



Family Law News

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

Maryland State Bar Association, Inc.

April 2011



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CHAIR'S MESSAGE- APRIL 2011

Greetings to the members of the Family and Juvenile Law Section Council

At the moment, we are deeply involved in the Maryland General Assembly legislative session. The FJLSC is actively supporting or opposing 19 bills of interest to family law attorneys. The Section's legislative efforts this year include advocating for the passage of a multi-family adjustment to the Child Support Guidelines; advocating for a grandparent visitation statute; advocating for legislation to create stronger protections for victims of domestic violence; continuing to oppose a presumption of joint custody, both legal and physical; supporting legislation making it easier for parties living under the same roof to file for, and obtain, a divorce under certain circumstances; and supporting the proposal to allow same sex marriages in Maryland. A special shout out to Delegate Kathleen Dumais for her hard work and unwavering dedication to improving our laws that impact the practice of family law.

Don't miss the MSBA FJLSC's new CLE, "Representing Children in Juvenile Court", on April 15 in Columbia. This course addresses the representation of children in CINA and delinquency cases, with unique perspectives from the bench, mental health practitioners, and experienced attorneys. Please contact the MSBA to register.

Council member, Alisa Cummins, from Howard County has prepared our Top Ten this month. It suggests "Top 10 Things to Consider Before You Post on the List Serve". In April, we are hoping to have "Top 10 Things to Keep Your Judge Listening" Keep watching the List Serve!

Our annual Program at the MSBA Convention in Ocean City, "Limited Scope Representation in Family Law Cases," promises to be both educational and fun! In addition, we will be awarding fabulous prizes to members of our audience and the distinguished Beverly Ann Groner Award will be given to a deserving member of the family law community. We currently are requesting nominations for the Groner Award. If you know a deserving person, please complete the nomination on the last page of this newsletter.

If any Section member has a question, suggestion or comment about the Section or any of our activities, I welcome your contact. I can be reached via e-mail at dlenning@truthmd.org.



Dorothy Pennig
Chair, 2010-2011



Message from the Editor

We all know that the lines are often blurred in the eyes of a client when it comes to whether we as attorneys are working as psychologists and vice versa. It is hard at times to avoid this and helpful to hear from others in terms of when there needs to be an active handoff to a therapist. Sometimes as well, it is important to be aware of the psychological dynamics between you and your client, between counsel and/or the parties and within your office environment itself. In this issue, we thus explore these psychological components from a number of fronts with the capable help of Hadrian Hatfield, Angela Silverstein and Ron Bergman in their capacity as attorneys coupled with the important insights of Paul Berman, a licensed psychologist in full time private practice in Baltimore County and Lynn Friedman, Ph.D., a clinical psychologist, psychoanalyst and organizational consultant in full time, private practice in Chevy Chase where she sees individuals in psychotherapy, psychoanalysis & provides consultation to organizations. There are also the practice pointers and case notes we try to provide in each issue as well as important developments in the area of our juvenile law practice.

Kristine K. Howanski, Justin J. Sasser and Walter A. Herbert, Jr.



Benefits of Therapy During Divorce

By: Hadrian N. Hatfield, Esquire

Many people going through separation or divorce think that consulting a therapist is a waste of time and money, or worse, could be held against them in any court proceedings. Others have consulted a mental health professional for years, and worry whether that can be used against them. The following are just some of the benefits from consulting a mental health counselor during separation or divorce. These include:

1. Separation and divorce are among the most stressful experiences any of us likely will have during our lifetime. In addition to the stress, the feelings of loss, shame, anger, lack of control, and hopelessness can be overwhelming. Even the emotionally strong can use skilled help during this time.
2. Separation and divorce require good judgment and decision making over a prolonged period of stressful time (see point 1!). This is often impossible if the stressors are left to act with no constructive release or experienced professional feedback.
3. Attorneys are usually more expensive, and almost always less educated, experienced, and skilled than mental health professionals when it comes to helping with emotional and psychological consequences of separation and divorce. Many clients could get better and more relevant help, at much less cost, from talking to a therapist more and their family law attorney less.

Obviously, this is not a recommendation to divorce without a lawyer, though!

4. Family law judges recognize the importance of mental health counseling and treatment, especially on good family dynamics. They usually will credit a party who gets help when they need it. The opposite can be true for someone who consciously ignores a reasonable and rational response to difficulty and family change.
5. Mental health professionals experienced with separation and divorce issues often can better educate parents about the effects of various choices and processes on their children. This can lead to better parenting and more well-adjusted children.

These benefits are among the good reasons to recommend that almost every client consult with a mental health professional at least once during the divorce process.

Hadrian N. Hatfield, a partner with Shulman, Rogers, Gandal, Pordy & Ecker, P.A., in Potomac, Maryland, concentrates his practice on family law litigation and mediation in Maryland and D.C. He wishes to acknowledge and thank to Meg McKinney, David Goldberg, and Daniel Owel for their learned views on this topic expressed in list-serve discussions.

Annual Meeting Coming Soon!



MSBA 2011 Annual Meeting

June 8-11

Ocean City, MD



Sea. You. There.

FJLSC Legislative Update-

Legislative Summary as of March 9, 2011

By: Dorothy Fait

Although the legislative session started in mid-January, 2011, most of the Bills of interest to the Family and Juvenile Law Section Council were introduced in early February, with hearings scheduled shortly thereafter. The process put us in a position where our resources were stretched, having to marshal people to testify at the various hearings, as well as provide written testimony.

Attached is a chart (on page 4) showing, to date, the Bills upon which we have taken positions and the status of those Bills. Much will be happening with these Bills in the upcoming weeks and it is imperative that our Section Council stay on top of the status, so we can make our views known to the legislators.

While a chart is attached, the following are the “top ten” Bills that we have been focused on in this session:

1. SB 116 - Civil Marriage Protection Act (same sex marriage) - This Bill has passed the Senate and passed the House Judiciary Committee by a narrow margin. It is likely to be addressed on the House floor this week. Assuming it passes, the Governor will sign it. However, opponents of the Bill will petition a referendum and the Bill will be placed on ballot in the 2012 election.

2. HB 1052 and HB 1132 - These Bills are this year’s attempt to establish a presumption of joint physical and legal custody. This year, new support has been garnered for this Bill from the NAACP, and several father’s rights organizations. There was a contentious hearing on this issue in the House Judiciary Committee on February 24, 2011. A companion Bill in the Senate (SB 909) will be brought to a hearing on March 23rd in the Senate Judicial Proceedings Committee. We need as many people as possible, to sign up and testify in opposition to this Bill on March 23rd. Also, it is important to contact members of the Senate Judicial Proceedings Committee and let them know our position.

3. HB 402 - Grounds for Divorce - This Bill would reduce the length of the waiting period for a voluntary separation to six months and for a no-fault divorce to one year. The Bill has been amended in the Senate version (SB 139) and has passed the Senate, so that the no-fault provision for absolute divorce would be reduced to twelve months of separation.

4. HB 427 - Child Support Guidelines (Lorinez case) - This Bill would provide that an individual who is in school or job training may seek work-related childcare expenses in a child support case.

5. HB 635 - Child Support - Extraordinary Medical Expenses - This Bill modifies the child support statute to provide that extraordinary medical expenses would be defined as medical expenses which are out of pocket and are more than \$250 in any calendar year.

6. HB 837 - Exemption from Execution for Child Support Arrearage (Roseman case) - This Bill would provide that a personal injury settlement could be attached for child support arrearage, but only up to 25 percent of the settlement.

7. HB 304 - Termination of Alimony - This Bill would have provided that alimony terminated upon cohabitation of the recipient. This Bill was defeated in the House Judiciary Committee after our testimony in opposition to the Bill.

8. HB 35 - Child Support - Definition of Actual Income - This Bill would have provided that an individual could obtain a second job to pay off a child support arrearage, without having the income accounted for child support purposes. It was badly written and we testified in opposition to it - the Bill failed in the House Judiciary Committee.

9. HB 1037 - Grandparent Visitation - This Bill brings our Grandparent Visitation Statute into conformity with Constitutional standards and would allow grandparents under appropriate circumstances to petition for visitation with their grandchildren.

10. HB 422 - Child Support - Multi-Family Adjustment - This Bill would modify the language in the Child Support Statute to provide for an appropriate formula for child support for a payor who has other children in the household the payor is living in; and to whom a duty of support is owed by the payor.



Bill Number	Subject Matter	FJLSC Position	Date of Hearing	Status
HB 35	Child Support Definition of Actual Income	Oppose	2/02/2011	Unfavorable; House Judiciary
HB 304	Termination of Alimony	Oppose	2/17/2011	Unfavorable; House Judiciary
HB 402	Grounds for Absolute Divorce 6 months for Voluntary Separation 1 year for No Fault	Support	2/24/2011	
HB 403	Grounds for Divorce Separate Bedrooms	Support	2/24/2011	Withdrawn
HB 407	Domestic Violence Cruelty to a Pet or Service Animal	Support	3/03/2011	
HB 416	Domestic Violence Definition of Abuse	Support	3/03/2011	
HB 422	Child Support Multifamily Adjustment	Support	2/24/2011	
HB 427	Child Support Guidelines Child Care Expenses (Lorincz Case)	Support	2/24/2011	
HB 635	Child Support Extraordinary Medical Expenses	Support	2/24/2011	
HB 667	Peace Orders Extension of Duration	Support	3/03/2011	
HB 805	Domestic Violence Timely Reporting	Oppose	3/03/2011	
HB 816	Child Custody Determinations	Support	2/24/2011	
HB 837	Courts Exemption from Execution for Child Support Arrearage (Roseman Case)	Support	2/24/2011	
HB 1052 HB 1132	Visitation Rights of Non-Custodial Parents-Equal Parenting Time	Oppose	2/24/2011	



Representing the Client with Diminished Capacity

By: Angela J. Silverstein and Paul C. Berman

In a day and age with increasing knowledge, understanding and compassion of mental illness and addiction, the lawyer is left without much guidance when it comes to representing an individual with mental health or addiction issues. The first place an attorney looks to for guidance is within the Maryland Rules of Professional Conduct to Rule 1.14 – Client with Diminished Capacity. While the Rule is somewhat helpful it does not necessarily provide step by step rules in the manner the average lawyer is used to. Indeed, even Comment 8 of Rule 1.14 in discussing disclosure of a client's condition states: "The lawyer's position in such cases is an unavoidably difficult one." The purpose of this article is to flesh out some of the tools the lawyer can use in representing individuals with diminished capacity.

How does the law define diminished capacity?

It would seem the answer to that question would be obvious but it isn't. A guardian for the property can be appointed when a person "is unable to manage his property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment compulsory hospitalization, confinement, detention by a foreign power, or disappearance." While Estates and Trusts §13-201 deals with the appointment of a guardian of the property for an individual it does give clues as to what the law deems as being diminished capacity.

Further review of the Estates and Trusts Article can help a lawyer with the degrees of diminished capacity. Maryland Code, Estates and Trusts §13-705(b) states:

A guardian of the person shall be appointed if the court determines from clear and convincing evidence that a person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

The law does require that for the appointment of a guardian it must be proved that there is no less restrictive form of intervention to manage the property or care for the individual personally. Having said that, a lawyer may come across clients with any number of degrees of diminished capacity that don't meet the standards for the appointment of a guardian but whose particular mental health issues make representation extremely difficult. The long and short of it is diminished capacity can be defined as anything that may render the client incapable of assisting the lawyer in the prosecution or defense of the matter being handled.

How can you tell if your client has diminished capacity?

A lot of movies and t.v. shows would lead one to believe that "diminished capacity" is obvious and leaps out at you immediately. Everyone reading this would say they have represented the "crazy" client but serious problems can be more subtle than expected. A client will not always present or disclose mental illness in your first consultation with him/her and the alcoholic will not always reek of alcohol when he/she comes to your office. Indeed many individuals with mental health problems will initially appear fully capable in assisting you in your representation of them and in making considered decisions regarding their case. The law does recognize varying degrees of competence. See comment 1 of Rule 1.14. Comment one gives some examples of diminished capacity in which the client can still give considered opinions, however there are a multitude of instances the lawyer may come across. For example, an individual who is seriously addicted to illegal or prescription drugs. This individual may be fully capable of giving the lawyer opinions and in indicating what he or she wants out of litigation. However, the same individual may be completely unresponsive for long periods of time and completely incapable of providing coherent discovery responses or to collect requested documents. This individual is clearly competent enough to tell you what they want but completely incapable in assisting you in reaching that goal.

Another very different example is a client that suffers from Dissociative Identity Disorder, commonly known as multiple personality disorder. This individual may be perfectly capable of gathering documents and providing detailed information in a very timely manner. He or she may also be very clear on what the objectives are in your representation. However, this person may also be incapable of following through with final agreements and may often completely sabotage good results after lengthy litigation and negotiations.

Lawyers may also come across individuals suffering from Post Traumatic Stress Disorder – especially at this particular time in history. This individual may initially present just fine but then begin to self-medicate and become as responsive as the above mentioned drug addict. This person may also avoid dealing with ongoing issues surrounding the subject matter of your representation, going so far as to avoid talking to the lawyer at all. Or, this individual may suffer major setbacks every time he or she has to talk to the lawyer.

All of the above individuals may suffer from some degree of diminished capacity but it cannot be said that they are incompetent or that they should not be afforded all considerations in the client-lawyer relationship. That being said, these individuals can be next

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Representing the Client...

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to impossible to represent, all for very different reasons. They all require extra hand-holding and individual attention. Attorneys have the responsibility to figure out what, besides competent representation, the client needs from them.

One of the difficulties in representing certain individuals like the above mentioned is that, in some cases, the proceedings themselves may cause the client serious upset, making their condition worse. The client may go from being capable of assisting the lawyer to completely incapable of dealing with anything, especially anything to do with the reason for the lawyer's representation. The lawyer may find themselves in the position of having to resolve the matter quickly simply to save the client from harming themselves.

If the client does not disclose everything from the outset of representation it can be difficult to recognize diminished capacity. Here are some things to think about.

1) How does your client present when you meet with him or her?

Some lawyers have seen it but it shouldn't be expected that an alcoholic will come into the lawyer's office stumbling drunk. Don't expect the client to start responding to the voices they hear in their head while in the initial consultation. Telltale signs of possible mental health problems may be subtle. Knowing something about addiction and mental illness could help in identifying when a client could have a problem. (Two resources: Clinical Guide to the Diagnosis and Treatment of Mental Disorders, Michael B. First and Allan Tasman, 2010; Principles of Addiction Medicine, Fourth Edition, Richard Ries, David A. Fiellin, Shannon C. Miller, and Richard Saitz, 2009.)

2) How long does it take your client to respond to phone calls, emails and letters?

Sometimes people are genuinely busy or simply forget to return a phone call or they are out of town, but if the lawyer has left numerous desperate messages with no response or the response is some cryptic voicemail left at 2:00 a.m. chances are the client has problems. Sometimes the case may be that when the client does get back to the lawyer the clues are in the apology, "I am sorry it took so long to respond, I just haven't wanted to deal with this." could be telling the lawyer the client isn't doing well – the problem may be a temporary emotional issue but it could be depression that could spiral to deeper depths.

3) What is your client doing while not with you?

It is hard sometimes for a lawyer to acknowledge but sometimes the opposing party can be an excellent source of information. A divorcing spouse often accuses a client of being mentally ill or

a raging drug addict and while those accusations are often self-serving falsehoods, they can also be truthful and informative. If the lawyer hasn't heard from the client in weeks and then gets a call from opposing counsel saying the client has been on a bender, the lawyer will need to address that. Also, the client will probably drop clues about what is going on with them. If the client says they just haven't been able to get out of bed and do routine things the lawyer should consider that the client may be depressed. Lip service is often paid to lawyers having to be good listeners but the fact is a lot of mental health issues fall through the cracks because a lawyer is just not listening. What your client is saying about life aspects outside of litigation may be subtle but can be neon flashing lights that the client is seriously suffering.

What should you do when you know or suspect your client has diminished capacity?

If the lawyer is lucky enough to have the client tell them about their mental health or substance abuse problem, how long they have been treated and who is treating them, then the job of representation can be much easier than otherwise. With the client's consent the attorney may want to consult with the treating mental health professionals and/or family members that could be of assistance. Once this has been done the lawyer can determine how much involvement the lawyer will need from third parties. The mental health professional may also help the lawyer determine just how to treat the client during the course of proceedings. In some cases a third party need only be consulted if the news is potentially distressing to the client. In other cases every aspect should be run through a mental health professional first. Some clients will need that extra care and the lawyer will have to have the patience to first figure out just what the client needs and to give that extra care.

In some cases the client is being treated but for whatever reason the mental health professional is not available, or is not consistently available, for consultation. For example, this may be the case if the individual is being treated in the V.A. system. In this case it may be best to have a trusted family member as the "consultant." This person should be closely involved with the client and knowledgeable about the client's particular issues. In some cases the client may wish to sign a power of attorney and allow the third party to resolve the entire case. More than likely the client will elect to do this simply because they know they can't handle the proceedings. In this case the attorney should be confident that the third party truly has the client's best interests at heart. The attorney should also make sure that the client is consulted as much as possible.

If the client has not been forth coming with information but the attorney has suspicions there is an underlying mental health or substance abuse problem, then the attorney has a difficult deci-

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Representing the Client...

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sion to make. Either the attorney should continue to monitor the situation closely and continue to listen very carefully for hints of bigger troubles or simply have an honest heart to heart with the client. It is surprising how an expression of concern over a client's odd behaviors can open flood gates. The attorney should be genuine in their concern and prepared with an action plan for moving forward.

In rare cases it may be necessary to appoint a guardian ad litem to represent the client. More than likely if this is necessary it will be abundantly clear that other, less intrusive means, will not take care of the problems in representation. The appointment of a guardian means that the appointed individual "steps into the shoes" of the disabled person. The courts do not take the appointment of a guardian lightly. Essentially the client would cease to make any decisions and the guardian would take over.

The goal should always be not to make things worse for your client while weathering contentious legal battles.

What mental health disorders can lead to diminished capacity?

Diminished Capacity is a legal concept, not a medical diagnosis. Mental illnesses which may directly relate to intent and the ability to resist or control impulses include the psychotic disorders (e.g., confuse internal and external reality) such as schizophrenia and bipolar illness (i.e., severe depression and mania), severe depression, severe obsessions and compulsions (e.g., irresistible impulse), Post-Traumatic Stress Disorder, Dissociative states, and addictions. Organic brain disorders including dementia, mental retardation, brain injury, and other brain disorders may also lead to diminished capacity.

There is currently an ongoing debate with regard to whether personality disorders fall within the meaning of mental disease or defect in the test of criminal responsibility, the insanity defense, and diminished responsibility. At least one state (New Jersey) has affirmed that a personality disorder can form the basis for a diminished capacity defense while other states (i.e., Oregon) specifically excludes consideration of individuals diagnosed only with a personality disorder.

What is a Personality Disorder?

Personality disorders are marked by enduring, entrenched, inflexible, and crystallized patterns of thinking and/or behaviors which impair functioning. People with personality disorders tend to respond to differing situations and demands with a characteristically rigid constellation of thoughts, feelings, and behavior.

The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) lists ten personality disorder diagnoses and groups them into three clusters.

Each cluster represents a group of several specific personality disorders that are considered somewhat similar in terms of the cognitive, emotional, and behavioral patterns. They are referred to as Cluster A (the "odd, eccentric" cluster), Cluster B (the "dramatic, emotional, erratic" cluster), and Cluster C (the "anxious, fearful" cluster).

Early in the client-attorney relationship, even individuals with severe personality disorders will likely present as quite regular and typical. But as the attorney-client relationship becomes more involved, as the stress increases, and as the level of apparent trust and intimacy increases, the client's interpersonal and behavioral problems will become evident.

Personality disorders are typically characterized by dysregulation in at least one of the following areas: emotional dysregulation, interpersonal dysregulation, behavioral dysregulation, cognitive dysregulation, or a dysregulation in the sense of self.

Emotional dysregulation can be described as highly reactive and volatile emotional responses such as significant problems with anxiety, anger, irritability, anxiety, or depression. These reactions are out of proportion to the situation at hand and occur with some regular frequency. Interpersonal dysregulation can be seen in the client's tension and drama-filled chaotic relationships. The attorney-client relationship is typically initially protected from the chaos but devolves as soon as disagreements occur or the client feels they have been mistreated or misunderstood. Behavioral dysregulation usually, but not always, is self-directed and involves a pattern of problem impulsive behaviors such as self-mutilation, constant high-risk behaviors, and suicidal behaviors. Cognitive dysregulation involves problematic thinking patterns that include distortions in the way they interpret and think about the world and themselves. Examples include all-or-nothing, black and white thinking, pervasive mistrust, odd or eccentric thinking, and an extreme view of relationships where people (including their attorney) suddenly change from being "brilliant" and "the best" to "incompetent" and "the worst."

Managing clients with Diminished Responsibility.

The fundamental "rule" when working with clients with diminished responsibility is "accepting" the client for who they are, but doing so within an environment of structure, stability, emotional safety, and appropriate limits. The attorney must strive to consistently treat the client in an accepting and respectful manner with an emphasis on maintaining a positive and collaborative relationship.

The attorney's own inner feelings are often the first clue that they may be working with someone with diminished capacity or with someone who has a mental illness. When an attorney feels their own feelings more intensely or feels they are acting differently

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Frederick County: Practice and Procedure

By: Lorraine M. B. Prete, Esquire

In Frederick County, the filing fee for a divorce Complaint is One Hundred Forty-Five Dollars (\$145.00). An Answer filing fee is Ten Dollars (\$10.00).

An Initial Conference (generally called a Scheduling Conference elsewhere) is set after an Answer to a Complaint has been filed. A Proof of Service is not expected to be filed and is not necessary except in a Default situation. Generally, the Initial Conference is scheduled for approximately six (6) to eight (8) weeks after the Answer is filed. You will receive a Notice of Initial Conference within one (1) to two (2) weeks from the filing date of the Answer. If you do not receive a Notice from the Court within two (2) to three (3) weeks from the filing of an Answer, contact the Assignment Office and inquire as to the status of an Initial Conference date. If you are unavailable on the date set by the Court, you must file a written Motion for Continuance of the Initial Conference date. It is best if you have contacted opposing counsel and obtained available dates from them. The Assignment Office will try to accommodate you in regards to your and opposing counsel's availability after your Motion is granted.

The Initial Conference will be held by one of Frederick County's two Masters. If for some reason they are both unavailable, then a Judge will handle the proceeding. If custody or access is at issue, your client will have already been court ordered to attend the co-parenting seminar which consists of two (2) three (3) hour sessions or a six (6) hour Saturday session. The cost is One Hundred Dollars (\$100.00) per seminar and is non-refundable. A certificate of attendance will be provided by the class instructor to the Court, you or your client need not provide to the court.

Master Minner's Hearing Room is on the second floor of the Courthouse. Master Sandy's Hearing Room is on the third floor in Circuit Courtroom No. 3. If entering the Courthouse by the front doors, after passing through security, if you turn to the left and head towards the Assignment Office, you will see the docket sheets for the day posted on the wall so you will know which Master is hearing your case.

At the Initial Conference, you will be scheduling future court dates and events. There may be four or five other hearings set at the same time, usually, Initial Conferences or Settlement Conferences and not *Pendente Lite* Hearings. The Master wants to hear a brief synopsis of what is at issue in the case, not the facts, as they have read the file. They will recommend mediation at this hearing. If abuse has been alleged, they will inquire if the parties would be amenable to voluntarily attending mediation with counsel present.

The Court has a list of approved mediators. If your preference is attorney mediators, you must state that preference to the Master at the Initial Conference. Counsel could agree on a particular mediator and inform the Master. The cost of court-ordered mediation is Two Hundred Dollars (\$200.00) per party per two-hour session. The parties are ordered to attend two (2) sessions of custody/access mediation and/or marital property mediation. Any time over two (2) hours, the mediators may charge their normal hourly rate.

If a *Pendente Lite* Hearing is set, you must be specific about what issues are to be addressed. A maximum of two (2) hours is set for a *Pendente Lite* Hearing. You must convince the Master why a *Pendente Lite* Hearing should be specifically set for a longer period of time at the Initial Conference or you will be bound to the two (2) hour time limit. The *Pendente Lite* Hearing will be heard by a Master. Legal custody is generally not addressed at a *Pendente Lite* Hearing.

If your client qualifies for the Court Mediator due to income or is ordered to a court based custody evaluation, prior to leaving the courtroom, your client must complete a Confidential Questionnaire and leave it with the Clerk or Deputy in the courtroom. These forms are located at counsel's table in the Hearing Rooms.

For the Court Mediator, Kathryn McHugh, the range of the fee for each party goes from Twenty-Five Dollars (\$25.00) to One Hundred Fifty Dollars (\$150.00) per two hour session. All fees are paid to the Treasurer of Frederick County; however, the parties can bring fees on the day of the mediation session and give to the Court Mediator. The parties can also ask for assistance from the Family Law Fund but do need to fill out the required form/Motion.

You can request a court evaluation. The evaluation will include a home study as well as the contacting of collateral witnesses. Lynda Mallory, Family Court Evaluator states: "I do evaluations which always include a home visit. I do not do assessments as I feel the evidence of a "family system" truly lies within the home and the dynamics presented within." There is no psychological testing done by the courthouse evaluator. If you want psychological testing, or prefer a private evaluation, you must file a Motion requesting such an evaluation. The cost of a court evaluation is generally Two Hundred Fifty Dollars (\$250.00) per party. Sometimes circumstances cause an additional amount needed, i.e., distance to travel to do home study.

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Frederick County Practice and Procedure...

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The results of your court evaluation will be presented orally by the evaluator right before the Settlement Conference. If the issues do not resolve at the Settlement Conference, then a written report will be prepared and provided by the custody evaluator before the custody trial.

The Master will set a Settlement Conference date at the Initial Conference. At the Settlement Conference, the Masters will work hard to settle your case if it has not settled prior thereto. If your case does not settle at the Settlement Conference, the Master may schedule a mediation session with Judge Warren Donahue (Retired Judge from Montgomery County paid by the Court so not charged to your client). Judge Donahue uses an available jury room to meet with counsel and parties. The mediation is scheduled for two (2) hours. Attorneys will be ordered to attend also. If Judge Donahue settles your case, he may have you go into the courtroom and put it on the record to finalize your case.

It is important to understand that there is rarely an emergency. "If there is blood on the floor and not a bandage on the injury, then there is an emergency". There is nothing in the Rules regarding emergencies. When an Emergency Motion is filed with the Clerk's Office, it goes right up to a Judge. Then, it is usually returned back down to the Clerk's Office because it has not complied with the Ex Parte Rules. A courtesy copy is not necessary. If the Emergency Motion does not comply with the Ex Parte Rule 1-351, it will be denied.

The Motion to Shorten Time Requirements Rule 1-204(b) must be complied with. You must attempt to reach an agreement with opposing counsel or party as to when a Response to the Motion will be due. Judge Dwyer's suggestion is to review the Rule every time. He stated most Motions to Shorten Time are denied because of failure to comply with the Rules not because of the meat of the issue.

The Court wants the opposing side involved in the Emergency Motion. If the Court determines it is necessary, an emergency *Pendente Lite* Hearing will be scheduled in one to two weeks.

A true emergency might be a complete denial of visitation. If your client is getting visitation, but the visitation is limited or is not on a regular and consistent schedule, that issue will not be an emergency. An example is one parent trying to remove the child or children from the country. Failure to pay the mortgage or potential foreclosure on the marital home has not been considered an emergency. If the case is not considered an emergency and is not heard by a Judge, a Judge may give you an Order for an expedited Initial Conference.

IMPORTANT TELEPHONE NUMBERS:

Co-Parenting Seminars

Linda Moran, LCSW 301-631-2936 ext. 304
Gayle Bromberg, LCSW 301-695-8390 ext. 312
Brenda Lee 301-600-2777

Clerk's Office

Sandra Dalton, Clerk of the Court 301-600-1865
Jean Creighton, Family Law Division 301-600-1919

Assignment Office

Nancy Bell 301-600-2563
Crystal Marsden 301-600-2015

Court Evaluator

Lynda Mallory, LCSW 301-600-6762

Court Mediator

Kathryn McHugh, Esquire 301-600-1865

ADR Coordinator

Jen Bern 301-600-1467

Family Law Masters

Julia A. Minner
Lisa Turner, Judicial Asst. 301-600-1476
Richard Sandy
Amber White, Judicial Asst. 301-600-6811

Judges

Chief Judge G. Edward Dwyer, Jr.
Erin Melton, Judicial Asst. 301-600-2973
Judge John H. Tisdale
Michelle Johnson, Judicial Asst. 301-600-2943
Judge Julie S. Solt
Crystal Cooper, Judicial Asst. 301-600-1998
Judge Theresa M. Adams
Carole Shoemaker, Judicial Asst. 301-600-1999

Lorraine M. B. Prete, Esquire, is a partner at Kaslick, Prete & Kelly, LLC and a member of the MSBA Family and Juvenile Law Section Council. She practices family law in Frederick, Maryland.

Quotation of the Month

"Good people do not need laws to tell them to act responsibly, while bad people will find a way around the laws."

Plato

CASE NOTE

In Re: Adoption/Guardianship of Ta’Niya C., 417 Md. 90 (2010)

By: Erin Darner Gable, Esq.

On November 22, 2010, the Court of Appeals of Maryland issued an opinion in the case of In Re: Adoption/Guardianship of Ta’Niya C. which will have wide spread implication in the application of the best interest child standard in termination of parental rights cases. The Court reversed both the Court of Special Appeals as well as the trial court by holding that the paramount consideration is the “best interest of the child,” and although the court is required to examine the constitutional and common-law rights of the parents, the best interest standard is still the prevailing standard in these determinations. The child at issue in these proceedings appealed the lower decisions and asked the Court of Appeals to address the following issues:

- 1) Whether it is desirable or in the public interest to interpret Rashawn H. as requiring a court to use a parental interest standard when making a decision to terminate parental rights, thereby, denying permanency to Ta’Niya C.
- 2) Whether is it desirable or in the public interest to interpret the “exceptional circumstances” provision in Rashawn H. in a manner that denies permanency to a child who has been out of her mother’s care for over four years.
- 3) Whether the lower court’s denial of the Petition to terminate parental rights demonstrated an application of federal and state permanency planning statutes that was desirable and in the public interest when that application failed to provide permanency for Ta’Niya C.

In October 2004, the Department of Social Services of Baltimore City received a report relating to Ta’Niya, eighteen months old and her older sister, Ja’Mira. According to the reports, the living conditions were dirty and Ta’Niya had ringworm; eventually, Ta’Niya was removed from her mother’s care and Jamiara went to live another relative. Four years later, Ta’Niya was adjudicated to be a Child In Need of Assistance, however, Jamiara was ordered to return to her mother. Ta’Niya’s father, nor any other relative, was in a position to assume care of Ta’Niya. From October 2004 to January 2009, she was placed in three different foster homes. She had several behavioral problems, but these problems subsided when she was placed with Alicia and Luther W. During the four years that Ta’Niya was in foster care, her mother had limited contact with her, and in fact, did not start regular contact until DSS petition for termination of her parental rights. Ta’Niya’s mother entered into four family service agreements requiring her to complete parenting classes, obtain stable housing, maintain employment, and submit to a substance abuse test. Despite the efforts of DSS, Ta’Niya’s mother made no progress other than to complete the parenting classes. At the termination of parental rights hearing, the foster parents testi-

fied that Ta’Niya was succeeding in school, loved to read, and was a happy child. She had start calling the foster parents “mommy” and “daddy.” Further, the foster parents indicated a deep desire to adopt Ta’Niya.

The TPR case lasted three days and the court denied DSS’s petition. The court stated that “DSS failed to demonstrate, by clear and convincing evidence, that Mrs. L. was unfit and that there were exceptional circumstances that would justify termination of Mrs. L.’s parental rights.” The court referred to In re: Adoption/Guardianship of Rashawn H. and Tyrese H., 402 Md. 477 (2007), commenting that Rashawn had changed the law by “changing it now from how it looks to the child to what should happen regarding the parents.” The court found that there were no exceptional circumstances, even though the mother might not have timely completed all of the requirements of her family service agreements. The court also noted that it was reluctant to terminate Mrs. L.’s parental rights when Ta’Niya’s older sister had been returned to her care. Even though the court stated that Mrs. L was not in a position to care for Ta’Niya and that leaving her foster care parents would detrimental, if the mother was fit and no exceptional circumstances were present to prevent the older sister from being returned to her care, “then it is the same with respect to Ja’Mira as it is with respect to Ta’Niya.” The Court of Special Appeals in an unreported opinion upheld the lower court’s ruling.

Maryland Annotated Code, Family Law Article, Section 5-323 governs termination of parental rights. Pursuant to the statute, a juvenile court is granted the right, not present, under common law, to terminate parental rights and grant guardianships. The statute states that the court must find by clear and convincing evidence that a parent is unfit or exceptional circumstances exist that would make continuation of the parental relationship detrimental to the child. Further, the statute provides an exhaustive list of factors to be considered by the court in determining if a parent is unfit or if exceptional circumstances exist. In Rashawn, the court held that the a juvenile court must consider and make specific findings under the statute and “mindful of the presumption favoring a continuation of the parental relationship, determine expressly whether those findings suffice either to show an unfitness...or to constitute an exceptional circumstances that would make a continuation of the parental relationship detrimental to the best interest of the child” Rashawn, 402 Md. at 501.

The uncertainty arose in the application of the standard because at the time of the Court’s decision of Rashawn the statute did not

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In re: Adoption/Guardianship of Ta'Niya C...

(continued from page 11)

expressly require a court to make a determination of unfitness or exceptional circumstances, only to make a finding as to the best interest of the child. What was not clear in Rashawn, was there a presumption in favor of a child remaining with their biological parents and that presumption could be rebutted if the parent is shown to be unfit or the presence of exceptional circumstances. In Rashawn, the court outlines three critical elements, (1) the court must focus on the continued parental relationship unless there is a showing of unfitness or exceptional circumstances that would be detrimental to the child, (2) that court must make these findings by clear and convincing evidence, and (3) the trial court must consider the statutory factors in determining if exceptional circumstances existed. Where the lower court had difficulty was in aligning exceptional circumstances and determining its “interaction with the child’s best interest standard.”

Unfortunately, the phrase “no further inquiry” language was included in the analysis in Rashawn. This language has been used in several third party threshold cases which had been heard prior to the opinion in Rashawn, such as McDermott v. Dougherty, 385 Md. 320 (2005), Ross v. Hoffman, 280 Md. 172 (1977), Shurupoff v. Vockroth, 372 Md. 639 (2003). Judge Wilner in the Rashawn attempted to harmonize the earlier cases:

Nonetheless, our case law has been clear and consistent, that, even in contested adoption and TPR cases (and in permanency plan proceedings that may inevitably lead to a TPR case), where the fundamental right of parents to raise their children stands in the starkest contrast to the State’s effort to protect those children from unacceptable neglect or abuse, the best interest of the child remains the ultimate governing standard.

Therefore, the factors enumerated under Section 5-323(d) should be the basis for a court’s finding of whether there are exceptional circumstances that would make a continued parental relationship detrimental to the child’s best interest and whether termination of parental rights is in the child’s best interest.

In the case of Ta’Niya, she alleges that the lower court failed to apply case and the statutory factors correctly when it determined that no exceptional circumstances existed. In overruling the lower court, the Court of Appeals noted that lower court stated on the record that the Rashawn opinion “changed the landscape” and “made new law...they took something and they made a new requirement and it overcomes all the past.” Further, the lower court stated that it was troubled by the return of the older sister and it could not find exceptional circumstances as to Ta’Niya. In holding that the lower court was incorrect, the Court held that such a characterization of the exceptional circumstances does not take into account circumstances particular to an individual child. In sum, “Since one cannot make

a determination of whether there are exceptional circumstances that would overcome the presumption of parental rights and make continuation of parental rights detrimental to the child’s best interest without looking into the child’s best interest, the ultimate focus of the juvenile court’s inquiry must be on the child’s best interest.”

In a concurring opinion by Judge Harell and Murphy, joins, he disagreed with the Court interpretation of lineage third party custody cases.

Erin Darner Gable has been a family law attorney practicing in Anne Arundel County for over ten years and is a member of the Family and Juvenile Law Section Council.

Representing the Client...

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than they usually do when working with clients, then that is a clue that the attorney may be working with someone with a mental illness. Through their interpersonal interactions, these clients have the ability to make the attorney feel what the client feels. For example, with these clients, the attorney may feel especially confused, angry, mistreated, critical, attacking, omnipotent, and incompetent, that they are the savior, or that they are irrelevant. These are likely very similar feelings to what the client experiences in their relationships.

The attorney must, of course, “contain” their own feelings and must not “act them out” (as is typically done by the client). Acceptance of the client within a context of limits and structure will help the client better manage and contain themselves. The attorney may also seek a consultation with a mental health professional. Finally, the benefits and disadvantages of referring the client to an appropriate mental health professional for therapy or for a medication evaluation should be considered.

About Angela J. Silverstein

Angela is a graduate of the University of Baltimore School of law and has practiced solely in the area of family law for 11 years. Angela is currently an associate at Turnbull, Nicholson & Sanders, P.A. Angela became interested in the issue of representing the mentally ill after having represented clients suffering from brain injuries, Post Traumatic Stress Disorder, Dissociative Identity Disorder and serious drug addiction.

About Paul C. Berman

Paul is a licensed psychologist in practice in Towson, Maryland with Berman & Killeen, P.A. His practice focuses on family law matters including child forensic evaluations, custody evaluations, and parent coordinator work. He is also Director of the Towson Addictions Center which specializes in comprehensive assessment, education and treatment services for alcohol and other drug related problems.

CASE NOTE

In Re: Adoption/Guardianship of Tatianna B. No. 36, September Term 2010

By: Master Robert E. Laird, Jr.

In a recently issued opinion, the Court of Appeals determined that a licensed clinical social worker could render an opinion regarding the risk of future harm to a child during a TPR (termination of parental rights) proceeding.

BACKGROUND/PROCEDURAL POSTURE

On July 28, 2008 Tatianna was found to be a child in need of assistance (CINA). On December 8, 2009, the Circuit Court for Montgomery County conducted a TPR hearing regarding the parental rights of Hyacinth M. During the hearing, the Department offered Dianna McFarlane, a licensed clinical social worker, as an expert in social work. Ms. McFarlane testified she had a master's degree in social work and had been employed as a social worker by the Department for six years. Ms. M's attorney objected. The attorney agreed that Ms. McFarlane was qualified to testify on general social work matters, but argued she should not be allowed to give an opinion as to the risk of future harm to Tatianna were she to return home. The court disagreed and allowed Ms. McFarlane to testify as an expert in "the areas of child abuse and neglect, children in foster care, permanency planning, adoption, and risk and safety assessment." The court ultimately terminated Ms. M's parental rights, ruling that Ms. M "pose[d] an unacceptable risk to ... [the] future safety" of Tatianna. An appeal was made to the Court of Special Appeals. The Court of Appeals, prior to a ruling by the COSA, granted certiorari at its own initiative.

ISSUES ON APPEAL:

Can a licensed clinical social worker qualify as an expert witness in social work and give an opinion in a TPR proceeding regarding the safety and risk of a child, were the child to be returned to the mother's care?

HOLDING:

A licensed clinical social worker, who is qualified as an expert, can render an opinion as to the risk and safety of returning a child to her mother's care.

DISCUSSION:

The Court of Appeals began its discussion by examining Rule 5-702 which provides that, in order to render an opinion, an expert must (1) be qualified by knowledge, training, education, etc; (2) the testimony must be appropriate; and (3) there must

be a sufficient factual basis to support the testimony. In order to be a licensed clinical social worker, a person must meet the requirements of Section 19-301(2). These require, in pertinent part, a master's degree from an accredited program and having completed 2 years as a licensee with at least 3,000 hours in the "assessment, formulation of a diagnostic impression, and treatment of mental disorders and other conditions and the provision of psychotherapy ..."

The court noted that COMAR provides that, when investigating child abuse and neglect, social workers are required to assess safety and risk of maltreatment of children, determine if child abuse is indicated, unsubstantiated, or ruled out, and determine what services would be appropriate under the circumstances. Once a child has been found to be a CINA and placed in foster care, COMAR again requires social workers to prepare an assessment of the parent's ability both to safely care for the child and to resume parental responsibilities. The court further noted it had affirmed allowing a licensed clinical social worker to present expert testimony regarding a mother's mental illness and the effect it had on her daughter's well being.

PRACTICE CONSIDERATIONS:

One cautionary note regarding allowing social workers to give opinions regarding the risk and safety of returning a child home: the court deliberately did not reach the question of whether the trial court should have conducted a *Frye-Reed* hearing. Practitioners should be aware that such a challenge has not been resolved by this case.

Master Robert E. Laird, Jr., is the Standing Master for Domestic Relations and Juvenile Causes in the Circuit Court for Somerset County. Prior to his appointment to his current position, Master Laird represented the Somerset County Department of Social Services in CINA cases for more than fifteen years.



The Maryland Foster Care Court Improvement Project: The Juvenile Court's Journey to Improved Safety, Permanence, and Well-being for Maryland's Foster Youth

By: Tracy Watkins-Tribbett, MSW

In 1993, the Omnibus Budget Reconciliation Act (OBRA) provided federal funds to states to help improve how the courts were handling child abuse and neglect cases. Federal grants were awarded to the highest court of each state. The Court Improvement Program (CIP) was established in 1994 as a source of funding for state courts to assess and subsequently improve their handling of foster care and adoption proceedings.

The Maryland Judiciary's Foster Care Court Improvement Project (FCCIP) has endeavored since 1994 to improve the performance of juvenile courts in child abuse and neglect cases. Upon the completion of an initial assessment of the juvenile courts and how they managed foster care cases, 37 recommendations yielded a plan of improvement, and subsequently implementation of the recommendations contained in the improvement plan. The FCCIP Advisory Committee was formed and members of the Judiciary were appointed by the late Honorable Robert C. Murphy, then Chief Judge of the Court of Appeals. In 1997 the FCCIP Advisory Committee published the results of its assessment in a report entitled, *Improving Court Performance for Abused and Neglected Children*. The recommendations in the 1997 Report were categorized as follows: (1) uniformity of terminology and restructuring of information and data collection procedures; (2) training for members of the Judiciary assigned to handle CINA and related cases; (3) statutory revisions; and (4) standards for counsel representing parties in a CINA proceeding.

Following the completion of the assessment, the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, appointed juvenile court judges and masters representing jurisdictions throughout the State to serve on the newly formed FCCIP Implementation Committee. The Implementation Committee serves as the oversight committee to the FCCIP. Its primary responsibilities are to monitor the progress of the FCCIP as a whole; approve grant expenditures; and set the vision for the FCCIP. The Implementation Committee is also comprised of the Executive Director of the Maryland Social Services Administration and the Administrator of the Citizen's Review Board for Children. The FCCIP Implementation Committee established four subcommittees to help implement the assessment recommendations: Statistics; Training; CINA; and Representation. In 2001 an additional subcommittee was formed to specifically address the processing of TPR cases.

The **CINA/Legislative Subcommittee** is responsible for reviewing, drafting and amending CINA, TPR, and related statutes regarding child welfare. The committee also researches and remains apprised of current federal laws and national best

practices in an effort to keep Maryland law in compliance. The **Representation, Practice and Procedure Subcommittee** is responsible for developing uniform standards of representation for attorneys representing all parties in CINA and related cases. The subcommittee reviews matters such as developing and initiating new guidelines for the selection and compensation of attorneys, timing of appointment of counsel for parents in TPR cases, etc. The subcommittee also researches and remains apprised of current national representation best practices and trains attorneys. The **Training Subcommittee** is responsible for all CINA, TPR and related matters training and education of juvenile court judges and masters. This subcommittee is responsible for planning the annual child welfare conference and other training programs. The **Statistics Subcommittee** is responsible for the collection and analysis of data for CINA, TPR, and related cases. This subcommittee is also responsible for training juvenile court clerks and related court personnel on performance measures, terminology, and other processes.

In 2004, the FCCIP embarked upon its obligation to assess its progress and efforts in implementing the recommendations. The American Bar Association (ABA) Center for Children and the Law conducted an evaluation of the Maryland FCCIP. The ABA noted, "Overall the Maryland FCCIP has achieved many great successes and has provided training, support and assistance to all of the key players in the child welfare system throughout Maryland. Based on the evaluation conducted by the ABA most of the recommendations of the 1997 Report have been achieved, but as always in the child welfare arena, there is more work to be done." – Executive Summary.

The following is a list of key accomplishments of the FCCIP since its inception:

Statutory and Rule Changes

Accomplishments

- FCCIP drafted and spearheaded the passage of the 2001 Child in Need of Assistance (CINA) statute which has improved the child welfare practice.
- FCCIP drafted and spearheaded the passage of the 2005 Permanency for Families and Children's Act (TPR)
- Updated the Maryland Juvenile Rules Consent Forms for Guardianships for Adoptions.
- FCCIP drafted and spearheaded the passage of the 2006 Safe and Timely Interstate Placement of Children Act

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Maryland Foster Care Court. . .

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- Developed Uniform Court Orders to ensure that courts are complying with state and federal laws and also implementing best practices.
- Drafted and spearheaded the “Consult” provision in both CINA and Guardianship statutes.

Educational Programs and Materials

Accomplishments

- Implemented an orientation program for new judges and masters.
- Developed and revised Child Welfare Benchbook for Judges and masters.
- Two day Annual Child Abuse and Neglect Judicial Conference and Judicial Institute training programs attended by most judges and masters, for the last fourteen years.
- Applied and received CIP Training grants since 2006 to further enhance training and educational opportunities for judges and masters.
- Provided national training opportunities for juvenile judges and masters.
- Developed and hosted three Biennial ADR CINA/TPR conferences.
- Develop training resources

Representation of Parties

Accomplishments

- Developed the A Guidelines of Advocacy for Attorneys Representing Children in CINA and related Termination of Parental Rights (TPR) and Adoption cases and approved by the Court of Appeals in 2001. This has set high standards for representation of children.
- Developed standards of practice for agency attorneys in CINA/TPR matters.
- Developed and hosted annual Attorney training for the past six years
- Conducted free training to increase the pool of pro bono attorneys for CINA
- FCCIP has changed the statute allowing for representation of indigent parents regardless of custodial status.
- Worked in collaboration with the Clerk of the Court of Special Appeals and the ABA to review the timeliness CINA/TPR Appeals process.
- Implemented a Train the Trainer program for CINA attorneys

Case Management and Statistical Overview

Accomplishment

- Developed the Maryland Automated Judicial Information System (MAJIC) in 1999.
- Extensive coordination between the FCCIP, JIS, and outside vendors to develop a functional

database system, as well as implementing performance measurement.

- Served as the statewide database management entity for CINA/TPR cases
- Serve as a subject matter resource for JIS and other IT vendors in this area.
- Developed and conducted several statewide clerks’ trainings.
- Applied and received CIP data grant to continue to develop a functional database system for child welfare.

Implementation

- FCCIP has awarded grants for the continuation of Court Appointed Special Advocate programs, Alternative Dispute Resolution, Family Dependency Treatment Courts, and TPR/Permanency grants.
- Funded and facilitated NCJFCJ Model Courts programs.
- FCCIP has organized six regional multi-disciplinary meetings throughout the state to address the Adoption and Safe Families Act regulations, two federal reviews, and best practices.
- Conducted year long jurisdictional site visits.
- Coordinated and implemented the Commission on Improving Child Welfare and subsequent Children’s Summits
- Coordinated and lead the State Family Dependency Drug Court Committee
- Participated in Federal CFSR and Title IV-E on Site reviews, statewide assessments, and development of Program Improvement Plans (PIP).
- Developed and Implemented the TPR Plan of Action
- Applied for and received annual CIP funds based on the development and implementation of strategic plan.
- Administer and provide oversight to TPR/Permanency grants.
- Participated on National Judicial Leadership Summit team and implemented recommendations.
- Comply with federal annual and quarterly CIP reporting requirements.
- Conducted assessment of the statewide process for the Interstate Compact for the Placement of Children (ICPC)
- Worked with the University of Maryland in conducting a judicial workload assessment (CINA/TPR)

Despite all of its accomplishments, the FCCIP continues to identify and focus on those areas needing improvement in child welfare generally, and specifically in the courts. The ultimate goal of the project remains to work towards the betterment of the lives of abused and neglected children. Through FCCIP’s

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The Maryland Foster Care Court. . .

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continued efforts to actively collaborate with all child welfare stakeholders, it has identified a series of next steps or initiatives designed to accomplish the goals of its strategic plan and move Maryland towards a more improved effort of processing child abuse and neglect cases.

Next Steps

- * Evaluate the effectiveness of the Model Court Program Initiatives
- * Evaluate the effectiveness of ADR in CINA and TPR cases
- * Continue efforts of the Commission on Improving Child Welfare
- * Reconvene Model Court Orders Work Group
- * Reconvene efforts with Clerk of the Court of Special Appeals to address timeliness of CINA & TPR Appellate Process
- * Assess quality representation of all parents
- * Draft Parent Attorney Guidelines
- * Continue to provide training and educational resources to members of the juvenile court bench
- * Implementation and alignment of National Court Performance Measures with National Standards

Tracy Watkins-Tribbett, MSW, has served as the Director of the Maryland Judiciary's Foster Care Court Improvement Project since July 2005. She served as Assistant Director from January 2002 until July 2005. The FCCIP is always looking to expand its membership and develop more collaborative working relationships. If you are a judge, master, CINA attorney, or other child welfare stakeholder and would like to join us as we continue our journey, please contact the FCCIP, Department of Family Administration at (410)260-1427.

REFERENCES

The Maryland Judiciary's Foster Care Court Improvement Project, *Improving Court Performance for Abused and Neglected Children*, A Report Prepared By: The Administrative Office of the Courts, September 1997.

Evaluation of the Progress of the Maryland Foster Care Court Improvement Project, American Bar Association, Center on Children and the Law, June 2004.

Court Improvement Fact Sheet, American Bar Association, Center on Children and the Law. www.abanet.org.



Website Corner



www.alimonyformula.com an alimony calculator with a free cd copy of the Divorce Spousal Support Calculator from two attorneys, Scott Stevenson (www.StevensonLynch.com) and Justin Kelsey (www.KelseyTrask.com).

Courtesy of Dave Goldberg

www.operationnobleforster.org and www.netpets.org These two sites are available if you are interested in providing "foster care" for pets owned by military service members while they are deployed overseas.

Practice Sanity*

To Erase Law Firm Dysfunction, Assess and Address

By: Lynn Friedman, Ph.D. and Ronald B. Bergman, JD

Tell any senior law partner that you're a psychoanalyst to law firms and corporations, and the floodgates open. No matter how high up they are in the food chain, no matter how profitable the firm, they'll regale you with tales of organizational dysfunction.

- A senior partner, a rainmaker is legendary for hemorrhaging associates.
- A partner with an irascible temperament and a serious drinking problem is renowned for his abusive tirades.
- A talented senior partner is notorious for sexual harassment.
- A managing partner who fails to back her colleagues even when this action leaves the firm vulnerable to a lawsuit.

Ask when their problems first began and you'll learn that they existed in the firm culture for as long as anyone can remember. In fact, these behaviors often do not get recognized as problems until they pose a major legal or financial threat to the firm.

What prevents us from stopping behaviors that are costly, obnoxious or even illegal? And what can be done about it? The answer is as complex as the people within the firm.

Analyze this situation.

A first step is to describe the organizational difficulty in detail. For example, let's talk about "John," a partner who can't retain associates.

Start by writing down your own description. "John alienates associates. He asks them to work late hours and is insensitive to their personal needs. When they can't read his mind, he yells at them, throws things and tells them they're stupid. When they do deliver, he takes all the credit for their excellent work. And when partnership questions emerge, he votes against highly qualified people."

Next, ask yourself what about John's behavior is maladaptive. That is, in what way is it damaging to him, to the firm, to the affected associate and to other associates who witness it?

This loss hurts John in many ways. At a pragmatic level, he has to constantly retrain new people, and he's without a loyal following that will rally to his support if he's in a bind. Associates criticize him behind his back, and everyone avoids working with him. John's behavior erodes the bottom line and damages the corporate culture. Those who have options vote with their feet, sometimes taking clients with them. The firm's reputation suffers, and recruitment becomes harder.

The deleterious consequences of doing nothing are apparent, but ask yourself a seemingly bizarre question: What about these ostensibly maladaptive behaviors is adaptive?

Given the damaging nature of the behavior, why is it allowed to persist unbridled? Who are the beneficiaries of his behavior? How do you benefit from his behavior? How does the firm benefit? How does John benefit?

You may be a beneficiary, albeit an inadvertent one. As long as John is acting highhanded, the heat's off you. The associates aren't criticizing you because whatever your limitations, they could not be worse than his.

Since John is a partner, he undoubtedly contributes something important to the firm, something the firm could lose if his behavior isn't addressed diplomatically. Beyond this, John's misdeeds obscure the more subtle conflicts that occur between partners and between partners and associates.

Thus, John's behavior allows everyone to be a little less accountable.

For subordinates, John's behavior serves as a distraction and a justification for not working their hardest.

And how does ignoring John's misbehaviors benefit him? In the workplace, it allows him to remain unaccountable and in denial about how powerless and inept he feels.

Problem solved.

If the partners have the courage to deal honestly with the dysfunctional situation, the firm will be stronger and the "problem" partner will have an improved sense of well-being.

Partners who've relied on John to "look bad" so they can "look good" will be forced to develop more realistic ways of enhancing their self-esteem. With improved morale, associates are likely to work harder and feel better about the firm.

How does a firm go about addressing these difficulties?

In an ideal world, senior partners have effective policies and practices for these sorts of challenges. But this is not always the case, especially, when a member of the senior leadership is part of the problem.

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Practice Sanity

When Attempts by Partners to Delegate Boomerang, Watch Out!

By: Lynn Friedman, Ph.D. and Ronald B. Bergman, JD

You're a successful senior partner in your firm, swamped with work. However, you believe help is at hand because you've hired Mary, a seemingly terrific senior associate, to lighten the load. On paper she is qualified to assume some highest-level responsibilities and manage the detail work. Mary is personable and seems to be well-liked by her colleagues.

But soon you begin to notice that she is inattentive to detail and often displays questionable judgment. Her writing is so full of misspellings, grammatical errors, and incomplete sentences that you feel compelled to review each item before it goes out. She also annoys clients with questions she should be able to easily answer.

After several snafus, you feel you must carefully monitor all her actions. You've brought these issues to her attention several times, and each time she responds with an appropriate level of contrition: "I'm sorry. I don't know why I messed up." Or: "I feel terrible about this and will be more careful in the future." On the surface, she appears to take responsibility. But the problem persists and with each passing day your resentment increases.

Mary has successfully achieved "reverse delegation." Instead of reducing your workload, she's increased it, further draining your valuable time and energy. Your repeated explicit feedback meets with seemingly sincere regret and heartfelt apology, but nothing meaningful changes. Your frustration mounts. You find yourself being impatient and short-tempered. But when Mary tells you, apologetically, that she can't seem to please you, you wonder if you are now being harsh and unfair. Although effectively dealing with associates has always been a strong suit, you now experience powerlessness and self-doubt. When Mary alienates yet another client, you lose your temper and loudly criticize her in an area where other staff can overhear, behavior that is out of character for you.

As a general rule, partners set goals and standards for the firm, and associates attempt to respond effectively. When associates fall short, they are usually sincerely concerned and take steps to improve their mistakes or shortcomings. But in this situation, Mary has in effect, turned the tables on her employer. Instead of worrying about her own performance, Mary has managed, perhaps unconsciously, to engender feelings of self-doubt in her boss. Nearly all experienced law partners have had their "Mary moment."

In recounting their experiences, even the savviest of attorneys found themselves behaving uncharacteristically by expressing frustration or even occasional outbursts of rage.

Satisfaction under siege.

How might one understand this unwieldy state of affairs?

Unlike the typical concerned employee, Mary doesn't take steps to identify the source of her poor performance, nor does she begin to work on a plan to improve. Instead, Mary merely expresses regret that she is not satisfying the partner's demands. Her congenial response to critical feedback creates the illusion that she wants to change and is trying her best to do so. But the subtext of her message belies those assertions, conveying the impression that the partner's expectations are unrealistic and unachievable. As Mary characterizes the partner as "impossible to satisfy," she shifts the focus from her inadequate performance onto the partner's ostensibly unreasonable expectations. She asserts, "I can't seem to please you," as if it is the partner who is now at fault. No wonder the partner is left feeling irritable, helpless, powerless and even enraged at times.

Despite understandable frustrations in dealing with associates like Mary, a partner must recognize that the seemingly manipulative behaviors of these associates are often outside their own awareness, which makes them challenging to manage. It can be very useful to obtain consultation from an objective colleague, a skilled human resources professional, or an organizational consultant to develop a strategy for associates like Mary.

To maintain your perspective and emphasize the seriousness of the situation, consider having a third person attend a feedback meeting with the associate. In this meeting, provide concrete, descriptive feedback about the performance concerns.

Specify behaviors that must change. Make recommendations on ways the associate might develop the skills to address your concerns. Be explicit about how and when change will be measured, as well as the consequences that will accrue if performance does not improve.

Remember to document how you are addressing performance problems.

As disconcerting as these associates can be, bear in mind that their behavior may indeed be driven by factors outside of their awareness. Individuals with these types of struggles often grew up in difficult family situations that they were powerless to change. Consequently, when faced with current challenges, they may be very uncertain about how they can effectively change.

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CASE NOTE: LASATER V. GUTTMANN

Lasater v. Guttman 194 Md. App. 431, 5 A.2d 79 (2010) No. 2364, September Term 2008. Maryland Court of Special Appeals Filed September 8, 2010

By: Nick Orechwa

I have been asked a couple times in the past whether or not there are any non-family law civil remedies which can be sought against an estranged or ex-spouse for wrongs (real or perceived) during the marriage. The case of *Lasater v. Guttman* provides excellent guidance on the issue and touches on the practicalities of one spouse bringing a tort suit in conjunction with a divorce.

Ms. Lasater and Mr. Guttman were divorced on November 15, 2007 after a marriage of 27 years. Prior to that, on August 30, 2005 Ms. Lasater sued Mr. Guttman for conversion, intentional infliction of emotional distress, breach of fiduciary duty and fraud for a variety of misdeeds she alleged Mr. Guttman committed during the marriage. In particular, she alleged that during the marriage Mr. Guttman controlled the couple's finances which included, but was not limited to, a joint checking account into which they both deposited their paychecks. For the first 23 years of the marriage, Ms. Lasater never read any of the statements pertaining to that account. In addition, there was a second joint account into which Ms. Lasater deposited returns on an a separate account containing an inheritance she received along with returns on other properties titled only in her name. The parties earmarked this second joint account to pay the educational expenses for the couple's eldest child. As time passed, Ms. Lasater learned that Mr. Guttman spent lavishly during the marriage, decimating both joint accounts, running up credit card balances, taking out a home equity line, and taking loans out against various retirement accounts.

Mr. Guttman sued for divorce on November 14, 2005 and filed for a stay of the civil proceedings filed by Ms. Lasater on August 30, 2005. The court¹ granted the stay. After the court entered the Judgment of Absolute Divorce (the terms of which can be found at 440 (84 of A.3d) of the opinion), it lifted the stay and Mr. Guttman moved to dismiss Ms. Lasater's tort suit or in the alternative moved for summary judgment in his favor on all counts. Ms. Lasater filed a Motion for Partial summary Judgment. The court granted Mr. Guttman's motion in its entirety and denied Ms. Lasater's. Ms. Lasater appealed.

The CSA boiled the thirteen questions presented by Ms. Lasater down to the following:

- I Did the circuit court err or otherwise abuse its discretion in staying the tort suit during the pendency of the divorce case?
- II Did the circuit court err in granting summary judgment on the conversion count?

III Did the circuit court err in granting summary judgment on the intentional infliction of emotional distress count?

IV Did the circuit court err in granting summary judgment on the fraud and breach of fiduciary duty counts?

In affirming the Circuit Court's ruling in its entirety, the CSA held as follows:

The Stay: Notwithstanding the fact the issue of the stay was moot given it had already been lifted, the CSA found no abuse of discretion by the trial court in granting the stay during the pendency of the divorce case. The CSA reasoned that although there was overlap of the issues in the divorce and the tort suit, the imposition of the stay was within the Circuit Court's discretion.

Conversion: Ms. Lasater argued that the funds in the Joint account were misappropriated by Mr. Guttman without her consent and therefore converted by him. The parties settled the financial portion of the divorce case and therefore the court never adjudicated any claim of dissipation raised by Ms. Lasater. Interestingly, one of Ms. Lasater's main arguments for pursuing the tort claims was the fact that a dissipation claim in the divorce was unavailable due to the fact that many, if not all of Mr. Guttman's alleged financial misdeeds occurred **prior** to the point when the marriage began to irretrievably break down. (citing *Heger v. Heger* 184 Md. App. 83 (2009)). The CSA agreed with Mr. Guttman saying that the funds in the accounts were commingled and therefore no longer subject to a conversion claim. In doing so, the CSA cited *Allied Inv. Corp. v. Jason*, 354 Md. 547, 564, 731 A.2d 957 (1999) which held: "The general rule is that monies are intangible and, therefore, not subject to a claim for conversion." The exception to that rule concerns "specific segregated or identifiable funds." The CSA found that once Ms. Lasater's separate funds had been comingled with the couple's joint funds they "lost their separateness for purposes of a conversion claim."

Intentional Infliction of Emotional Distress: Ms. Lasater's general allegation is that Mr. Guttman's general demeanor during the marriage (alleged yelling, overspending and infidelity) caused a steady decline in her physical health (*inter alia* gastrointestinal problems, pneumonia etc). The CSA found Mr. Guttman's behavior did not rise to the level of "extreme and outrageous" and was not "so extreme in degree [] as to go beyond all possible bounds of decency[.]" In doing so, the CSA

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noted the elements for an Intentional Infliction of Emotional Distress claim per *Harris v. Jones* 281 Md. 560, 566, 380 A.2d 611 (1977): 1) The conduct must be intentional or reckless; 2) The conduct must be extreme and outrageous; (3) There must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe.² The facts presented by Ms. Lasater simply did not cross that threshold.

Breach of Fiduciary Duty and Fraud: Ms. Lasater alleged Mr. Guttman took advantage of a relationship of trust and confidence and deceived her by misappropriating the funds. She asserted he owed her "duties of care, loyalty and disclosure by virtue of their relationship as husband and wife and what she alleges was his dominant position in their marriage..." The CSA noted the seminal Maryland case on breach of fiduciary duty as a cause of action at law is *Kann v. Kann* 344 Md. 689, 690 A.2d 509 (1997). In doing so the CSA quoted the following passage from *Kann* at 713 of that case:

Accordingly, we hold that there is no universal or omnibus tort for the redress of breach of fiduciary duty by any and all fiduciaries. This does not mean that there is no claim or cause of action available for breach of fiduciary duty. Our holding means that identifying a breach of fiduciary duty will be the beginning of the analysis, and not its conclusion. Counsel are required to identify the particular fiduciary relationship involved, identify how it was breached, consider the remedies available, and select those remedies appropriate to the client's problem.

Lasater at 454 (emphasis in quote by the *Lasater* court)

The CSA made a distinction between the doctrine of interspousal immunity (which has been abrogated in Maryland) and the premise upon which Ms. Lasater filed her suit. Interspousal immunity prevented one spouse from taking legal action against the other spouse for a civil wrong that, had it been committed by a non-spouse, would have been actionable (the CSA uses the example of a Motor Vehicle Tort). BUT, said the CSA, the removal of interspousal immunity does not mean "the marital relationship ITSELF now gives rise to duties that are actionable in tort." Spouses in Maryland (unlike those in at least 9 states³) are not true fiduciaries absent a formal agreement to that effect. There is also no presumption in Maryland that Husband and Wife have a confidential relationship. Therefore, for Ms. Lasater to have a cause of action, she must establish the presence of a confidential relationship between Mr. Lasater and herself. Confidential relationships can be shown to be present through

mechanisms such as a separation agreement and in addition, the CSA noted there is an element of dominion of one spouse over the other. However, Ms. Lasater was not seeking to have an agreement (i.e. one transaction) set aside, she was seeking to attack the actions of Mr. Guttman during the course of the entire marriage. The CSA examined several cases from other jurisdictions and concluded the facts in this case do not support a confidential relationship.

Fraud: In order for Ms. Lasater to prevail on a claim of fraud, the CSA noted she must establish Mr. Guttman owed her a duty to disclose a material fact (or a "duty to speak"). The CSA found Mr. Guttman had no such duty. Furthermore, the CSA noted in the final paragraph of the opinion:

Finally, as discussed, *supra*, evidence of wasteful or imprudent conduct by one spouse with respect to marital finances properly may be considered in the context of a divorce proceedings as a factor weighing in favor of awarding most, if not all, of the marital property to the non-offending spouse. See Md.Code (2006 Repl.Vol., 2009 Supp.) §§ 8-205(b)(1), (3) & (11) of the Family Law Article (factors the court shall consider in adjusting the equities include contributions made by each party to the well-being of the marriage; circumstances leading to the estrangement of the parties; and any other factor necessary and appropriate in reaching a fair and equitable result). It is for this reason that, even if we were to conclude that Guttman's statements were actionable, that Lasater reasonably could rely on them, and that damages could be proved as a policy matter, we simply cannot countenance separate tort actions for fraud by one spouse against the other premised on statements regarding expenditures of joint marital funds. **The parties to a marriage bring with them differing views of necessary and discretionary expenditures. They may be comfortable with differing levels of investment risk. And despite those differences, both parties bear the responsibility for managing joint finances and bear the risk that the other spouse will spend marital funds in a manner not to their liking. We decline to open the door to tort suits arising from disagreements over allocation of marital resources when these grievances properly can be remedied in the divorce setting.** See, e.g., Beers, *supra*, 724 So.2d at 116-17 (exclusive remedy for waste of marital assets is in the divorce proceedings).

Lasater at 477. (Emphasis Added)

Nick Orechwa is an associate with Brodsky, Renehan, Pearlstein, Lastra & Bouquet Chtd in Gaithersburg, Md. He is licensed to practice in Maryland, Louisiana and the District of Columbia.

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Teen Courts- An Effective Diversionary Alternative to Delinquency Court

By: Georgine Debord

They may be called something a little different - Teen Court, Youth Court, Student Court or Peer Court – but the concept is the same. All are diversionary programs run by teens, for teens. Nationwide there are over 1200 Teen Court programs in operation. While the concept of Teen Courts has been around for over 25 years, many are still not familiar with the way it works or the benefits to the Juvenile Justice process of having a program like this.

Teen Courts were designed to provide misdemeanor offenders an opportunity to restore relationships within their communities through informal methods of adjudication and offer them the resources to enhance their future decision making. They are designed to teach responsibility and appropriate decision-making while restoring a sense of safety in the community. They also provide an opportunity for offenders to avoid the stigma of a formal juvenile record while focusing on accountability and development.

Generally, to be eligible to participate in Teen Court, a juvenile must be a first-time offender. They must admit responsibility for the offense with which they are charged, which is usually a misdemeanor. Offenders are generally between the ages of 12 and 17. Their cases are usually sent to Teen Court prior to being forwarded to the Department of Juvenile Services. They appear before a jury of their peers who, after hearing their case and deliberating, will decide what their disposition or sanctions will be for their offense. If the juvenile completes the disposition within the assigned time period, their case is sent back to the referring agency as being successfully completed.

Types of offenses heard in Teen Court are Theft, Possession of Marijuana, Possession of Alcohol, Furnishing Alcohol, Possession of a Weapon, Destruction of Property, Trespass, Failure to Obey Police, Disruption of School Activities and Telephone Misuse.

Volunteers to the program are usually high school students. They serve as jurors, bailiffs and clerks. They earn Student Service Learning hours for their participation. They undergo training on courtroom procedure, decorum, the concepts of Restorative Justice and the deliberation process. Former respondents are welcomed as volunteers after they have completed their sanctions, giving them a feeling of belonging in the community.

The respondent and the volunteers appear in an actual courtroom in front of either an adult judge or a student trained as a judge. The adult judges, including Circuit, District, and Special Appeals judges as well as prosecutors and private attorneys, volunteer

their time. The volunteer judges are present to answer legal questions and set the tone for the courtroom, but it is the teens who decide upon the sanctions after listening to mitigating and aggravating factors.

Some of the sanctions that juveniles can receive include writing an apology letter to someone affected by their actions, making restitution, doing community service, and attending educational programs. The jury may also have the respondent write an essay on an appropriate topic, such as “How my continued use of substances will affect my dreams of becoming a teacher” or “The effects of shoplifting on the community.” If they express a talent for art or poetry, they may be asked to paint a picture or compose a poem related to their offense. This gives the respondent a chance to express themselves in a manner in which they are comfortable, thereby learning more from it.

Respondents are almost always required to return and perform the function of juror for other cases. This gives them a chance to give back to the program in a positive manner, and be a productive member of a group. We believe that the proactive peer influence of the other youth volunteers combined with being a part of the disposition process for other juveniles serves as a deterrent to future juvenile acts as the respondents join in critical thinking with their peers. Many stay on past their required term of service, enjoying the camaraderie and feeling of making a difference.

Teen Court is based on the philosophy that when a peer jury decides sanctions, it will have a greater impact on the youth offender. The guiding idea behind all teen courts is the same-if peer pressure can lead young people into delinquency; hopefully it can keep them out of delinquency. The Maryland Teen Court Association has reported that statewide, Teen Courts realize an 89% completion rate among their respondents with an average recidivism rate of 11%.

Current jurisdictions that have Teen/Youth Court programs are Montgomery, Anne Arundel, Charles, St. Mary's, Caroline, Queen Anne, Prince George's Counties, and Baltimore City. Programs are “under construction” in Harford, Calvert and Worcester County. Please go to www.MDTCA.org to find out more about Teen Courts in Maryland and how you can become involved.

Georgine DeBord is the Teen Court Coordinator for the Montgomery County State's Attorney's Office Teen Court program. She is also the President of the Maryland Teen Court Association.

Upcoming Events

PRINCE GEORGE'S COUNTY

MAY 7, 2011 - SATURDAY

FAMILY LAW SEMINAR

CEREMONIAL COURTROOM, COURTHOUSE ,
UPPER MARLBORO

TOPIC: PROCEDURAL INTRICACIES, FROM PROPER
PLEADINGS TO FINANCIAL FORMS: How To Request
And Obtain The Relief You Seek While Avoiding Potential
Pitfalls

\$45 members until April 21, \$55 after

\$50 non members until April 21, \$60 after

Payment is PRIOR TO EVENT.

Call 301-952-1442 or email gperry@pgcba.com

BALTIMORE COUNTY

Dinner meetings begin at 6:00 p.m. and Brown Bag lunches
begin at 12:00. Dinners are \$42.00 for BCBA Members and
\$50.00 for Non-Members; Brown Bag lunches are free for BCBA
Members and \$10.00 for Non-Members.

April 28

Hayfield's Country Club

Joint Dinner with Baltimore City Family Law Committee

May 25

4:30 p.m.

Baltimore County Circuit Court

Annual Forum

Speakers and Topics to be determined

Chair: Craig Ward

Happy Hour to follow

ANNE ARUNDEL COUNTY

Hello:

On behalf of the Anne Arundel County Bar Association, Family Law Committee and its officers, Susan Wyckoff, Esq, Erin Gable, Esq, and Jeremiah Chiappelli, Esq. I would like to personally invite you to attend our bi-annual Joint Dinner Meeting of the Anne Arundel Bar Association and Anne Arundel County Psychological Association on May 4, 2011 at the Loews Hotel in Annapolis. The program has traditionally been a great opportunity for the exchange of ideas between family law practitioners and mental health care professionals.

This year's program will focus on family law matters, divorces in particular, which present individuals with dual challenges - legal issues and emotional issues. Most of the attendees are trained as either lawyers or mental health professionals, not both. Attorneys try their best to assist the person in front of them as they navigate this difficult time in their lives, but all too often the person is seeking legal help from a therapist or emotional

help from a lawyer. Experience has afforded enough knowledge to assist in rudimentary ways, but the legal professional obligation requires that attorneys to draw the line and not attempt to act as cross professional. Our program will assist in spotting these problems and steering the individual in the right direction.

We have an excellent panel of experts, including attorneys, psychologists, and members of the bench and court staff. Although this program is sponsored by the Family Law Committee of the AABA, attorneys in every practice area encounter emotionally delicate clients so we would invite everyone from all practice areas to register and attend.

I have attached the brochure which provides the specific information on how to register for this event. If you have any further questions, please do not hesitate to contact me. I look forward to seeing everyone there.

Erin Darner Gable, Esq

Vice Chair,

Anne Arundel County Bar Association

Family Law Committee

If you practice family law, you won't want to miss the Joint Dinner Meeting Of the Anne Arundel Bar Association and The Anne Arundel County Psychological Association

~Wednesday, May 4, 2011~

Reception: 6:30 p.m.

Dinner: 7:00 p.m. (cash bar)

**Windmill Point Room, Loews Annapolis Hotel
126 West Street, Annapolis**

This program is presented by the AABA Family Law Committee

Featured Speakers:

The Bench:

The Honorable Nancy L. Davis-Loomis

The Psychologists:

Mark Good, Ph.D.

Maureen Vernon, Ph.D., licensed psychologist

The Attorney:

John Ryan, Esquire

The Court Expert:

Holly Hutchins, LCSW

About the Program:

Family law matters, divorces in particular, present individuals with dual challenges - legal issues and emotional issues. Most of us are trained as either lawyers or mental health professionals, not as both. We try our best to assist the person in front of us as they navigate this difficult time in their lives, but all too often

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Upcoming Events. . .

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the person is seeking legal help from a therapist or emotional help from a lawyer. Experience has afforded most of us enough knowledge to assist in rudimentary ways, but our professional obligation requires that we draw the line and not attempt to act as cross professional. This program will assist in spotting the problems and steering the individual in the right direction.

Cost: \$50 per person on or before April 29th (\$55 after April 29th)

Anne Arundel Bar Association/The Anne Arundel County Psychological Association Joint Dinner Meeting Registration Form

Please reserve ____ places at the May 4, 2011
Joint Dinner Meeting

Registration Cost: \$50 per person on or before April 29th (\$55 after April 29th)

Name:

Guest Names:

Amount Enclosed:

Make checks payable to the AABA.

Send to AABA, P.O. Box 161, Annapolis, MD 21404-0161.

For information, contact the AABA at 410.280.6950, www.aabar.org.

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Footnotes:

¹ All actions in this matter were litigated in the Circuit Court for Montgomery County.

² The CSA also noted that it has only upheld a claim of Intentional Infliction of Emotional Distress four times in the 30 years since the tort was recognized: “*See Faya v. Almaraz* 329 Md. 435, 620 A.2d 327 (1993) (reversing dismissal when HIV-positive surgeon operated on the appellants without their knowledge of his disease); *Figueiredo –TORRES V. NICKEL*, 321 MD. 642, 584 A.2d 69 (1991) (reversing dismissal when plaintiff alleged psychologist engaged in sexual relations with plaintiff’s wife during the time he was counseling the couple); *B.N. v. K.K.* 312 Md. 135, 538 A.2d 1175 (1988) (cause of action for IIED could exist when physician had sex with nurse without informing her he had herpes and infected her with the disease); *Young v. Hartford Accident & Indem. Co.*, 303 Md. 182, 492 A.2d 1270 (1985) (reversing dismissal when workers’ compensation insurer insisted that claimant submit to psychiatric evaluation for the “sole purpose” of harassing her and forcing her to drop her claim or commit suicide).” *Lasater* at 449.

³ Arizona, California, Louisiana, Nevada, New Mexico, Oregon, and Texas *See Lasater* at 456 (footnote 16)

Practice Sanity- Dysfunction...

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Sometimes a firm's human resources department can help. In more delicate situations, an outside organizational consultant can help the firm's leadership design and implement a sound strategy.

“PRACTICE SANITY” is going to be a running feature authored by Lynn Friedman, Ph. D. and Ronald B. Bergman, Esquire to address the various psychological issues that arise in family law cases and in family law practices.

Lynn Friedman, Ph.D., is a clinical psychologist, psychoanalyst and organizational consultant in full time, private practice Chevy Chase where she sees individuals in psychotherapy, psychoanalysis & provides consultation to organizations. More about her practice can be found at: www.washington-dc-psychologist.com

Ronald B. Bergman is a partner at Houlon, Berman, Bergman, Finci, Levenstein & Skok, LLC with offices in Rockville and Greenbelt and concentrates on family law litigation and collaborative practice. More information can be found at: www.houlonberman.com

Practice Sanity- Delegate

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Direct and specific feedback can help them rectify the situation or even lead them to seek outside counseling or therapy so they can become more self-aware and can manage their behavior better with colleagues and clients in the workplace.

Lynn Friedman, Ph.D., is a clinical psychologist, psychoanalyst and organizational consultant in full time, private practice Chevy Chase where she sees individuals in psychotherapy, psychoanalysis & provides consultation to organizations. More about her practice can be found at: www.washington-dc-psychologist.com

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THE BEVERLY A. GRONER FAMILY LAW AWARD

The Family Law Section Council of the Maryland State Bar Association announces the **opening of nominations** for the ninth annual Beverly Groner Family Law Award. The Award will be presented at the MSBA Annual Convention in Ocean City, Maryland on **June 10, 2011**.

The Award recognizes:

An Attorney who has served the Maryland legal community through his or her dedication to the practice of family law, exemplifying the highest professional standards during a distinguished career.

PRIOR RECIPIENTS:

The Honorable Kathleen O'Ferrall Friedman (2002)
The Honorable John F. Fader II (2003)
Senator Sharon Grosfeld (2004)
The Honorable Julia Weatherly (2005)
The Honorable Ann Sundt (2006)
Roger A. Perkins, Esquire (2007)
The Honorable Theresa A. Nolan (2008)
Sheila K. Sachs, Esquire (2009)
Kathleen M. Dumais, Esquire (2010)

The Beverly A. Groner Family Law Award was created to provide a vehicle for highlighting the importance of family law to our community, and to celebrate those who improve family law practice in our state. It is named in honor of the late Beverly Ann Groner, the Maryland family law practitioner whose long, distinguished career featured chairing the state commission which researched and drafted the present Marital Property Act and Alimony law.

Please send your nomination (including this form) to:

Beverly A. Groner Family Law Award Committee
C/o Vincent M. Wills
Dragga, Hannon, Hessler & Wills L.L.P.
110 N. Washington St., Suite 300
Rockville, Maryland 20850
vwills@draggalaw.com or fax: (301) 340-0725

The deadline for nominations is April 30, 2011.

Name of Nominee: _____

Address of Nominee: _____

Name of person making nomination: _____

Telephone/Email: _____

Address: _____

Signature: _____

Tell us about your nominee (Attach additional pages as necessary): _____
