Family Law Newsletter

January/February 2003

An Interview with Justice Leah Ward Sears Regarding The Supreme Court's Pilot Project On Divorce and Alimony Cases

by Kurt Kegel, Esq. Davis, Mathews, & Quigley, Atlanta, GA

Faced with the passage of the Supreme Court's Pilot Project on Divorce and Alimony Cases, I was fortunate enough to sit down with Justice Leah Ward Sears in her chambers to discuss the Pilot Project and the implications to the Family Law Bar. The following is my interview with Justice Sears:

Kurt A. Kegel (KAK): Family Law Practitioners are certainly excited about the opportunity that has been presented this year with the passage of the Supreme Court's Pilot Project on Divorce and Alimony Cases. Why did the Supreme Court develop a pilot project granting all discretionary appeals in divorce and alimony cases for this calendar year?

Justice Leah Ward Sears (JS): We have heard for years, not just the past year, a cry from family law practitioners that they felt there was no right, no meaningful right, to appeal in domestic cases. The Bar did not feel that we had adequately developed the common law in this area; while the justices felt that all domestic cases did receive a meaningful review at the Supreme Court, we nevertheless listened to the Bar and decided that this is something we ought to do to determine whether we can grant all discretionary appeals and not have the resulting extra caseload adversely effect the quality of our opinions. We thought it would be better to develop this pilot program in an effort to review the process, rather than having legislation enacted that would force us into a situation that may not work out for the Family Bar or the Court. Nobody knows what will work best to facilitate the process; with the pilot project we could experiment with what works. We could then refine the process, and get back with practitioners and ask, "How does this work for you?" "How does this work for us?"

Chief Justice Leah Ward Sears

Then, even if there were subsequent legislation, at least we would not be walking through the wilderness.

KAK: Is the issue of whether the Supreme Court or the Court of Appeals hears certain types of appeals also something that is being reviewed by the Supreme Court during this Pilot Project?

JS: No, not in this project, but I think that is probably something that needs to be worked on in the future, so all family law cases go through the same route. We spend a lot of time up here deciding what are called red tag memos, which are jurisdictional memos, reviewing whether or not this case or that case is a divorce or alimony case because it involves a settlement agreement that's attached to a divorce case, or is it a custody case, or a modification case, etc. etc... I think the confusion as to where certain cases go should be cleared up. In some situa-

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NOTES FROM THE CHAIR

Emily S. "Sandy" Bair, Chair, State Bar of Georgia Family Law Section

Recently at a meeting of family lawyers a question was raised as to whether family lawyers who take cases to jury trial have been unfairly maligned by other lawyers who prefer mediation or "alternative dispute resolution". Are we trying to make the trial lawyers feel guilty? Apparently trial lawyers feel almost personally abused by the movement toward ADR that has occurred in the last 15 years. As Chair of the Family Law Section, I suggest we step back and look at ourselves as one group. We have a common goal.

Our clients look to us for effective, cost-efficient conflict resolution. I submit that we stop criticizing our fellow lawyer for the methods he or she uses to resolve a family law case. The methods we use to resolve cases are tools in our toolbox. If we were in the construction business, we would start by analyzing the project and picking the best tools. When we start a family law case, we analyze the project and the personalities and the facts and all aspects of the case. We use the tools that are best suited for that particular case. This can be a courtroom trial or it can be mediation or any other method of conflict resolution, or a combination of methods.

It seems as though we have polarized. Those of us who believe we are in the group in favor of ADR seem to believe that trial work and the adversarial process is not ever an acceptable method of dispute resolution. Those of us who are "trial lawyers" proudly believe that mediation does not effect justice, but rather litigation does. The truth is that trial work, mediation and all methods of resolution of family disputes are hard work. No matter what method of dispute resolution is applied, the best results are achieved by careful and efficient planning of the case. The common thread in our trial of a case as well as our negotiation and mediation of a case is methodical and thorough preparation. Preparation prior to mediation settles cases and preparation for trial settles cases. Effective preparation, in other words, is key. If anyone of us is going to feel defensive or guilty about our style of practice, it should be for lack of effective planning and preparation, not the method that we choose to resolve a case.

We all have a high calling in resolving family disputes. We need to support each other in our work, not polarize. Ultimately, the service we provide to the public is the orderly and just resolution of family law disputes. Different fact patterns, different personalities of clients and different underlying issues require different methods. It is our job to advise and lead our client in using the method of dispute resolution that will best resolve the case for that client and his or her family.

On another note, I want to encourage all our members to join us at the Family Law Institute at the Ritz Carlton in Amelia Island this coming May 22-24, 2003. Tommy Allgood of Augusta, Georgia, our vice-chair, is planning an excellent program. We are inviting many superior court and appellate court judges to attend. Among other judges, Justice Leah Sears has accepted our invitation and we are planning a special breakfast meeting with her early one morning to discuss the progress of the Supreme Court's pilot project on discretionary appeals. The brochure will be sent to members soon so make your plans and come.

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tions, there isn't even any logic. Why, for example should custody cases be in the Court of Appeals and divorce here?

KAK: How many discretionary appeals were granted last year by the Supreme Court?

JS: About 40.

KAK: With 40 applications granted, do you know what percentage of the applications which were filed were granted?

JS: I would say that the percentage in the last couple of years has been about 15%.

KAK: How many appeals do you anticipate being granted during the pilot project?

JS: We anticipate that all of the applications will be granted, except those that are frivolous.

KAK: When you say frivolous, how do you define frivolous?

JS: We are going to define frivolous as anything that is baseless, or an application that is interposed for harassment or delay. The traditional definition.

KAK: It is my understanding that the appellant will be required to attach a certificate to the appeal, certifying that the issues are not frivolous.

JS: That's correct.

KAK: When a practitioner files an application for discretionary appeal and attaches the certificate, will the Court still review that appeal to determine whether in the Court's opinion that appeal is frivolous, or interposed for harassment or delay?

JS: Yes. What will happen is that it will come to the Court, the appeal is then put on a wheel, and the applications are randomly assigned to the Justices. That Justice will perform a review as to whether or not it is frivolous. If he or she thinks it is frivolous, he notifies the other Justices, and the Justices will discuss the case en banc and decide whether it is frivolous or not. We will vote; if the majority believes that it is frivolous then it will be denied.

KAK: What will the Court's position be with regard to the appellant if the Court determines that the appeal is frivolous?

JS: Very likely sanctions will be entered. The sanctions can go up to as much as $1,000.00, but if this becomes a routine thing, we will review those sanctions because we have thought $1,000.00 has been too low for years.

KAK: If a pro se brings an appeal, are they required to file the affidavit?

JS: No. Furthermore, if someone files their appeal and there is no certificate attached, in the beginning we are going to have the Clerk notify the lawyer that a certificate is required, because we know everyone doesn't know about the pilot project yet. The lawyer will be given 5 days after the date that the Clerk notifies him to get that certificate filed.

KAK: For those practitioners who haven't handled a lot of appeals recently, what would be the process that they would go through once the application is filed.

JS: Once the application is filed, within 30 days they will hear from us whether the application is dismissed as frivolous or for some other procedural defect, such as the case really being a custody case or something like that. In that event, we would probably dismiss the application or transfer it to the Court of Appeals. When the application is granted, what happens is that it is treated like a direct appeal. The practitioner is then required to file a notice of appeal, obtain the record, the transcripts, pay the costs, and have everything sent up here. That's the way it always would have happened if an application for discretionary appeal had been granted. It is treated as a direct appeal.

KAK: Will all appellants be required to argue their appeals orally before the Court?

JS: No, you will have to request argument. We already do 4 days of oral argument per month. We are going to have a full day or 2 days added on each month of oral argument. All of these cases will be grouped on 1 or 2 days. They will all come in on the same day and oral argument will be 10 minutes a side unless the Court has agreed otherwise.

KAK: As we are progressing through the pilot project, will the Court be reviewing the project throughout the year to see how the system is working?

JS: Yes, we have somebody who will be keeping track of

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Past Chairs of the Family Law Section

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statistics.

KAK: When will the pilot project end?

JS: December 16, 2003, unless we determine that we need more time to review the process.

KAK: How will the Court determine whether the pilot project has been a success or failure?

JS: To be a success, we would have to see that things are in balance. The case load must not be out of balance and the Court's opinions must remain of high quality. Our opinions are known as being good, quality and thoughtful opinions. That standard would be important to me to maintain, and we need the time to make them be that way. Also, to be a success, family law practitioners should be satisfied that a good review is occurring. It will also be important that the system has not broken down as a result of this and that the state of the domestic law is evolving in terms of our writing.

KAK: Is there going to be any change in the way the Supreme Court handles appeals from a decision rendered by the Court of Appeals?

JS: No, those will remain the same. They come up by certiorari. This project only applies to the cases that we would otherwise have received by discretionary application.

KAK: In the event the Court sees an overabundance of frivolous appeals, would you see that as a failure of the project and the practitioners taking advantage of the situation?

JS: We will just have to see, because we already said we would deny frivolous appeals up front, and we would have denied the application anyway. I should point out that when the application is filed, if the respondent chooses, they can file an initial reply addressing only the frivolous issue.

KAK: What do you see as the responsibilities of the family law practitioner to insure that this project is successful?

JS: To take it seriously and to not take unfair advantage of the opportunity. To understand that the process is going to be a lot more time consuming, not less, and will require many more resources, because direct appeals are more expensive.

KAK: Is the pilot project intended in any way to deflect any action by the General Assembly regarding direct appeal on divorce and family law matters?

JS: Well, we are attempting to deflect any such action until we have all the facts. I think the legislature does a wonderful job, but we don't know much about the results of changing the process. In fact, we don't know anything yet. I think studies and experiments are good; then we can decide where we want to go, but I would not like to see the legislature blindly head down this path with no statistics, no studies, no information. So yes, we have tried to provide information for what they may be trying to do because legislation may be inadequate without the needed information. For example, we did many full studies on Alternative Dispute Resolution before we went across the street and had legislation passed. You can't just jump in and just pass legislation to simply see how it goes and expect it to work.

KAK: Do you see a goal of the pilot project being to try to formulate the best method of appeal in family cases?

JS: Yes.

KAK: With an emphasis on identifying that method, before having something legislated?

JS: Right. It's like we have this lump of clay and we are going to shape it and we will try it like this and we may say that doesn't work for some reason. With our rule making authority and ability, we can shape it up. However, if you pass a piece of legislation and it doesn't work, that's it, you are stuck. We don't want to do that. I would rather continue the dialogue with the Bar and shape the system to ensure that the system works. It is best that we remain flexible because this is an evolving process and I think that's how you get the best results.

KAK: Has the Court done any review to determine what an appeal in a family case would cost and the financial impact to litigants on granting every application for appeal?

JS: Well the Court understands from practitioners that it could easily cost between $15,000 to $30,000 to complete the process. The brief writing process will be a lot more significant than a simple application for discretionary appeal. It will require enumeration of errors, a complete review of the record and transcript, citations to the record and transcript and an oral argument before the Court, and the cost could be significant.

KAK: As a family law practitioner I am sure that we all have in the back of our mind areas of law that need to be addressed, or areas where clarification is needed. Do you see any areas of family law that you think need to be developed or clarified?

JS: Yes, I'm most concerned about equitable division. That is an area where I think some work needs to be done. I have been to family law seminars outside of the state and there seems to be a number of issues that Georgia Courts have yet to tackle. Relocation by the custodial parent is such an issue which needs to be developed.

KAK: We are certainly looking forward to the opportunity presented by the pilot project.

JS: I'm looking forward to it also. This should be quite an adventure.

KAK: Do you have any other words of wisdom or advice for the practitioner going forward?

JS: Just be careful and understand that this system is your system; so if you abuse it, you are abusing yourself. So take advantage of the opportunity, but don't abuse it. We want the Family Bar to be satisfied and to feel that justice is being served.

Some Thoughts On The Supreme Court's Pilot Project in Divorce and Alimony Cases

Jeanney Kutner, Judicial Officer, Fulton County Family Division

On December 12, 2002, the Supreme Court of Georgia issued a statement announcing a pilot project to grant all non-frivolous applications for discretionary appeals in divorce and alimony cases for a period of one year (three terms), for applications filed after January 6, 2003 and before December 16, 2003. All lawyers filing such applications must sign a certificate that they have a "good faith belief that the application has merit and is not taken for the purposes of delay, harassment or embarrassment."

This project presents an opportunity and a challenge for family law practitioners. The bar can use this opportunity with discretion and responsibility. The bar can prevent the Court's worst nightmare – a deluge of appeals – from occurring. If the bar fails and the Court's fears are confirmed, the family law bar may well find itself in a worse position in 2004 than it was in 2002.

The Court will keep data sheets to track all domestic applications and appeals during this year, but the Court cannot predetermine what the measure of success will be. The analysis of data compiled during the project will provide documentation for the Court. The data can be used to the bar's advantage or its disadvantage. The data could provide evidence of the bar's serious inquiries into uncodified and unresolved issues of family law. However, it could also provide evidence of the bar's abuse of the appeals process. By carefully analyzing the data, the Court can determine the future course of appeals in the area of domestic relations law.

Justice Hugh Thompson explained the pilot project to members of the trial bench and bar present at the Charles L. Weltner Family Law Inn of Court on January 14, 2003 and answered questions. This much is clear:

- This project does not apply to domestic relations discretionary applications filed with the Court of Appeals.
- The intent of the project is to consider appeals only in divorce and alimony cases.
- Pro se litigants are not required to certify that their applications are non-frivolous.
- The experiment applies only to final orders. (Hence, interlocutory appeals must still follow all the requirements of OCGA § 5-6-34 (b) and Supreme Court Rules 30-32.)
- Supreme Court Rules for discretionary applications (33 and 34 in particular) must still be followed.
- During the project, the Court retains its authority to dismiss a granted application as improvidently granted, or to affirm the trial court without written opinion under Supreme Court Rule 59.

Some interesting questions remain:

1.What constitutes a "non-frivolous" application?

The Supreme Court does not define what "frivolous" means in its own Rule 6 concerning sanctions. OCGA § 5-6-6 provides a definition of frivolous: "[w]hen in the opinion of the court the case was taken up for delay only." Even though by its own terms OCGA § 9-15-14 does not apply to appeals, its definitions may be instructive during this project: The (trial) court is required to impose sanctions where there is "a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or position…." OCGA § 9-15-14 (a). The (trial) court is permitted to impose sanctions in a case or position that 'lacks substantial justification or that the action, or any part thereof, was interposed for delay or harassment." OCGA § 9-15-14 (b). The statute defines "lacks substantial justification" to mean "substantially frivolous, substantially groundless, or substantially vexatious." Note that there is no penalty for asserting a good faith attempt to establish a new theory of law in Georgia if such new theory of law is based on some recognized precedential or persuasive authority." OCGA § 9-15-14 (c).

2. What penalty will the Court assess for attorneys filing applications that it deems "frivolous"?

At present, the primary sanction for the filing of

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frivolous appeals is found at Supreme Court Rule 6, which provides that the Court "may, with or without a motion, impose a penalty not to exceed $1000" for an application that it determines to be frivolous. The Court could raise this amount during the pendency of this project.

For frivolous appeals in cases involving a money judgment, OCGA § 5-6-6 provides that "10 percent damages may be awarded by the appellate court upon any judgment for a sum certain which has been affirmed." Note, however, that the Court has written:

The statutory penalty is an additional damage award against a party and is not jointly levied against counsel. Therefore, the record must clearly reflect that the party pursued the appeal for delay only… Where lawyers before the appellate courts make patently frivolous arguments, the courts may sanction such conduct under the courts' own rules. [Warnock v. Davis, 267 Ga. 336 (478 SE2d 124) (1996).]

Supreme Court Rule 7 provides that the breach of any of the Supreme Court's rules "may subject the offender to contempt and revocation of the license to practice in the Supreme Court."

3. Will the pilot project affect custody decisions?

The project statement clearly refers to divorce and alimony cases and makes no mention of custody. The Court of Appeals has jurisdiction of change of custody cases, so these cases will not be affected by the project. The Court has not provided guidance as to how or whether it will deal with the initial custody determination raised in the context of divorce appeals. It is not anticipated that the Court will ask attorneys to address particular questions or issues in the granted applications during the project. If the Court does address initial custody determinations, it is unlikely that the number of reversals will increase because the standard of review for custody determinations is the "any evidence" rule:

In a contest between parents over the custody of a child, the trial court has a very broad discretion, looking always to the best interest of the child, and may award the child to one even though the other may not be an unfit person to exercise custody or had not otherwise lost the right to custody…. Where in such a case the trial judge exercised his discretion, this court will not interfere unless the evidence shows a clear abuse thereof… in a case such as this, it is the duty of the trial judge to resolve the conflicts in the evidence, and where there is any evidence to support his findings it cannot be said by this court that there was an abuse of discretion on the part of the trial judge in awarding custody of the minor child to the [parent]. [Anderson v. Anderson, 240 Ga. 795 (2) (242 SE2d 593) (1978).]

Some practical pointers and advice during the project are these:

1. What should practitioners consider in anticipation of an increased number of orders that are superseded during appeal?

The filing of an application for discretionary review acts as a supersedeas and has the effect of depriving the trial court of jurisdiction to modify or alter its judgment. OCGA § 5-6-35 (h).

The divorce itself should be superceded during the appeal. Whether or how the Court will address this issue is unclear. In most appeals of divorce cases, the divorce itself is not at issue, but rather the "contested issues" surrounding the divorce. However, the enactment of Uniform Superior Court Rule (USCR) 24.7 abolished the practice of bifurcated divorce proceedings:

Although the court may, in appropriate cases, grant judgment on the pleadings or summary judgment that the moving party is entitled to a divorce as a matter of law, no divorce decree shall be granted unless all contestable issues in the case have been finally resolved. [USCR 24.7, Contested Divorce Actions, 1985.]

See Edward s v. Edwards, 260 Ga. 440 (396 SE2d 236) (1990) for ratification of this Rule; see also, Moate v. Moate, 265 Ga. 418 (456 SE2d 502) (1995).

As to the "contested issues," if a temporary order is in place, its provisions are enforced during the pendency of an appeal or an application. If there is no temporary order as to custody provisions, the attorney opposing an appeal can ask the trial court to insert the following type of language into a final order: "Custody is effective as of the date of this judgment to protect the best interest and welfare of the child." Such language would modify the automatic supersedeas as it regards custody. Walker v. Walker, 239 Ga. 175 (1977).

The trial court retains the authority to consider (or reconsider) temporary alimony, child support and attorney's fees during the pendency of the appeals process. See, e.g., Shepard v. Shepard, 233 Ga. 228 (1974). Additionally, the practitioner can ask the trial court to enter two orders upon a final hearing, the final order (or judgment and decree of divorce) and one that is temporary but contains the same language as the final order as to custody, child support, alimony and attorneys' fees.

2. What does the practitioner need to know to file applications during the project?

The practitioner needs to follow the Supreme Court Rules for specific requirements, such as the format of the application, style preferred, and criteria for granting. An application must be filed within 30 days from the entry of the trial court's order. The application is actually a brief, with authorities and argument. One new rule during the project will be that the opposing attorney may (but is not required to) file within 10 days a letter brief – no longer than 5 pages – that addresses the sole issue of the frivolity of the appeal.

While the Court has not so specified, the practitioner would be well advised during the project to file only those applications that meet the standards enunciated in Supreme Court Rule 34: "(1) Reversible error appears to exist; (2) The establishment of a precedent is desirable; or (3) Further development of the common law, particularly in divorce cases, is desirable." The practitioner should also state which standard his or her appeal addresses in the application itself.

3. What if a practitioner dismisses an appeal before it is ruled upon?

A lawyer may dismiss an appeal for a good reason. For example, after filing the application, the lawyer may discover that opposing counsel wants to negotiate a result different from the trial court's order that would be just. He or she would be well advised to inform the Court of the reasons for doing so during the pendency of this project, lest the Court think that the filing itself was imposed for delay purposes and was frivolous.

4. What about pro se litigants?

Pro se litigants are not required to certify that their applications are non-frivolous. Because this project is one of trust between the bar and the Court, a practitioner should not encourage a client to file a pro se application that the practitioner knows is not meritorious or is for the purpose of delay.

DNA PATERNITY TESTS:
Technology is Outpacing the Law

By Elizabeth S. Panke, M.D., Ph.D.; Genetica DNA Laboratories, Inc. and
Elizabeth Green Lindsey, Esq.; Davis, Matthews & Quigley, P.C.

Georgia law currently creates a rebuttable presumption of 97 percent probability of paternity based on genetic tests. This level of discrimination in DNA testing allows for a man presumed to be the father by law to have a genetic pattern identical to approximately one out of 35 individuals in the population.

But technology has now far outpaced the 97 percent probability standard. Today's DNA technology allows for genetic testing to be accurate to levels significantly higher than 99 percent, prompting the consideration that the standard for probability of DNA testing in Georgia should be raised.

Background on Paternity Law

Current Georgia law states that whenever there is an issue of paternity, the parties are entitled to a genetic test according to O.C.G.A.§19-7-43:

(e) In any case in which the paternity of a child or children has not been established, the Department of Human Resources may order the mother, the alleged father, and the child or children to submit to genetic tests as specified in O.C.G.A.§19-7-45. The request for the order shall be supported by a sworn statement alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties. The parties shall be given notice and an opportunity to contest the order before the department prior to the testing or the imposition of any noncooperation sanction.

Procedures for requesting a test are set forth in O.C.G.A. §19-7-45 and include the following requirements: The test must be conducted by a laboratory certified by the American Association of Blood Banks, and it must be performed by a duly qualified licensed practicing physician or immunologist, or other qualified person. The court has the discretion to determine the number and qualifications of the experts.

The results of the test are to be made available to all parties at interest, and the court can issue an order for contempt for failure to submit to a genetic test or can dismiss the action if the petitioner refuses to take the test.

Testing procedures are important because the results are admissible at trial. Under O.C.G.A. §19-7-46, results are automatically admissible at the time of trial, including the statistical likelihood of the alleged parent's parentage, unless a party to the paternity genetic test objects in writing at least 30 days prior to the hearing at which the results of the testing may be introduced into evidence. Without a properly filed objection, the results will be entered without proof of authenticity or accuracy or the need for foundation. If there is an objection properly filed, the results will be admitted when offered by a duly qualified person.

The standard in Georgia for a proper foundation for the introduction of DNA evidence is a two- prong test: (1) evidence that the general scientific principles and techniques involved in DNA tests were valid and capable of producing reliable results, and (2) evidence that the tester who performed the scientific procedures did so in an acceptable manner. Johnson v. State, 265 Ga. 668, 461 S.E.2d 209 (1995).

DNA testing is not an exact science, and the court has held that the fact that genetic testing has a margin of error goes to the weight and credibility of the court assigned to the evidence. Woodford v. State, 240 Ga. App. 875, 525 S.E.2d 408 (1999). The court has yet to object to the lack of statistical evidence applying theories of population genetics to a finding of paternity. See FN 1 to Johnson v. State, supra and Holden v. State, 202 Ga. App. 558, 414 S.E.2d 910 (1992).

Rebutting the Presumption

A recent study highlights the necessity for reliable DNA testing. The study found that two out of 249 nonfathers had a probability of

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2003 Family Law Institute

Presented by the Family Law Section of the State Bar of Georgia and ICLE in Georgia

Program Chair: Tom Allgood, Jr., Allgood, Childs & Mehrhof, Augusta
Date(s): May 22, 23, and 24, 2003
Location: Ritz-Carlton Resort, Amelia Island, Florida

Time	Speakers	Topic	CLE Credits
Thursday, May 22, 2003			
8:30	Tom Allgood	Opening Remarks from the Program Chair	
8:35	Frank DeVincent	"How To Protect Your Assets In The Event of Death During Litigation."	1.0
9:30	BREAK		
9:45	Awards and Section Announcements		
9:55	John B. Long, Esq. Augusta, GA. Judge J. Harvey Davis, Tifton Judge Kathy Palmer, Swainsboro Judge Warren P. Davis, Gwinnett	"Domestic Violence - Who is really the Victim?"	1.0 (Trial practice)
10:55	John C. Mayoue, Esq. Atlanta, GA	Comments on Professionalism	1.0 (Ethics)
11:55	BREAK		
12:10	Honorable R. Rucker Smith, Chief Judge, Southwestern Judicial Circuit, Americus	"Ten Tips on Dealing with the Non-Metropolitan Judge" (With Application to all Judges)	1.0 (Trial Practice)
1:00	ADJOURN		

Time	Speakers	Topic	CLE Credits
Friday, May 23, 2003			
8:30	David J. Dempsey, Esq. Atlanta, GA	"Secrets to Speaking with Power, Passion and Persuasion"	1.0 (Trial Practice)
9:30	BREAK		
9:45	David J. Dempsey, Esq.	"From Theory to Practice: Demonstrations of Communicating with Confidence"	1.0 (Trial Practice)
10:45	H. William Sams, Jr., Esq. Judge Neal W. Dickert, Augusta Judge Melvin K. Westmoreland, Atlanta Judge Louisa Abbott, Savannah	"Thomas v. Thomas" - Where are the Answers?	1.0 (Trial Practice)
11:45	BREAK		
12:00	Elizabeth S. Panke, M.D.	"So Your Client Insists The DNA Results Are Wrong!"	1.0
1:00	ADJOURN		
Saturday, May 24, 2003			
8:30	Jeffrey B. Bogart, Esq. Atlanta, GA	"The Demise of Spousal Immunity in Georgia- A New Litigation Tool for the Family Lawyer."	1.0
9:30	BREAK		
9:45	Ed Coleman, Esq. Shayna Steinfeld, Esq. Judge James Walker	"Does the Client Need You or a Bankruptcy Lawyer Instead?" Bankruptcy Issues and Strategies for the Family Lawyer.	1.0
10:45	John F. Lyndon, Esq. Athens, GA	"Recent Developments in Georgia Family Law"	1.0
11:45	BREAK		
12:00	Paula J. Frederick, Esq. Office of the General Counsel State Bar of Georgia	"Common Complaints to the Bar about Family Lawyers and How to Avoid Them."	1.0 (Ethics)
1:00	ADJOURN		

paternity of more than 99 percent. Only with additional DNA testing would these two men be correctly identified as nonfathers. Given that a 97 percent rebuttable presumption for paternity exists in Georgia, it is important to understand how this presumption can be overcome.

First, there needs to be presentation of clear and convincing evidence as determined by the trier of fact. Thus, it is the trial judge's discretion to determine the clear and convincing evidence as to parentage since there is no right to a jury trial in paternity actions pursuant to O.C.G.A. §19-7-40.

The ability to present clear and convincing evidence can be aided by thoroughly understanding the significance of the DNA test report. The bottom-line results of a DNA paternity test are expressed by two primary numbers: the Combined Paternity Index (CPI) and the Probability of Paternity.

The CPI is a ratio that depicts the likelihood of the tested man being the biological father in comparison to the likelihood of a random, unrelated man in the population being the father.

Many people have difficulty understanding the likelihood ratios expressed in the CPI. Genetica DNA Laboratories, which performs DNA parentage testing nationwide at a guaranteed accuracy rate greater than 99.9 percent, has found that expressing the CPI as a frequency of occurrence is much easier to understand. For example, the DNA paternity test results can be stated: "one individual in 1,000 has this genetic pattern." This statistic is often calculated during the DNA testing process and is called the Random Man Not Excluded, or RMNE, statistic.

The Power of Exclusion, or PE statistic, on a DNA paternity test reports the accuracy of a given DNA test. For example, the PE statistic states: "999 out of 1,000 men in the population do not have this genetic pattern and therefore they are excluded from the possibility of being the father by the DNA test." Another way to express the PE statistic is: "This DNA test would exclude 99.9 percent of the male population from the possibility of being the biological father of the child."

In practice, however, the DNA test results are often expressed in terms of the probability of paternity. Unfortunately, the probability of paternity statistic can be intuitively misleading. For example, a 99 percent probability of paternity sounds convincing. This high percentage value gives a sense of accuracy that the level of testing performed is more than adequate, and that false-positive test results are rare. However, the statistics in Table I highlight the misleading nature of the "probability of paternity" percentage.

Table I

Probability of Paternity	Average Combined	Paternity IndexCPI
Average number of individuals with the same genetic pattern(random man not excluded)RMNE		
95%	20	1 out of 20
97%	35	1 out of 35
98%	50	1 out of 50
99%	100	1 out of 100
99.9%	1,000	1 out of 1,000
99.99%	10,000	1 out of 10,000
99.999%	100,000	1 out of 100,000

Although it may be difficult to appreciate the significance of the CPI number at first glance, notice that this statistic closely estimates the RMNE. For example, when the combined paternity index is 35, one out of approximately 35 individuals in the population has the same genetic pattern as the tested man. And, when the combined paternity index is 100, one out of approximately 100 individuals in the population has the same genetic pattern as the tested man. The 97 percent and 99 percent probabilities of paternity in Table 1 seem as if they are both close to an accuracy of 100 percent, but not when compared to their correlating one-in-35 and one-in-100 odds.

This analysis demonstrates the need for attorneys to consider stipulations. In the case of Stephens v. State, 224 Ga. App. 184, 480, S.E.2d 235 (1997), the defendant in a rape and molestation case entered into a stipulation that he would plead guilty if a second DNA test established a probability of paternity with at least a 90 percent. That means he would test positive as the father of one out of approximately every 10 children tested at random.

Studies of paternity cases

Genetica DNA Laboratories has performed extensive DNA parentage testing throughout the last 10 years to reduce the number of false-positive test results. As a result, the company has amassed significant samples and data from proven nonpaternity cases to help test the validity of less-thorough genetic testing.

In one study, 249 nonpaternity cases were tested using a nine- or 15-genetic STR loci test.1

From the population of 249 nonfathers, one alleged father matched the child on all nine genetic sites and had a 99.66 percent probability of paternity (CPI of298). A second man in this population had a probability of paternity of 99.72 percent (CPI of 353) after 15 genetic sites were tested.

Other laboratories also have reported false-positive results when testing is stopped at a probability of paternity of less than 99.9 percent (CPI of 1,000). A case recently reported at the Twelfth International Symposium on Human Identification involved a man accused of rape whose DNA paternity test result showed a 99.3 percent probability of paternity. Only with additional testing was this man excluded as the biological father of the child resulting from the rape2. Also reported at the symposium was a case from the Arizona Public Safety Crime Laboratory that identified a match between two unrelated offenders, one Caucasian and the other African-American, who shared both alleles (genetic variants) at nine genetic loci3. In addition, the Florida State Crime Laboratory4 has reported a nine-genetic loci match between two unrelated individuals.

Advances in Technology

As recently as 10 years ago, DNA parentage testing was performed using red blood cell (RBC), serum protein testing, and human leukocyte antigen (HLA) testing. Throughout the 1980s and the early 1990s, the state legislature required a probability of paternity of 95.0 percent to 99.0 percent because available tests were limited in their ability to exclude a falsely accused man from paternity.

continued on page 11

The advent of DNA technology in the late 1980s and the early 1990s has revolutionized parentage testing by dramatically increasing the ability to accurately exclude falsely accused men. In turn, when an accused man is not excluded following thorough paternity testing, his probability of paternity will typically be greater than 99.99999 percent, thereby removing any doubts of paternity.

In an ideal world, laboratories would provide extensive testing in all cases and would test to a level of certainty as high as 99.9999999 percent or more. Currently, the technology is available to provide that level of certainty in every case. Some private attorneys routinely specify that level of testing for their private clients. Paternity testing laboratories, however, have an economic incentive to keep the level of testing as low as possible.

Considering today's technology and current economic realities, what should be the minimum level of testing? Statistical calculations predict that when the testing is stopped at the combined paternity index of 100 (probability of paternity 99 percent), one out of approximately 100 individuals in the population have the same genetic pattern as the tested alleged father.

The Uniform Parentage Act (last revisions completed in 2000)5 recommends that the threshold for the presumption of paternity be 99 percent probability. Using this guideline, both of the nonfathers in Genetica DNA Laboratories' study would have legally been presumed to be fathers. Only by increasing the threshold for the presumption of paternity to a minimum of 99.9 percent were these men correctly identified as nonfathers.

Technology is available for all laboratories to provide a CPI of 1,000 (probability of paternity 99.9 percent) at reasonable cost and turnaround time in virtually all standard parentage cases. Evidence also suggests that gains in adopting a minimum standard of a 1,000 CPI outweigh the costs, as reflected by several states increasing their standards for the presumption of paternity. Hawaii and Illinois increased the established presumption of paternity to a CPI of 500 (probability of paternity 99.8 percent). And, Louisiana has increased the established presumption of paternity with a DNA test to a minimum probability of 99.9 percent (CPI of 1,000).

Recommended legal standard for presumption of paternity

Today's DNA technology and cost indicators make it clear that there is no reason to consider any standard below a CPI of 1,000 (probability of paternity 99.9 percent). As seen in the Genetica DNA Laboratories study, the number of nonfathers legally presumed to be biological fathers is significant when testing is stopped below a CPI of 1,000. A minimum CPI of 1,000 is also important because more extensive DNA testing provides a higher degree of confidence. This increased confidence often translates into fewer disputes. Additionally, an extensive DNA test is more reliable in excluding falsely accused men who are relatives of the biological father.

In addition, Genetica DNA Laboratories recommends that the legal standard should reference the CPI of 1,000 rather than the probability of paternity of 99.9 percent. The CPI reflects more accurately the difference between higher and lower levels of testing. To the casual observer, the difference between 99 percent probability and 99.9 percent probability is not as obvious as the corresponding difference in the paternity index of 100 versus 1,000. This phenomenon is even more apparent when you consider that the two nonfathers in the Genetica DNA Laboratories study had probabilities of 99.66 percent and 99.72 percent and CPIs of 298 and 353 — significantly less than the recommended minimum CPI of 1,000.

In addition to establishing a minimum CPI of 1,000, the law should provide that a genetic test cannot establish a presumption of paternity unless that same test also excludes at least 999 out of 1,000 non-fathers (excludes at least 99.9 percent of the population). This is the only way the law can ensure that tests establishing a presumption of paternity will exclude some minimum percentage of the population.

The minimum legal standard for the presumption of paternity by genetic testing must keep pace with advances in technology. The standard of 97 percent probability of paternity belongs in the past decade. In 2002, DNA technology and economic realities require a new standard. This new standard should read: "The legal threshold for the presumption of paternity through genetic testing requires a minimum combined paternity index of 1,000 and a minimum exclusion of 99.9 percent of men in the population."

At a minimum, lawyers representing fathers in a paternity matter should demand the more-extensive paternity test. Until the legal standards change, studies indicating false-positives when the probability of paternity is 99 percent, much less 97 percent, may be the key to "clear and convincing evidence" necessary to rebut the current presumption.

ENDNOTES:

1. Research study was conducted by Genetica DNA Laboratories, Inc., Cincinnati, Ohio. This study was supported in part by Applied Biosystems. The nine genetic sites tested included the following STR loci: D3S1358-3, VWA-12, FGA-4, D5S818-5, D13S317-13, D7S820-7, D8S1179-8, S21S11-21, and D18S51-18. The 15 genetic sites tested included the nine loci listed above and the following additional six STR loci: THO1-11, TPOX-2, CSF1PO-5, D16539-16, D2S1338-2, D19S433-19. The study was presented in part at the Twelfth International Symposium on Human Identification. October 9-12, 2001.
2. Twelfth International Symposium on Human Identification. October 9-12, 2001. Bio Links, Lima, Peru.
3. Twelfth International Symposium on Human Identification. October 9-12, 2001. Arizona Department of Public Safety Crime Laboratory.
4. Florida State Crime Laboratory (personal communication).
5. Uniform Parentage Act (Last Revisions Completed Year 2000); National Conference of Commissioners on Uniform State Laws, January 5,2001.

Eric Schurdak, M.S., Timothy Boyer, Ph.D., and Nina King, M.D., Ph.D., all of Genetica DNA Laboratories, also contributed to this article.

CLE Opportunities

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Successful Trial Practice Video Replay (6 CLE Hours)
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March 14
Art of Advocacy (6 CLE Hours)
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Emory Law School, Atlanta

March 20
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Resource Forum, Atlanta (3 CLE Hours)

March 20
Bare Knuckles with the Judges (4 CLE Hours)
Atlanta

March 21
Professionalism and Ethics Update (3 CLE Hours)
Statewide Satellite Broadcast

March 27
Jury Selection (6 CLE Hours)
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April 18
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April 25
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April 25
QDRO's Made Easy (4 CLE Hours)
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GEORGIA CASE LAW UPDATE

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CHILD SUPPORT

Corson v. Marbel, A02A0983 (10/11/02)

In the parties' divorce decree, the mother was granted custody of the parties' minor child, and the father was ordered to pay child support, which he did for several years, along with maintaining health insurance for the child and paying some of the uncovered expenses. Several years later, the child turned sixteen and elected to live with the father. At a hearing, the issue for the trial court to decide was whether the mother should be ordered to pay child support. The trial court held that the mother was not required to pay any child support to the father but made no written findings of fact as to why it was departing from the guidelines.

The evidence showed that the mother was employed; that she had remarried and her husband was employed; that they had a baby who had no special needs; and that the mother did not want to pay child support. There was no evidence that the child support amount according to the guidelines would be excessive.

On appeal, the Court of Appeals reversed the judgment and remanded with direction to the trial court to apply the guidelines set forth in O.C.G.A. 19-6-15. The Court of Appeals stated in its direction to the trial court that it must enter written findings of special circumstances as enumerated in the guidelines if the court is going to depart from them.

Eleazer v. Eleazer, S02A1215 (9/16/02)

The parties were divorced after a bench trial. The trial court awarded legal and physical custody of the children to the wife and ordered the husband to pay child support in the amount of $2,500 per month. The court did not make any findings as to the parties' gross incomes, the calculation of the applicable percentage of child support according to the guidelines nor any findings justifying a departure from the guidelines. On appeal, the husband alleged that the trial court committed error by failing to enter such findings as part of its Final Judgment and Decree.

The Supreme Court agreed with the husband, vacated the order and remanded the case for the trial court to make written findings in accordance with O.C.G.A. 19-6-15. The Supreme Court held that a decree containing an award of child support must comply with O.C.G.A. 19-6-15 and contain a written finding of the gross income of each party, and the presence or absence of special circumstances authorizing a departure from the guidelines. The obvious practice tip from these two cases is to make sure all your final decrees, whether a case is finalized by agreement or trial, contain the necessary information set forth in O.C.G.A. 19-6-15, including the gross incomes of the parties, the amount of child support, the appropriate percentage range, and the list of special circumstances and whether any apply.

Richardson v. Levitt S02A0956 (9/16/02)

The Settlement Agreement of the parties stated that the husband would pay 25 percent of his gross monthly income to the wife as child support, and that he would pay an additional 25 percent of the net of any future bonus or salary increase from his employment which he received in a year in which the child support obligation was ongoing. The Agreement also stated that the husband would retain his entire pension and retirement account with his employer, IBM.

The year following the entry of the Final Decree, IBM offered to its employees, in an effort to cut back total employees there, the opportunity to participate in a pre-retirement leave of absence program. The purpose of the program was to provide transition assistance to employees who agreed to leave IBM for other employment or retirement. An employee participating in this program would receive one week of pay for each six months of service fully or partially completed, for a maximum of 52 weeks. The husband accepted the offer and received a lump sum payment of $83,463.89. This payment was made in addition to any accrued retirement income, which benefits would begin at the end of the leave period and upon eligibility.

The wife filed a contempt action against the husband for failure to pay 25 percent of the net of the lump sum payment received by the husband for opting into the leave of absence program, claiming that such amount was additional child support under the parties' agreement. The trial court found the husband in contempt for failure to pay the additional child support amount.

The Supreme Court agreed with the trial court and found that the husband's lump sum payment was employment compensation rather than a retirement benefit. The Supreme Court construed the payment in the nature of a continuation of the husband's salary to compensate him after his separation from IBM during his transition to other employment or retirement but prior to the time he actually would take his retirement pay. Thus, such payment was subject to the child support escalation clause of the parties' Agreement, and the husband was required to pay the applicable percentage of the lump sum payment to the wife.

CONTRACT INTERPRETATION

Carlos v. Lane, S02A1333 (10/28/02)

The Settlement Agreement of the parties in this case had the following provision:

> "[The parties] waive their respective statutory right to future modification up or down of the alimony payments for which this Agreement provides, based upon a change in the income or financial status of either party. The statutory modification rights waived herein shall include those rights set out in OCGA 19-6-19, et seq."

The husband filed a petition to modify his alimony obligations based upon the live-in lover provision in OCGA 19-6-19(b). The trial court dismissed his petition, finding that the Agreement contained a valid waiver of the right to modify alimony for any reason. The Supreme Court affirmed, and found the words "et seq" in the Agreement showed an intent by the parties to waive all statutory rights to modify alimony, including OCGA 19-6-19(b). The Court found that if the parties had intended to omit OCGA 19-6-19(b) from the waiver, they could have done so. The Court found that since the Agreement referenced the statute in its entirety, the husband was foreclosed from bringing any action to modify alimony.

The Supreme Court was split in its decision as three Justices dissented. In the dissent, Justice Carley wrote that the majority's decision was a departure from the state's longstanding "clear and express waiver" rule, and replaced it with a "clear and express nonwaiver" rule. According to Varn v. Varn, parties are required to expressly state the rights they are waiving. The dissent noted that citation of the statute itself was not enough to constitute a waiver of all the rights contained in that statute, particularly since the Agreement specifically referenced waiving the right to modify in the event of a change of income or financial status of either party but contained no reference to the live-in lover provision. The dissent stated that the majority's decision in this case was a departure from settled and well-reasoned precedent.

Horwitz v. Weil, S02A1073 (9/16/02)

The issue in this case was whether a paragraph in the parties' Settlement Agreement was ambiguous and unenforceable. The parties were divorced in 1991. The paragraph in question provided as follows:

> "Notwithstanding anything herein to the contrary, the husband agrees that upon the sale of the marital residence or on April 1, 2001, whichever event first occurs, he shall pay from the proceeds of the sale to Wife all of the net proceeds from the sale of the house, but not more than $50,000.00."

The trial court found that the above provision was not ambiguous and that the husband's obligation to pay was contingent upon his sale of the house prior to April 1, 2001. Because the house was not sold by April 1, 2001, the husband was relieved of his obligation to pay and could not be found in contempt.

The Supreme Court disagreed and found that the agreement imposes an unconditional requirement that the husband pay in either of two specified events, but then provides for a source of payment which would exist only upon the occurrence of one of the alternatives. Thus, there is an ambiguity as to the rights and responsibilities of the parties when April 1, 2001 passes and there are no actual sales proceeds from the residence.

Once the Court determined that an ambiguity existed in the Agreement, it found that the background of the contract and the circumstances under which it was entered into were to be considered. The Court found that the above provision was found in the "Division of Property" section of the Agreement and was meant to reimburse the wife for her interest in the marital residence. The Court found that, applying the rules of contract construction to resolve the ambiguity, the husband's obligation to pay became unconditional after April 1, 2001, even if he had not sold the house by that time. Otherwise, under the husband's interpretation, the provision would be an illusory contract that could be defeated by husband's failure to sell the house by April 1, 2001.

The Supreme Court also found that the Agreement did not require the existence of actual sales proceeds. The intent of the parties was for the wife to be paid either from the proceeds of the sale of the residence or in accordance with a hypothetical sale, the price which could have been determined by expert opinion evidence. Furthermore, the Agreement contained a definition of net proceeds, and determination of the amount was a matter of simple calculation.

CUSTODY-MODIFICATION

Bodne v. Bodne, A02A1380 (10/08/02)

In the parties' Settlement Agreement which was incorporated into their final decree of divorce, they agreed that they would have joint legal custody of their two children, with the father having primary physical custody of them, and the parties having approximately equal time with the children. Fifteen months after the divorce, the father remarried and informed the mother that he was moving to Alabama with his new wife and the children. The father filed an action to modify the mother's visitation to accommodate the move. The mother filed a counterclaim seeking a change in physical custody, claiming the father's move constituted a change in material condition authorizing a change in physical custody.

The trial court agreed with the mother and held that, because the move to Alabama made it impossible for the parties to spend equal time with the children, a material change had occurred which justified changing physical custody. There was evidence at trial that the children were doing well in school in Alabama; and evidence of the mother's improvement of her condition since the divorce. There was no evidence presented of a worsening of the father's parenting abilities nor of a worsening of the children's condition.

The Court of Appeals reversed the trial court and held that the standard is not an improvement of the non-custodial parent's situation, but rather a worsening of the custodial parent or a change in the children's condition which would necessitate a change in custody to promote their welfare. This standard was not met in this case. However, the Court of Appeals noted that the father's relocation might necessitate a modification of the mother's visitation, and thus remanded the case to the trial court for further proceedings on the issue of visitation.

PATERNITY AND LEGITIMATION

Banks v. Hopson, S02A1294 (10/15/02)

In this case, the Supreme Court resolved the conflict between O.C.G.A. 19-7-40(a) which prohibits jury trials in paternity cases, and O.C.G.A. 19-7-22(f) which allows jury trials in legitimation actions. The parties in this case were not married; the mother filed a paternity action against the father asking the court to determine whether he was the biological father of the child, and to order the father to pay child support. The father admitted paternity and filed a complaint for legitimation, which was ultimately consolidated with the paternity action with the parties' consent. The mother filed a demand for jury trial which was denied by the trial court on the basis that there is no right to jury trials in paternity actions.

At trial the father admitted and stipulated that he was the biological father of the child, and the mother consented to the legitimation. The trial court deemed the child legitimate, ordered the father to pay child support and awarded him visitation rights with the child.

The mother appealed, claiming she had the right to have a jury trial since paternity was not an issue at trial because the father had stipulated to that issue. For that reason, the mother claimed that O.C.G.A. 19-7-40 did not control, and, instead, O.C.G.A. 19-7-22 applied as legitimation was the only issue for the court to determine.

The Supreme Court looked to the historical purpose of paternity actions and the legislature's reasons for eliminating the right to jury trials in such actions. The legislature intended that the purpose of paternity actions was to decide the identity of the father and his duty to support the child, and the sole effect of a paternity order was to establish the duty of a father to support his child. The prohibition of jury trials in paternity actions eliminated a previously used dilatory tactic to delay having to pay child support, and allowed for a more efficient determination of child support.

The Supreme Court held that the procedures adopted by the legislature in the paternity statutes, including the ban on jury trials, were designed to ensure the establishment of a father's duty to support his child. Thus, neither the consolidation of paternity and legitimation actions nor a father's admission of paternity would transform the case into one controlled solely by the legitimation statutes. Such a result would allow a parent to circumvent the legislative ban on jury trials, which would be a procedural device a parent could employ to obtain indirectly a right expressly prohibited by statute. Thus, when a legitimation action is consolidated with a paternity action, there is no right to a jury trial.

Editor's Column

Kurt Kegel, Davis, Mathews & Quigley

Opportunities Abound

With the dawn of the New Year comes many opportunities and changes that can be equally rewarding, challenging and potentially dangerous. In this, our first edition of 2003, you will notice an emphasis on one particular such change which we, as family law practitioners should wholeheartedly embrace with an equal degree of enthusiasm and caution.

As many of you may now know, as of January 6, 2003, the Supreme Court enacted a Pilot Project wherein all non-frivolous Applications for Discretionary Appeal in Divorce and Alimony cases will be granted through December, 2003. This is an opportunity which many of us have been seeking for many years in an effort to address what we see as inadequacies in the common law on many of the issues that family law practitioners face on a regular basis.

Earlier this month, I was provided the opportunity to sit down with Justice Leah Ward Sears in her chambers to discuss the Pilot Project and the implications to the Family Bar. Of course, I, along with Sandy Bair, took advantage of that opportunity. Included in this edition is a transcript of that interview. I think you will find Justice Sears' comments thoughtful and enlightening. Equally as salient are her words of caution that this opportunity not be abused.

Of course, other Justices have also addressed the Pilot Project in conversations with members of the Bar. One overriding theme seems to exist, which the Family Bar must accept. The Pilot Project has been enacted in an effort to determine whether direct appeal will work. As such, it is incumbent upon us to not abuse the process.

The Supreme Court, utilizing their rule making authority, has enacted this Pilot Project in an effort to accumulate facts and information regarding the appeals of Divorce and Alimony cases. As you well know, there have been many efforts by family law practitioners over the years to implement legislation which would allow direct appeals in all Divorce and Alimony cases. Of course, the Court has been resistant to such legislation being passed, and the legislators know their position. However, in response to the repeated requests from the Family Bar, the Supreme Court is going to review the process in an effort to determine the best way to address everyone's concerns.

The danger with this Pilot Project will present itself if the process is abused. Therefore, when reviewing an issue for appeal, we must look at that appeal as part of the big picture and determine whether a wrong does in fact need to be corrected or an area of our law needs clarification. If so, you have the means available to address the issue. However, if the practitioner is faced with a situation wherein a client is simply upset or mad because he or she does not like the results, that is a situation wherein we, as the family law practitioner, have the responsibility to counsel that client as to whether the appeal is warranted, or will it be dismissed as frivolous. If it is deemed frivolous, the attorney will be fined and that appeal will count as a mark against continuing with direct appeals. By the same token, if an appeal is undertaken and that case is subsequently settled before the appeal is heard, resulting in a dismissal, we must let the Court know that the parties settled the case, rather than continuing to expend attorney's fees, or for some other valid reason, or statistically that appeal may be viewed by the Court as one that was taken purely to gain a procedural or technical advantage. The end result of that scenario will be that the Court will be left with the impression that the system is being abused and we will be back at square one, or worse.

So, let's take advantage of the opportunity that has been presented to us by clarifying areas of the law and bringing issues to the Court which need to be addressed, but when taking advantage of this opportunity, don't abuse it or we will all lose in the end.

Kurt A. Kegel

Don't Forget . . .

. . . The 2003 Family Law Institute will be held at Amelia Island, Florida, May 22-24.

SEE YOU AT THE BEACH

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