should be submitted no later than June 17, 2011.
HARRELL V. PECYNISKI
11 A.3d 1000 (Pa. Super. 2011)

On Jan. 3, 2011, the Superior Court of Pennsylvania (Bender, Gantman and Freedberg, J.J.) affirmed Berks County Judge Mary Ann Campbell’s order which, sua sponte, dismissed appellant-father’s complaint in custody; dismissed all outstanding petitions; vacated all orders; and dismissed and closed the case due to father’s failure to have a custody trial scheduled within 180 days of filing for custody. In rendering its decision, the Superior Court, per Freedberg, J., ruled that the “shall” language of Pa.R.C.P. 1915.4(b), which provides for dismissal of a custody action if a trial has not been scheduled after 180 days of filing of the complaint, affords the trial court no discretion under the rule.

The facts of this case are as follows. Appellee-mother and father are the parents of one minor child. The parties were never married and never cohabited. The child lived with mother and had occasional contact with father for the first four years of his life. In May 2008, however, mother asked father to care for the child for approximately six weeks while she began employment in Tennessee and made arrangements for such things as the child’s daycare. Father agreed.

On July 23, 2008, father filed a complaint for custody and on Aug. 12, 2008, the trial court issued a temporary order granting the parties custody on an alternating two-week basis. The parties appeared for a custody conference on Sept. 4, 2008, during which custody evaluations were ordered. A review conference was scheduled for Dec. 5, 2008, and subsequently continued to Jan. 23, 2009. On Jan. 22, 2009, an order was entered to change the custody evaluations were ordered. A review conference was scheduled for Dec. 5, 2008, and subsequently continued to Jan. 23, 2009. On Jan. 22, 2009, an order was entered to change the professional to administer the custody evaluation. The Jan. 23, 2009 custody conference was rescheduled to July 17, 2009.

The parties appeared for the July 17, 2009 custody conference with counsel and accepted the custody evaluator’s recommendation that the child would reside primarily with mother in Tennessee and that father would exercise custody during the summer and over certain holidays. The custody master was notified that no additional conference would be needed.

On Aug. 21, 2009, the trial court entered an order stating that the case was dismissed for failure to proceed if an agreement was not filed within 30 days. The parties contacted the custody master who declined to issue a recommendation without a custody conference. Father filed a petition for contempt and special relief for enforcement of the prior custody orders on Sept. 16, 2009. A hearing on father’s petition was scheduled for Oct. 22, 2009. Mother requested that the court administrator schedule a custody conference and a conference was scheduled for Nov. 16, 2009.

At the Oct. 22, 2009 hearing on father’s petition, Judge Thomas J. Eshelman, to whom the case was previously transferred from Judge Campbell, mandated the enforcement of the temporary order providing for shared alternating custody and deferred any modification to the Nov. 16, 2009 custody conference. Mother filed exceptions and a motion for post-trial relief, which the court did not hear.

The case was transferred back to Judge Campbell on Dec. 1, 2009. The custody master issued a recommendation following the Nov. 16, 2009 custody conference, which provided that mother should have primary physical custody in Tennessee subject to father’s partial custody in the summer and on certain holidays. Father filed exceptions.

On Dec. 28, 2009, Judge Campbell entered an order that dismissed father’s complaint in custody, dismissed all outstanding petitions, vacated all orders, and dismissed and closed the case in reliance on Pa.R.C.P. 1915.4(b) and the Superior Court’s decision in Dietrich v. Dietrich, 923 A.2d 461 (Pa.Super. 2007). Father appealed.

On appeal, father argued that (1) the trial court erred as a matter of law when it dismissed the custody action when neither party requested that the case be dismissed; (2) the trial court erred as a matter of law when Judge Campbell dismissed the custody action after Judge Eshelman dealt with the alleged delays in the matter at the Oct. 22, 2009 conference; and (3) the trial court erred as a matter of law when it dismissed the custody action although the parties were waiting for the court to schedule a custody trial date.

Joseph R. Williams is an Associate in the Pittsburgh firm of Pollock Begg Komar Glasser L.L.C. He was recently elected to a three-year term on the Allegheny County Bar Association Family Law Section Council and a two-year term on the Allegheny County Bar Association Young Lawyers Division (YLD) Council. Williams also serves as the Zone 12 delegate for the Pennsylvania Bar Association YLD Executive Council.

(continued on Page 61)
The Superior Court examined Pa.R.C.P. 1915.4(b) and Dietrich, both of which the trial court relied on when it dismissed the action.1 Pa.R.C.P. 1915.4(b) provides, in pertinent part, that “within 180 days of filing of the complaint either the court shall automatically enter an order scheduling a trial before a judge or a party shall file a praecipe, motion or request for trial, except as otherwise provided in this subdivision. If it is not the practice of the court to automatically schedule trials and neither party files a praecipe, motion or request for trial within 180 days of filing of the pleading, the court shall dismiss the matter unless the moving party has been granted an extension for good cause shown, which extension shall not exceed 60 days beyond the 180 day limit.” (emphasis added)

In Dietrich, the father filed a Complaint in Divorce with a count for custody on Aug. 3, 2005. After several conciliations, a series of petitions for contempt and a custody evaluation, the trial court held a custody trial on Aug. 9, 2006. The mother did not present any evidence and moved that the trial court dismiss the action because it had not come to trial within 180 days of filing of the complaint. The trial court refused to dismiss the complaint and granted father primary physical custody of the parties’ children. The mother appealed and the Superior Court ruled that the trial court erred in its decision based upon the requirements of Rule 1915.4(b). The Superior Court vacated the order of the trial court and remanded with instructions for the trial court to reinstate the previous custody order. The court noted that “the rule dictates that dismissal must be automatic, thus making it unnecessary for a party to petition for dismissal.” Dietrich, 923 A.2d at 465.

The Superior Court found that Judge Campbell’s dismissal was also proper in accordance with the rule unambiguously requires the trial court to dismiss an action if a trial has not been scheduled within 180 days of the pleading or if the moving party has not been granted an extension for good cause shown.

Although the court determined that Pa.R.C.P. 1915.4(b) affords no discretion, it reiterated that the fundamental issue of a custody dispute is the best interest of the child. As a result of the trial court’s compliance with the rule, the child was left with no order in place to resolve parental custody disputes. The court stated that it would be preferable if Pa.R.C.P. 1915.4(b) provided the trial court with discretion whether to dismiss an action so that the fundamental concern for the best interest of the child could be considered.

CASE NOTE AUTHOR’S EDITORIAL COMMENTS

Although the text of Pa.R.C.P. 1915.4(b) mandates dismissal consistent with Judge Campbell’s order and the Superior Court’s opinion, the failure of a trial court to dismiss an action amounts to an exercise of discretion to avoid the requirement. Indeed, those trial courts that do not dismiss custody actions where trials are not scheduled within 180 days are essentially failing to strictly comply with the rule. Further, although Judge Campbell ultimately dismissed father’s complaint in this case, dismissal did not incur until over 300 days had passed since the prompt disposition deadline of Rule 1915.4(b). Although the Superior Court’s holding states that there is no discretion afforded to the trial court, it seems unavoidable that a certain amount of discretion lies with the trial court.

1 The Superior Court also briefly addressed father’s failure to comply with the family fast track procedural requirement to submit a Concise Statement of Matters of on Appeal contemporaneously with the Notice of Appeal but the court ultimately determined that the defect did not preclude meaningful review. The court noted that mother did not object or claim any prejudice and the trial court had an opportunity address father’s claims of error.

---

Mark Your Calendar: Upcoming PBA Family Law Section Meetings

2011 Summer Meeting — July 7-10, 2011 • The Sagamore, Bolton Landing, New York

2012 Winter Meeting — Jan. 13-16, 2012 • Renaissance Vinoy Resort & Golf Club, St. Petersburg, Florida

2012 Summer Meeting — July 12-15, 2012 • The Hotel Hershey, Hershey

2013 Winter Meeting — Jan. 18-20, 2013 • The Westin Convention Center, Pittsburgh
The Superior Court of Pennsylvania (Stevens, Gantman and Fitzgerald, JJ.) affirmed the decision of Berks County Judge Mary Ann Campbell, who denied the appellant/father’s request for credit for time served against his sentence that was imposed as a result of his failure to comply with his child support obligation. The father had been brought to court on a bench warrant and held for three weeks pending his contempt hearing. At the time of the contempt hearing, he was sentenced to three weeks in jail with a purge condition requiring payment. The father asked for credit against this sentence for time that he had already spent in jail awaiting the enforcement hearing. This was denied and the Superior Court affirmed this denial.

**Background**

The facts of this case are not in dispute. The father was the obligor of a child support order, which he very often ignored. In May 2001, he had been ordered to pay $260 per month for the support of his two minor children. Since then, the Domestic Relations Section had filed numerous petitions to enforce this support obligation. The father also had filed a number of times for modification of the support order, failing to appear at the time of the modification hearings. A number of contempt petitions were issued and contempt conferences scheduled. Finally a support enforcement hearing was scheduled for November 2009. The father failed to appear and a bench warrant was issued. The support enforcement proceeding was rescheduled for three weeks later. The father would not pay the $525.08 and remained incarcerated for the three weeks pending the hearing.

At the time of the enforcement hearing, the father was delinquent in his support obligation in the amount of $6,037, representing 23 months of his support obligation. The father was found to be in civil contempt and a sanction was imposed whereby the father would be incarcerated for a maximum of three months, with the minimal purge amount being set at $100. Through counsel, the father requested that he be given credit for the three weeks that he had spent in custody on the bench warrant before the rescheduled support hearing. Essentially, he was requesting the equivalent of what is commonly seen in the Criminal Division, that being credit for time served. The trial court denied this request.

**Trial Court Decision**

First, in spite of the fact that the father had already served his entire three month sentence, the Superior Court determined that the issue before the court was not moot since the father was subject to a continuing support obligation and could conceivably face further contempt proceedings. The issue of credit for time served could arise again and would be capable of being raised by other similarly situated defendants. Because the issue was determined to be capable of repetition, the matter was deemed not to be moot but was deemed appropriate to be reviewed on appeal.

Second, the crux of the father’s argument was that he should have received credit for the weeks that he spent in jail following being brought in on a bench warrant and prior to the hearing on the issue of enforcement. The trial court and the Superior Court determined that the incarceration was unlike a sentence for a criminal offense in that the contempt sentence had no absolute time period. The father was not required to spend any time at all in jail if he made a minimal purge payment of $100. This was seen to undercut the otherwise coercive nature of a civil contempt sentence. The father argued that the time in jail prior to the enforcement hearing should have qualified as coercive as he argued that he was financially unable to meet the bail conditions and pay the $525.08 in court costs. He argued that he had no ability to pay this amount and therefore had to spend the three weeks incarcerated prior to the hearing. He analogized the matter to situations in criminal proceedings where defendants receive credit for time served was tantamount to a denial of his equal protection rights both under the U.S. and Pennsylvania Constitutions.

*Christine Gale is a Shareholder in the Pittsburgh firm of Frank, Gale, Bails, Murcko, & Pocrass, P.C., First Vice Chair of the Pennsylvania Bar Association Family Law Section and a former Co-Chair of its Legislative Committee, and a former Council member of the Allegheny County Bar Association Family Law Section and Co-Chair of its Legislative Committee.*

(continued on Page 63)
The trial court and the Superior Court disagreed with the father’s arguments. First, the Superior Court reviewed the difference between criminal and civil contempt and the purpose of each concept. Both forms of contempt address the obstruction of the orderly process of the court and both address contumacious behavior. If the purpose is to vindicate the authority of the court and protect the interest of the public, criminal contempt is the appropriate avenue. If, however, the purpose to be served is to enforce compliance with an order of court primarily for the benefit of another party, civil contempt is the avenue to be pursued. The entire purpose of the civil contempt proceedings is remedial, designed to coerce compliance with a court order and to compensate the aggrieved party for damages and losses.

The Domestic Relations Code specifies the sanctions for civil contempt. Once a party is found to be in civil contempt of a support order, the trier of fact can impose incarceration for a period not to exceed six months, a fine not to exceed $1,000 and probation for a period not to exceed one year. If incarceration is ordered, a purge condition is to be specified so that the party in contempt in essence holds the keys to his own jail cell and can be released by fulfilling the purge conditions. Obviously to be found in contempt, the party must be found to have violated an order and the purge conditions must be set based on determinations by the trial court that the party found in contempt has the present ability to comply with the purge conditions.

The father in the matter before the court was insisting that his confinement was the same as confinement in the criminal arena. Presentence confinement in the criminal arena is credited toward any sentence imposed for the commission of a crime. The trial court and the Superior Court determined that the Domestic Relations Code does not provide such an analogous credit when addressing confinement for civil contempt. There is no case law and there is no statute in this jurisdiction supporting the argument that credit for time served must be given in a civil contempt context. The court opined that the incarceration was being imposed in an attempt to coerce the father to pay his support obligation. He had a very minimal purge condition. Of great importance is that the father did not appeal the purge condition. He did not argue that the purge condition was inappropriate or wrongly ordered and therefore he was not arguing that he had the inability to pay the purge condition. How long he would spend incarcerated, therefore, was logically within the father’s control. Also, the trial court accepted the father’s request for credit for time served, the trial court could simply have added to his sanction since the maximum sanction would be six months.

The arguments that the father raised were creative and often analogies are meritorious. Making arguments that raise analogies to rules that govern other arenas in our court system are often advantageous but must be logical. In the criminal arena, sentences are imposed for many purposes including punishment. In the civil arena however the entire purpose of incarceration for failure to comply with a support order is the attempt to coerce compliance, not punishment. A purge condition is given and therefore the party found in contempt has what is often called the keys to his own freedom. Therefore the analogy utterly fails.

Further, the analogy in this matter does not really carry any force as the trial court could simply have ordered a lengthier term of incarceration if the trial court believed that credit for time served would be appropriate to grant. The father’s argument therefore was an argument without any distinction.

In Childress v. Bogosian, 12 A.3d 448 (Pa.Super. 2011), the Superior Court emphasized that, when imposing coercive incarceration, the court must be convinced that the person to be incarcerated has the ability to comply with the purge conditions. It is improper to impose purge conditions that the contemnor is incapable of performing. If the purge conditions are beyond the contemnor’s ability to comply, incarceration is not proper as was seen in Barrett v. Barrett, 368 A.2d 616 (1977). When one is involved in a matter where incarceration and purge conditions may be or are going to be imposed, it is wise to be prepared to address whether or not the contemnor has the present ability to comply with the purge conditions. See 33 Pa. Family Lawyer 64 (Issue No. 2, June 2011).

©2011 by the Family Law Section of the Pennsylvania Bar Association.

EDITOR-IN-CHIEF
David S. Pollock

CO-EDITORS
Harry M. Byrne Jr./Amy J. Phillips  David L. Ladov/Lori K. Shemtob

Founder/Former Editor-in-Chief  Former Editor-in-Chief
Jack A. Rounick  Hon. Emanuel A. Bertin

Former Associate Editors:  Gary J. Friedlander, Caron P. Graff

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: 1-800-932-0311 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.
CHILDRESS V. BOGOSIAN
12 A.3d 448 (Pa. Super. 2011)

Factual and Procedural History
Husband and wife, both self-employed piano teachers, were married for six years and had no children. Wife filed a divorce complaint in February 2005. After the hearing, the master filed an Equitable Distribution (ED) report in June 2009 that also included a recommendation for alimony pendente lite (APL) as a result of outstanding support issues being consolidated with the ED proceedings. In her analysis of ED factors, the master noted that husband was 50 years old at the date of marriage, had amassed his assets from a lifetime of work and that the marital estate existed by virtue of husband’s pre-marital efforts and savings. Also, husband inherited a sizeable estate when his mother died a year and a half before husband and wife’s separation. The master noted that wife was 25 years old at the date of marriage, had student loan debt at date of marriage and that the marriage enabled her to build a retirement fund and her business and to purchase a Steinway “D” piano.

In her ED recommendation, the master found that the marital estate was primarily attributable to the market appreciation of husband’s nonmarital assets. The master recommended that the vacation property be divided 60 percent to husband and 40 percent to wife, mainly due to husband’s significant nonmarital contribution, and that all other marital assets be divided 55 percent to husband and 45 percent to wife. In her recommendation for support, the master determined that husband’s obligation to pay APL should terminate effective April 2007, which awarded wife only two years of support over the four-year separation. The master also applied a 20 percent downward deviation from the support guideline calculation. The rationale for the master’s support decision was that wife did not seek any living expenses from her boyfriend, the father of her child, who lived with her at least four days per week, and she forfeited commissions from her boyfriend for piano student referrals.

Both husband and wife filed numerous exceptions to the master’s report and the Chester County Court of Common Pleas held oral argument. Judge John L. Hall subsequently issued its final decree in which it accepted the master’s ED recommendation of a 55/45 split of the marital property and a 60/40 split of the vacation property, although it determined different marital values for some of the assets. In its support decision, the court granted wife’s exception to the master’s support recommendation and ordered that husband’s APL payments to wife terminate effective November 2009, concurrent with the date the final divorce decree was entered, which was two and a half years longer than the master’s recommendation. Due in part to the new support decision, husband was ordered to pay $30,104 in arrears to wife by the end of January 2010. In addition, the court found husband in contempt for his failure to comply with the support order and ordered him to pay a $1,000 fine to wife. Husband appealed.

On husband’s appeal, he claimed the trial court erred in its findings as follows: (1) the appreciation in value of the marital residence; (2) the appreciation in value of the vacation property (Bay Landing); (3) the value of husband’s retirement account including failure to credit for post-separation contributions; (4) husband’s donative intent with regard to a family ring; (5) the trial court’s application of ED factors and basing its ED decision on factual and legal errors; (6) the reinstatement of APL to wife after master recommended it be terminated; (7) wife’s proof of need for APL and (8) husband’s contemptuous behavior.

Legal Analysis
In his first claim of error, husband’s issue was the court’s use of wife’s appraisal value for the marital residence (the Berwyn home) as of the time of hearing. Husband asserted that the comparison properties used by wife’s appraiser did not meet the appropriate search criteria and that the court’s finding of the value at acquisition is inconsistent with the increase in value since both parties’ experts discussed a downturn in values since 2004. The Pennsylvania Superior Court (Bender, Freedberg and Colville, JJ.) reasoned that both the master and trial court have discretion to accept or reject an expert’s testimony. The trial court found the master’s recommendation supported by the record and the master’s reasoning for his determination persuasive. Superior Court Judge John T. Bender found that husband’s entire argument appeared to be an attack on the credibility determinations of the master and trial court. The Superior Court cannot overturn findings on such a basis, especially when the findings are supported by record evidence. Accordingly, the Superior Court found husband’s first claim to be without merit.

Joanna K. Conmy is an Associate in the Blue Bell firm of Shemtob Law, PC. Ms. Conmy is an active member of the Pennsylvania Bar Association Family Law Section and the Montgomery County Bar Association Family Law Section.
In his second claim of error, husband argued that the court erred in its finding of the appreciation of the vacation property, Bay Landing, by failing to credit husband with his post-separation expenditures, failing to credit husband with the costs of renovation to the home made with separate funds and placing an unattainable burden of proof upon husband to demonstrate that the renovations were made with separate funds and were in fact made. The master found, and the trial court concurred, that by failing to produce any credible or persuasive evidence to show such funds had nonmarital origins, husband failed to overcome the presumption that such funds expended during the marriage constituted marital funds, the presumption provided in 23 Pa.C.S. § 3501(b). The Superior Court found that the trial court applied the correct burden of proof when it employed a preponderance of the evidence standard. Husband’s only proof of payment for renovations was uncorroborated testimony plus a collection of miscellaneous receipts and cancelled checks, most of which contained no reference to the vacation home, the parties or any reliable evidence showing a nonmarital source for the money. The master and court found that this “loose compilation of evidence” did not persuasively overcome the marital property presumption. The Superior Court found husband’s argument that the trial court applied an unattainable burden of proof to be without a basis in fact or law. The Superior Court also found that husband waived his specific argument regarding judicial notice of the amortization table that he had attached to his court briefs because he did not state the issue in the Rule 1925(b) statement of questions or fairly suggest the issue in the statement.

Husband’s third claim of error was the court’s failure to properly follow the formula set forth in 23 Pa.C.S. § 3501(a)(1) when valuing the marital portion of his retirement account, although the Superior Court realized that husband intended to reference section § 3501(a.1) related to measuring the increase in value of non-marital property. The trial court found merit in husband’s argument that the master inaccurately calculated the value of the marital portion of his retirement account but the court adjusted the calculation in a different manner than that proposed by husband. Instead of reducing the marital value of the account by deducting husband’s post-separation contributions, the trial court took into consideration the market decline of the retirement accounts and calculated that 14.5 percent of husband’s post-separation contributions had dissipated and thus could not be credited to husband.

The court determined this percentage by taking an average of the decline in his accounts through two calculations. The first rate of decline measures the market drop in his accounts from the date of separation value to the date of hearing value, which was 12 percent. The problem with using this calculation only is that it assumes that all of husband’s post-separation contributions occurred on the first day of separation, which was not the case as shown by husband’s annual deposits. So the court calculated a second rate of decline to be able to determine the value on the assumption that all of husband’s post-separation contributions occurred on the day before the date of hearing value. To measure the second rate of decline, the court subtracted the full amount of husband’s post-separation contributions from the date of hearing value, and the decline from the date of separation to this latter number was 17 percent. These calculations showed the range of reduction of the contributions over the entire time period from date of separation to date of hearing. Therefore, the court credited husband with an amount for his contributions that was reduced by 14.5 percent to arrive at the marital value of the retirement account. Husband argued that the trial court’s formula for the calculation had no precedent and considered evidence outside of the record to arrive at its calculation. The Superior Court found that the trial court relied on the evidence presented and that husband could have produced precise records showing the exact amount of losses or gains predicated upon the post-separation contribution but failed to do so. The Superior Court concluded that the trial court applied a method that would produce an equitable resolution and did not err in the manner it calculated the marital value of the account.

In his fourth issue on appeal, husband claimed error in the trial court’s finding that he had given the family ring to wife as a gift before marriage and therefore it was her separate property. This diamond ring was a point of contention since husband claimed it was nonmarital property as a family ring lent to wife to wear on special occasions, while wife claimed it was given to her four months prior to the marriage as an engagement ring. Husband argued that the two elements necessary to show that an item is a gift, donative intent and delivery, were not proven. Based on testimony from both husband and wife, the master found that it was given to wife prior to marriage and was therefore her separate property. The Superior Court concluded that the trial court’s finding was not persuasive to overcome the marital property presumption. Husband argued that the family ring was a separate property, the trial court’s finding that he had given the family ring to wife as a gift was not persuasive given that the two elements necessary to show that an item was a gift were not present. Husband claimed the diamond ring was a separate property and therefore not marital property. The Superior Court found that husband again based his claim on an attack upon the credibility determinations of the master and the court. The Superior Court realized that husband intended to reference section 3501(b) related to measuring the increase in value of non-marital property. The trial court found merit in husband’s argument that the master inaccurately calculated the value of the marital portion of his retirement account but the court adjusted the calculation in a different manner than that proposed by husband. Instead of reducing the marital value of the account by deducting husband’s post-separation contributions, the trial court took into consideration the market decline of the retirement accounts and calculated that 14.5 percent of husband’s post-separation contributions had dissipated and thus could not be credited to husband.

The court determined this percentage by taking an average of the decline in his accounts through two calculations. The first rate of decline measures the market drop in his accounts from the date of separation value to the date of hearing value, which was 12 percent. The problem with using this calculation only is that it assumes that all of husband’s post-separation contributions occurred on the first day of separation, which was not the case as shown by husband’s annual deposits. So the court calculated a second rate of decline to be able to determine the value on the assumption that all of husband’s post-separation contributions occurred on the day before the date of hearing value. To measure the second rate of decline, the court subtracted the full amount of husband’s post-separation contributions from the date of hearing value, and the decline from the date of separation to this latter number was 17 percent. These calculations showed the range of reduction of the contributions over the entire time period from date of separation to date of hearing. Therefore, the court credited husband with an amount for his contributions that was reduced by 14.5 percent to arrive at the marital value of the retirement account. Husband argued that the trial court’s formula for the calculation had no precedent and considered evidence outside of the record to arrive at its calculation. The Superior Court found that the trial court relied on the evidence presented and that husband could have produced precise records showing the exact amount of losses or gains predicated upon the post-separation contribution but failed to do so. The Superior Court concluded that the trial court applied a method that would produce an equitable resolution and did not err in the manner it calculated the marital value of the account.

Husband’s fifth claim of error contends that the trial court did not properly apply in ED the factors that he claims weigh in his favor. He asserts it would be far more equitable to receive 82 percent of the marital estate since he brought “at least that much” to the marriage. In explaining its support of the master’s ED recommendation, the trial court stated that the master addressed all of the § 3502 factors in the report and thoroughly analyzed them. The trial court found the master’s overall distribution scheme was not inequitable to wife because she gained such significant resources during the six-year marriage and it was not inequitable for husband to sacrifice the amount of increased value given to

(continued on Page 66)
wife since husband will remain far more financially secure than wife. Upon its review of the record, the Superior Court supported the court’s adoption of the master’s findings with respect to the application of the ED factors and concluded that the court did not abuse its discretion by adopting the master’s distribution scheme. Accordingly, the court found husband’s fifth issue without merit.

The Superior Court then addressed together husband’s sixth and seventh claims of error related to the trial court’s support order. Husband claimed error in the trial court’s reinstatement of APL to wife for over a four-year period ending the date the divorce decree was entered, which was two years longer than the master’s recommendation. Husband also claimed error in the trial court’s finding that wife had proven need for APL and in doing so disregarded that she failed to provide sufficient documentation of her income, cohabitated with boyfriend, reduced her income by traveling 4-8 weeks each year and paying for her boyfriend’s travel tickets, and delayed support proceedings to advance her own interests.

The trial court had disagreed with the master’s recommendation and indicated that APL usually ends when the divorce decree is entered and equitable distribution has been determined. The trial court stated that while APL may not be denied on the basis that a spouse is cohabitating with another person, wife’s cohabitation was a proper basis upon which to impose the 20 percent downward deviation in support. With regard to wife’s need for APL, the court noted that APL aids the dependent spouse so that both parties have equal financial resources to pursue the divorce even though one party has the major assets. The court also recognized that although wife would receive substantial assets following equitable distribution, she did not have access to those funds during the litigation. The Superior Court found the trial court’s findings supported by evidence and the conclusion it reached was not an abuse of discretion, therefore deeming husband’s sixth and seventh issues without merit.

Husband’s final claim of error contends that wife did not carry her burden of proving his contemptuous behavior of acting willfully with wrongful intent. The trial court found the record to be replete with credible evidence of the contempt. Where the parties’ testimony or evidence conflicted, the court found and reaffirmed that, on this issue, wife’s testimony and evidence was credible and husband’s was not. The Superior Court found that evidence did exist in the record to support that husband had the ability to pay and that he acted willfully and with wrongful intent by not paying support to wife. The Superior Court concluded that the trial court did not abuse its discretion in its decision to find husband in contempt and therefore found husband’s last issue also without merit.

CASE NOTE AUTHOR’S EDITORIAL COMMENTS

This case serves as a lesson for practitioners for several reasons. First, if a party is seeking credit for post-separation or otherwise nonmarital expenditures on a home, the party must be able to provide reliable evidence showing that the money came from a nonmarital source and what the money was spent on. This includes dating and labeling all documents and checks, and including pertinent information as much as possible, such as writing in the memo portion of the check what the money was being put toward. In the present case, husband may have been more successful in receiving credit for his post-separation expenditures if he had carefully documented the amount of money he spent, what he spent it on and where the money came from. The case also shows that it is essential to keep pre-marital funds separate from marital funds. If premarital funds cannot be traced due to a commingling with marital funds, a court is within its boundaries to deem all of the funds to be marital.

Second, the case shows that the courts will apply market experience when calculating credit for a party’s post-separation contributions to his or her accounts. In the present case, the court reduced the amount of credit husband received for his post-separation contributions to his retirement account because a certain percentage of the contributions had dissipated due to market decline. The trial court explained that it could not give full credit for the contribution if the full value of the contribution was no longer present due to investment experience. The case is also an important reminder to provide ample and accurate records when requesting credits for post-separation contributions. While husband argued that the trial court’s formula for its calculation of the market decline on his retirement account had no precedent, the Superior Court reasoned that the trial court’s method would produce an equitable resolution and that husband could have produced precise records showing the exact amount of gains or losses predicated upon the post-separation contributions.

This case is also important since it confirms that cohabitation will not be cause for termination of APL, unlike the terms for alimony in which cohabitation causes it to cease. Because the parties need equal financial resources to pursue the divorce, courts will likely extend APL until the entry of the divorce decree even if the separation is for a long period of time. In the present case, the parties were married for six years and the court awarded APL to wife until the entry of the decree, which was over a four-year period. Furthermore, the fact that wife was receiving a large amount of assets did not block her receipt for APL since, as the court noted, she would not have access to those assets until equitable distribution was resolved.

Lastly, this case teaches us to proceed with caution when making claims of error that could be interpreted to be an attack on the credibility determination of the master or trial court. As seen here, the Superior Court cannot overturn findings on such a basis and will find such claims to be without merit.
SUPERIOR COURT DISMISSES APPEAL OF ORDER DENYING MARRIAGE COUNSELING PURSUANT TO 23 PA. C.S. §3302(b) AS MOOT

BY ANN M. FUNGE, ESQ.

WETZEL V. HEINEY
17 A.3d 405 (Pa. Super. 2011)

On March 8, 2011, the Superior Court of Pennsylvania (Bender, Lazarus and Strassburger, J.J.) dismissed appellant-husband’s appeal of a Lehigh County §3301(d) divorce decree. Specifically, husband, who was defendant in the divorce action, presented two issues for appeal: (A) whether the trial court (Judge William E. Ford) failed to mandate marriage counseling upon request pursuant to 23 Pa. C.S.A. §3302(b) and Pa. R.C.P. 1920.45; and (B) whether the trial court erroneously found the parties’ marriage irretrievably broken and denied counseling prior to expiration of the 90-day period required by 23 Pa. C.S.A. §3301(c).

The relevant facts of the case are as follows:

Wife filed a divorce complaint on Nov. 9, 2007, alleging no-fault divorce grounds pursuant to 23 Pa. C.S.A. §3301(c) and §3301(d). Service of the complaint was made more than three months later on Feb. 22, 2008. On March 27, 2008, husband filed a petition seeking marriage counseling pursuant to 23 Pa. C.S. §3302(b), which states that “whenever [a 3301(c) divorce is sought], the court shall require up to a maximum of three counseling sessions within 90 days following the commencement of the action [upon either parties’ request].” Upon a hearing held that same day, the trial court found the parties’ marriage irretrievably broken for the purpose of marriage counseling because the parties already had twice engaged in marriage counseling and yet more counseling would be futile. Husband sought reconsideration, which was denied. He then filed an appeal, which was quashed as being interlocutory.

Prior to expiration of the two-year separation, wife obtained the appointment of a master who helped the parties resolve their divorce-related economic claims. On Feb. 23, 2010, Wife filed her §3301(d) affidavit alleging a two-year separation and irretrievable breakdown. Husband timely filed his §3301(d) counter-affidavit. In it, husband checked off item 1(b) on the counter-affidavit form required by Pa. R.C.P. 1920.42(d) and 1920.72(e)(2) to indicate he opposed entry of a divorce decree and then checked off as the reason for not agreeing to entry of the decree a self-inserted provision indicating “I was denied the right to marriage counseling pursuant to 23 Pa. C.S.A. §3302(b).” Importantly, husband did not assert, i.e., check off, that he believed “the marriage is not irretrievably broken” on his counter-affidavit. See, e.g., 3301(d) counter-affidavit form at Pa. R.C.P. 1920.72(e)(2).

On April 14, 2010, the parties filed their marriage settlement agreement. Notably, the agreement contained express language that husband intended to appeal the denial of marriage counseling and also expressly stated that the parties acknowledged separation for more than two years and that grounds for a §3301(d) divorce had been established. On April 21, 2010, a §3301(d) divorce decree issued. Husband timely appealed.

In adjudicating the appeal, the Superior Court per Strassburger, J. relied upon husband’s failure to assert that the marriage was not irretrievably broken in his counter-affidavit as well as his acknowledgement in the agreement that grounds for divorce under §3301(d) had been established. Because the purpose of marriage counseling is to preserve the marriage, there was no reason for marriage counseling when husband did not deny the marriage was irretrievably broken. On that basis, the Superior Court dismissed the appeal as moot.

CASE NOTE AUTHOR’S EDITORIAL COMMENTS

In an opinion written by the esteemed Senior Judge Eugene Strassburger, who served many years as a Judge and then Administrative Judge of the Family Division of Allegheny County’s Court of Common Pleas early in his judicial career, the Superior Court dismissed appellant-husband’s appeal as procedurally moot without also substantively addressing the questions raised. While this particular appellant might be of the annoying “he-who-shall-not-be-denied” variety, a brief review of the scant existing case law may have been more satisfying to the litigants and trial court as well as instructive to the bench and bar for future guidance, especially since this is a published opinion.

Such substantive review, the standard of which is de novo in appeals from divorce decrees, would have been brief: there is no unequivocal right to marriage counseling in Pennsylvania. Under the case law, a trial court simply is not required to order marriage counseling if it finds that no reasonable prospect of reconciliation exists, i.e., the marriage is irretrievably broken. Liberto v. Liberto, 520 A.2d 458 (Pa. Super. 1987) and Rich v. Acrivos, 815 A.2d 1106 (Pa. Super. 2003). §3302 of the Divorce Code is “not intended to compel a court to engage in futile and useless exercises, nor [is] it intended to provide a spouse with the means to delay

(continued on Page 68)
the entry of a decree in divorce for no good reason." Liberto at p. 461. Therefore, the trial court’s finding, after hearing, that the parties had twice attempted marriage counseling with no success and that further counseling would be futile supported the denial of counseling and, later, entry of the divorce decree.

Joo Y. Park is an Associate in the Norristown firm of High Swartz L.L.P. She is a member of the PBA Family Law Section and Montgomery County Bar Association Family Law Section. Ms. Park is also an active member of the Doris Jonas Freed American Inn of Court for Family Law.

[P]rospective adoptive parents, unlike foster parents, have an expectation of permanent custody which, though it may be contingent upon the agency’s ultimate

(continued on Page 69)

---

**CASE NOTES**
(continued from Page 67)

---

**PURSUANT TO 23 PA.C.S. §2512, FOSTER PARENTS MUST POSSESS EITHER LEGAL CUSTODY OR IN LOCO PARENTIS STATUS IN ORDER TO FILE A PETITION TO INVOLUNTARILY TERMINATE BIOLOGICAL PARENTAL RIGHTS BY JOO Y. PARK, ESQ.**

**IN RE: ADOPTION OF B.R.S.; APPEAL OF: S.C. AND S.S.P.**
11 A.3d 541 (Pa. Super. 2011)

The Pennsylvania Superior Court (Bowes, Lazarus and Freedberg, J.J.), in an opinion authored by Judge Mary Jane Bowes reversed Jefferson County Orphans Court Judge John H. Foradora’s decision denying father’s motion to quash foster parents’ third-party petition to involuntarily terminate father’s parental rights as lacking standing under 23 Pa.C.S.§2512. The Superior Court also dismissed foster parents’ appeal of the Orphans Court’s decision that denied foster parents’ petition to terminate the parental rights of the father.

The child at issue, B.R.S. (child), was born on March 8, 2008. At that time, child’s biological parents, T.R.S (father) and C.C.W. (mother) were incarcerated and there was no caregiver available for child. The Jefferson County Children and Youth Services (CYS) placed child in shelter care with foster parents, who were also caring for child’s half-sister. The Juvenile Court adjudicated child dependent on April 23, 2008, and granted CYS legal custody, with the initial permanency goal being reunification. The juvenile court also directed both parents to complete parenting classes, mental health assessment, and drug and alcohol assessments.

During father’s incarceration, there were four permanency review hearings. At three of these four hearings, CYS petitioned the juvenile court to change child’s permanency goal from reunification to adoption. CYS contemplated but did not file a petition to involuntarily terminate father’s parental rights pursuant to the Adoption Act, 23 Pa.C.S. Sec. 2511 (a) and (b). During the fall of 2009, the juvenile court changed child’s permanency goal to adoption. In November 2009, upon father’s release from incarcer-ation, CYS initiated bi-weekly two-hour supervised visitations and father consistently attended the same. Father also submitted to a bonding evaluation with child, completed the parenting classes that were not available to him during his incarceration, continued to attend outpatient counseling and obtained employment. In light of father’s significant progress and pursuant to the recommendation of the bonding evaluator, CYS increased father’s visitation from bi-weekly two hours to weekly eight-hours.

Notwithstanding the above circumstances, on March 24, 2010, foster parents filed the prerequisite report of intention to adopt child. On April 13, 2010, foster parents filed a petition for involuntary termination of mother’s and father’s parental rights. Father countered on May 24, 2010, with a motion to quash foster parents’ petition on the basis that under 23 Pa.C.S. §2512, foster parents lacked standing. The Orphans Court denied father’s motion and following an evidentiary hearing on foster parents’ petition, entered an order granting foster parents’ petition to terminate the parental rights of the father.

In denying father’s motion to quash foster parents’ petition to terminate father’s parental rights, the Orphans Court invoked the so-called “prospective adoptive parent exception,” which was set forth by the Superior Court in In re Griffin, 690 A.2d 1192 (Pa.Super. 1997). This is an exception to the general rule that foster parents lack standing to litigate matters involving their foster children. Foster parents also invoked this exception in their appeal. The Superior Court rejected the Orphans Court and foster parents’ application of this exception and in support, cited to the following rationale set forth in the Griffin decision:

(continued on Page 69)
CASE NOTES
(continued from Page 68)

approval, is nevertheless genuine and reasonable. Because of this expectation of permanency, prospective adoptive parents are encouraged to form emotional bonds with the child from the first day of the placement. By removing the child from the care of the prospective adoptive parents, the agency forecloses the possibility of adoption. In light of the expectation of permanent custody that attends an adoptive placement, an agency’s decision to remove a child constitutes a direct and substantial injury to prospective adoptive parents. Because prospective adoptive parents, unlike foster parents, suffer a direct and substantial injury when an agency removes a child from them, we see no reason in law or policy why we should limit their standing to sue for custody.

Id. at 1201. (Quoting Mitch v. Bucks County Children and Youth Social Service Agency, 556 A.2d 419, 423 (Pa. Super. 1989) (stating prospective adoptive parents have standing in Juvenile Court to contest agency’s decision to remove foster child from their physical custody).

In the present case, although foster parents assumed the designation of prospective adoptive parents during the dependency proceedings, CYS never contemplated removal of child from foster parents’ care. As such, the Superior Court found the Orphans Court’s reliance of the “prospective adoptive parents exception” to be inapoposite. Instead, the Superior Court pointed out that the issue in this case is whether foster parents possess legal custody of child or stand in loco parentis to file a petition to terminate the parental rights of a birth parent.

Pursuant to 23 Pa.C.S. §2512(a)(3), an “individual having custody or standing in loco parentis to the child who has filed a report of intention to adopt” may file a petition for the involuntary termination of parental rights. Custody in this context means legal custody. In re C.M.S., 884 A.2d 1284, 1288 n.5 (Pa. Super. 2005). In In re B.L.J., Jr., 938 A.2d 1068 (Pa. Super. 2007), the Superior Court explained that, “the legal status of in loco parentis refers to a person who puts himself or herself ‘in the situation of a lawful parent by assuming the obligations incident to the parental relationship without going through the formality of a legal adoption.’” Id. at 1073. The Superior Court also elucidated that there are two aspects of in loco parentis: “assumption of a parental status and discharge of parental duties. In order for assumption of parental duties to be legitimate, … [i]t must be predicated on the natural parent’s agreement to a permanent placement of the child.” Id.

In In re B.L.J., the natural mother of the child relinquished her parental role. The child’s grandmother attained in loco parentis status and expressly permitted prospective adoptive parents to join the termination petition. In consideration of these facts, the Superior Court found that the foster parents should substitute for the child’s grandmother as third parties with in loco parentis status when grandmother passed away.

The Superior Court found this case distinguishable from In re B.L.J. Here, although the Superior Court found that foster parents had discharged parental duties to child since her birth, they could not establish in loco parentis status because father never relinquished his parental role. To the contrary, throughout and following the release from incarceration, father maintained contact with both CYS and foster parents and accomplished various objectives requested by CYS. Further, improvement in father’s progress was also noted by the bonding evaluator, who recommended increased visitation. The Superior Court further held that foster parents also did not possess legal custody as that was in the hands of CYS. Accordingly, because foster parents possessed neither in loco parentis status nor legal custody, the Superior Court found that foster parents could not file a petition to terminate the parental rights of father pursuant to 23 Pa.C.S. §2512.

Next, foster parents attempted to invoke the Resource Family and Adoption Process Act, 11 P.S. §§2621-2625 for the proposition that foster parents have standing “to file for adoption of children for whom they have cared.” Here, the Superior Court found that the sparse provisions of that statute cannot reasonably be read to provide foster parents standing to file a petition to terminate the birth parents’ parental rights. In doing so, the Superior Court explained that the statute does not convey any legal rights to foster parents beyond an adoption interview with the appropriate agency after certain enumerated events occur. See 11 P.S. §2624.

The Superior Court also found foster parents’ reliance upon Adoption and Safe Families Act to be misguided because the act requires states to focus on the child’s needs for permanency rather than the parents’ actions and inactions. Accordingly, the court reversed the Orphans Court’s Order denying father’s motion to quash foster parents’ third-party petition to involuntarily terminate his parental rights as lacking standing under 23 Pa.C.S. §2512.

CASE NOTE AUTHOR’S EDITORIAL COMMENTS

This is certainly an eye-opening and crucial case for all lawyers representing foster parents who are considering adoption of their foster child(ren). Where the natural parents have not relinquished their parental rights and they have not been terminated by a court, we need to ask whether the foster parents possesses either (1) legal custody or (2) in loco parentis status in their pursuit for adoption. If dealing with the latter qualification, the natural parents must have provided consent to the foster parents, allowing them to discharge parental duties upon the natural parents’ child(ren).

In light of the fact that CYS petitioned three times for a change in permanency goal from reunification to adoption, it appears that the foster parents had high hopes of successfully adopting the child. However, they were never prospective adoptive parents and unfortunately, they learned the hard way that where natural parents are fit to provide care for their child(ren), the rights of the natural parents trump the rights of foster parents.
DURNING V. BALENT/KURDILLA

On May 2, 2011, the Pennsylvania Superior Court (Ford Elliott, P.J.E., Allen, and Strassburger, J.J.) granted appellant-mother’s appeal of a Carbon County award of shared physical custody of the parties’ 5-year-old son. Rather than simply vacate the trial court’s Oct. 21, 2010 order (Steven R. Serfass, J.) and remand for further proceedings, the Superior Court vacated and then adjudicated the case on its merits, stating that the record had been sufficiently developed below. Specifically, the Superior Court denied appellee-father’s petition to modify the existing custody order, awarded mother primary physical custody and permitted her to relocate with the child from Alaska to North Carolina. The Superior Court then remanded for entry of an order in conformity with its decision.

The facts are as follows: The child, born in Carbon County in 2005, had lived with mother since his birth. Pursuant to an agreed 2008 custody order, Mother relocated with the then 2½ year-old child to Alaska to reside with her husband, a U.S. military member, who was stationed there. Under the same order, father received partial physical custody during the summer as well as when he traveled to Alaska or mother traveled with the child to Pennsylvania.

In early 2010, mother developed renal failure and asked father to come to Alaska to get the child to care for him while she attended to her health. Father was financially unable to do so, so maternal grandmother accompanied the child to Carbon County, where he lived with her. In mid-March 2010, maternal grandmother permitted the paternal grandparents to have overnight custody of the child for a weekend, during which time father decided to keep the child. He refused to return the child to maternal grandmother. Within the week, father filed a petition to modify the agreed custody order, seeking primary physical custody. Shortly thereafter, mother, upon regaining her health, travelled to Carbon County to resume primary physical custody under the existing order, but father refused.

After a custody conciliation on father’s petition, an interim order awarding primary physical custody to father and partial physical custody to mother was entered. Shortly thereafter, mother filed a petition for contempt, alleging father had denied her partial custody under the interim order. The first day of hearing on both petitions occurred on Aug. 31, 2010. The hearing concluded six weeks later on Oct. 13, 2010. At the trial, father testified, inter alia, that he sought primary custody of the child in Carbon County at the residence he intended to acquire with his fiancee. Mother testified, inter alia, that she wished to retain primary custody and to relocate with the child from Alaska to North Carolina to accompany her husband on reassignment.

At the hearing’s conclusion, the trial court denied mother’s petition for contempt and one week later entered a final custody order awarding joint legal and week on/week off physical custody. The trial court further determined mother had failed to establish the Gruber factors necessary to permit relocation, specifically saying she failed to show that the move to North Carolina would improve her or the child’s quality of life or that the move was predicated on a desire to return to family or friends. The trial court further found that mother had not shown the motives of the parties regarding the move or the availability of alternate custody arrangements. Mother timely appealed on Nov. 16, 2010.

The three issues addressed on appeal were:
1. Whether the trial court abused its discretion contrary to the child’s best interests by awarding week on/week off custody where the child is school age and mother resides in North Carolina and father resides in Pennsylvania;
2. Whether the trial court abused its discretion by not awarding mother primary physical custody; and
3. Whether the trial court abused its discretion in not considering that mother’s relocation to North Carolina would bring the child geographically closer to father, not farther away, and that the relocation was by reason of her husband’s employment?

The Superior Court noted that its scope of review in custody matters is “of the broadest type” and that, while deference to the trial court’s assessment of credibility should be accorded, it could reject the trial court’s conclusion if it was unreasonable in view of its findings and that the “paramount concern is the best inter-
CASE NOTES
(continued from Page 70)

ests of the child.” P. 5 of opinion, quoting A.D. v. M.A.B., 989 a.2d 32, 35-36 (Pa. Super. 2010). The Superior Court then proceeded to examine the trial court’s findings in view of applicable case law and not only found abuse of discretion on all three of mother’s issues, but decisively adjudicated the case on those record findings.

Most relevantly, the Superior Court cited the following trial court findings: Mother was only in Pennsylvania temporarily to participate in the custody proceedings; mother returned to Pennsylvania only because father had usurped custody during her health crisis; mother intended to join her husband in North Carolina in a rented five-bedroom home; mother was a stay-at-home mom; mother and her husband were expecting a child; mother had been the child’s primary caregiver from birth until January 2010 when she became ill; father was the child’s primary caregiver only from March 2010 until October 2010, when the trial court awarded week on/week off custody; father did not have an established residence; father did not have a permanent job; father unilaterally took custody of the child when he refused to return him to maternal grandmother in March 2010; and, notably, father had pled guilty in 2008 to assault and endangerment of his 18-month-old child by another woman.

Based on the foregoing facts and applicable case law, the Superior Court vacated the trial court’s shared physical custody award. It then awarded mother primary custody and granted relocation, citing mother’s established role as the child’s primary caregiver, Johns v. Cioci, 865 A.2d 931 (Pa. Super. 2004) and the unreasonableness of week on/week off given the geographical distance between the parties’ residences, Fisher v. Fisher, 535, A.2d 1163 (Pa. Super. 1988). The Superior Court then performed a Gruber analysis under the case facts, also stating that the Gruber factors, “while important, are but one aspect of the overall best interest analysis.” P. 11, citing Collins v. Collins, 897 A.2d 466, 472 (Pa. Super 2006). The court then remanded for entry of a custody order in conformity with its decision and opinion.

CASE NOTE AUTHOR’S EDITORIAL COMMENTS

In another opinion written by Judge Strassburger, who has been on the Superior Court since only Jan. 3, 2011, the Superior Court demonstrates (a) the effectiveness of its “fast-track” process, taking less than six months from notice of appeal to filing its opinion in this matter; (b) its willingness to act not only judicially, but judiciously, by ruling on the merits to swiftly rectify clear errors made in the court below; and (c) that the custody case law entered prior to the new custody statute, in particular the case law related to “the historical role of caregiver” and “the potential dangers of disruption of established patterns,” is alive and well. P. 10 citing Johns, supra, at 940 and Wiseman v. Wall, 718 A.2d 844 (Pa. Super. 1988). While the new statute works to eliminate as many presumptions as possible when making custody decisions and was arguably applicable to the Superior Court’s instant adjudication, the Superior Court expressly states, “We are not writing here on a clean slate…” P. 10. Although this case deals with a petition to modify, not establish, a custody order, this statement sets an important consideration for the family bench and bar when determining custody. Most importantly, the Superior Court’s opinion sets forth the detailed and case-specific best-interest analysis required under 23 Pa. C.S.A. §5328, demonstrating that such analysis, when reasonably performed, yields the best result.

Hey, gang!

You have family moments of significance: golf tournaments, cycle events, swim meets, weddings, family births, christenings, bar/bat mitzvahs, championships, graduations ... your significant others ... and your law practices. Let us know what is going on!

The “Sidebar” may be at the end of the Pennsylvania Family Lawyer, but many read it first.

So let me know what is going on by mail, fax or e-mail:
Gerald L. Shoemaker, Esq.,
2 West Lafayette Street, Suite 275, Norristown, PA 19401.
Telephone: (610) 313-1674/Fax: (610) 313-1689
E-mail: gls@hangley.com
SOME TIPS FOR NEW LAWYERS ...
AND SOME REMINDERS FOR VETERAN LAWYERS
BY JUDGE DAVID N. WECHT

Recently, I had the pleasure of presiding at a mock custody and custody relocation trial. Afterward, I provided some comments to the law students who tried the case. A few are set down here.

I emphasize that these thoughts are idiosyncratic; they represent only my views and are certainly very, very far from holy writ. Many lawyers and judges will no doubt disagree with some of these points. These are simply my thoughts, and represent some of my views collected over the years.

The Objections

New lawyers are sometimes hesitant to object to a question or an answer in the courtroom. Successful lawyers are not shy. While objections should never be made for nonmeritorious reasons, they should always be made when the lawyer deems them to be important. It should never be a reason for refraining from an objection that the judge might possibly be peeved. Judges are not supposed to be peeved by the fact that lawyers are doing their job. Lawyers need to be prepared not only to stand up to more senior lawyers, but also to stand up to the judge. It is not a matter of offending the trial court; it is a matter of making a record that will stand up on appeal. If a record is not made because the newer lawyer is afraid of the more senior lawyer or of the judge, then the client’s rights will be sacrificed and the appellate court will be deprived of the record needed to handle the case appropriately.

The corollary to this is that lawyers need to read the Rules Of Evidence, and use those rules. It is never a bad idea to re-read the Rules Of Evidence before each trial. The text is not long and it is well worth the refresher.

The lawyer should remind the court — because the judge may in fact forget — that the rules are important. Most objections that are not made can in fact be waived. For example, lawyers should remember that expert witnesses are not permitted under Rule 703 of the Rules Of Evidence to be mere conduits for otherwise inadmissible evidence. It is well settled under Rule 703 that experts may rely upon material that is not in and of itself admissible as substantive evidence if it is of the type and nature customarily and reasonably relied upon by experts in the field. However, lawyers need to police this rule by ensuring that objection is made if a proper foundation is not laid. Too often lawyers forget to object when a lawyer presents an expert and then solicits from that expert a long recitation of inadmissible material without prior foundation and without properly reminding the court that the material is only being used to explain the foundation for the expert’s opinion. If not monitored correctly and closely, the lawyer runs the risk that the record may be replete with otherwise inadmissible evidence that has now come in as substantive proof. Experts are there at trial to give their opinions and the reasons for those opinions. They are not there as tools to get inadmissible evidence into the record.

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 L.L.P., 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.

David N. Wecht is a Judge of the Civil Division, Court of Common Pleas, Fifth Judicial District of Pennsylvania (Allegheny County). From February 2003 to January 2011, Judge Wecht was assigned to the Family Division, and served as Administrative Judge of that Division from January 2009 to January 2011. The views expressed herein are the author’s and do not purport to represent the views of other persons or entities.
The Experts

An expert should be viewed as a teacher. An expert should be used to educate the fact-finder. The expert’s report itself is hearsay. In the family court, this document is often (and even customarily) admitted without objection. If an objection is made, it is hard to discern an applicable exception. This makes it incumbent on counsel to discuss this matter in advance of trial with opposing counsel to ensure that no objections will be made and that both sides may bring in their expert reports without objection. In the event of the objection, a full development of this material must be done adequately on direct in lieu of the writing.

In the case of a custody trial, the lawyers should always inspect the MMPI data as well as the files of the experts. While some of the raw data may not be admitted into the record, all the detail that is used by the expert in forming his or her opinion is fair game for the lawyer to review as a matter of due process of law. The lawyer who fails to do this may be shirking his or her duty to the client.

On cross-examination it is rare to hit a home run with the other side’s expert, much less to destroy that expert. Unlike what is shown on television or in the movie theaters, experts do not break down and admit that they are frauds or scoundrels. A full frontal assault upon the other side’s expert usually fails, often quite embarrassingly. The objective of the cross-examiner should be to get the other side’s expert to concede points, to agree with the cross-examiner on certain points, to admit gaps in the expert’s knowledge or even perhaps to confess one or two incorrect premises upon which the expert’s opinion has been based. Sometimes the best you can do on cross-examination of the other side’s expert is to nibble around the edges. Once one or more of these things has been accomplished, the cross-examiner should be prepared to sit down without dragging the matter out. The strengths of the cross-examiner’s case usually can best be brought out effectively by the presentation of opinion from the cross-examiner’s own expert.

All of this said, it is nonetheless important for every lawyer to prepare thoroughly for the adversary’s expert. The cross-examination of that opposing expert can be illuminating. Though it should not be a full frontal assault, it should be prepared carefully and thoroughly. Lawyers also should remember the fair scope rule. The expert cannot go beyond the fair scope of his or her report. If the expert tries to do so, the opposing lawyer should object.

In a custody case, the lawyer should study the APA and PPA guidelines carefully, as well as the professional literature. An experienced psychologist will know these guidelines and this literature. If the psychologist does not, the opposing lawyer should be prepared to exploit deficiencies in his or her testimony on these matters.

The Kids

In a custody trial, it is essential that the lawyer give the court a full picture of the child. Remember that the judge will be spending very little time with the child, at least as compared to the time that your client has spent with that child over the child’s lifetime. It is especially important to present a full and contextualized picture of the child in the event that your client has a position on custody that may differ in some respect from the views that you expect the child will convey to the judge when the judge interviews the child on the record.

The Relocations

With respect to relocation cases, it is imperative that lawyers develop ample evidence about the venue to which the relocating spouse is seeking to move. Information about schools, amenities, housing and other facets of the child’s prospective life in the new venue is very important. In addition, the lawyer in the custody case, and especially in a relocation case, should show the court through evidence that his or her client is not taking an approach to custody that is infected by any vindictiveness. Indeed, in the custody statute that recently took effect, the General Assembly has signaled its clear intent that courts be aware of the risk of vindictiveness and bad behavior. In other words, try to show that your client understands that the matter is about the children and what is best for the children rather than about himself or herself and his or her parental rights.

Lawyers should propose to the court custody arrangements that envision alternative scenarios, particularly in relocation cases. For example, the lawyers should propose custody arrangements for a scenario where the court grants the relocation and for a scenario where the court denies the relocation. Proposing alternative arrangements does not signal any weakness or any concession. It helps the court and provides effective advocacy.

Under the new custody statute, as under the old Gruber regime, the alternative visitation arrangement enabling the child to maintain contact with the non-relocating parent is always the toughest nut to crack in the relocation case. The relocating parent should set forth in detail a robust alternative visitation arrangement to convince the court that meaningful and psychologically beneficial contact will be maintained with the non-relocating parent in the event of a relocation. This is not an area of the case to neglect.

The Judges

From time to time, in the family court, lawyers will forget that the proceeding needs to be addressed with appropriate formality. It is important to remember that, even though there is no jury, the matter is a serious proceeding governed by rules of law, evidence and procedure. If the lawyer approaches the matter seriously and with proper decorum and formality and respects the rules, it is more likely that the judge and the other lawyers and parties and
witnesses involved will do the same. When one player raises his or her game, all the other players tend to do so as well.

It is critical that the lawyer know the habits and preferences of the judge. The judges are not in any way uniform; each has his or her own approach to the law and to the practice and has different habits acquired over time and experience. Given that there is no prospect at all that judges will become uniform in any of these respects, it is incumbent on the lawyer who would be successful to know those different habits and views, and to assimilate and adjust accordingly. With respect to being prepared for the individual judge on the case, lawyers need to know which judges like to receive custody schedules proposed in detail and which ones do not. As well, some judges like the psychologist to opine on a schedule while others do not.

Remember that the judge sometimes may jump in with questions. Different judges will do this to different degrees in different kinds of cases. This is especially true because family law trials are conducted without a jury. While it is rare that a judge will interrogate a witness in a jury trial, it is not at all uncommon for this to happen in a bench trial. Counsel should not be flustered and should listen closely to the questions being asked by the court as well as to the answers being given. This back-and-forth will provide attentive counsel the opportunity to move in directions that could help shift the trial proof to the advantage of the client.

The Lawyers

Lawyers should strive to maintain a straight face and a calm demeanor. Nothing in the conduct of the trial lawyer should distract the court or, in a jury trial, the jury. In my experience, many of the very best lawyers, indeed, most of the best lawyers maintain a poker face at most times during trial.

The best pretrial statements are the ones that methodically walk the court through the statutory or common law factors that the General Assembly and/or the higher courts have set forth for the trial court. This provides a good road map for the judge in thinking about the case in advance and, no less important, in framing an order once the case is submitted. Indeed, many of the best lawyers will actually go through those factors in their closing argument. This applies not only to equitable distribution and alimony, but now to custody as well.

There is never any substitute for thorough preparation. The aim of a lawyer should be to know the case inside and outside and better than anyone else in the courtroom on the day that the lawyer walks into the courtroom to try the case.

SOME RESERVATIONS ABOUT SEALING DIVORCE RECORDS
BY JUDGE DAVID N. WECHT AND JENNIFER H. FORBES

Lawyers sometimes assume that a motion to seal a divorce case will be granted without judicial scrutiny. But the law requires a careful inquiry by the court, even when the motion is unopposed.

The leading case in Pennsylvania on the topic of sealing divorce records is Katz v. Katz, 514 A.2d 1374 (Pa. Super. 1986), appeal denied, 515 Pa. 581, 527 A.2d 542 (1987). However, there is a more recent case that, while not disputing the test in Katz, comes to a different conclusion despite a similar fact pattern.

David N. Wecht is a Judge of the Civil Division, Court of Common Pleas, Fifth Judicial District of Pennsylvania (Allegheny County). From February 2003 to January 2011, Judge Wecht was assigned to the Family Division, and served as Administrative Judge of that Division from January 2009 to January 2011. Jennifer H. Forbes is Law Clerk to Judge Wecht. The views expressed herein are the authors’ and do not purport to represent the views of other persons or entities.


Freedom of access to civil proceedings is a common-law right. This right includes access to court records. Katz, 514 A.2d at 1377. The right is not absolute. Id. The public may be excluded so as to protect trade secrets, uphold the privacy or reputation of innocent parties, guard against risks to national security or minimize danger of an unfair trial. Id. The decision to seal records is within the discretion of the trial court. Id. at 1378.

In the Katz case, the husband had developed the Nutrisystem weight loss business and had eventually purchased the Philadelphia 76ers. The Superior Court decided that the parties’ divorce records could be sealed in order to protect their privacy because “divorce proceedings” involve personal matters and because “no legitimate interest could be served by broadcasting the intimate details.” Id. at 1379. The Superior Court stated that “divorce hearings are the type of proceedings which courts may
close to protect the rights of the parties” when “good cause” is shown. Id. at 1380. The court suggested that good cause was apparent in Katz because the disclosure would “work a clearly defined and serious injury to the party seeking closure.” Id. (quoting Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3d. Cir. 1984)).

The Superior Court defined this good cause injury broadly to include the right to keep details of a marriage private and indicated a concern about harassment in the event that “financial holdings were made public.” Katz, 514 A.2d at 1380. The Katz Court did not order the record sealed, but remanded with instructions, because the trial court had not made a finding that good cause had been shown. Id. at 1381. Nonetheless, the Katz Court made it quite clear that it felt good cause appeared in its review of the record. Id.

The Zdrok case followed 17 years later. That case, which proceeded before an entirely different panel of the Superior Court, involved a wife who had gained notoriety and income from her featured appearance in Playboy magazine and from various merchandising activities based upon that appearance. Zdrok, 829 A.2d at 698-99. In Zdrok, the Superior Court indicated that there are two methods for determining whether a case may be closed — a constitutional analysis and a common-law test — and that both of these begin with a presumption of openness. Id. at 699. The constitutional analysis examines whether the party seeking closure can rebut the presumption of openness by showing that closure serves an important governmental interest and that there is no less restrictive option. Id. (citing U.S. Const., 1st Amendment, and Pa. Const. Art. 1 § 11). This analysis seems to be used mainly when the press is involved. Id.

The common-law test provides that the party seeking closure must show that the interest in secrecy outweighs the presumption of openness. Zdrok, 829 A.2d at 699. In Zdrok, the Superior Court refused to reverse the trial court’s decision that kept the record open. The Superior Court found that the trial court had acted within its discretion, and noted that the case was limited to “contract” issues (i.e., a settlement agreement), so that no “sordid details” would be admissible at trial. Id. at 700. The wife in Zdrok raised the same concerns as the husband in Katz; to wit, that she was a public figure who could be harassed and that the details of the marriage were likely to cause embarrassment. Id. at 701. However, the Superior Court called her claims “spurious” and deemed them insufficient to support a reversal of the trial court. Id.

Frankly, it is difficult to reconcile these two cases. Both disputes involved public figures who made the same claims for why the record should be sealed. Both panels purported to use the same common-law analysis. It could be that, because the decision is based upon trial court discretion, there always will be inconsistent results. It could be that between 1986 and 2003 the ideas of what would cause embarrassment or what could be deemed “good cause” changed. It could be that the judges were influenced by the fact that one case involved a prominent businessperson while the other involved a person who sold nude photos and videos of herself. In any event, the one constant theme is that there is supposed to be a presumption of openness, even in divorce cases, that must be overcome with some kind of showing by the party seeking closure.

There are policy reasons why divorce records should be open. The first is that public access encourages settlement of cases. If parties are worried about disclosure, they will feel encouraged to work outside the court system (through mediation, collaborative divorce and the like.). Open records also give the public and attorneys information about the outcome of cases. With that information, attorneys more accurately can counsel clients about reasonable settlements and expectations. Parties also can look frankly at that information in forming their own ideas of what might be reasonable. When parties and attorneys have information about various possible outcomes through open records, their expectations may be more earthbound, leading to more and earlier resolutions of cases.

Another policy reason for transparency is that the public supports the courts through taxes. It is important that the people be able to see what they get for their money. If courts and records are closed, there can be no meaningful oversight of the court system by the public. When cases are sealed, there may be an assumption by the public that the court system is somehow acting unfairly or even nefariously. The people are accustomed to an open court. When records suddenly are closed, the public might presume that the closure is being used to hide something that might reflect badly on the judiciary.

Arguments for closure also ignore the fact that divorce is viewed differently than it was years ago. There has been an evolution in societal attitudes toward divorce since Katz issued in 1986. While divorce still may prove devastating to a particular family, there is little or no societal stigma that attaches to it anymore. This modern reality may well have been reflected in the Zdrok case, which presumably might have explored “sordid details” no matter how much the trial was expected to focus on the “contract” issues.

Two additional points bear mention. First, there is an unspoken and unremarked socioeconomic discrimination in the area of sealed divorce records. Many litigants are pro se and lack the financial wherewithal or nuanced perspective of wealthier divorce litigants who will hire experienced counsel to file closure motions. While people are entitled to get what they pay for, it is nonetheless troubling to reflect upon the fact that the “sordid details” of a nonwealthy person’s divorce are fair game, but the wealthy may shield their divorce from public attention upon request.

Second, the motions brought to seal or close divorce hearings often neglect to seek less restrictive alternatives. That is to
ARTICLES
(continued from Page 75)

say counsel should consider seeking to seal certain discovery material, exhibits, or even portions of a transcript rather than asking the court to close the trial to the public or seal the entire case record. Presumably trial courts are, and should be, more open to such a calibrated approach in appropriate cases.

Lawyers should be prepared to show the trial court why good cause supports closure of the record. Lawyers should not be surprised if and when the court denies an unopposed motion that fails to offer such good cause. To obtain closure of a record, mere averment of embarrassment to a litigant likely will not suffice. And, in view of both our constitution and our common law, there is good reason why it should not.


---

NO CREDIT FOR TIME SERVED IN JAIL WHILE AWAITING SANCTION FOR CIVIL CONTEMPT FOR FAILURE TO PAY SUPPORT
BY JENNIFER ZOFCIN, ESQ.

WARNKESSEL V. HEFFNER,
___ A.3d ___ (Pa. Super. 2011)

Legal Principles
An obligor is not entitled to credit against a civil contempt sanction for the time he spent in jail awaiting the support enforcement hearing.

Facts and Analysis
Berks County Domestic Relations, Campbell, J., engaged in the filing of “numerous petitions” for enforcement of child support order. Obligor would sometimes file to modify the support order, but would then fail to appear to prosecute the petitions. Ultimately obligor failed to appear for a support enforcement hearing and a bench warrant was issued for obligor’s arrest. The obligor was taken into custody by the police on Feb. 5, 2010. Unsecured bail was set at $5,000 ROR and immediate release if obligor paid court costs. The support enforcement hearing was rescheduled for Feb. 26, 2010. Obligor remained in jail until the hearing.

At the re-scheduled enforcement hearing, the court held obligor in civil contempt and sanctioned him to three months’ imprisonment with a minimal purge amount of $100. Obligor asked for credit for the 21 days that he spent in jail on the bench warrant before the re-scheduled support hearing. The lower court denied credit for time served before the support enforcement hearing.

Father asked for reconsideration, stating that his equal protection rights under the U.S. and Pennsylvania Constitutions were violated by the court’s failure to give him credit for time served. Reconsideration was granted, but the court did not change the determination. Obligor appealed but was released from jail before the Superior Court heard his appeal.

Father argued that his appeal is not moot because he may be unable to pay his support obligation in the future and because the scenario is capable of repetition, yet evading review. The Superior Court agreed on both bases. Father’s appeal was not considered to be moot.

Father argued that his appeal is not moot because he may be unable to pay his support obligation in the future and because the scenario is capable of repetition, yet evading review. The Superior Court agreed on both bases. Father’s appeal was not considered to be moot.

Recognizing that the purpose of incarcerating those failing to meet ordered support payments is coercion to follow support orders, father asserted that the time that he spent in jail before the support enforcement hearing was equally as coercive as was the time he spent in jail after his sanction was determined at the

Jennifer Zofcin is a Senior Associate at Pollock Begg Komar Glasser LLC in Pittsburgh. Ms. Zofcin is a member of the Pennsylvania, Westmoreland and Allegheny County Bar Associations and their Family Law Sections, and the Matrimonial Inns of Court. Ms. Zofcin serves on the Public Service Committee of the Allegheny County Bar Association Family Law Section. She has served as Case Note author for the Pennsylvania Family Lawyer and recently presented lectures on the 2011 revisions to the Child Custody Law.

(continued on Page 77)
enforcement hearing. He argued that his incarceration was similar to a criminal defendant, and that a criminal defendant would have been entitled to credit for time spent in custody before final sentencing.

The Superior Court, per Gantman, J., first discussed the difference between civil and criminal contempt, with the difference being the purpose sought by their use. In the court’s discussion of the difference between civil and criminal contempt, the court noted:

The distinction between criminal and civil contempt is ... a distinction between two permissible judicial responses to contumacious behavior. These judicial responses are classified according to the dominant purpose of the court. If the dominant purpose is to vindicate the dignity and authority of the court and to protect the interest of the general public, it is a proceeding for criminal contempt. But where the act of contempt complained of is the refusal to do or refrain from doing some act ordered or prohibited primarily for the benefit of some private party, proceedings to enforce compliance with the decree of the court are civil in nature. The purpose of a civil contempt proceeding is remedial. Judicial sanctions are employed to coerce the defendant into compliance with the court’s order, and in some instances, to compensate the complainant for losses sustained.

Warmkessel at 2011 PA Super 46 at 11-12.

The court compared 23 Pa.C.S.A. § 4345 related to punishment for contempt in support actions and the criminal statute for credit for time served, 42 Pa.C.S.A. § 9760. The Superior Court noted that the Domestic Relations Code does not provide a credit for time served provision similar to the criminal statute. The court refused to extend the criminal statute to the civil contempt context.

The Superior Court also agreed with the reasoning of the lower court that the court hearing the contempt was required to set a sanction designed to coerce the obligor into paying his support obligation, and immediately purge his contempt. In this case, the lower court determined that a three-month incarceration needed to be ordered to coerce obligor into paying a $100 purge amount. The Superior Court, somewhat callously, stated that if obligor chose to remain in prison rather than pay the purge term, then that was the obligor’s choice. Cutting down the sanction by giving credit for time served would undercut the coercion and undermine the purpose of the civil contempt order.

The court determined that the obligor had a long history of failing to make child support payments. The court’s assignment of three months of imprisonment was within the discretion of the court as a sentence that would “achieve the required level of coercion” to compel the obligor to pay his support obligation. Since 23 Pa.C.S.A. § 4345(a)(1) allows for six months of incarceration, the court had ample room to extend the sanction to three months and 21 days.

Using an abuse of discretion standard, the Superior Court determined that the lower court did not abuse its discretion in setting the purge condition, because it chose a monetary sanction that the obligor could immediately pay.


ARTICLES
(continued from Page 76)

KENT V. KENT
16 A.3d 1158 (Pa. Super. 2011)

Legal Principles
Alimony is a secondary remedy that is available only where economic justice and reasonable needs of the parties cannot be met with equitable distribution.

An award of alimony should be made to either party only if the trial court finds that it is necessary to provide the receiving spouse with sufficient income to obtain the necessities of life.

Where wife requested alimony in order to not be employed so that she could home-school the parties’ minor children, analysis of the alimony factors will govern the issue of whether wife should receive alimony. The issue of whether home-schooling will benefit the minor children is not determinative with regard to whether wife should receive alimony.

(continued on Page 78)

BENEFIT TO MINOR CHILDREN IN THE NATURE OF HOME SCHOOLING NOT TO BE CONSIDERED IN ALIMONY ANALYSIS
BY JENNIFER ZOFCIN, ESQ.

KENT V. KENT
16 A.3d 1158 (Pa. Super. 2011)

Legal Principles
Alimony is a secondary remedy that is available only where economic justice and reasonable needs of the parties cannot be met with equitable distribution.

An award of alimony should be made to either party only if the trial court finds that it is necessary to provide the receiving spouse with sufficient income to obtain the necessities of life.

Where wife requested alimony in order to not be employed so that she could home-school the parties’ minor children, analysis of the alimony factors will govern the issue of whether wife should receive alimony. The issue of whether home-schooling will benefit the minor children is not determinative with regard to whether wife should receive alimony.

(continued on Page 78)
Facts and Analysis

The parties were married for 17 years and had two minor children. Wife, who had worked as a public school teacher, stayed at home to home-school the parties’ children. During the marriage, wife opted to receive her Public School Employees’ Retirement System (PSERS) pension early to help support the family while wife did not work.

At the time of trial, wife and children were living in the marital residence, where wife home-schooled the children, and husband was living in an apartment. Wife requested alimony for 12 years, a period that would allow her to remain at home to continue to home-school the minor children until they graduated from high school.

Allegheny County Judge Cathleen Bubash did grant alimony in an amount $100 per month higher than wife requested, but for a mere three years. The court made a finding that wife needed to get back into the workforce.

Wife appealed to the Superior Court. The contested issues were the length of alimony and whether husband’s dividend income was properly considered.

Wife’s arguments were that she could not sustain herself on the child support, that the alimony requested by wife was contrary to the evidence of her frugal lifestyle and that the court substituted its own judgment about home-schooling in determining that wife should reenter the workforce. Wife argued that the decision to home-school the children was a joint decision of the parties during the marriage and that the minor children have benefitted from the decision.

Husband disagreed that the parties made a joint decision to home-school beyond elementary school for the older minor child and the decision to home-school the younger child at all. He does admit that he acquiesced to home-schooling the older child initially, but that wife not working in order to home-school had become “an economically-unviable situation.”

According to the trial court, home schooling was a decision that was conditioned on an intact marriage and the economic benefit of an intact marriage.

The Superior Court, per Bowes, J., restated prior case law that alimony is a secondary remedy that is available only where economic justice and reasonable needs of the parties cannot be met with equitable distribution. Teodorski v. Teodorski, 857 A.2d 78 (Pa.Super. 2004). An award of alimony should be made to either party only if the trial court finds that it is necessary to provide the receiving spouse with sufficient income to obtain the necessities of life. Stamperro v. Stamperro, 889 A.2d 1251 (Pa.Super. 2005). Furthermore, the court analyzed the alimony factors set forth in 23 Pa.C.S.A. § 3701.

The facts in this case show that wife’s PSERS pension was in pay-status. Pursuant to PSERS regulations, an individual receiving a PSERS pension generally cannot be employed in a workplace in which that worker would contribute toward a PSERS pension. Query whether this would make wife less employable, which is a significant part of the Superior Court’s analysis?
On Nov. 23, 2010, the General Assembly of Pennsylvania enacted House Bill 1639, which dramatically changed Pennsylvania’s custody statute. The new statute became effective on Jan. 24, 2011. Among many changes, the statute contains new procedures and requirements in custody relocation cases. The new statute attempts to streamline the custody relocation process by outlining a specific procedure for litigants and courts to follow in relocation cases. The new relocation provisions are located at 23 Pa. C.S. §5337.

The procedures required by the statute apply to any proposed “relocation.” 23 Pa. C.S. §5337(a). The term “relocation” is not defined, so it remains within the discretion of the court to determine what constitutes “relocation” in a particular custody matter, given the specific factors of each case. Since “relocation” remains undefined, in practice, a relocating party should err on the side of caution and plan to follow the procedures required by the statute, as there may be serious consequences for failure to comply with the statute, including failure to follow the notice requirements ...

Following the publication of this article, a dedicated reader, Renee Heilman Johnson, brought to our attention that this statement is, in fact, incorrect. In an effort to clarify Attorney Leech’s article, the editors of the Pennsylvania Family Lawyer reviewed the revised Custody Act. Section 5337 of the Custody Act, as amended, does not define relocation within that particular statutory section. However, § 5322 (relating to definitions) of the Custody Act, as amended, does contain a definition of the term “relocation.” Section 5322 defines “relocation” as “[a] change in a residence of the child which significantly impairs the ability of a nonrelocating party to exercise custody rights.” See 23 Pa. C.S. § 5322 (relating to definitions). Thus, the revisions to the Custody Act, as amended, do provide practitioners with some guidance in determining what constitutes a “relocation” but there appears to be room for interpretation by our trial courts with respect to this definition.

The Editors of the Pennsylvania Family Lawyer sincerely apologize for this error.

The corrected article appears below.

Katherine M. Leech is an Associate in the Pittsburgh law firm of Raphael, Ramsden & Behers; member of Family Law Sections of PBA and ACBA (Young Lawyer’s Division and Bar Leadership Initiative class of 2009-2010); Court Appointed Special Advocate; NLS Protection from Abuse program; Allegheny County Family Division’s pro se Motions program; Women’s Bar Association of Western Pennsylvania; Pittsburgh Cultural Trust Partner’s Board; and Leukemia & Lymphoma Society’s Team in Training Program.

(continued on Page 80)
ARTICLES
(continued from Page 79)

notice must be served by certified mail, return receipt requested. 23 Pa. C.S. § 5337(c)(2). It is somewhat curious that the notice must be served by certified mail, return receipt required, rather than other forms of service permitted by the Rules of Civil Procedure, such as personal service, which is generally the preferred method of service. It may prove problematic in practice to comply with the service requirement of certified mail, particularly in cases involving pro se litigants where addresses may be unknown or unavailable. In cases where service cannot be made by certified mail, litigants may need to seek leave of court for alternate means of service, including personal service.

The notice must include certain information, including but not limited to, the address of the intended new residence, the mailing address (if not the same), the names and ages of the individuals in the new residence, including individuals who intend to live in the new residence, the home telephone number of the residence (if available), the name of the new school district and school, the date of the proposed relocation, the reasons for the proposed relocation, a proposal for the revised custody schedule and any other information which the relocating party deems appropriate. 23 Pa. C.S. § 5337(c)(3). If this information is not readily available when the notice is sent, then the relocating party shall “promptly” inform every other individual receiving the notice when this information becomes available. 23 Pa. C.S. § 5337(3). These provisions may be also be difficult, in practice, since it may not be possible for litigants to have all of this information readily available when the relocation is initially proposed. Moreover, relocating parties may wait to finalize these details until they have received confirmation from the non-relocating party or the court that the relocation is permitted.

Since “relocation” remains undefined by the new statute, relocating litigants should err on the side of caution and provide notice of the relocation as required by the statute, as there may be serious consequences for the failure to provide notice, including the imposition of sanctions. Moreover, since litigants must “promptly” provide notice of the details of the relocation if this information later becomes available, litigants should notify all other parties to the action as soon as the information becomes available. The court may consider the failure to provide adequate reasonable notice of a proposed relocation as: (1) a factor in making a determination regarding the relocation; (2) a factor in determining whether custody rights should be modified; (3) as a basis for ordering the return of the child to the non-relocating party if the relocation has occurred without reasonable notice; (4) sufficient cause to order the party proposing relocation to pay reasonable expenses and counsel fees incurred by the party objecting to the relocation; and (5) a ground for contempt and the imposition of sanctions against the party proposing the relocation. 23 Pa. C.S. §5337(j)(1)(2)(3)(4)(5). However, the failure to provide ade-

quate reasonable notice may be mitigated if the failure was caused by abuse. 23 Pa. C.S. §5337(k).

In addition to the information provided in the notice, the relocating party must also include a counter-affidavit that the non-relocating party must file with the court to consent or object to the relocation and proposed modification of custody. 23 Pa. C.S. §5337(3)(x). The counter-affidavit shall be in the form prescribed by 23 Pa. C.S. § 5337(d)(1). The notice and counter-affidavit must include a warning to the non-relocating party that if no objection to the proposed relocation is filed within 30 days after receipt, that the non-relocating party will be foreclosed from objecting to the relocation. 23 Pa. C.S. § 5337(3)(xi).

If the non-relocating party objects to the proposed relocation, he or she must file the counter-affidavit objecting to the relocation within 30 days of receipt of the notice. 23 Pa. C.S. § 5337(d)(2). In the counter-affidavit, the non-relocating party has the option to (1) consent to the proposed relocation and the modification of the custody order; (2) object to the modification of the custody order, but not the relocation; or (3) object to the relocation and proposed modification of the existing order and request a hearing. 23 Pa. C.S. § 5337(d)(1). The counter-affidavit must be served on the other party via certified mail, return receipt requested. 23 Pa. C.S. § 5337(d)(2). Again, this service requirement may prove difficult, in practice, and litigants may need to seek leave of court to accomplish service by other permissible means.

If the non-relocating party fails to file the counter-affidavit within 30 days of receiving the original notice, then it shall be presumed that the non-relocating party has consented to the proposed relocation. 23 Pa. C.S. § 5337(d)(3). This section of the statute presents due process concerns. Moreover, if the counter-affidavit and objection are not filed within thirty (30) days, and the non-relocating party later petitions the court for a review of the custodial arrangements, the court shall not accept testimony “challenging the relocation.” 23 Pa. C.S. § 5337(d)(4). This phrase is not defined, so it will be left to the discretion of courts to interpret exactly how this provision shall be applied in custody cases. The language barring the non-relocating party from offering testimony “challenging the relocation” is somewhat concerning, since problems with the relocation often do not arise until after the relocation has already occurred. In all cases, the paramount concern of the court is the best interests of the child. If problems arise after relocation has occurred, then the non-relocating party should have the opportunity to present evidence to the court that the relocation was not in the child’s best interests.

If the non-relocating party does not file a counter-affidavit objecting to the proposed relocation, or does not object to the relocation and modification of the custody order, then the relocating party must file a petition to confirm the relocation. 23 Pa. C.S. § 5337(e). Among other things, the confirmation must include a proposed order. 23 Pa. C.S. § 5337(e)(4). If the non-relocating party files a counter-affidavit which indicates that he or she has

(continued on Page 81)
ARTICLES
(continued from Page 80)

no objection to the relocation and modification of the order, then the court may modify the existing custody order by approving the proposed order submitted in conjunction with the confirmation of relocation. 23 Pa. C.S. § 5337(f). The new order shall specify the method by which the custody order may be modified in the future. 23 Pa. C.S. § 5337(f). This section applies to cases when the non-relocating party has filed a counter-affidavit that does not challenge the relocation and proposed modification; it not clear if this section also applies in cases where the non-relocating party fails to file the counter-affidavit.

If the non-relocating party objects to the relocation, then he or she may request a hearing either before or after the relocation has occurred. 23 Pa. C.S. § 5337(d)(1). Unless “exigent circumstances” exist, the court shall not modify the existing order until after the relocation hearing has occurred. 23 Pa. C.S. § 5337(g)(3). The terms “exigent circumstances” are not defined by the statute, so it will be within the discretion of trial courts to determine when exigent circumstances exist. Regardless, if the hearing occurs after relocation has already taken place, then the court shall not confer any presumption in favor of the relocation. 23 Pa. C.S. § 5337(l). Thus, when the hearing is not held prior to relocation, courts should strive to schedule hearings as soon as possible after the relocation has occurred. Plowman v. Plowman, 597 A.2d 701 (Pa. Super. 1991).

The hearing shall be an “expedited full hearing” on the proposed relocation. 23 Pa. C.S. § 5337(g)(1). The statute does not define “expedited full hearing.” This will allow trial courts the discretion to determine whether psychological evaluations are necessary in any particular relocation dispute. Since the hearing must be “expedited,” it may be difficult for litigants and attorneys to have adequate time to fully prepare for the hearing and obtain all the information needed to present their cases.

For the first time, the Legislature has codified certain factors that the court must consider in relocation cases, which should provide guidance to the court in making decisions in relocation cases.

Specifically, there are 10 factors that court must consider, which include the Gruber factors; however, the court is required to give “weighed consideration” to those factors which affect the safety of the child. 23 Pa. C.S. § 5337(h), Gruber v. Gruber, 583 A.2d 434, 438-39 (Pa. Super. 1990). The court can no longer assume that the benefits of relocation for a parent will indirectly “flow” to the child, as the statute now requires the court to consider whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit, or educational opportunity. 23 Pa. C.S. §5337(h)(7). Kaneski v. Kaneski, 604 A.2d 1075 (Pa. Super. 2000).

The new statute places the burden on the relocating party to establish that the relocation is in the best interests of the child. 23. Pa. C.S. § 5337(i)(1). The statute is silent on whether this section applies to relocation disputes when the parties do not have an existing custody order. To that end, it appears that the statute has overruled the line of cases holding that parties stand on “equal ground” in relocation disputes where no prior custody order exists. Hurley v. Hurley, 754 A.2d 1283, 1287 (Pa. Super. 2000). Finally, the holding in Gruber that each party is required to establish the integrity of motives to seek relocation or prevent relocation is now codified in the statute. 23 Pa. C.S. § 5337(i)(2), Gruber, 583 A.2d at 440.

The new statute provides more protection to non-relocating parties in custody matters, by requiring advance notice of the proposed relocation. Under the old law, it was incumbent on the non-relocating party to petition the court for review of the existing order, which was difficult in cases when the relocating party did not provide advance notice of the relocation. Overall, however, it appears that the new statute may make it easier for litigants to relocate. If parties follow the procedures required by the statute, and the other party does does object to object or does not object within a relatively short time-frame 30 days of receiving notification), then courts will permit the relocation. There are also may undefined and somewhat ambiguous terms in the statute, which will require court interpretation. It will be interesting in practice to see how the statute affects these cases, which are often among the most challenging and emotional for clients, judges, and lawyers.


Vols. 1-20 (1980-98) in cloth binding (fishman@duq.edu)
Overview

The first two parts of this trilogy about the Survivor Benefit Plan (SBP) explained the disaster that befell Mrs. Diana Jarvis in 2006 with the loss of her claim for former-spouse coverage under her husband’s military SBP after a trial in the Common Pleas Court of Berks County. Married for about two decades, she was left with nothing to fall back upon if her ex-husband died before her. His pension share payments to her, about $900 a month, would end with his death, since no survivor annuity was granted to her by the judge.¹

Why did she lose the annuity? While the exact course of the case is not known, one point that is made clear in the reported decision is that the financial impact on the parties of survivor annuity coverage was unknown.² That shouldn’t happen. There is a great deal of information for the judge on SBP that can be shown in support of the claim of the former spouse, and the purpose of this article is to show how to get that data before the trial court.

The first parts of this series explains:

• What the Survivor Benefit plan is and how it works
• Cost, death benefit, termination and changing of coverage
• SBP for members of the National Guard and Reserves
• Benefits and disadvantages of SBP coverage
• Deadlines for elections and remedies for the wronged spouse, and
• use of a court-ordered “deemed election” when the service-member (SM) or retiree cannot or will not cooperate

This final part will explain arguments used to advocate or block SBP coverage, deciding how much coverage to obtain and how to argue the case for a separated spouse to convince the court that she or he should have received SBP former-spouse coverage. Finally, we’ll also explain how to shift the premium to the former spouse (since the SM will receive no benefit from SBP coverage and must be dead for it to take effect).

Strategies for the Servicemember

The best option for the SM who wants to avoid SBP obligations is usually silence. If no one says anything about SBP, then John Doe, our hypothetical SM, will not have to elect coverage for Mary Doe, his soon-to-be ex-wife. This will save him money since there will be no deduction for coverage from his retired pay. And since there is no way of dividing the SBP between successive spouses, it is to his advantage to hold on to available coverage for a remarriage and a new wife, if that is in his future.

If there is a discussion about SBP, then his attorney should deflect the conversation into death benefits in general, of which life insurance is the most obvious choice. Life insurance for Mrs. Doe may be cheaper than SBP, since former-spouse coverage under the SBP costs 6.5 percent of his pay. It also has the advantage for Mary Doe of paying her in a lump-sum cash amount at his death, rather than monthly payments.

As a way of sweetening the deal, if that is necessary, John Doe and his attorney could offer to split the cost of life insurance with Mrs. Doe, with each paying half the premium. Another alternative is to make the life insurance premium payable entirely by John Doe but to treat it as tax-deductible alimony for him (which would mean that the premium is treated as taxable alimony for Mary Doe).

Mirror Benefit

If John cannot dissuade the other side from SBP, then he and his attorney might try a different approach. Especially where the parties have not been married during the entire term of the SM’s military service, it is wise to step back and compare the benefit that Mary Doe will receive while her ex-husband is alive with the

(continued on Page 83)
SBP death benefit she will receive, which will be 55 percent of the base amount selected. Often there is a great (and irrational) disparity between these two amounts.

Suppose that the parties were married for 16 years at the time of divorce and that John Doe had 24 years of service at that time. Then Mrs. Doe should be entitled to 50 percent of 16/24, or 33 percent of the military pension if John Doe retired on his date of divorce. But if John elects SBP coverage for her at the full base rate, that is, his entire retired pay, she would receive 55 percent of the pension starting at the date of his death. This is a good example of someone being worth more dead than alive!

John Doe probably feels that his ex-wife should receive the same amount whether he is alive or dead — the death benefit should mirror the lifetime benefit. He might well be appalled that same amount whether he is alive or dead — the death benefit

The proper way to do the calculation is first to figure the amount that the spouse should receive as a lifetime pension share. Then, one needs to divide that figure by .55. This yields the proper base amount to effect a “mirror share” for the spouse or former spouse.

Below is a table that can be used to calculate a new “target base amount.” The base amount is placed into the settlement document (or trial court order) so that Mary Doe receives the same amount at John Doe’s death that she was getting as her lifetime share of the pension. If the settlement is being done before divorce and at about the time that John Doe is retiring, he will need to select the lower base amount at retirement and she will have to provide written consent for this change. Then, upon divorce, the decree or separate court order will have to state that she receives “former spouse coverage” and recite the lower base amount that they have chosen in compliance with the settlement agreement.

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Determine the dollar amount that the FS (former spouse) will receive each month as a share of the pension. This is usually the spouse’s percentage times disposable retired pay (DRP)</td>
<td></td>
</tr>
<tr>
<td>2. Divide that amount by .55 (SBP is always 55 percent of base amount chosen for former spouse coverage)</td>
<td></td>
</tr>
<tr>
<td>3. The result is the “target base amount” to be chosen by the SM upon retirement (with written spouse concurrence)</td>
<td></td>
</tr>
</tbody>
</table>

(continued on Page 84)
When using the numbers shown above for John and Mary Doe, here is what the table would look like:

<table>
<thead>
<tr>
<th><strong>Explanation</strong></th>
<th><strong>Calculations</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Determine the dollar amount that the FS (former spouse) will receive each month as a share of the pension. This is usually the spouse’s percentage times disposable retired pay (DRP)</td>
<td>$4,000 - $260 (SBP premium) = $3,740 (DRP) $3,740 x 25 percent (spousal share) = $935 per month</td>
</tr>
<tr>
<td>2. Divide that amount by .55 (SBP is always 55 percent of base amount chosen for former spouse coverage)</td>
<td>$935 ÷ .55 = $1,700</td>
</tr>
<tr>
<td>3. The result is the “target base amount” to be chosen by the SM upon retirement (with written spouse concurrence)</td>
<td>$1,700 = Target Base Amount</td>
</tr>
</tbody>
</table>

Note that there is no mathematical formula that will yield this result if the SM is not retired or about to retire or if the state law, as in the majority of the states, does not fix the spouse’s benefit but rather applies a formula (with an unknown denominator, total years of military service) to the final retired pay of the SM (which is also unknown). In the majority of the states, it is impossible to know the SM’s retired pay or the spouse’s fixed benefit when retirement is not past or imminent, since that depends on the SM’s grade at retirement and the applicable pay tables at that time. This makes it impossible in these circumstances to compute the future SBP payment as above since the final retired pay is not known.

The best one can do, if John Doe is near retirement, is for him to use an estimate of his retired pay as of the date of divorce (or the date of settlement) to figure his base amount in the above calculations. You can still “fix” the spouse’s share by agreement or stipulation. So long as it is not disputed by Mrs. Doe or her attorney, this will yield a “fair” result for her (in the eyes of John Doe) and will save him some money in premiums. Using the examples above, the premium for a base amount of $1,700 is about $110, a savings of $150 each month over the premium ($260) for a base amount of $4,000.

Who Pays the Premium?
Perhaps John Doe will say, “Why should I pay for SBP at all? Why doesn’t my ex-wife have to pay for it? After all, she wants it. I’ll be dead and gone by the time she gets it. She should have to pay the premium!” Unfortunately for him, it does not work that way with DFAS. His attorney can send DFAS as many orders as he wants — signed by judges, certified by clerks and affixed with ribbons and sealing wax — and DFAS will still refuse to approve any order that tries to shift the premium to Mary Doe’s share of the pension. This is because the SBP premium, according to the Uniformed Services Former Spouses’ Protection Act (USFSPA) comes “off the top” before determining disposable retired pay.

The definition of “disposable retired pay” excludes SBP premiums. This results in the parties both paying the SBP premium in the same ratio as the pension division.

However, even if the front door is closed for John Doe, there are two back doors he may use. One involves direct payment and the other involves changing the pension percentage of the former spouse.

First, John Doe may negotiate for an agreement, or seek a court order, which requires Mrs. Doe to be responsible for the premium payments and to reimburse him for some portion or all of the premium each month. This would require, of course, her continued interaction with her former husband through the process of writing a check or approving a direct debit from her bank account. This is probably something that John Doe would not want, since it involves the ongoing duty to monitor and enforce payments. It is worth mentioning, however, inasmuch as a premium-allocation order made in advance of John Doe’s retirement cannot state with specificity what the SBP payment to his former spouse will be and how much it will cost. Such a clause might read:

The former spouse will reimburse and indemnify the SM/retiree for the cost of the SBP premium by paying to him each month the full cost thereof by [certified check] [money order] [automatic bank debit from her account to his at XYZ Bank, Apex, North Carolina, Acct. #12345] no later than the fifth day of each month.

Pension Share Adjustment

A second option, which would accomplish the same thing, is to adjust the pension percentage that Mrs. Doe receives from DFAS. As an example, assume that the parties were married for half the length of John Doe’s military service and John Doe retires from active duty on the date of divorce. Mrs. Doe is entitled to 25 percent of the military pension of John Doe. His retired pay is $4,000. To shift the SBP premium to her, follow these steps:

- First, calculate the amount of the total SBP premium. In an active-duty case, one that doesn’t involve Reserve Component SBP (RCSBP), the formula is generally 6.5 percent times the base amount of coverage selected for former spouse coverage. In John Doe’s case, his full retired pay is the selected base amount. Thus, the SBP premium for cover-
FEDERAL/MILITARY CORNER
(continued from Page 84)

age for Mrs. Doe is $260 ($4,000 x 6.5 percent = $260).
• Determine the amount Mrs. Doe would receive from DFAS
each month as her share of the pension.
  ° Remember that DFAS only pays a percentage of DRP, or
disposable retired pay, which is gross pay less certain
deductions, the most important of which are the SBP
premium and disability pay. For this example, assume
there is no disability deduction.
  ° Mrs. Doe is to receive 25 percent of John Doe’s DRP.
His DRP is $3,740 ($4,000 - $260 = $3,740). Mrs. Doe’s
share of that is $935 (25 percent x $3,740 = $935).
  ° This amount, $935, is what DFAS would pay to Mrs.
Doe if the court order simply required Mrs. Doe to
receive 25 percent of John Doe’s retired pay without any
adjustment for the SBP premium. DFAS would deduct
the premium from his gross pension, which means that
each party shares in the cost of the SBP premium propor-
tionate to the percentage share of the pension each
receives. In this example, with the SBP premium com-
ing “off the top,” Mrs. Doe is paying 25 percent of the
premium and John Doe is paying 75 percent.
• We need Mrs. Doe to pay John Doe’s 75 percent of the SBP
premium. To calculate this in dollars, multiply the full premi-
num by John Doe’s percentage of the pension. This yields
$195 ($260 x 75 percent = $195).
• Next, subtract this figure from Mrs. Doe’s share of the pen-
sion. The result is $740 ($935 - $195 = $740). This is her net
share after shifting the full SBP premium to her.
• Finally, divide Mrs. Doe’s new pension share by the total dis-
posable retired pay (which is his retired pay less SBP premi-
ums) to arrive at Mrs. Doe’s new percentage of the retired
pay ($740 ÷ $3740 = 19.79 percent).

To verify your calculations, do a double-check. Multiply John
Doe’s disposable retired pay by Mrs. Doe’s new percentage share.
The result should be equivalent to $740 [$3,740 x 19.79 percent
= $740.15].

A third way to check the math is to take the gross amount of
the pension ($4,000) and figure the monetary value of Mrs. Doe’s
25 percent share ($1,000). Deduct from her share the full SBP
premium ($1,000 - $260). Again, the result is $740.

Thus, Mrs. Doe’s share of the pension would be reduced from
25 percent to 19.79 percent, and she is responsible for the full cost
of the SBP premium. This is a savings of $195 per month for John
Doe. A worksheet for premium-shifting is at Appendix A.

Putting this into a formula for the separation agreement or
court decree involving a military retiree might be accomplished as below:

Calculate the monetary amount due to the former
spouse by multiplying her share times the “dispos-
able retired pay.” Subtract from this the retiree’s
percentage of the SBP premium (in dollars). Divide
the remainder by the disposable retired pay to get
her adjusted percentage of the pension, thus allocat-
ing payment of the entire SBP premium to her.

The Best of Both Worlds

Sometimes the client, John Doe, wants it both ways. He
wants both a shifting of the premium to Mrs. Doe and the selec-
tion of a “mirror benefit.” While ordinarily his counsel will
advise him that — so long as she is paying for it — the amount
of the SBP benefit should not matter, sometimes he’ll put his foot
down, usually “on principle.” In that situation, the following
chart explains how to determine the mirror share and shift the
entire SBP premium to the former spouse:

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Calculations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Figure out what dollar amount the FS (former spouse) would get each month as a share of the pension — in a percentage award case, take the spouse’s percentage times gross retired pay of the member/retiree</td>
<td>Next, divide that amount by .55 (SBP is always 55 percent of base amount chosen for former spouse coverage) for target base amount</td>
</tr>
<tr>
<td>Then figure out the dollar amount for the total SBP premium (6.5 percent for spouse or former spouse coverage)</td>
<td></td>
</tr>
<tr>
<td>Then subtract the premium from dollar amount for FS; this yields her spousal share less the SBP premium</td>
<td>Finally divide this net figure by the disposable retired pay (gross pay less SBP premium in non-disability cases) and multiply the result by 100</td>
</tr>
<tr>
<td>This yields the reduced percentage share of the pension that the FS should receive where the death benefit is to mirror the life benefit and the FS pays the full premium</td>
<td></td>
</tr>
</tbody>
</table>

(continued on Page 86)
FEDERAL/MILITARY CORNER
(continued from Page 85)

Strategies for the Spouse
If there is a discussion about SBP and the conversation turns to death benefits in general, Mrs. Doe should decide whether she wants to discuss alternatives. The best approach is to let the John Doe and his attorney explain their proposal and then reiterate that she is interested in SBP but she is willing to consider life insurance as an alternative death benefit if the cost and benefits are satisfactory. She should realize that John Doe might have his own reasons to eliminate SBP coverage from the discussion, either because of the cost to him or because he wishes to preserve the benefit for a future wife. Mrs. Doe might be able to use this to her advantage in the negotiations by making John Doe prove to her that his alternative is not just as good as SBP but actually superior to it.

Life Insurance Issues
If Mrs. Doe is interested in life insurance, she should insist on private life insurance and should avoid using Servicemen’s Group Life Insurance (SGLI). According to a 1981 Supreme Court decision, Ridgway v. Ridgway, a judge cannot enforce a court order or separation agreement that provides for SGLI to secure the payment of a divorce settlement when the SM has chosen someone else to be his or her beneficiary.

Another tip regarding private life insurance is to be sure to transfer ownership of the policy to the client who is to be protected. Such provisions for life insurance are commonly funded or secured by “owned” policies that belong to the premium payor and build up cash value or equity (e.g., whole life, variable life or universal life policies), ones that belong to the payor but build up no cash value (term life insurance), and ones that have no equity/cash value and do not belong to the person who pays the premiums (group life policies).

Remember this when drafting a clause that attempts to ensure that the premium payor will not inadvertently (or intentionally) change the beneficiary to a new spouse, for example, in lieu of the beneficiary stated in the agreement. How will the other party ever know whether the intended beneficiary remains as such when the policy and all incidents of ownership remain elsewhere — with the payor or his employer? How can one prevent the payor from signing an agreement containing a life insurance clause and then immediately breaching it by designating a new beneficiary?

The answer is through policy ownership. Most insurance companies allow the assignment of ownership of the policy to a person other than the premium payor. The policy owner is the one who designates the current beneficiary and who must consent to any proposed change in beneficiary. The owner must be informed by the company of any attempts to cancel the policy, and must also be advised as to non-payment of premiums that would have the effect of canceling coverage. Finally the owner is the only one who, with life insurance that has cash value, can borrow against the policy. Since these are the very things that ought to be withdrawn from the premium payor — the power to borrow against the policy, cancel it or change the beneficiary — it makes sense to agree on transfer of ownership of the insurance policy.

Ownership of the policies can revert back to the original owner after the support terms have been satisfied. A transfer of ownership has the effect of protecting each party, preserving their promises and putting temptation out of the way.

Other SBP Issues
If Mrs. Doe is interested only in SBP coverage, then her attorney should be aware of the arguments pro and con about allocating the premium to her, as discussed above. Her initial position might be skeptical, reflecting the position that USFSPA will not allow DFAS to subtract the premium cost from her share of retired pay.

She may argue that there is no good reason for shifting the cost to her. With no SBP, only John Doe receives a survivorship benefit. After all, the military pension plan is only divisible using the “sharing method,” which gives her a share of her husband’s pension (rather than the “dividing method,” which gives her a share in her own right). Because of this, there is a no-cost survivor benefit for John Doe, since upon his wife’s death her lifetime share reverts to him. It costs him nothing, and he gets 100 percent of his pension restored to him.

The survivor benefit for her, however, is a maximum of only 55 percent of the base amount, not 100 percent of the pension or 100 percent of the base amount. She only receives this if the premium is paid, which is 6.5 percent of the base amount. This means that she receives less during his retired lifetime. Since she receives less during life and less after his death, Mrs. Doe should argue that John Doe should bear the cost of “equalizing” the parties’ survivorship benefits by paying for the only part of survivor benefits that has a cost associated with it.

She may, on the other hand, decide that it makes sense for her to share in some or all of the cost or that it is not worth the time and money to contest her husband’s arguments. If John Doe is successful in negotiating his base amount downward, as shown in the example above, Mrs. Doe should realize that she will still obtain a slight increase in her present pension payment. This is due to the fact that a lower base amount means a lower premium for SBP. The lower SBP premium means a higher amount of DRP, which is what DFAS divides with her. Thus she receives a smaller share (due to SBP premium-shifting) of a larger amount of DRP.

The End of Premiums
Mrs. Doe’s attorney should also be aware that SBP premiums do not last forever. Since Oct. 1, 2008, there has been a change in the world of “shifting premiums.” After that date, retirees who

(continued on Page 87)
have paid at least 360 premiums for SBP coverage and who are at least 70 years old will be considered “paid up” and need not pay any further premiums. Payments through DFAS are stopped automatically; no application is necessary. The change was made in Section 641 of the National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261.

This means that in an order containing a premium shift to the former spouse, there needs to be a clause that does a “reverse-shift” to restore the pension share to its original value. The attorney for the former spouse should be sure to include provisions that increase the percentage back to the original percentage after the above period of time. The order should also state that the court will enter a supplementary order, if necessary, to effectuate that increase. This is needed in case the retired pay center doesn’t honor the “reverse-shift” clause, or it doesn’t have the ability to track the order and “remember” to increase that percentage 30 or more years down the road. In addition to stating what the previous, unshifted percentage is, the order needs to state that, at the end of 360 months of premium payments and when the retiree is at least 70 years old, the percentage of the former spouse will revert to the original percentage. A very basic clause to do this might read:

After the defendant has attained age 70 and SBP premiums have been paid for 360 months, the percentage awarded to plaintiff (to accomplish a shift of the SBP premium) shall increase to ___ percent, the original percentage to which she would have been entitled.

Counsel for the former spouse should also be aware that SBP premiums may also be terminated if the former spouse, who previously was covered, is ineligible because she has remarried before age 55. This is not automatic; one of the parties must notify DFAS. A clause to provide for both this and the previously mentioned contingency would state:

The adjustment herein of the military pension division share for the non-military spouse/former spouse, to shift the premium payment for SBP, shall end upon the happening of either of the following two events, either of which would result in no premium payable for SBP: (1) that party’s remarriage before age 55 (which ends SBP coverage for her/him), or (2) the continuous payment of SBP premiums for 30 years (which results in paid-up SBP). Upon the happening of either event, the adjustment herein shall stop, the non-military party shall be entitled immediately to her/his full, unadjusted share of the pension (without regard to shifting payment of the SBP premium), and she/he may apply to the court for reversion of the pension share to the original, unadjusted portion. That original share is ___ percent.

In conclusion, when a case involves deferred division of the pension, the attorney for the non-military spouse should insist on SBP coverage (or some acceptable alternative) to provide for the continued financial security of the former spouse should he or she survive the SM. Death planning is an important part of advising the spouse, since “the pension dies when the member dies.” There may be substitutes for the SBP coverage or ways to reduce the cost to the retiree, but these will take the time and expertise of competent counsel and will require an understanding of the costs, the calculations, and the available alternatives at each step of the negotiations.

3 For cases supporting this proposition, see Matthews v. Matthews, 336 Md. 241, 647 A.2d 812 (1994), In re Marriage of Payne 897 P.3d 888 (Colo. App. 1995), Harris v. Harris, 261 Neb. 75, 621 N.W.2d 491 (2001), In re Marriage of Kiser, 176 Or. App. 627, 32 P.3d 244 (2001), Workman v. Workman, 418 S.E.2d 269 (N.C.App. 1992) (trial judge ruled that survivor annuity may not exceed lifetime pension share benefit; appellate court upheld this as part of 50 percent cap rule for pension division.)
4 See, e.g., Schneider v. Schneider, 5 S.W. 3d 925 (Tex. App. 1999), affirming trial court’s denial of motion for constructive trust on rest of SBP over ex-wife’s share of pension; SM-retiree argued against her expected receipt of 55 percent of his retired pay when her portion of the pension was only 32 percent.)
# APPENDIX A

## Shifting of SBP premium to former spouse, % method [retirement from active duty]

<table>
<thead>
<tr>
<th>Instructions [*=input items]</th>
<th>Amt./Number</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Calculate Disposable Retired Pay (DRP)</strong></td>
<td></td>
<td>DFAS bases pay calculations on disposable retired pay; see 10 U.S.C. 1408 (a)(4) and (c)(1)</td>
</tr>
<tr>
<td>*Gross retired pay</td>
<td>$4,000.00</td>
<td>See annual Retiree Account Statement (RAS) if SM already retired; otherwise make estimate based on years of service</td>
</tr>
<tr>
<td>*SBP premium</td>
<td>$260.00</td>
<td>@6.5% of selected base amount</td>
</tr>
<tr>
<td>*Disability compensation</td>
<td>$0.00</td>
<td>Unknown until retirement; see RAS</td>
</tr>
<tr>
<td>Disposable Retired Pay</td>
<td>$3,740.00</td>
<td>DRP = gross retired pay - SBP premium - disability compensation</td>
</tr>
</tbody>
</table>

## Calculate % for Retiree, for FS

| *Marital pension service months | 166 | From marriage or start of military service, whichever is later, until separation, divorce or other date, per state law |
| *Total pension service months | 332 | Months from start of military service to retirement |
| Marital/comm. property % of pension | 50.00% | Months of marital pension service ÷ total months of pension service |
| FS % of pension | 25.00% | Half of above % (presumed equal division) |
| SM/retiree % of pension | 75.00% | 100% - FS % |

## Calculate FS Share of DRP

| DRP from above | $3,740.00 |
| Spouse % from above | 25.00% |
| FS share of DRP | $935.00 | DRP X FS % |
| SBP premium from above | $260.00 |
| SM/retiree share of premium | $195.00 | Retiree % X SBP premium |
| FS net share of pension | $740.00 | FS share of DRP less retiree share of SBP premium |

## Calculate New Spouse %

| DRP from above | $3,740.00 |
| FS net share of pension from above | $740.00 |
| New FS % with premium shift | 19.79% | Divide FS net share by DRP |

---

1. SM = servicemember
2. FS = former spouse
3. This is necessary because SBP “comes off the top” in arriving at DRP, which means that each party pays his or her own percentage of the SBP premium. Thus the spouse’s share of DRP has only had her/his share of SBP withheld from it. To get the remainder paid by the spouse, subtract the amount of SBP paid by the SM/retiree, which is his/her percentage times the SBP premium. The result should be the same net dollar amount for the spouse as in the first part of this table.
Now that most firms have embraced scanning their case documents into digital files and are no longer relying as heavily on paper files, it is extremely important to make sure that your data is backed up daily on your pc and/or network. Here are a few questions to think about: Who is responsible for backing up the data in your office? How often is your data backed up? Do you have at least two methods of backup in case one fails? Is all of your data being backed up? Is your data able to be easily restored from the backup?

I ask you to think about these questions because I received a call from an office manager of a law firm who told me that the firm had all of its data and client files in the “cloud” (on a hosted server on the Internet). They had been told by the IT company selling them on the “cloud” concept that this would be a better option for them rather than having their file servers at their office because they would be less concerned about maintenance of their networking equipment. The law firm’s main software application is a case management software program that is specific to their practice area and they scan and link all of their files to their cases. The software manufacturer had released an upgrade, so the law firm wanted to upgrade to the latest version of the software. They notified their IT company of the upgrade and the IT company proceeded to perform the software upgrade on their “cloud” server. After performing the software upgrade for the law firm, the IT company ran out of space on the “cloud” server and all of the law firm’s case files in the second half of the alphabet were missing the attached scanned files. On top of this mess, the cloud IT company informed the law firm that they did not have a backup of the files.

How can you make sure you take the appropriate steps so that something like this doesn’t happen to you?

1. Make someone at your office responsible for backing up your data daily. Even if you have a file server with a tape backup, make sure a designated person backs up the data in all of your software programs to a local C drive at the end of each day. I like to setup a C:\DAILYBUP folder and then create the days of the week as sub-folders (1Mon, 2Tue, 3Wed, 4Thu, 5Fri). All software programs have an option to backup within the program. For QuickBooks, select File, Backup. Follow the prompts to backup locally and then select the C:\DAILYBUP\day of the week folder.

2. If you have a tape backup on your file server, make sure that you are changing your tapes daily and you should have at least 10 tapes for a two-week rotation (Week 1 – Monday through Friday, Week 2 — Monday through Friday), along with three tapes as monthly backup tapes. The last night backup tape should be taken off-site nightly and the monthly tapes should also be off-site.

3. Make sure that a full backup is performed, not a modified backup. A full backup backs up all of the data and a modified backup backs up the changed files only. It can be cumbersome to restore from modified backups.

4. In addition to the local backup or the tape backup, put a USB hard drive on your pc or file server. You can backup the data to the USB hard drive in addition to the local C drive or the tape backup. Therefore, you will have two different methods of backup in place.

5. Check and verify that the nightly backup took place every day. You can receive a report via e-mail and look for any errors. Too many times, people religiously put in a tape every day, only to find out that their tape backup has not run in days, weeks or months. You must verify that the backup took place.

6. Once a quarter, run a sample restore of a few files to make sure that your data can be restored and to test the backup.

(continued on Page 90)
7. If any of your software programs use SQL, make sure that a MS SQL backup agent is being used to back up the data properly. To many times this is overlooked by an IT person and when something goes wrong, the data cannot be restored.

8. Most importantly, work with a professional IT company that is properly insured, not just an independent consultant or a friend of a friend who knows more than you about computers.

It is your clients’ data. If it is gone, what happens to your practice and what is your liability? Take the steps to make sure your data is protected and think twice before putting it in the “cloud.”

Legislative Update:

This article updates the legislative history of the bills summarized in the March 2011 Legislative Update. 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 April 28, 2011. 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.

Updates

The following bills, summarized in the Legislative Update of March 2011, 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), 451 (adoption), 525 (custody), 557 (adoption) and 594 (adoption)

**Senate Bills:** Nos. 69 (adoption), 131 (marriage), 194 (adoption), 315 (child endangerment), 439 (relatives’ liability), 461 (marriage) and 497 (support).

Newly Introduced Legislation

**ADOPTION**

**House Bill No. 963** (Printer’s No. 1031), in the House Children and Youth Committee, amends section 2937 of the Adoption Act to add a new subsection (d), which provides that, at the written request of an adoptee, the Bureau of Vital Statistics of the Department of Health must disclose the adoptee’s original or amended certificate of birth in accordance with the Vital Statistics Law of 1953.

**Senate Bill No. 665** (Printer’s No. 673), in the Senate Judiciary Committee, amends section 9121(b)(1) of the Crimes Code and section 6344 of the Child Protective Services Law to provide that no fee may be charged to an individual who makes a request for a background check in order to adopt a child who is eligible for adoption assistance.

**CHILD ABDUCTION PREVENTION**

**House Bill No. 762** (Printer’s No. 785), in the House Judiciary Committee, 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.

**CUSTODY**

**House Bill No. 1133** (Printer’s No. 1235), in the House Judiciary Committee, amends section 6351(a) of the Judicial Code regarding the disposition of a dependent child. Under the bill, new paragraph (2.2) provides that if the court determines that an individual or entity other than the child’s parents, guardian or other custodian should be given temporary or permanent physical and legal custody of the child, the court must consider a grandparent who wishes to be given custody. The probation officer or other person or agency designated by the court must then perform a study. The bill also provides that such grandparent has standing in any court proceeding under the Juvenile Act involving the child.

**House Bill No. 1275** (Printer’s No. 1412), in the House Judiciary Committee, amends section 5323(g)(1)(v) of the Domestic Relations Code to add “filing fees” to the possible punishments for a party who willfully fails to comply with a custody order.

**House Bill No. 1395** (Printer’s No. 1656), in the House

(continued on Page 91)
LEGISLATIVE UPDATE
(continued from Page 90)

Judiciary Committee, amends section 5329 of the Domestic Relations Code to add a new subsection (b.1), which provides that a court may not award custody, partial custody or visitation to a parent who is the father of a child conceived through rape or incest when the child is the subject of the order, unless the child is of suitable age and consents to the order.

EDUCATIONAL GUARDIANSHIP

House Bill No. 1283 (Printer’s No. 1419), in the House Children and Youth Committee, amends the Probate, Estates and Fiduciaries Code to add a new section 5148 regarding educational guardianship. Under the bill, “[a] parent, legal guardian or legal custodian may authorize an adult person in whose care a minor has been entrusted to exercise all rights and responsibilities regarding the enrollment in school and education of the minor, including the rights provided under the special education laws” if there is no prior order prohibiting the parent, legal guardian or legal custodian from doing so. The bill provides a sample form and requires a school district, intermediate unit and other public education entity to honor the conveyance of authority that is consistent with the statutory requirements. The conveyance of authority “is revocable at will, unless other terms are agreed upon by the parent, legal guardian or legal custodian and the adult to whom authority is being conveyed.” The bill also specifies that (1) such educational guardianship is not intended to be a substitute for a dependency proceeding under the Juvenile Act, (2) the execution of a conveyance of authority is not binding in a custody or dependency proceeding and (3) regardless of the execution of the conveyance, a custody or dependency determination must be based on the best interests of the child and other applicable standards in accordance with law.

FUNDS FOR THE CHILDREN’S TRUST FUND

Senate Bill No. 186 (Printer’s No. 879), in the Senate Judiciary Committee, increases the $10 surcharge on all applications for marriage licenses and all divorce complaints, to be paid into the Children’s Trust Fund. Under the bill, a $35 surcharge is imposed on a marriage license application, and a $25 surcharge is imposed on a divorce complaint.

FUNDS FOR VICTIMS OF DOMESTIC VIOLENCE

Senate Bill No. 188 (Printer’s No. 907), in the Senate Judiciary Committee, raises the fee regarding a marriage license or declaration from $3 to $38, of which $35 ultimately will be forwarded to the Department of Public Welfare for use for victims of domestic violence. The bill also imposes a $25 fee for the commencement of an action for divorce or marriage annulment, which fee will be forwarded to the department for the same purpose. Such monies will not be used to supplant federal and state funds otherwise available for domestic violence services.

MARRIAGE

House Bill No. 708 (Printer’s No. 722), in the House Judiciary Committee, amends the Marriage Law by (1) adding the definition of a civil union (“a union between two adults of the same sex”) in section 1102 and (2) adding a new section 1103.1 providing that “[a]ll of the rights, protections and duties created by the Commonwealth that are applicable to a marriage shall apply to a civil union, unless the General Assembly expressly states otherwise.”

House Bill No. 909 (Printer’s No. 974), in the House Judiciary Committee, amends section 1310 of the Marriage Law to provide for an exception to the general rule that a marriage license is not valid more than 60 days from the date of issue: if an applicant is unable to satisfy the 60-day requirement due to deployment for military service, the applicant is granted an additional 60 days following return from such service. The term “active military service” is defined as active service in any of the U.S. armed forces or its reserve components for a period of 30 or more consecutive days in response to a war, armed conflict or state of emergency.

PATERNITY

Senate Bill No. 720 (Printer’s No. 704), in the Senate Judiciary Committee, amends section 5104 of the Domestic Relations Code to include tests conducted upon deoxyribonucleic acid (DNA) to determine paternity. The bill permits testing to rebut the presumption of paternity if the overall interests of justice, including the best interests of the child, would not be unreasonably harmed and the parties subject to the presumption (1) are divorced or irreconcilably separated, and one or both assert reasonable grounds to believe that application of the presumption is likely to result in an incorrect paternity determination or (2) mutually agree to submit to and be bound by the testing. The petition for testing in an action in which paternity of the child is an issue must be filed not later than five years after the child’s birth.

SUPPORT

House Bill No. 1106 (Printer’s No. 1202), in the House Judiciary Committee, amends section 4354(d)(2) of the Domestic Relations Code regarding the willful failure to pay a support order and when that offense is graded a misdemeanor of the third degree. The bill repeals the condition that the individual convicted of the offense established residence outside Pennsylvania with the intention of not complying with the support order. Therefore, the bill provides that the willful failure to pay a support order is graded a misdemeanor of the third degree if the offense (1) is a second or subsequent offense or (2) the individual owes support in an amount equal to or greater than 12 months of the monthly support obligation.

(continued on Page 92)
House Bill No. 1127 (Printer’s No. 1229), in the House Judiciary Committee, adds a new section 4345.1 to the Domestic Relations Code regarding indirect criminal contempt for violation of a support order. Under the bill, “[t]he domestic relations section or the district attorney may file and prosecute charges of indirect criminal contempt alleging that an obligor has willfully violated a support order.” The court may hold the obligor in indirect criminal contempt, which is punishable by one or more of the following: a fine not to exceed $1,000, imprisonment for a period not to exceed six months, probation for a period not to exceed one year or an order for other relief. Although an obligor does not have a right to a jury trial under the bill, the obligor is entitled to counsel. The bill also specifies that “[d]isposition of a charge of indirect criminal contempt shall not preclude the prosecution of other criminal charges associated with the incident giving rise to the contempt, nor shall disposition of other criminal charges preclude prosecution of indirect criminal contempt associated with the conduct giving rise to the charges.”

Sidebar:

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

Our condolences go to Howard and Molly Goldsmith on the passing of Howard’s mother. Howard is with Philadelphia’s Howard M. Goldsmith P.C. and Molly is law clerk to Judge Murphy in the Philadelphia County Court of Common Pleas.

Phyllis T. Bookspan of Wayne’s Bennett & Associates recently spoke on ethics for a program called “Cocktail Party Chatter,” a program about personal and professional boundaries that sometimes become blurred at social events.

Also at Bennett & Associates, Sarah L. McGeever has been appointed to the Board of Directors for Mission Kids. She is also the chairperson for Young Friends of Mission Kids, an organization of young professionals interested in supporting Mission Kids through various fund raising efforts.

Congratulations to Mary Sue Ramsden of Pittsburgh’s Raphael Ramsden & Behers on being honored as one of 15 recipients of the Pittsburgh Business Times ‘Women in Business’ awards.

Kenneth J. Horoho Jr. of Gentile Horoho & Avalli P.C. was named to the Pennsylvania Supreme Court CLE Board.

Mary K. McDonald of Pittsburgh’s McCarthy McDonald Schulberg & Joy was recently elected to the Seton-LaSalle Alumni Hall of Fame.

Chris Stachtiaris has joined the Pittsburgh firm of Frank, Gale, Bails, Murcko & Pocrass P.C.

Congratulations to Daniel Clifford of Weber Gallagher Simpson Stapelton Fires & Newby on being named by The Legal Intelligencer 2011 Diverse Attorney of the Year.

The following have recently been admitted as fellows to the American Academy of Matrimonial Lawyers, Pennsylvania Chapter:

Helen E. Casale of Norristown’s Hangley Aronchick Segal & Pudlin,

Candice L. Komar of Pittsburgh’s Pollock Begg Komar Glasser, LLC, and

Reid B. Roberts of Pittsburgh’s Strassburger McKenna Gutnick & Gefsky

Congratulations Helen, Candice and Reid!

And the following were nominated as officers of its Pennsylvania Chapter: President - Robert I. Whitelaw, President-Elect - David N. Hofstein, Vice President - Mary Vidas, Second Vice President - Steven S. Hurvitz, Secretary - Charles Meyers and Treasurer - David S. Pollock.
The Summer Meeting of the Pennsylvania Bar Association Family Law Section will take place on Thursday, July 7, through Sunday, July 10, at the Sagamore Resort, Bolton Landing, N.Y.

On Thursday, July 7, the Section’s Governing Council will meet at 3 p.m. Thereafter will be a Welcome Reception for meeting attendees and guests.

On Friday, July 8, after a breakfast buffet, a plenary session titled “Legal and Financial Techniques in Forensics and Valuation of a Closely Held Business” and featuring Judge James P. MacElree II; Mark R. Ashton; Steven S. Hurvitz; G. Daniel Jones, CPA, CFF; David N. Kaplan, CPA, CFF and Alita Rovito will be offered.

After a short break, two workshops will be offered: “Complex Compensation Issues,” which will feature Gregory Cowhey, ASA, CBA; Elizabeth J. Fineman; Charles J. Meyer and Carolyn M. Zuck, and “Timeout! The Impact of Custody Litigation on Children,” which will feature Judge Linda Rovdner Fleming; Judge Jeannine Turgeon; Judge Kelly C. Wall; Amber Marlowe, Miss Pennsylvania 2011 Contestant; Mary Sue Ramsden and Kasey Shienvold, Psy.D., M.B.A.

Attendees, families and guests will then be able to enjoy some free time exploring and relaxing. Horseback riding, a Fort Ticonderoga tour and an Adirondack Extreme Adventure will be offered. A golf tournament will be held at 1 p.m. After an afternoon of sightseeing, a dessert hospitality will be made available from 9 until 11 p.m., at which time the attendees will be able to socialize and enjoy the after-dinner treats.

On Saturday morning, July 9, after a breakfast buffet, a plenary session titled “A Grand Slam for Family Lawyers: Incorporating Civil, Criminal and Appellate Practice and Precedent in Your Family Law Practice – A Unique and ‘Unplugged’ Approach to Issues in Family Law” and featuring Justice Max Baer, Judge Mason Avrigian Sr., Risa V. Ferman, Montgomery County District Attorney and Leslee Silverman Tabas will be offered.


Attendees, families and guests will again have free time for exploring, relaxing and enjoying lunch and dinner. Two tours will be offered: a whitewater rafting trip and tour of the Glens Falls area, including the Chapman Museum, Hyde Collection and Cooper’s Cave Outlook. After another day of enjoying Bolton Landing, a farewell party will be offered.

On Sunday, July 10, a continental breakfast will be served for early risers. A Section Business Meeting will be conducted during breakfast by the Chair, Cheryl L. Young. Following breakfast, Case Law and Rule Updates will be moderated by Darren J. Holst. The Equitable Distribution Updates will be provided by Lauren L. Sorrentino. The Custody Updates will be provided by Lesley J. Beam. The Support Updates will be provided by Julie R. Colton.

The weekend promises to be both educational and entertaining. Suggestions for a future seminar and/or suggested meeting locations should be provided to Chair-Elect Joseph P. Martone. Questions regarding Section business may be addressed to any officer or member of Council at any time during the meeting or thereafter.

**Adoption and Surrogacy Committee Seeks Input**

The PBA Family Law Section has approved the formation of a committee within the section to address current issues in adoption and surrogacy and to advise the section on proposed legislation. Any PBA member interested in serving on the committee or in offering input on these subjects is asked to contact Michael Shatto at the PBA, 100 South Street, PO Box 186, Harrisburg, Pa. 17108-1086; or Joe Martone, Martone & Beasley, 150 W. 5th St. Erie, Pa. 16507-2118.
These BENEFITS are INCLUDED in your PBA Family Law Section membership:

• FREE *Pennsylvania Family Lawyer* newsletter —
  Available online anytime for reference at www.pabar.org/public/sections/famco/Pubs/Newsletters/familynewsletters.asp

• FREE Index to the *Pennsylvania Family Lawyer* by Joel Fishman Ph.D. — on the PBA Family Law Section Website at www.pabar.org/public/sections/famco/Pubs/index.asp

• FREE online FAMILY LAW SECTION Member Directory —
  Search fellow Section members by name, county or zip code
  Visit the PBA Web site at www.pabar.org and log in as a member in the upper-right corner. Then click on “Sections” along the left side and navigate to the Family Law Section, then click on “Membership.”

Family Law Directory Search

Enter the name and/or location of the attorney you are searching for within the Family Law section. Entering multiple fields will narrow your search. If all fields are blank, all attorneys within the Family Law section will be displayed.

<table>
<thead>
<tr>
<th>Last Name</th>
<th>County:</th>
<th>City:</th>
<th>Zip Code:</th>
<th>SUBMIT</th>
</tr>
</thead>
</table>

Search Hints:

• The Search is case-sensitive.
• The Search will work for partial matches.
  (Ex: Entering ‘Jeff’ in the last name field will locate ‘Jeffreys’, ‘Jefferson’, etc.)

• You can narrow your search by entering multiple fields.
  (Ex: Entering ‘Smith’ will result in all attorneys with the last name of Smith within the directory. Entering ‘Smith’ and choosing ‘Adams County’ will result in all attorneys with the last name of Smith in Adams County)

• To search only by attorney last name, leave the county and zip code fields blank.
• To search only by county, leave the last name and zip code fields blank.
• To search only by zip code, leave the last name and county fields blank.

You must log-in as a PBA member in order to access these benefits exclusive to Section members.
“Legal Eagle” Column Compilation Available

A long time ago in a galaxy far, far away, there was born one of the clearest legal minds to grace the world of matrimonial law in Pennsylvania. Patricia G. Miller was not always a lawyer. She actually graduated from the University of Colorado with a degree in chemistry and was a medical technologist. She was a longtime abortion rights activist in Colorado and Pennsylvania, where she was on the forefront of the passage of America’s first liberal abortion law in 1967. While raising three children she graduated from the University of Pittsburgh School of Law, remade herself as a civil rights lawyer, then a partner with the prominent matrimonial firm of Wilder & Miller until she established the matrimonial law group at Reed Smith L.L.P.

She left the world of advocacy to become the first Equitable Distribution Master in the Court of Common Pleas of the Allegheny County Family Division having been appointed by Justice Max Baer (then Administrative Judge). She has served as the Equitable Distribution Master and a Complex Support Hearing Officer for nearly 15 years, winning accolades from the Pennsylvania Supreme and Superior Courts, the Allegheny County Common Pleas Court Judges and the Bar.

More significantly, she was a co-author of the first edition of Pennsylvania’s Family Law: Practice and Procedure Handbook, the author of The Worst of Times, published in 1993 by Harper Collins, an oral history of the impact of illegal abortions (which she wrote while taking a sabbatical at Reed Smith), a monthly column for the Pittsburgh Post-Gazette titled “Legal Eagle,” numerous Pennsylvania Bar Association, Pennsylvania Bar Institute and Pennsylvania Family Lawyer articles and comments and a decade and a half of equitable distribution and support decisions. Master Miller is not afraid to speak her mind in court and outside of court. She has strong convictions and wise thoughts, many of which were incorporated into her monthly “Legal Eagle” column. Joel H. Fishman, Ph.D., Allegheny County Law Librarian and Professor at Duquesne University School of Law was inspired one night to preserve this wonderful collection. He wanted distribution because these articles are not only important to us as lawyers, but to our clients and the general public. This book is great reading and something that all of us will be giving to our clients to consider. There are words of wisdom for each one of them — and us, too. Enjoy the reading, as I did each month.

— David S. Pollock

PATRICIA G. MILLER’S ARTICLES FROM THE “LEGAL EAGLE” COLUMN
FROM THE PITTSBURGH POST-GAZETTE (1993-2001)

$25 per paperback volume; $35 per bound volume (cash or check only)

Name _________________________ Firm ______________________________________________
Address _____________________________________________________________________________
City ___________________________ State _________ ZIP code ___________________
Phone Number _______________________________________________________________________
☐ Paperback ☐ Hardcover No. of Copies _____

For more information, e-mail joelfishman1@yahoo.com
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>98</td>
</tr>
<tr>
<td>1. Chair’s Column</td>
<td>99</td>
</tr>
<tr>
<td>2. Editor’s Column</td>
<td>99</td>
</tr>
<tr>
<td>3. Digest of Case Notes</td>
<td>99</td>
</tr>
<tr>
<td>A. Case Digests by Author</td>
<td>99</td>
</tr>
<tr>
<td>B. Case Digests by Title</td>
<td>112</td>
</tr>
<tr>
<td>C. Case Digests by Subject</td>
<td>146</td>
</tr>
<tr>
<td>Abuse</td>
<td>146</td>
</tr>
<tr>
<td>Adoption</td>
<td>146</td>
</tr>
<tr>
<td>Annullment</td>
<td>148</td>
</tr>
<tr>
<td>Antenuptial/Prenuptial/Postnuptial Agreements</td>
<td>148</td>
</tr>
<tr>
<td>Appellate Procedure</td>
<td>148</td>
</tr>
<tr>
<td>Attorney Fees</td>
<td>149</td>
</tr>
<tr>
<td>Bankruptcy</td>
<td>149</td>
</tr>
<tr>
<td>Bigamy</td>
<td>149</td>
</tr>
<tr>
<td>Common Law Marriage</td>
<td>151</td>
</tr>
<tr>
<td>Contempt</td>
<td>149</td>
</tr>
<tr>
<td>Costs</td>
<td>150</td>
</tr>
<tr>
<td>Counsel Fees</td>
<td>150</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>150</td>
</tr>
<tr>
<td>Custody</td>
<td>150</td>
</tr>
<tr>
<td>Custody–Relocation</td>
<td>154</td>
</tr>
<tr>
<td>Custody–UCCJA</td>
<td>155</td>
</tr>
<tr>
<td>Dependency</td>
<td>155</td>
</tr>
<tr>
<td>Discovery</td>
<td>156</td>
</tr>
<tr>
<td>Divorce</td>
<td>156</td>
</tr>
<tr>
<td>Divorce–Actions In More Than One County</td>
<td>157</td>
</tr>
<tr>
<td>Divorce–Alimony</td>
<td>157</td>
</tr>
<tr>
<td>Divorce–Alimony Pendente Lite</td>
<td>158</td>
</tr>
<tr>
<td>Divorce–Application to Proceed</td>
<td>159</td>
</tr>
<tr>
<td>Divorce–Bankruptcy Actions</td>
<td>159</td>
</tr>
<tr>
<td>Divorce–Bifurcation</td>
<td>159</td>
</tr>
<tr>
<td>Divorce–Cohabitation</td>
<td>159</td>
</tr>
<tr>
<td>Divorce–Constitutionality</td>
<td>160</td>
</tr>
<tr>
<td>Divorce–Death of Party</td>
<td>160</td>
</tr>
<tr>
<td>Divorce–Domicile</td>
<td>160</td>
</tr>
<tr>
<td>Divorce–Foreign Decree</td>
<td>160</td>
</tr>
<tr>
<td>Divorce–Grounds</td>
<td>160</td>
</tr>
<tr>
<td>Divorce–Injunctive Relief</td>
<td>161</td>
</tr>
<tr>
<td>Divorce–Marital Property</td>
<td>161</td>
</tr>
<tr>
<td>Divorce–Pending Actions</td>
<td>162</td>
</tr>
<tr>
<td>Divorce–Post Separation</td>
<td>163</td>
</tr>
<tr>
<td>Divorce–Procedure</td>
<td>163</td>
</tr>
<tr>
<td>Divorce–Relocation</td>
<td>163</td>
</tr>
<tr>
<td>Divorce–Residence</td>
<td>163</td>
</tr>
<tr>
<td>Divorce–Separate and Apart</td>
<td>163</td>
</tr>
<tr>
<td>Divorce–Taxation</td>
<td>164</td>
</tr>
<tr>
<td>Divorce–Third Parties</td>
<td>164</td>
</tr>
<tr>
<td>Emancipated Minors</td>
<td>164</td>
</tr>
<tr>
<td>Equitable Distribution</td>
<td>164</td>
</tr>
<tr>
<td>Equitable Distribution–Business</td>
<td>166</td>
</tr>
<tr>
<td>Equitable Distribution–Good Will</td>
<td>167</td>
</tr>
<tr>
<td>Equitable Distribution–Insurance</td>
<td>167</td>
</tr>
<tr>
<td>Equitable Distribution–Pensions and Retirement Plans</td>
<td>167</td>
</tr>
<tr>
<td>Equitable Distribution–Stock Options</td>
<td>169</td>
</tr>
<tr>
<td>Equitable Distribution–Wage Attachments</td>
<td>169</td>
</tr>
<tr>
<td>Evidence</td>
<td>169</td>
</tr>
<tr>
<td>Grandparents</td>
<td>169</td>
</tr>
<tr>
<td>Guardianship</td>
<td>169</td>
</tr>
<tr>
<td>Incompetency</td>
<td>169</td>
</tr>
<tr>
<td>Ineffective Counsel</td>
<td>169</td>
</tr>
<tr>
<td>Legal Malpractice</td>
<td>169</td>
</tr>
<tr>
<td>Mailbox Rule</td>
<td>170</td>
</tr>
<tr>
<td>Name Changes</td>
<td>171</td>
</tr>
<tr>
<td>Palimony</td>
<td>171</td>
</tr>
<tr>
<td>Partition</td>
<td>171</td>
</tr>
<tr>
<td>Paternity</td>
<td>171</td>
</tr>
<tr>
<td>Protection from Abuse Act</td>
<td>172</td>
</tr>
<tr>
<td>Replevin</td>
<td>173</td>
</tr>
<tr>
<td>Res Judicata</td>
<td>173</td>
</tr>
</tbody>
</table>

(continued on Page 97)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 96)

Sanction ........................................... 173
Separation Agreements ......................... 173
Settlement Agreements ......................... 173
Slayer’s Act ....................................... 173
Support ........................................... 173
Support-Education ............................... 179
Support-Guidelines ............................ 180
Support-Income ................................ 181
Support-Jurisdiction ............................ 180
Support-Spousal ................................ 181
Support-Stock Options ......................... 181
Support-Taxation ............................... 182
Taxation ......................................... 182
Testimonial Privileges ......................... 182
Visitation ........................................ 182
Table of Cases Reported ....................... 183
4. Table of Cases Reported ................. 183
5. Articles & Comments ......................... 203
   A. Index by Author ............................ 203
   B. Index by Title ............................. 213
   C. Index by Subject .......................... 220
   Adoption ...................................... 220
   Adultery ....................................... 220
   Alimony ....................................... 220
   Alternative Dispute Resolution ............ 221
   Amendments to the Divorce Code ........... 221
   Antenuptial/Prenuptial/Postnuptial Agreements 221
   Appellate Practice ........................... 221
   Bankruptcy .................................. 221
   Bibliography ................................ 221
   Child Abuse ................................... 221
   Common Law Marriage ....................... 221
   Computer Programs/Technology .............. 221
   Conflict of Laws .............................. 222
   Counsel Fees ................................ 222
   Courts ........................................ 222
   Criminal Law ................................ 222
   Custody ....................................... 222
   Custody-Relocation ........................... 223
   Divorce ........................................ 223
   Divorce-Business .............................. 223
   Divorce-International ......................... 224
   Divorce-Marital Property .................... 224
   Divorce-Pensions and Retirement Plans ...... 224
   Divorce-Taxation ............................. 224
   Discovery ..................................... 224
   Equitable Distribution ....................... 224
   Equitable Distribution-Business .............. 224
   Equitable Distribution-Goodwill ............ 225
   Equitable Distribution-Pensions & Retirement Plans . 225
   Equitable Distribution-Stock Options ....... 226
   Equitable Distribution-Valuation .......... 226
   Estate Planning ................................ 226
   Ethics ......................................... 226
   Evidence ...................................... 226
   Foreign Judgments ........................... 227
   Labor Law ..................................... 227
   Legal Clinics ................................ 227
   Marriage ....................................... 227
   Maxims ........................................ 227
   Passports ..................................... 227
   Paternity ..................................... 227
   Practice of Law .............................. 227
   Protection From Abuse ....................... 228
   Separate Property ............................ 228
   Social Security ................................ 228
   Support ........................................ 228
   Support-Education ............................ 228
   Support-Guidelines .......................... 228
   Support-Paternity ............................ 228
   Surrogacy ..................................... 228
   Taxation ...................................... 228
   Women ......................................... 229

6. Military Corner ............................... 229
7. Book Reviews ................................ 229
   A. Author Index ............................... 229
   B. Title Index ................................. 230
   C. Reviewer Index ............................ 230
8. Ethics Corner ................................ 231
9. Technology Corner ........................... 231
   A. Author Index ............................... 231
10. Legislative Update ........................... 231
11. Poetry & Other Miscellaneous Literature 232
   A. Cartoons ................................. 232
   B. Letters to the Editor ...................... 232
   C. Poetry ...................................... 232
   D. Miscellany ................................ 232
12. Section News ................................ 233
13. Sidebar ....................................... 236
14. PBA News .................................... 236
15. Indexes ...................................... 236

(continued on Page 98)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 97)

2011 PREFACE

It has been eleven years since I first published the Index to the Pennsylvania Family Lawyer Volumes 1-18 (1980-1998) and its subsequent three three-year supplements (1999-2001, 2002-2004, 2005-2007) in the Pennsylvania Family Lawyer. This present volume then is an updated version combining all four indexes plus volumes 30 and 31 into one comprehensive index that will be updated annually online.

I wish to thank my friend, David Pollock, Esq., Editor in Chief of the Pennsylvania Family Lawyer for these past 15 years and the multiple colleagues whom I know through the Family Law Section of the Allegheny County Bar Association. In attending their monthly Council meetings, I understand how difficult it is to be a family law practitioner. It is hoped that this work will continue to provide guidance and assistance in finding family law materials necessary for them to conduct their work.

I wish to thank the Family Law Section of the Pennsylvania Bar Association for its financial assistance to compile this Index. I look forward to providing annual updates to the Index and hope all practitioners throughout the state will use this Index satisfactorily.

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
February 6, 2011

[ORIGINAL 2001] PREFACE

Periodicals serve an important service to its readership because they provide current information for the reader. As Jack Rounick, first editor of the Pennsylvania Family Lawyer, stated in the first issue: “Family Law, the stepchild of the Courts, probably represents the fastest changing area of law before us today.” The passage of the Divorce Act of 1980 and its subsequent amendments resulted in major changes in family law, especially in divorce, where for the first time the principle of equitable distribution was introduced to bench and bar of the Commonwealth. Having published the early cases of the Court of Common Pleas of Allegheny County, i.e., Allegheny County Divorce Decisions, I can certainly appreciate Rounick’s above-quoted statement. Now twenty years later, the Pennsylvania Family Lawyer has served the members of the practicing bar as an excellent publication. Providing summaries of new court decisions and analytical comments by the editors (Rounick, Bertin, etc.), articles by leading practitioners, and shorter pieces concerning ongoing legislation and other events, the section has received an important tool to keep abreast of recent developments.

David Pollock, your esteemed Editor, approached me about providing an index the Pennsylvania Family Lawyer. He understood that there was no index of the periodical and that one was needed. As a law librarian I have been working on various bibliographical projects (Bibliography of Pennsylvania Law: Secondary Sources (1993), an Index to Pennsylvania Bar Association Quarterly, in preparation) and thought such a project worthwhile in my attempt to create ongoing bibliographies and resources for the practicing bar and would provide me with additional citations from an important source towards publishing a larger bibliography of Pennsylvania legal periodical literature. David has proved to be an excellent advocate for the Section and has provided great assistance to me in the preparation of this bibliography. He has reviewed the outline of topics, suggested changes in the placement of some notes and articles, though he is not responsible for any errors in the final bibliography.

In compiling this work, I have tried to make this bibliography useful to the readership by providing an author, title, and subject listing for the case notes and articles. Titles of the case notes also have citations to all cases reported and these cases are given with complete citations for all cases rather than the original slip opinions. A table of cases provides the volume and specific page reference to the case cited. I wish to thank Jordana Greenfield, student intern from the University of Pittsburgh Legal Studies Department, for her assistance in checking an early draft of a portion of the bibliography. I have reviewed all citations, but any errors are of course my own fault.

I hope that this bibliography serves the Section well. David has already expressed his approval of the project by asking me to continue updating the Pennsylvania Family Lawyer on an annual basis and, of course, I agreed.

Joel Fishman, B.A., M.A., M.L.S., Ph.D.
Asst. Director for Lawyer Services
Duquesne University Center for Legal Information/
Allegheny County Law Library
Pittsburgh, PA 15219
November 14, 2001

(continued on Page 99)
1. FROM THE CHAIR

Behers, Carol A. . . . . . . 30:145-46, 201-02; 31:1-2, 54-55, 86-87
Blechman, Jay A.. . . . . . . . . . . . . . . . . . 27:49-50, 109-10; 28:1-2
Byrne, Harry M., Jr.. . . . . . . . . . . . . . . . . 25:61-62, 93-94; 26:1-2
Cognetti, Maria P. . . . . . . . . . . . . . . . . . . 26:37-38, 101-2; 27:1-2
Dischell, Mark B. . . . . . . . . . . . . . . . . 23:53-54; 24:1-2, 24:29-31
Doherty, Mary Cushing . . . . . . 21:69-70; 109-110, 22:1-3; 29-31
Goldsmith, Howard M. . . . . . 19:49-50, 73-74; 20:1-2, 33-34
Hark, Ned . . . . . . . . . . . . . . . . . . 29:78-80, 121-22; 30:1-2, 73-74
Howett, John C., Jr. . . . . . . . . . . . . . . . . . . . . . . 18(1):1-2, (2):1-2
Ladov, David. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 29:1-2, 45-47
Ladov, David L., From the Immediate Past President . . 29:80-81
Mahood, James E. . . . . . . . . . . . . 20:53-54, 85-86; 21:1-3, 33-34
Pollock, David S. . . . . . . . . . . . . . . . . . . . . . . . . . . . 23:1-2, 29-32
Williams, Jeffrey M. . . . . . 31:86-87, 153-54; 32:1-2, 65-66, 135
Young, Cheryl L. . . . . . . . . . . . . . . . . . . . . . . . 32:133-34, 185-86

2. EDITOR’S COLUMN

Fred Cohen: A Tribute. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 81-85
Robert I. Whitelaw, 81; Albert Momjian, 82; Mark B. Dischell, 82-83; Mary Cushing Doherty, 83; Joel Bernbaum, 83; Michael E. Fingerman, 84; Jack A. Rounick, 84; Steven S. Hurvitz, 84; Bob Matthews, 84; Michael Shatto, 84-85.

3. CASE DIGESTS


3A. CASE DIGESTS BY AUTHOR


Index to the Pennsylvania Family Lawyer
(continued from Page 98)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 99)


Badali, Christian V. Child Support Where Father was Sperm Donor and Determined to be an Indispensable Party in Mother’s Action to Obtain Child Support from Former Same-Sex Partner. [Jacob v. Shultz-Jacob-Jacob & Frampton, 923 A.2d 473 (Pa. Super. 2007)]. 29:48-49.

Badali, Christian V. Grandmother Custody not Enough in Dependency Hearing Where It is a Sham. [In Re J.C., 5 A.3d 284 (Pa. Super. 2010)]. 32:189-90.


(continued on Page 101)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 100)


Bononi, Michele G. Trial Court had Jurisdiction to Enforce Marital Property Settlement Agreement under Divorce Code Where Agreement had not been Merged or Incorporated into Final Divorce Decree. [Annechino v. Joire, 946 A.2d 121 (Pa. Super. 2008)]. 30:82-83.


(continued on Page 102)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 101)


Burkett, Loreen M. A Disability Pension or District Disability Portion of a Pension is a Nonmarital Asset and not Subject to Equitable Distribution. [Cioffi v. Cioffi, 885 A.2d 45 (Pa. Super. 2005)]. 28:5-7.


Clifford, Daniel J. Earning Capacity vs. Earning History: If a Party has been a Farmer for Ten Years; He is a Farmer. [Dennis v. Whitney, 844 A.2d 1267 (Pa. Super. 2004)]. 26:44-45.


(continued on Page 103)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 102)


Cusick, Charles S. Jr. Neither IVF, Nor a Preconception Oral Agreement Nor the Mother’s Intentional Deception Bars a Sperm Donor’s Adjudication as the Child’s Legal Father Obligated to Pay Child Support. [Ferguson v. McKiernan, 855 A.2d 121 (Pa Super. 2004)]. 26:109-10.


(continued on Page 104)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 103)


Grunfeld, David I. ERISA Trumps State Law. [Egelhoff v. Egelhoff, (continued on Page 105)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 104)


Grunfeld, David I. Failure to Inform Employer RE: Divorce Subjects Employee to Liability for Post-Divorce Health Benefits Paid When No Health Insurance Premiums Paid. [Trustees of the AFTRA Health Fund v. Biondi, 303 F.2d 765 (7th Cir. 2002)]. 24:106.


Krentzman, Cheryl B. Superior Court Reaffirms Trial Court’s Discretion to Apply Gruber to Intrastate Relocations, Reject the Recommendation of a Custody Evaluator, and Increase the Custodial Time of the Non-Petitioning Parent. [Masser v. Miller,
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 105)


Laffey-Ferry, Marion. When Local Court’s Reasoning is not Evident from Record Failure to File Rule 1925(a) Opinion Caused Reversal and Remand. [Bold v. Bold, 939 A.2d 892 (Pa. Super. 2007)]. 30:3-5.


Mahood, James E. Horner vs Horner, A Subsequent Case Note. 20:43-44.


(continued on Page 107)


Miles, Patricia A. Sole Proprietorship can have Enterprise Goodwill Under Facts of Some Cases (But not This One). [Gaydos v. Gaydos, 693 A.2d 1368 (1997)]. 19:51-54.


(continued on Page 108)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 107)

Mirabile, Carolyn R. Best Interest Standard Supports Trial Court’s Holding That a Prior Criminal Record Does not Bar Someone as a Kinship Provider. [In Re: J.P.; Appeal of Department of Human Services, 998 A.2d 984 (Pa. Super. 2010)]. 32:144-45.


Paul, Sophie P. In Re: G.C. Focuses Attention on Standing Issues. (continued on Page 109)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 108)


(continued on Page 110)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 109)


Shemtob, Albert. U.S. Court of Appeals Upheld Tax Court Ruling That Unallocated Pendente Lite Support Award was Properly Deductible as Alimony to Payor and Income to Payee. [Patricia Kean v. Commissioner of Internal Revenue; Robert W. Kean v. Commissioner of Internal Revenue, 407 F.3d 186 (3rd Cir. 2005)]. 27:117-18.


(continued on Page 111)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 110)


Swain, Julia. Husband's Proceeds from a Workers' Compensation Compromise and Release Agreement Approved Post Separation (for a Pre-Separation Injury) were not Marital Property Subject to Equitable Distribution. [Pudlish v. Pudlish, 796 A.2d 346 (Pa. Super. 2002)]. 36-38.


(continued on Page 112)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 111)

3 B. CASE DIGESTS BY TITLE

19-Year-Old Adult Child With Medical Conditions not Considered


An Accurate Inventory Prior to Trial may not Be. [Anderson v. Anderson, 822 A.2d 824 (Pa Super 2003)]. Lori K. Shemtob. 25-66-67


Alimony Pendente Lite and Support–Court Rules Party may Maintain Actions for Both. [Remick v. Remick, 310 Pa. Super. 23,

(continued on Page 113)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 112)


Appellant’s Failure to Comply With Trial Court’s Order to Furnish a 1925(b) Statement of Matters Complained of on Appeal in a Timely Manner While Also Violating the New Procedural Rules Outlined in 1925(a)(2)(i) Constitutes a Waiver of Objections to the Lower Court’s Order. [J.P. v. S.P., 991 A.2d 904 (Pa. Super. 2010)]. Liane Davis Anderson. 32:80-82.


An Attorney Held in Contempt and Directed to Return Appointment Fees Prevails on Appeal. Melaine Shannon Rothey. 31:8-10.


Award of Preliminary Counsel Fees and Expenses is Interlocutory.

(continued on Page 114)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 113)


Best Interest Standard Supports Trial Court’s Holding That a Prior Criminal Record Does not Bar Someone as a Kinship Provider. [In Re: J.P.; Appeal of Department of Human Services, 998 A.2d 984 (Pa. Super. 2010)]. Carolyn R. Mirabile. 32:144-45.


(continued on Page 115)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER


Child Support Award Based on Earning Capacity Held to be Applicable only in Cases Where There is a Pre-Existing Court Order. [Klahold v. Kroh, 437 Pa. Super. 150, 649 A.2d 701 (1994)]. 17(1):7-8.


(continued on Page 116)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 115)


Child Support Where Father was Sperm Donor and Determined to be an Indispensable Party in Mother’s Action to Obtain Child Support from Former Same-Sex Partner. [Jacob v. Shultz-Jacob-Jacob & Frampton, 923 A.2d 473 (Pa. Super. 2007)]. Christian V. Badali. 29:48-49.


Constructive Trust may Attach to Non-Disclosed Marital Assets

(continued on Page 117)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 116)


(continued on Page 118)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 117)


(continued on Page 119)
Custody Agreements will not Only be Upheld Where All of the Terms are Known by the Litigants. [Yates v. Yates, 936 A.2d 1191 (Pa. Super 2007)]. Michele G. Bononi. 30:9-10.


(continued on Page 120)


Earning Capacity vs. Earning History: If a Party has been a Farmer for Ten Years; He is a Farmer. [Dennis v. Whitney, 844 A.2d 1267 (Pa. Super. 2004)]. Daniel J. Clifford. 26:44-45.


Effect of 401.1(b) on Pre-1988 Property Settlement Agreements.

(continued on Page 121)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 120)

12(4):4-5.


(continued on Page 122)


(continued on Page 123)


(continued on Page 124)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 123)


Grandmother Custody not Enough in Dependency Hearing Wheere It is a Sham. [In Re J.C., 5 A.3d 284 (Pa. Super. 2010)]. Christian V. Badali. 32:189-90.


Grandparents have Automatic Standing to Bring Custody Actions. (continued on Page 125)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 124)


(continued on Page 126)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 125)


Husband’s Proceeds from a Workers’ Compensation Compromise and Release Agreement Approved Post Separation (for a Pre-Separation Injury) were not Marital Property Subject to Equitable Distribution. [Pudlish v. Pudlish, 796 A.2d 346 (Pa. Super. 2002)]. Julia Swain. 24:36-38.


Increase in Value of Medical Degree Held to be Marital Property, as well as Future Earnings Made Possible by Degree, Due to Contributions of Working Spouse. Also a Factor for Alimony. [Millili v. Millili, 24 D.&C.3d 479 (Montg. Co. 1982)]. 3:270-73.


(continued on Page 127)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 126)


(continued on Page 128)


(continued on Page 129)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 128)


Neither IVF, Nor a Preconception Oral Agreement Nor the Mother’s Intentional Deception Bars a Sperm Donor’s Adjudication as the Child’s Legal Father Obligated to Pay Child Support. [Ferguson v. McKiernan, 855 A.2d 121 (Pa Super. 2004)]. Charles S. Cusick, Jr. 26:109-10.


No “Dueling Experts” Needed to Ascertain Plain Meaning of

(continued on Page 130)


INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 130)


INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 131)


Pennsylvania Supreme Court Examines Due Process Rights of

(continued on Page 133)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER

(continued from Page 132)


Police Department Pension is not Subject to Attachment Pursuant to Equitable Distribution Order. [Young v. Young, 320 Pa. Super. 269, 467 A.2d 33 (1983)]. 4:481-83.


Post-Divorce Increase in Pension Subject to Division. [Smith v. Boulding, 938 A.2d 276 (Pa. 2007)]. Catherine McFadden. 30:76-79.


(continued on Page 134)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 133)


A Primary Custodial Parent may be Required to Pay Child Support. [Colonna v. Colonna, 853 A.2d 359 (Pa. 2004)]. Gerald L. Shoemaker, Jr. 26:47-49


Professionals’ Business Interests and Equitable Distribution. [Buckl

(continued on Page 135)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 134)


(continued on Page 136)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 135)


Review by Pennsylvania Supreme Court of Equitable Distribution Order. [Cooper v. Cooper, 8 W.D. 1992 (March 11, 1994)]. 15(2):2-

(continued on Page 137)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 136)

3.


(continued on Page 138)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 137)


(continued on Page 139)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 138)


(continued on Page 140)


Superior Court Finds Tax Refund Retains the Character of the Payment from Which It was Withheld. [Cerny v. Cerny, 440 Pa. Super. 550, 656 A.2d 507 (1995)]. 17(3):5.


Superior Court Reverses Trial Court’s Inclusion of Retained Earnings in Computing Disposable Income for Support. [Fennell v.


Tenancy by the Entireties is Subject to a Creditor’s/ Mother’s

(continued on Page 143)

INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 141)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 142)


Transfer of Primary Physical Custody as a Sanction for Contempt of

(continued on Page 144)


Trial Court had Jurisdiction to Enforce Marital Property Settlement Agreement under Divorce Code Where Agreement had not been Merged or Incorporated into Final Divorce Decree. [Anchechino v. Joire, 946 A.2d 121 (Pa. Super. 2008)]. Michele G. Bononi. 30:82-83.


Trial Court Must Appoint a Qualified Professional to Provide Counselling to Parent Who has been Convicted of Certain Crimes and Must Hear from That Professional at the Time of Trial. [Ramer v. Ramer, 914 A.2d 894 (Pa. Super. 2006)]. Gerald L. Shoemaker, Jr. 29:20-21.


U.S. Court of Appeals Upheld Tax Court Ruling That Unallocated Pendente Lite Support Award was Properly Deductible as Alimony (continued on Page 145)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 144)

to Payor and Income to Payee. [Patricia Kean v. Commissioner of Internal Revenue; Robert W. Kean v. Commissioner of Internal Revenue, 407 F.3d 186 (3rd Cir. 2005)]. Albert Shemtob. 27:117-18.


(continued on Page 146)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 145)


When Local Court’s Reasoning Is not Evident from Record Failure to File Rule 1925(a) Opinion Caused Reversal and Remand. [Bold v. Bold, 939 A.2d 892 (Pa. Super. 2007)]. Marion Laffey-Ferry. 30:3-5.


Where No Petition to Modify was Filed, the Trial Court Dismissal of the PFA Order was Improper. [Stamus v. Dutcavich, 938 A.2d 1098 (Pa. Super. 2007)]. John P. Attiani. 30:84-86.


3C. CASE DIGESTS BY SUBJECT

ABUSE


ADOPTION


Commonwealth Court Upholds Governmental Immunity Defense in Case Against CYS for Misrepresentation of Adopted Child’s (continued on Page 147)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 146)


Court Sets Forth Charges Permitted as Part of Adoption Proceedings. [In Re: Baby Girl D., 512 Pa. 449, 517 A.2d 925 (1986)]. 8:946-950


(continued on Page 148)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 147)


ANNULMENT


ANTENUPTIAL/PRENUPTIAL/
POSTNUPTIAL AGREEMENTS


Earning Capacity vs. Earning History: If a Party has been a Farmer for Ten Years; He is a Farmer. [Dennis v. Whitney, 844 A.2d 1267 (Pa. Super. 2004)]. Daniel J. Clifford. 26:44-45.


APPELLATE PROCEDURE

Appellant's Failure to Comply With Trial Court's Order to Furnish a 1925(b) Statement of Matters Complained of on Appeal in a Timely Manner While Also Violating the New Procedural Rules Outlined in 1925(a)(2)(i) Constitutes a Waiver of Objections to the Lower Court’s Order. [J.P. v. S.P., 991 A.2d 904 (Pa. Super. 2010)].

(continued on Page 149)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 148)

Liane Davis Anderson. 32:80-82.


When Local Court’s Reasoning Is not Evident from Record Failure to File Rule 1925(a) Opinion Caused Reversal and Remand. [Bold v. Bold, 939 A.2d 892 (Pa. Super. 2007)]. Marion Laffey-Ferry. 30:3-5.

ATTORNEYS FEES


BANKRUPTCY


Courts Have Equitable Power to Appoint Trustee in Receivership.


BIGAMY


COMMON LAW MARRIAGE


CONTEMPT

CONTROLLED MATERIAL

INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 149)


COSTS


CRIMINAL LAW


CUSTODY


Allocation of APL and Child Support–Split Custody–Complex

(continued on Page 151)


Custody Agreements will not Only be Upheld Where All of the Terms are Known by the Litigants. [Yates v. Yates, 936 A.2d 1191 (Pa. Super. 2007)]. Michele G. Bononi. 30:9-10.


Forum Non Conveniens Analyzed in Adoption/Custody Proceedings. [In Re: Adoption of K.S., 399 Pa. Super. 29, 581 A.2d (continued on Page 152)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 151)


Protection of Mental Health Records as it Applies to a Custody Case (continued on Page 153)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 152)


(continued on Page 154)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 153)


Trial Court Must Appoint a Qualified Professional to Provide Counselling to Parent Who has been Convicted of Certain Crimes and Must Hear from That Professional at the Time of Trial. [Ramer v. Ramer, 914 A.2d 894 (Pa. Super. 2006)]. Gerald L. Shoemaker, Jr. 29:20-21.


CUSTODY–RELOCATION


(continued on Page 155)


CUSTODY–UCCJA


DEPENDENCY


(continued on Page 156)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 155)

DISCOVERY


DIVORCE


(continued on Page 157)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 156)


DIVORCE–ACTIONS IN MORE THAN ONE COUNTY


DIVORCE–ALIMONY


Garnish Gross, not Net, Wages for Alimony Arrearages, Superior

(continued on Page 158)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 157)


DIVORCE–ALIMONY PENDENTE LITE


Marital Misconduct not a Bar to a Bar to Alimony Pendente Lite.

(continued on Page 159)
DIVORCE–APPLICATION TO PROCEED


DIVORCE–BANKRUPTCY ACTIONS


DIVORCE–BIFURCATION


DIVORCE–COHABITATION

18.


DIVORCE–CONSTITUTIONALITY


DIVORCE–DEATH OF PARTY


DIVORCE–DOMICILE


DIVORCE–FOREIGN DECREE


DIVORCE–GROUNDS


Defendants are not Required to Execute §201(c) Affidavit of Consents Against Will. [Hulek v. Hulek, 6 A.C.D.D. 294 (1984)]. 6:699.

Given a Conflict Between a Fault and No-Fault Ground, No-Fault

(continued on Page 161)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 160)


DIVORCE–INJUNCTIVE RELIEF


DIVORCE–MARITAL PROPERTY


Increase in Value of Medical Degree Held to be Marital Property, as Well as Future Earnings Made Possible by Degree, Due to Contributions of Working Spouse. Also a Factor for Alimony. [Millili v. Millili, 24 D.&C.3d 479 (Montg. Co. 1982)]. 3:270-73.


Post-Separation Increase in Value of Professional Practice Qualifies (continued on Page 162)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 161)


Superior Court Finds Tax Refund Retains the Character of the Payment from Which it was Withheld. [Cerny v. Cerny, 440 Pa. Super. 550, 656 A.2d 507 (1995)]. 17(3):5.


DIVORCE–PENDING ACTIONS


Recent Cases Concerning the Application of the New Divorce Code (continued on Page 163)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 162)


DIVORCE–POST-SEPARATION


DIVORCE–PROCEDURE


DIVORCE–RELOCATION


DIVORCE–RESIDENCE


DIVORCE–SEPARATE AND APART


DIVORCE–TAXATION


DIVORCE–THIRD PARTIES


EMANCIPATED MINORS


EQUITABLE DISTRIBUTION


Court’s Equitable Distribution of Property is not that Equitable. [Rudick v. Rudick, Lackawanna Co., 80 Cw 4753 (1981)]. 2:207-10.

INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 164)


Equitable Distribution (W/80%, H/20%)–An Award Made by the Court Rehabilitative Alimony, Counsel Fees (75%). [Reese v. Reese, (Montg. Co. 1981)]. 2:222-23.


(continued on Page 166)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 165)


Husband’s Proceeds from a Workers’ Compensation Compromise and Release Agreement Approved Post Separation (for a Pre-Separation Injury) were not Marital Property Subject to Equitable Distribution. [Pudlish v. Pudlish, 796 A.2d 346 (Pa. Super. 2002)]. Julia Swain. 24:36-38.


EQUITABLE DISTRIBUTION-BUSINESS


(continued on Page 167)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 166)


EQUITABLE DISTRIBUTION–GOODWILL


EQUITABLE DISTRIBUTION–INSURANCE

Change in Beneficiary did not Violate Order Enjoining Husband from Disposing of Marital Property. [Lindsey v. Lindsey, 342 Pa. Super. 72, 492 A.2d 396 (1985)]. 7:826-828


EQUITABLE DISTRIBUTION–PENSIONS AND RETIREMENT PLANS

(continued on Page 168)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 167)


A Disability Pension or District Disability Portion of a Pension is a Nonmarital Asset and not Subject to Equitable Distribution. [Cioffi v. Cioffi, 885 A.2d 45 (Pa. Super. 2005)]. Loreen M. Burkett. 28:5-7.


(continued on Page 169)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 168)


Police Department Pension is not Subject to Attachment Pursuant to Equitable Distribution Order. [Young v. Young, 320 Pa. Super. 269, 467 A.2d 33 (1983)]. 4:481-83.

Post-Divorce Increase in Pension Subject to Division. [Smith v. Boulding, 938 A.2d 276 (Pa. 2007)]. Catherine McFadden. 30:76-79.


**EQUITABLE DISTRIBUTION—STOCK OPTIONS**


**EQUITABLE DISTRIBUTION—WAGE ATTACHMENTS**


(continued on Page 170)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 169)

EVIDENCE


GRANDPARENTS


GUARDIANSHIP


INCOMPETENCY


INEFFECTIVE COUNSEL


LEGAL MALPRACTICE


MAILBOX RULE


(continued on Page 171)
NAME CHANGES


PALIMONY


PARTITION


PATERNITY


(continued on Page 172)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 171)


PROTECTION FROM ABUSE ACT


(continued on Page 173)


Where No Petition to Modify was Filed, the Trial Court Dismissal of the PFA Order was Improper. [Stamus v. Dutovich, 938 A.2d 1098 (Pa. Super. 2007)]. John P. Attiani. 30:84-86.

REPLEVIN


RES JUDICATA


SANCTION


SEPARATION AGREEMENTS


SETTLEMENT AGREEMENTS


Trial Court had Jurisdiction to Enforce Marital Property Settlement Agreement under Divorce Code Where Agreement had not been Merged or Incorporated into Final Divorce Decree. [Annechino v. Joire, 946 A.2d 121 (Pa. Super. 2008)]. Michele G. Bononi. 30:82-83.

SLAYER’S ACT


SOCIAL SECURITY


SUPPORT

Administrative Error That Resulted in Premature Termination of a

(continued on Page 174)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 173)


Child Support Award Based on Earning Capacity Held to be Applicable only in Cases Where There is a Pre-Existing Court Order. [Klahold v. Kroh, 437 Pa. Super. 150, 649 A.2d 701 (1994)]. 17(1):7-8.


Child Support Where Father was Sperm Donor and Determined to be an Indispensable Party in Mother’s Action to Obtain Child Support from Former Same-Sex Partner. [Jacob v. Shultz-Jacob-Jacob & Frampton, 923 A.2d 473 (Pa. Super. 2007)]. Christian V. Badali. 29:48-49.


Direct Payment to Public Assistance Recipient of Child Support

(continued on Page 175)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 174)


Neither IVF, Nor a Preconception Oral Agreement Nor the Mother’s

(continued on Page 176)


INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 176)


Superior Court Holds that South Carolina Court has Jurisdiction Over Support Action Under the Provision of Uresa. [Bratton v. Jury, (continued on Page 178)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 177)


SUPPORT–EDUCATION


(continued on Page 180)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 179)


SUPPORT–GUIDELINES


Melzer not Applicable to High-Income Spousal Support Cases, says

(continued on Page 181)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 180)


SUPPORT–INCOME


SUPPORT–JURISDICTION


SUPPORT–STOCK OPTIONS


SUPPORT–SPOUSAL


SUPPORT–TAXATION

(continued on Page 182)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 181)


TAXATION


U.S. Court of Appeals Upheld Tax Court Ruling That Unallocated Pendente Lite Support Award was Properly Deductible as Alimony to Payor and Income to Payee. [Patricia Kean v. Commissioner of Internal Revenue; Robert W. Kean v. Commissioner of Internal Revenue, 407 F.3d 186 (3rd Cir. 2005)]. Albert Shemtob. 27:117-18.

TESTIMONIAL PRIVILEGES

VISITATION


(continued on Page 183)
## 4. Table of Cases Reported

<table>
<thead>
<tr>
<th>Case Description</th>
<th>Citation</th>
<th>Page(s)</th>
</tr>
</thead>
</table>

(continued on Page 184)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 183)

12(6):19-11


Bordner v. Bordner, 14 D.&C.3d 634 (Lebanon Co. 1980). 1:84


(continued on Page 185)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 184)


(continued on Page 186)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 185)


(continued on Page 187)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 186)


(continued on Page 188)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 187)

3:324-27
Ferguson v. McKiernan, 940 A.2d 1236 (Pa. 2007). 30:10-11
(continued on Page 189)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 188)

Goninen, Jr. v. Commissioner, 47 TCM 49,698 (1983). 5:528

(continued on Page 190)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 189)

10:121


15(1):13-14

17(5):4


13(1):6-7


12(4):6

15(2):10-11

14(4):14-15

13(6):3-4


3:282-85

Havice v. Havice, 15 D.&C.3d 450 (Snyder Co. 1980). 1:51-54

5:652-53

15(1):15-16

14(4):2


14(3):10-11


Hockenberry v. Thompson, 428 Pa. Super. 403, 631 A.2d 204


7:838


18(3):5-6

12(3):6-7

18(2):7-9


(continued on Page 191)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 190)


In Re: Estate of Bartolovich, 420 Pa. Super. 419, 616 A.2d 1043

(continued on Page 192)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 191)

  6:724-28
In Re: I.L.P. and I.L.P., Joint Petition on Assisted Conception Birth
  Registration; Appeal of: C.-H.L. and T.J.P., G.S. and B.S., 965 A.2d.
In Re: In the Interest of M.B., K.B., J.B., L.B., 388 Pa. Super. 381,
In Re: J.P.; Appeal of Department of Human Services, 998 A.2d 984
In Re: Jeffrey S. v. Kathleen S., 427 Pa. Super. 79, 628 A.2d 439
  1:91-92
In Re: M.A.K. and R.L.K., Appeal of Allegheny County Institution
In Re: M.L.H., Appeal of M.H. and J.H., 490 Pa. 54, 415 A. 2d 29
  (1980). 1:93
In Re: P.A.B.; M.E.B.; M.A.B., , 391 Pa. Super. 79, 570 A.2d 522
  10(4):111
In Re Voluntary Termination of Parental Rights to MLO, Appeal of
In the Interest of C.L., P.G., Appeal of Pierson, 436 Pa. Super. 630,
In the Interest of Garthwaite, 422 Pa. Super. 280, 619 A.2d 356
In the Interest of R.M.G, a Minor; Appeal of : York County
  32:193-94
In the Interests of S.S.; Appeal of: Steven S. and Lori S., 438 Pa.
In the Interest of Tina K. v. Montgomery County Office of Children
  11:178
In the Matter of Fager v. Fatta, 395 Pa. Super. 152, 576 A.2d 1089
In the Matter of Green v. McCoy, 437 Pa. Super. 606, 577 A.2d 1341
  11:146-47
(continued on Page 193)
### INDEX TO THE PENNSYLVANIA FAMILY LAWYER
*(continued from Page 192)*

(1980). 1:54-57

<table>
<thead>
<tr>
<th>Case</th>
<th>Volume</th>
<th>Pages</th>
</tr>
</thead>
</table>

---


*(continued on Page 194)*
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 193)


(continued on Page 195)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 194)


11:163-164


(continued on Page 196)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 195)


(continued on Page 197)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 196)


Murphy v. Murphy, 988 A.2d 703 (Pa. Super. 2010). 32:7071


(continued on Page 198)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 197)


4:444-47


6:777-79


16(5):8-10


14(5):2-3

Petition for Involuntary Termination of Parental Rights, Appeal of

11:143-44

Philadelphia County Department of Human Services, Division of


16(5):5


5:579-81

11:196-97

R v. Com., Department of Public Welfare and Montgomery County
15(3):11-17


10:90-91


(continued on Page 199)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 198)


(continued on Page 200)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 199)


(continued on Page 201)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 200)


Toll v. Toll, No. 73-8806. 2:163


(continued on Page 202)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 201)

199

(continued on Page 203)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 202)


5. ARTICLES AND COMMENTS


5A. ARTICLES AND COMMENTS BY AUTHOR

* In listing multiple-authored articles, I have identified the first author with an * for a proper bibliographical citation.

Adams, James R. Soldiers’ and Sailors’ Civil Relief Act–A Followup. 26:124.


Ade, Mary V. The Taxing Side of Divorce: Taking Advantage of Tax Saving Measures in Divorce. 32:35-38.


Altschuler, Mark K. Age Patterns in Divorce. 28:114-118.

Altschuler, Mark K.* and Jeffrey M. Williams. The Demarco Case and Delayed Retirement. 24:51-52.

Altschuler, Mark K.* and Toby Dickman. Early Retirement Window Enhancements and Divorce. 20:44-45.


Altschuler, Mark K. How to Determine a QDRO Award Under Act 175. 31:62-64.


Altschuler, Mark K. Past Payments. 30:12-14.


Ashton, Mark R. A Form to Beat a Headache: Solving the Joint Escrow Problem. 25:41-42.


Ashton, Mark R. Settlement Strategies: When Due Diligence can be Dangerous. 22:43-44.


Ashton, Mark R. Understanding College Funding: What the Divorce Practitioner Needs to Know. 27:122-23.


Baer, Max. Custody Wars–The Creation of a New Weapon of Mass

(continued on Page 204)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 203)

Destruction. 21:121-125.


Barenbaum, Lester. Executive Stock Options Valuation Issues. 20:16-17.


Bennett, Elizabeth L. The Discovery Rule and Child Abuse. 12(1):12.

Bennett, Elizabeth L. Divorce, Older Women and Alimony. 16(5):15-17.


Berbaum, Joel B. Bits and Bytes. 19:82.

Bertin, Emanuel A. Editor’s Rebuttal to Dr. Crews’ “In the Best Interest of the Child: A Legal Term of Art.” 10:70.


Bloam, Brittany M. In Pennsylvania, Apparently Divorce Agreements are Sufficient to Waive ERISA Pension Plan Benefits. 31:110-12.

Brandt, Jennifer A. Misuse of Unlawfully Obtained Documents. 32:150-51.


Bronstein, Peter E* and David A. Typermass. Business Valuation Reports—The Importance of Proactive Lawyering. 32:99-104.


Brown, Neil S. Not All Assets are Treated Equally. 26:51-52.


Brown, Neil S. and Joan K. Crain*. Special Considerations for Retirement Plans During Divorce. 29:56-57


Bunde, Robb D. Relocation Orders, Like any Interim Custody Order, are not Subject to Immediate Appeal. 20:100-101.


Byrne, Harry M., Jr. Delaware County Opposes PACSES Implement. 20:73-74.


Casciato, Daniel. Collaborative Law. 29:141-42.

Celentino, Christopher. Portions of the 2005 Bankruptcy Reform

(continued on Page 205)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 204)

Legislation of Interest to Family Law Practitioners. 30:106-7.


Crews, Wanda J. In the Best Interest of the Child: A Legal Term of Art. 10:68-70.


Davis, Russ* and Donald Wochna. Computer as Witness—Should You Use It in Your Case? 30:26-29.


DeGrazia, Donald J. How to Unwind and Otherwise Address Complex Estate Planning and Asset Protection Vehicles in Divorce. 30:117-22.

Dickman, Toby and Mark Altschuler.* Early Retirement Window Enhancements and Divorce. 20:44-45.


Dodds, Deborah D. and Peggy Lynn Ferber.* Estate Planning and the Family Lawyer. 13(2):9-11.


Doherty, Mary Cushing* and Jeannine Turgeon. Partnership Means Progress for Family Court Reform. 25:43-44.


Edelson, Gary. Qualified Domestic Relations Orders—When can the Alternative Payee Get Control of Her Money. 9:9.


Elovitz, Shelley W. The Interplay of Long-Term Disability and Social Security Disability Insurances. 32:98-99.

Ethics Opinion 95-134 Temporarily Withdrawn. 18(2):22.


(continued on Page 206)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 205)

Feder, Robert D. Interest–An Unused Remedy. 11:202-203.

Ferber, Peggy Lynn* and Deborah D. Dodds. Estate Planning and the Family Lawyer. 13(2):9-11.

Fischer, Ellen S. A Helpful Solution for Supervised Visitation and Difficult Custody Exchanges. 29:27.

Fischer, Ellen S. Woman Convicted of Violating Own Protection Order. 25:109-10.


Forbes, Jennifer H. and David N. Wecht,* Haste can Make Waste: Speedy Trials and Custody. 32:83-85.

Forbes, Jennifer H. and David N. Wecht,* Parenting Coordinators Revisited. 32:146-47.


Frumkes, Melvyn B. A Divorce’s Retroactive Modification will not Change Taxability of Payments. 29:26.


Galzerano, Mark R. The Roth IRA Conversion. 29:105-6.


Garrigan-Nass, Michele and David L. Ladov,* Another Piece of the Marital Pie: Stock Options. 9:52-53.


Glasser, Daniel H. Response to the Response. 20:69.

Glasser, Daniel H. Solomonic Resolution of Custody Case--Israeli Style. 20:97-98.


Grinberg, Edwin I. Permission Slip. 29:103-5.

Gross, Dodi Walker and Miller, Patricia G.* Stinner v. Stinner: Who Decides When a Court Order Qualifies as a Qualified Domestic Relations Order? 10:82-84.

Gruener, Harry J. Close the Door on Open Adoptions. 18(3):18-19.

Gruener, Harry J. Discovery can be Taxing. 18(2):22.


Hitzemann, Diane D. Collaborative Practice--A Choice for Families. 29:24-25.


Hofstein, David N. Custody Litigation—The Role of the Child. 20:10-14.


Hofstein, David N. Stipulation for Custody Evaluation. 21:129-130.


Howett, John C. Response to Daniel H. Glasser, “Advances Against (continued on Page 207)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 206)


Jones, Daniel* and Tracy Stewart. What Does the Healthcare Reform Bill Mean for Divorcing Couples? 32:163-64.


Kindler, Alex M.* Greg Voss, and Reid B. Roberts. It is Time to Revisit Hovis. 21:12-13.


Klein, Howard B. What to do When the IRS Agents Come Calling. 20:48-49.


Ladov, David L.* & Kenneth Spiegel. Parents have a Constitutional Right to Inculcate Their Religious Beliefs upon Their Children. 11:167-168.


Levine, Dana A.* and Brian C. Vertz. Analysis of a Support Case. 32:29-34.


Levitske, John and Nina Vitek.* Stock Options and Post-Retirement Maintenance Payments According to the Wisconsin Court of Appeals. 32:106-7.


Lovewell, Matthew B. Divorce, Refinance, & Title: Acquiring New Income. 32:104-5.

Luccino, F. J. Uptown Legal Clinic. 27:16-17.


Mahood, James E. Do Common Pleas Courts have Constitutional Authority to Prescribe by General Order or Local Rule Seminars or Counseling for Parents Involved in Divorce? 20:70-73.

Mahood, James E. Early Retirement Incentives are not Deferred Compensation. 20:18-20.


Mahood, James E. Relocation Orders are Immediately Appealable. 20:99-100.

Mahood, James E. Some Reflections on Social Security Offsets:

(continued on Page 208)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER

(continued from Page 207)

Cornbleth to McClain to Cohenour. 19:58-60.


McCullough, Kevin C. and David N. Hofstein.* Contingent Fees in Domestic Relations Matters. 9:37-39.

McCurdy, Dennis W. Terminating the Parental Rights of the Incarcerated Parent: Clarity and Guidance from the Superior Court. 27:13-15.


McFadden, Catherine M. ALI Principles Suggest a New Approach to Separate Property. 18(3):12-16.

McFadden, Catherine M. Colonna Considered. 26:49-50.

McFadden, Catherine M. Don’t Let Your Client Shoot Himself in the Foot. 12(5):9-11.


McFadden, Catherine M. How Costs of Children are Calculated. 26:19-23.


McFadden, Catherine. Pension Valuation Issues. 11:189-91.

McFadden, Catherine M. Retirement Age Arguments. 12(3):11-14.

McFadden, Catherine M. Speculative or Not, Indefinite Tax Ramifications Must be Considered. 32:196-200.

McFadden, Catherine M. Standard of Practice for Pension Valuation Adoption. 22:44-46.


McFadden, Catherine M. There is No Such Thing as an Accrued Benefit (Or Why Coverture Fractions Make Sense). 12(3):14-16.

McFadden, Catherine M. U.S. Supreme Court Identifies Pension Issues: Kennedy & Progeny Post-Decision Guidance. 31:107-10.

McFadden, Catherine M. Valuing and Distributing Increases and Decreases. 15(2):13-15.


Mroz, Kelly A. Paternity by Estoppel and Fraud. 25:81-82.


Miller, Patricia G. Holland v. Holland: An Assortment of Post-

(continued on Page 209)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 208)


Miller, Patricia G. Karkaria: A New and Uncertain Test for Pennsylvania Antenuptial Agreements. 9:29-30.

Miller, Patricia G. McFadden v. McFadden: A Double Dip at the Pension Well. 10:110-111.


Miller, Patricia G. Simeone v. Simeone: A Rejection of the Karkaria Test for Prenuptial Agreements. 10:71-72.


Miller, Patricia G. Yes, Virginia, There is Such a Thing as an Accrued Benefit. 12(4):14-15.

Molinaro, Nicole. Health Resources for Uninsured Women. 27:15-16.


Mroz, Kelly A. Paternity by Estoppel and Fraud. 25: 81-82.


Mulroy, Thomas M. Elian Go Home. 22:11-12.


Mulroy, Thomas M. Pennsylvania Fashions an Approach to Surrogacy. 9:15-16.


Mulroy, Thomas M. What is Wrong With the Proposed Support Guidelines. 10:70-71.


Mulzet, C. Kurt. Drake v. Drake: Workers’ Compensation Commutation Award Accrued During Marriage can be Marital Property Subject to Equitable Distribution. 21:42-45.

Munafo, Rachel. Supreme Court Decision Limits Sua Sponte Powers of Court. 10:95-96.


PACSES Deficiency Summary: Executive Summary. 20:74-76.


(continued on Page 210)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 209)

PBA Fair a Roaring Success 22:42.
PBA Family Section Nominating Committee Report 19:43.
Pearson, Katherine C A Midnight Tale of Filial Support 29:146-47.
Philadelphia Family Court–Host to Eastern DRAP 20:69.
Rains, Robert E. Senate Bill 979—Expanding the “Jen & Dave” Act 24:40-42.
Rains, Robert E. To Rhyme or not to Rhyme: An Appraisal 26:53-57.
Rounick, Jack. The New Divorce Reform Law of Pennsylvania 1:34-44.
Rubin, Frederic D. Response to Wilder’s Mediation Piece 11:130.
Serine, Charles K. Public Pension Funds and Approved Domestic Relations Orders 21:45-65.
Shah, Barbara J. Hayward v. OPM—Qualifying Orders on Civil Service Retirement System Pensions 31:170-72.

(continued on Page 211)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 210)

Simpson, Craig E. Sex With Clients. 31:57-59.

Sipos, Lawrence J. Valuation of Survivor Benefit for Purposes of Equitable Distribution—Guidance for Practitioners in the Post-Palladino Era. 21:15-16.

Snyder, Bradley Z. Drafting a DRO for SERS and PSERs. 14(3):14-15.

Snyder, Marvin. Comments on Pension Valuation Procedures in Divorce in Accord with Pennsylvania Superior Court Opinion in Agatone. 10:84.


Snyder, Marvin. Pension Valuations With Inflation and Taxation. 9:40-41.

Snyder, Marvin. Superior Court Finds a New Method to Allocate Marital Property in a Defined Contribution Plan. 17(1):15-16.

Snyder, Marvin. Two Recent Superior Court Cases on Pensions in Divorce. 11:188.

Snyder, Marvin. (What) Pension is Marital Property. 12(5):8.

Spiegel, Kenneth and David L. Ladov.* Parents have a Constitutional Right to Inculcate Their Religious Beliefs upon Their Children. 11:167-168.


Stewart, Tracy* and Daniel Jones. What Does the Healthcare Reform Bill Mean for Divorcing Couples? 32:163-64.

Sullivan, Mark E. The New Service Members Civil Relief Act. 27:92-94.

Supreme Court Authorizes Discovery. [R.C.P. 1930.5(b)]. 19:42.


Troyan, William M. Curriculum Vitae. 6:680-682.

Troyan, William M. Drafting and Qualifying a Court Order in a Domestic Relations Case. 7:896-900.


Turgeon, Jeannine and Mary Cushing Doherty*. Partnership Means Progress for Family Court Reform. 25:43-44.

Turgeon, Jeannine. PFA Court—A Problem Solving Court. 23:69-74.


Tyermass, David A. and Peter E. Bronstein.* Business Valuation Reports—The Importance of Proactive Lawyering. 32:99-104.

Update on Pa Supreme Court Support Guidelines. 20:98.


Vertz, Brian C. and Dana A. Levine.* Analysis of a Support Case. 32:29-34.


Vertz. Brian C. Eight Landmines to Avoid in Divorce Litigation. 28:119-120.

(continued on Page 212)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 211)

Vertz, Brian C. The Homemaker Contribution. 31:167.


Vetrano, Kathleen B.* and Sarinia A. Michaelson. New QDRO Costs to be Factored in Divorce Practice Pointer. 27:12-13.


Viola, Michael L. At Your Service. 31:29-31.


Vitek, Nina* and John Levitske. Stock Options and Post-Retirement Maintenance Payments According to the Wisconsin Court of Appeals. 32:106-7.


Voss, Greg, Alex M. Kindler*, and Reid B. Roberts. It is Time to Revisit Hovis. 21:12-13.


Walzer, Peter M. Advice to a Client Before Signing a Premarital Agreement. 27:85-90.

Walzer, Peter M. Family Law and the Economic Downturn. 31:56-57.

Wecht, David N. Child Interviews in Custody Cases Involving Pro Se Parents. 31:106.

Wecht, David N. Crimes, Counseling and Custody. 29:22-23.

Wecht, David N. The Discipline of Rules. 29:138-40.

Wecht, David N.* and Jennifer H. Forbes Haste can Make Waste: Speedy Trials and Custody. 32:83-85.

Wecht, David N. A Judge’s Comment On “Trial Aids.” 31:55-56.

Wecht, David N. Overseas Deployments. 31:21-23.


Wecht, David N.* and Jennifer H. Forbes. Parenting Coordinators Revisited. 32:146-47.

Wecht, David N. The Unified Family Court. 32:28.


Wilder, Joanne Ross. Alternative Dispute Resolution in Divorce Cases: The New Wave or an Ill Wind? 10:120.


Wilder, Joanne Ross. The Right Man’s Burden and Other Disorders of the Profession. 32:88-90.

Wilusz, Andrew M. and Joseph M. Egler* Valuing Employee Stock Options. 19:81-82.


Winegrad, Stephanie H. The Soldier’s and Sailor’s Relief Act–What is It? 26:84-85.

(continued on Page 213)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 212)

Wochna, Donald and Russ Davis.* Computer as Witness–Should You Use It in Your Case? 30:26-29.


Zabowski, Diane M. Coburn: An Analysis of Recent Paternity Cases. 10:118.


5B. ARTICLES AND COMMENTS BY TITLE


Advice to a Client Before Signing a Premarital Agreement. Peter M. Walzer. 27:85-90.


Age Patterns in Divorce. Mark K. Altschuler. 28:114-18.


Alternative Dispute Resolution in Divorce Cases: The New Wave or an Ill Wind? Joanne Ross Wilder. 10:120.


Bits and Bytes. Joel B. Bernbaum. 19:82.


Child Interviews in Custody Cases Involving Pro Se Parents. David N. Wecht. 31:106.

(continued on Page 214)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 213)


Close the Door on Open Adoptions. Harry J. Gruener. 18(3):18-19.

Coburn: An Analysis of Recent Paternity Cases. Diane M. Zabowski. 10:118.

Collaborative Law. Daniel Casciato.29:141-42.


Colonna Considered. Catherine M. McFadden. 26:49-50.


Comments on Pension Valuation Procedures in Divorce in Accord with Pennsylvania Superior Court Opinion in Agatone. Marvin Snyder. 10:84.


Computer as Witness–Should You Use It in Your Case? Russ Davis and Donald Wochna. 30:26-29.


Delaware County Opposes PACSES Implementation. Harry M. Byrne, Jr. 20:73-74.


Discovery can be Taxing. Harry J. Gruener. 18(2):22.


(continued on Page 215)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 214)


Do Common Pleas Courts have Constitutional Authority to Prescribe by General Order or Local Rule Seminars or Counseling for Parents Involved in Divorce? James E. Mahood. 20:70-73.


Drafting and Qualifying a Court Order in a Domestic Relations Case. William M. Troyan. 7:896-900.

Drake v. Drake: Workers’ Compensation Commutation Award Accrued During Marriage can be Marital Property Subject to Equitable Distribution. C. Kurt Mulzet. 21:42-45.


Early Retirement Window Enhancements and Divorce. Mark Altschuler and Toby Dickman. 20:44-45.


Editor’s Rebuttal to Dr. Crews’ “In the Best Interest of the Child: A Legal Term of Art.” Emanuel A. Bertin. 10:70-71.

Eight Landmines to Avoid in Divorce Litigation. Brian C. Vertz.


Estate Planning and the Family Lawyer. Peggy Lynn Ferber and Deborah D. Dodds. 13(2):9-11.


Ethics Opinion 95-134 Temporarily Withdrawn. 18(2):22.


Executive Stock Options Valuation Issues. Lester Barenbaum. 20:16-17.


Family Law and the Economic Downturn. Peter M. Walzer. 31:56-

(continued on Page 216)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 215)

57.


Guideline Triple X. Dennis McGee and Mike Levandowski. 22:42-43.


How Costs of Children are Calculated. Catherine M. McFadden. 26:19-23.

How to Determine a QDRO Award Under Act 175. Mark K. Altschuler. 31:62-64.


How to Unwind and Otherwise Address Complex Estate Planning and Asset Protection Vehicles in Divorce. Donald J. DeGrazia. 30:117-22.


In Pennsylvania, Apparently Divorce Agreements are Sufficient to Waive ERISA Pension Plan Benefits. Brittany M. Bloam. 31:110-12.


It is Time to Revisit Hovis. Alex M. Kindler, Greg Voss, and Reid B. Roberts. 21:12-13.


Joint Custody: The Pendulum Swings. Thomas M. Mulroy. 19:11-

(continued on Page 217)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 216)

13.

A Judge’s Comment On “Trial Aids.” David N. Wecht. 31:55-56.


Karkaria: A New and Uncertain Test for Pennsylvania Antenuptial Agreements. Patricia G. Miller. 9:29-30.


Not All Assets are Treated Equally. Neil S. Brown. 26:51-52.


Overseas Deployments. David N. Wecht. 31:21-23.

PA Supreme Court Domestic Relations Procedural Rules Committee Changes Leadership. 21:96.

PACSES Deficiency Summary: Executive Summary. 20:74-76.


Parents have a Custodial Right to Inculcate Their Religious Beliefs upon Their Children. David L. Ladov & Kenneth Spiegel. 11:167-68.

Partnership Means Progress for Family Court Reform. Mary Cushing Doherty and Jeannine Turgeon. 25:43-44.


(continued on Page 218)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 217)

Paternity by Estoppel and Fraud. Kelly A. Mroz. 25:81-82.

PBA Fair a Roaring Success. 22:42.


Pension Valuations With Inflation and Taxation. Marvin Snyder. 9:40-41.


Philadelphia Family Court–Host to Eastern DRAP. 20:69.


Public Pension Funds and Approved Domestic Relations Orders. Charles K. Serine. 21:45-65.

Qualified Domestic Relations Orders–When can the Alternative Payee Get Control of Her Money. Gary Edelson. 9:9.


Relocation Orders are Immediately Appealable. James E. Mahood. 20:99-100.

Relocation Orders, Like any Interim Custody Order, are not Subject to Immediate Appeal. Robb D. Bunde. 20:100-1.


Response to Wilder’s Mediation Piece. Frederic D. Rubin. 11:130.

(continued on Page 219)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 218)


Settlement Strategies: When Due Diligence can be Dangerous. Mark R. Ashton. 22:43-44.

Sex With Clients. Craig E. Simpson. 31:57-59.

Simeone v. Simeone: A Rejection of the Karkaria Test for Prenuptial Agreements. Patricia G. Miller. 10:71-72.


The Soldier’s and Sailor’s Relief Act—What is It? Stephanie H. Winegrad. 26:84-85.


Speculative or Not, Indefinite Tax Ramifications Must be Considered. Catherine M. McFadden. 32:196-200.

Standard of Practice for Pension Valuation Adoption. Catherine M. McFadden. 22:44-46.


Superior Court Finds a New Method to Allocate Marital Property in a Defined Contribution Plan. Marvin Snyder. 17(1):15-16.

Supreme Court Authorizes Discovery. [R.C.P. 1930.5(b)]. 19:42.

Supreme Court Decision Limits Sua Sponte Powers of Court. Rachel Munafo. 10:95-96.


Tax Planning and the Family Residence: §§1034, 121, 453, and 1031. 1:73-76.


There is No Such Thing as an Accrued Benefit (Or Why Coverture Fractions Make Sense). Catherine M. McFadden. 12(3):14-16.


(continued on Page 220)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 219)


Two Recent Superior Court Cases on Pensions in Divorce. Marvin Snyder. 11:188.


Uptown Legal Clinic. F. J. Lucchino. 27:16-17.


What is Wrong With the Proposed Support Guidelines. Thomas M. Mulroy. 10:70-71.


What to do When the IRS Agents Come Calling. Howard B. Klein. 20:48-49.


Yes, Virginia, There is Such a Thing as an Accrued Benefit. Patricia G. Miller. 12(4):14-15.

5C. ARTICLES AND COMMENTS BY SUBJECT

ADOPTION


Gruener, Harry J. Close the Door on Open Adoptions. 18(3):18-19.

McCurdy, Dennis W. Terminating the Parental Rights of the Incarcerated Parent: Clarity and Guidance from the Superior Court. 27:13-15.


ADULTERY


ALIMONY

(continued on Page 221)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER

Bennett, Elizabeth L. Divorce, Older Women and Alimony. 16(5):15-17.


ALTERNATIVE DISPUTE RESOLUTION

Casciato, Daniel. Collaborative Law. 29:141-42.


Hitzemann, Diane D. Collaborative Practice–A Choice for Families. 29:24-25.

Rubin, Frederic D. Response to Wilder’s Mediation Piece. 11:130.

Wilder, Joanne Ross. Alternative Dispute Resolution in Divorce Cases: The New Wave or an Ill Wind? 10:120.

AMENDMENTS TO DIVORCE CODE


ANTENUPTIAL/PRENUPTIAL/POSTNUPTIAL AGREEMENTS


Miller, Patricia G. Karkaria: A New and Uncertain Test for Pennsylvania Antenuptial Agreements. 9:29-30.

Miller, Patricia G. Simeone v. Simeone: A Rejection of the Karkaria Test for Prenuptial Agreements. 10:71-72.

Walzer, Peter M. Advice to a Client Before Signing a Premarital Agreement. 27:85-90.

APPELLATE PRACTICE

Munafo, Rachel. Supreme Court Decision Limits Sua Sponte Powers of Court. 10:95-96.

BANKRUPTCY


BIBLIOGRAPHY


CHILD ABUSE


Bennett, Elizabeth L. The Discovery Rule and Child Abuse. 12(1):12.


COMMON LAW MARRIAGE


COMPUTER PROGRAMS/TECHNOLOGY

Bernbaum, Joel B. Bits and Bytes. 19:82.


(continued on Page 222)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 221)


CONFLICT OF LAWS
Viola, Michael L. At Your Service. 31:29-31.

COUNSEL FEES


COURTS
Doherty, Mary Cushing and Jeannine Turgeon. Partnership Means Progress for Family Court Reform. 25:43-44.


Rains, Robert E. To Rhyme or not to Rhyme: An Appraisal. 26:53-57.


CRIMINAL LAW


CUSTODY


Bertin, Emanuel A. Editor’s Rebuttal to Dr. Crews’ “In the Best Interest of the Child: A Legal Term of Art.” 10:70-71.

Crews, Wanda J. In the Best Interest of the Child: A Legal Term of Art. 10:68-70.


Fischer, Ellen S. A Helpful Solution for Supervised Visitation and Difficult Custody Exchanges. 29:27.


Ladov, David L. & Kenneth Spiegel. Parents have a Custodial Right to Inculcate Their Religious Beliefs upon Their Children. 11:167-68.


Mulroy, Thomas M. Elian Go Home. 22:11-12.


Mulroy, Thomas M. When Bad Families Happen to Good Children.

(continued on Page 223)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 222)

19:64-65.


Wecht, David N. Child Interviews in Custody Cases Involving Pro Se Parents. 31:106.

Wecht, David N. Crimes, Counseling and Custody. 29:22-23.

Wecht, David N. Overseas Deployments. 31:21-23.


CUSTODY–RELOCATION

Bunde, Robb D. Relocation Orders, Like any Interim Custody Order, are not Subject to Immediate Appeal. 20:100-1.


Mahood, James E. Relocation Orders are Immediately Appealable. 20:99-100.


DIVORCE

Adams, James R. Soldiers’ and Sailors’ Civil Relief Act—A Followup. 26:124.

Altschuler, Mark K. Age Patterns in Divorce. 28:114-18.


Mahood, James E. Do Common Pleas Courts have Constitutional Authority to Prescribe by General Order or Local Rule Seminars or Counseling for Parents Involved in Divorce? 20:70-73.


Rains, Robert E. House Judiciary Committee Considers Amendment/Repeal of No Fault Divorce Law. 18(4):19-23.


Sullivan, Mark E. The New Service Members Civil Relief Act. 27:92-94.

Vertz, Brian C. The Homemaker Contribution. 31:167.

Winegrad, Stephanie H. The Soldier’s and Sailor’s Relief Act—What is It? 26:84-85.


DIVORCE–BUSINESS


(continued on Page 224)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 223)


Vertz, Brian C. Eight Landmines to Avoid in Divorce Litigation. 28:119-120.

DIVORCE–INTERNATIONAL

DIVORCE–MARITAL PROPERTY
Ashton, Mark R. A Form to Beat a Headache: Solving the Joint Escrow Problem. 25:41-42.


Brown, Neil S. not All Assets are Treated Equally. 26:51-52.

Mulzet, C. Kurt. Drake v. Drake: Workers’ Compensation Commutation Award Accrued During Marriage can be Marital Property Subject to Equitable Distribution. 21:42-45.

DIVORCE–PENSIONS AND RETIREMENT PLANS
Altschuler, Mark K. How to Determine a QDRO Award Under Act 175. 31:62-64.

Altschuler, Mark K. Past Payments. 30:12-14.

Bloam, Brittany M. In Pennsylvania, Apparently Divorce Agreements are Sufficient to Waive ERISA Pension Plan Benefits. 31:110-12.


Vetrano, Kathleen B. and Sarinia A. Michaelson. New QDRO Costs to be Factored in Divorce Practice Pointer. 27:12-13.

DIVORCE–TAXATION


Frumkes, Melvyn B. A Divorce’s Retroactive Modification will not Change Taxability of Payments. 29:26.

Galzerano, Mark R. The Roth IRA Conversion. 29:105-6.

DISCOVERY
Gruener, Harry J. Discovery can be Taxing. 18(2):22.


Supreme Court Authorizes Discovery. [R.C.P. 1930.5(b)]. 19:42.


EQUITABLE DISTRIBUTION
Feder, Robert D. Interest–An Unused Remedy. 11:202-3.


Glasser, Daniel H. Response to the Response. 20:69.


Mahood, James E. Early Retirement Incentives are not Deferred Compensation. 20:18-20.

(continued on Page 225)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 224)

EQUITABLE DISTRIBUTION–BUSINESS


EQUITABLE DISTRIBUTION–GOODWILL

EQUITABLE DISTRIBUTION–PENSIONS & RETIREMENT ASSETS
Altschuler, Mark and Toby Dickman. Early Retirement Window Enhancements and Divorce. 20:44-45.


Ashton, Mark R. Settlement Strategies: When Due Diligence can be Dangerous. 22:43-44.


Edelson, Gary. Qualified Domestic Relations Orders–When can the Alternative Payee Get Control of Her Money. 9:9.


McFadden, Catherine M. Don’t Let Your Client Shoot Himself in the Foot. 12(5):9-11.

McFadden, Catherine. Pension Valuation Issues. 11:189-91.

McFadden, Catherine M. Retirement Age Arguments. 12(3):11-14.


McFadden, Catherine M. Standard of Practice for Pension Valuation Adoption. 22:44-46.


McFadden, Catherine M. There is No Such Thing as an Accrued Benefit (Or Why Coverture Fractions Make Sense). 12(3):14-16.

McFadden, Catherine M. U.S. Supreme Court Identifies Pension Issues: Kennedy & Progeny Post-Decision Guidance. 31:107-10.


Miller, Patricia G. Yes, Virginia, There is Such a Thing as an Accrued Benefit. 12(4):14-15.

Serine, Charles K. Public Pension Funds and Approved Domestic Relations Orders. 21:45-65.

Shah, Barbara J. Hayward v. OPM–Qualifying Orders on Civil Service Retirement System Pensions. 31:170-72.

(continued on Page 226)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 225)

Sipos, Lawrence J. Valuation of Survivor Benefit for Purposes of Equitable Distribution–Guidance for Practitioners in the Post-Palladino Era. 21:15-16.

Snyder, Bradley Z. Drafting a DRO for SERS and PSERs. 14(3):14-15.

Snyder, Marvin. Comments on Pension Valuation Procedures in Divorce in Accord With Pennsylvania Superior Court Opinion in Agatone. 10:84.


Snyder, Marvin. Pension Valuations With Inflation and Taxation. 9:40-41.

Snyder, Marvin. Superior Court Finds a New Method to Allocate Marital Property in a Defined Contribution Plan. 17(1):15-16.

Snyder, Marvin. Two Recent Superior Court Cases on Pensions in Divorce. 11:188.

Snyder, Marvin. (What) Pension is Marital Property. 12(5):8.

Troyan, William M. Curriculum Vitae. 6:680-682.

Troyan, William M. Drafting and Qualifying a Court Order in a Domestic Relations Case. 7:896-900.


EQUITABLE DISTRIBUTION–VALUATION


Barenbaum, Lester. Executive Stock Options Valuation Issues. 20:16-17.


McFadden, Catherine M. Valuing and Distributing Increases and Decreases. 15(2):13-15.


ESTATE PLANNING


DeGrazia, Donald J. How to Unwind and Otherwise Address Complex Estate Planning and Asset Protection Vehicles in Divorce. 30:117-22.

Ferber, Peggy Lynn and Deborah D. Dodds. Estate Planning and the Family Lawyer. 13(2):9-11.

Grinberg, Edwin I. Permission Slip. 29:103-5.

ETHICS


(continued on Page 227)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 226)


EVIDENCE
Wecht, David N. A Judge’s Comment On “Trial Aids.” 31:55-56.

FOREIGN JUDGMENTS

LABOR LAW

LEGAL CLINICS
Luccino, F. J. Uptown Legal Clinic. 27:16-17

MARRIAGE

MAXIMS

MEDICAL JURISPRUDENCE

PRACTICE OF LAW
Ethics Opinion 95-134 Temporarily Withdrawn. 18(2):22.
PBA Fair a Roaring Success. 22:42.
Simpson, Craig E. Sex With Clients. 31:57-59.
Walzer, Peter M. Family Law and the Economic Downturn. 31:56-57.
Wecht, David N. The Discipline of Rules. 29:138-40.
Wilder, Joanne Ross. How to Look Like a Winner (Or at Least not

PASSPORTS

(continued on Page 228)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 227)


PROTECTION FROM ABUSE

Fischer, Ellen S. Woman Convicted of Violating Own Protection Order. 25:109-10.

Turgeon, Jeannine. PFA Court–A Problem Solving Court. 23:69-74.

SEPARATE PROPERTY

McFadden, Catherine M. ALI Principles Suggest a New Approach to Separate Property. 18(3):12-16.

SOCIAL SECURITY


SUPPORT


Byrne, Harry M., Jr. Delaware County Opposes PACSES Implement. 20:73-74.


McFadden, Catherine M. Colonna Considered. 26:49-50.


PACSES Deficiency Summary: Executive Summary. 20:74-76.

Pearson, Katherine C. A Midnight Tale of Filial Support. 29:146-47.


SUPPORT–EDUCATION

Ashton, Mark R. Understanding College Funding: What the Divorce Practitioner Needs to Know. 27:122-23.


SUPPORT–GUIDELINES


McFadden, Catherine M. How Costs of Children are Calculated. 26:19-23.

Mulroy, Thomas M. What is Wrong With the Proposed Support Guidelines. 10:70-71.

Update on Pa Supreme Court Support Guidelines. 20:98.

SUPPORT–PATERNITY

Zabowski, Diane M. Coburn: An Analysis of Recent Paternity Cases. 10:118.

SURROGACY

Mulroy, Thomas M. Pennsylvania Fashions an Approach to

(continued on Page 229)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 228)

Surrogacy. 9:15-16.

TAXATION


Kindler, Alex M., Greg Voss, and Reid B. Roberts. It is Time to Revisit Hovis. 21:12-13.

Klein, Howard B. What to do When the IRS Agents Come Calling. 20:48-49.


Tax Planning and the Family Residence: §§1034, 121, 453, and 1031. 1:73-76.


WOMEN

Molinaro, Nicole. Health Resources for Uninsured Women. 27:15-16.

6. FEDERAL/MILITARY CORNER.


7. BOOK REVIEWS.

7A. AUTHOR LISTING


Alexander, Susan. We Love Each Other, But... Reviewed by Dr. Ellen Wachtel. 22:73.


Friday, Paul. Friday’s Laws. Reviewed by Dr. Frank Angelini. 23:42.


(continued on Page 230)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 229)


7B. TITLE LISTING


Friday’s Laws. Paul Friday. 23:42.

How to Become Normal When You’re not and How to Stay Normal When You Are. Paul Friday. 28:128.

How to Examine Psychological Experts In Divorce And Other Civil Actions. Marc J. Ackerman and Andrew W. Kane. 13(6):15.


Valuing Specific Assets in Divorce. Robert Feder. 23:43.

We Love Each Other; But….. Susan Alexander. 22:73.


7C. REVIEWER INDEX.

Angelini, Frank. Friday, Paul. Friday’s Laws. By Paul Friday. 23:42.


(continued on Page 231)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 230)


Smith, Elaine and David I. Grunfeld. *How to Examine Psychological Experts In Divorce And Other Civil Actions*. By Marc J. Ackerman and Andrew W. Kane. 13(6):15.


8. ETHICS CORNER


9. TECHNOLOGY CORNER


9A. ARTICLES BY AUTHOR


Bernbaum, Joel B. Apple’s iPad Reviewed. 32:166-67.


Bernbaum, Joel B. Bits and Bytes 2000. 32:53-54.

Bernbaum, Joel B. Computer Programs to Calculate Support Pursuant to PA Supreme Court Support Guidelines. 23:16-17, 28:130 (same topic without title).


Bernbaum, Joel B. Suggestions for Healthier E-Mailing. 31:64-65.


Plummer, Martin H. Protecting Your Valuable Data. 23:41-42.


Slade, Alicia A. Scanning: not Just Your Case Files. 30:29-30.

Slade, Alicia A. Technology Planning & Budgeting. 30:182-83.


10. LEGISLATIVE UPDATE.


(continued on Page 232)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER  
(continued from Page 231)


11. POETRY & OTHER MISCELLANEOUS LITERATURE.


B. Letters to the Editors.
(Responses to Justice Baer’s article listed above). 24:52-56.

Stachtiaris, Chris A. Sales Tax on Professional Services. 28:30.

C. Poetry.

Bell, Denise P. My Legal Eagle. 16(5):20.


Glasser, Daniel H. Clarence the Ruthless Divorce Lawyer. 26:137.


Rains, Robert E. As Love Slips By. 19:85.

Rains, Robert E. Courting Canine Custody, A Domestic Doggerel. 24:112.


Rains, Robert E. Nick-Name. 25:121.


Rains, Robert E. Three Variations on a Christmas Theme. 26:136.

Rains, Robert E. Two Tales of Trying Times. 28:142-45.

Rains, Bob. Two More Tales of Trying Times. 29:153-54.

Rasner, David S. A Christmas Gift. 25:122.

Rasner, David S. A Divorce Lawyer’s Lament. 25:122.

Rasner, David S. I Do. 17(2):16.

Rasner, David S. The Judge. 25:122.

D. Miscellany.

Coleman, Mary Kate. Sixth Annual Lawrence W. Kaplan Lecture in Conflict Resolution: ‘Calm in the Face of the Storming Client.’ 31:72-73.


Glasser, David H., Ark Building Fool Found to have Committed Indignities. 24:110-11.

Glasser, Daniel H. Fallout of Tower of Babel Revealed. 32:129-30.

Glasser, Daniel H. Lifestyles of a Famous Divorce Lawyer. 27:138-41.


(continued on Page 233)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 232)

Sponte, S. To Wit: May the Force Be With Me. 30:31.

Glasser, Daniel H. I Have a Little Divorce. 22:78.


Rains, Robert E. A Miracle Through the Mail (Or the Pros and Cons of Cons Procreating). 23:63.


ACBA Family Law Section Child Advocate of the Year–Cindy K. Stoltz. 27:106.


Book Award Winners Sponsored by Pension Analysis Consultants. 30:70.

Busis, Cynthia. Pittsburgh Chapter of NCJW Children’s Playrooms in the Court Holds Open House/Fundraiser. 29:40.

Calderwood, Gail C. PBA Family Law Section 2009 Winter Meeting Photos. 31:75-82.

Calderwood, Gail C. PBA Family Law Section 2009 Summer Meeting Photos. 31:135-43.

Carbasho, Tracy. Family Law Section Provides Support to NCJW Children’s Playrooms in Allegheny County. 27:37.


Clifford, Daniel J. PBA Family Law Section Membership Incentive Program. 31:147; 32:82.

De Blassio, Abby. ABRA-COLLABRA: Collaborative Law Takes Root in Westmoreland County. 31:188-89.

Dischell, Mark B. Eric David Turner Award Speech for Leonard Dubin. 32:59.

Doherty, Mary Cushing. Cohen Family Directs Donation to the Laurel House. 30:60.

Doherty, Mary Cushing. Eric David Turner Award Recipient: Jack A. Rounick. 31:44.

Doherty, Mary Cushing. Homeless Benefit from PBA-FLS 2004 Eric Turner Award. 25:120.


(continued on Page 234)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 233)

Elisabeth Bennington Elected to Pennsylvania House of Representatives, District 21. 28:147.

Eric David Turner Award: Family Law Section Recognizes Another Outstanding Lawyer. [Chris Gillotti]. 28:32.

Family Law Section Elects Officers and Council at Annual Summer Meeting in Baltimore. 19:69.

Family Law Section Summer Meeting. 25:52-53.

Family Law Section Summer Meeting. [2006]. Schedule of Events. 28:45.

Family Law Section Thanks Our Sponsors. 27:45.

Family Law Section Thanks These Vendors. 27:46.

Gary G. Gentile Named Chair of the Pennsylvania Supreme Court Disciplinary Board. 28:146-47.


Highlights from the July 15-18, 1999 PBA Family Law Section Summer Meeting, New York City. 21:99-104.

Highlights from the July 1999 PBA Family Law Section Summer Meeting New York City and the January 1999 Family Law Section Winter Meeting Pittsburgh. 21:144-147.

Highlights from the July 2000 PBA Family Law Section Summer Meeting, Boston. 22:49-52.


Highlights from the July 2002 PBA Family Law Section Summer Meeting Montreal. 24:90-93.


In Memoriam: I. B. Sinclair. 23:46, 79.


Judge Marilyn Horan of Butler County Honored With Susan B. Anthony Award. 28:33.

Judge Strassburger’s Rejoinder. 27:42-43.

Justice Sandra Schultz Newman Receives Eric David Turner Award. 29:40.

Laffey-Ferry, Marion. Caring Canines. 30:139-40.

Marion Laffey-Ferry Receives Pennsylvania Bar Foundation Louis J. Goffman Award for Pro Bono Service. 28:146.


More PBA Family Law Section 2009 Summer Meeting Photos. 31:179-87.


(continued on Page 235)
INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 234)

PBA Family Law Section 2007 Summer Meeting Photos. 29:111-118.

PBA Family Law Section Election Results, Sunday, July 15, 2005. 27:100.

PBA Family Law Section Summer Meeting. [2007]. Schedule of Events. 29:43.

PBA Family Law Section Meeting. [2008] Schedule of Events. 30:239.

PBA Family Law Section Nominating Committee Report. 19:43; 28:35.


PBA President Ken Horoho has Notable Family Law Background. 28:147-48.

PBI Farewell Party for Gail Markovitz, Mechanicsburg. 28:36.


Pennsylvania Bar Institute Program on Drafting Marital Settlement Agreements Earns International Recognition. 19:68-69.

Photos from the January 2003 PBA Family Law Section Winter Meeting Pittsburgh. 25:54-58.

Photographs from the July 2003 PBA Family Law Section Summer Meeting Philadelphia. 25:87-90.


Photos from the 2004 PBA Family Law Section Summer Meeting


Photos From the PBA Family Law Section Summer Meeting, Puerto Rico. 27:95, 101-5.


Photos from the 2006 PBA Family Law Section Summer Meeting, Toronto, Canada. 28:136-41.


Pollock, David S. PBA Family Law Section 2010 Winter Meeting Photos. 32:58.

Pritchard, Jessica A. Briefs and Breastmilk. 31:144.


Safe Visits Safe Families Program by the Parental Stress Center Opens in Pittsburgh. 28:34-35.

Second Annual Lawrence W. Kaplan Lecture in Conflict Resolution. 27:37.

Shatto, Michael T. Fred Cohen Memorial. 30:59-60.


Viola, Michael L. PBA Family Law Section 2008 Summer Meeting Photos. 30:188-97.

Westmoreland Bar Association Family Law Committee & Young Lawyers Committee Approved Stipend for PBA Family Law Section Meetings. 31:147.


Xx

PBA Family Law Section January 2009 Winter Meeting Photos: Pittsburgh. 31:36-43,

(continued on Page 236)
13. SIDEBAR


Adelphi Dedicates Marker Home. 26:143.

Montgomery Bar Initiative Cheers Up Courthouse for Kids. 26:143.


14. PBA NEWS

PBA News. 20:30-31, 52, 84, 113.

New PBA Member Service Center Stands Ready to Assist. 20:30-31.

New Benefit Gives PBA Members Who Also are Members of Their County Bar Association up to $150 in Tuition Discounts for PBI CLE Courses. 20:84, 113.

Shatto Honored by Past Chair. 20:113.

15. INDEXES


INDEX TO THE PENNSYLVANIA FAMILY LAWYER
(continued from Page 235)