Pennsylvania Family Lawyer

PENNSYLVANIA BAR ASSOCIATION
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VOLUME 39 ISSUE NO. 1 MARCH/APRIL 2017

IN THIS ISSUE

THE CONSTITUTION AND BEST INTERESTS: A STUDY IN CONFLICT

By Mark R. Ashton, Esq.
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Mark R. Ashton

I recently attended a seminar produced by the Family Law Section on the role of psychological evaluations in the context of custody proceedings. The seminar participants properly focused attention upon issues using the ubiquitous "best interests" analysis referenced in nearly every Pennsylvania appellate decision rendered in the last half century. Yet, while nearly every case references that standard, the "standard" has to be viewed through the oculus of individual rights secured by the federal and state constitution.

In an ironic twist, the Pennsylvania Divorce Code enacted in 1980 begins by telling us that the family is the basic unit of our society, the preservation of which is a paramount concern. 23 Pa. C.S. 3102. Add to that the definition of what constitutes "family" has evolved more in the past 35 years than in the millennium that precedes it. The legislators who passed the 1980 Divorce Code contemplated what we will call the "Biblical Family." It was a simple definition; man, woman, child. The doctrine of in loco parentis did exist even then, but these cases were exceedingly rare.

Meanwhile the United State Supreme Court has a long history of celebrating "family" without really defining it. And beginning with a 1972 case, S*tanley v. Illinois*, that court also expanded "family" to include fathers who had not married women with whom they had sired a child. In *Stanley*, a man fathered three children with a woman during an 18-year intermittent relationship. When the mother died, Illinois seized the children and asserted

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THE CONSTITUTION AND BEST INTERESTS
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that Peter Stanley had no rights to children by a woman he had never married. In a 3-2 decision, the U.S. Supreme Court held that his marital status was immaterial to his parental rights and reversed Illinois law. In that case, Justice Byron White wrote, "The right to conceive and raise one's children have been deemed 'essential,' 'basic' and 'far more precious' . . . than property rights." See *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Skinner v. Oklahoma*, 316 U.S. 541 ((1942); *May v. Anderson*, 316 U.S. 533,535 (1953). In 1944 *Prince v. Massachusetts*, the court wrote that the "state can neither supply nor hinder…." the function and freedom of parents to "care and nurture their child." 312 US. 157,166. This language was employed to inform the Illinois Supreme Court that a parent cannot be denied the right to raise a child merely because two parents elected not to formalize their relationship. 405 U.S. 652 citing *Levy v. Louisiana* 391 U.S. 68 (1968). As the plurality puts it, Illinois defeats its own purpose of promoting family when it allows a child to be taken from an otherwise competent father based purely upon his marital status." If Peter Stanley was a competent parent, the state's interest in the matter was de minimis. 405 U.S. 658

The earliest of these cases, *Meyer v. Nebraska*, involved a state law prohibiting the teaching or use of foreign languages. Robert Meyer was convicted of teaching students using the German language in a private school. Justice McReynolds wrote that the due process clause denotes not merely restrictions on physical restraint but the right of the individual to marry, establish a home and bring up children consistent with the "orderly pursuit of happiness by free men." The student's parents had the right to engage the teacher to teach in such language as the teacher and parents agree without state interference. *Meyer* is considered one of the prime cases giving birth to substantive due process that today forms the framework upon which cases like *Obergefell v. Hodges* 576 U.S. ___ and *Lawrence v. Texas,* 539 U.S. 558 (2003) are rooted.

In 2000 the U.S. Supreme Court published *Troxell v. Granville*, 530 U.S. 57. The state of Washington had adopted a law granting almost anyone standing to seek custodial rights over minor children with the courts to employ a best-interest standard. In a 4-3-2 decision with Souter and Thomas concurring, Justice O'Connor wrote that custody and control of one's child was perhaps the oldest fundamental right of constitutional law. *Troxell* gave birth to the September 9 decision authored by Chief Justice Saylor holding that a statute conferring partial custody rights to grandparents could not survive the agreed position of the natural parents that the grandparents were not seeing their children. *D.P. and B.P. vs. G.J.P. and A.P.* Concurring/dissents by Justices Baer and Wecht hinted that the remaining portions of 23 Pa.C.S. 2325 might not survive constitutional challenge because "special weight" must be afforded to a parent's custodial decision about with whom their child could associate. "Special weight" in constitutional parlance means that a government's interest in the matter must be compelling to overcome parental discretion.

In *D.P. and B.P. v. G.J.P. and A.P.* the defendants were natural parents who had been separated for more than six months. Under the grandparent visitation statute, the grandparents sued for custodial time. The natural parents may not have agreed on much, but they were agreed that these grandparents had no place in the management of their childrens' affairs. The Westmoreland County trial court read *Troxell* to say that Pennsylvania had no special interest to justify reversing the jointly made decision of the natural parents. The Supreme Court affirmed. The special challenge of this case was that the parents joined in wanting to deny the one set of grandparents any right of access. That is not a frequent event.

Meanwhile, just a few days earlier, the Supreme Court had ruled in *Adoption of M.R.D. & T.M.D.* 26 MAP 2016. In this case, a father who had not seen his children in several years decided to file for partial custody in Lycoming County. Mother was living in and around her parent's home in Pennsylvania. When Father filed his action, Mother and her father ("Grandfather") filed an action seeking to terminate Father's parental rights based upon an application by Grandfather to adopt these same children. The facts as found by the Supreme Court demonstrated that Grandfather had, in many respects, functioned in loco parentis during Father's lengthy absence. But Justice Todd found the adoption statute premised upon the expectation that adoption would forge a new family not a try to form a contorted family formed principally to thwart the sudden appearance of a long-missing natural parent.

Just this past month on February 10, we have the reported Superior Court decision in *M.G. v. L.D.*, a legal standing case that covers the planet with unusual but easily duplicated facts. Two women in a long-term relationship decide to adopt each other's child. The relationship between the adults later erodes and after some agreed custody orders, one parent shoots the other in the presence of the children. There is evidence that prior to the gunfire, there was high conflict between the children themselves and at least of parent and one child. The shooting and arrest of one parent for that act prompts the shooter's father to file for partial and primary custody using the two relevant statutes. On a primary custody basis, Grandfather asserts that the children lack parental control and that the children are physically altercating in ways that demand legal protection. The trial court rejects what amounted to a neglect theory and also denies any partial custody based mostly upon the perception that Grandfather is a harmful influence because he continues to believe that his daughter did not provoke the shooting even though she was the triggerwoman. The Superior Court disapproves of the theory and the "scant" evidence for the Montgomery County trial court to build a more substantial record of whether the shooter mother or her father really present a danger to the physical or emotional well-being of the 12-year-old daughter. Is this in derogation of *Troxell* principles? We shall see as Grandfather's request for partial custody was denied.

The other standing case of a different stripe from 2016 was the February decision in *M.L. v. G.J.M*. This case at 2016 Pa. Super. 1 involved a relationship in which the married father of

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FROM THE EDITOR

By David S. Pollock, Esq.
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REFLECTIONS ON RECEIVING THE ERIC TURNER MEMORIAL AWARD

David S. Pollock

My family is very pleased and proud that I have received the Eric Turner Memorial Award from the PBA Family Law Section. It is truly the most important award that I have received over my 42+ year career. In the past, the Pennsylvania Family Lawyer has tried to reproduce introductory comments by others as well as the comments of the recipient. Since the introductory comments were by our friends, **Mark D. Dischell, Esq., Mark R. Ashton, Esq**., and **Harry M. Byrne Jr., Esq.**, this issue would be consumed by their good-natured and wonderful remarks. They were so wonderful that it brought tears to my eyes and laughs to my belly and my heart. At the PBA Family Law Section Annual Meeting luncheon on Saturday, Jan. 14, 2017, **Mark, Mark** and **Harry** delivered their remarks followed by my remarks below. I was blessed to have so many good friends and especially our son **Adam L. Pollock** in attendance. **Rita** and I thank all of you for this fulfilling award.

Thank you **Mark Ashton, Mark Dischell** and **Harry Byrne.**

You are my friends and brothers — you are dedicated to your families, your law practices, your communities — I am proud to be your friend.

AND, thank you all — you must know by now that I am pleased and proud — and I am humbled by knowing those who have received this award before me.

Thank you to the members of the Eric Turner Memorial Award Committee

Last year's awardee, **Mark Dischell**, told us in great detail about our friend **Eric Turner** who died 17 years ago. Those were great and sad stories, as Eric was dying.

I also knew **Eric** from PBA FLS meetings.

During **Fred Cohen's** year as chair, we were assembled in Pittsburgh for the January 1994 Annual Winter Meeting. It was 22 degrees below zero! **Eric** decided that he wanted to go to a classic Pittsburgh bar. So I took everyone to Blue Lou's/Mario's Southside Saloon on Carson Street on Pittsburgh's Southside.

At Blue Lou's, **Eric** sat at the head of a long table under the steps with his Terrible Towel in hand. Of course, the Erie contingent was game, so was **Harry,** and some other intrepid souls. **Eric** was hilarious, culminating by his drinking from one of Blue Lou's signature drinks, not the meter of beer, but rather the toilet of beer. **Eric** regaled us with stories and continued to drink from his toilet. We all laughed so hard and so long that we forgot that it was 22 degrees below zero.

That night **Eric** was more Pittsburgh than the rest of us, calling out "Go Steelers" and waving his Terrible Towel.

Eric had a terrific sense of humor, a great intellect, an ability to connect on cases and to connect with people. I was honored and happy to be his friend.

It is teamwork and dedication that brings us together. The team of **Doherty, Pollock and Dischell,** chairs of the section from 1999 to 2002, worked as the executive committee should work. We took care of one another to take care of the Family Law Section to which we are dedicated, and we continue to do so. After **Doherty, Pollock, Dischel**l were **Beck, Byrne, Blechman & Behers**. Lots of B's and lots of enthusiasm. To this very day, other than **Jim Beck** (of blessed memory), those past chairs are still active and nurturing of our section, its committees, the *PA Family Lawyer* and the annual meetings.

Years ago **Harry** and I were co-chairs of the Program Committee. We did not have the PBI attorneys and staff and the PBA staff as we have now. We did it ourselves. We even reproduced the materials ourselves with the help of our sons **Adam** and **Josh**. Our sons would send late night faxes to all of the program speakers and writers of the materials with the most recent updated program that they prepared. They would accumulate and reproduce the materials. There was no internet. This is dedication to the section and its members.

Now look at us. We are PBA's most active section. We have the best attended meetings; we are the envy of the other PBA sections and committees. We do so much on our own to make this happen. We have a committed executive leadership and a Council. We have our hard-working committee chairs

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REFLECTIONS ON RECEIVING ERIC TURNER MEMORIAL AWARD

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and members. We have the *PA Family Lawyer* with numerous contributors. The reason why we are so successful is we are dedicated to the Family Law Section.

I love to see everybody here at these terrific PBA Family Law Section meetings at terrific venues; and to have great programs with PBI coordination and certification of our CLE. We have email list-mates for dissemination of information and problem-solving; the section-only website with an index to past issues of the *PA Family Lawyer* and photographs from different meetings; our state-wide connections to get and give referrals on cases; and most importantly to have effective and respected legislative proponents who communicate personally and in writing with the state legislators and testify before the state house and state senate.

The most recent achievement of our section was spearheaded by **Mary Cushing Doherty** whose efforts have given us the one-year date of separation for a no-fault divorce. This is an enormous achievement that has been in our minds long before the PA Divorce Code of 1980. In 1988, the reduction to two years was significant, but we have always wanted one year recognizing that certain lobbies were against no-fault divorce in the first place. Prior Eric Turner awardees and leaders of our section spearheaded the Pennsylvania Divorce Code of 1980. They traveled the state producing the PBI program introducing the law, explaining the law and providing written materials. We did that again for the Feb. 12, 1988 amendments; and we have done it over and over again since the May, 2010 amendments. Section members are at the forefront of the Pennsylvania laws related to families.

I thank my excellent and overly indulgent law partners, **Todd Begg, Candice Komar, Dan Glasser, Brian Vertz** and **Joe Williams**. I especially want to thank my office manager/office wife/sister, **Jean**, and our attorneys and staff who have taken this journey with me. Actually 13 of our 15 attorneys are here today! We support the PBA and ACBA Family Law Sections to the fullest.

I obviously thank **Rita** for our 45 years of marriage and her 52 years of house breaking me, which has been more successful than we have done with a succession of dogs. I thank **Adam** and **Josh** for making me human and keeping me in check.

It is hard for me to believe that I have experienced 42 years of law practice — 30 of those with **Jean** — 22 years as Editor-in-Chief of the *PA Family Lawyer* with **Harry Byrne** and **David Ladov** and many others who served on the Editorial Board. To me, these are things that bring me great pride.

I am so pleased that my son **Adam** could be here to with me. I regret, but excuse, **Rita** and my other family members whose long-standing commitments kept them from being here.

We are proud of **Adam** who is a lawyer in the Manhattan office of the New York State Attorney General in its Criminal Division, Taxpayer Protection Bureau. **Rita** is on a long-planned family trip to London. **Adam** and his wife **Michal** and their very cute daughters **Madeleine** and **Nitzan** live in Brooklyn. **Josh**, whose company Caldera Forms is a Word Press applications company, and his wife **Alicia** live in Tallahassee. We are most proud of our family.

The most satisfying and gratifying thing is to see all of you here. The section fellowship and dependability is of upmost importance to our clients and law practices. We have friends, good friends, in every corner of the state because of the PBA Family Law Section. We all have people that we can rely to send or to receive cases and clients, or just to discuss cases with someone who is not going to be our adversary. The section works and that is the biggest reward of all for me. Thank you again.

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

Winter Meeting 2017

PET CUSTODY — NEW ALASKA LAW
BY CARA A. BOYANOWSKI

It is estimated that 70-80 million dogs and 74-96 million cats are owned in the United States[1]. That equates to approximately 37-47% of all households in the United States own a dog, while approximately 30-37% of all households in the United States own a cat. With these statistics, it is hard to believe that only one state has enacted laws to protect Fido and Miss Kitty from the fallout of his/her owners' divorce.

Most states, including Pennsylvania, define pets as personal property, much like a car or a chair. As such, there is no provision in the Pennsylvania Divorce Code which permits a judge to award visitation or custody rights to a pet owner. Instead, like personal property, the judge must equitably distribute the dog or cat between the parties, using purely financial factors. Since most parties have an emotional tie to the family pet, the thought of "buying" out their interest in the family pet, is both inconceivable and unwelcomed.

This month, in groundbreaking legislation, Alaska became the very first state to amend their divorce laws to include a provision surrounding "pet custody." The amendment requires judges in divorce proceedings to "take into consideration the well-being of the animal" when determining which owner's home it will be placed. As such, the new law permits judges to consider factors such as who was the primary caregiver for the pet throughout the marriage, who will be awarded custody of the children (as it has long been a tradition that children and pets live together), and who has the financial means and time to devote to the pet, before awarding "joint custody" or "primary/partial custody" of the pet. The Animal Legal Defense Fund, in a recent blog, called the well-being provision both "groundbreaking and unique."

Alaska also permits pets to be covered in domestic violence protection orders, thus rendering them "victim-like" status in such proceedings.

[1]Source ASPCA

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THE CONSTITUTION AND BEST INTERESTS: A STUDY IN CONFLICT *(continued from page 2)*

a 10-year-old child decided after the marriage collapsed that he needed to know whether his son was in fact, as represented. His pharmacy-acquired test said his child was not, in fact, his. So, he filed to demand official paternity session and terminate any support obligation. The trial court ordered the test on the basis that there was no marriage to preserve. The Superior Court sent the case back to the trial court to develop a full record under *K.E.M. v. P.C.S.*, 38 A.3d 798 (Pa. Supreme 2012). That opinion held that, in deciding who shall be father and who shall not, the courts are to employ a best interest analysis. The challenge this poses has an interesting constitutional dimension. If the actual father of the subject child filed for custody, would a "best interest" analysis vanquish his "fundamental liberty" interest in what science states is indisputably his biological child? Recognize that there can be fathers who discover their status only long after the child is born. Certainly, it is also possible that a mother "guessed wrong" in her assessment of who was, in fact, her child's father. But does this vitiate the constitutional principle involved? I would suggest not, but while not emphatic on that point, I am convinced that it cannot be in the best interest of a child to declare a non-father to be the father where that person has already determined that he is not father and has filed a petition to sever any relationship with the child.

As we move forward, one fact is undeniable. The "family" of 2017 is much more complex than what existed 25 years ago. Genetic testing is now ubiquitous and seemingly unchallengeable from a scientific standpoint. We know that many grandparents and others who have acted for lengthy periods in loco parentis appear to offer vastly superior child rearing opportunities in a world where the conduct of the natural parents is wanting yet not "neglectful." Unfortunately, it is clear that the legislature will not be able to address this. I submit that even the most learned of legislators would have a difficult time defining who should have custody and who should not. I don't know that there is a right answer. What I do know is that with 45,000 custody filings in the state each year, litigants will persist in asking the judiciary to figure this out.

Articles:

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COMMUNITY SERVICE PROVES EFFEECTIVE TOOL FOR COLLECTION OF CHILD SUPPORT
BY JUDGE BARRY C. DOZOR

Judge Barry C. Dozor

Finding the appropriate and most effective sentence in contempt support court is often a daunting task for a family court judge. There are fewer courtroom experiences more frustrating than trying to fashion a contempt sentence that encourages a chronic non-payer to pay child support on a monthly basis.

As a result, a judge often relies on "trial and error" and increasingly harsher sentences. While criminal judges can adhere to sentencing guidelines, mandatory minimum sentences and the acceptance of negotiated sentences, these remedies are not available to the family court judge.

When the monthly relisting of a contempt support case, along with a "lecture from the mount," does not produce regular monthly support payments, what new remedies are available to the judge? One would think that shame and embarrassment alone would induce payments and that repeated hearings would not be necessary. Unfortunately, that is frequently not the case.

Finding a sentence for the chronic non-payer of child support that is a balance between incarceration and a stern lecture is the greatest challenge for a family court judge. While the custodial parent often insists on jail time, punishment is not the goal. Payment of child support to help provide food, housing, clothing, medical care, and child care costs is of paramount importance.

Conventional contempt sentences for failure to pay child support include:

- 30/60/90 days in jail with a reasonable release amount to encourage payment and release from jail.
- Daily reporting to a domestic relations officer to help the obligor find a job, search internet job listings, secure references and job referrals, and assist with job training skills.
- The proverbial lecture and request for verification of obligor's claims of disability, medical treatment, and the status of Social Security Disability applications that may or may not have been filed.

The 'Groundhog Day' Syndrome

From this inventory of sentences, judges have the exhausting experience of pronouncing the same sentence over and over again. With a list of 50+ cases a day and the futility of handing down contempt sentences that do not produce monthly support, family court judges often refer to support contempt court as "Groundhog Day," after the movie in which a weatherman finds himself living the same day over and over again. With the same non-payment of child support and the same unproductive sentences repeating themselves day after day, the support contempt court experience can be like "Groundhog Day" every day.

However, when an obligor remains obstinate and obviously averse to complying and cooperating with any child support contempt sentence — and incarceration fails to elicit any cooperation whatsoever — what is left for the sentencing judge to consider? What do many child support defendants loathe more than the county jail? What new incentive will generate the payment of child support?

In my own experience as a family court judge in Delaware County, Pennsylvania, I have found that a community service sentence on a Saturday and Sunday has proven to be an effective weapon in collecting child support for the most hardened and chronic non-payers.

During the last five months of 2016, obligors sentenced to community service paid $104,563.40 in child support as follows:

MONTH	NO. OF OBLIGORS SENTENCED TO COMMUNITY SERVICE	NO. OF OBLIGORS MONITORED	NO. OF BENCH WARRANTS FOR FAILURE TO PAY AND/OR ATTEND COMMUNITY SERVICE	NO. OF OBLIGORS PAID FOR MONTH	PERCENTAGE PAID	COLLECTIONS	NO. OF COMMUNITY SERVICE DAYS SERVED
AUGUST 2016	28	81	38	43	53%	$ 20,140.36	92
SEPTEMBER 2016	26	80	30	50	63%	$ 22,924.41	39
OCTOBER 2016	15	77	25	52	68%	$ 27,797.78	74
NOVEMBER 2016	10	73	25	48	66%	$ 17,158.06	60
DECEMBER 2016	14	62	20	42	68%	$ 16,542.79	49
					TOTAL	$ 104,563.40	

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From August 1 through December 31, 2016, 63.60 percent of obligors sentenced to community service paid child support rather than report for community service. As we continue to monitor chronic non-payers, this proves to be a welcome return on our effort to collect child support.

The Case for a More Effective Remedy

Delaware County is located in the southeast corner of the Commonwealth of Pennsylvania, bordering the City of Philadelphia. With a 2010 census population of 561,973, it is the fifth most populous county in the state. The county is challenged with a myriad of familiar pressures, including unemployment, underemployment, increasing mental health issues, chronic drug and alcohol problems, too many felony criminal records, loss of driving privileges, and many apathetic and indifferent parents.

With 16,817 open child support cases in 2016, the Delaware County Domestic Relations Office collected a total of $66,454,208 in child support payments. During 2016, 19,890 support conferences and hearings were scheduled before a domestic relations officer, a judge and a master. Throughout the year, 4,636 support contempt hearings were scheduled, with many obligors sentenced for having willfully failed to comply with the child support order.

In seeking a more effective remedy to encourage the payment of child support for repeat non-payers, a sentence of community service has proven to be a more effective and economical solution than incarceration.

The Delaware County Correctional Facility has an average population of 1,754 on any day at a direct cost to taxpayers of approximately $65 per prisoner per day. With the average 30-day child support jail sentence costing taxpayers $1,950, this makes community service a far more economical option.

The Delaware County Family Division, which includes five judges who share the assignment of child support contempt hearings, have formalized a model community service sentence. The sentence orders the defendant to complete eight hours of community service on any given day for up to six months. The judge routinely chooses a three-month period during which community service must be completed and circulates the specific days requiring attendance. Judges often choose Saturday and Sunday. If the defendant fails to report to community service, the sentencing judge will choose either to issue a bench warrant for their arrest or relist the contempt support case.

What Makes It Work

However, what makes this sentence work is the last part of the sentencing order which declares that the "Defendant is to be excused from community service by making payment of the weekly equivalent of the monthly support obligation by 4:00 p.m. on the day before the defendant is required to report to community service." If the defendant does not keep the support obligations current on a weekly basis, they remain obligated to report to community service as ordered. The support order boldly spells out the weekly support payment the defendant must make the previous day, which is often on a Friday, to avoid community service.

What we have learned is that an obligor is more likely to pay a weekly support payment on a Friday prior to 4 p.m. than report for Community Service on Saturday and Sunday mornings.

Each week, Domestic Relations contempt support court orders approximately 80 defendants to report to Saturday and Sunday community service, with others reporting on various week days.

Approximately 4,000 defendants per year are ordered by our criminal judges to complete community service hours through the existing Delaware County Community Service Program. These orders originate from criminal and magisterial district court sentences for a myriad of serious criminal convictions, as well as underage driving, harassment, and disorderly conduct. The program has easily accepted the additional Domestic Relations defendants.

Domestic Relations community service is completed at a variety of work sites throughout the county and includes chores such as removing trash and debris from highways, public parks and playgrounds and mopping and cleaning public buildings, garages, and municipal police, fire and public service spaces.

The county's community service program is financed at a cost of approximately $1 million annually. Approximately $500,000 of this cost is reimbursed by fees charged to criminal defendants. The program has about 25 full-time and-part-time employees and various vehicles and equipment. Work crews operate seven days a week, with about 18 crews operating on Saturday. The criminal defendants pay fees that vary based on the number of hours of community service ordered. However, believing that the payment of child support is a priority, all community service fees are waived for Domestic Relations defendants.

With the proven success of community service sentences here in Delaware County, the family court judge now has a new tool in their tool belt through which they can encourage chronic non-payers to pay child support on a monthly basis.

Barry C. Dozor is liaison judge for the Family and Juvenile Division of Pennsylvania's Delaware County Court of Common Pleas. He was appointed to the Court of Common Pleas by Governor Tom Ridge and swore his oath of judicial office on Dec. 13, 2001. Judge Dozor was then elected to a full term that began on Jan. 5, 2005. On Nov. 5, 2013, Judge Dozor was retained for an additional judicial term of 10 years.

SURVIVING SPOUSE FORFEITS INTESTATE SHARE DUE TO POST-SEPARATION EXTRAMARITAL AFFAIRS BY DAVID S. POLLOCK

IN RE: ESTATE OF KATHLEEN TALERICO, 137 A.3d 577 (Pa. Super. 2016)

The PA Superior Court (P*ANELLA, J., LAZARUS, J., and JENKINS, J.*) affirmed the order of Lackawanna County Orphans' Court Judge James A. Gibbons' denial of surviving husband's petition to strike the claim of decedent sister. He argued that the trial court improperly applied 20 Pa.C.S.A. § 2106, Forfeiture, in determining that his separation from the decedent and subsequent extramarital affairs had deprived him of his spousal rights under the Probate, Estate and Fiduciaries Code.

Decedent and husband separated when Husband moved from the marital residence. Husband testified that between the commencement of the divorce proceedings and the death of the decedent, both he and the decedent engaged in multiple extramarital affairs, specifically, Husband engaged in three separate and distinct relationships, each one of which included sexual intercourse. Husband testified that he had sexual relations with the decedent at least once and at least twice at a subsequent address of his. Husband further testified that he was personally aware that the decedent had sexual relations with other men after the filing of the divorce proceedings when he found her in bed with another man in what had been their marital residence. Husband testified that his relationship with the decedent, including their marriage, was a tumultuous one. He testified that the decedent had been diagnosed with bipolar disorder and frequently failed to take her prescribed medications. He further testified that the decedent abused alcohol regularly. Despite this, Husband testified, he and the decedent maintained a friendship, and he assisted her whenever she asked such as helping around the home, dealing with her abusive relationship with another individual, taking her to the emergency room on several occasions because of injuries she sustained, continuing to help the decedent financially and helping to take care of the decedent's ailing mother. Husband offered this evidence for the purpose of showing that, despite the filing of a divorce and despite the separation between himself and the decedent, they maintained a friendship and he helped and supported her at all times subsequent to their separation. Notwithstanding this, it is uncontroverted that Husband engaged in multiple extramarital affairs after the commencement of the divorce (and separation).

The divorce action was never finalized before her death. Husband filed a petition for grant of letters of administration, and letters of administration were granted to him. The decedent's sister, Karen Cavanaugh, filed a notice of claim against the estate. Husband filed a petition to dismiss Cavanaugh's claim, arguing that he and the decedent were married at the time of the decedent's death since the requisite grounds for a divorce had not yet been established. Decedent's sister maintained that Husband forfeited his claim as surviving spouse pursuant to 20 Pa.C.S.A. § 2106(a) because of his post-separation and post-divorce commencement conduct. She maintained that Husband's admitted extramarital affairs constitute a forfeiture of any right he has to an intestate share of the decedent's estate.

The court wrote that the question is whether Husband should share in the estate of his deceased wife in light of their separation, the commencement of divorce proceedings and his subsequent extramarital conduct. The court reviewed case law:

"The death of a spouse during the pendency of a divorce proceeding abates the divorce action and any and all claims for equitable distribution." I*n re Estate of Cochran,* 738 A.2d 1029, 1031 (Pa. Super. 1999) (citation omitted). However, the Probate, Estates and Fiduciaries Code (PEF Code) contains substantial provisions designed to insure the fair distribution of the marital estate upon the death of one spouse. *Id.* The relevant section of the PEF Code provides as follows:

"§ 2106. Forfeiture Spouses share — A spouse who, for one year or upwards previous to the death of the other spouse, has willfully neglected or refused to perform the duty to support the other spouse, or who for one year or upwards has willfully and maliciously deserted the other spouse, shall have no right or interest under this chapter in the real or personal estate of the other spouse. 20 Pa.C.S.A. § 2106(a)."

The Pennsylvania Supreme Court has recognized "...that the mere fact of separation does not create a presumption of willful and malicious desertion." *In re Estate of Kostick,* 514 Pa. 591, 594, 526 A.2d 746,748 (1987). See also *Lodge's Estate*, 287 Pa. 184, 186, 134 A. 472, 473 (1926) ("Mere separation is not desertion, there must be an actual abandonment of matrimonial cohabitation with intent to desert, willful and persisted in without cause."). Thus, where an allegation of desertion is based on separation, the party advocating forfeiture must prove there was a desertion without cause or consent of the other spouse. *In re Estate of Fisher,* 442 Pa. 421, 424, 276 A.2d 516, 519 (1971). However, once such a showing has been made, the parties' separation is presumed a willful and malicious desertion and the burden shifts to the surviving spouse to prove the contrary. *Id. In re Estate of Cochran,* 738 A.2d at 1031.

"Husband contended on appeal that he separated from the decedent either with just cause or with the decedent's consent, such that desertion was not proven. Husband further maintains that if the presumption of desertion on his part existed, it was neither willful nor malicious in that his extramarital sexual relationships allegedly did not occur until after decedent had engaged in the same. Citing *In re Archer's Estate,* 70 A.2d 857 (Pa. 1950), and *In re Crater's Estate*, 93 A.2d 475 (Pa. 1953), the trial court

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(continued from page 8)

found and the Pennsylvania Superior Court affirmed that Husband forfeited his right to share in the decedent's estate due to his extramarital affairs during the separation. See *In re Crater's Estate* 93 A.2d at 478 ("[W]here a separation has its inception in mutual consent of the parties, it becomes a wil[l]ful and malicious desertion on the part of the spouse who thereafter is guilty of conduct violative of the marriage vows."). Although Husband maintains that the decedent first engaged in an extramarital affair, this fact is irrelevant to our analysis. See *In re Archer's Estate.* Although the instant case lies in a statutory forfeiture proceeding, our decision stands as an acknowledgment that the separation of spouses, although not finalized by divorce, should be given effect even following the death of a spouse."

The trial court found and the Pennsylvania Superior Court affirmed that Husband forfeited his right to share in the decedent's estate due to his extramarital affairs during the separation.

The court also referenced PEF Code Section 6111.1 in support of its holding: "Any provision in a conveyance which was revocable by a conveyor at the time of the conveyor's death and which was to take effect at or after the conveyor's death in favor of or relating to the conveyor's spouse shall become ineffective for all purposes unless it appears in the governing instrument that the provision was intended to survive a divorce, if the conveyor: (1) Is divorced from such spouse after making the conveyance (2) Dies domiciled in this commonwealth during the pendency of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided as 23 Pa.C.S. § 3323(g). 20 Pa.C.S.A. § 6111.1 (emphasis added). Originally enacted in 1978, Section 6111.1 embodies a clear legislative intent that a spouse's death in no way invalidates a separation and pending divorce contemplated by the spouses prior to that death. Our decision today further effectuates the intent of the legislature in that regard."

Judge Emanuel A. Bertin, center, attended the Family Law Section Winter Meeting. Judge Bertin is the second of the three editors-in-chief of the 39-year history of the Pennsylvania Family Lawyer. Pictured with him are Madeleine Kaufman and Steve Kaufman.

EDITOR'S COMMENT:

Obadiah G. English, Esquire, Mannion Prior, LLP recently wrote in "Estate and Elder Law Symposium" PBI No. 2017-9618 (as edited by this author):

"This is contrary to the advice most family law practices give their clients after separation. It is not unusual for family law attorneys to tell clients their conduct after filing for the divorce doesn't matter. The *Talerico* decision now says otherwise.

In *dicta*, the court also briefly analyzed the case under Section 6111.1 of the PEF Code, 20 Pa. C.S.A. §6111.1, which, in essence, maintains that at the time of a spouse's death, any revocable conveyance to a surviving spouse becomes ineffective if the decedent-spouse dies during the pendency of a divorce that has not been finalized and grounds for the divorce may be proven. Under Section 6111.2, [if there are grounds established for a divorce], surviving spouse will also not take non-probate assets. However, the estate must pursue such a claim against the recipient of assets (the separated spouse) and not the financial, insurance or annuity company.

The moral of the story is [consider filing §3301(c) affidavit of consent and §3302(d) 1 or 2 year separation affidavit] to avoid this whole mess…The estate will be substituted for deceased spouse for equitable distribution of marital property. All of which emphasizes that family law practitioners should be advising clients seeking separation/divorce to head straight to their estate planning attorney when they leave the family law attorney's office."

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

ARTICLE FOR JUDGES, LAWYERS AND PSYCHOLOGISTS GROUPS — PARENTING PLAN FORM BY DAVID J. STEERMAN

This article is the result of a compilation of input from a group of judges, masters, lawyers and mental health professionals who are and have been committed to assisting and understanding family members in conflict who are unable to resolve their custody issues on their own. Today's families include parents and various caregivers. Our work with these individuals focuses primarily on child custody disputes.

In April, 1997, the Family Law Section of the American Bar Association and the American Psychological Association co-sponsored a symposium of psychologists and lawyers titled "Children, Divorce and Custody: Lawyers and Psychologists Working Together" to initiate a dialogue between the two professional groups. Growing out of that stimulating and collaborative conference, a group of judges, masters, mental health professionals and attorneys from southeastern Pennsylvania have been meeting for almost two decades. Over that period, our group has continued the interchange of ideas regarding our work with separating families.

Most recently, the group spent a considerable amount of time reviewing the model Parenting Plan set forth in 23 Pa. C.S.A. §5331. Retaining the same substantive form, the group proposed, discussed and subsequently refined the provisions from the different perspectives of judges, custody masters, mental health professionals and lawyers.

The current statute for parenting plans set forth at 23 Pa.C.S.A §5331 is underused and often ignored altogether. After many discussions, our group concluded that the existing form is not user-friendly. We believe our revised parenting plan (now proposed to be a rule), which can be found at this link and on the following pages, is a streamlined version of the existing plan in the Pennsylvania statute. Our version clarifies the intention and function of the original plan. Our proposed plan is geared toward assisting lawyers who have clients who may be contemplating a

change which could result in potential custody litigation as well as unpresented litigants.

The consensus of our group was that the majority of parents/caregivers who find themselves embroiled in custody litigation rarely have the resources, financial and otherwise, to assist them in making their way through complicated and/or challenging custody matters. We collectively agreed that custody litigants are often inexperienced and/or emotionally unprepared for dealing with these important issues. We concluded that custody litigants can benefit from an easily accessible and usable guide to thinking through the important legal issues affecting their children.

We are hopeful that our revised parenting plan will allow parents/caregivers to identify areas of common agreement related to co-parenting and to understand their potential differences and disagreements more easily and clearly.

The input of judges, custody masters, lawyers and mental health professionals who are currently dealing with these issues is not only welcome, but invited. Please contact any of us with your suggestions and/or feedback. Most importantly, please start using this form and share your experiences.

Working Group Creates Revised Parenting Plan

The following individuals were part of the working group who have contributed to the revised parenting plan.

The accompanying article was written by Marlene Angert, Ph.D., Talia Eisenstein, Psy.D., David Hofstein, Esquire, Honorable Robert Matthews, Sr.J. (Ret.), Eve Orlow, Ph.D. and David J. Steerman

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Eve Orlow, Ph.D.
Carla Rodgers, M.D.
David J. Steerman, Esquire

	:	
Plaintiff	:	IN THE COURT OF COMMON PLEAS OF
	:	_____ COUNTY, PENNSYLVANIA FAMILY DIVISION – CUSTODY
	:	
vs.	:	
	:	
_____	:	NO.
Defendant	:	

PROPOSED PARENTING PLAN BY

_____

Write Your Name Here

In this document you will be asked to provide suggestions about certain parenting issues and how future disputes about your child/children should be resolved. This is a chance for you to provide your suggestions for what you think is best for your child/children. This proposal is not binding and will not be considered as evidence in a trial.

If there is an existing Custody Order in your case, please attach a copy to this document.

CHILD/CHILDREN

Child's Name	D.O.B./Age	Gender	Address for Child When In Your Custody

If **you or your significant other** have other children who spend significant time in your household but are not included in this parenting plan, identify them here.

Child's Name	D.O.B./Age	M/F	When are you with the other child/children?

Decision Making

Shared Legal Custody is defined as the right to make major decisions on behalf of children. These decisions may include—but are not limited to—things like education, religion, and medical care. Under this arrangement, each party will consult with and attempt to reach agreement with the other party about major decisions **before** these decisions are made. Neither party may unreasonably withhold his or her agreement.

As part of shared legal custody:

a) Each party shall be entitled to full and complete information about the child/children's health, education, and welfare.

b) Each party shall make certain that they are listed as an emergency contact on all relevant forms.

c) Each party shall make sure that both parties are listed with any medical/dental, mental health provider, school, or other individuals or agencies so that the other party may receive copies of all notices, documents, report cards, or other materials that concern the child/children.

Appointments (Check all that apply)

Medical appointments for physicals will instead be made by:

- ___ The party with physical custody at the time of the appointment, unless agreed otherwise in writing
- ___ Mother
- ___ Father
- ___ Other: (Name)_____

Dentist and Orthodontist appointments will be made by:

- ___ The party with physical custody at the time of the appointment, unless agreed otherwise in writing
- ___ Mother
- ___ Father
- ___ Other: (Name)_____

Counseling appointments will be made by:

- ___ The party with physical custody at the time of the appointment, unless agreed otherwise in writing
- ___ Mother
- ___ Father
- ___ Other: (Name)_____

Each party will inform the other party upon making the appointment, in writing (e-mail or text is fine), of all appointments for the child/children. ___ Yes ____ No

The party who takes the child/children to an appointment will inform the other party, in writing (e-mail or text is fine), of what happened at the appointment immediately after the appointment. __ Yes __ No

Activities

Each party will have the option to attend activities of the children at all times. __Yes __ No

If you answered "No", tell why: _____

Extra-curricular activities for the children will be selected by:

- ____ Prior written agreement of both parties (email or text is fine)
- ____ The party who has custody of the child during the activity time.

The party who has the child/children will take them to a substantial number of practices and/or activities. ___Yes ____ No

If you answered "No", tell why: _____

Regular Schedule

Physical custody means which party has responsibility for the child or children at any given time. A schedule makes it clear where and with whom the children are at all times.

Use the charts below to propose the **days and times** that your children are with you, and when they go to the other party. Indicate whether the block of time includes the overnight or has a specific end time on the same day(s).

Week 1

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mother							
Father							

(Other)							

Week 2

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mother							
Father							
(Other)							

Summer

Please describe any changes to the school year schedule that you think should occur during the summer school break.

_____

_____

_____

_____

Holidays & School Breaks

HOLIDAY	Which party in odd-numbered years	Which party in even-numbered years	Holiday begins/ends when?	Exchanges (where/when?)
New Year's Eve				
New Year's Day				
Martin Luther King Day				
Presidents' Day				
Passover				
Good Friday				
Easter Sunday				
Spring Break				
Fall Break				
Mother's Day				
Father's Day				
Memorial Day				
Fourth of July				
Labor Day				
Rosh Hashanah				
Yom Kippur				
Halloween				
Fall Break				
Thanksgiving Break				
Hanukah				
Christmas Eve				
Christmas Day				
Winter Break				
Kwanzaa				
Eid Al Adha				
Eid Al Fitr				
Other				
Other				

"Other" may include any holiday or special day (such as birthday), which is important to you.

Holidays take priority over the regular custody schedule. Your **vacation** with your child/children should **not** be planned over the other party's assigned **holiday**. However, your **vacation** takes priority over the **regular schedule**.

Vacation

Each party should have how much annual vacation time with the children?

- ___ 1 week
- ___ 2 weeks
- ___ 2 non-consecutive weeks
- ___ 3 weeks
- ___ Other (specify here _____)

The **minimum** amount of advance written notice that each party must give the nonvacationing party **prior to departure** is:

- ___ 30 days
- ___ 60 days
- ___ 6 months
- ___ Other (specify here _____

If a party travels out of town with the children during vacation, the traveling party must provide the other party, in writing, with (check all that apply):

- ____ Dates of travel
- ____ Means of travel
- ____ Destination
- ____ Names of all people vacationing with child
- ____ Flight, train, bus, ship information
- ____I do not want to be notified

In the event that both parties select the same date for vacation, _____ will have the right in odd numbered years, and _____ will have the right in even numbered years.

Should a party be able to travel out of the country with child/children?

_____Yes _____No (List restrictions): _____

If you answered "No", tell why: _____

Should child/children have passports? ___ Yes ___ No

If you answered "No", tell why: _____

If "Yes", who should hold the passport(s)?

- _____ Mother
- _____ Father
- _____ Bank safe deposit box requiring signatures of both parties
- _____ Other _____

Exchanges

Exchanges of the child/children will take place at (mark all acceptable locations):

- _____ School/daycare/camp
- _____ Residence of party **ending** custodial period
- _____ Residence of party **beginning** custodial period
- _____ Other: _____

If a party does not come on time to exchange the children, the other party must wait at least:

- ___ 15 minutes ___ 30 minutes ____ Other _____
  Then they may leave

School Closing/Illness

If there is **advance notice** that school/daycare/camp will be closed (in-service, non-assigned holiday), or the child is too ill to attend on a certain day, custody on that day will be with:

- ___ Party who had the child/children the night before the closing/illness
- ___ Party who will have the child the following day
- ___Other _____

If school/camp closes early **unexpectedly** or a **child is ill** and needs to be picked up from school/camp, the party responsible for picking up the child and providing childcare is:

- ___ Party who had the child/children the previous night
- ___ Party who will have the child that night
- ___ Other _____

If the party scheduled to be with the child/children is working on a day that school/camp/daycare is closed, and the other party is available, then the available party will be offered the time with the child/children before other childcare arrangements are made: ___ Yes ___ No

If you answered "No", tell why: _____

Communication

Parties may communicate by (check all that apply):

- ___ Telephone
- ___ E-mail
- ___ Text message
- ___ An online scheduling/calendar application

Parties should schedule fixed time to talk with each other about the child/children:

____ Yes (suggest a time and day) _____

____ No

If you answered "No", tell why: _____

When and how often should child/children contact the party they are **not** with?

Write your suggestion here: _____

This contact between child/children and parties should be by (check all that apply):

____ Telephone ____ E-mail ____ Text message _____ Other _____

____ Skype/Face Time or equivalent

A party may communicate with the child/children (check all that apply):

- ___ Anytime
- ___ Daily, but no more than _____ times per day
- Only between the hours of: ____ a.m. and ____ p.m.

Any inquiry from the other party regarding child/children should be made by (check all that apply):

- ____ Telephone ____ E-mail ____ Text message
- ___ Other: _____

A party should respond to an inquiry from the other party regarding child/children within:

- ___ 12 hours
- ___ 24 hours
- ___ Other: _____

Changes in Schedule

From time to time, one of you might want or need to rearrange the custody schedule due to work, family obligations, celebrations, or other events.

The party asking for the change in the schedule will ask the other party

(check as many as apply):

- _____ In person _____ By letter _____ By phone _____ By e-mail
- _____ By text message

Unless there is an emergency regarding child/children, the party asking for the change will ask the other party no later than:

___ 12 hours before the requested change ___ 24 hours before the requested change

___ Days before the requested changes (write the number on the line)

The party being asked for the change will reply to the other party
(check as many as apply):

- _____ In person _____ By letter _____ By phone _____ By e-mail
- _____ By text message

The party being asked for a change will reply to the other party within _____ hours. Write the number on the line.

Notification

I want to be notified promptly if the other party is hospitalized: ___ Yes ___ No

This is how I want to be notified (check as many as apply):

- _____ In person _____ By letter _____ By phone _____ By e-mail
- _____ By text message

I want to be notified promptly if a member of the other party's household is hospitalized or becomes ill with an infectious disease ___ Yes ___ No

This is how I want to be notified (check as many as apply):

_____ In person _____ By letter _____ By phone _____ By e-mail

_____ By text message

I want to be notified promptly if the other party plans to move.

____ Yes ____ No.
[Note: The move of one of the parties can significantly impair the ability of the non-moving parent to spend time with the child/children because of distance, transportation issues, etc. The party who wants to move must comply with all requirements under Pennsylvania law.]

If you believe that you should have **sole authority** to make custody decisions, explain why here.

_____

_____

Is there anything else that is important to you that should be addressed? Please talk about it here.

_____

_____

IMPORTANT: Each party will encourage and foster a positive and healthy relationship between the child/children and the other party. Neither party will make negative remarks about the other party to the children or in the presence of the children. Neither party will allow anyone else to speak negatively about the other party around the children.

Date: _____

Signature of Party _____

Print your name _____

"NO, I DON'T WANT TO BE CC'ED ON ALL OF YOUR EMAIL" TOOLS TO SIMPLIFY CLIENT COMMUNICATION BY SARA KLEMP

Traditional web and mobile communication provide an easy way for divorced or separated parents to stay connected at a distance. However, for parents who experience conflict or miscommunication issues, texts and emails may add to their frustrations. For attorneys, getting cc'd on every client's messages can be a headache. Lengthy and ambiguous email or text messages can be unclear and are often disputed, making it burdensome for counsel to compile clear, admissible records.

As a way to resolve these issues, many Pennsylvania courts have joined all 50 states and five Canadian provinces in routinely ordering parents to communicate using the OurFamilyWizard® website (OFW®). Even ordered in domestic violence cases, OFW® provides a way for parents to stay informed while reducing the risk of continued harassment or coercive control.

While some parent-focused communication tools facilitate messaging, OFW® offers a full suite of features specifically designed to keep communication clear and concise to help parents avoid conflict. They can maintain parenting schedules, approve expenses, send reimbursements, and share documents using the OFW® app. Parents stay up-to-date about new entries with email, text, or push alerts sent directly to their smartphones.

"Professional Access" gives attorneys access to parent activity on the app, and makes it simple to compile admissible records. Instead of being cc'd on their client's emails, counsel can quickly access client information using a computer or the free iOS OFW® Practitioner App. Because entries are categorized and concise, they don't have to waste their time searching through endless emails. Everything comes fully documented with who authored, viewed, and edited entries. If counsel does not care to supervise parent activity, they can order it retroactively. All communication in the app is maintained indefinitely, and OFW® is extremely responsive to subpoenas and requests for authenticated records.

With both web and mobile access, parents and professionals can view and share information from virtually anywhere. This makes it easier to handle important matters in real time. Parents use the app to photograph and upload receipts to reimbursement requests. Their co-parent may access that request immediately and transfer funds to satisfy it. Most importantly, a record of each parent's activity is maintained. Documentation includes who made the request or entry, when it was made, if and when it was seen by the other parent, and when funds were successfully transferred.

OFW® features are built to help parents intuitively share information without lengthy messages, but sometimes a discussion needs to be had. The message board serves as a place for parents to have discussions with the added benefit of some algorithmic feedback. Tonemeter™ is built into the OFW® message board to analyze the content of a message as it is written and flag emotionally-charged phrases. Tonemeter™ encourages mindfulness and gives parents a chance to adjust their tone before sending a message.

OFW® is frequently upheld when challenged in both lower and higher courts. In one such Pennsylvania challenge, the father objected to the court's mandate that the parties utilize OFW® for all communication apart from emergencies. In the opinion which affirmed the court's order, Hon. Carolyn Tornetta Carluccio of Montgomery County stated that the use of OurFamilyWizard, "... facilitates communication in a non-hostile, non-confrontational, non-intrusive, monitored format. Father's objection belies logic. The tool is objective and applies equally to each party."

Courts across the nation recognize the benefit of using this application by consistently ordering its use, yet thousands of parents have chosen to sign up for the website entirely on their own. An OFW® subscription gives a parent complete access to its suite of tools plus mobile apps, detailed reports, and access for any number of professionals they are working with. OFW® professional access is always free and includes the ability to link up with clients, create accounts for new clients, and (as previously mentioned) generate clear reports from the web or iOS app. To help ensure that OFW® is available to any family who needs it, complimentary subscriptions are available to low income users.

Visit www.OurFamilyWizard.com to learn more about the OurFamilyWizard® website and sign up for a free professional account. OFW® Pennsylvania representative Kevin Dorsey is available to answer questions at kevin@ourfamilywizard.com.

Sara Klemp is a content writer and business analyst for the OurFamilyWizard® website. She also serves as editor of the OFW® Blog. She can be reached by email at sklemp@ourfamilywizard.com or by phone at (612) 294-0431.

THE CUSTODY CASE WHERE EVERYTHING WENT WRONG BY MARK R. ASHTON

Last fall brought us a decision from the Supreme Court of Pennsylvania holding that a grandparent did not have standing to terminate a father's parental rights incident to an adoption. Last week brought us a Superior Court case in which the appeal comes from a mother and her own father in a custody case involving a 12-year-old child.

Mother had a girlfriend. To show the seriousness of their commitment, Mother and Girlfriend decided they would adopt

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each other's children. The family remained intact for 13 years until April, 2011. A few months after the split, Girlfriend filed to obtain sole legal and physical custody of her natural child (a son) and primary physical custody of Mother's child, a daughter. Mother counterclaimed for primary custody of both children.

After some initial skirmishes in the Montgomery County courts, a consent order was formed in August, 2012. Each parent would keep primary custody of her natural child. Problems began to arise between Mother and her adopted son, and a parent coordinator was appointed who thought psychiatric and psychological support was necessary. In addition, a custody evaluation was ordered at the instigation of the parent coordinator.

Matters boiled over, and on May 27, 2013, Mother shot Girlfriend in the presence of both minor children. Mother was charged with attempted homicide and endangering the welfare of the children. She was sentenced to a lengthy prison term exceeding 20 years. Mother was prohibited from communicating with her adopted son and from discussing the incident with her own natural child. Mother's assertion to this day is that she acted in self-defense.

Once the shooting took place, Girlfriend (who had been shot by Mother) filed an abuse action and emergency custody petition. Mother's own father (Grandfather) filed a petition to intervene, requesting that he have custody of his granddaughter, the natural child of Mother. His allegation was that Girlfriend was tolerating physical abuse of the 11-year-old girl by her adoptive brother. Girlfriend, having recovered from the gunshot, asserted that the allegations were false and that Grandfather had no standing. Grandfather amended his petition in the wake of the objections to alleged other incidents of abuse and to assert a right to custody under 23 Pa.C.S.5325(2). Ironically, that ground as a basis for custody was declared unconstitutional by the Supreme Court while this appeal was pending. See. *D.P. v. G.J.P.* 146 A.3d 204 (Pa. 2016). The Superior Court notes that Girlfriend did not preserve the standing issue at trial so that it could not be asserted on this appeal. Judge Strassburger dissents on the standing issue, but let's keep our story on track.

Eight days after the shooting, the trial court entered an order granting custody of the daughter to Grandfather. (Mother's father). A local attorney was appointed as child advocate, and it was ordered that only the advocate could discuss the incident where the girl witnessed her natural mother shoot her adoptive parent.

A two-day custody trial followed. As the Superior Court notes, Grandfather needed to show an unaddressed risk of harm to have standing under 23 Pa.C.S. 5324. The trial court concluded that the risk was not sufficient to afford Grandfather the standing to seek custody he had filed to obtain. Accordingly, it granted Girlfriend's preliminary objection and therefore, concluded that the best-interest analysis set forth in 23 Pa.C.S. 5328(a) was superfluous.

While all of this was awaiting trial, there was no interim custody order. The trial court instructed the attorneys and the child advocate to craft some form of physical contact. After two visits totaling 36 hours, the child advocate suspended Grandfather's access because her directives were not being followed. Shortly after this occurred, Girlfriend filed for sole legal and physical custody of both children. Another hearing was held, and in October, 2014 (17 months after the shooting), Girlfriend was awarded sole physical custody of both children. Mother was to have legal custody on a "cause shown" basis if she disagreed with Girlfriend's legal decisions. All communication between Mother and daughter were to be reviewed and edited by the child advocate.

Grandfather did not appeal but filed another petition to modify, which appears to complain about his absence of access. He was afforded another hearing at which he expressed concern that the son was physically dangerous to the daughter in Girlfriend's care. Mother also filed a request for phone contact with her daughter from prison. In August, 2015, both requests were denied following another hearing. Postal contact was permitted by Mother subject to control by the child advocate.

Mother and Grandfather appealed. Mother asserted there were constitutional issues at stake, as she had a fundamental right to parent. While the Superior Court found her constitutional argument to be fragmented, it did find that Mother's claims of innocence in the shooting incident should not, alone, prevent contact between parent and child. The standard found in the statute is one of whether there is a "threat" from contact. 23 Pa.C.S. 5329(a) and (d). The Superior Court found that the trial court had not devoted enough energy to analysis of what it terms "prison visits" under *Etter v.Rose* 684 A.2d 1092,1093 (Pa. Super. 1996) and *D.R.C. v. J.A.Z.*, 31 A.3d 677 (Pa. 2011).

A second source of controversy was the level of authority afforded the child advocate. The appellate court characterized the advocates regulation of contact between Mother and daughter as "overreach[ing]" and "micromanaged." The court concludes that this level of delegation, including the management of all communication between parent and child as improper. The court notes that the title of "advocate" is not defined and cannot be equated with that of guardian ad litem. The term advocate is found in 42 Pa.C.S. 5983 and relates to involvement of children in the criminal law system as either victims or material witnesses. The advocate is described by the opinion as a holistic approach in contrast to the specific missions of guardian ad litem (G.A.L.) under 23 Pa.C.S. 5334 or attorney for the child under 23 Pa.C.S. 5335. The court notes that from the record it appeared that the advocate acted at times as legal counsel and at other times more akin to guardian ad litem. She appeared as both counsel and witness in these proceedings and was cross-examined while testifying. The Supreme Court had decided in an order issued in September 2013 that the guardian ad litem statute would be suspended to the extent that it required the G.A.L. to be an attorney or permitted "best" interests analysis to be conflated with "legal interests" or it permitted the G.A.L.

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to present witnesses and participate in the trial in any role other than as a witness. The message this rule seemed to telegraph was that if you want to participate in a trial as a lawyer, you proceed under Section 5335. Section 5334 means you will sit, listen to the trial and take the stand to express what you consider to be the best interests of your subject child. On remand, the trial court was directed to carefully craft its order defining the scope of the attorney-advocates role.

As for the appeal of Grandfather, it shared many of the waiver problems found in Mother's appeal. Both were presented pro se and the court opined that the Pa.R.A.P. 1925(b) statements were not well articulated.

Here the reasoning gets somewhat muddled. Bear in mind that the majority has affirmed the trial court ruling that Grandfather did not attain the standard of showing that the children lacked sufficient parental authority and control. So it was motoring under the partial custody standard and doing so because Girlfriend had not asserted lack of standing to seek partial custody in response to Grandfather's filing. The trial court denied partial custody because his desire to have contact with his granddaughter was not in the child's interest because of Grandfather's (a) animosity toward Girlfriend (b) steadfast belief that his daughter was not guilty of a crime when she shot Girlfriend (c) efforts to control his granddaughter's testimony. The trial court also felt that Grandfather was inclined to try to sow discontent between Girlfriend and the 11-year-old daughter (by adoption). The Superior Court found that there was scant evidence to support these conclusion, and while it defers to trial courts in these types of analysis, the analysis must be borne of evidence presented rather than supposition. It also held that under Section 5328(c)(1)(iii) the trial court must perform the 16-factor analysis that has become a part of all custody determinations.

Specifically, while condemning Grandfather's use of the term "Adoptive Mother" in the case, the court did not find this so egregious as to merit suspension of contact. The court found no record that Grandfather had attempted to discuss or persuade his granddaughter to take a side in the criminal proceeding against her natural mother. This was ascribed to a "supposition" on the part of the child advocate rather than any evidence of record. Grandfather had attempted to arrange for the child to meet with Mother's criminal counsel for purposes of an interview, but that interview was blocked by a subsequent court order.

In the end, the appellate court expresses concern that Girlfriend was not exercising sufficient control over her son to the possible risk of her daughter. The Superior Court described some of the incidents and believed the conduct between the sibling children involved more than innocent horseplay. Thus it reversed not only to have a full evaluation of Mother's rights while incarcerated but Grandfather's rights under Section 5328(a). This makes for an interesting rehearing as the law of standing is different than it was at the last hearing.

For better or for worse, this is what new age custody proceedings are going to entail; an unmarried couple who adopt and then split badly, even violently. The children involved present their own issues related to physical conflict. A grandfather tries to intervene and an advocate is criticized both for the nature of her role and for overzealousness in the protection of an 11-year-old child. Bear in mind, the circumstance of an adoption is the only thing that bars the two natural fathers from appearing on the scene to add to the mele. Note as well that this action began in November, 2011. It was temporarily settled in August, 2012, but within eight months gunfire erupted, setting in motion a piece of litigation that has subsisted for more than 3.5 years and is headed back to trial. The one child affected is described as "now 12." That would mean that she was perhaps 7 when her world fell apart.

*Note Bien***:** The author has been a longstanding critic of the business of identifying custody litigants and children by initials. The author has been told this is a losing battle. But this opinion, for those willing to endure its 45-page analysis, was a special form of suffering. For 45 pages here is what one read:

M.G. v. L.D.; Appeal of C.B.D. 2017 Pa. Super 29 (2/8/2017)

L.D., mother of M.G.D., adoptive parent of E.G.D.

M.G., mother of E.G.D.,adoptive parent of M.G.D.

C.B.D., father of L.D.; grandfather of E.G.D. and (by adoption) E.G.D.

As I have explained plaintively to any appellate judge who grants me audience, the children in this case are the soldiers in the trenches of modern day custody wars. They are gassed-with parental acrimony nearly every day. They don't read the "Atlantic Reporter" and their friends don't either. In this case, two children have lived a life of newspaper headlines and criminal trials culminating in a long-term prison sentence. The least of their concerns is whether their identity is revealed in appellate paperbooks and resulting opinions. Meanwhile, if called upon to explain the precedential effect of this reported case in a pending case, this lawyer would be required to emit enough letters to daze even a lifetime "bingo addict." The addict at least has a chance at a prize.

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STEP PARENTS STEPPING UP TO PAY SUPPORT
BY JAMES W. CUSHING

It goes without saying that non-custodial parents are liable for child support, but the law is still developing as to whether other people in parental roles — namely step parents — would be liable as well. The recent matter of *A.S. v. I.S.*, 130 A.3d. 763 (Pa.2015), which the court believed was of first impression, has helped clarify the law on the subject.

In *A.S.*, when mother and stepfather married, mother already had children from a previous relationship. During the course of their marriage, stepfather developed a loving relationship with the children. Unfortunately, the marriage between mother and stepfather broke down and was eventually dissolved in divorce.

Upon the separation of the parties, stepfather immediately, and aggressively, pursued custody of the children. After extensive and protracted custody litigation, including a full trial, the court ruled that father stood in loco parentis to the children and, as a result, granted him shared legal and physical custody of the children on alternating weeks.

Once stepfather was awarded custody, mother took the opportunity to pursue him for child support for the children for whom he fought so hard to obtain custody of. In response, stepfather argued that he ought not be liable for support because he is not the biological father, who incidentally is still alive and available to pursue for child support instead. The child support master, trial judge, and superior court all ruled in favor of stepfather, in essence because he is not liable for support as he is not the biological father and merely provided the children with love and care. As a result, mother appealed the matter to the Pennsylvania Supreme Court.

After a review of the above facts, the court surveyed the law, starting with the definition of "parent." Unfortunately, the child support statute does not define "parent," which led the parties to suggest using the Child Protective Services and/or Domestic Relations Code as a guide. The court rejected these suggestions, and observed that a modern "parent" encompasses more than simply biology. Instead, the court looks to see if a non-biological-parent "has taken affirmative steps to act as a legal parent so that he or she should be treated as a legal parent."

The court noted that there is established precedent for a step parent who holds a child out as his own legal child to have liability to pay child support for that child. In addition, there is also some precedent for finding a support obligation for someone who took affirmative steps to act as a parent.

Taking a broader view, the court explained that none of the factors identified above: standing in loco paentis, taking affirmative steps to act as a legal parent, and holding children out as one's own are, taken alone, is sufficient to find someone liable for child support of a non-biological child. Furthermore, the court ruled that not even supporting the children during the marriage and/or acquiring visitation are necessarily determinative in finding someone liable for support.

Taking all of the above under consideration and applying it to the instant matter, the court found that stepfather did far more than take "affirmative steps," but engaged in a — in the court's words — "relentless pursuit" of the custody of the children. The court observed that "stepfather…haled a fit parent into court, repeatedly litigating to achieve the same legal and physical custodial rights as would naturally accrue to any biological parent." So, in the court's view, stepfather's actions far exceeded merely wanting to maintain continuing post-separation contact, he wanted, and was granted, the right to become a full parent in every sense of the concept. As a result, stepfather has pursued all of the above: standing in loco paentis, taking affirmative steps to act as a legal parent, holding the children out as one's own, supporting the children during the marriage, and acquiring post-separation custody.

The court also noted that there is established precedent for a stepparent who holds a child out as his own legal child to have liability to pay child support for that child.

In light of the fact that stepfather is as invested in the children as described above, the court ruled that "[e]quity prohibits [s]tepfather from disavowing his parental status to avoid a support obligation to the children he so vigorously sought to parent."

Therefore, yes, a step parent can, in some circumstances, be liable for child support, but such liability is evaluated on a case-by-case basis to determine if it can be demonstrated that a certain threshold of involvement with the child at issue is reached (as described above) to warrant entering a child support order.

Reprinted from "The Legal Intelligencer" dated Jan. 3, 2017.

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DOES EMPATHY GUIDE OR HINDER MORAL ACTION?
BY GREGORY S. FOREMAN

A recent *New York Times* ROOM for DEBATE discussed "Does Empathy Guide or Hinder Moral Action?" The anti-empathy debater defined it as "the capacity to experience the feeling of others, and particularly others' suffering." He believes our culture confuses empathy with compassion, and that empathy is a hindrance to making wise and moral decisions.

Family law clients often are seeking an empathic attorney. Yet I agree with the anti-empathy debater. In fact, on more than one occasion I have been told I am one of the least empathic folks the speaker knows. Every bit of legal training and experience has taught me the dangers of taking on my clients' emotions. While I used to see this "anti-empathy" accusation as a sign of a moral flaw, I now tend to see it as an unintended compliment.

Law school teaches budding attorneys to be dispassionate — hence anti-empathetic — in myriad ways. We are drilled to "look at both sides of this issue" and "to learn to disagree without being disagreeable." Family court litigants are often, for good reason, upset and highly emotional. Having compassion for their situation is an absolute requirement for being an effective family law attorney. Taking on their emotional state is counterproductive and dangerous as it interferes with the professional detachment necessary to provide proper legal advice.

A most obvious example is attending a hearing in which a client is very upset about the matter at issue. Addressing the court while mirroring the client's emotional state will not only be counterproductive — the court is unlikely to respond to highly charged, ill reasoned argument — it could possibly land the attorney in jail for contempt of court.

Further, law school and the practice of law requires an attorney to understand and consider both sides' positions. With some exceptions, family law attorneys generally do not get to choose which party to represent: they represent the side willing to hire them. I have to have compassion for both the adulterous spouse and the cheated-upon spouse, the abusive spouse (or parent) and the abused spouse, the husband and the wife, the mother and the father. Empathy for an abusive or adulterous spouse is distasteful and dangerous. Compassion for their situation is all that can reasonably be asked of an attorney.

Yet, even if one is representing the abused or cheated-upon spouse, one must still have some compassion for the opposing party. Understanding that party's position and needs is key to crafting a mutually agreeable resolution, and an attorney who cannot settle the vast majority of his or her cases is doing his or her clients a disservice. For those cases that do not settle, understanding the other party's position is a vital first step to countering that position in a contested hearing.

Further, even empathy for an "innocent" spouse or parent is dangerous. At some point one will likely need to counsel that party to compromise on some issues to achieve a beneficial result. Any attorney who mirrors that client's emotions will be unable to give that client sound advice: how do you counsel such parties to compromise with someone they, and now the "empathetic" attorney, perceive as evil?

Taking on one's clients' emotions is dangerous. It clouds judgment, hinders settlement, and leads to poor strategic decision making. An empathetic family law attorney is a bad family law attorney.

Gregory S. Forman is a sole practitioner in Charleston, South Carolina. A 1984 graduate of Haverford College and a 1991 Cum Laude graduate of Temple Law School, Mr. Forman has been a member of the South Carolina Bar since 1992 and practicing family law since 1993. His practices' emphasis is on family law at both the trial court and the appellate level. He is a past president of the South Carolina Bar's Trial & Appellate Advocacy Committee and has been a mentor to numerous family law attorneys. Mr. Forman lectures frequently on family law to judges, lawyers and law students. He has written numerous articles on family law for South Carolina Lawyer*, the* South Carolina Trial Lawyers' Magazine*,* The Bulletin*, the American Bar Association's* Family Advocate*, and the* American Journal of Family Law.

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DOGGONE IT! COURT CANNOT CONDONE CANINE CUSTODY
BY JAMES W. CUSHING

Many Americans have a pet, and regardless of whether that pet is a dog, cat, lizard, or fish, many pet owners think of their pets as members of the family. What happens when a pet is owned by a married couple who make the unfortunate decision to divorce? The landmark Pennsylvania Superior Court case of Desanctis v. Pritchard, 803 A.2d 230 (2002) has answered this question rather definitively.

In Desanctis, the parties were married for about nine years. While they were married, they purchased their family dog, Barney, from the SPCA. As part of their divorce agreement, the parties, using terms typically reserved for child custody matters, awarded wife "full custody" of Barney while husband received what is tantamount to "visitation."

Not long after their divorce, wife moved a fair distance away from husband and discontinued making Barney available to the husband for visits. Due to wife's refusal to make Barney available to husband, husband filed a complaint against wife in equity. Husband sought injunctive relief to, inter alia, force wife to provide Barney to him, and modify the "custody" arrangement for Barney to ensure he had more time with his pooch. Wife filed preliminary objections to husband's complaint that were granted by the court of common pleas, which resulted in the dismissal of husband's complaint, leading him to file an appeal to Pennsylvania Superior Court.

In its review of husband's complaint and the preliminary objections, and the applicable law, the Pennsylvania Superior Court first pointed out that pets, regardless of our emotional attachment to them, are simply personal property. The court ruled that the agreement explicitly awarded the dog to wife. The court further ruled that any terms in an agreement which award a type of custody of the dog are void on their face.

Although it may be tough for animal lovers to hear, the court, rather bluntly, stated that a visitation schedule for a dog is analogous, in law, "to a visitation schedule for a table or a lamp." As a result, pursuant to 23 Pa.C.S.A. Section 3503, property rights dependant upon a marital relationship are terminated upon divorce and, therefore, pursuant to 23 Pa.C.S.A. 3504, the parties to a divorce are to have "complete freedom" as to their property upon divorce. An agreement to somehow share property is not, by definition, complete freedom.

So, a divorce, in addition to dissolving the relationship between a husband and wife, also serves to potentially dissolve the relationship with a person and his pet. This is important to remember when separating as one may want to claim the pet as soon as possible in order to try and do as much as possible to retain the pet post-divorce.

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Scenes from PBA Family Law Section Winter Meeting 2017

Federal/Military Corner:

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CONGRESS OVERRIDES *SMITH* RULE FOR MILITARY PENSION DIVISION
BY MARK E. SULLIVAN, ESQ.

The New Pension Division Rule

Without notice to Pennsylvania or consultation with its congressional delegation, Congress enacted on Dec. 23, 2016, the National Defense Authorization Act for Fiscal Year 2017 (NDAA 17) and overrode Pennsylvania's *Smith*[1] formula for dividing pensions and its statutory framework, 23 Pa.C.S. § 3501(c), as applied to military retired pay. This means that many lawyers need to know how to present testimony and evidence in contested pension division cases, as well as how to prepare a properly worded military pension division order (MPDO). This new rule will require a new set of skills for such lawyers.

The new statute contains a major revision of how military pension division orders are written and will operate throughout the nation. Instead of allowing the states to decide how to divide military retired pay and what approach to use, Congress imposed a rigid uniform method of pension division on all the states, a fictional scenario in which the military member retires on the day that the pension division order is filed. Effective Dec. 23, 2016, the new rule up-ends the law regarding military pension division in Pennsylvania and almost every other state.

The new rule applies to those still serving (active duty, National Guard or Reserves). It is a rewrite of the terms for military pension division found in the Uniformed Services Former Spouses' Protection Act, or USFSPA[2]. From now on, what is divided will be the hypothetical retired pay attributable to the rank and years of service of the military member at the date of the decree of divorce, dissolution, annulment or legal separation. The only adjustment will be cost-of-living adjustments under 10 U.S.C. § 1401a (b) between the time of the court order and the time of retirement.

There are no exceptions for the parties' agreement to vary from the new federal rule. Everyone must do it one way, regardless of what the husband and wife decide they want the settlement to say.

Mark E. Sullivan, a retired Army Reserve JAG Colonel, practices family law at Sullivan & Tanner, PA, Raleigh, N.C., and is the author of The Military Divorce Handbook *(ABA May 2006), from which portions of this article are adapted. He is a Fellow of the American Academy of Matrimonial Lawyers and has been a board-certified specialist in family law since 1989. He works with attorneys nationwide as a consultant on military divorce issues and to draft military pension division orders. He can be reached by e-mail (above); 919-832-8507 or fax 919-833-7852.*

How Hard Is This, Anyway?

Known as a hypothetical clause at the retired pay centers[3], "frozen benefit division" is the most difficult to draft of the pension division clauses available. A government lawyer familiar with the processing of military pension orders put it this way: "… over 90 percent of the hypothetical orders we receive now are written ambiguously and consequently rejected. Attorneys who do not regularly practice military family law do not understand military pension division or the nature of … military retired pay. This legislative change will geometrically compound the problem."

Due to the difficulty of doing such orders, more expenses will be involved in the military divorce case and a whole new team of experts will appear to help ordinary divorce attorneys comprehend and implement the new frozen benefit rule. Without the right help and the proper wording, rivers of rejection letters will flow back to attorneys who submit their pension orders to the retired pay center in the hope of approval. Since the new frozen benefit rule was written by Congress, which knows next to nothing about the division of property and pensions in divorce, there will be numerous problems in applying it in the courts of most states.

Although the method of dividing pensions, as well as the date of valuation and classification of marital or community property, has always been a matter of state law, that will change in military cases. Since no time has been allowed for state legislatures to adjust to the change and rewrite state laws, lawyers will need to make adjustments "on the fly" to deal with military pension division cases that are presently on the docket or that come to trial before the state legislature can act.

Strategy for the Service Member

The attorney for the SM (service member) will have an easier time than the lawyer for the FS (former spouse) in getting through a trial or settlement. The SM has control over all the evidence and testimony needed for either procedure.

The active duty SM needs to provide proof of the "High Three" retired pay base (i.e., average of the highest 36 months of continuous compensation) at the date of divorce[4]. That will usually be the most recent three years, and the data will be found in the pay records of the SM. The court also needs to know the rank and years of creditable service of the SM.

Once the evidence has been admitted, the court will require

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an order to divide the pension. The attorney for the prevailing party is often tagged with the task of preparing the MPDO, unless all the necessary language is placed in the divorce decree or in a property settlement incorporated into the decree. It will help immensely if counsel obtains "outside assistance" from a lawyer experienced in writing such pension orders, and not at the last minute.

Whenever possible, the SM needs to request bifurcation of the divorce from the claim for equitable distribution or division of community property[5]. The earlier that the SM gets the court to pronounce the dissolution of the marriage, the lower his or her "High Three" figure base will be, which means the lower the dollar amount for pension division with the spouse.

Strategy for the Former Spouse

The FS would oppose such a request for severance of the divorce and the property division, arguing that this would double the hearings involved and detract from judicial efficiency. The FS would also argue that that Congress has joined inextricably the divorce and the division of a military pension by requiring the setting of the retired pay base (the "High Three") at the time of divorce[6]. As soon as appropriate, counsel for the FS should begin discovery, seeking to determine when the member's "High Three" years were, what the figure for that period is, and how many years of creditable service the member has (or, in the case of a Guard/Reserve member, how many retirement points).

The attorney for the SM (service member) will have an easier time than the lawyer for the FS (former spouse) in getting through a trial or settlement. .

As to documents and data, the strategy of the FS will be similar to that stated above for the SM for settlement or trial. If the SM is obstinate, it can take weeks or months to obtain this information from the source (that is, the pay center) with a court order or judge-signed subpoena[7].

There are several ways to try to get around the division of a frozen benefit for the FS. No single approach is best, and the rules have not been written yet. The slogan is NOT "One Size Fits All." Some states may restrict or prohibit one or more of these strategies. The FS's attorney may try out the following to "even the scales" in trial or settlement:

•When the parties are in agreement, spousal support is one way to obtain payments not restricted to a retirement based on rank and years of service (and the High Three) at the time of the order. An alimony order – which can be used by skilled attorneys to mimic a pension division – gives much more flexibility in dealing with the retired pay center, so long as the payments do not end at remarriage or cohabitation of the FS. There is, for example, no requirement for 10 years of marriage overlapping 10 years of creditable service[8]. A consent order for spousal support should suffice to obtain the payments to the FS upon retirement of the SM, and the tax consequences will be the same, namely, the FS is taxed on the payments and they are excluded from the income of the payor/retiree.

•The FS can ask the court for an award of spousal support to make up the difference, that is, the money which would be lost to the FS by division of the hypothetical retired pay of the SM. If the FS is awarded alimony while the member is still serving, the FS may try to argue that it should not end automatically at the SM's retirement, since some amount might be needed to equalize the pension division for the FS.

•The FS can always ask the court for an unequal division of the property acquired during the marriage in an attempt to even out the entire property division scheme due to the division of a truncated asset of the SM, not the final retired pay. Or the FS can ask for a greater share of the pension to make up for the smaller amount which will be divided.

•The FS can also argue for a present-value division of the pension, with an expert witness setting the likely value of the retired pay, so that it can be offset by other assets given to the FS in exchange for a full or partial release of pension division. Evaluating a pension is a complex task. These complicated computations generally demand the evaluation report and testimony of an expert.

•Another approach is to delay the divorce. The longer this is put off, the larger the High Three amount will be. More time means possible promotions and pay increases.

•The FS can still use the standard time-rule clauses pursuant to the Bangs case and its progeny. The new law limits the "disposable retired pay" (DRP) which the retired pay center (DFAS or the Coast Guard Pay and Personnel Center) will honor, limiting DRP to "date-of-divorce" dollars in the High Three (for those still serving). The court may still enter a time rule order if it complies with the interim guidance or, when published, the rules implementing the frozen benefit law. The court should state that at the SM's retirement only a portion of the pension-share payment for the FS will come from the retired pay center. The order would provide that the member will still be responsible for the rest and will indemnify the FS for any difference between the two amounts. The duty to indemnify is a potential remedy for the reduction in payments to the FS and there is statutory support in 10 U.S.C. § 1408 (e)(6), the "savings clause" in USFSPA, which allows the courts to employ state enforcement remedies for any amounts which may not be payable through the retired pay center[9].

As a final note, be sure not to use "disposable retired pay" in the order to describe what is apportioned to the FS. DRP means the restrictive definition in the frozen benefit rule (i.e., the retired pay base at the date of divorce) less all of the other specified deductions, such as the VA waiver and moneys owed to the federal

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government. The best way to word a pension clause for the FS is to provide for division of total retired pay less only the SBP premium attributable to coverage of the former spouse. Regardless of the language used, DFAS will construe orders dividing retired pay as dividing "disposable retired pay[10]."

Resources

The final rules have yet to be published by DFAS, the Defense Finance and Accounting Service. Until there are revisions to Volume 7B, Chapter 29 of the Department of Defense Financial Management Regulation, no one will be completely sure how the division of uniformed services retired pay shakes out. The only information presently available from DFAS is a "Notice of Statutory Change" and a sample order[11].

A complete guide to problems and pitfalls stemming from the "Frozen Benefit Rule" is in the Silent Partner infoletter, "Fixing the Frozen Benefit Rule." How to write acceptable military pension clauses may be found at the Silent Partner, "Guidance for Lawyers: Military Pension Division." For the necessary terms for the MPDO, see the Silent Partner, "Getting Military Pension Orders Honored by the Retired Pay Center"; this guide includes the necessary elements and language for a proper hypothetical clause. All these infoletters are located at the military committee websites of the N.C. State Bar, www.nclamp.gov > For Lawyers, and the American Bar Association's Family Law Section, www.americanbar.org > Family Law Section > Military Committee.

[1]*Smith v. Smith,* 595 Pa. 80, 938 A.2d 246 (2007). The Smith case held that in a marital pension division, rather than using the salary at the time of separation, courts should instead allocate the pension between its marital and non-marital portions solely by using a coverture fraction, pursuant to 23 Pa.C.S. § 3501(c). Thus, the non-participant spouse is entitled to benefit from increases in value due to continued employment of the employee. "In the simplest of cases, the determination of the marital portion of a defined benefit pension will entail a straightforward application of the coverture fraction to the final total value of the pension, even though the value has increased due to years of postseparation employment." *Smith v. Smith*, 595 Pa. at 101-102, 938 A.2d at 259.

[2]10 U.S.C. § 1408.

[3]For the Army, Navy, Air Force and Marine Corps, the retired pay center is DFAS (Defense Finance and Accounting Service) in Cleveland, Ohio. Pension garnishments for the Coast Guard and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration are handled by the Coast Guard Pay and Personnel Center in Topeka, Kansas.

[4]The other element for determination of retired pay is the "retired pay multiplier," which is 2.5% times years of creditable service (in an active-duty case). In a Reserve or National Guard case, the court order must also provide the applicable number of retirement points.

[5]See *Brett R. Turner*, EQUITABLE DISTRIBUTION OF PROPERTY (3rd Ed. & 2016-2017 Supp.), Sec. 3.2. In those states which have adopted the Federal Rules of Civil Procedure, the issue of separate trials under Rule 42 (b) deals with bifurcation of claims into separate hearings.

[6]For an excellent summary of arguments against bifurcation of the divorce and the property division, along with case citations for state appellate decisions, see Brett R. Turner, EQUITABLE DISTRIBUTION OF PROPERTY (3rd Ed. & 2016-2017 Supp.), Sec. 3.2.

[7]The anticipated delay, however, may work to the FS's advantage. The longer the division of retired pay is put off, the better chance the FS will have of dividing a higher amount of retired pay. In general the FS's case usually will benefit from delay under the new rule.

[8]10 U.S.C. § 1408 (d)(2) requires this 10/10 overlap of marriage and military service for garnishment of military retired pay as property division.

[9]See also Brett R. Turner, EQUITABLE DISTRIBUTION OF PROPERTY (3rd Ed. & 2016-2017 Supp.), Sec. 6.4.

[10]DoDFMR, Vol. 7B, ch. 29, Sec. 290601.

[11]Type into any search engine, "Notice of Statutory Change" and "DFAS" to locate this. DFAS has placed the Notice at its website, www.dfas.mil > Garnishment Information > Former Spouses' Protection Act > NDAA-'17 Court Order requirements.

Honor Stephen Anderer at Philadelphia Bar Association 5K on May 21

Dear Colleagues and Friends,

Many of you knew Stephen J. Anderer, Ph.D., who passed away unexpectedly on August 28, 2016. Stephen was a respected family lawyer and psychologist who was committed to improving the lives of disadvantaged children through his work for the Support Center for Child Advocates in Philadelphia, which is the nation's leading pro bono legal and social services advocacy organization serving abused and neglected children. Stephen was a member of the Volunteer Committee and he consulted in many of their cases. He represented many children in more than 20 years of service as a Volunteer Child Advocate Attorney and, in 2001, Stephen was honored as a Distinguished Advocate. Stephen was also a gifted athlete who enjoyed running among many other activities, and he participated for many years in the Philadelphia Bar Association 5k Run/Walk, which benefits the Support Center for Child Advocates.

The 38th Annual Philadelphia Bar Association 5K Run/Walk is taking place on Sunday, May 21, 2017 at Memorial Hall in Fairmount Park, Philadelphia. All of the proceeds of this event will benefit the Support Center for Child Advocates. Please join me in honoring Stephen by walking or running with the non-competitive Friends of Stephen J. Anderer team or by making a contribution to the event in his memory.

The link to register for the walk/run is: https://runsignup.com/RaceGroups/37953/Groups/345411.

The link to donate is: https://runsignup.com/Race/Donate/PA/Philadelphia/PhiladelphiaBarAssociation5k.

Legislative Update:

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This article summarizes several domestic relations bills introduced in the 2015-16 legislative session of the Pennsylvania General Assembly. Status of each bill is as of Feb. 23, 2017. The full text of the bills, as well as their legislative history, may be found at: http://www.legis.state.pa.us/cfdocs/legis/home/bills/.

New Law

Senate Bill 1311 was signed by the governor before the close of the 2015-2016 General Assembly as Act 115 of 2016, P.L.966, No.115. The act amended 23 Pa.C.S. § 2511(a) to add two justifications for the involuntary termination of parental rights. They are that the parent has been found by a court of competent jurisdiction to have committed sexual abuse against the child or another child of the parent based on a finding of "sexual abuse or exploitation," or the parent is required to register as a sexual offender. The definitions of "perpetrator" and "child abuse" found in 23 Pa.C.S. § 6303 were also amended to include severe forms of trafficking a child. he statute took effect on Oct. 28, 2016.

Adoption

House Bills 56 through 63 are part of an adoption reform package introduced in the fall of 2016 and reintroduced in January 2017.

House Bill 56 (Printer's No. 189) was introduced and referred to the House Children and Youth Committee on January 31, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. The bill provides for counties to provide adoption-related counseling services to parents of children who are being relinquished or who have been relinquished for adoption, including putative fathers.

House Bill 57 (Printer's No. 169) was introduced and referred to the House Children and Youth Committee on Jan. 25, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. The bill expedites the adoption hearing and provides procedures for a diligent search for the putative father, and defines procedure to challenge the validity of the consent to adoption.

House Bill 58 (Printer's No. 170) was introduced and referred to the House Children and Youth Committee on Jan. 25, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. The bill shortens the time period in which the mother can revoke her consent and restricts future challenges to the consent.

House Bill 59 (Printer's No. 55) was introduced and referred to the House Children and Youth Committee on Jan. 23, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. The bill allows parents who adopt a child to appeal to the Pennsylvania Department of Human Services the amount of an adoption subsidy provided by local authorities.

House Bill 60 (Printer's No. 152) was introduced and referred to the House Children and Youth Committee on Jan. 24, 2017. The bill provides for permissible reimbursement of expenses by adoptive parents to an adoption intermediary for medical care and living expenses of the birth mother, counseling for the adoptive parents, home visits and investigations and administrative expenses.

House Bill 61 (Printer's No. 56) was introduced and referred to the House Children and Youth Committee on Jan. 23, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. It permits the consent to an adoption by an incarcerated person to be witnessed by a correctional facility employee.

House Bill 62 (Printer's No. 57) was introduced and referred to the House Children and Youth Committee on Jan. 23, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. The bill would eliminate the requirement of holding a hearing to confirm a consent to an adoption when the birth parent or parents of the child being placed for adoption have executed valid consents to an adoption. The court would be authorized to confirm the consent without a hearing and enter a decree of termination of parental rights and duties.

House Bill 63 (Printer's No. 58) was introduced and referred to the House Children and Youth Committee on January 23, 2017. It received second consideration and was re-referred to the House Appropriations Committee on February 8, 2017. The bill amends the definition of adoption "intermediary" to include licensed attorneys and licenses social workers.

House Bill 243 (Printer's No. 207) was introduced and referred to the House Judiciary Committee on Jan. 31, 2017. The bill adds "the repeated and continued abuse of alcohol or a controlled substance by the parent has placed the health, safety

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or welfare of the child at risk and the abuse of alcohol or a controlled substance cannot or will not be remedied by the parent" to the grounds for involuntary termination of parental rights.

House Bill 289 (Printer's No. 283) was introduced and referred to the House Children and Youth Committee on Feb. 2, 2017. It received second consideration and was re-referred to the House Appropriations Committee on Feb. 8, 2017. The bill adds reasonable living expenses to the list of items that can be reimbursed to the birth mother by the adoptive parents, and lists additional demographic information to be included on the petition for adoption.

Alimony and Support
No bills introduced.

Custody

House Bill 443 (Printer's No. 459) was introduced and referred to the House Judiciary Committee on Jan. 10, 2017. The bill gives the common pleas court the power to temporarily modify the custody order when a parent is found to be in contempt.

Divorce

No bills introduced.

Domestic Violence

House Bill 44 (Printer's No. 400) was introduced and referred to the House Judiciary Committee on Feb. 15, 2017. This bill provides notice to the court from the petitioner in a protection from abuse action whether the person has any knowledge of a child abuse investigation involving the defendant. If so, the petition would set forth the name of the investigative agency and any other information in possession of the plaintiff.

House Bill 274 (Printer's No. 232) was introduced and referred to the House Judiciary Committee on Jan. 31, 2017. The bill permits a court entering a protection from abuse order to include an order to not harm and dog or cat belonging to or residing with the plaintiff.

Equitable Distribution

No bills introduced.

Family Courts/Litigation

No bills introduced.

Kinship and Foster Care

House Bill 206 (Printer's No. 174) was introduced and referred to the House Children and Youth Committee on Jan. 25, 2017. The bill authorizes a study to determine drug abouse by parents within resource families.

Marriage

House Bill 141 (Printer's No. 105) was introduced and referred to the House Judiciary Committee on Jan. 23, 2017. The bill eliminates the three-day waiting period to obtain a marriage license after application therefore.

Paternity

See House Bills 57, 58, 62 and 243 in the Adoptions section above for adoption bills that address paternity and termination of parental rights.

Support

House Bill 42 (Printer's No. 48) was introduced and referred to the House Judiciary Committee on Jan. 23, 2017. The bill restricts the ability of the court to order the suspension of driving privileges for violation of domestic relations orders.

House Bill 114 (Printer's No. 90) was introduced and referred to the House Health Committee on Jan. 23, 2017. The bill requires a non-custodial parent of children for whom Medical Assistance is sought to enroll their children in their own health insurance plan before the commonwealth would pay for medical care for them. It is intended to ensure that Medical Assistance is the payer of last resort.

House Bill 139 (Printer's No. 103) was introduced and referred to the House Judiciary Committee on Jan. 23, 2017. This bill authorizes family court judges to hold individuals in indirect criminal contempt for willfully failing to pay a support order.

Bar Review

Gerald L. Shoemaker, Esq.

Judge Daniel J. Clifford of the Court of Common Pleas of Montgomery County has been appointed to the Board of Directors of the Pennsylvania Bar Institute. Judge Clifford was also honored by the Montgomery County Bar Association Diversity Committee as a founding member of the Committee and also for being the first LGBT member of the Bench in the 38th Judicial District.

Congratulations to **Jessica A. Pritchard** of Doylestown's **Antheil Maslow & MacMinn LLP** on being honored as Women Who Make a Difference by the YWCA Buck County.

David S. Pollock, founding member of the Pittsburgh firm **Pollock Begg Komar Glasser & Vertz LLC**, was the recipient of the Eric Turner Memorial Award at the PBA Winter Family Law Section Meeting. Congratulations David!

Pollock Begg welcomes **Heather Trostle Smith**, who joined the firm as an associate.

Congratulations to **Patrick T. Daley** on making partner in the Media firm of **Sweeney & Neary LLP**.

Our condolences go to **Susan J. Smith** of **Williams Family Law PC** in Doylestown on the recent passing of her father, Robert Smith.

Also at **Williams Family Law PC, Robert J. Salzer** has be named partner of the firm and **Melanie J. Wender** has joined as an associate.

Kelley Menzano Fazzini and her husband, Mike, account the birth of their son, Alexander John Fazzini II (A.J.) who was born on July 7, 2016. Kelley is an associate at Norristown's **Hangley Aronchick Segal Pudlin & Schiller PC.**

Also at **Hangley, Colleen M. Norcross** has joined the firm as an associate.

Blue Bell's **Shemtob Law PC** welcomes **Marshall H. Schreibstein,** who joined the firm as an associate.

Lori Shemtob has been inducted as the President of the Pennsylvania Chapter of the American Academy of Matrimonial Lawyers.

It is with sadness that we mourn the loss of long-time Pittsburgh attorney **June Schulberg**, who was retired from **McCarthy, McDonald, Schulberg & Joy P.C.**

Scott J.G. Finger has been named shareholder at Philadelphia's **Hofstein Weiner & Meyer PC.**

Carolyn Moran Zack has joined the Philadelphia firm of **Momjian Anderer LLC**.

Melaine Shannon Rothey of Pittsburgh's Jo**nes, Gregg, Creehan & Gerace LLP** has been named the President of the Allegheny County Bar Association.

Lisa Shapson has been promoted to partner at Philadelphia's **Berner Klaw & Watson LLP**. Congratulations Lisa.

Also at **Berner Klaw & Watson LLP, Stephanie Stecklair** has joined as an associate.

At **Fox Rothschild, Judy Springer** has received the 2016 Pro Bono Publico Award from Pennsylvania's First Judicial District for her volunteer work with the Support Center for Child Advocates in dependency cases.

Congratulations to **Eileen G. Murphy** and her husband, Patrick, on the birth of their baby, Theodore B. Murphy, who was born on July 30, 2016. Eileen is at the Philadelphia office of the **Law Offices of Michael E. Fingerman.**

Judith Algeo of Doylestown's **Eastburn & Gray** has been awarded the 2016 ABA Jean Crowe Pro Bono Award.

Allegheny County family law practitioner **Anita Astorino Kulik** won both the Democratic and Republican nominations for state representative in the 45th legislative district.

Elizabeth Early of Norristown's **High Swartz LLP** gave birth to Robert on July 12, 2016. Robert joins Liz and dad, Jeff Milligan, at home. Congratulations Liz!

Get well wishes go to **Mary Cushing Doherty** also of **High Swartz**. Mary is recovering from surgery.

West Chester's **Rovito Law LLC** welcomes F**redda L. Maddox** as a member of the firm.

Robert D. Weinberg has joined the Pittsburgh firm of Gentile, Horoho & Avalli, PC, working as an associate.

Congratulations to **Adam H. Tanker** of Doylestown's **MacElree Harvey** on the birth of his son, Samuel "Sammy"

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BAR REVIEW
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Tanker. Sammy was born on July 24, 2016 and joins Adam and mother, Shira, at home.

Karen Ackerman has returned to Pittsburgh's **Raphael Ramsden & Behers PC** as an associate.

The Pa. Family Lawyer Co-editor **Amy J. Phillips** has new contact information: Amy J. Phillips, The Family Law Practice of Leslie S. Arzt, Esq., 2002 S. Queen St., York, PA 17403
Office: 717-741-0099; Fax: 717-801-0448;
email: *amy@LSAFamilylaw.com*

GETTING TO KNOW ONE OF OUR MEMBERS . . . Jessica Pritchard.

Jessica A. Pritchard

Jessica is a partner in the Bucks County firm of Antheil Maslow & MacMinn LLP.
jpritchard@ammlaw.com

1. Full name?
Jessica Anne Irene Pritchard

2. How did you become interested in family law/why did you choose this area of law?
I did not find family law; family law found me. After law school, I was initially hired to work in the area of criminal defense, however, the family law associate left shortly after I started. The partners discussed matters and I was moved to the family law department. Despite crying in front of the partners at that time, I couldn't be happier with the way things worked out.

3. How long have you been practicing and where?
I have been practicing family law in Bucks County since 1999.

4. Why did you choose to live and practice in Doylestown?
My family and I live in Doylestown Borough because I grew up a few miles down the road. I have a very supportive extended family living close by and it is wonderful that my children have this amazing benefit.

5. What's your favorite thing about Doylestown?
Doylestown is an idyllic American small town. My favorite thing is that the people here have pride in our inclusive community. For a small town, we have many reasons to live here. In addition to the lovely shops and restaurants that line the streets, we have the Mercer Museum, Moravian Pottery and Tile Works, Oscar Hammerstein Farm and Fonthill Castle.

6. What's your favorite vacation spot?
Sea Isle City, New Jersey, may not be the most exclusive zip code but it remains my favorite vacation spot. My husband's family owns a home there and we return year after year. Much of my extended family and friends can be found there on any given week.

7. What's your favorite book?
My favorite book is Judy Blume's "Deenie." It chronicles a young woman's journey after being diagnosed with scoliosis. As a young teen, I was diagnosed with scoliosis and had to wear a back brace for a year and a half. I was given this book by my mother a few weeks prior to getting fitted for my brace. At the time, I was horrified and upset. I can't say that the book alleviated my fears but I can say I vividly remember its impact on my young self and it remains a favorite.

8. What's your favorite TV show?
Beverly Hills 90210 is my all-time favorite show. I went to high school and college in the 90's. That should be sufficient explanation for my love of this show. "Donna Martin graduates!"

9. What's your favorite movie?
"Annie" (the original) is my favorite movie. I used to sing the songs on the bus in grade school (for the record, I am a horrible singer). Now my daughter watches it and loves all the songs.

10. What's one thing that we don't know about you?
I was voted "Most Spirited" for the Archbishop Wood High School Class of 1992. It probably had to do with my being dressed as the mascot, a Viking, at various pep rallies. They must have remembered because I have recently been appointed to their Board of Directors.

11. What's your favorite band?
My favorite band is U2. I joke that they are the soundtrack of my life. On Valentine's Day 1994, I was living in Dublin, Ireland. U2 was opening a dance club that evening. My friend and I stood outside the club in freezing weather waiting to get a glimpse of the band. We had fun and I have a picture of Larry Mullen, Jr. (the drummer) to prove it.

12. What are your pet peeves in terms of practicing family law?
I dislike when a client tells me "my spouse told me that…" or "my neighbor said…" Why are they paying for my advice if they are not going to at least listen to it?

Pa. Family Lawyer Indices by Joel Fishman Ph.D.

Vols. 1-36 (1980-2014) on the PBA Family Law Section Website at www.pabar.org/public/sections/fam05/Pubs
You must login as a PBA member to use this exclusive member benefit.

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

Index to the *Family Law Quarterly*
Volumes 45-49 (2011-2016)
Compiled by Joel Fishman, Ph.D., and Isabella Bergstein*

It has been five years since the publication of the previous index to volumes 33-44 of the *Family Law Quarterly* (see December 2011 issue). As the leading periodical of the ABA Family Law, Section, its articles are important for their topical interest and for the development of family law and related matters over the past five years. With the issues containing symposium, we have added the name of the symposium at the end of the article. We thank David S. Pollock, Editor-in-Chief, for his continued support for these indexes and bibliographies

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IV. BOOK REVIEWS

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PBA FAMILY LAW SECTION NOMINATING COMMITTEE REPORT 2017

The Family Law Section of the Pennsylvania Bar Association is governed by by-laws last amended in January, 2017. Article V of those by-laws requires that at least annually, a Nominating Committee be assembled for the purpose of making nominations for Section members to fill officer and council member vacancies. This year, as immediate past chair of the Section, I had the honor of acting as the chair of the Nominating Committee. Members of the committee are Steven S. Hurvitz, chair-elect, Gail C. Calderwood, first vice-chair, Joseph R. Williams and Amy Phillips, council members, and Christine Gale and David L. Ladov, past chairs of the Section. We met via telephone conference on Wednesday, March 22, 2017, at which time we executed our duties to the best of our collective ability, resulting in the nomination of the following slate of officers and council members to fill the vacancies of those whose terms expire at the conclusion of the upcoming Summer Meeting.

OFFICERS

CHAIR:	Steven S. Hurwitz
CHAIR-ELECT:	Gail C. Calderwood
FIRST VICE-CHAIR:	Michael E. Bertin
SECOND VICE-CHAIR:	David C. Schanbacher
SECRETARY:	Helen E. Casale
TREASURER:	Darren J. Holst

COUNCIL MEMBERS

Brian C. Vertz, Melissa P. Greevy, Anthony M. Hoover, Eileen G. Murphy, Jill M. Scheidt, Heather Trostle Smith, and Lauren L. Sorrentino

Official voting by the membership of the Family Law Section will take place during the meeting to be held July 16, 2017, in Richmond, Virginia. All members are invited and encouraged to attend this meeting. While it will prove to be a "hot" time, it will undoubtedly be a weekend to remember fondly.

The 2017 Nominating Committee extends its sincere and heartfelt thanks to everyone who expressed an interest in becoming an officer or council member of the Section. We also greatly appreciate the service and dedication of those council members whose terms are expiring at the conclusion of the Summer Meeting. They are: Christina M. DeMatteo, Sarinia M. Feinman, Darren J. Holst, James G. Keenan, Elisabeth Molnar, Judy M. Springer and Joseph R. Williams and to J. Paul Helvey who served as Section delegate.

Respectfully submitted:
/s/
Mary E. Schellhammer,
Family Law Section 2017 Nominating Committee Chair

PBA Annual Meeting May 10-13 in Pittsburgh

The PBA Annual Meeting, one of the largest events of the year, is the perfect place for different types of lawyers to convene. To be held May 10-12 at the Omni William Penn Hotel in Pittsburgh, the annual meeting promises to be three days of thought-provoking presentations, insightful speeches and opportunities to meet with colleagues from across the commonwealth.

PBA offers a variety of professional development programs, receptions and networking opportunities.

The schedule of CLE events is as follows:

ANNUAL MEETING CLES

Wednesday, May 10
Planning for Disaster (CLE 301)
1.0 ethics CLE credit
Hot Topics in Federal Practice (CLE 302)
1.5 substantive CLE credits
5 Tough Problems in Guardianship Cases – Solutions That Work (CLE 303)
1.0 substantive CLE credit

Thursday, May 11
Big Changes Coming for LLCs, LLPs, LPs and GPs: An Overview of Act 170 (CLE 304)
1.5 CLE substantive credits
Better Call Saul? The Ethics of Breaking Bad (CLE 305)
1.0 ethics CLE credit
Aeronautical & Space Law Section "Space Operations: Pittsburgh" (CLE 306)
1.5 substantive CLE credits
How the Trump Administration Is Changing U.S. Immigration (CLE 307)
1.0 substantive CLE credit

For more information and to register, go to www.pabar.org. Click on Events Calendar, go to May 10-12, then click on PBA Annual Meeting.

#PBAannual17

Mark your calendar

Upcoming PBA Famly Law Section Meetings

2017 Summer Meeting • July 13-16, 2017
Omni Richmond, Richmond, Va.

2018 Winter Meeting • Jan. 11-14, 2018
The Roosevelt New Orleans, New Orleans, La.

2018 Summer Meeting • July 12-15, 2018
Hotel Hershey