



Family Law News

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

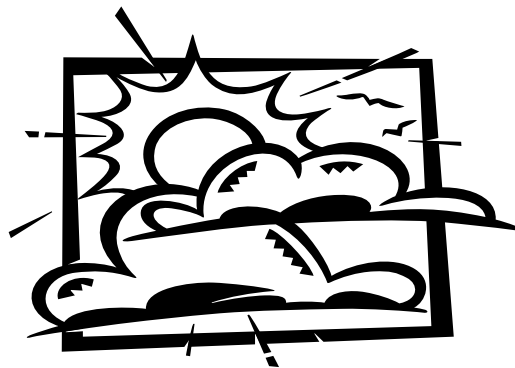
Maryland State Bar Association, Inc.

June 2004

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Editor: Walter A. Herbert, Jr.





A Message from the Editor

My, how time flies... We bring you the penultimate issue of the 2003/2004 bar year; no, no loving testimonials this month, just the nuts and bolts stuff you look forward to in each issue...

We bid our leader, Paul Reinstein, a fond and overdue farewell after nine years on the Section Council, and welcome Barry Dalnekoff as our Chair for the 2004/2005 bar year; look for Barry's inaugural message in the September newsletter.

Anne Morrison of the Prince Georges County Circuit Court Law Library looks into resources on the Internet, and David Goldberg gives us the mediator's perspective in the first of a multi-part series. We have practice tips for Baltimore County, Wicomico County and the lower shore, and we even included a beach reading list. Our legislative chair, Todd Bennett, gives us the rundown on family law bills from the recently concluded session and we have several of the ever-popular Case Notes. Many thanks to all of our contributors.

Your Section Council once again put on the Family Law CLE at the Annual Meeting in Ocean City. It was great to see so many familiar faces; the CLE was a huge success, and we hope to see more of you next year.

Please contact me with thoughts, comments, article ideas, etc:

HERBERTLAW @ WORLDNET.ATT.NET

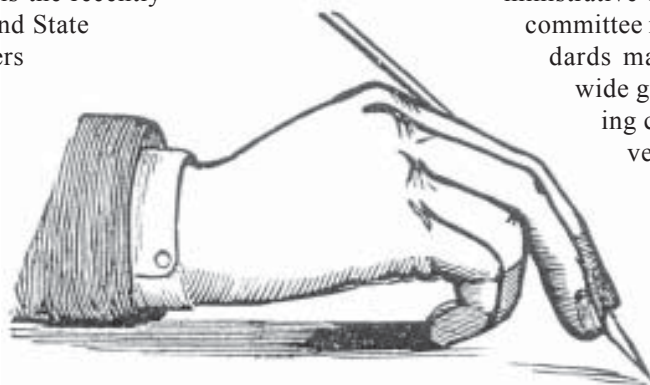
301.952.0707

NEXT ISSUE: SEPTEMBER 2004

Chair's Message

In asking that I prepare this, my final “message” as chair of the Family & Juvenile Law Section, Walter Herbert, our hard working newsletter editor, suggested I reflect on the past year and the accomplishments of the Section Council. At the risk of sounding maudlin, I will truly miss (at least formally) participating in such an active, involved council. While I am not that familiar with the inner workings of other MSBA sections, I can say without reservation that no other section works harder than ours, simply because they physically could not.

A perfect example of this effort is the recently completed session of the Maryland State Legislature. Our council members assisted in the drafting and introduction of proposed legislation, monitored all family and juvenile law-related bills, provided both written and oral testimony to Senate and House committees, and even engaged in a written effort to convince Governor Ehrlich to veto a bill passed by the legislature. As a direct result of those efforts, significant legislation has either been signed into law by the governor, or is awaiting his imprimatur or veto. House Bill 836 will now allow a trial judge to transfer title and ownership to family use personal property in a divorce proceeding. This represents an enormous change in the law, and hopefully the harbinger of future revisions to provide the judge greater flexibility in the division of marital and non-marital property. Senate Bill 328 provides for needed revisions to the low end of the Maryland Child Support Guidelines. House Bill 511 now prohibits a juvenile from waiving his/her right to counsel without first being given the opportunity to consult with an attorney. And Senate Bill 928, while opposed by the Section Council, provides that a child support obligor receive a credit against the payment of child support for dependency benefits received by the child. In my almost nine (9) years of involvement in Section Council, I cannot remember another year when so many far reaching pieces of legislation were



enacted, and this is due, at least in part, to the members of the Section Council. A special word of thanks is also extended to Senator Sharon Grosfeld and Delegate Kathleen Dumais, whose tireless efforts in shepherding numerous family and juvenile bills through the legislature this year prove once again how important these representatives are both to domestic practitioners and to the citizens of Maryland.

As I suggested in a previous message, our Section Council members also take on many other tasks to benefit our entire section membership. Our involvement in the Administrative Office of the Courts Custody Subcommittee review of guardian-ad-litem standards may soon help bring about state-wide guidelines for attorneys representing children. Our participation in developing, preparing and presenting many MICPEL programs continues. We are currently hard at work on the preparation for our annual program at the MSBA Conference in Ocean City in June – and yes, we are going to make it even funnier and more entertaining than last year (if that is humanly possible). Even this newsletter is an example of the increased efforts of the council to expand the information provided to the entire section membership. I would like to personally thank my fellow officers Barry Dalnekoff and Barbara Trader, as well as every member of the Section Council, for the extraordinary dedication they have shown – it is a year well done.

Of course, much remains to be done in the next year. Please take the time to contact me, Barry Dalnekoff, Barbara Trader or any of the members of the Section Council with your comments, suggestions or requests, so that we may better serve our membership. And as I have said before, get involved – we are always looking for volunteers.

Paul J. Reinstein, Esquire

(continued on page 5)

MARK YOUR CALENDARS:

*The Family Law Committee of the **Prince Georges County Bar Association** meets on the third Wednesday of each month at 4:45 p.m. in the Circuit Court Law Library. Each meeting includes a Guest Speaker...all are welcome. Upcoming topics include:

June 24-Note special date-The New Emergency Procedures

No meeting in July...organizational meeting August 18, 4.45 p.m., Circuit Court Law Library. Also, mark your calendars for a Retirement Extravaganza for our very own Arnie Yochelson, Master for the Family Division, as WE celebrate HIS retirement...wait, that didn't come out right...September 2, 2004; for details please contact Sandy Wilkerson 301.952.3488; Angie Loor 301.952.5875 or Robyn Dague 301.952.3701.

The organizational and planning meeting of the **Baltimore County Family Law Committee** for the 2004-2005 Bar Year will be held on Tuesday, July 13, 2004 at 4:30 p.m. in the Grand Jury Room, 1st Floor, Circuit Court for Baltimore County. Please contact the incoming Chair, Suzanne Farace at 410-821-2910 or sfarace@fslawoffice.com or Vice Chair, Craig Little at

410-828-6100 or cjlittle@family-law.com for further information.

The Committee's next monthly dinner meeting will be held on Wednesday, September 22, 2004 at 6:00 p.m. at the Towson Golf & Country Club, 12801 Stone Hill Road, Phoenix, Maryland 21131; 410-252-8484. The speakers and topics for this meeting will be announced at a later time.

MICPEL:

Family Practice 2004 Update:

The Most Important New Cases, Statutes & Court Rules

Friday, August 20, 2004 Rockville

Friday, August 27, 2004 Baltimore

Marital Property Workshop

Friday, October 1, 2004

Columbia

Hot Tips for Family Law Practitioners

Friday, February 4, 2005

Columbia

WEBSITE OF THE MONTH:

www.marylandchildsupport.org

"Welcome to the eChild Support website". Do support calculations, check payment history, forms and more, all brought to you by our very own Maryland Department of Human Resources...

Legal Quotation of the Month:

"And do as adversaries do in law-strive mightily, but eat and drink as friends."

The Taming of the Shrew William Shakespeare

Great Resources on the 'Net

Anne Morrison

Prince George's County Law Library

The Internet is a fantastic resource. According to Nielson/Net Ratings, as of January 2004, over 447 million people over the age of 2 have access to the Internet. Those 447 million people each visit over 1000 web pages per month. With all those "surfers" and all that information, how can legal practitioners know how and where to find useful information on the Internet?

One of the best ways for a lawyer to find useful information is to consult his/her law librarian. Law Librarians are specialists in legal information. As a law librarian, I've put together a short list for you of useful resources that you might find interesting:

ITools <http://www.itools.com/>: This site offers quick access to all sorts of useful Internet tools. Search the web through Google, discussion groups through Usenet, find people through WhoWhere or Yahoo's People Search. Look up a definition in the American English dictionary, definitions to computer terms, or search the Encarta Encyclopedia. This site also allows you to translate phrases or entire web pages (to/from) English (to/from) Spanish, French, German, Italian or Portuguese. There are also links to currency conversion tools and map tools (including obtaining a map by longitude and latitude or topographical features)!

Good Stuff <http://showcase.netins.net/web/trhalvorson/g-stuff/index.shtml>: This site is compiled by TR Halverson, a (self-described) "lawyer, author, speaker, computer programmer, and small grains farmer" from Sidney, Montana. TR has accumulated links to a wide variety of useful resources for general information here. He has grouped these resources into "Selected Resources" focusing on business and investing; "Generic Internet Resources" such as search tools, websites and newsgroups; "Reference" tools such as Bartlett's Quotations, the Elements of Style, and the Library of Congress; along with headings such as "U.S. Government," "U.S. News," "International News," and "Business Magazines."

Lex Notes <http://www.lexnotes.com/sources.shtml>: This is another useful resource from TR Halverson. This site specifically focuses on sources of legal information, with links to "Federal Government" information, "State Government and Law," "Law Reviews, Journals and Newsletters," "LexNotes Subject Collections," "Reference," and "Miscel-

laneous Non-Legal Information." This site is definitely worth a bookmark on your browser!

Search Engine Showdown <http://www.searchengineshowdown.com/>: Ever wonder what the differences are between all the search engines that are available on the Internet? Wonder no more! This site offers the latest news of changes with search engines, along with a "Search Engine Chart" which compares power search features and capabilities of popular search engines with links to detailed reviews of each. You will also find statistical information on search engines, search strategies, and reviews of various search engines.

Legal Information Institutes' Law About <http://www.law.cornell.edu/topics/index.html>: The Legal Information Institute from Cornell's School of Law has compiled pages that provide brief summaries of law topics with links to primary source material, Internet resources, and "off net" references. Their "Family Law" section provides links to adoption, child custody, children's rights, divorce, estate planning, estates and trusts, insurance and marriage. Be sure to check out the rest of the Legal Information Institute pages, too!

Hieros Gamos <http://www.hg.org/>: This site is a legal professional's "goldmine," with links to legal news, forms, law journals, dictionaries, and law libraries. Their "Law Practice Center" offers an alphabetical listing of more than 230 legal resources around the globe, from "aboriginal peoples" to "workers compensation." Hieros Gamos truly is an international legal resource. (You can get the page translated into French, Dutch, Italian, or Spanish with just a click of the mouse at the top of the page!)

Martindale's Reference Desk <http://www.martindalecenter.com/>: No, this may not be the "Martindale" that you might think of first. This site comes from Jim Martindale, who has collected links to over 18,000 "calculator tools" of every imaginable type into one place! Here you can find links to child support calculators; insurance calculators (including automobile, life, earthquake and homeowners); DWI/DUI/OUI points calculators for every state; damage value calculators; and logic tools for those serious mathematical types out there. There are even some fun tools like translating your name into sign language or Hawaiian, Chinese, Japanese, or Egyptian Hieroglyphics.

May Birthdays:

Joseph Heller: "You have deep-seated survival anxieties. And you don't like bigots, bullies, snobs and hypocrites. Subconsciously there are many people you hate." "Consciously, sir, consciously," Yossarian corrected in an effort to help. "I hate them consciously." **Catch-22**

Sigmund Freud: I have a few clients that would have him scratching his beard, bet you do, too...

Adela Rogers St. Johns: Journalist, Biographer, daughter of noted Los Angeles attorney Earl Rogers.

"There is so little difference between husbands you might as well keep the first."

June Birthdays:

F. Lee Bailey: "Perhaps the cardinal personality trait of a good trial lawyer is that of easy self-reliance, a willingness to act swiftly based on one's own counsel, with little or no time to consult with or be advised by others." **To Be A Trial Lawyer**

Marquis de Sade: Seemed appropriate to recognize him in a family law newsletter...

Mel Brooks: The Master..."Roll, roll, roll in the hay..." **Young Frankenstein**

Gene Wilder: "That's Fronkensteen." **Young Frankenstein**

July Birthdays:

James M. Cain: "They threw me off the hay truck about noon". The opening line of one of the great *noir* classics, **The Postman Always Rings Twice**

August Birthdays:

Maria Montessori: Educator

Dorothy Parker: Writer, reviewer: "This is not a novel to be tossed aside lightly. It should be thrown with great force."

THE MEDIATOR'S PERSPECTIVE

David S. Goldberg, Esq.
Family Mediator

A TOAST . . .

*Here's to the bride and the mother-in-law.
Here's to the groom and the father-in-law.
Here's to the sister and brother-in-law.
Here's to the friends and the friends-in-law.
May none of you need an attorney-at-law!*

The sad reality is that one in three first marriages ends in divorce. Fully half of all second marriages meet a similar fate. The majority of contested lawsuits filed each year involve divorce and related family matters. There are more than 500 lawyers who regularly practice family law in Montgomery County, Maryland. Ninety percent of the complaints received by the Fee Dispute Resolution Committee of the Bar Association of Montgomery County involve fees charged by lawyers in domestic cases. It is not unusual for litigation costs in divorce cases (lawyers, mental health professionals, appraisers, accountants, rehabilitation experts, depositions, etc.) to run upwards of \$25,000 for each party - even more in a contested custody case. It is not uncommon for parties to conclude their divorce having spent all of their savings, all of the funds set aside for their children's education, and all of the equity in their home. Bankruptcy, foreclosure, and destroyed credit ratings are all too frequently the result of the financial devastation of divorce.

Being "right" or "winning" is of little comfort. An Irish curse comes to mind - "May you be involved in a lawsuit in which you are unquestionably in the right!" A "win" will be at great financial and emotional cost, and you might just lose no matter how meritorious your position appears to be. What matters in court is **not** what is true...it is **what you can prove**. Rarely does either party to a divorce case leave court with a good taste in his or her mouth. Even a "victory" is tempered by dissatisfaction with the cost, the delay, the public disclosure of intensely personal matters, and the realization that the judicial system is simply not equipped to deal effectively with family relationships.

The old joke - "In a town in which one lawyer cannot make a living, two lawyers will do very well", seems appropriate. Lawyers have historically been trained in an adversarial and confrontational method of doing business. The theory is that if the attorney for each party zealously advocates his or her client's cause and mightily bashes the other party in the process, the truth will somehow emerge, a wise judge will make a fair and equitable decision, and everyone will leave court believing that justice has been done. While this practice model may work in other areas of the law, it is not well

sued to the resolution of disputes between people who are dealing with a level of personal chaos which they never could have anticipated and for which no preparation is possible. A confrontational approach does little to heal and much to worsen and prolong the pain.

It is said that there is no objective truth, only our individual perceptions of truth. The judge who decides a divorce case must try to ascertain truth from the litigants, both of whom see the facts in different ways, both of whom are experiencing the emotional trauma of dealing with the dissolution of their marriage, and both of whom may appear to be equally sincere in setting forth their respective needs and concerns.

Some years ago while driving down Rockville Pike on a cold and rainy March day, I spotted a woman walking on the sidewalk, clutching her hooded raincoat at her throat, turning her head and body against the wind and the rain, clearly uncomfortable and unhappy with the weather. Holding her left hand was a young boy whom I guessed to be about 6 years old. His head was thrown back, tongue extended, trying to catch raindrops, clearly enjoying himself. I was struck by how differently these two people perceived and reacted to the very same event. What is the lesson? We need to understand and acknowledge that there are at least two sides to every story, that each party has his or her own perception of events, that such differing perceptions may be completely valid, and that such differences need not be irreconcilable.

In the play Fiddler on the Roof a scene takes place in which a number of towns people are discussing a newspaper which a student, Perchik, has brought from the far away city of Kiev. One of the men observes that the outside world does not care about the people in their small and isolated village - so why should they care about the outside world. Tevye, the lead character, agrees: "You are right!" Young Perchik disagrees: "We cannot ignore what goes on in the outside world." Tevye again agrees: "You are right!" A third townsman points out to Tevye that they cannot both be right, to which Tevye responds: "You too are right!"

So it is in divorce. There is rarely one side that is right and one that is wrong. There are rarely clearly identifiable victims and villains. "Correct calls" are not easy to make no matter how well intentioned and experienced the judge may be. Judges who are faced with difficult decisions to which no "formulas" apply will often decide based on their gut reactions of what is "fair", on their own per-

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A Beach Reading List

By the Staff of FLN

If your family is like mine you head for the beach for a week or so each summer; we always seem to wind up at Bethany. Since I can pick-up a sunburn in a February snowstorm I tend to see the family off to the *actual* beach, the sandy one, each morning and then head for the porch with a book. As my reading tastes are a bit quirky, I have solicited the advice of friends, colleagues, neighbors, wives and assorted kids to assemble the following beach reading list.

The good news is that people still read; the scary news is that they seem to like reading about murder and mayhem...no, Jane Austen didn't turn up on a single survey.

Mysteries are very popular. The hands down winner among mystery /thriller authors was James Patterson. He has a series featuring a Washington, D.C., detective named Alex Cross; some titles include Jack & Jill, Along Came a Spider and Big Bad Wolf; non-series titles include Suzanne's Diary For Nicholas. "The books are wonderful, can't put down...James Patterson is never a let down!"

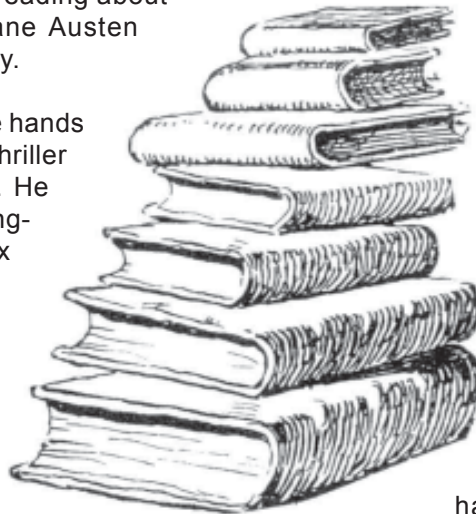
We were advised that if you like James Patterson you might like Catherine Coulter. Her titles include The Edge, Hemlock Bay and Riptide: "Stop sleeping with the Governor or I'll kill him." Readers said that she features intriguing characters, surprising plot twists.

Patricia Cornwell is huge. Her series features Dr. Kay Scarpetta, a Medical Examiner in Richmond, and titles include Post-Mortem and Body of Evidence. Her non-series titles include Isle of Dogs and Hornets Nest and feature great plots and humor.

The English Assassin by Daniel Silva; an art restorer plunged into espionage, stolen art and murder..."Great story, interesting characters."

A Certain Justice by P.D. James: "The Old Bailey and the murder of a barrister...very interesting characters, keeps you guessing until the end..."

A number of readers suggested Dick Francis for anyone who likes horses and mysteries. Some of his titles include 10 lb. Penalty and a series featuring an ex-jockey, including Odds Against and Whip Hand. You can also start slowly, with a book of short stories called Field of Thirteen.



In mainstream fiction the most popular title in our survey was The Secret Life of Bees by Susan Monk Kidd: beehives and women and their mothers. "Unique and interesting story, and wonderfully written..."

Mount Vernon Love Story by Mary Higgins Clark: the love story of George and Martha Washington..."I think, young Washington, that if you wish to court my sister, you must act rather more in love, and less like a man who is thinking of adding to his possessions. I would have thought that teaching you to dance was enough. Must I also teach you how to love?"

Bel Canto by Ann Patchett: opera and life as a hostage in South America...surprise ending.

Sacred Time by Ursula Hegi: the saga of an Italian-American family...

The Da Vinci Code by Dan Brown: Harvard professor called in to help solve the mystery of the Holy Grail, some action, some romance, unexpected plot twists..."Brain-twisty...riveting and thought-provoking." Also wrote Angels and Demons: "A better book than Da Vinci Code!"

So goop up and take a book to the beach.

The Mediator's Perspective . . .

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sonal family and marital history, and on their view of the world in general colored in many cases by their religious or political convictions.

Is it reasonable to expect that a judge who knows nothing of the parties and their family and nothing of their history together over many years, will be able to fairly decide the very momentous issues presented during a one or two or even a three day trial at which each party will testify for perhaps three to four hours at most? Will the judge know enough to make a correct call? Will he or she be sensitive to the cultural, religious and ethnic differences that impact the way the litigants view their relationship? Will fault be a factor and will it be easily ascertainable? Will the remedy be clear - and effective? Will the result be fair...and at what cost? Following the bloodletting that normally attends a fully contested trial, will the parties be able to communicate civilly about their children - graduations, weddings, grandchildren - or will a bad situation have been made worse by a process which seems designed to assess fault and punish the wrongdoer?

Supreme Court justice Warren Berger observed that he did not believe that people wanted the important decisions of their lives made by black robed judges in wood-lined courtrooms while being represented by lawyers in three-piece suits. In the final analysis, we must ask why attorneys and their

clients would choose to leave these important decisions in the hands of others when a realistic and cost effective alternative exists? That alternative is mediation.

In the next issue I will address the process of mediation and the role of counsel in preparing their clients to participate in the process, with and without counsel.

Recommended reading: Getting to Yes, Fisher & Ury, published by Penguin USA, and How to Win Friends & Influence People, Revised Edition, Dale Carnegie, published by Pocket Books.

David S. Goldberg is a graduate of the University of Maryland and Georgetown Law School and has been a member of the Maryland Bar since 1967. He is a Practitioner Member of the Academy of Family Mediators, a founding member of the Maryland Society of Professional Family Mediators, and a member of the Association of Family and Conciliation Courts and the Society of Professionals in Dispute Resolution. Mr. Goldberg is President of Family Mediation Services, Inc., in Gaithersburg, Maryland. He can be reached at familymediator@earthlink.net. His web site is www.familymediator.com.

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Case Notes

Issues: Appealability - Conditions attached to Custody Award - Due process right to representation by counsel

Frase v. Barnhart, et al., 379 Md. 100, 840 A.2d 114 (2003).

By Marjorie Roberts

Paralegal for Christopher R. vanRoden, Esquire

Facts: Deborah Frase is a single mother of three children, by three different fathers, and was pregnant with a fourth child by a different father at the time of this appeal. The children's names and ages are as follows: Justine, age 12; Tara, ages 8-9, and Brett, ages 2-3. While Ms. Frase was arrested and incarcerated for eight weeks in the Talbot County Detention Center for a failure-to-appear bench warrant based on an earlier charge of possession with intent to distribute marijuana, her children stayed with different families. Ms. Frase's mother, Ms. Keys, found two other couples from her church to take the children. The Appellees, the Barnharts, took Brett and Justin, and the Eskows took Tara. At some point after her release, Ms. Frase moved into a trailer with two other adults, Robert Johnson, the father of the unborn child, who had recently been released from prison, and his mother. Mr.

Johnson's nephew occasionally stayed with them at the trailer. Due to the crowded conditions of the trailer, Ms. Frase allowed the Eskows to retain physical custody of Tara for a period of time. Three days after the Barnharts returned Brett to Ms. Frase, they filed for custody of the child. After unsuccessfully trying many resources to obtain free counsel, Ms. Frase filed a *pro se* answer and a counterclaim for custody. At a scheduling conference held on April 15, 2002, Ms. Frase asked the domestic relations master to appoint an attorney for Brett, but not for herself. The request was denied, but the master suggested that she go to the *pro se* clinic. At the trial court level, Ms. Frase did not have counsel at any time, but had representation in the appeal.

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Sports Update:

Our Gunston Venom (Gunston Team America Venom, U-11 boys, Division 2, NCSL, that is) coverage continues with the bane of every athlete's existence, the injury, in this case a strained quadriceps of the right leg. The Quad, as those of us in the know call it, is the big muscle on the front of the thigh. One day at recess, as Daniel (yes, another up-date featuring Daniel Herbert, can't imagine why) was kicking a soccer ball with friends, another boy kicked a *basketball* towards him; his right foot in mid-air, the basketball slammed into the top of his foot and bent it back under his ankle.



We saw a delightful orthopedic specialist in Arlington, a former athlete himself, which helped him to rapidly establish a bond with Daniel. The Doctor quickly made his diagnosis but opted for x-rays, to be sure. And while Daniel went off for x-rays in a pair of the silliest, baggiest med gown shorts I have ever seen (he was so embarrassed he forgot the pain, which may have been their plan), the Doctor actually stayed in the room and spoke with us.

"Don't worry, I think we have caught it in time, and a few exercises should help him. You know, we didn't do any of this stuff when I was a kid. I was throwing breaking balls when I was 8."

Having had my own right shoulder rebuilt many years ago, doubtless after too many years of throwing breaking balls, I winced.

"Oh," he said, "that's not the worst of it. I grew up in New Hampshire, playing hockey, smacked all over the ice...loved the sport, though, didn't give it up until my 9th concussion, in college."

"Tell me, "I softly asked my wife, the nurse, who had found this character," tell me again why we came to this office?"

He laughed. "It's O.K, I'm the orthopod, not the brain surgeon."

The x-rays were negative, so the next 4 weeks consisted of light training, but no running or shooting, which nearly killed Daniel. For a true disciple of the game, watching other kids play is torture. Daniel, however, eventually returned to form; as of this writing Venom sit in the middle of the second division, with 7 points, and Daniel has 2 assists.

Next up-date: the Fall 2004 season...

Case Notes . . .

(continued from page 9)

The evidentiary hearing before the master was held on May 20-21, 2002. At the hearing, Ms. Frase admitted to a past drug problem but said she completed a six-month intensive addictions program, and that she was drug free and no longer had an alcohol problem. Counseling was longer necessary. The master's report was filed on June 3, 2002, recommending that "(1) Ms. Frase be awarded custody of Brett, 'provided that she immediately apply for and obtain housing at Saint Martins House (they have indicated that they expect to have a vacancy shortly),' (2) with the permission of the Barnharts, Brett 'spend every other weekend with them for as long as Justin is in their household,' (3) Ms. Frase 'continue to cooperate with the Family Support Center and Caroline County DSS,' and (4) 'this matter be reviewed in ninety days.'"

Ms. Frase filed exceptions where she averred that her right to counsel had been denied. She complained about the conditions attached to the award of custody and asked that "(1) she not be required to move, (2) more suitable visitation, through the Department of Social Services and involving all three children, be arranged, (3) an attorney be appointed for her, and (4) if necessary, another hearing be scheduled." A hearing was held on the merits of the exceptions. As a result of the hearing, the trial court signed three orders on September 16, 2002. Custody of Brett was awarded to Ms. Frase, "provided she make application for housing at St. Martin's House." A visitation schedule was established, mediation on visitation ordered, a continued cooperation with the Family Support Group and the county Department of Social Services ordered, and a review would be held on November 4, 2002. No appeal was taken from those orders.

On October 23, 2002, Ms. Frase filed an Emergency Motion to have the conditions attached to the custody order stricken. Ms. Frase also found after a review of the 1993 court file relating to the award of Justin's custody to her mother, that the master had represented her mother and did not disclose this to the parties at the hearing. She also averred that the master had denied her request for counsel and that representation was even more important than before. Ms. Frase also requested that the review hearing scheduled for November 4 be postponed until February 2003, as she was in pre-labor and was due to have her child on December 5, 2002. On November 1, 2002, the court denied the postponement request but made no other rulings on Ms. Frase's Emergency Motion. The hearing was held before the master who did not recuse herself from the matter. No decisions were made other than to schedule another hearing in February 2003. Ms. Frase filed an appeal on November 25, 2002 for the November order, and the review hearings were stayed pending the appeal. Appellee filed a Motion to Dismiss the appeal. The Maryland Court of Appeals granted *certiorari* prior to any proceedings in the Court of Special Appeals.

Held: Appealability: The Court of Appeals denied the Appellee's Motion to Dismiss, as this matter was appealable based on CJP § 12-303(3)(x) which states: "A party may appeal from any of the follow-

ing interlocutory orders entered by a circuit court in a civil case: . . . (3) An order: . . . (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order; . . ." The imposition of that uncertainty constitutes a deprivation of the parent's care and custody. The Court held that the September 16 orders were interlocutory because they included conditions, but as a procedural matter, those conditions should not have been included. The determination of custody in the September 16 orders should have been the final judgment of the court.

Validity of the Conditions: Ms. Frase attacked two of the conditions specified by the court, including the visitation provision and the requirement that she apply for and if accepted, reside at St. Martin's House. As custody was awarded to Ms. Frase, conditions should not have been included. Appellants referred to the U.S. Supreme Court's decision in *Troxel v. Granville*, 530 U.S. 57 (2000), wherein "the visitation requirement interfered with her fundamental right to direct the care and upbringing of her children." The Court of Appeals held that the conditions attached to the custody award, including the setting of review hearings were impermissible and therefore invalid. The Court remanded the case to the Circuit Court for Caroline County with instructions to vacate the conditions.

Concurring opinion by Justice Cathell, joined by Chief Justice Bell and Justice Eldridge: The issue of the due process right to counsel was not addressed which is an issue that has been avoided in custody cases before. Parents, when faced with losing the most fundamental and constitutional of rights, the right to parent, have a right to counsel. "By our failure to determine the constitutional limits of the rights, if any at all, of the indigent to provided representation, the issue remains a 'bouncing ball,' subject to being bounced back and forth between the legislative, executive, and judicial branches of government, each branch leaving it to the other to address." In Justice Cathell's view, the state's top court should no longer leave parties, trial courts, and this issue in limbo. "More important I would resolve it by holding that in cases involving the fundamental right of parents to parent their children, especially when the parent is a defendant and not a plaintiff, counsel should be provided for those parents who lack independent means to retain private counsel."

The Court of Appeals included in the background of this case, but did not instruct on Ms. Frase's complaint that she discovered that the master had served as her mother's attorney and therefore was a conflict of interest. She pointed out to the trial court that the master did not bring the subject up, was biased, had personal knowledge of disputed facts, and the hearing conducted was unfair.

Practice Considerations: Whether custody is awarded or implied, conditions cannot be attached. The Court of Appeals did not rule on the right to counsel and in any meaningful way discuss the flagrant ethical violation of the Master.

Case Notes

Social Security and "Above the Guidelines" Cases

By Justin J. Sasser, Esquire

This recent Maryland appellate case briefed below revisits the issue of how to apply Social Security benefits in the calculation of the Maryland Child Support Guidelines, specifically, in cases that are "above the guidelines".

***Tucker v. Tucker*, 2004 Md. App. Lexis 57**

Facts: In 1995, the Petitioner, Bruce Tucker (hereinafter "the Petitioner" and/or "Mr. Tucker"), and the Respondent, Terri E. Tucker (hereinafter "the Respondent" and/or "Mrs. Tucker"), divorced and entered into a settlement agreement to resolve their differences over alimony and child support. That agreement required Mr. Tucker to pay Mrs. Tucker alimony for seven years and child support until their four children reached the age of eighteen.

When Mr. Tucker's alimony obligation expired in 2002, Mrs. Tucker filed a motion in the Circuit Court for Montgomery County seeking an increase in child support. At the time the motion for modification was considered the circuit court found that the Mr. Tucker's monthly income was \$33,319 (\$32,219 income and \$1,100 Social Security benefits), and that Mrs. Tucker's monthly income was \$4,016 (\$2,916 income and \$1,100 Social Security benefits for the children). Mrs. Tucker's motion was granted, and Mr. Tucker's child support obligation increased. Mr. Tucker specifically objected to the court's treatment of Social Security benefits, received by his children as a result of his age, in computing his and Mrs. Tucker's child support obligations.

After first calculating the parties' respective incomes the court added to Mrs. Tucker's income the Social Security benefits that she receives on behalf of the Tuckers' children. That addition, Mr. Tucker maintained, violated Maryland law. Those benefits, he insisted, should not have been added to Mrs. Tucker's income but subtracted from the total amount of the parties' child support obligation.

ISSUES: (1) Whether the Circuit Court erred in adding children's Social Security benefits to the custodial parent's income.

(2) Whether federal law mandated that Social Security benefits paid to children must be deducted from the children's reasonable expenses before determining each parent's child support obligation.

Held: 1) Yes. The circuit court erred by adding the Social Security benefits received by the children to the custodial parent's income. In vacating the lower court's judgment to include the children's Social Security benefits in the custodial parent's in-

come the Court of Special Appeals relied upon the rationale in *Anderson v. Anderson*, 117 Md. App. 474, 700 A.2d 844 (1997), vacated on other grounds, 349 Md. 294, 708 A.2d 296 (1988), citing that Maryland's child support guidelines, see *FL Secs. 12-201 to 12-204*, do not "provide that Social Security benefits paid on behalf of a minor child shall be included in the income of the custodial parent."

2) No. While Social Security regulations require a custodial parent to "use the payments . . . she receives only for the use and benefit of her children in a manner and for the purposes . . . she determines, under the guidelines . . . to be in the best interests of the beneficiary" 20 C.F.R. Sec. 404.2035 (2003), under the guidelines, the benefits "have been used for the use and benefit of the children if they are used for their current maintenance. In an "above guidelines" case, the children's Social Security benefits are "simply one fact of the many available to the circuit court upon which to base an award" of child support. *Anderson*, 117 Md. App. At 489.

The circuit court has the discretion to set the child support obligation when the parties' income exceeds the guidelines, and it can base the amount of that obligation on the children's reasonable expenses if it so chooses. This does not mean that the court must automatically reduce the children's reasonable expenses by the amount of Social Security benefits they receive before calculating the child support obligations. Neither Maryland law governing child support awards, nor the federal regulations governing Social Security benefits, require such a result.

Practice Consideration: Keep in mind that in "above the guideline" cases, (Which are becoming more and more frequent with the current \$10,000 per month "cap"), the circuit court is afforded great latitude in exercising its discretion as to whether to adjust the total child support obligation by reducing it in some measure to reflect benefits and other sources of support that children are receiving, such as Social Security benefits. This affords creative counsel opportunity to craft persuasive arguments that otherwise would be ineffective in the determination of the non-custodial parent's child support obligation. While the circuit court may use the Maryland Child Support Guidelines as a basis to extrapolate a support figure, it must take into consideration benefits and/or other sources of support that the child(ren) receive.

Justin J. Sasser is Of Counsel with the law firm of Pitrof & Starkey, P.C. located in Upper Marlboro, Maryland, focusing his practice in the area of Family Law. If you have any questions related to this article, he can be reached at (301) 627-4300.

Case Notes

Issues: Whether putative father has the right to establish paternity when child is born during the mother's marriage to her husband

Stubbs v. Colandrea et al., 154 Md. App. 673, 841 A.2d 361 (2004).

By Marjorie Roberts

Paralegal for Christopher R. vanRoden, Esquire

Facts: The Appellant in this matter, Mr. Stubbs, brought this action alleging that he is the biological father of a child conceived and born during the marriage of the Appellees, Mr. and Mrs. Colandrea. Mr. Stubbs also sought visitation rights. The Appellees were married on May 15, 1993. Three children were born to them during the marriage, the third of which is the reason for this suit. Jonnie Colandrea was born on January 25, 1998. As a result of Mr. Colandrea's drinking, the Appellees were separated on four occasions between 1995 and 1999, but have been back together since January 2000. Mr. Stubbs filed for paternity and visitation rights in the Circuit Court for St. Mary's County on April 7, 2000. He requested that an appropriate blood and generic test be administered to determine whether he was the father of Jonnie Colandrea. The request for a blood test was referred to a master who took two days of testimony. A child psychologist provided the master with the relationships within the Colandrea family, and presented the best interests of the child standard. The master, using the best interests of the child standard, recommended that the blood test be denied. Exceptions were filed by Mr. Stubbs and his new counsel, challenging the best interests of the child standard for determining whether a blood test should be administered. The circuit court denied all of the exceptions. Mr. Stubbs wanted counsel for the child, but the circuit court pointed out that Mr. Stubbs had not raised the issue prior to or at the master's hearing. The circuit court concluded that it would not be in Jonnie's best interest to declare Mr. Stubbs to be her biological father. The court further held that "Mr. Stubbs had failed to overcome the presumption that Mr. Colandrea is Jonnie's biological father."

Mr. Stubbs appealed to the Court of Special Appeals on the following issues:

- I. The circuit court could not refer the request for a blood test to a master;
- II. An attorney should have been appointed for Jonnie;
- III. Whether a blood test should be administered is controlled by the "Paternity Act," Maryland Code (1984, 1999 Repl. Vol.), Title 5, Subtitle 10 of the Family Law Article (FL);
- IV. A best interests of the child standard should not be used to determine whether a blood test should be administered; and

V. Even if a best interests standard is applicable, the circuit court abused its discretion in its application of that standard in this case."

Held: The Court of Special Appeals affirmed the circuit court's decision in denying Mr. Stubbs' request for a blood test and for his request for a declaration of paternity. Additionally, the Court of Special Appeals held that referring this to a master was appropriate. The Court of Special Appeals also held that counsel for the child was inappropriate in this matter, applying a best interests of the child standard. "Jonnie's interests had been adequately presented to the court by the child psychologist who had examined Jonnie. There was no abuse of discretion." In his argument, Mr. Stubbs' used the "Paternity Act," Maryland Code (1984, 1999 Repl. Vol.), Title 5, Subtitle 10 of the Family Law Article as his argument for receiving a blood test, and not a best interests of the child standard. Mr. Stubbs argued that § 5-1029 of the Paternity Act governs whether the blood test should have been administered. Under that provision, blood tests would be mandatory, as it was held in *Langston v. Riffe*, 359 Md. 396, 754 A.2d 389 (2000). The Court of Special Appeals noted the differences between *Langston* and the present action. Putative actions involving an alleged father and an unwed mother may rely on *Langston*. Blood tests are required if requested. *Turner v. Whisted*, 327 Md. 106, 607 A.2d 935 (1992), refers to cases where a third party files a putative action where the mother is married to another party. A blood test is not required when the child already has an established family. The Court of Special Appeals found that *Turner* was more relevant to the instant case. *Turner* refers to § 1-206(a) of the Estates and Trusts Article, which states: "A child born or conceived during a marriage is presumed to be the legitimate child of both spouses". The Court of Special Appeals also referred to § 1-208 of the Estates and Trusts Article, in which a discovery request under Maryland Rule 2-243 for a physical examination requires good cause to be shown.

Practice Considerations: Case decisions vary, depending on whether a paternity suit involves unwed mothers or married mothers. Refer to § 1-208 of the Estates and Trusts Article for establishing paternity of a child born in wedlock. Refer to the Paternity Act in cases involving a child born out of wedlock. It would appear difficult to overcome the presumption of paternity without a test.

WICOMICO COUNTY: PRACTICE AND PROCEDURE

In Wicomico County, the filing fee for divorce is Ninety Dollars (\$90.00), and there is an additional Ten Dollar (\$10.00) fee for the entrance of appearance of counsel. After filing the Affidavit of Service and the filing of an Answer, the Circuit Court will issue a Notice of Scheduling Conference to the parties or counsel. The Court typically attempts to have Scheduling Conferences scheduled within three weeks of receipt of an Answer indicating contested issues. The Court may also set a Scheduling Conference in a particular case with no particular activity for sixty to ninety days.

If counsel have a conflict with the date of the Scheduling Conference, the Court is receptive to informally arranging for a new date with the consent of the parties through the office of the Family Law Master. If that is not possible, a formal request by motion is necessary.

The Scheduling Conferences are conducted by Family Division Masters. At the Scheduling Conference, you will be scheduling future court dates, events, and requests for services. Any agreements for requests can be addressed on the date of the Scheduling Conference. It is particularly important that counsel have access to their calendars available for scheduling dates and the various deadlines necessary for the case at the time of the Scheduling Conference.

At the time of the Scheduling Conference, the parties may request specific services, including, but not limited to, home study, mental evaluations, drug screens, and appointment of a Guardian Ad Litem. Home studies are handled through the Wicomico County Department of Social Services and typically cost approximately five hundred dollars (\$500.00). Mediation services are available for both custody/visitation issues as well as marital property, monetary award and alimony.

In every case involving custody and/or visitation issues, the parties will be scheduled to attend a Co-Parenting Educational Seminar consisting of two separate three hour classes which occur on the first and second Monday of each month from 6:30 p.m. to 9:30 p.m. at Salisbury State University. The parties will also be ordered to participate in Parenting Mediation with a Court-Approved Mediator. Supervised visitation and monitored exchanges may be conducted through the Lower Shore Family Visitation Center and Life Crisis Center only if court-ordered and arranged through the Family Services Coordinator.

Practitioners are also well-advised to review the visitation guidelines set forth herein which are frequently incorporated in visitation orders issued by the Circuit Court for Wicomico County.

Pendente Lite Hearings are available for the issues of visitation, child support, alimony, use and possession issues, attorney's fees and/or court costs. Pendente Lite hearings are conducted by a Family Division Master and are generally limited to two (2) hours.

Merits Hearings may be heard before a Family Division Master or a Judge of the Circuit Court. Parties may consent to hearings before a Family Division Master. In addition to Master L. Bruce Wade, Master Brett W. Wilson also presides over domestic and juvenile cases in Wicomico County. Cases involving abuse, where the parties do not consent to a hearing before a Family Division Master, or cases requiring more than two days of trial, may be set before a Judge of the Circuit Court. All of the judges of the Circuit Court share in adjudicating and hearing domestic cases set before a judge.

Settlement Conferences are held typically thirty (30) days before the Merits Hearing before a Family Division Master. The Joint Statement of Marital Property pursuant to Maryland Rule 9-207 must be submitted prior to the Settlement Conference.

The court requires parties to abide by the following general deadlines in every case:

Any expert witnesses must be specified to the court and other parties thirty (30) days prior to Merits Trial Date pursuant to Maryland Rule 2-402(e)(1)(A). Each person that a party intends to call as an expert witness to support a defense to a claim or a defense to a counterclaim must be identified within fifteen (15) days thereafter.

Any party who intends to use computer-generated evidence at trial in support of that party's position must give notice thereof thirty days prior to the Merits Trial Date pursuant to Maryland Rule 2-504.3(b), except as limited in subsection (b)(2).

All discovery, including resolution of discovery disputes, must be concluded at least thirty (30) days prior to the Merits Trial Date.

All pre-trial motions and amendments of pleadings must be filed at least twenty (20) days prior to the Merits Trial Date.

It is worthy of particular note that the Circuit Court has a specific requirement that each party must file the following at least ten (10) days prior to the Trial Date:

- 1) That party's list of trial exhibits. Exhibits shall be individually identified (e.g., "All medical records" will not be sufficient to comply with this requirement);
- 2) List of that party's witnesses;

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3) Joint Statement of Marital Property pursuant to Maryland Rule 9-207 if marital property disposition or a monetary award is requested by either party and is scheduled for determination by the Court or at the trial;

4) Current within the past thirty (30) days financial statements in compliance with Maryland Rule 9-203;

5) A complete proposed Child Support Guideline worksheet in compliance with Maryland Rule 9-206, including documents confirming the income and expenses shown thereon; and

6) A proposed Judgment which specifies with particularity the relief to be granted on all matters which may be at issue, such as: grounds for divorce, legal and physical custody, parental contact schedule, child support, monetary award and alimony.

The Court also requires that counsel comply with the following requirements regarding the conduct of the Merits Hearing:

- a) All subpoenas for witnesses must be issued for the first day of trial unless the Standing Master or Judge has given permission otherwise;
- b) Prior to the beginning of trial, each party shall mark their exhibits with a courtroom clerk; and
- c) In case of settlement, the court is to be notified immediately.

Failure of Counsel or parties to comply with the requirements of the Scheduling Order may result in sanctions, including, but not limited to, monetary sanctions, dismissal, continuance of trial date and/or contempt.

If circumstances should require that you seek an Emergency Hearing on behalf of a client, you will need to file a written Motion for Emergency Hearing. The motion, upon filing, will be presented to one of the Circuit Court judges for consideration and ruling.

Uncontested divorce cases: upon the filing of an Answer confirming that there are no disputed issues or a default, the moving party may directly contact an Examiner to schedule a divorce hearing. Notice of the uncontested divorce hearing must be provided to the other party. The Examiner's fee is \$100.00.

IMPORTANT TELEPHONE NUMBERS:

Hon. Donald C. Davis, Administrative Judge: (410) 548-4822
Hon. Kathleen L. Beckstead: (410) 548-4822
Hon. W. Newton Jackson III: (410) 548-4822

Family Division Master - Master L. Bruce Wade: (410) 334-3127

Family Services Coordinator - Ellen T. White: (410) 548-7107

Assignment Office - Barbara Underwood Commissioner : (410) 548-4822

Examiners

William T. Smith, III: (410) 546-0506

W. Newton Jackson 3d: (410) 742-3176

Henry L. Vinyard: (410) 543-2131

C. Bruce Anderson: (410) 742-7100

John H. Williams, Jr.: (410) 749-2762

Court Approved Mediators

Jennifer Barnes: 410-572-6050

Dianne Beauchamp: 410-742-0576

Center for Conflict Resolution: 410-219-2873

James Finneran: 410-726-7185

Colleen Ford: 410-334-6363

M. Eileen Matlack: 410-334-6363

Special Thanks to Master L. Bruce Wade, Ellen T. White and Barbara Underwood for their assistance

Jeffrey B. Schultz, Esq. is an associate who practices family law with Schlachman, Belsky & Weiner, P.A.

Practice Tip - Wicomico County

Barbara Trader, Esquire

If you should ever find yourself winding your way over to Wicomico, and perhaps Worcester, Somerset or Dorchester, the following Standard Visitation Guidelines are sometimes, but not always, utilized in setting up custody/visitation schedules and especially for setting out the "ground rules" of appropriate etiquette between parents. If you are going to take a case in one of those jurisdictions and children are involved, I would recommend you familiarize yourself and your client with the "Rules of Engagement" and give some consideration to the following:

STANDARD VISITATION GUIDELINES

1. WEEKENDS: The non-residential parent shall have visitation on alternate weekends

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from Friday at 6:00 p.m. to Sunday at 6:00 p.m. beginning the first Friday following entry of the Court's Order herein.

2. **WEEKDAY:** The non-residential parent shall have visitation from 6:00 p.m. to 9:00 p.m. each Wednesday evening beginning the first Wednesday following entry of the Court's Order herein.

3. **HOLIDAYS:** The _____ parent shall have the child on the holidays in Column 1 in odd-numbered years and in Column 2 in even-numbered years. The _____ parent shall have the child on the holidays in Column 1 in even-numbered years and the holidays in Column 2 in odd-numbered years.

<u>COLUMN 1</u>	<u>COLUMN 2</u>
Easter or other Religious Holiday	Memorial Day
Fourth of July	Labor Day
Christmas Day	Thanksgiving Day
	Christmas Eve

With the exception of Christmas visitation, holiday visitation shall be from 9:00 a.m. the day of the holiday until 6:00 p.m. Christmas Eve visitation shall begin at 6:00 p.m. on December 24th and end at noon on December 25th. Christmas Day visitation shall begin at noon on December 25th and end at 6:00 p.m. on December 26th. When the holiday falls on a Monday immediately following a visitation weekend, the visiting parent shall be entitled to keep the child continuously from 6:00 p.m. Friday to 6:00 p.m. Monday.

4. **OTHER:** _____

5. **MOTHER'S/FATHER'S DAY:** On Mother's Day and Father's Day, no matter whose turn it is for visitation, the child shall be with the appropriate parent on those days from 9:00 a.m. to 6:00 p.m.

6. **BIRTHDAYS:** In odd-numbered years the _____ parent shall have the child on the child's birthday [children on each child's birthday] from 6:00 p.m. until 9:00 p.m. In even-numbered years the _____ parent shall have the child on the child's [children on each child's birthday] birthday.

7. **SCHOOL BREAKS: (Winter/Spring)** In odd-numbered years the _____ parent shall have the child for Winter break from school starting at 9:00 a.m. the day after school recesses to 6:00 p.m. the

day before school resumes. The _____ parent shall have the child for his Winter break in the even-numbered years. In even-numbered years the _____ parent shall have the child for his Spring break (Easter break) from school starting at 9:00 a.m. the day after school recesses to 6:00 p.m. the day before school resumes. The _____ parent shall have the child for his Spring break (Easter break) in the odd-numbered years. If the child is not of school age, the day following the last day of school through Friday of the next week shall be substituted.

8. **SUMMER VACATION:** The _____ parent shall have visitation for _____ weeks each summer. Summer visitation shall be taken in increments of no greater than two weeks (14 days), unless otherwise agreed, and shall not be extended because other visitation days fall within the chosen summer visitation weeks. The non-residential parent shall give the residential parent written notice of summer visitation plans between March 1 and April 1 of each year. The non-residential parent has priority of choice of summer visitation dates if notice is given as required and unless the residential parent's vacation is an annual mandatory shut-down of the place of employment. If no notice is given by April 1, the residential parent then has priority in the scheduling of any summer vacation plans. The residential parent shall have the right to a two week summer vacation, which shall not be interrupted by any conflicting visitation times. Each parent shall provide the other parent with destination, times of departure and method of travel when taking the child outside the parent's community.

9. **LATE PICK-UP:** The residential parent shall have the child ready for pick-up at the start of visitation periods. The child and the residential parent have no duty to wait for the non-residential parent to arrive for visitation more than thirty (30) minutes, unless notified. The non-residential parent who arrives more than thirty minutes late without prior notification for a particular visitation forfeits that visitation, unless the residential parent agrees otherwise.

10. **DROP-OFF:** The non-residential parent will not return the child early from visitation unless the parents agree to a different drop-off time in advance. The residential parent or other adult well-known to the child must be present when the child is returned from visitation.

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11. **CANCELING VISITATION:** Except in emergency situations, the non-residential parent must give at least 24 hours advance notice when canceling a visitation period.

12. **MEDICAL TREATMENT AND EMERGENCIES:** If the child becomes seriously ill or injured, each parent shall notify the other parent as soon as practicable. If the child becomes ill or injured during visitation, the non-residential parent shall contact the residential parent to secure treatment unless the situation is a medical emergency.

13. **TELEPHONE/MAIL:** Neither parent shall interfere with the telephone or mail contact between the child and the other parent. Long distance calls from an out of town parent shall be at that parent's expense.

14. **TRANSPORTATION:** The non-residential parent has responsibility for transportation of the child to and from their home for visitation periods and may use another adult well known to the child for picking up or dropping off the child when necessary. Any person transporting the child may not be under the influence of alcohol or drugs, and must be a licensed, insured driver. All child restraint and seat-belt laws must be observed by the driver. Car seats should be exchanged when required.

15. **SCHOOL WORK:** Parents shall provide time for child to study and complete homework assignments, even if the completion of work interferes with the parent's plans for the child. The residential parent is responsible for providing the non-residential parent all of the school assignments and books. Summer school which is necessary for a child must be attended, regardless of which parent has the child during the summer school period.

16. **EXTRACURRICULAR ACTIVITIES:** Regardless of where the child is living, his continued participation in extracurricular activities school related or otherwise, should not be interrupted. The parent with whom the child is living shall be

responsible for providing transportation to activities scheduled during visitation with that parent. Each parent shall provide the other parent with notice of all extracurricular activities, complete with the schedules and the name, address and telephone number of the activity leader, if available.

17. **OUT-OF-STATE RELOCATION:** Upon relocation of the child from the State of Maryland, the parents should attempt to agree to modify a visitation schedule. If the parents cannot agree, the parent who is moving shall file a petition asking the Court to modify the visitation schedule. The Court may consider the allocation of transportation expenses.

18. **NOTICE OF CHANGE OF ADDRESS:** Both parents shall give notice to the other parent immediately upon any change of address and/or phone number, unless a protective order has been obtained from the Court. A copy of the notice shall also be provided to the Clerk of the Circuit Court for Wicomico County, P.O. Box 198, Salisbury, MD 21803-0198.

19. **CONFLICTS IN SCHEDULE:** In the event of conflicting dates and times, the following is the order of priority: Holidays; Birthdays; Summer Vacation and School Breaks; Weekends; then Weekdays. This schedule presumes that if the parents have more than one child, the visitation will be exercised with all the children together.

20. **OPPOSITION FROM CHILD:** If a child indicates a strong opposition to being with the other parent, it shall be the responsibility of both parents to appropriately deal with the situation by calmly discussing with the child his or her reasons, and to work together to alleviate these misgivings without confrontation or argument. If they cannot resolve the problem, the parents shall seek the immediate assistance of a counselor or other professional, or may file a motion requesting court ordered counseling. It is the absolute affirmative duty of the residential parent to foster an environment which avoids such problems and to make certain that the child goes for visitation.

Circuit Court for Baltimore County

Answers to Frequently Asked Questions (FAQs)

About the Family Division

The following are answers to frequently asked questions (FAQs) about the Circuit Court for Baltimore County's Family Division. It is intended to be a summary of the Family Division Plan and the Domestic Differentiated Case Management Plan for the Circuit Court for Baltimore County.

FAQs

1.) How do I get a hearing?

How a party gets a hearing depends on the nature of the case.

Uncontested Cases: Cases that are filed and identified as uncontested will first be reviewed by a Family Division Master to determine if the case is appropriate and ready to proceed as uncontested. If the Master determines that the case is not ready (i.e., a custody agreement and/or a child support order is not in the file), the attorney or party will be notified why the case cannot proceed. If the Master determines that an issue(s) are contested, the case will be scheduled for a Master's Settlement/Scheduling Conference. Finally, if the case is ready and appropriate to proceed, a Notice of an Uncontested Hearing will be sent to all parties with a date for a hearing before a Master to take testimony. The hearing will be scheduled approximately 20 days later, for those cases with an Answer filed, or 35 days later, if a default order is granted, from the date an Answer is filed or a Default Order is granted. If a party or attorney has a conflict with the scheduled date, they may contact the Civil Assignment Office at 410-887-2660 to obtain a new date.

Contested Cases: Once an Answer is filed, all contested cases will be scheduled for a Master's Settlement/Scheduling Conference in the Grand Jury Room in the Courts Building in Towson. All parties are required to attend the Conference. Parties who reside out-of-state may be available by phone for the Conference. If a party or attorney has a conflict with the date of the Conference, they may contact the DCM Office at 410-887-3233 or 410887-2509 to obtain available dates for resetting the Conference.

If the entire case does not settle at the Conference, all necessary hearings, settlement conferences and services (i.e., parenting classes and mediation) will be scheduled at the Conference. If a party is seeking an evaluation and/or an investigation, all parties consent and the Master finds that an evaluation and/or an investigation is warranted, an Order for the evaluation and/or investigation may also be prepared

at the Conference. The Order is not effective, however, until signed by a Family Division Judge.

If a case scheduled in the Grand Jury Room has no contested children issues and all parties are represented by attorneys, then the attorneys may conduct a Scheduling Conference by phone. Attorneys must contact the DCM Office to obtain available dates to conduct a Telephone Conference.

Exceptions Hearings: Exceptions hearings are scheduled within 60 days of the date exceptions are filed. A hearing will be scheduled only if a party has filed a Request for Hearing.

2.) Which cases are heard by a Master?

Consistent with Md. Rule 9-207, the following matters will be referred to Family Division Masters as of course:

- (A) Uncontested divorce, annulment or alimony actions;
- (B) *Pendente Lite*¹ relief for child support, alimony, use and possession of the family home or family-use personal property and custody and/or visitation;
- (C) Support of dependents, including health, dental insurance of a child or dependant spouse, child care expenses and tuition expenses;
- (D) Modification or contempt of previous court orders or judgments related to child support, alimony, support of dependents, use and possession of the family home or family-use personal property and custody and/or visitation;
- (E) Counsel fees and assessments of court costs in any action or proceeding referred to a Master;
- (F) Stay of an earnings withholding order; and
- (G) By agreement of the parties, any other Family Division matter or issue that is not triable before a jury.

3.) Who do I call for help?

General Policies & Procedures: Family Law Administrator, Richard Abbott; 410-887-6578

Scheduling Conferences: DCM Office, Rosalyn Johnson, 410-887-2509

Masters' Docket, Postponements & Uncontested Cases: Civil Assignment, 410-887-2660

Judicial Docket: Central Assignment, 410-887-3497

Automated Docket: 410-887-8660

State Child Support: Child Support Office, 1-800-332-6347

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Juvenile Matters: 410-887-3836

Custody Investigations/Home Studies: Family Support Services, 410-887-8614

Mediation: Office of Family Mediation, 410-887-6570

Circuit Court WebPages: <http://www.co.ba.md.us/p.cfm/agencies/cicuit/index.cfm>

4.) What Services are Available for Litigants?

(A) **Pro Se Family Law Program** (410-887-3446): This program provides assistance to those individuals who are handling their simple, uncontested family law cases without a lawyer.

(B) **Filing Fee Waiver** (Clerk of the Circuit Court's Office, 410-887-3467): Parties wishing to have the prepayment of a filing fee waived must file a motion to waive the prepayment of the filing fee with the Clerk of the Circuit Court. The judge who hears the case will decide whether the fee should remain waived.

(C) **Reduced Fee & Lawyer Referral Programs** (Baltimore County Bar Association, 410-337-9100): The Reduced Fee Program refers low and moderate-income individuals to attorneys. There is no charge for the initial consultation. The hourly fee for representation is currently \$40. The Lawyer Referral Program refers individuals to an experienced attorney. Participating attorneys charge \$20 for a one half-hour consultation. Subsequent fees are set by the attorney.

(D) **Parenting Classes & Custody Mediation** (Division of Custody & Mediation; 410-887-6570): The Division of Custody & Mediation offers free classes designed to assist concerned parents in focusing on their children's needs during separation and divorce. Separate classes for children are also available. The Division of Custody & Mediation also provides mediation services in custody & visitation disputes. The trained professionals in the office will assist parties to understand the needs of the children, reach agreements in the children's best interests and, if agreement is reached, help develop a cooperative parenting relationship.

(E) **Family Division Services** (Family Support Services Office; 410-887-8614): Family support services were developed to help promote family health and safety and the best interests of the children. Services include the following: emergency and psychosocial home investigations in custody and visitation cases; referrals for drug and alcohol assessments and counseling; extended parenting or anger management classes; and supervised visitation and monitored exchanges of minor children, which may take place at the Court's own neutral location.

5.) How do I get an Emergency Hearing?

If there is some substantial injury which will result to the party or the party's child or children before a regularly scheduled hearing can be held, an emergency hearing may be considered. In order to request an emergency hearing, a motion must be filed (in motion format) and must be titled Motion for an Emergency Hearing. The motion should contain all of the relevant facts including the reason why the matter needs immediate court attention. It is helpful to include with the motion a statement regarding the time estimates to hear the motion and whether medical experts may be called. Motions for emergency hearing should be sent to the opposing counsel/party.

An affidavit and certificate of service must accompany the motion detailing the facts that give rise to the emergency. In certain instances, where the party does not have the personal knowledge to support all of the facts in the motion, additional affidavits should be used. All affidavits are to be attached to motions for mailing and/or service and must be signed by the party, not counsel, unless the attorney has personal knowledge.

If a motion for an emergency hearing is requested and a *pendente lite* hearing has been scheduled before a master, then the request for emergency hearing will be reviewed by the master. Otherwise, the Administrative Judge will review the request. If the request is granted, the case will be scheduled within 15 days.

6.) How do you obtain *Ex Parte* Relief?

A party may seek to obtain immediate relief in a domestic case if the health, safety and/or welfare of a party or child are at immediate risk of harm. The party or attorney representing the party may present, in person, a Petition or Motion for *Ex Parte* Relief to the daily chambers judge. The Petition should contain as much evidence and, if necessary, affidavits that support the fact that the party's or child's health, safety and/or welfare is at immediate risk of harm.

The party or attorney seeking relief shall provide notice to the opposing party or attorney of the date and time that they will be presenting the *Ex Parte* to the chambers judge. They should also contact the chambers judge as soon as possible and confirm the date and time the Petition will be presented. Relief may be granted only if the applicant or the applicants attorney certifies to the court in writing that all parties who will be affected have been given notice of the time and place of the presentation of the *Ex Parte* Petition or the court

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finds that specified efforts commensurate with the circumstances have been made to give notice. Md. Rule 1-351

If a Petition for *Ex Parte* Relief is granted, and the judge does not order that the case be set for hearing, the party affected by the order may apply for modification or dissolution of the order on two days notice to the party who obtained the relief. If notice is given, a hearing before a Family Division judge will be scheduled at the earliest possible time.

Special thanks to Richard Abbott, Esquire, Christopher Nicholson, Esquire, Mary Sanders, Esquire, and Stacy Siegel, Esquire, for the preparation of this article.

(Footnotes)

¹ Certain cases involving *pendente lite* relief and modification or contempt of previous court orders may not be referred to a Family Division Master, but rather to a Family Division Judge. These cases include: (1) protracted cases that are estimated to take more than two days, (2) cases where a party(s) alleges physical or sexual abuse of a child or a party, (3) cases where there is a high level of conflict between the parties that severely affects the safety and/or well-being of a child (e.g., alleged kidnapping of a child, severe drug or alcohol abuse), and (4) those post-judgment cases that are specially assigned to a Family Division Judge.

WOMEN'S LAW CENTER RELEASES PIVOTAL RESEARCH FINDINGS

by Rebecca Saybolt Bainum

The Women's Law Center of Maryland has just released the results of a two-year statewide research study and presented the findings at a recent meeting of the Section Council. *Custody and Financial Distribution in Maryland* is the first large-scale statistical study of custody and the financial outcomes of divorce in the state of Maryland.

The Women's Law Center embarked on this intensive research project after its family law hotline attorneys reported that callers were regularly complaining about perceived inequities and inconsistencies in the custody and divorce process in Maryland. Despite the frequency of these complaints, never before has anyone attempted to capture and quantify these experiences on a statewide level. [Here are a few highlights from the study:](#)

Extensive sample: The study analyzed an extensive dataset, which consists of a random sampling of all divorce and custody cases filed in Maryland during fiscal year 1999. Data were collected from cases filed in all 24 Maryland jurisdictions for a total of 1867 cases in the study. The largest number of cases were collected from Baltimore County (16% of the total sample), Montgomery County (14%), Baltimore City (13%), and Anne Arundel County (13%). Cases from these jurisdictions represented over half (56%) of the total cases collected.

Profile: The study considered financial distribution in Maryland families at the time of divorce. Several important characteristics of Maryland families included in this analysis emerged:

· Women were plaintiffs in 61% of all cases analyzed;

· Half of the marriages in the sample were long term marriages, ending after ten or more years of marriage;

· 55% of divorcing couples in the study had minor children; and

· The most common ground for which divorce was granted was voluntary separation (53%).

Financial distribution: The data show that few people are seeking or receiving financial accommodations (excluding child support) in a divorce.

Financial Requests & Outcomes in Divorce Cases
The striking observation about each of these categories is how few *requests* for each type of financial award were actually made. Of the total divorce cases, only 17% of litigants requested alimony, 27% requested monetary awards and 10% requested a share of pension/retirement. In addition, the data show that very few *awards* are made relative to the number of divorce cases. Only 8% of the divorce cases had alimony awards. Likewise, only 12% of the divorce cases included monetary awards and only 12% included awards of share of pension/retirement. In 65% of all divorce cases, there was no financial award at all.

Predictability of Alimony: A sophisticated "regression" analysis of many of the statutory factors that are considered for alimony awards revealed that there is little predictability in alimony awards. The regression analysis indicated that alimony awards tend to be predictable only for cases with the

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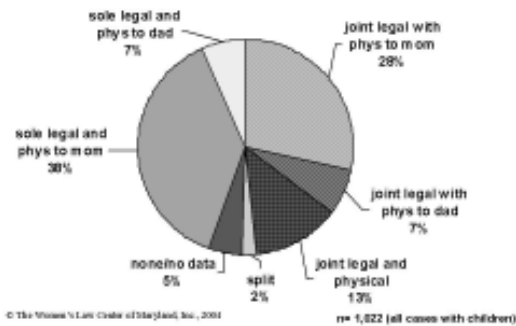
Women's Law Center . . .

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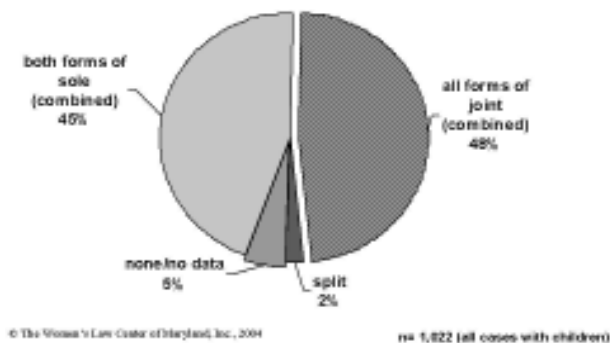
longest marriages and the highest incomes. Several factors, including an award of sole custody to the mother, made it less likely that an alimony award would occur. In a state where 50% of marriages end in divorce, lack of predictability at the time of divorce prevents families from planning their financial futures. In addition, with 55% of these divorcing families including children, the impact of the financial outcome on children is undeniable.

Custody: The study also shows that women request and receive sole custody more often than do men. (See pie chart, below left). However, when the custody outcomes are grouped by type of decision-making involved (sole or joint), as illustrated in the pie chart, below right, the data indicate that parents are sharing some form of decision-making in Maryland in nearly half of the cases involving children.

Distribution of Custody Awards by Type



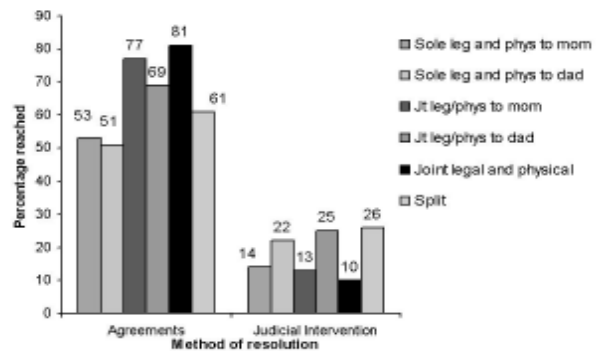
Distribution of Custody Awards (combined)



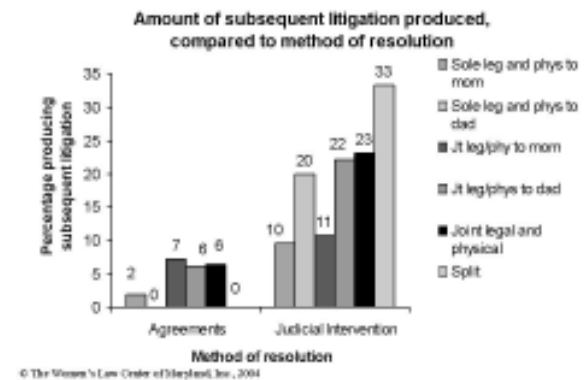
Decision-making: The data show that custody outcomes are more frequently resolved through agreements of the parties than through judicial intervention (see chart below left). This indicates that parties in Maryland are working together to resolve custody issues more frequently than they are seeking the court's assistance in doing so.

One way of assessing the durability of a particular resolution process is to explore whether any subsequent litigation was filed. As shown in the chart below right, the data reveal that when the custody issue is resolved through judicial intervention, parties go back to court at least twice as often as when they agree on the outcome. In particular, where joint legal and physical custody is resolved by the court, the parties return for modification more than three times as often. In recent years, there has been a tremendous emphasis on mediation and other forms of alternative dispute resolution as a method of reducing emotional and financial costs of litigation in Maryland. The data support the benefit of such programs.

Who is Making Custody Decisions?



How well do Custody Decisions Stand?



There are many more exciting findings detailed in the full report. The Women's Law Center of Maryland has also proposed substantive policy recommendations based on the research findings. For a copy of the full research report and recommendations, please contact The Women's Law Center of Maryland at 410-321-8761. The Women's Law Center of Maryland, Inc. is a private, non-profit advocacy organization committed to the advancement of women's rights.

Legislative Wrap-Up

THE PROCESS

The Maryland General Assembly meets in Annapolis each year for ninety (90) days to act on more than 2300 bills including the State's annual budget. The General Assembly has 47 Senators and 141 Delegates elected from 47 districts. Many of the General Assembly's proposed bills pertain to Family or Juvenile Law issues each year. This year, the 418th Session began January 14, 2004 and adjourned April 12, 2004.

The Legislative Committee of the Family & Juvenile Law Section endeavors to monitor the rapid-fire legislative session each year and to keep the Section Council members abreast of the content and status of pending legislation, solicit volunteers for supportive or opposition testimony to pending bills before the various committees (*usually* House Judiciary or Senate Judicial Proceedings), and communicate with, and sometimes directly cooperate with, legislators on pending bills or important family and juvenile law issues or matters.

Prior to the commencement of each legislative session, the Legislative Committee usually communicates directly with legislators (legislators such as Delegate Kathleen Dumais and Senator Sharon Grosfeld have proven to be consistent and valuable allies of the Family & Juvenile Law Section of the MSBA over the years) regarding prospective and relevant family and juvenile law bills that will likely be introduced during the upcoming session. This "heads up" is an invaluable step in the process of keeping the Section informed of upcoming proposed legislation.

In other years, the Section has also taken a more proactive role in introducing or shepherding important bills into the legislative pipeline. This year in particular, legislation was introduced and ultimately signed into law by Governor Ehrlich concerning the Court's powers *vis a vis* the disposition and ownership of family use personal property through the work, dedication and supportive testimony of Section Council members such as Sheila Sachs, Dorothy Lennig and Marc Noren.

Once the ninety day General Assembly session commences, it is a fairly harrowing and time consuming process of constant monitoring and on-going communication with Section members regarding the status of pending legislation. Thanks to the march of technology, however, it has become far easier to convey fairly *instant* updates to the Section members through email, and to often canvass for a Section Council position (support, oppose or no position) on rapidly moving and important family and juvenile law bills. In those instances where the luxury of several days are afforded prior to a scheduled bill being heard by committee, a hastily arranged conference call between the Section members at lunch time has proven to be a valuable and workable solution.

The status of pending family and juvenile law bills is constantly monitored by the legislative committee at the follow-

ing two web links throughout each General Assembly Session: family law matters at <http://mlis.state.md.us/2004rs/subjects/family1.htm> and juvenile law matters at <http://mlis.state.md.us/2004rs/subjects/juvenic.htm>. Additionally, the scheduling of proposed bills before the respective committees is monitored at the following web link on the General Assembly homepage: http://mlis.state.md.us/2004rs/hearsch/hs_index.htm. The specific House Judiciary Committee schedule is found at: http://mlis.state.md.us/2004rs/hearsch/0603_jud_1154.htm, while the Senate Judicial Proceedings Committee schedule is found at: http://mlis.state.md.us/2004rs/hearsch/0603_jpr_1154.htm.

Additionally, the Legislative Relations arm of the Maryland State Bar Association sends out status and summary emails throughout each legislative session to the various legislative chairpersons of each Section. These emails are invaluable as they are specifically tailored to the monitoring of only the pending bills relevant to each individual Section.

The Legislative Committee of the Family & Juvenile Law Section typically will call Members' attention to various pending bills throughout the Session. These are family or juvenile law bills which are preliminarily deemed of higher or priority importance to the Section, and to the practice of family and juvenile law. Usually, these important bills require the Section to take a formal position. Typically, the Section will either vote to support, oppose or take no position at all on pending bills. Sometimes, the Section will also oppose legislation as drafted, but support it with amendment or revision. Many times, the Section will be contacted by sponsoring legislators who seek to solicit the favorable support and testimony of the Family & Juvenile Law Section for their proposed bill. These requests are assessed on a case by case basis depending upon the relative importance and merits of the pending bill to family & juvenile law practice.

Perhaps the most important step in the legislative process is the committee hearing. This is where Section Council members are able to testify in person in support or opposition to pending legislation, and typically the phase where the Section Council gets to wield its clout. Usually, House bills pertaining to family and juvenile law matters are heard before the House Judiciary Committee chaired by Joseph F. Vallario, Jr., and Senate bills are heard before the Senate Judicial Proceedings Committee chaired by Brian E. Frosh.

Finally, this year, as in other years, the lobbying by the legislative committee of the Family & Juvenile Law Section, either for or against certain the passage of certain bills, continued throughout their journey from committee, to their ultimate vote by the full House or Senate, and up until the moment that passed bills were forwarded to the Governor for his consideration.

THE 418th LEGISLATIVE SESSION UPDATE

This year, the 418th Session began January 14, 2004 and adjourned April 12, 2004. During that time, several important family and juvenile law bills were passed by the General Assembly, and ultimately signed into law by Governor Robert Ehrlich.

The family law bills which became law after the 418th General Assembly Session include:

HB 211: Status as of April 27, 2004: Became Law- Chapter 158. This bill repeals the provision of law making the entry of an adoption order by a court grounds for the Secretary of Health and Mental Hygiene to make a new certificate of birth for an individual who was born outside the United States, and repeals a specified qualification that a foreign-born adopted person must meet before the Secretary may prepare and register a certificate of foreign birth.

HB 400: Status as of May 26, 2004: Became Law- Chapter 502. This very important bill which was supported by the Family & Juvenile Law Section and sponsored by Delegates Kathleen Dumais and Brian J. Feldman repeals the Maryland Uniform Child Custody Jurisdiction Act, and in its place adopts the Maryland Uniform Child Custody Jurisdiction and Enforcement Act. The bill establishes the general procedures for child custody proceedings under the Act. The Maryland UCCJEA further specifies the basis for jurisdiction over child custody matters and specifies the procedures for enforcing child custody determinations made under the Act.

HB 605: Status as of May 26, 2004: Became Law- Chapter 509. This bill, which was also supported by the Family & Juvenile Law Section, and sponsored by Delegate Kathleen Dumais, establishes specified grounds on which a child support obligor may request an investigation and appeal the proposed action of the Child Support Enforcement Administration to send a notice to the Motor Vehicle Administration that the child support obligor is 60 days or more out of compliance with the most recent court order in making child support payments. The new law further prohibits the Child Support Enforcement Administration from sending information about the obligor to the Motor Vehicle Administration if certain specified grounds exist.

SB 285: Status as of April 13, 2004: Became Law- Chapter 31. This bill restores a requirement that all children in out-of-home placements committed under child in need of assistance proceedings have permanency planning hearings held by the appropriate court, and makes the Act an emergency measure.

SB 328: Status as of April 27, 2004: Became Law- Chapter 116. This is a very important bill updating and revising the lowest end of the Maryland Child Support Guidelines which

was supported by the Family & Juvenile Law Section, and sponsored by Senator Sharon Grosfeld and others.

SB 418: Status as of May 26, 2004: Became Law- Chapter 457. This bill was actually proposed and strongly supported by the Family & Juvenile Law Section Council Members, and sponsored by Senator Sharon Grosfeld. The bill authorizes a court, in a proceeding for annulment or absolute divorce, to transfer, subject to the consent of any lien holders, ownership of an interest in family use personal property from one or both parties to either or both parties and to determine the terms of the transfer.

SB 928: Status as of May 26, 2004: Became Law- Chapter 491. This somewhat controversial bill, sponsored by Senator Norman R. Stone, Jr., was opposed by the Family & Juvenile Law Section Council before committee, and in follow-up letter to the Governor. The bill as drafted and signed into law alters the definition of "actual income" under the child support guidelines to include specified third party payments to or for a minor child, such as disability Social Security payments, and requires specified third party payments to or for a child to be set off against the child support obligation under the guidelines. The offset provided for in the bill is a direct *dollar for dollar* offset against an obligor's child support obligation. The bill further requires specified third party payments to or for a child that exceed the current support obligation to be credited toward existing child support arrearage.

Finally, the juvenile law bills which became law include:

HB 624: Status as of May 11, 2004: Became Law- Chapter 362. This bill, sponsored by Delegate Carter, Dumais and others, requires a court to advise a specified defendant that the defendant may be entitled to expunge specified records under specified circumstances.

HB 163: Status as of May 26, 2004: Became Law- Chapter 442. This very important bill sponsored by Senators Kelley, Grosfeld and others, and strongly supported by the Family & Juvenile Law Section Council, prohibits a child from waiving the right to the assistance of counsel in specified proceedings except under specified circumstances. The bill further prohibits a parent, guardian, or custodian of a child from waiving the child's right to the assistance of counsel and prohibits the juvenile court from accepting a waiver of the child's right to the assistance of counsel except under specified circumstances. Finally, the bill requires the court to consider specified factors in determining whether a waiver by a juvenile is knowing and voluntary.

E. Todd Bennett, Esquire, is a partner in the Annapolis firm of Brennan, Trainor, Billman and Bennett, and (shush) the true unsung hero of the Section Council legislative committee.

FAMILY & JUVENILE LAW SECTION
Maryland State Bar Association, Inc.
520 West Fayette Street
Baltimore, Maryland 21201