The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Winter 2016

A Teaspoon of TSP

Editors' Corner

by Scot Kraueter
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We hope everyone had a wonderful holiday season. We continue to enjoy bringing you the Family Law Review and hope that you will continue to give us your feedback and contributions and keep this newsletter fulfilling its role in educating our members on timely family law issues, decision and trends. *FLR*

Editor Emeritus

by Randy Kessler
rkessler@ksfamilylaw.com

Gosh how times flies. Here we are on the verge of yet another Family Law Institute. I am so looking forward to this one and know that just as with each of the previous ones, it will be even better than before. There are so many new lawyers and section members attending each year. Let's reach out to them and continue to make them feel welcome. It's what our founding chairperson, Jack Turner would certainly have wanted. And as we mourn the loss of our section's founder, first chairperson and the founder of the *Family Law Review*, his passing should continue to give us strength in our purpose to continue to provide service and relief to the citizens of our state. I could not be prouder to be a member of this section and to be a member of the State Bar of Georgia.

I look forward to seeing each of you at the Family Law Institute on May 16. *FLR*

***The Family Law Review* is looking for authors of new content for publication.**

If you would like to contribute an article or have an idea for content, please contact Scot Kraeuter at scot@jdklawfirm.com

Inside this Issue

What's Past Is Prologue[1]

by Regina M. Quick
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"Character is the ability to carry out a good resolution long after the excitement the moment has passed." - Cavett Robert[2]

Welcome to 2016! The new year brings opportunity for equal parts reflection and forward-looking optimism.

We look back on the 2015 State Bar of Georgia Section Award of Achievement, the record-breaking attendance at the 33rd Annual Family Law Institute, the resources provided to our members, and the difference we made in the lives of others and are justifiably proud.

Retrospection also takes us to the opposite end of the spectrum. There were lessons learned from difficult outcomes for clients and victims lost to domestic violence. And we collectively mourn colleagues and members who left us better for having known them - notably Jack P. Turner, the founder of the Family Law Section and the consummate lawyer's lawyer. (See comments on page 4). Perhaps a most telling reflection on the wide-ranging contributions of Jack Turner is found in *Southerner*, written by the late Chief Justice Charles L. Weltner. In discussing *Brown v. Board of Education*, he observes:

> *And through it all, I remember only one of my friends who was willing to say that the Supreme Court was right. Jack Turner was my contemporary at the bar. One morning at the drugstore once located at Five Points, we were drinking coffee with a young assistant to the state Attorney General. The latter was most vehement in his agreement with his employer: "The Court is wrong. It is an illegal decision! They have no power to amend the Constitution," and so forth. I asked, "Who's to say that the Court is wrong other than the Court? Where is the appeal?" Jack took another, far more forthright and honest position. "I think they're right," he said. I rested on purely procedural grounds. He accepted it as a mandate of conscience.*

Family lawyers are blessed to represent good people at the absolute worst time of their lives. The nature of our work requires forthright positions and clear communication. We are charged with balancing professionalism, the business of the practice of law and the needs of clients while simultaneously living and loving to the fullest successfully in our private lives. Through it all, the best among us display that mandate of conscience embodied by Jack Turner and so may others knowing that "There is a higher court than courts of justice and that is the court of conscience. It supercedes all other courts."[3]

The Family Law Section leadership looks forward to 2016 with the optimism and excitement which befits this call to service. Membership will increase to over 1900. For the first time in over 15 years, the Family Law Institute will be held in the State of Georgia to showcase the Jekyll Island Convention Center and the new Westin. Thanks to the leadership of Institute Chair Marvin Solomiany, the 600+ attendees of the Family Law Institute will witness oral argument before the Court of Appeals in actual pending family law cases as part of the program agenda. The future is bright and the possibilities limitless.

In celebration, we embark on a new year prouder still that we stand on the shoulders of those founding members of the Family Law Section whose vision and foresight has elevated the practice of family law from something anyone could do to a highly-skilled speciality. We are grateful that long after the excitement of starting a new section passed, people of character rolled up their sleeves and carried out the vision. As a result, the collective work of family lawyers now positively affects the very future of Georgia daily in the lives of clients and children from Brasstown Bald to Tybee Light.

Resolved: Give warm greetings and farewells. Cheers to another chance to get it right. ***FLR***

(Endnotes)

1 With sincere apologies to Shakespeare and gratitude to the eight original petitioners for the creation of the Family Law Section in 1976, who included Jack P. Turner, Harry Hall, Bob Reinhart, Paul V. Kilpatrick and former Supreme Court of Georgia Justice G. Conley Ingram.

2 Teacher, gas line installer, author, lawyer, and founder of the National Speakers Association. (1907-1997).

3 Mahatma Gandhi

In Memory of Jack Porter Turner
May 6, 1924 - Dec. 26, 2015

On Dec. 26, 2015, Jack Turner, founder and pillar of the State Bar Family Law Section passed away. As Rob Wellon remembers, "Jack was a true leader of our Family Law Bar, and I was certainly proud to have him as my mentor." Rick Schiffman, who also trained under Jack and is a former chair of the Section, remembers Jack not only for his innovation in starting the Section but also for his dedication to improving the practice for both the Bench and the Bar. Nancy Lawyer refers to him as the "George Washington of the Family Law Bar in Georgia". Randy Kessler recalls Jack as his inspiration to become more involved in the family law bar noting that "After I nervously gave my very first CLE presentation on Family Law, Jack approached me, graciously complimented me on my remarks and asked if my materials could be used for the FLR. That one gesture gave me reassurance to continue and develop as a family law attorney and I consulted with him often as the years went by."

Jack created and for many years paid for the family law newsletter at a time when no cases were reported except in advance sheets that came out months after cases were decided. Jack included in the newsletter case summaries to allow lawyers a way to keep current with the law. He also provided copies to every superior court judge so they would be aware of the law. Rick states, "Jack helped elevate family law from something anyone could do to a real specialty. He was the dean of domestic relations." Jack joins his beloved wife in eternal rest. Our hearts go out to Nelson Turner and all of Jack's family. Please see the obituary below for complete details of the celebration of Jack's life.

Jack and Frances Turner, 1988. A favorite family portrait provided by Nelson Goss Turner

Obituary
Jack Porter Turner
Atlanta, Georgia

Jack P. Turner died Dec. 26, 2015. He was born May 6, 1924, in Atlanta, Ga. to Russell G. Turner Sr. and Julia G. Turner. He graduated from Boys High School in Atlanta, briefly attended Georgia Tech until enlisting in the U.S. Army Infantry and after training was deployed to the European Front where he was wounded and captured during the Battle of the Bulge in WWII. After his military service, he graduated from Emory University and Emory Law School, was a member and president of Pi Kappa Phi Fraternity and Phi Alpha Delta Law Fraternity. He began his law practice in 1950 with Turner, Turner & Turner joining his father and brother, later joined by his son, Nelson G. Turner, practicing until retirement. He is founder and was chairman of the Atlanta Bar and State Bar of Georgia Family Law Sections, founded, was a Fellow and Chairman of the Ga. Chapter of the American Academy of Matrimonial Lawyers, was a Fellow of the International Academy, was a Master in the Charles L. Weltner Family Law Inn of Court and editor of the State Bar of Georgia Family Law Section Newsletter. An award is given in his name to a Georgia Lawyer of Distinction in Family Law by the State Bar Family Law Section. He was a Member of the Lawyers Club, Old War Horse Lawyers Club, was Chairman of the Fulton County Democratic Party, was a member of Trinity Presbyterian Church, serving as Elder and Teacher. He is predeceased by his wife, Frances Turner and brother Russell Turner Jr., survived by four children, Nelson Turner; Allan Turner; Anne Montgomery and Noel Turner, seven grandchildren, Natalie Nichols, Lindsey Turner, Allison Turner, Brooke Waterhouse, Irene Turner, Nina Montgomery and David Turner and two great grandchildren, Alexander and Savannah Waterhouse.

Child Support Worksheet Helpline

A Call for Volunteers

a service provided by the Family Law Section of the State Bar of Georgia and the Georgia Legal Services Program

Flex your child support worksheet prowess to assist income eligible, pro se Georgians with the completion and filing of child support worksheets!

- Convenient and easy way to serve the community
  - One-time legal assistance – not an ongoing legal relationship with the pro se litigant
  - Contact caller(s) from the comfort of your office or home on your schedule
- Flexible commitment
  - You may volunteer for as many cases as you would like to take
- Simple registration Email the form below to cswgahelp@gmail.com

Child Support Worksheet Helpline Volunteers

Alice Benton
Ivory Brown
John Collar
Katie Connell
Leigh Cummings
Adrianna de la Torriente (Spanish)
Cindy English
Samantha Fassett
B. Lane Fitzpatrick
Brooke French
Adam Gleklun
Gary Graham
Mitchell Graham
Hannibal Heredia (Spanish)
Michelle Jordan
Scot Kraeter
Kyla Lines
Regina Quick
Tera Reese-Beisbier
Rebecca Crumrine Rieder
Dawn Smith
Susan Stelter

I am interested in being a Volunteer for the Child Support Helpline*

1 . Name: _____

2. Bar Number: _____

3. Office Address: _____

4. Phone: _____

5. Email: _____

6. I would like to assist with no more than ____ callers per month.

7. l understand that by signing up for this volunteer position, I am certifying that I have a working knowledge of Child Support Worksheets in the State of Georgia and how to complete them based on information provided to me by a pro se litigant. I also certify that I am a member in good standing with the State Bar of Georgia.

_____ ___Interested Volunteer Georgia Bar Number

***Please email this form to cswgahelp@gmail.com**

A Teaspoon of TSP

by Mark E. Sullivan

Mark Sullivan is a retired Army Reserve JAG colonel. He practices family law in Raleigh, North Carolina and is the author of The Military Divorce Handbook (Am. Bar Assn., 2nd Ed. 2011) and many internet resources on military family law issues. A Fellow of the AAML, He has been a board-certified specialist in family law since 1989, and works with attorneys and judges nationwide as a consultant and expert witness on military divorce issues in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.

Introduction

The military retirement system does not end with the pension and the Survivor Benefit Plan. The Thrift Savings Plan (TSP), the third deferred compensation attribute of the system, should not be overlooked. This can be a valuable asset in property division, potentially containing tens of thousands of dollars of marital or community funds.

Current contributions to a TSP account are shown on the individual's leave-and-earnings statement (LES). As of 2015, a servicemember (SM) can contribute all or a percentage of base pay and any special pay, incentive pay, or bonus pay received, up to a total of $18,000 annually. Incentive pay (e.g., flight pay, submarine pay, hazardous duty pay) and special pay (e.g., medical and dental officer pay, hardship duty pay, career sea pay) are identified and explained in Chapter 5, Title 37, U.S. Code; while bonus pay, which generally is a type of special pay, is addressed separately for election purposes because different TSP rules apply. Contributions from pay earned in a combat zone do not count against this ceiling.

Contributions to the TSP come from pre-tax dollars; thus, the SM receives no direct tax benefit from contributing pay to the TSP that has been excluded from gross income. However, the earnings on those contributions are tax-deferred. SMs do not pay federal or state income taxes on contributions or earnings until they are withdrawn.[1] When the SM makes a withdrawal, money is taken from the total account balance proportionally from taxable funds and tax-exempt funds. The amount attributable to tax-exempt contributions will not be taxable and t quarterly participant statement will show the tax-exempt balance separately.

Dividing the TSP

A servicemember's TSP account can be divided by means of a court decree of divorce, annulment, or legal separation. It can also be distributed through a court order or court-approved property settlement agreement incident to such a decree.

The order is not a QDRO (Qualified Domestic Relations Order). The rules for QDROs – issued under the Employee Retirement Income Security Act of 1974 (ERISA) – apply to private-sector retirement plans, not to federal retirement programs authorized by Congress. Therefore, a QDRO may not be a valid mechanism with which to divide the TSP. TSP calls the account-division document a retirement benefits court order, or RBCO.[2]

Contents of the Court Order

The pamphlet "Court Orders and Powers of Attorney" contains much useful information for attorneys in the divorce process. It explains that the TSP will review only a complete copy of the RBCO. To be complete, the order must contain all pages and attachments. The Order must also provide (or be accompanied by a document that provides):

- the participant's TSP account number or Social Security number (SSN);
- the name and mailing address of each payee; and
- if the current or former spouse of the participant is a payee, the SSN of the spouse-payee.

Additionally, according to the pamphlet, the RBCO must meet four basic requirements set forth in 5 C.F.R. § 1653.2:

- The Order must be issued by a court in any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, or by any Indian court as defined by 25 U.S.C. § 1301(3).

- It must expressly relate to the Thrift Savings Plan, meaning that it must specifically contain the name "Thrift Savings Plan." Terms such as "all retirement benefits," "Government benefits," "Federal retirement benefits," "Thrift Savings," or "Thrift Savings Account" are not adequate.
- If the RBCO requires a payment from a TSP account, it must clearly describe the payee's entitlement. It can only award a specified dollar amount or a fraction or a percentage of the participant's account as of a specific past or current date.
- The RBCO can require a payment only to the participant's current or former spouse or to the participant's dependents. In addition, a court order will not be honored if it demands a single payment to be made jointly (for example, $8,000 to be divided among the participant's ex-wife and three children).
- The court order must separately specify the dollar amount, percentage, or fraction of the award made to each person.

Access to Information

The "Court Orders and Powers of Attorney" pamphlet also notes that spouses may access certain TSP account information pursuant to 5 U.S.C. § 552a. Upon a written request, TSP will provide to the spouse (and his or her lawyer) account information including the account balance of the participant, any loan balance on the account, a transaction history, and quarterly or annual statements. TSP will not, however, provide personal information to the spouse or spouse's attorney, such as the address, date of birth or Social Security Number of the participant. Requests must be directed to the TSP Legal Processing Unit as shown at the end of the "Court Orders and Powers of Attorney" booklet. The request may also be faxed to 1-866-817-5023. A subpoena is not required.

To receive prompt and complete responses, requests should provide the participant's name and TSP account number (or SSN). They should also identify the individual requesting the information and describe his or her relationship to the participant. Finally, requests should describe the information needed and state the purpose for which the information is being requested.

Freezing Your Assets

Last, the pamphlet points out that a court order can be used to prevent a participant from withdrawing his or her TSP account during a divorce action. As soon as possible after receipt of a court order issued in an action for divorce, annulment, or legal separation, the TSP will freeze the participant's account if:

- the court order names the "Thrift Savings Plan" and provides that the participant may not obtain a TSP loan or withdrawal; or
- the court order purports to divide a participant's TSP account.

There is no such thing as "one size fits all" in pension division orders, and this includes the TSP variety. A sample Retirement Benefits Court Order, containing alternate clauses, is found below.[3]

Sample Retirement Benefits Court Order follows:

Resources and Tax Issues

On Friday Jan. 22, 2016 the Family Law Section, in conjunction with the Georgia Commission on Child Support and the Savannah Mediation Center, conducted a continuing education course on the new child support worksheets with attorneys and staff from the Eastern, Atlantic and Ogeechee Judicial Circuits.

STATE OF EAST VIRGINIA
COUNTY OF JEFFERSON

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. CVD

Jane M. Doe,
Plaintiff
v.
John Q. Doe,
Defendant.

RETIREMENT BENEFITS COURT ORDER

THIS MATTER having come before the court on the motion of plaintiff for division of the Thrift Savings Account of defendant. The court, having reviewed the file, received evidence and heard argument, hereby orders that:

***(Note:** Any **ONE** of the following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.)*

Jane M. Doe, SSN 123-45-6789, 455 Windy Lane, Apex, East Virginia 20122 is awarded $5,300 from the uniformed services Thrift Savings Plan account of John Q. Doe, SSN 321-54-9876, 7809 Langston Court, Fairfield, East Virginia, 20132.

-OR-

Jane M. Doe, SSN 123-45-6789, 455 Windy Lane, Apex, East Virginia 20122 is awarded 44.65% of the uniformed services Thrift Savings Plan account of John Q. Doe, SSN 321-54-9876, 7809 Langston Court, Fairfield, East Virginia, 20132 as of [date].

-OR-

Jane M. Doe, SSN 123-45-6789, 455 Windy Lane, Apex, East Virginia 20122 is awarded one-third (1/3) of the uniformed services Thrift Savings Plan account of John Q. Doe, SSN 321-54-9876, 7809 Langston Court, Fairfield, East Virginia, 20132 as of [date].

***(Note:** The following optional language can be used in conjunction with any of the above examples.)*

It is further ordered that earnings will be paid on the amount of the entitlement under this ORDER until payment is made. For the purpose of a retirement benefits court order, the term "earnings" includes earnings and losses.

_____ Date: _____
District Court Judge Presiding

1

The TSP is governed by U.S. Code Title 5, Chapter 84, Subchapters III–IV, as well as 5 C.F.R. Part 1653 (Subpart A for court orders dividing the TSP, and Subpart B for orders regarding alimony or child support). The website for Thrift Savings Plan orders and other forms is http://www.tsp.gov. Look for "All Publications" under Forms and Publications. The website contains a sample Retirement Benefits Court Order, sample language for a garnishment order for TSP funds, and "Court Orders and Powers of Attorney," the pamphlet for attorneys to help them prepare orders. An example of the letter that counsel will receive upon acceptance of the TSP order is found at the end of this article.

Note that the above-mentioned pamphlet states under "Tax Treatment":

> If a payment is made to the current or former spouse of the participant, the taxable portion of the payment is reported to the Internal Revenue Service (IRS) as gross income for the recipient spouse for the tax year in which the payment is made (unless the funds are transferred to a traditional IRA, a Roth IRA, or an eligible employer plan). This is the case even if the payment is intended to satisfy child or spousal support arrears.

Note: The transfer option does not apply to court-ordered payments made from beneficiary participant accounts.

> If the payment is made to someone other than the current or former spouse of the participant (e.g., a child or a support enforcement agency), the taxable portion of the payment is reported to the IRS as gross income for the participant for the tax year in which the payment is made.
>
> A payment in response to a retirement benefits court order or legal process is not subject to an early withdrawal penalty tax. Such distributions are exempt from the early withdrawal penalty tax under the Internal Revenue Code.
>
> For more detailed information about tax treatment of payments, see the TSP tax notice "Tax Treatment of Thrift Savings Plan Payments Made Under Qualifying Orders," available on the TSP website.

Thus if the former spouse receives funds with which to pay her attorney under the first of these paragraphs, she will be taxed on the proceeds received. If, however, the court were to order payment of attorney fees directly from the TSP account of the SM/retiree, then the tax burden would fall upon the shoulders of the latter. Payments made in response to the RBCO which has been filed in court are not subject to an early withdrawal penalty. ***FLR***

Family Law Institute Comes to Jekyll Island, Georgia - May 19-21, 2016

by Marvin L. Solomiany

We are looking forward to the Family Law Institute which will take place from Thursday May 19 through Saturday May 21 at the Jekyll Island Convention Center.

This year's program will feature live oral arguments by the Court of Appeals of Georgia. As a reminder, and unlike prior years, the Institute will not be centered around a particular hotel, but rather the Jekyll Island Convention Center which is conveniently located to all of the 4 hotels that will be hosting our attendees.

As of today, the Westin Hotel and Jekyll Island Club have been sold out. I encourage you to contact one of the following two hotels which have been either recently built or renovated to book your reservation as soon as you can to ensure that you are able to stay in one of our four partner hotels.

- Hampton Inn: http://hamptoninn3.hilton.com/en/hotels/georgia/hampton-inn-and-suites-jekyll-island-BSWJIHX/index.html (Special Rate Code is ICL)
- Holiday Inn http://www.ihg.com/holidayinnresorts/hotels/us/en/jekyll-island/bqkji/hoteldetail

Information regarding registering for the Institute will be emailed to Section Members in the upcoming weeks. We look forward to seeing you in May! ***FLR***

THRIFT SAVINGS PLAN

Thrift Savings Plan

Legal Processing Unit
P.O. Box 4390, Fairfax, VA 22038-9998

April 28, 2008

RE: NUNC PRO TUNC FINAL DECREE OF DIVORCE IN DANITA RAMIREZ AND STEVEN JAMES RAMIREZ, CASE NO. 123,456-D, FILED NOVEMBER 14, 2007, RECEIVED MARCH 24, 2008.

Dear Mr. RAMIREZ:

The above-referenced court order requires the Thrift Savings Plan (TSP) to make a payment from your Uniformed Services account to the payee, named below. This payment will be paid on a pro rata basis from the taxable and tax exempt monies in your account. The court order was evaluated according to the requirements at
5 U.S.C. §§ 8435(c), 8467, and 5 C.F.R. § 1604.9 and part 1653, subpart A.

Payee: Ms. Danita RAMIREZ

The court order awards $5,467.77 from your TSP account to the payee. The payee's entitlement was calculated as follows. The order awards 50 percent of your account as of September 18, 2007. See page 36 of the court order. As of that date, your account balance was $10,935.54, 50 percent of which is $5,467.77. The payee's entitlement will be credited with earnings at the TSP Government Securities Investment Fund (G Fund) rate beginning with the business day following the entitlement date and ending two business days prior to payment. Please note that the TSP does not segregate or separately invest the amount awarded pending payment.

Scheduled Payment Date: June 30, 2008

Tax and payment information is enclosed with the payee's copy of this letter. That information includes the forms the payee must use to elect payment options, including a request to transfer the payment to an individual retirement arrangement (IRA) or eligible retirement plan or to request direct deposit of the payment. The payee's entitlement will be disbursed in a single payment (a check) on the **Scheduled Payment Date** shown above unless the TSP timely receives instructions electing one of the following options.

The payee may request an expedited payment, which can occur no sooner than 31 days from the date of this letter (to allow the parties time to review this letter).

To have the entitlement transferred to an IRA or other eligible employer plan **or** to have the funds sent electronically (direct deposit) to the payee's checking or savings account, the enclosed Form TSP-13- S-C **must** be properly completed and received by the TSP Legal Processing Unit at least five (5) business days before the scheduled payment date. We may not be able to process the form if we receive it within 5 business days of the payment date. Please note that a properly paid court order cannot be returned to the TSP.

The payee may request a payment extension of 30 days in order to submit Form TSP-13-S-C. This request must be in writing; fax or mail it to the TSP Legal Processing Unit so that it is received at least 5 business days before the scheduled payment date. The fax number is (703) 592-0151.

Documents pertaining to this case may be faxed to the Legal Processing Unit. Include your daytime telephone number and your TSP Account Number (or your Social Security number) on all correspondence. In addition, the TSP court order booklet is available from the TSP website (www.TSP.gov). If you do not have web access, please call the Thrift Line to receive a printed copy.

This letter is a final administrative action by the TSP. Upon receipt of the court order, your account was frozen for loans and withdrawals. That freeze will be lifted after the award has been paid.

This letter applies only to your TSP account. You may obtain information about your other Government retirement benefits by writing to the Office of Personnel Management, Court Ordered Benefits Branch, P.O. Box 17, Washington, DC 20044.

If you have any questions, contact the TSP Legal Processing Unit at the address on the letterhead or call the Thrift Line at 1877-968-3778, (TDD for hearing-impaired 1-877-847-4385). Callers outside the United States and Canada should call (404) 233-4400.

Sincerely yours,

Angelita Duncan, Director
Office of Participant Services

Enclosures
cc: Ms. Danita RAMIREZ

(Endnotes)

1 For a more complete explanation, see the TSP home page, located at http://www.tsp.gov.

2 Information about court orders and dividing TSP accounts is found at www.tsp.gov > Forms and Publications > All Publications > Court Orders and Powers of Attorney.

3 If the participant has both a civilian TSP account and a uniformed services TSP account, the court order must expressly identify the account to which it relates.

Interview with The Hon. Dean Bucci

by Sean M. Ditzel

The Hon. Dean Bucci was appointed to the Paulding County Superior Court by Gov. Nathan Deal on Jan. 7, 2015, becoming the first Hispanic appointed to the Superior Courts of Georgia. Prior to his appointment, Bucci was a founding partner in the Dallas, Georgia firm of Plumley & Bucci, LLC, where he maintained a family law practice, served as a Guardian Ad Litem and also spent several years in part time service as an associate judge of the Paulding County Juvenile Court. He is a 1997 graduate from the University of Georgia School of Law.

Q: What's been the biggest adjustment from being a lawyer in private practice to becoming a Superior Court Judge?

Well, this may come as a surprise to some of the readers, but I actually find myself with most of my weekends free. The workweek is busy, and our caseload is demanding, but it is quite a change not having to spend nights and weekends preparing a case to be tried. I took that very seriously while in private practice. And now, from this side of the bench I can definitely tell which attorneys spent the nights and weekend preparing, and which ones have not.

Q: Prior to your time on the bench, you did extensive Guardian Ad Litem work. How is making a custody decision different, in your experience, from making a custody recommendation to the Court.

They are both very difficult things to do and require a good deal of consideration. As a GAL, about a quarter of my time was devoted to GAL investigation. As a judge, because of the limited nature of a trial, I get to spend a lot less time with the parties, and sometimes no time with the child before making a custody decision. But, I try to pull on my experiences as a trial lawyer, GAL and Juvenile Court Associate Judge to help guide my decisions. My preference would be for the parties to try to settle such matters between themselves and with the use of hired professionals before coming to the Court for resolution.

Q: In your short time on the bench, have you developed pet peeves about attorneys' behaviors in your Court?

I have some pet peeves from my time practicing family law but those have only been reinforced by my time on the bench. First and foremost, I expect the attorneys in my Courtroom to be professional and civil to each other, to the Court and especially to the witnesses. While I understand that sometimes it is appropriate to be aggressive with a witness, there is a line that you should not cross. I'm generally patient, but I can feel my patience wearing thin for attorneys who are disrespectful. I expect that my patience will wear thinner for such behavior the longer I am on the bench.

Attorneys should also know that your judge can see everyone's face during trial. Every eye roll, head shake and under-your-breath agitation will be noted.

Another thing that I have observed is that, very often, attorneys will take an hour or two with a witness trying to establish a point that could be made in 15 minutes. Not only is this a waste of the Court's time and the parties' money, but it can backfire, leading to testimony coming in that the attorney did not want or intend.

Q: Anything else that you have learned while on the bench that you think could assist our readership with the practice of family law?

There is a lot to learn. I practiced law for nearly 20 years before the bench and never stopped learning. I have only had to learn more in the past year, as I want to get my orders legally correct and not be overturned on appeal. I would specifically say that attorneys should thoroughly know the rules of evidence in Georgia, and how they differ from the federal rules. Attorneys should also know the code sections that contain the laws under which they are requesting relief. If you submit an order for attorneys' fees and have not cited the correct code section, I cannot give you fees. ***FLR***

Sean M. Ditzel is an attorney at Kessler & Solomiany, LLC, where he exclusively practices family law. He attended Georgia State University in Atlanta, where he graduated summa cum laude in 2003. He then obtained his J.D. from the University of Georgia School of Law in 2006. Sean is an active member and leader in the Family Law Section of the Atlanta Bar Association, and the Cobb Bar Association, as well as a director for the Young Lawyers Division of the State Bar of Georgia. Ditzel and his wife make their home in Marietta.

Divorce Valuations and Forensics*

by JT Grenough

Do you have a good Seller's Due Diligence Package? Often circumstances will dictate both a valuation and a sale, as when undergoing a divorce. When it's time to sell your business, you want to achieve a maximum price, a minimum level of closing costs and the shortest length of due diligence time and closing time possible. Those are the seller's objectives. In order to accomplish this you must provide the buyer with a proper Due Diligence Package.

Normally this is a multi-step process. A good Seller's Due Diligence package has at least a dozen critical items in it, including common size financials (historical), recast and projected financials (at least 5-6 years), a discounted cash flow methodology or an appropriate alternate method listed and explained in detail, a variety of footnotes and limiting conditions, an analysis of all key financial ratios, a description and analysis of the technical and narrative sections of the company's website, and a description of the method used in determining the net present value of cash flows. A variety of discretionary expenses as well as owner's compensation are normally added back to attain Free Cash Flow, the basis for all major valuation methodology.

This report usually has a micro and macro economic analysis as well of the industry and economic status and growth factors projected for the company. The report can be from 30 to 50 pages long. It is released to the prospective buyer only after the buyer signs a standard Non-Disclosure or Confidentiality Agreement, often just a short one-page document. In it the buyer also presents his or her qualifications to a certain extent, usually the amount of liquidity or cash the buyer has to work with and a ballpark estimate of their net worth.

Once that Agreement is signed, then and only then is this very valuable report released. It should answer every conceivable question the buyer will have to allow him to present an offer – a Letter of Intent. The Letter of Intent is stage two. It allows a due diligence period of 30 days or so and allows the buyer to examine the backup for the report. At a minimum this is normally the last 3 years of corporate tax returns for the business, and copies of leases and as well as any other data deemed appropriate between the parties.

The buyer will usually have a Forensic Accountant representing him. An Attorney will prepare the Letter of Intent. If the term sheet attached to the Purchase Agreement which is subsequent to the Letter of Intent is agreed on by all parties, you have a deal. Often sellers will provide a level of financing to the buyer, some up to 25 to 50 percent in the terms of a purchase money mortgage, with interest calculated at so many points over prime as listed by the Wall Street Journal. Some buyers may utilize the Seller's Due Diligence package to obtain bank financing.

The Due Diligence Package will allow you as the seller to reduce the time frame on the overall deal by months. Each buyer will not have to sift through data and do the work. You will not have to respond to requests which may be unreasonable – in other words, you don't want to release tax returns or other proprietary data until you have a firm Letter of Intent with at least a 5 percent range deposit. The buyer cannot proceed to make an offer without a reasonably high level of data collection, but you don't want him during the early due diligence period to have access to your tax returns and other data which has personal identifying information on it. The Seller's Due Diligence package is the absolute solution.

Another interesting point is that you probably don't require a real estate broker at all. This adds anywhere from 6-7 percent to the transaction. You can find with a Google key phrase search anywhere from 3-5 sites on the Internet to list your business. Of course, you can also list it electronically online in your local newspaper under businesses for sale. Just polish a narrative synopsis and enter it yourself at your discretion online after you make a final decision as to the best online presence to market your business or practice. Everything is really done online today. You can even add a Page to your Website with a well-written introduction to your business, and have a downloadable PDF copy of a Valuation Report once it is written available on the site. On WordPress you have the option of making a page "Private." Just create the Page and mark it so. No one will have access unless you provide them the link. Only provide the link after you have received a response from a qualified buyer who has signed a Confidentiality Agreement. These protocols streamline your time and indicate major professionalism, saving both you and your professional representative's valuable time and effort. ***FLR***

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Mediation Primer: The Client Preparation List You May Not Already Have.

By Peter M. Walzer, Walzer Melcher LLP

Before I present the mediation guidelines at the opening of the session I ask each of your clients one question: "Have either of you attended or participated in a mediation session?" Most respond with an overwhelming "no" and are usually nervous, confused and apprehensive about what is about to occur. While you've spent time prepping them for the session, there is a big difference between what it perceivably feels like and what the actual experience is for your client. I've put this list together as an "add on" to what they can expect to see at mediation. These aren't always obvious beforehand, but can become issues at the session itself. It is best that they are addressed before we meet, so expectations on behalf of your client continue to be realistic in nature.

1. **Professional Fees:** It is of the utmost importance that the mediator and attorneys (and other professionals if part of the session) are compensated appropriately. The typical mediation session with two attorneys and one mediator can approach the sum of $1,000 per hour. This issue must be discussed ahead of time so that the clients have a clear understanding up front as to who is responsible for payment.. In some cases, the mediator and attorneys talk through this issue at the beginning of the session but this is certainly not a best case scenario. Your client should understand the parameters before we start and be prepared accordingly, even if this is a case where fees are reserved and all other issues can be resolved. Clarity and disclosure are key and when responsibility for the payment of fees is not addressed ahead of time, the interests of the attorney may interfere with the interests of the party.

2. **Meeting with the Clients:** I often offer to talk alone with your clients when we aren't making progress, especially when there are minor children involved. There is a misconception that when their case is resolved the hard work concludes; yet the reality is that once the divorce is finalized, the real work (effective co-parenting) begins! Sometimes your clients need a neutral to explain this and help open up their minds to the prospect of a compromise in the face of continued litigation. The benefits of a one-on-one meeting between the neutral and the client is true even after the case concludes - if the parties can't work together after the fact, post-divorce, they can call us all back in to their dispute. Some cases don't allow for this to take place (TPO's, etc.,) but in the majority of situations it can be a welcomed alternative. Let your client know this is something that may be explored as a way to get their case moving in the right direction.

3. **Have your client prepare a list of needs, then wants:** Make sure your client is diligent and specific about exactly what they are seeking to achieve at mediation. There are deal breakers and then there are "wants" that, while important to the total outcome, should be negotiable. Sometimes parties get so emotional that they confuse the two. I once saw a client begin the session by pulling out a piece of paper with two columns: "what I need" and "what I want." It may seem simple but as the mediation continued there was no confusion and much less emotional conflict.

4. **Stuff:** We've reached settlement, are moving into the drafting phase, and out comes the personal property lists. Most often these items are of little financial value since they were not addressed earlier;, now, however, they are becoming large issues. There is no sense in arguing over a 46" TV that can be purchased for $499 when the cost of a 30-minute discussion can buy the other party another TV. As well, this is the point when I see negotiations over the already agreed to larger items begin to unravel. Get clarity on personal property early on and have your clients prepare a complete list. Have the mediator check in on this and ask your client to review these lists for presentation to the other party. One effective use of everyone's time is for the party the mediator is not in caucus with to work on their personal

property list while the mediator is with the other party (again, early in the day),.

5. **"But my friend got….":** The amount of support that your clients' friend/sister/mother/aunt/neighbor received in their settlement has nothing to do with your case. Yet parties will continue to use these results as the benchmark for determining what the rightful outcome should be in their divorce. Energy spent in this direction is misaligned. Remind them that their divorce is unique to them and that comparing other's results to theirs shifts the focus away from what they need to be concentrating on.

6. **Mediator Shut Out:** During my opening I explain that it is perfectly acceptable for either the party or the attorney, when in caucus, to ask me to leave the room so they may speak privately. Additionally, I may on my own volition sense a good time for me to exit and allow the two of you to speak privately. While any combination of the above is acceptable, it is not effective to ask the mediator to leave the room for every conversation the two of you have. Certain situations may call for lengthy private meetings without me but it is important for me to understand how you arrived at your position. A mediator needs to be able to effectively answer questions from the other side. Without this knowledge I cannot be as effective.

7. **Drafting takes time:** Remind your clients that if we do reach an agreement, the terms must be carefully drafted into a document that all parties understand and agree to. Rushing through this phase is a mistake. A simple reminder to your client that this part of the mediation is as important as the negotiations, themselves. Rushing to finalize a document draft causes mistakes. An extra 30 minutes can be of great value to everyone.

8. **Time Constraints:** Clarify ahead of time whether or not you, your client, opposing counsel or their client have any time constraints relating to your upcoming mediation session. This sounds simple, but one's perception of how long a mediation session can last may be very different from reality. Recently I had a party and their attorney block three hours for mediation because that's the longest they believed a mediation should last. Waiting to disclose this at mediation, instead of beforehand, can become a huge issue and prevent settlement.

And, the session should not be labeled unproductive in the event the parties decide that they are not at an impasses and, therefore, an agreement will not be reached.

9. **Leave the session on a high note:** No mediation session is a waste of time. Information gathered can be of great value to future negotiations and can be helpful in eventually reaching agreement. Be sure to have an "action plan" post mediation as to how offers may be bounced back and forth between both sides. I always suggest that the party who made the last offer memorialize this to the other side in the immediate future to keep the case moving in the right direction.

10. **Impasses are okay:** The fact that the mediation concluded without a settlement does not mean the day was a waste of time and money. Your client will sometimes feel this way, especially in situations where we have worked for 5 or so hours at the rates explored in item #1 above. Keep in mind that mediation is frequently the catalyst that gets people talking and continuing to negotiate. As well, you and your client undoubtedly discovered certain aspects about his or her wants and needs, as well as the wants and needs of the other sided, during the mediation.

Going through a divorce is a difficult and highly emotional time in an individual's life. My job as a neutral is to try and minimize feelings of powerlessness and frustration for your clients. I am hopeful that by becoming familiar with these simple ideas, we can work together to make the experience a little less painful and our time together more productive. ***FLR***

Peter M. Walzer is a partner at Walzer Melcher LLP, Los Angeles. He is a vice-president of the American Academy of Matrimonial Lawyers. He is a member of the ABA Family Law Section Council.

Joseph T. Tuggle Jr. Professionalism Award.

This award is given in recognition of the person who the Section deems to have most exemplified the aspirational qualities of professionalism in their practice as a lawyer and/or judge. The award will be presented at the 2016 Family Law Institute, held at Jekyll Island Georgia on May 19-21, 2016. Unlike in other years, it will not be held during Memorial Day weekend, but rather the weekend before.

1995 - Hon. Hilton M. Fuller Jr.
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1997 - Ms. Debra A. Segal
1998 - M.T. Simmons Jr.
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2001 - Hon. Mary E. Staley
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2004 - John C. Mayoue
2005 - Hon. Carol W. Hunstein
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2007 - Jill O. Radwin
2008 - Carol Ann Walker
2009 - Edward E. "Ned" Bates Jr.
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2011 - John Lyndon
2012 - Nancy F. Lawler
2013 - Barry B. McGough
2014 - Kice H. Stone
2015 - Tina Shadix Roddenbery

Relationship Lessons From Your Navigation System

by Randall M. Kessler

We all know that voice, the one in your navigation system telling you to "turn left." She tells us when to turn, how far until our next turn and when we have arrived at our destination. But perhaps she teaches us the most when we do not follow her instructions. Sometimes we just "know better," so we ignore her instructions or advice, and we don't "turn left." And the amazing thing is what happens next. She does not ask us why we ignored her words. She does not tell us we are making a mistake. She simply recalculates the route and tells us the next turn, given where we now are. Isn't that amazing? What if we all behaved like that? Instead of focusing on mistakes or differences of opinion, we simply decided to navigate our course from our current location, opposed to our previous one? Wouldn't that be a relationship changer?

As a divorce lawyer, I often feel like the navigation voice. Clients ignore our advice, do things we wish they wouldn't and create their own paths. And our job as divorce lawyers is to figure out where to go from here, not to criticize them for not following our advice. Unfortunately much of the debate, dispute and negotiation in divorce cases often reverts to complaints about past choices made, requests ignored and poor decisions. But once in the midst of divorce, most of those decisions are well in the past and cannot be undone. If they can, great; but if not, then the best course is usually to look forward and to shape the future out of or from everyone's current position s. If divorcing parties, or even individuals not going through a divorce, could look more to the future and how to get to where they want, FROM WHERE THEY CURRENTLY ARE, wouldn't things be better, smoother, easier?

Married people often want their spouse to be different and to do more things the way they do. But people are different and make different choices. Some people prefer to take the highway, while others prefer backroads. But whatever the choice, once it is made, we must keep moving forward towards our destination. And when you ask someone to "turn left" and they don't, simply recalculate and consider what is best given where everyone is now, not where they once were. *FLR*

Past Family Law Section Chairs

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Kelly Anne Miles	2012-13
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Carl Westmoreland	1986-87
Lawrence B. Custer	1985-86
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C. Wilbur Warner Jr.	1983-84
M.T. Simmons Jr.	1982-83
Kice H. Stone	1981-82
Paul V. Kilpatrick Jr.	1980-81
Hon. G. Conley Ingram	1979-80
Bob Reinhardt	1978-79
Jack P. Turner	1977-78

Caselaw Update

by Vic Valmus

ATTORNEY CONTEMPT

Murphy v. Murphy, **A14A1137** (Nov. 17, 2014)

On Aug. 23, 2013, the Trial Court entered an order that, among other things, denied the Husband's Motion for Temporary Change of Physical Custody of the parties' children, directed the parties not to discuss the case with the children, and directed the parties to cooperate with the custody evaluator. Six days after the Order, the Husband filed a Motion seeking to hold the Wife in contempt for violating its visitation provisions. The Mother filed affidavits from the children testifying that the Motion for Contempt had been read to them in the presence of their Mother, that the Mother had not interfered with the Father's visitation, and that they were extremely angry at their Father for not telling the truth to the Court. The Father then amended his Motion for Contempt alleging that the Wife and her lawyer were in contempt of the Order provision prohibiting the parties from discussing the case with the children, the Wife had not cooperated with the custody evaluation, and the Wife had refused to complete the paperwork for the custody evaluator. A hearing was held in October of 2013. The Wife and Farmer (one of the Wife's attorneys) did not appear but King (Wife's other attorney) appeared on behalf of the Wife. After the hearing, the Court found the Wife, Farmer, and King to be in contempt. The Trial Court found Farmer being in contempt for discussing the case with the children in violation of the Aug. 23 Order; found the Mother in contempt for willfully refusing to cooperate with the custody evaluation; and, found King and Farmer in contempt because the Mother's failure to appear at the contempt hearing. The Wife, Farmer, and King appeal. The Court of Appeals affirmed in part and reversed in part.

The Trial Court held attorney Farmer in contempt for discussing the issues, allegations, and claims in the case with the children. Farmer argued , among other things, that the evidence did not support the finding. The standard of review, was dictated by the nature of the contempt as either criminal or civil.. Since Farmer was sentenced to imprisonment for a specific unconditional period, his contempt was criminal and, therefore, the standard, viewing the evidence in light most favorable to the prosecution, was whether any rationale trier of fact could have found the essential elements of the crime beyond a reasonable doubt. , The Appellate Court upheld the contempt noting that Farmer signed a Brief to which affidavits reflecting the children's knowledge of the case were attached. Further Farmer's own affidavit, notarized on the same day by the same notary who notarized the children's affidavit, was also attached. Farmer also argued that he could not be held in contempt for violating a provision directed at the parties rather than himself. A violation of a Court's Order by one who is not a party to the proceedings can be punished for contempt if the contemptor had actual notice of the Order and is in privy with, aided and abetted, or acted in concert with the named party in acts constituting a violation of the Order. It was undisputed that Farmer had actual notice of the Order and acted as the Wife's representative when obtaining the affidavits from the children and, therefore, he had actual notice.

Both of the Wife's attorneys, Farmer and King, appealed the Trial Court's holding of contempt based upon their client's failure to appear at the contempt hearing. A party may choose not to be present at trial of the case and to be represented solely by counsel and there is a long established principal that there is full power on the part of counsel to represent a client is just the same as if the client were there in person. Because the Wife was not required to appear in person, Farmer and King could not be held in contempt for her failure to appear.

With regards to the Wife's contempt and incarceration for not cooperating with the custody evaluation, her contempt was civil .This was a civil contempt since the Wife was incarcerated until she complied with the August Order by signing documents previously submitted to her by the custody evaluator's office. A civil contempt ruling will be upheld if there is any evidence upon which the Trial Court could have concluded that its Order had been violated,. The Appellate Court found that the evidence supported the ruling.

ATTORNEY'S FEES

Regan v. Edwards, **A15A0850 (**Oct. 1, 2015)

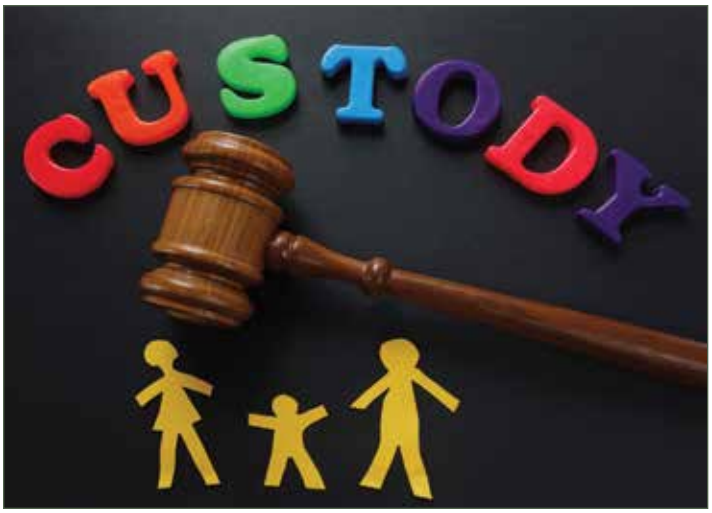
The parties were divorced in 2010. In 2012, Regan (mother) provided written notification to Edwards (father) that she expected to move to Massachusetts with her two sons. In response to the notification, the father filed a Petition for Modification of Child Custody, Child Support, and Citation for Contempt. The mother answered and asked for a change of custody based on the long distance visitation and alleging that the move was necessary because she required family support based upon the father's continued failure to provide financial support and payment of the couple's marital tax obligation. The parties went to mediation and reached a partial agreement on some issues and purported to reach an agreement on the tax obligations. However, the mother refused to agree to formal entry of the order. The trial court awarded attorney's fees to the father, including $10,463 pursuant to O.C.G.A. § 9-15-14, for the mother's unnecessary expansion of the proceedings. The trial court's decision was based on its finding that there was no basis for the mother's planned move to Massachusetts that caused the father's filing of action for modification of child support and parenting time. The mother appealed and the Court of Appeals reversed.

The mother contended that the trial court erred by awarding a portion of the attorney's fees to the father under O.C.G.A. § 9-15-14 because the conduct precipitating the award occurred prior to the initiation of the litigation. An award under O.C.G.A. § 9-15-14 may not be based on conduct that occurred prior to litigation. The mother's announcement of her intention to move to Massachusetts occurred prior to the instigation of the father's petition and, therefore, the trial court abused its discretion by agreeing to the father's motion for fees under O.C.G.A. § 9-15-14.

CHANGE OF CUSTODY

Medley v. Mosley, **A15A1201** (Nov. 17, 2015)

Mosley (Father) filed a legitimation action in 2008 for which an Order was entered in 2012 granting Medley (Mother) primary physical custody. In 2013, the Father filed a Petition for Modification of Custody alleging that the Mother had been denying him visitation and interfering with his parental rights since the 2012 Order. The Father filed a Motion for Emergency Temporary Custody. At the hearing, at which the Mother did not appear, the court heard evidence and entered a Temporary Order awarding the Father sole legal and physical custody and awarding the Mother visitation. The court found that the Mother had repeatedly refused to allow the Father visitation under the previous agreement and had filed a Temporary Protective Order against him that was later dismissed for lack of evidence. The trial court also found that the Father had arrived at prearranged locations to exchange child but the Mother had failed to appear. Shortly thereafter, the Mother filed her response averring that she prevented the Father from visiting with the child because the child was seeing a psychologist who opined that the meetings with the Father disturbed the child. The Mother then filed an Emergency Motion for Modification of Temporary Custody and a Rule 1000-4 to request all matters be heard by a Superior Court Judge and not a Judicial Officer. Later, a Guardian Ad Litem was appointed. In October 2013, the parties mediated (because the Rule 1000-4 request prevented a hearing in front of anyone but a Superior Court Judge) and reached an agreement whereby primary custody would remain with the Father and visitation with the Mother. Thus, the only issues remaining for the trial court were which parent would have school year primary custody and which parent would have summer session primary custody. The Final Order gave the Father primary custody during the school year with the Mother having the majority of the summer time. The court also ordered that no child support be paid during the temporary period but ordered the mother to pay costs of half of the Father's proven child-related expenses over the temporary time period. The Mother appealed and the Court of Appeals affirmed in parts and reversed and remanded in part.



The Mother argued that the trial court erred by awarding primary custody to the Father. The Court of Appeals found that t he evidence showed that the Mother violated numerous Court orders and settlement agreements which prevented visitation with the child from December 2011 through August of 2013. The fact that a parent had interfered with the other parent's visitations supported the trial court's finding that it was more likely that the other parent would provide visitation and to abide by court orders. Also, the Mother often left the child with his grandmother rather than allowing him to visit with his Father while she worked at night. In addition, during the temporary award of custody to the Father, the child was doing well at school and was emotionally adjusted. The Court of Appeals also found that the trial court correctly considered the Mother's behavior in taking an unsupported TPO against the Father, as well as the Mother's arrest for simple battery against the Father.

The Mother also argued that the trial court erred by awarding child support for the period of time prior to the entry of the Order, and that the Trial Court incorrectly based its ruling on *Weaver v. Chester*, which only applies to putative Fathers who fail to support their children. Initially, the Court of Appeals found that the requirement to provide child support extends to both mothers and fathers and the custodial parent may seek out child support for most of the actual expenses that he or she provided during the time the non-custodial parent failed to pay. Therefore, the award was supported by law. However, in determining what portion of the amount of actual expenditures must be borne by the non-custodial parent, the Trial Courts are required to follow the Child Support Guidelines; which would include at least the consideration of the parties' incomes and other child support obligations. The Court of Appeals found in this case that the trial court did not reference the Child Support Guidelines and, therefore, the case was remanded.

The Mother also argued that use of judicial officers in making custody decisions is unconstitutional. However, that issue was not raised and ruled on before the trial Court; therefore, , the mother waived the issue for appeal.

DISCOVERY

Ewing v. Ewing, **A15A1422 (**Sept. 3, 2015)

While traveling with her husband, the wife picked up his iPhone and, while looking for the music list, inadvertently opened an email containing a photo of

another woman lying with her head on the husband's chest. Later that night, the wife retrieved the husband's iPhone and opened up other emails finding additional pictures of the woman. The wife then forwarded all of the emails to her email account. The husband found out about the wife's forwarding of the emails and filed for divorce. The wife then filed a discovery request with the husband's wireless carrier. The husband requested a protective order objecting to the wife's discovery request and limiting the wife's discovery with regards to the information obtained from his phone without his knowledge or permission to prohibit the wife from taking the deposition of his girlfriend. The trial court denied the husband's Motion for Protective Order and to quash the subpoena for the iPhone records. The husband filed an interlocutory appeal and the Court of Appeals affirmed.

The husband contended that the trial court erred by denying his Motion for Protective Order on the grounds that he parties may obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action. The Appellate Court found the conduct of the parties to be relevant and admissible. The husband also argued that under *Ransom v. Ransom*, which protects spouses from invasion of their privacy including the clandestine recording of the spouse's private telephone conversations, that he is entitled to a protective order prohibiting the wife from asking questions about emails, pictures, and videos which the wife viewed on his iPhone and forwarded to others. However, the Court of Appeals held that *Ransom* involved the issue of whether a recorded telephone conversation is admissible for impeachment purposes at the parties' divorce trial, not whether during discovery a spouse is entitled to ask questions which might lead to admissible evidence. It held that regardless of the admissibility of the content of the husband's emails, including the photos and the videos of the woman, the wife is entitled to engage in discovery which might lead to admissible evidence of the husband's alleged adultery.

The husband also argued the trial court erred by not quashing the wife's subpoena for his iPhone records because it was a "fruit of the poisonous tree". However, the Appellate Court dismissed this argument noting that the husband did not argue that the iPhone records were not discoverable and did not show the trial court that the matters were not relevant or privileged.

DISMISSAL

Woodruff v. Choate, **A15A0452** (Nov. 17, 2015)

The parties were divorced in 2002. A 2010 Consent Order gave the parties joint legal custody with Choate (Father) having primary custody and Woodruff (Mother) living out of state. In 2011, the Mother purchased a home close to the Father's home in Georgia and the parties consensually deviated from the 2010 Consent Order, alternating custody every few days and every few weeks during the summer. In July 2013, the Father ended the informal Parenting Plan and reverted back to the 2010 Order. In August of 2013, the Mother filed a Petition for Modification of Custody and Visitation and Child Support and Attorney's Fees. In September 2013, the 16-year-old child signed an election indicating a preference to live with the Father. In January 2014, the Trial Court ordered the parties and their attorneys to avoid discussing litigation with the child. Notwithstanding such order, the child signed a different election indicating a preference to live with the Mother and the Father on an equal basis. In March of 2014, after reserving the issue of attorney's fees and hearing opening arguments, the Trial Court struck the child's February 2014 election and, without accepting any other evidence from the Mother, dismissed her petition. In June 2014, the Father sought and was awarded $47,000 in attorney's fees under 9-15-14 and 9-9-3. The Mother appealed and the Court of Appeals reversed.

On appeal, the Mother contended the trial court erred in dismissing her Petition to Modify Custody and Visitation for failure to state a claim, The trial court found that the Mother had failed to offer details of the alleged change in circumstances in her petition and had not claimed a change in material conditions or circumstances. However, the Supreme Court noted that it is no longer necessary for a complaint to set forth all of the elements of a cause of action to survive a motion to dismiss for failure to state a claim. Therefore, if within the framework of the complaint evidence may be introduced which shall sustain a grant of relief to the plaintiff, the complaint is sufficient. The Mother claimed in her petition that both the circumstances of the parties and the needs of the minor child had changed to a degree that the 2010 Consent Order was no longer in the best interests of the child. Therefore, the Mother's petition was sufficient to state a complaint

for modification of custody. In addition, the Supreme Court noted that the trial court found there was no change of circumstances since September of 2014 when the child signed an election indicating a preference to live with the Father. In dismissing the Mother's petition based on the child's September 2014 election, the trial court considered matters outside the pleadings thereby converting the dismissal order into one for summary judgment. A party opposing summary judgment, may, if she so desires, have 30 days' notice in which to submit evidence in response thereto. , The Supreme Court held that in considering and deciding whether to grant the Mother's petition for modification based on a change of custody, the trial court relied upon the evidence showing that the parties had deviated from the 2010 Order. Therefore, the trial court erred by not allowing the Mother to submit any evidence in support of her argument prior to dismissing the complaint.

The Mother also contended the court erred by awarding the Father $47,000 in attorney's fees. Although the trial court found the Mother had failed to demonstrate that circumstances had changed and had violated the its order by discussing the case with the child, it did not allocate the fee award between 9-15-14(b) and 9-9-3(g) and therefore the case was reversed and remanded.

GRANDPARENT'S VISITATION

Vincent v. Vincent, **A15A1244 (**Sept. 24, 2015)

The paternal grandparents filed a petition for visitation rights with their minor grandchildren under § 19-7-3. The parents of the children were divorced and, afterwards, the father was incarcerated. A hearing was held and the Trial Court denied the grandparents' visitation petition. The grandparents appealed and the Court of Appeals reversed

The grandparents argued, among other things, that the trial court applied the wrong legal standard. In denying the grandparents' request for visitation, the trial court relied solely on subsection (c) of the Code section which provides, in part, that the court may grant any grandparent of a child reasonable visitation rights if the court finds the health and welfare of the child will be harmed unless visitation is granted and that the best interests of the child would be served. However, the newly enacted subsection (d) states that, notwithstanding the provisions of sections (b) and (c), if one of the parents of the minor child dies, is incapacitated or is incarcerated, the Court may award the parent of the deceased incapacitated or incarcerated parent of such minor child reasonable visitation to such child during his or her minority if the Court in its discretion finds that such visitation will be in the best interests of the child. The custodial parent's judgment as to the best interests of the child regarding visitation shall be given deference by the Court but shall not be conclusive. Based on the foregoing, the Supreme Court held that the trial court, applied subsection (c) and when it should have applied subsection (d).

Judge Ray concurred in judgment only and stated that the Supreme Court found the grandparent visitation in effect in 1995 to be unconstitutional because it did not include a threshold finding by the trial court of harm that would be caused without visitation and therefore the newly enacted 2012 statute may as well be unconstitutional.

NOTICE

Wright v. Young, **S15A0896 (**Sept. 14, 2015)

Wright (the husband) was incarcerated and stated he never received notice of the Final Divorce Decree. The husband first learned of the Final Divorce Decree on Oct. 2, 2014. Upon learning of the Final Divorce Decree, the husband filed a Motion to Set Aside on Oct. 23, 2014. Without making any findings as to notice, the trial court denied the Motion on Nov. 6, 2014. The husband appeals and the Supreme Court reverses.

The Supreme Court looked to O.C.G.A. § 15-6-21(2) which provides, in pertinent part, that it shall be the duty of the judge to file his or her decision with the clerk of the court in which the cases are pending and to notify the attorney or attorneys of the losing party of his or her decision. Said notice shall not be required if such notice has been waived pursuant to subsection (a) of § 9-11-5. § 15-6-21 refers to notice for decisions made on motion, but the Supreme Court found that its logic also applies to final judgments. The only circumstance in which notice requirement is waived is when the losing party has failed to file any responsive pleadings in the case. However, Supreme Court noted that the husband filed an answer to the Complaint for Divorce and therefore did not waive notice. The record did not show whether the trial court notified the husband of the Final Divorce Decree. In addition, the trial court denied the Motion to Set Aside the Divorce Decree without making any findings on the issue of notice. Therefore, the Supreme Court reversed and remanded to determine whether the husband had knowledge of the judgment that was entered pursuant to the duty imposed on the Court under 15-6-21(c). If on remand the trial court determines it did not give notice, then it must grant the Motion to Set Aside the Final Judgment, re-enter the Final Judgment, and allow the losing party 30 days from the reentry of the date to seek appellate review.

ORAL PRONOUNCEMENT

Black v. Ferlingere, **A15A1040 (**Sept. 9, 2015)

The parties were unmarried when the child was born in 2009. Black (father) filed a Petition for Legitimation in 2010 for which a Consent Order for Legitimation was entered and the father was to pay child support. In 2013, the father filed a Petition for Modification of Child Custody, Visitation, and Child Support. After the hearing the trial court entered a final order ruling that the parties would have joint physical custody. The Order also allocated parenting time and ruled that the father's child support obligation would cease based upon the shared physical custody arrangement and neither party should pay child support to the other. No child support worksheets or support schedules were attached or referenced to in the final order. The father appealed and the Court of Appeals reversed and remanded.

The father contends that the Permanent Parenting Plan Order which was incorporated into the Final Order did not conform to the Trial Court's oral ruling at the hearing as to how the parenting time should be allocated between the parties. However, a Trial Court's oral pronouncement is not the judgment until it is put in writing and entered as the judgment. If there are any discrepancies between the two pronouncements, it must be resolved in favor of the written judgment. Therefore, the Court's oral statements made at the hearing were non-binding.

The husband also argued the trial court erred because it did not have the requisite findings of facts that could support the conclusion regarding the child support and no child support worksheets were attached. The Appellate Court agreed and found that the trial court's Final Order but did not contain any specific findings of fact. In addition, a completed Child Support Worksheet and Schedule E were not attached or incorporated by reference into the Final Order nor was there information that otherwise would be found in the worksheets or schedules.

PRENUP

Dodson v. Dodson, **S15A1334** (Nov. 16, 2015)

While the parties were pursuing a divorce, the Wife filed a Motion to Deny Enforcement of the Prenuptial Agreement. The Trial Court applied *Scherer* and found the Prenuptial Agreement unenforceable due to the non-disclosure of the material facts. The Husband appealed and the Supreme Court affirmed.

The trial court noted that although the Prenuptial Agreement lists all of the Husband's assets, it contains no values for these assets including the value of the Husband's bank accounts and two closely held businesses owned by him. To satisfy the first prong of the *Scherer* test, one must show that there was a full and fair disclosure of the assets of the parties prior to execution of the Prenuptial Agreement. The Husband did not allow the Wife reasonable access to his bank accounts in order to ascertain their value. In addition, the Husband failed to disclose the values of his business accounts to the Wife, and there was no evidence presented that the Wife could have known the value of the Husband's accounts. The Husband argued that the Wife had a duty to inquire and investigate regarding the value of all the assets, including the bank accounts. However, the Supreme Court made it clear that the spouse seeking enforcement must show that the agreement contained a full and fair disclosure on his or her marital assets and therefore the other spouse does not have a general duty to investigate the assets of the other. The Husband maintained that the law requires only that he list all of his material assets and not that he disclose to the Wife as to their values. However, the Supreme Court found this to be an incorrect and overly narrow interpretation of the law and further found, there was not a full and fair disclosure because the Wife had no real knowledge of the value of the Husband's bank accounts, businesses, or have reasonable access to know their value.

QDRO

Mermann vs. Tillitski, **S15A0965** (Oct. 5, 2015)

The parties were divorced in 2009 and incorporated a settlement agreement whereby Mermann (wife) would receive 50 percent of the husband's IRA as of the date of the agreement and would have her pro-rata share of all investment experience including earnings and losses and QDRO prepared within 30 days of the signing of the agreement. Four years later, the wife submitted a QDRO to the trial court that was signed in 2012. The wife claimed the long delay was caused by the husband's failure to give her the necessary information and documents. In 2013, the wife realized the husband had not seen the QDRO and filed a motion to vacate the QDRO and entered one approved by the husband. A hearing was held in 2014 and the husband argued the wife should not receive any earnings on her portion of the IRA that accrued after March 26, 2009, the 30-day deadline after the settlement agreement was signed. The husband claimed the 30-day deadline imposed on the wife was meant to limit her ability to benefit from the accounts investments and the trial court agreed. In August of 2014, the trial court entered an order vacating the QDRO setting March 31, 2009, as the date of calculating gains and losses to total value of the IRA as of Feb. 24, 2009. The wife appealed and the Supreme Court reversed.

The controlling principal is to find the intent of the parties by looking to the four corners of the agreement and in light of the circumstances as they existed at the time the agreement was made. The division of the parties' marital property and the identification of the parties' separate property set forth in the divorce decree was fixed and the trial court did not have the power to modify those terms of the judgment, even if the circumstances of the parties changed. The plain language of the parties' Settlement Agreement made it clear that the wife was entitled to receive 50 percent of the husband's IRA as of the date of the agreement and was to have a pro-rata share of all investment experience including earnings and losses. Although the agreement also stated the wife was tasked with preparing a QDRO within 30 days, there was nothing in the agreement to suggest that if the wife did not prepare the QDRO within that time frame, she would not receive any earnings or a portion of the IRA that accrued after 30 days from the date of the agreement. Holding any other way would impose an artificial 30-day window to the wife to calculate gains and losses with the total value of the IRA. Thus the Supreme Court held that the trial court improperly modified a fixed division of property as set forth in the parties' Settlement Agreement.

STANDING

Hall v. Hall, **A15A1032** (Nov. 19, 2015)

Keith Hall (Father) has two minor children that were born out of wedlock but legitimated. Dean (Mother) consented to the placement of the children with Felice Hall, the Father's former sister-in-law. The Mother was not a party to the case. In 2001, the Father was ordered to pay child support of $112 per month through Child Support Enforcement. Felice was later granted final legal custody and control of the children in March of 2005. In 2011, Felice opened the case with Child Support Services to collect unpaid child support. In 2012, the Father filed a Motion to Modify the Court Order to obtain custody or reasonable visitation and for equitable relief arguing against the child support order. Felice denied the allegations and filed a Counterclaim for Modification of Child Support and Attorney's Fees and subsequently added claims for contempt and fees. In June of 2014, the trial court entered a final order awarding Felice child support in the amount of $498, finding the Father in contempt of previous Court Orders, and ordering him to pay past due child support of $19,077 and attorney's fees. The Father appealed and the Court of Appeals affirmed in part and reversed and remanded in part.

On appeal the Father argued the trial court erred in finding him in contempt because the original Order was obtained by Child Support Services (CSS) and Felice lacked standing to enforce the original Child Support Order because she was never a party to the order or its actions and she did not have the authority to request the modification. The Father did not cite any statute or case law suggesting Child Support Services was the only entity entitled to enforce a child support order originally obtained by Child Support Services. Rather, the Appellate Court found that case law supports the argument that Felice does have standing because she is the legal and physical custodian of the minor children. In addition, support for that conclusion is also found in statutory authority. Under § 29-2-22(a)(3), as the children's guardian, Felice is authorized to bring, defend, or participate in legal,

equitable or administrative proceedings as are appropriate for the support, care, education, or welfare of the minor children in the name or on behalf of the minor. Also, § 19-6-15(e) permits a non-custodial parent to enforce a child support provision. Here, the Court of Appeals found that the Father is the obligor and Felice is the obligee. Therefore, she may pursue available remedies for enforcing the judgment, singularly or concurrently with Child Support Services until the judgment is satisfied. Finally, the Appellate Court held, with regard to the contempt, the Father failed to demonstrate that Felice, as the child's guardian, lacks standing to pursue a contempt action.

The Father also argued the trial court erred in awarding attorney's fees without specifying the statutory authority or factual basis for the award. Felice in her counterclaim asked for fees under § 19-6-2 and §19-15-14. However, § 19-6-2 does not apply because it did not involve an action for alimony, divorce, or alimony or contempt arising out of either an alimony case or a divorce and alimony case. However, § 9-15-14 was applicable. A trial court may award fees against the party that brought or defended an action or any part thereof that lacked substantial justification. In addition, the trial court cited § 9-6-15 which states "in a proceeding for modification of child support award pursuant to the provisions of this Code section, the Court may award fees, costs, and expenses of litigation to a prevailing party as the interest of justice may require." Here there are two plausible statutory bases for attorney's fees. The Court of Appeals noted that in addition to requiring statutory basis for an award of attorney's fees, the trial court was required to set forth the factual support for such award and the trial court failed to set forth the factual basis for its award. The record showed that Felice submitted an invoice for attorney's fees totaling $7,810. However, the record did not contain any statement regarding the amount of fees attributed to the pursuit or defense of claims for which attorney's fees were recoverable and what portion of the attorney's time was spent on the matters that were not recoverable.

UCCJEA

Roach v. Breeden, **A15A0891 (**Sept. 21, 2015)

Breeden (mother) filed a petition to establish paternity and legitimate and to obtain sole custody of the minor child of the parties. Roach (father) moved to dismiss the petition and to enforce a Tennessee custody order. The trial court denied the father's motion and thereafter legitimated the child and granted sole custody to the mother. The father appealed and the Court of Appeals reversed.

In 2013, the Juvenile Court of Knox County, Tennessee entered an order accepting a permanent parenting plan agreed to by the parties. The order provided that the child would reside primarily with the mother, but the father would have custody of the child every other week. In addition, both parties would have day-to-day decision-making power regarding the care of the child while in their custody. In 2014, the mother filed a Petition for Contempt in the Tennessee Juvenile Court. By this time, the mother was living in Georgia. Two weeks after filing a Petition for Contempt, the mother filed the instant petition in the Superior Court of Walker County, Georgia. The Tennessee Juvenile Court ordered an expedited hearing. The Tennessee Court issued an order for the mother to return the child to the father for resumption of the co-parenting plan in Tennessee. Thereafter, the father filed a Motion to Dismiss the mother's case in Georgia because the Georgia court lacked jurisdiction to enforce. The trial court denied the father's Motion to Dismiss because the court concluded that the Father did not have standing to challenge a custody determination because the child had not been legitimated and the father's paternity had not been established. The Georgia court also found it was a more appropriate and convenient forum and entered an order legitimating the child and granting the mother sole custody.

The father contended on appeal that the trial court erred by not dismissing the mother's petition. Georgia and Tennessee both have adopted UCCJEA. Under both states, child custody determination is defined by a judgment, decree, or other order of the court providing for legal physical custody or visitation with respect to a child. The Appellate Court found that there was no question that the Tennessee Juvenile Court order was an initial custody determination. Therefore the trial court erred by not dismissing the mother's petition.

The next determination was whether the Georgia trial court had jurisdiction to modify the Tennessee custody determination. First, the Appellate Court found that there was nothing in the record evidencing that the Tennessee Juvenile Court ever determined it no longer had exclusive jurisdiction. In addition, while the Georgia trial court concluded it was a more appropriate and convenient forum to try the issues of the case, 19-9-63(1) specifies that the out of state court must make this determination, and the Tennessee court had never made such a determination. Finally, there was been no finding by either Tennessee or the Georgia trial court that neither the child nor the child's parents no longer resided in Tennessee.

Therefore, Tennessee Juvenile Court retained exclusive and continuing jurisdiction.

Prabnarong v. Oudomhack, **A15A0978** (Nov. 19, 2015)

The parties had one minor child and divorced in Washington State in 2005. The Mother was awarded primary custody and later moved to Georgia. The Mother remarried, had another child, and resided in Georgia for 9 years before she died in 2014. During this period , the Father continued to live in Washington and exercised visitation with the child during the summer breaks. After the Mother died, the Father obtained an order from the Washington Court that issued the divorce decree awarding him primary physical custody of the minor child. Days later, the maternal uncle filed a motion for emergency hearing in the Superior Court of Gwinnett County with a petition requesting that the Washington 2005 Order be registered in Georgia, that Georgia modify the Parenting Plan, and that the maternal uncle be awarded primary physical custody of the child. The uncle's petition asserted that the Father had mistreated the child by removing her from everything she knows including her stepfather, younger sister, aunts, uncles, maternal grandparents, friends, teachers, and classmates. The child filed an election expressing a desire to visit with her Father, but stating she elected to live with her stepfather and uncle on a permanent basis. Attached to the petition were two Affidavits from the child stating "Why I Want to Stay in Georgia" and the other titled "Why I Don't Want to Stay in WA". The Father responded by requesting Gwinnett enforce the Washington Order. After a hearing, the Gwinnett Court entered an order making the Washington decree an order of the Gwinnett Court but awarding temporary order of primary physical custody to the uncle. The Gwinnett Court found that it had emergency jurisdiction pursuant to § 19-6-64(a) based upon the Affidavit of Election of the child and the handwritten attachments thereto and ordered the child shall remain in physical custody and care of the uncle pending the transfer of the case to the Juvenile Court of Gwinnett County and appointed a Guardian Ad Litem to determine the proper permanent physical custody. The Father appealed and the Court of Appeals reversed.

The Father claimed the trial court erred by exercising temporary emergency jurisdiction. Pursuant to § 19-9-64(a) a court of this state has temporary emergency jurisdiction to modify child support determination made by a court of another state if t child is present in the state and it is necessary in an emergency to protect the child because the child is subject to or threatened with mistreatment or abuse. The criteria in § 19-9-64(a) is "immediate danger". The Appellate Court found in this case that, there was no true emergency which required the Georgia Court to exercise jurisdiction for the protection of the child. There was no immediate danger under any version of the facts alleged in the child's affidavits and attachments. The Appellate Court noted that the general rule is that the court where the parent with legal custody resides has the exclusive right to award change of custody given the Georgia court recognized the Washington Order which awarded the Father legal custody. Allegations of neglect by her Father and fear of the step-brother arose from acts that had allegedly occurred and circumstances that had allegedly existed in Washington and the uncle's claim should have been presented in Washington.

In addition, the Appellate Court held that the trial Court erred in holding that if a previous child custody determination exists, as in this case, the temporary order must specify a period that the court considers adequate to allow the person seeking the temporary order to obtain an order from the court maintaining continuous jurisdiction over the custody of the child. The order issued in this state (Georgia) would remain in effect until the order is obtained from the other state within the period specified or the period expires. , The trial court failed to specify in its order any period of time which the uncle must obtain an order from the Washington court.

WAIVER

McLendon v. McLendon, **S15F1254 (**Oct. 5, 2015)

The parties were divorced by Final Decree in May of 2013. The parties had one minor child and the Court awarded primary custody to the husband and joint legal custody to the wife. During the summer months, the wife had primary custody and the husband had visitation rights. The wife is required to pay the husband $940.00 per month during the school year and, in summer no child support was paid by either party. Wife filed a Motion for New Trial and Motion for Reconsideration. In her written motion, the wife raised issues regarding custody and, during the hearing orally issues of personal property and issues with the parenting plan. The trial court denied her request but supplemented an order modifying the property division and parenting plan. The husband also received $4,000.00 in attorney's fees under O.C.G.A. § 9-15-14 pursuant to the trial court's finding that the Motion for New Trial was brought at least in part for the purposes of delay. The wife appealed, and the Supreme Court affirmed.

The wife argued that the trial court failed to comply with the Child Support Guidelines, including the failure to make required findings of facts regarding the court abating child support during the summer months. However, the wife did not raise any claim regarding the deviation in her motion for new trial and the trial court did not reach the issue in either of its two Orders on the wife's Motion for New Trial. As a result, the wife waived review of the issue. ***FLR***

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2016 Family Law Institute Scholarship Information

Please Note the Deadline for Scholarship Submission is Friday, Feb. 22, 2016.

The Family Law Section of the State Bar is excited to announce that it will offer up to five scholarships to Family Law Section members to attend the 2016 Family Law Institute at Jekyll Island, May 19-21. Each Scholarship will pay $1,000 towards the ICLE registration costs for the seminar, accommodations for three nights at the available room rate, and mileage while traveling to and from the Institute.

The goal is to provide funds for lawyers from around the state who otherwise could not afford to attend the Institute and to encourage section members to provide pro bono services. In exchange for receiving the scholarship, the applicants chosen will be required to attend the Family Law Institute **and** accept one Pro Bono domestic violence and/or divorce case referral from the Georgia Legal Services Program (GLSP) before Dec. 31, 2016. GLSP provides representation to low-income clients in Georgia who cannot afford a lawyer.

The scholarships will be awarded based on financial need and commitment to Pro Bono work. Reimbursement will be made after the Institute upon presentation of proof of expenses. To be eligible to apply, you must be a Family Law Section member in good standing who has never been the subject of any disciplinary action. To apply, email Institute Chair Marvin Solomiany (msolomiany@ksfamilylaw.com) **and** Kelley O'Neill Boswell (kboswell@watsonspence.com) by Feb. 22, 2016, and provide to them the following:

- Name, office and email address, phone number;
- Year of admission to the Bar and work history;
- List and details of any prior pro bono service;
- List and details of involvement in any community service of Bar Association programs or projects;
- An explanation of your financial need; and
- A written statement, less than 200 words, why the scholarship should be awarded to you.
- Written notification will be sent to all applicants by March 15, 2016 so that each of the recipients will have time to make arrangements to attend the Institute.

Discussing Divorce With a Young Child?

by Randall M. Kessler

In today's world this unfortunate discussion is much more common than it perhaps should be. Nonetheless, circumstances which are often beyond our control (although some would argue whether or not to divorce is within our control), require such a conversation which must be handled with a great amount of tact and thoughtfulness. Speaking with a young child about the fact that his or her parents will no longer be living together is truly sad; but it is also an opportunity to set the tone for the child's future relationship with both parents and extended family. So how do we navigate this sad terrain? Therapeutic help and guidance can be invaluable. And while I am not a therapist, I find myself participating in these discussions repeatedly in my role as a divorce lawyer. It is based on these experiences that I offer my opinion as a minor, but hopefully useful, contribution to the planning for such a talk.

As lawyers we are taught to simplify things. We must simplify complex legal statutes to make them easier for our clients to understand. We must also often simplify complex financial situations so that judge can understand what the marital estate is comprised of and divide it fairly. We must simplify our legal documents so that the legal arguments can be easily and quickly digested. These papers are, after all, referred to as "briefs." But how do we help our clients explain divorce to a three year old? This explanation is one that parents must deal with and must get right in order to help their children. Whether one is explaining divorce to a three year old, a 6 year old, or a teenager, this conversation is never easy, especially when it's your own divorce. And while I believe that I can offer some good suggestions. Truly, it is beneficial to work with a therapist you trust to help guide you through that most difficult, but most important discussion.

When faced with the prospect of sitting down to discuss divorce with a teenager, you may take comfort in the knowledge that they are most likely familiar with the concept. But explaining divorce to a child who does not yet, or has just begun, to understand the concept of marriage can be overwhelming. There are many good books (e.g. "When Dinosaurs Divorce"). But there are so many questions. As someone who is not a therapist but has simply seen more than my share of divorce in my practice, my best suggestion is that there be a united front. Children want their parents to love each other and to get along. And at the very moment that a child learns that his or her parents cannot get along well enough to stay married, it might soften the blow for them to see that they are united when it comes to the children. Unfortunately I see much too much of the opposite behavior; i.e., parents trying to "beat the other to the punch" and to tell the child their side of the story.

Children want their parents to love them and to love each other. If parents disparage each other to or in front of a child, doesn't that encourage the child to do the same (disparage the other parent) so that the child can ensure the love of the criticizing parent? And isn't that wrong? Remember, the child is the sum of the two parents, so anything negative said about the other parent is in essence a complaint about a part of the child.

So as hard as it may seem, take a joint approach. Remind your child repeatedly how much you both love him or her. And as hard as it may be, compliment the other parent in front of and to the child. It may be hard, but certainly you can do it. Think about your own parents. How nice it was (or would have been) for you your own parents to be sweet to each other and to talk respectfully and positively about the other. Aren't those the memories you want your child to have? Explain it together, politely and with as much love as you have ever expressed. You can do it. Your children deserve it and you have the capability. ***FLR***

Randall M. Kessler has practiced family law since 1988 and founded Kessler & Solomiany (KS Family Law) in 1991, a highly respected domestic relations firm, known for representing high-profile clients, athletes, celebrities, and entertainers.

He has served as Chair of the Family Law Sections of the American Bar Association, the State Bar of Georgia and the Atlanta Bar Association; and has authored and edited Divorce: Protect Yourself, Your Kids and Your Future *(Divorceprotect.com),* the Georgia Library of Family Law Forms, *and* How to Mediate a (Georgia) Divorce.

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