The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia March 2004

QDRO Basics:

10 Things Every Divorce Lawyer Should Know

by Emily Widmann McBurney, Esq.
Davis, Matthews and Quigley, P.C.
emcburney@dmqlaw.com

You're in the middle of complicated settlement negotiations. The parties have finally worked through their volatile custody issues, and now they're tackling financial matters. Bank accounts, debts, sale of the marital home – all of these issues are resolved after much debate between the parties and counsel. Retirement funds? Both sides agree to simply split them in half: "Husband shall transfer fifty percent (50 percent) of his retirement funds to Wife by Qualified Domestic Relations Order (QDRO)." That was easy. You move on to the next issue, and start making detailed lists of who gets each item of the parties' china, silver, and household appliances. At the end of a long day, the parties have reached agreement on all issues, and you breathe a sigh of relief. You just have a few loose ends to tie up, like the QDRO, before you can close the case.

For too many lawyers, that sigh of relief turns out to have been premature. It seems that more often than not, QDROs cause problems long after the case should be finished. Although the parties' agreement seemed simple and clear at the settlement conference, months after the final judgment, all sorts of arguments have arisen over retirement issues. What is supposed to be the date of division: the date of the mediation or the date of the divorce (which ended up being four months later, and the market tanked in the interim)? Is the Wife supposed to be treated as the surviving spouse? Who is responsible for the outstanding loan balance in the account? Months later, these loose ends are costing your client a fortune to resolve, and taking up precious hours of your time. Meanwhile, your client is angry that she's been divorced for six months but somehow you are still billing her monthly because you can't seem to finish up that QDRO.

It doesn't have to be this way. A little preparation on the front end can save you and your client a lot of time and money at the end of the case. Here are 10 things for

see QDRO on page 4

Inside This Issue

Update on the Supreme Court's Pilot Project on Divorce and Alimony Cases

By Jeanney M. Kutner
jeanneyk@mindspring.com

On Dec. 11. 2003, the Supreme Court issued a statement extending its pilot project to grant all non-frivolous applications for discretionary appeals in divorce and alimony cases for another year, until Dec. 16, 2004.

All lawyers filing such applications must continue to 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." The certificate must also state that the lawyer is familiar with the trial court record in the case and has a good faith belief that the application has merit, based upon the record and applicable law. Additionally, the lawyer must certify that he/she has been authorized by the client to file the application.

When the Supreme Court dockets an application for discretionary review, the docketing notice contains information concerning the pilot project. However, such notice does not signify that the particular application is part of the project. The respondent of an application would be well advised to file a response if he/she believes that the application falls outside the parameters of the pilot project and to so state in the response. If an application falls within the pilot project, the only response permitted is one addressing whether the application is frivolous and it is limited to five pages.

In conversation, Justice George H. Carley relayed some thoughts about the extension of the pilot project and the Court's view so far:

The extension involves the same parameters as the first year of the project, that is, the pilot project provides an automatic grant to nonfrivolous applications for discretionary review from divorce cases.

The Court collects data weekly. However, the justices have determined that one year was not sufficient time to review and evaluate the new procedure. Preliminary statistics indicate that the new procedure might make appellate work more manageable. As of Feb. 16, there had been 52 pilot project applications filed. Of these, 37 were granted. Of the 15 that were denied, reasons included jurisdictional problems or failure to follow procedures. Sometimes lawyers failed to provide the Court with the required certificate. Of the 85 non-pilot project domestic relations applications filed during this same time period, 12 were granted and 73 were denied. (This means that of the total number of domestic relations applications, 35.7 percent have been granted.)

The Court is tracking the outcome of applications granted under the pilot project. Justice Carley feels certain that as many as 25 percent may not lead to opinions. The main reasons why a granted application does not reach finality is that the case may settle after an application for appeal is granted; the client may not want to pay attorney's fees for the appeal; or the trial court record may prove to be too costly for the client.

While some well-known family lawyers have asserted that an application was frivolous, there have been few dismissals due to frivolity. Justice Carley emphasized that there is a big difference between totally lacking in merit and being frivolous. There have also been surprisingly few cases in which the Court has affirmed the trial court without written opinion under

Supreme Court Rule 59. The Court has not dismissed any pilot project applications as improvidently granted at a later date.

The justices have not had sufficient time to discern a real difference between an application granted automatically and one granted on the merits. Anecdotally, Justice Carley has felt in a few cases that a case that he would not have granted provides an interesting issue once the record has been sent up and the justices can take a thorough look at the case.

Has the pilot project effected the substantive changes in the law? Because applications included in the pilot project were first granted some time in February, no opinions were issued under the project until September 2003. Only eight opinions have been issued as part of the pilot project to date. Six additional appeals are scheduled for oral argument between January and March 2004.

A variety of issues have been raised and decided already. In *Esser v. Esser*, 277 Ga. 97 (2003), the Court reversed the trial court's application of child support calculations and remanded the case. In *Wright v. Wright*, 277 Ga. 133 (2003), the Court affirmed the trial court's division of marital and non-marital assets. In *Walters v. Walters*, 277 Ga. 221 (2003), the Court reversed the trial court's dismissal of a divorce case for lack of personal jurisdiction over the defendant, reciting the correct burden and evidence necessary to establish long-arm personal jurisdiction. In *Staffon v. Staffon*, 277 Ga. 179 (2003), the Court affirmed the trial court, establishing that a substantial decrease in income due to incarceration following conviction for criminal conduct does not warrant a modification of child support obligations. In *Carson v. Carson*, 277 Ga. 355 (2003), the Court affirmed the trial court's award of attorney's fees. In *Pope v. Pope*, 277 Ga. 332 (2003), the Court affirmed the trial court's authority to set aside a judgment within the same term of court to provide a rehearing with the defendant having proper notice. In *Knott v. Knott*, 277 Ga. 380 (2003), the Court reversed the trial court's order of contempt that was based upon its construction of a settlement agreement pursuant to a divorce. In *Moon v. Moon*, 277 Ga. 397 (2003), the Court affirmed the trial court's determination on custody, visitation and child support issues and reversed and remanded the case as to the statutory basis to support the award of attorney's fees. Of these eight opinions, four were affirmed with all the justices concurring and three were reversed with all the justices concurring.

The Court has indicated that the term, "appeals from all divorce and alimony cases," excludes such applications as those from modification cases, from contempt orders arising out of divorce cases, and from other orders such as arbitration awards from divorce cases. The Court clarified this intent by posting a "Limiting Order" on its Web site, www.state.ga.us/courts/supreme:

The motion for reconsideration of this Court's denial of the application for discretionary review is denied. On motion for reconsideration, applicant asserts her application should stand automatically granted under this Court's January 2003 pilot project. The pilot project is applicable to "all non-frivolous applications in divorce and/or alimony cases," i.e., those discretionary applications timely filed from the final judgment and decree of divorce. Applicant's discretionary application, timely filed from the entry of a declaratory judgment in which the trial court construed the previously-entered final judgment and decree of divorce, does not fall within the pilot project and was denied after a review of its merits pursuant to OCGA § 5-6-35(a)(2).

During 2003, several important opinions were issued that did not qualify as part of the pilot project. In *Bodne v. Bodne*, 277 Ga. 445 (2003), a granted certiorari from the Court of Appeals, the Supreme Court addressed for the first time in 25 years the effect of relocation on change of custody. In *Scott v. Scott*, 276 Ga. 372 (2003), an application from a modification action, the Court addressed the issue of self-executing change of custody provisions and

see Pilot Project on page 17

QDRO
Continued from page 1

attorneys to keep in mind while preparing for settlement conferences and drafting settlement agreements. Some QDRO issues will always rear their ugly heads when you least expect them, but paying attention to these 10 issues early in the case will save you countless hours and headaches later.

1) What kind of plan(s) do the parties have?

Most settlement agreements refer to the parties' retirement plans, without specifying whether they are defined benefit or defined contribution plans, or both. In simplest terms, a defined benefit plan is what people commonly refer to as a pension. A defined benefit plan is what an employee has if, after working for a company for a certain number of years, she will get a guaranteed amount of money every month for the rest of her life after she retires. There are many variations in the form of defined benefit plans, but the basic idea is that the employee has a guaranteed benefit, normally based on years of service with the company. Most defined benefit plans pay out the benefits in the form of monthly payments of a specific dollar amount, but some defined benefit plans provide for a lump sum payment and many other options.

The most common type of defined contribution plan is a 401(k) plan. The basic idea is that the employee has a specific account into which funds are contributed over time. The amount in the account will fluctuate with the market and the amount of contributions made by the employee and the employer. Thus, there is no guarantee of how much money will be in the account when the employee retires.

The distinction between the two types of plans is important because you need to know what you are really dividing. Is it the right to receive monthly payments in the future, or part of an account with an identifiable balance that is fluctuating over time? The relevance of various issues, such as surviving spouse benefits, cost of living increases, earnings and losses, and loans depends on whether you are dealing with a defined benefit or defined contribution plan. It is surprising how often settlement agreements contain statements such as, "Wife shall receive one half of Husband's Pension Plan as of the date of the divorce, plus or minus earnings and losses from that date until the date the account is divided." This presents a problem, since the concept of earnings and losses does not apply to pension (defined benefit) plans. As discussed above, payments under defined benefit plans do not fluctuate with the market, and thus there are no earnings and losses.

2) Do they need a QDRO?

Not every retirement plan requires a QDRO. Settlement agreements often provide that an Individual Retirement Account (IRA) will be divided by QDRO, but a QDRO is not necessary to divide up an IRA or SEP (Simplified Employee Plan) account. Division of an IRA should normally only involve a letter of instruction from the participant, along with a copy of the final judgment and decree. Of course, needless confusion results when the agreement states that there will be a QDRO when none is actually needed.

Another point to consider is that it often does not make financial sense to agree to a division of assets which will require a QDRO when the (defined contribution) account to be divided does not have enough money in it to make a QDRO worthwhile. If the account is only worth $5,000, it is foolish to go through the lengthy and expensive QDRO process (which often costs more than $1,000 in attorney's fees) to give each party $2,500. Although there are some cases in which the parties insist that every account be divided in half, regardless of the cost and inefficiency involved, in many cases the parties could save themselves some money and aggravation simply by agreeing to transfer funds from an IRA or other asset rather than from a defined contribution plan. If the parties have other assets to choose from, consider whether it is absolutely necessary before agreeing to divide a small retirement plan by QDRO.

3) Can you do a QDRO for this plan?

Sometimes attorneys learn the hard way that some plans are simply not divisible by QDRO. Georgia State or county pensions, such as the Georgia Teachers Retirement Plan, are not subject to QDROs and *cannot be divided*. The same is true for retirement plans offered through religious organizations (church plans). It is never pleasant to learn this after the divorce is final. In some unfortunate cases, a pension plan is literally the parties' only asset. Imagine the reaction of the client who learns that there is no way for her to obtain the pension payments awarded to her in the divorce decree. In such cases, often the only option is for the employee spouse to write a check to his former spouse for her share of each pension payment as he receives it. Obviously, there are many serious drawbacks to this scenario and it is to be avoided if at all possible.

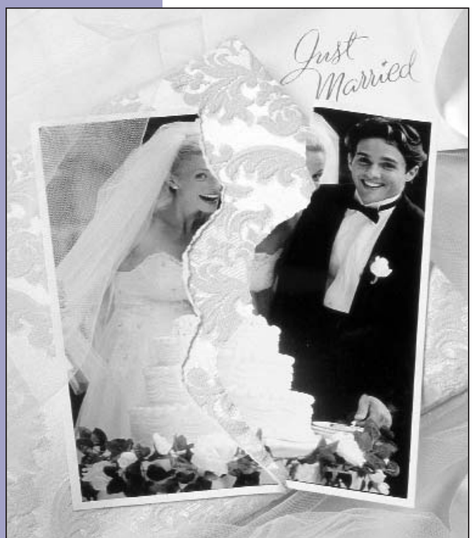
Many employees participate in non-qualified retirement plans which are also not divisible by QDRO. A non-qualified plan is a retirement plan which is not subject to ERISA, and thus not required to accept QDROs. These plans are usually set up by corporations in addition to their qualified retirement plans in order to provide higher-paid employees with more retirement benefits than the tax code will permit under qualified plans. They are sometimes referred to as supplemental plans because they are intended to supplement the retirement funds the employee will receive from the company's qualified retirement plans. Some non-qualified retirement plans accept QDROs, but many do not, so it is a good idea to find this out before agreeing to divide a non-qualified plan in a divorce action.

If you can't find out whether a particular plan is subject to a QDRO before the agreement is finished, it is good practice to set up an alternative mechanism in the settlement agreement for dividing the funds. "In the event that the Wife's XYZ Corporation Non-Qualified Supplemental Retirement Plan ('the Plan') cannot be divided by Qualified Domestic Relations Order, the parties agree that the Husband shall receive $15,000 from the Wife's IRA in lieu of the funds awarded to him herein from the Plan."

4) Do you have the correct name of the plan?

Believe it or not, knowing the correct name of the plan can be the key to finding crucial information. For example, if the parties have been talking about the Husband's "retirement plan," but no one has specified what sort of plan it is, you can learn a lot from finding out that the plan is called the "ABC Corporation 401(k) Plan," as opposed to the "DEF Corporation Qualified Pension Plan," or even the "GHI Corporation Non-Qualified Supplemental Income Plan for Highly Compensated Employees." These plan names tell you a lot about the parties' retirement assets (specifically, whether they participate in a defined contribution, defined benefit, or non-qualified plan).

Specific plan names also provide information regarding which retirement plans the employee participates in. In many cases, the parties simply refer to the employee spouse's retirement plan, when he actually participates in the company's 401(k) plan, a pension plan, and a non-qualified plan. If the settlement agreement awards the Wife half of Husband's "retirement plan," what will happen when you discover, post-divorce, that there are actually three plans, all of which have very different features? Further, if the agreement refers only to the "JKL Retirement Plan," and it turns out that the employee participates in three retirement plans with the company, one of which is actually called the "JKL Retirement Plan," the employee might later take the position that the non-employee spouse is only entitled to a portion of the "JKL Retirement Plan," since that is what the plain language of the settlement agreement specifies and refuse to divide the funds in the other plans. Simply put, it pays to find out in advance the exact names of all of the plans in which the employee spouse participates.



5) What is the date of division?

Many settlement agreements fail to state a precise date for the division of retirement assets, and believe it or not there is quite a bit of QDRO litigation on this issue. Always state the date as of which the funds are to be divided ("Husband is awarded one-half of the account balance as of June 1, 2004 [or, "the date of the Final Judgment and Decree," or any other date to which the parties have agreed])." If you don't include this simple information in the agreement, you may find yourself litigating the issue of whether the parties intended the benefits to be divided as of the date the divorce was filed, the date of the mediation, the date the agreement was signed, the date of the final judgment and decree, or some other date. For a defined contribution plan, if the market spikes up or down during this period, and the agreement is not specific, the parties may fight relentlessly over which date of division should control. Thousands of dollars could be at stake for your client.

The only exception to this rule is when a specific dollar amount is awarded in a defined contribution plan, and the parties do not intend for this amount to be adjusted for earnings and losses. If the parties have agreed that the Wife shall receive exactly $50,000 from the Husband's plan, then the date of division is not relevant.

6) Will the amount awarded be adjusted for earnings and losses?

There is usually a delay of several months between the date of division and the date that the funds in a defined contribution plan are actually divided. That is, an agreement may specify that the funds shall be divided as of July 1, 2003, but this division does not actually take place until the QDRO is entered the following December. If the agreement states that Wife shall receive 50 percent of the Husband's 401(k) plan balance as of July 1, 2003, and the account was worth $100,000 on July 1, 2003, but has grown to $106,000 by December, what should the Wife receive when the account is divided? Fifty thousand dollars, or 53 thousand dollars? The agreement must specify what happens to earnings and losses on the amount awarded to the Wife between the date of division and the date the funds are actually distributed to her.

Obviously, your position on this matter may depend on which party you represent and the facts of the case. If you agree on a specific dollar amount or percentage of the account as of a certain date, with no adjustment for earnings and losses, then the employee spouse is going to bear all of the potential risk and potential benefit of the market falling or rising. If the market goes up dramatically, he will be very happy. If it goes down, he may resent having to transfer $50,000 to his ex-wife, because this now represents a greater percentage of the account balance. Conversely, the Wife will be happy with her guaranteed $50,000 if the market falls, but unhappy that she is not getting a share of the gains if the market goes up.

If you agree that the awarded amount will be adjusted for earnings and losses, then neither party's interest should be affected by the amount of time it takes to complete the QDRO process. Even if the plan does not actually divide the account until, say, Dec. 15, 2005, each party will still get exactly what he or she would have received if the account had been divided on July 1, 2003. Essentially, the plan will do calculations which will make it just as if a separate account had been established for the Wife on July 1, 2003, and then her account independently rose and fell with the market between that date and Dec. 15, 2005.

7) Who is the surviving spouse?

One of the trickiest QDRO issues is that of the surviving spouse designation. This is a complicated topic, but there are ways to address it in your settlement agreements to avoid QDRO agony later on. Attorneys often stumble over the surviving spouse issue because it seems like a moving target. Perhaps this is because there is a great difference in the nature and meaning of the surviving spouse designation between defined contribution plans and defined benefit plans. Further, there is an important distinction in defined benefit plans between surviving spouse benefits before the employee retires and after retirement.

In a defined contribution plan, surviving spouse benefits are relatively simple: there generally aren't any. There is a certain amount of money in the account, and once the funds are transferred, the death of either spouse will not affect either party's account. When you designate the non-employee spouse as the surviving spouse of a defined contribution plan, you are really just making sure that she gets the portion awarded to her, even if the employee spouse dies before the funds are transferred to her. The agreement should state that "Wife shall receive her portion of the MNO Corporation 401(k) Plan without regard to the death of the Husband." If you designate the non-employee spouse as the surviving spouse with respect only to her benefit, she will receive exactly what she was awarded in the agreement. If you designate her as the surviving spouse with respect to the Husband's entire benefit, she will probably get the whole account balance if Husband dies before her portion is transferred to her.

Defined benefit plans present much more complicated issues with regard to surviving spouse benefits. The consequences of handling this incorrectly can be enormous, so it is important to grasp the basic issues. In many defined benefit plans, if the non-employee spouse is not designated as the surviving spouse in the event of the employee spouse's death before retirement, the non-employee spouse will get nothing if the employee spouse happens to die prior to retirement. This is often something that neither the parties nor counsel understand or intend, and it is almost always irrevocable by the time this mistake is discovered.

There are too many variables in this area to discuss adequately here, but it is important for attorneys to understand that, under ERISA and the terms of most plans, if the employee spouse dies prior to retirement, his surviving spouse will receive a Qualified Pre-Retirement Survivor Annuity (QPSA) which is equal to 50 percent of his benefit. Assume that you are negotiating a settlement in which the parties have agreed that the non-employee Wife should receive one half of the pension. In most cases, if the Husband dies before he reaches retirement, Wife will either receive nothing, or 25 percent of the benefit, or 50 percent. Under most plans, she will get nothing if she is not designated as the surviving spouse for the QPSA. She will get 25 percent of the benefit, instead of the 50 percent she expected, if she is designated as the surviving spouse for only her portion of the benefit. She will only get the full 50 percent that she expects if she is designated as the surviving spouse for the entire QPSA.

To make matters even more complicated, the death of the employee spouse after retirement presents a whole different set of issues. In many defined benefit plans, the non-employee spouse receives a completely separate benefit, such that the death of the employee spouse following retirement has no effect on the benefit. Then there is no need for the non-employee spouse to be designated as the surviving spouse after retirement. In other plans, however, the parties' benefits are linked, and the death of the employee spouse can affect the non-employee spouse's benefit, so the surviving spouse issue must be addressed.

This is a topic that could be the subject of a seminar on its own. The bottom line is that, when you are dealing with a defined benefit plan, you need to specify whether and to what extent the non-employee spouse is to be designated as the surviving spouse, before and after retirement.

8) Is there a loan balance?

Existing loan balances in defined contribution plans are often overlooked when drafting settlement agreements. In fact, account statements frequently make it difficult to determine whether an account has an existing loan balance. This is because defined contribution plans often use confusing terms to refer to the total balance. Statements may show a "total balance" of $50,000 in bold type, but show elsewhere that the "total account value" is $75,000, due to an outstanding loan on the account. In most plans, an outstanding loan is considered an asset which should be added to the total balance when determining the true value of the account. However, most plans cannot award any portion of a loan balance through a QDRO.

To protect your client from a post-divorce loan surprise, you should determine whether there are any existing loans on the defined contribution plan you are dividing. If there are not, be sure to include language in the settlement agreement (especially if you represent the non-employee spouse), asserting that there are no loans on the account and prohibiting the employee from taking any until after the completion of the QDRO and division of the account.

If there is an existing loan, find out what the loan was used for. If the funds were used to repair the gutters on the marital home to prepare it for sale, the parties might agree that the loan balance should be equally shared. In this case, the agreement should provide that the loan be excluded from calculations of the non-employee's share. If, however, Wife has taken $25,000 out of her 401(k) plan to pay your fees or to buy gifts for her boyfriend, the parties may agree that the loan balance should be included when calculating Husband's share. This means that if there is $50,000 in the account, plus a $25,000 loan balance, Husband will receive $37,500, while the Wife will receive $12,500 plus the $25,000 loan balance, which represents funds she has already received from the plan. You may also want to include a prohibition on any further loans while the QDRO is pending, depending on which party you represent.

Further, in cases in which one spouse is to receive 100 percent of a defined contribution plan, you must determine whether there is an outstanding loan because the plan will generally not transfer a loan to the non-employee spouse. The plan may also need to hold back sufficient funds to cover the loan. Thus, 100 percent can be substantially less than that, and it pays to find this out in advance.

Who is entitled to subsequent contributions? In some defined contribution plans, employer and/or employee contributions are not made monthly or with each paycheck. Many profit sharing plans make no employer contributions until after Dec. 31. Receipt of a contribution for the calendar year may be dependent on whether the employee is employed by the company on Dec. 31. In some situations, this may prevent the non-employee spouse from receiving a considerable amount of money. For example, if the parties are dividing their assets as of Nov. 30, 2003, and they agree to split the Husband's 401(k) plan in half, but the employer's contributions for 2003 will not be made until January or February 2004, Wife may lose out on a substantial sum of money (the maximum for 2003 was $40,000) which is arguably marital property to be divided. For example, if the employer contribution will be $20,000, Wife might be entitled to fifty percent of 11/12 of $20,000, or $9,166.66. In this case, the agreement should specify that Wife shall be entitled to a proportionate share of contributions made to the plan for the 2003 plan year attributable to the period ending Nov. 30, 2003. This way she will get half of the contributions accrued during the first 11 months of the year, (50 percent of 11/12). If not, you may want to specify that Wife shall not be entitled to a share of any funds contributed to the plan following Nov. 30, 2003.

10) Who is drafting the QDRO?

A frightening number of agreements do not specify this, and in some cases, this means that the QDRO is never drafted or completed. QDROs can easily fall through the cracks, since they are not something most clients are familiar with, and each attorney may assume that the other is taking care of it and then forget about it as time passes. Some attorneys think they do not need to worry about this if they represent the employee, since he will get his money regardless of whether a QDRO is entered. However, part of the attorney's role is to protect her client from future complications or claims. You don't want to leave your client's estate (or his new wife) facing a costly legal battle after his ex-wife realizes that his new wife has (irrevocably) received all of his pension benefits following his death, even though his ex-wife was awarded those benefits in a settlement agreement.

Ideally, the settlement agreement should spell out who is going to be responsible for drafting and submitting the QDRO to the court and plan. It is also a good idea to set forth who is going to pay for the preparation of the QDRO, and to make it clear that the other attorney will have the opportunity to review and approve the QDRO before it is submitted to the Court by the attorney who prepares it.

Conclusion

QDROs are almost always going to be complicated, but they don't have to be painful. The key to avoiding QDRO hassles is to be as specific as possible in drafting the agreement. If you take the time to investigate and agree on these issues before the divorce is final, you will find yourself dealing with fewer QDRO problems down the road. Although it may not seem like it in the heat of negotiations, it is better to address these issues during settlement than to leave the agreement vague and then fight about them when they arise after the divorce is final. ♦

Emily Widmann McBurney is an associate at Davis, Matthews and Quigley, P.C. Her practice is substantially devoted to Qualified Domestic Relations Orders. Prior to joining the firm, she served as staff attorney to Judge Cynthia D. Wright in Fulton County Superior Court's Family Division. She graduated cum laude from Harvard Law School in 1995.

Georgia Case Law Update

by Sylvia A. Martin
Sylvia Martin, Attorney at Law

Adoption

Hall v. Coleman,
A03A1084; 3 FCDR 3552 (2003)

The trial court granted the adoptive parents' petitions to terminate the biological father's parental rights and to adopt the minor child, which orders were appealed by the biological father. The evidence showed that within 30 days of the child's birth, the child was placed by DFACS with the Colemans because the mother abandoned him, and the mother voluntarily gave up all parental rights to the child as evidence by her signed affidavit. The biological father had been given notice of the Coleman's petition to adopt, and he objected, although he had provided no financial or emotional support at all for the child. Specifically, the evidence showed that the biological father never sent any child support of any kind, despite requests by the Colemans; that he had never visited with the child nor talked to him other than after one court hearing; that he never sent any cards, letters or gifts; that he never attempted to talk to the child on the phone; and that he knew nothing about the child's health. The evidence also showed that the child considered the Colemans to be his parents, and he considered the Coleman's extended family to be his extended family. A psychologist testified that the child would be devastated if he were removed from the Coleman's care as he had completely bonded with them and considered them to be his parents. The Court of Appeals found that the evidence was sufficient to support the trial court's orders.

Attorney's Fees

Moon v. Moon,
589 S.E.2d 76 (2003)

At the final trial of the parties' divorce, the trial court awarded sole physical and legal custody of the minor children to the husband, ordered the wife to pay child support to the husband, found the wife to be unfit and for visitation to be supervised, for wife to post a $100,000 bond as a prerequisite to exercise of her visitation rights, and for the wife to pay attorneys' fees to the husband. In the final order, the trial court ordered the wife to pay the sum requested by the husband's attorney for the "numerous hearings seeking visitation, the discovery process, the temporary hearing, and the four days of trial." The wife's attorney did not cross-examine the husband's attorney.

The Supreme Court affirmed all of the trial court's order except the portion attributed to attorneys fees. The Court found that it was not clear whether the trial court based its award of attorneys fees on O.C.G.A. § 9-15-14 or on O.C.G.A. § 19-6-2. If the award was based on O.C.G.A. § 9-15-14, then the required findings for such award were not made. If based on O.C.G.A. § 19-6-2, then the evidence did not support such award as the evidence showed that the husband's income was twice as much as the wife's income. The Supreme Court remanded the case for the trial court to state the statutory basis of the award and any findings that must justify such award.

Child Support

Sims v. Miller,
S03A1787; 4 FCDR 289 (2004)

The parties were divorced in 1991. The mother was awarded custody of the parties' two children; and the father was ordered to pay child support of a certain amount each month "when the parties had two dependents" and another amount "when they had one dependent." One month after the oldest child turned 18, the mother filed an action for upward modification of child support and some contempt matters. The parties entered into a consent temporary order that required the father to pay increased child support "until further order of the Court." Less than one year later, the father stopped paying child support and filed a petition to reduce his child support to zero as the youngest child had just turned 18. The mother asked the court to find the father in willful contempt as he stopped paying child support because the existing order required him to pay child support "until further order."

The trial court found that the father was no longer required to pay child support, but that he had voluntarily agreed to pay child support beyond the child's eighteenth birthday by agreeing to pay until further order of the court, and thus found the father in contempt for failure to pay child support for several months. The Supreme Court reversed and held that when the parties divorced in 1991, the applicable law at the time stated that child support ended when a child reached the age of 18 unless specifically contracted by the parties to extend beyond a child's reaching the age of 18. The Court held that the "further order" language was not specific enough to obligate the father to pay child support beyond a child turning the age of 18, and that the father was entitled to cease paying child support upon the eighteenth birthday of each child.

Staffon v. Staffon,
277 Ga. 179 (2003)

In this case of first impression, the Supreme Court considered whether a substantial decrease in income due to incarceration for commission of criminal acts would support a downward modification of child support. After considering the public policy of Georgia and the law of other states, the Supreme Court concluded that such incarceration for voluntary criminal acts, which inevitably causes a decrease in income, is not grounds for a downward modification.

The parties' final decree of divorce ordered the father to pay child support for their minor child in the approximate amount of 20 percent of the father's income at the time. The father was under indictment at the time for felony drug possession and was awaiting trial. About two months after the final decree was entered, the father was convicted for drug possession and was sent to prison to serve a six-year sentence. He transferred an asset to his attorney to cover attorneys' fees, and then filed a petition for downward modification of child support due to a substantial decrease in his income that was caused by his incarceration. The trial court denied his request which was affirmed by the Supreme Court.

The Supreme Court first considered the public policy of Georgia and reasoned that, although the Court has not before addressed the issue of whether incarceration could be a basis for a downward modification of child support, Georgia has a compelling interest to ensure that adequate support is provided to Georgia's children. The Court next examined existing cases in Georgia wherein incarcerated parents had lost their parental rights as a result of incarceration and subsequent inability to financially and/or emotionally support their children. The appellate courts in Georgia have rejected parents' claims that they should be excused from findings of neglect due to incarceration, finding that "no person can object to the natural consequences of his own act voluntarily performed." The Court further noted that the child support laws would be rendered meaningless if a parent were allowed to avoid such responsibility by voluntarily taking action, whether due to incarceration or walking away from a job, that limits or prevents such parent from fulfilling his obligations. The Court then considered the law of other states, which states have held that voluntary criminal acts resulting in a prison sentence cannot excuse or alter that person's child support obligation. The Court concluded that such reasoning is congruent with Georgia's public policy and existing law, and thus, in Georgia, child support payments cannot be modified or suspended based upon an obligor's incarceration for criminal acts. The Court noted that in this case, the father is not able to pay child support while incarcerated, that such payments will accrue and that he will be required to pay the arrearage upon his release from prison with consideration of his income and assets at the time.

Civil Procedure

Koby v. Koby,
277 Ga. 160 (2003)

In the husband's complaint for divorce, he asked for joint custody of the parties' two minor children, with no mention of child support in the pleading. The wife hired a lawyer, but her counsel never made an entry of appearance, and an answer was never filed. A trial was held approximately six months after the complaint was filed; the husband attended and the wife did not. The trial court awarded sole custody of the children to the husband and ordered the wife to pay him child support.

The wife moved to set aside the final decree on the grounds that she never received notice of the final trial; that the husband actively prevented her from receiving any notice; and that the parties had reconciled during the pendency of the divorce case. The trial court denied the motion. On appeal, the Supreme Court held that, although the wife waived her right to receive notice of the final trial due to her failure to file responsive pleadings, the trial court cannot award relief beyond that sought in the complaint when the defendant does not file an answer and does not appear at trial. Because the complaint only asked for joint custody and no child support, the Supreme Court held that the trial court was not authorized award sole custody and child support to the husband, and the Court reversed that part of the trial court's order. The trial court had found that there was no evidence of a bona fide reconciliation, which was affirmed by the Supreme Court.

Contempt

Knott v. Knott,
589 S.E.2d 99 (2003)

The parties' settlement agreement was incorporated in their final decree of divorce, and as part of their settlement, they agreed that the property they jointly owned in Hawaii would be sold and the net proceeds divided equally. The agreement stated that the husband would be responsible for all payments on the Hawaii property, including taxes, and that upon the sale of the property, all expenses of sale, including any liens, would be satisfied out of the sales proceeds first, before dividing the net proceeds. The agreement also stated that each party had made full disclosure to the other party of all property interests, and that no property was subject to a lien except those disclosed in the agreement. The agreement did not specifically mention a tax lien on the Hawaii property. About six months before the divorce was finalized, the state of Hawaii filed a tax lien on the party's property for unpaid taxes for seven previous tax years.

The husband filed a petition for contempt against the wife for interfering with his efforts to sell the Hawaii property. The wife counterclaimed for contempt, claiming that the husband willfully failed to disclose the existence of the tax lien and failed to pay the accrued taxes out of his half of the net proceeds. The trial court's order found the husband in contempt but was reversed on appeal by the Supreme Court.

The Supreme Court found that both parties knew there were taxes owing on the property, that neither had actual knowledge of the lien, and that both parties were charged with constructive knowledge of the lien. The Supreme Court found that there was no evidence that the husband intentionally precluded the wife from learning about the tax lien and, thus, the trial court erred in finding the husband in contempt of this issue.

The Supreme Court also found that the provision in the agreement set forth above indicated an intent by the parties to share in any liens as such would be paid from the sales proceeds before dividing the remainder.

Equitable Division of Property

Snowden v. Alexander-Snowden,
277 Ga. 153 (2003)

The trial court, in its final decree of divorce after a bench trial, awarded the entire interest in the marital home to the wife, which order was reversed by the Supreme Court on the ground that the trial court failed to apply the source of funds rule. In this matter, the wife had purchased the marital home prior to the parties' marriage. The parties lived in the home for the entirety of their eleven-year marriage. The trial judge had the following evidence presented at trial for consideration: the value of the residence at the time of purchase and at the time of trial; the amount by which the residence had appreciated each year; and the amount of the monthly mortgage, which was paid by automatic debit from the wife's bank account. The trial court found that the husband had not presented sufficient evidence for the court to apply the source of funds rule. The trial court found that it was never presented with evidence of the value of the residence at the time of the marriage, nor with evidence of the exact amount of funds the husband provided to pay down the mortgage and make improvements on the residence. The Supreme Court held that the trial court had plenty of evidence to apply a Thomas analysis to the residence and should have done so. The Court noted that although the mortgage was paid out of the wife's account during the marriage and the husband could not provide the exact amount of expenditures he had personally made on the residence, the marital unit was deemed to have reduced the mortgage during that time, and such payments should not be attributed solely to the wife. The case was reversed and remanded to the trial court to apply the source of funds rule and to equitably divide the marital portion of the interest in the marital residence.

Settlement Agreement

Bradley v. Frank,
A03A2099; 3 FCDR 3690 (2003)

Upon the parties' marriage, the wife sold her previous home, placed the proceeds in several certificates of deposit and moved into the husband's house. They divorced several years later. The settlement agreement provided that the wife would retain the "four CD's which the Husband agrees are the Wife's premarital property." A few days after the agreement was signed, the husband cashed in one of wife's CDs. She did not know he had done so until about one year later, after the husband had died. Upon learning of the husband's action, the wife brought suit against the husband's estate for the money at issue plus interest. The probate court ruled in the wife's favor, which was affirmed by the Court of Appeals.

On appeal, the husband's executor argued that the settlement agreement's reference to the "four CDs" was ambiguous, that it did not necessarily refer to the wife's certificates of deposit and that a jury issue existed as to the meaning of that term. The Court of Appeals disagreed and held that the evidence presented to the probate court established that the "CDs" mentioned in the agreement were the wife's premarital certificates of deposit, and that she was entitled to receive the monies and interest from same from the husband's estate. ♦

Tips on Standards of Value

By Scott Thurman
Thurman Financial Consulting, Inc

What standard of value should be applied to valuations of businesses for divorce cases in Georgia? The value of a business interest can be different depending on the standard of value applied.

The most common standards of value are:

- Fair Market Value
- Fair Value
- Investment Value

Fair Market Value

Fair market value has been defined by the IRS in Revenue Ruling 59-60 to be "the amount at which the property would change hands between a willing buyer and a willing seller when the former is not under compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of the relevant facts." This definition is commonly used by the IRS, the tax courts, and many valuation consultants. It assumes a hypothetical arm's length cash sale without regard to a specific buyer or seller. There are numerous tax court cases that deal with the nuances of fair market value. Often, discounts for marketability, minority interest or lack of control are applied to arrive at the fair market value standard of value. Is this the appropriate standard for valuing businesses in divorce actions?

Fair Value

Fair value is a term that is used for court-determined value, typically to protect the rights of dissenting shareholders. If a corporation agrees to a merger, sale or other action determined by a majority vote and the minority shareholders believe they will not get adequate consideration for their stock, those shareholders have the right to have their shares appraised and receive fair value for their stock.

In 1988, Georgia revised its Business Corporation Code, including the dissenters' rights statute, to follow the revised Model Business Corporations Act. The Model Act defines fair value as the value of the shares immediately before the effectuation of the corporate action objected to by the minority shareholder. In 1999, the definition of fair value was modified in the Model Act to provide that fair value should be determined without discounting for lack of marketability or minority status. According to the Model Act's Official Comment, "valuation discounts for lack of marketability or minority status are inappropriate in most appraisal actions, both because most transactions that trigger appraisal rights affect the corporation as a whole and because such discounts give the majority the opportunity to take advantage of minority shareholders who have been forced against their will to accept the appraisal-triggering transaction."

The *Blitch* Case

Dan Blitch owned five percent of Peoples Bank. A holding company owned the remaining shares. The holding company merged into another entity, and Blitch's shares were effectively canceled. Blitch dissented, and a trial was held to determine the value of his shares. The trial court ruled that Blitch's shares should be valued after reduction by a marketability and a minority discount. Blitch appealed and, in the case of *Blitch v.*

Peoples Bank, the Georgia Court of Appeals ruled in September 2000 that under Georgia's dissenters' rights statute a court should not apply minority or marketability discounts in determining the fair value of dissenters rights shares. This means that the fair value of a minority shareholder's shares will be equal to the shareholder's proportion of the entire value of the company as a whole without reduction for any marketability or minority discounts. Is this the appropriate standard for valuing businesses in divorce actions?

Investment Value

Investment value is the value of a business to a specific owner or specific buyer. This standard of value considers the owner's or prospective owner's knowledge, abilities, expectations of risk and earnings potential. In a fair market value concept, the buyer is assumed to be a hypothetical third party with only reasonable knowledge of facts. For investment value, the buyer is assumed to be a specific owner who has a greater degree of knowledge of the business. Is this the appropriate standard for valuing businesses in divorce actions?

In a divorce situation, the buyer and the seller are the same person. The same person (spouse) will generally continue to own the interest after the divorce is completed. The buyer/seller spouse knows all of the benefits that the business provides to him or her. There is no need to be skeptical of financial or sales information provided by the seller to the buyer. The buyer will know all of the perks, problems and risks of the business. This standard of value for valuing a business in a divorce action, which is used by at least one other state, is known as "Value to the Owner." It contemplates all of the benefits of owning the business interest. Is this the appropriate standard for valuing businesses in divorce actions?

Conclusion

In Georgia, we are supposed to use the "Value" of the asset in a divorce action. The Georgia courts have provided guidance as to the standard of value for a business interest in a shareholder's dissenters rights action as indicated by the *Blitch* case. However, the courts have not provided specific guidance with respect to the appropriate standard of value for a business interest for divorces. ♦

Past Chairs of the Family Law Section

Emily S. Bair	2002-03
Elizabeth Green Lindsey	2001-02
Robert D. Boyd	2000-01
H. William Sams	1999-00
Anne Jarrett	1998-99
Carl S. Pedigo	1997-98
Joseph T. Tuggle	1996-97
Nancy F. Lawler	1995-96
Richard W. Schiffman Jr.	1994-95
Hon. Martha C. Christian	1993-94
John C. Mayoue	1992-93
H. Martin Huddleston	1991-92
Christopher D. Olmstead	1990-91
Hon. Elizabeth Glazebrook	1989-90
Barry B. McGough	1988-89
Edward E. Bates Jr.	1987-88
Carl Westmoreland	1986-87
Lawrence B. Custer	1985-86
Hon. John E. Girardeau	1984-85
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

One Technology Device All Lawyers Must Have

by Randy Kessler
Kessler & Schwarz, P.C.

The future of technology is uncertain. For an old-fashioned, historically conservative profession such as the law, where does technology fit in? Rather than spending pages discussing what technology can do for the legal profession, I will focus on the benefits of using a personal data assistant (PDA).

Like other professions, it is clear that lawyers have become dependant on the modern conveniences technology provides. Most of us take advantage of technological advances on a regual basis. How many of you have done online research or put on a Power Point presentation in court?

Although these advancements are great, nothing compares to my PDA — the most valuable tool I use, which has opened up new and exciting possibilities for effectively and efficiently getting my job done.

With the invention of the PDA, at any place and time you can have and hold a five ounce machine that will allow you to communicate with anyone in the world (by telephone or e-mail); will allow you to know exactly where you are supposed to be (calendar function including details for appointments including directions on how to get there); will allow you to have your complete rolodex on hand at all times; will allow you to carry pictures of loved ones; will allow you to search the Internet; and will allow you access to a calculator.

Although there are many other functions a PDA can provide, if we just stop and think about how useful and beneficial it is for us at any one moment to have one device (a combined cell phone/PDA) that allows us to call anywhere, send an e-mail anywhere, check our calendar and look up a phone number, we need not go beyond those functions for this device to be classified as the most useful technology tool. (At least for a litigator or someone who will regularly be away from their office.) Of course we can also combine a camera into this PDA as well as a navigation system, which will allow us to wirelessly obtain directions from and to any place.

Apart from the functionality set forth in the broad, general terms noted above, let us think about the day to day functionality and what specific examples of usefulness there are. We can be in court and discuss potential dates for deposition without having to contact our offices to see if our calendar will permit the deposition on that day. When a court reschedules a hearing and asks us if we are available on a certain day, we can immediately advise the court whether we have previously scheduled appointments, vacations or other matters scheduled for the same tentative date. Or, when the court appoints an expert in our case such as the *guardian ad litem* or a psychologist, we can access our rolodex and immediately provide it to our client, which will be helpful in expediting the process and moving the case along much more efficiently.

But perhaps the most important aspect to many of us about the PDA/cell phone is the fact that once our rolodex is downloaded into the phone, we then have the ability to pre-screen all calls that come into our cell phone. By virtue of this, we no longer need to fear dispensing our cell phone number to our clients, because when they call us, we are able to see it is them and we can mentally prepare for the call or defer them to voicemail until we are able to call them back.

Even more importantly, a PDA allows

you to do the one thing which you must always do to ensure that technology does not leave you in a worse position than you started in: that is backup.

The entire key to the success of the PDA is that all the information that it stores is also installed on your computer. By simply pushing a button on your computer, all information that has been entered on your computer and on your PDA automatically synchronizes, which means that the information will be transferred to both your computer and your PDA so that they will be mirror images of each other. In this manner, you may have your assistant enter all appointments on your calendar in the same manner as he or she currently does and when you push the button on the PDA cradle, everything your assistant has entered on the computer, including phone numbers, court dates or directions to another lawyer's offices, will be automatically transferred to your hand held device for you to have with you at all times.

There are certainly hundreds of varieties of PDAs. You can check with any manager at one of the local electronic stores to explain further details about each; however, if you accept one suggestion from this article it should be that you ensure that your PDA is also a cell phone. While you may love your cell phone and understand how it works, and while you may be resistant to learning a new system, the most important reason to have a combination cell phone and PDA is not readily apparent. I believe the most important reason to have a single device is to ensure you don't forget either. In other words, if you leave home without your Palm Pilot (a brand of PDA) you may not bother to go back inside to retrieve it. However, if you leave home without your cell phone, aren't you likely to go back inside to retrieve it? If they are one and the same, you ensure that you will always have your PDA with you and that you will always be able to use it.

These are only my thoughts, but the wave of the future seems to be that we will all have these devices. As a final benefit or technology tip, there is one more feature which you should know about: the ability to beam information. In other words we can simply beam (by infrared transfer) our own contact information to another hand held device. In this way we can eliminate the need to transfer business cards and then to have to transfer information from the business card into the computer. This function alone will save us a lot of cost in printing business cards and secretarial time just to enter the information into computers. One day, the exception will be for business associates to exchange business cards and the norm will likely be to transfer information from PDA to PDA via infra-red beaming. We have all heard the expression that something may be as hard as selling ice to an Eskimo. Selling PDAs to "on the go" litigators should be more like selling a heater to an Eskimo. It should be easy for us to all realize and recognize the enormous benefits of having one hand held device which can serve all of these purposes. ♦

Pilot Project

Continued from page 3

created a new standard. In *Georgia Department of Human Resources v. Sweat*, 276 Ga. 627 (2003), the Court upheld the constitutionality of the child support guidelines. In *Baker v. Baker*, 276 Ga. 778 (2003), the Court interpreted application of the new statute OCGA § 19-7-54 to mothers in the context of a divorce. (The application in this case was docketed in 2002, before the commencement of the pilot project.)

At this juncture, the bar is to be commended for the restraint lawyers have shown in not abusing the privilege of automatic grants by filing frivolous applications. The justices are to be commended for their confidence in the family law bar. The hope is that the bond of trust and mutual respect that has been created will grow stronger during the second year of the pilot project. ♦

2004 Family Law Institute: Practical Family Law

May 27 – 29, 2004 — San Destin Hilton, Destin, Fla.

Presented by the Family Law Section and I.C.L.E.

Thursday, May 27

8:15 **Registration**

8:30 **Opening Remarks and Welcome**
Richard M. Nolen, Program Chair, Warner, Mayoue, Bates, Nolen & Collar, P.C., Atlanta

8:35 **Ethics and Professionalism: Divorce Lawyers Dilemmas**
Justice Carol Hunstein, Supreme Court of Ga.
Robert D. Boyd, Davis, Matthews & Quigley, P.C., Atlanta

9:30 **Break**

9:45 **Awards and Section Announcements**

9:55 **Alternatives to the Courtroom**

A. Collaborative Law
Lauren Alexander Esq., Atlanta
Eileen Thomas, Esq., Atlanta

B. Practical Mediation Tips
M.T. Simmons, Simmons & Szczecko, Decatur
Barry McGough, McGough, Huddleston & Medori, Atlanta

C. Arbitration Issues and Strategies
Edward E. Bates Jr., Warner, Mayoue, Bates, Nolen & Collar, P.C., Atlanta
Baxter L. Davis, Davis, Matthews & Quigley, P.C., Atlanta

10:55 **Practical Tips for Avoiding Malpractice**
David N. Lefkowitz, The Lefkowitz Firm, Atlanta

11:55 **Break**

12:10 **Family Law Appeals: The Appellate Judges Speak**
The Honorable Jeanney M. Kutner, Judicial Officer, Superior Court of Fulton Country, Atlanta (Moderator)
Justice Carol Hunstein, Supreme Court of Georgia
Justice Harris Hines, Supreme Court of Georgia
Justice Hugh Thompson, Supreme Court of Georgia

1:00 **Recess**

6:30 **Institute Welcome Reception**

Friday, May 28

INTERACTIVE SESSION
Elizabeth Green Lindsey, Davis, Matthews & Quigley, P.C., Atlanta (Moderator)

PANELISTS:

Judges: Hon. Bonnie Chessher Oliver, Superior Court of Hall County
Hon. David R. Sweat, Superior Court of Clarke County
Hon. Melvin K. Westmoreland, Superior Court of Fulton County
Hon. Frank J. Jordan Jr., Superior Court of Muscogee County

8:30 **Your View Matters: Child Support Scenarios to be Presented by Superior Court Judges**
Speakers: John F. Lyndon, Esq., Athens
Carol A. Walker, Esq., Gainesville

9:30 **Child Support: Comparisons of Income Share, Cost Share and Percentage Models**
Speakers: Richard W. Schiffman Jr., Davis, Matthews & Quigley, P.C., Atlanta
H. Martin Huddleston, McGough, Huddleston & Medori, Atlanta

10:15 **Break**

PANELISTS:

Judges: Hon. Wendy L. Shoob, Superior Court of Fulton County
Hon. Adele L. Grubbs, Superior Court of Cobb County
Hon. Steve C. Jones, Superior Court of Clarke County
Hon. Robert E. Flournoy III, Superior Court of Cobb County

10:30 **Alimony Scenarios: "The Gift that Keeps on Giving"**
Speakers: Rachel A. Snider, Macey, Wilensky, Cohen, Wittner & Kessler, Atlanta

Andrew R. Pachman, Lawler, Tanner & Zitron, P.C., Atlanta

11:15 **Evidence: Cyber Crimes, Sex-Demeanors, PIs and More**
Speakers: Elizabeth Green Lindsey, Davis, Matthews & Quigley, P.C., Atlanta
Kurt A. Kegel, Davis, Matthews & Quigley, P.C., Atlanta

12:00 **Break**

PANELISTS:

Judges: Hon. Louisa Abbot, Superior Court of Chatham County
Hon. Cynthia D. Wright, Superior Court of Fulton County
Hon. George H. Kreeger, Superior Court of Cobb County
Hon. Willie E. Lockette, Superior Court of Dougherty County

12:15 **Attorney Fees: Show Me the Money**
Speakers: Christine C. Bogart, Bogart & Bogart, P.C.
John L. Collar Jr., Warner, Mayoue, Bates, Nolen & Collar, P.C., Atlanta

1:00 **Recess**

1:30 **Golf Tournament (Captain's Choice) – Golf Course at Sandestin Hilton**

6:30 **Family Law Section Reception**

Saturday, May 29

8:30 **Hot Tips From the Experts**
Moderator: Shiel Edlin, Stern & Edlin, Atlanta

9:30 **Emerging Issues in Family Law**

A. Computer and High-Tech Issues, Discovery and Evidence
John F. Lyndon, Esq., Athens

B. Relocation Issues and Strategies
Robert D. Boyd, Davis, Matthews & Quigley, P.C., Atlanta
Catherine M. Knight, Davis, Matthews & Quigley, P.C., Atlanta

10:30 **Break**

10:45 **Practical Divorce Taxation**
Melvyn B. Frumkes, Miami, Fla.

11:45 **Recent Developments: Cases, Legislation and Practice Pointers**
Randall M. Kessler, Kessler & Schwartz, P.C., Atlanta
Paul Johnson, McCorkle, Pedigo & Johnson, Savannah
Karen Brown Williams, Esq., Atlanta

1:00 **Recess**

2004 Family Law Institute Features Interactive, Participatory Full-day Session

All attendees may participate in Friday's session via individually issued and utilized hand-held electronic transponders.

Use of these transponders will allow the compilation, tabulation and immediate room-wide screen display of data from the participants.

The transponders will be utilized in a litigation-style format with experienced trial attorneys and judges handling designated family law related issues, ranging from unique child support guidelines applications to attorneys' fees and evidence issues.

The Executive Board of the Family Law Section plans to analyze and present this data to the Council of Superior Court Judges for its consideration. So come to the Family Law Institute and let your voice be heard!

The Editor's Corner

by Kurt Kegel
Davis, Matthews & Quigley P.C.

As we begin to experience these warm March days that offer us a teaser of weather and of things to come, I find my thoughts turning to spending time with family and friends, enjoying some sand, surf and fun in the sun. That's right, it is that time once again! The 22nd Annual Family Law Institute is coming. So, mark your calendars and make reservations to join us at the beach!

The Family Law Institute, presented by the Family Law Section of the State Bar of Georgia and I.C.L.E., is returning to the Hilton San Destin Golf Resort & Spa in Destin, Fla., from May 27 to May 29. This year's Program Chair is Richard Nolen, vice chair of the Family Law Section. Richard is a family law practitioner with Warner, Mayoue, Bates, Nolen & Collar P.C. in Atlanta.

Richard has organized an exciting program this year. Take a look at the agenda on pages 18 and 19, to see what is in store. On top of the always informative and educational topics presented at the annual seminar, Richard is presenting us with an interactive format on Friday. During this part of the seminar, various scenarios will be presented to the audience and each member of the audience will be asked to provide their response, through the use of a transponder, which will be provided to each participant. As you will notice, along with the presenters, each session also has a panel of judges present. Once the responses have been received and tallied, it will then be the judges' turn to provide their insight and opinions on the topics presented, ranging from child support, to alimony, to evidentiary issues and to the always important issue of attorneys' fees. So, don't miss your opportunity to be a part of this interactive session!

As always, the program provides a complete year's worth of CLE requirements, including necessary professionalism, ethics and trial practice credits. In addition to the interactive session and all the other excellent topics and presentations, each participant will also receive written materials accompanying the presentations, as well as several bonus articles.

Furthermore, the presence of members of the Bench and Bar from all over the state of Georgia gives us all the opportunity to interact and exchange thoughts and ideas. As in prior years, attendance is expected to be high, so make your reservations early.

See you at the beach! ♦

Family Law Section
State Bar of Georgia
Kurt Kegel, Editor
104 Marietta St, NW
Suite 100
Atlanta, GA 30303

NON-PROFIT ORG
U.S. POSTAGE
PAID
ATLANTA, GA
PERMIT NO. 1447