Family Law Forum

A Publication of the Minnesota State Bar Association's Family Law Section

Summer 2007

Volume 16, No. 1

Editor: Jaime Driggs

In this Issue

Letter From the Chair
Ellen Abbott

Riding the Relocation Roller Coaster:
An Update on Child Relocation Law in Minnesota
Lisa Bachmeier

Special Masters, Consensual Special Magistrates, or Arbitrators:
Alternative Dispute Resolution Options that Remove Fact-Finding and/or Decision-Making Authority from Judicial Officers
Amy L. Helsene

When Should You Use Publication in a Dissolution?
Bruce D. Kennedy

Division of a Business in a Marriage Dissolution
Laurie A. Mack & Lymari J. Santana

The Ties that Don't Bind
Danielle Shelton

A View From the Bench
Honorable Stephen C. Aldrich

From the Incoming Editor
Linda Wold

MSBA

www.mnbar.org

Letter From the Chair

By: Ellen Abbott

Dear Fellow Section Members:

As I end my tenure as the Family Law Section Chair, I want to highlight some of the accomplishments of the Section during the past year.

Continuing Legal Education

We instituted an "Ask a Mentor" program. Ten of the more senior members of the Section volunteered their time to be available to younger attorneys at the CLE program of one of our meetings last fall. The younger attorneys who participated gained valuable insight on issues ranging from specific case problems to general practice tips. After the program I received communication from several younger attorneys who were unable to attend and wondered if we would do another one. The program was so well received that we have decided to make it an annual program in the fall. We also provided many informative CLEs including "The Art & Science of the Medical Record," "Understanding and Differentiating Your Client's Financial Assets," "20 Difficult Family Law Questions" and "Family Law Appeals."

Strategic Planning

The Strategic Planning Committee, with the guidance of its chair, Don Enockson, worked to develop a mission statement and goals for its future work. The Committee will work on the following goals to: 1) enhance and promote leadership development within the Section; 2) encourage the development and growth of the Section; 3) promote collaboration with the other sections and committees of the MSBA and with other organizations outside the Association; and 4) anticipate and respond to future trends and challenges in the practice of family law. As immediate past chair of the Section, I am looking forward to chairing the Strategic Planning Committee as we focus on the first goal. I invite you to join me in working on the future of the Section. Thanks to Don and last year's committee for your work.

Domestic Abuse

The Domestic Abuse Committee was very active. The Section financially supported, and DA Committee members participated in, trainings around the state for volunteer attorneys and advocates. The Section subsidized registration fees for Section-member attendees who agreed to take a pro bono case involving domestic abuse. The DA Committee also finalized its brochure to assist victims of domestic abuse in hiring an attorney. The brochure development, which began with focus groups, is being mailed to shelters around the state and is available on the Section's website. In addition, the DA Committee provided a plenary presentation at the Family Law Institute on the Risk Assessment Bench Card that was developed to help judges screen for, and assess the risk of, lethality related to domestic violence in cases. Members of the DA Committee also collaborated with other domestic abuse groups in writing appellate amicus briefs to the Minnesota Supreme Court and the U.S. Supreme Court.

Legislation

During the past year the Minnesota Legislature ultimately addressed only a few substantive issues, although we could not know that until the end of the session. Thanks to Pamela Waggoner for all of her work as the Legislative Chair in monitoring proposed legislation and keeping us informed. The next legislative session, beginning in early 2008, is slated to have several bills that will affect family law. As such, our Legislative Committee will be very busy. To assist the efforts of our Section, I ask that each of you submit a completed "MSBA Grassroots Action Network" form. It can be found at the MSBA website under the main legislation tab.

Membership

Lastly, the number of members regularly attending the Saturday meetings increased during the last year, particularly among newer practitioners. We averaged 35 members at the meetings, including substantial representation from greater Minnesota. I want to again thank all of you who attended, for taking time out of your Saturday morning to support the excellent work of the Family Law Section. I also wish to acknowledge and thank all Section members for your membership. Member financial assistance in the form of dues supports the continued work of the Section.

The work of the Section is varied and interesting. It is only through the efforts of the Executive Committee and other participating members that the Family Law Section can effectively express its voice to "improve the practice, elevate the standards and advance the cause of Family Law in the State of Minnesota," the purpose for which the Section was established and continues its existence. I encourage your continued participation and attendance at the Saturday meetings, whether in person or by telephone.

Thank you for the opportunity to guide the Section for the past year and welcome to Cheryl Prince, our new Chair, and the new Executive Committee Members.

Ellen A. Abbott
Immediate Past Chair

Riding the Relocation Roller Coaster: An Update on Child Relocation Law in Minnesota

By: Lisa Bachmeier

In the recent case of *Goldman v. Greenwood*, the Minnesota Court of Appeals was presented with its first opportunity to address child relocation law since the 2006 amendment of Minn. Stat. §518.175, subd. 3.[1]

Beginning in the early 1980's, *Auge v. Auge*[2] and its progeny[3] had established that a sole physical custodian's desire to relocate a child's residence to another state was presumed to be in the child's best interests and any motion related to such a desire to relocate was to be granted unless the non-custodial parent could prove not only that the move was not in the child's best interest, but that the move would endanger the child's health and well-being. Parties could stipulate to joint physical custody in order to negate this presumption even if they had devised a significantly unequal parenting arrangement,[4] but could not agree to negate the presumption in favor of removal by substituting a best interests analysis if one party had been designated the sole physical custodian.[5] A trial court could, however, condition an award of sole physical custody on the requirement that the sole physical custodian remain in a particular geographic area.[6] By the time the political will had materialized to address the removal presumption in the early 2000's, the original public policy goal of promoting stability for children upon which *Auge* had been based had evolved into an over-reliance on custody labels that often were, at best, only a tenuous indicator of the best interests of each child under his or her particular circumstances.[7]

During the interim years between *Auge* and the statutory amendment, there was and continues to be a public policy and gender politics battle royale going on behind the scenes in social science and legislative circles.[8] A review of recent research in this area suggests that children normally develop close relationships with both parents and do best when they have the opportunity to establish and maintain close relationships with both parents.[9] The Minnesota Supreme Court has acknowledged as much in its "Parental Guide to Making Child-Focused Parenting Time Decisions" in which it repeatedly reminds that children generally fare better when they have the ongoing and active involvement of both parents.[10] The Court's recommendations for gradually evolving parenting time based on a child's developmental stage and emphasis on the individual needs of each child served as a harbinger of things to come.

Ultimately, the legislature stepped in to require that the party proposing relocation, which is inevitably a disruption to the continuity of many aspects of a child's life, should bear the burden of proving that such a move is in the child's best interests. This effort was a direct attack on the *Auge* presumption, as is clear from the floor debate regarding the proposed legislation.[11]

Minn. Stat. § 518.175, subd 3, as amended, prohibits the residential parent from relocating the residence of the child to another state except upon order of the court or with the consent of the other parent. It requires the trial court to apply a best interests standard when considering any request for removal, enumerates a non-exhaustive list of factors that must be considered, and places the burden of proof upon the parent requesting relocation (unless that person has been the victim of domestic abuse, in which case the burden remains with the abuser who is opposing the move). The revised statute became effective on August 1, 2006.

Goldman v. Greenwood first went before the district court in 2001 when custody of the parties' then-five-year-old child was tried and mother's motion to remove the child to Boston was heard. The trial court issued a Memorandum Decision denying mother's motion to remove but awarded mother sole physical custody on the condition that she remain available to parent the child in Minnesota. The court made numerous findings regarding the significance of the child's relationship with his father and half-siblings, his school, and religious community, and the importance of maintaining continuity in these areas. The parties eventually incorporated the court's entire Memorandum Decision into their 2002 Judgment and Decree.[12]

Four years later, mother filed a motion to remove the locale or "*LaChapelle*" restriction[13] and for permission to relocate the child, now an early adolescent, to New York City, citing a change in circumstances since the court issued its earlier Memorandum Decision. Mother based her request on her engagement to a man who lived and worked in New York City, the child's enhanced opportunity to further his religious education and live as an Orthodox Jew in New York City, the child's preference to relocate, and the child's changing relationships with his siblings. Father opposed the motion.[14]

In April 2006, notably prior to the effective date of the amended relocation statute, the district court issued its order denying mother's motion for permission to relocate the child to New York, explaining that the request to remove the locale restriction was, in effect, a motion to modify the conditional custody award and therefore, the endangerment standard of Minn. Stat. § 518.18 (d) must be applied. The court determined that none of the changed circumstances noted by mother were significant and that the only obvious change was in mother's circumstances (her engagement and impending marriage), not the child's. The court also found that mother failed to present a prima facie case of endangerment that would prompt an evidentiary hearing and that mother failed to address whether the advantages of the move outweighed the potential harm to the child.[15]

The Court of Appeals reversed and remanded the case to the trial court for an evidentiary hearing after mother argued that the trial court had erred by applying Minn. Stat. § 518.18 and by failing to consider the merits of her proposed move.[16] The Court held that:

(1) the new statutory language affecting motions for removal took effect on August 1, 2006, and prevented the trial court from imposing the higher burden of proof found in Minn. Stat. § 518.18 (d) (even though the district court issued its order prior to the effective date of the amended statute).[17]

(2) Minn. Stat. § 518.18 (d) may limit a functional modification of custody resulting from the denial of a motion for removal brought by a child's sole physical custodian. In other words, even though the new statutory language shifts the burden of proof from the party opposing the removal under *Auge* to the party moving for removal, other aspects of the *Auge* decision promoting the need to safeguard the child's relationship with the sole physical custodian remain intact.[18]

(3) a trial court may not deny a motion brought by a sole physical custodian merely because a move to another state would require an adjustment in existing visitation arrangements.[19]

(4) a trial court must grant an evidentiary hearing on a relocation motion if a sole physical custodian presents a prima facie case for removal.[20]

(5) a conditional award of custody will not be enforced against a sole physical custodian if the custodian presents compelling reasons for a move to another state.[21]

(6) although the supreme court should establish a standard to guide the district courts on these issues, on remand, Minn. Stat. § 518.175,

subd. 3 and Minn. Stat. § 518.18 (d) require that the trial court specifically address: (1) the worthiness of a sole physical custodian's reasons for removal; and (2) the impact upon the child of the denial of a sole physical custodian's motion for removal. [22]

Petitions for review of this case have been granted by the Minnesota Supreme Court with oral arguments to be scheduled sometime this fall. Issues to be addressed will include: (1) the applicability of Minn. Stat. § 518.18 (d) and Minn. Stat. § 518.175, subd. 3 and the appropriate standard for addressing such motions in light of the legislature's attempt to supercede *Auge*; (2) whether and under what circumstances an evidentiary hearing is required when a sole physical custodian makes such a motion; and (3) the impact of a conditional custody award on the standard for adjudicating such motions.

Lisa Bachmeier is an associate attorney at Clugg, Linder, Dittberner & Bryant, Ltd., where she practices exclusively in the area of family law. Before entering private practice, she clerked for more than three years in Hennepin County Family Court. Lisa received her J.D. from Hamline University and her B.S. degree from Minnesota State University – Moorhead.

Notes

[1] *Goldman v. Greenwood*, 725 N.W.2d 747 (Minn. App. 2007); petition for review granted, in part, denied, in part, motion granted by Goldman v. Greenwood, 2007 Minn. LEXIS 140 (Minn., Mar. 20, 2007).

[2] *Auge v. Auge*, 334 N.W.2d 393, 399 (Minn. 1983).

[3] See *Gordon v. Gordon*, 339 N.W.2d 269, 271 (Minn. 1983) (extending presumption to movant with sole physical custody but joint legal custody); *Hegerle v. Hegerle*, 355 N.W.2d 726, 731 (Minn. App. 1984) (declining to extend presumption to movant who shared joint physical custody); and *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996) (requiring non-custodial parents to show not only that move is not in child's best interests, but also that the move would endanger the child's health and well-being).

[4] *Ayers v. Ayers*, 508 N.W.2d 515, 520 (Minn. 1993).

[5] *Geiger v. Geiger*, 470 N.W.2d 704, 707 (Minn. App. 1991).

[6] *Dailey v. Chermak*, 709 N.W.2d 626, 630 (Minn. App. 2006) (reaffirming *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000).

[7] See e.g., *Ayers* at 519-20.

[8] See e.g., Richard A. Warshak, "Social Science and Children's Best Interests in Relocation Cases: Burgess Revisited," 34 Fam. L. Q. 83 (2003); Kenneth Waldron, "Á Review of Social Science Research in Post Divorce Relocation," 19 J. Am. Acad. Matrim. Law 337 (2005); Carol S. Bruch, "Sound Research or Wishful Thinking in Child Custody Cases? Lessons from Relocation Law," 40 Fam. L. Q. 281 (2006); and Journal of Child Custody, Vol. 3, Nos. 3/4 2006: "Relocation Issues in Child Custody Cases."

[9] Richard A. Warshak, "Social Science and Children's Best Interests in Relocation Cases: Burgess Revisited," 34 Fam. L. Q. 83, 85 (2003).

[10] "A Parental Guide to Making Child-Focused Parenting Time Decisions," Prepared by the Minnesota Supreme Court Advisory Task Force on Visitaion and Child Support Enforcement. Approved by the Minnesota Conference of Chief Judges – January 1999; Updated January 2001 – changing "visitation" to "parenting time" pursuant to statute.

[11] Transcript of Senate Floor Proceedings Regarding S.F. No. 266, dated April 15, 2003.

[12] *Goldman*, 725 N.W.2d at 749-50.

[13] See *LaChapelle v. Mitten*, 607 N.W.2d 151, 162-63 (Minn. App. 2000).

[14] *Goldman*, 725 N.W.2d at 750.

[15] District Court Order and Memorandum, dated April 14, 2006.

[16] *Goldman*, 725 N.W.2d 755-56.

[17] *Id.* at 751.

[18] *Id.* at 757-58.

[19] *Id.* at 758.

[20] *Id.* at 758

[21] *Id.* at761. But see *Swarthout v. Siroki*, (2001 Minn. App. LEXIS 772).

[22] *Id.*

Special Masters, Consensual Special Magistrates, or Arbitrators:

Alternative Dispute Resolution Options that Remove Fact-Finding and/or Decision-Making Authority from Judicial Officers

By: Amy L. Helsene

The use of alternative dispute resolution in family law cases is not new, but the requirement that family law cases that do not involve domestic abuse also attempt alternative dispute resolution (ADR) prior to seeking the assistance of the Court is still fairly recent (Rule 114 was amended to include family law proceedings as of July 1, 1997). Practitioners have become increasingly creative in implementing the various forms of ADR to best suit the needs of parties going through a marriage dissolution, paternity, or post-decree matter. It has become common for parties to stipulate to alternative decision-makers, whether it be a Special Master, Consensual Special Magistrate, Arbitrator, or Parenting Consultant, which not only provides more control over the process for parties and their counsel, but helps to alleviate an overly burdened judiciary. This article will provide an overview of the rules related to these alternative decision-makers and some important information to consider when deciding what course to take to best represent your clients who may be reluctant to leave their fate in the hands of a Judge for any number of reasons.

One must be especially cognizant of the specific rules when drafting orders appointing these neutral decision-makers as well as understanding that the rules are the default standard for determining the appropriate standard of review, procedure, record, etc. but that the parties can always agree to utilize a standard other than that set forth in the rules, and the parties' agreement will generally control. "Appointments by agreement are creatures of contract, rather than statute." Firestone v. Berger, No. A05-267, 2006 WL 224158 (Minn. Ct. App. Jan. 31, 2006), fn 1 (dealing with a parenting consultant appointment).

Parties may always stipulate to obligations that a court could not impose which will nonetheless be enforceable. Gatfield v. Gatfield, 682 N.W.2d 632, 637 (Minn. Ct. App. 2004) review denied Sept. 29, 2004. In a recent unpublished opinion, the Court of Appeals sanctioned an agreement to utilize a parenting consultant for parenting time disputes, where the parenting consultant first attempted to mediate disputes but then arbitrated any unresolved issues, and the district court could only be utilized for enforcement. Enforcement "is the role of the court in a case in which the parties have so clearly decided to keep disputes about the children outside the judicial process. Brennan-Damario v. Damario, No. A06-145, 2006 WL 3071365 (Minn. Ct. App. Oct. 31, 2006). "[A] ppellant may now regret that he agreed to a problem-solving mechanism that starts, every time, with reference of the issue to a specialist familiar with the parties' situation, rather than with immediate resort to the adversarial system of the District Court. But that is the procedure agreed to by the parties." Id.

Minn. R. Gen. Prac. 114 defines various options for adjudicative (Special Masters and Consensual Special Magistrates), evaluative (Early Neutral Evaluation), hybrid (mediation-arbitration), and "other" processes, several of which are discussed herein. "All ADRs are all

ADRs. But all ADRs have differences in setup, consequences, and appealability. After parties to a lawsuit carefully make a choice of a forum, carefully be sure you are in that forum." Buller v. Minnesota Lawyers Mutual, 648 N.W.2d 704, 710 (Minn. Ct. App. 2002).

Special Masters

Trial courts have the authority to appoint experts to assist them to enforce or interpret a judgment and decree. Minn. R. Civ. P. 53 (describing court's authority to appoint a referee "when issues are complicated" and particularly when the court is faced with "matters of account"); Minn. R. Gen. Pract. 310.01 (family court referee may appoint mediator "upon [its] own initiative" to address any or all issues of controversy between the parties)." Odell v. Odell, No. C0-96-367, 1996 WL 438823 (Minn. Ct. App. Aug. 6, 1996). A special master can be appointed by the Court by consent of the parties, press of business, the unusual needs of the case or other unusual circumstances. However, absent consent of the parties, the Court must make specific findings that the appointment is necessary. Under Minn. R. Civ. P. 53.02, "a reference to a referee shall be the exception and not the rule." In an action without a jury, "save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it." Id.

When appointing a Special Master, one must carefully review Rule 53 and make sure the Order of appointment deals with all of the necessary requirements. It is very important to have language in the Order regarding the "review mechanism," whether counsel can have ex parte communications with the Special Master, and what kinds of communications the Special Master can have with the Judge. There are a wide range of options, from allowing unlimited private communications to no communication between the Special Master and Judge without copies to parties. The parties can also agree to limited ex parte contact for specific reasons, such as for duly convened settlement conferences, or permit ex parte contact but only on the record with counsel to permit appropriate review by the Judge or Court of Appeals.

Absent agreement of the parties, the trial court is limited by Rule 53 in its appointment of a master in addition to justifying the appointment. The trial court may not appoint a master that has a relationship to the parties, counsel, action, or court that would require disqualification of a judge. M.R.C.P. 53.01 (b). The court "must give the parties notice and an opportunity to be heard before appointing a master." M.R.C.P. 53.02(a). Further, the court "must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay." M.R.C.P. 53.01(c). When allocating cost of the master, the trial court must consider "the nature and amount of the controversy, the means of the parties, and the extent to which any party is more responsible than other parties for the reference to the master. An interim allocation may be amended to reflect a decision on the merits." M.R.C.P. 53.08(c). The trial court, however, cannot tax costs of the master if appointment was necessitated by press of court business. Associated Contractors, Inc. v. Midwest Federal Savings and Loan Ass'n, 304 Minn. 528, 232 N.W.2d 740 (Minn. 1975).

If the Special Master is appointed at the trial court's direction or pursuant to the parties' agreement, the Order appointing the master must meet certain requirements. M.R.C.P. 53.02(b) requires that the Order appointing a master "direct the master to proceed with all reasonable diligence" and include (1) the master's duties and any limits on the master's authority, (2) the circumstances, if any, in which the master may communicate with the court or a party ex parte, (3) the materials to be filed as the record of the master's activities, (4) the time limits, method of filing the record, standards for reviewing the master's order, findings and recommendations, and (5)

outlining the master's compensation. The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard. M.R.C.P. 53.02(d).

If the Master is being appointed by consent of the parties (as opposed to by the Court for press of business), the parties may elect that the Special Master's findings will be final. Absent agreement, "[i]t is clearly up to the trial court, however, to accept or reject any special master findings or recommendations. The court is under no express duty to adopt special master findings." Mann v. Mann, No. C1-89-49, 1989 WL 98698 (Minn. Ct. App. Aug. 29, 1989), review denied Oct. 25, 1989. Likewise, the legal conclusions of the Master will be reviewed de novo and all procedural rulings will be reviewed for an abuse of discretion as the default standard.

Consensual Special Magistrates

Consensual Special Magistrate is defined as a "forum in which the parties present their positions to a neutral in the same manner as a civil lawsuit is presented to a judge. This process is binding and includes the right of appeal to the Minnesota Court of Appeals." Minn. R. Gen. Prac. 114.02(a)(2). An agreement to appoint a consensual special magistrate involves less opportunity for creativity (or room for error), in that a consensual special magistrate acts as a Judge would and the parties have the same opportunity to appeal the consensual special magistrate's rulings as they would a Judge's rulings. So long as the parties refer the matter to a Consensual Special Magistrate, the Court of Appeals will utilize the definition in the rules and provide the same standards of review as that of a trial court's decision. Utilizing a consensual special magistrate, however, does not divest the trial court of jurisdiction. See Park Constr. Co. v. Independent Sch. Dist. No. 32, 209 Minn. 182, 186, 296 N.W. 475, 477 (1941), (concluding that arbitration merely removes controversy from litigation and is no more ouster of jurisdiction than is settlement or covenant not to sue). The Order for appointment should state clearly what issues the consensual special magistrate is to decide and whether the appointment will include any post-decree issues so that the trial court will not refer post-decree issues to the consensual special magistrate unless that is what the parties intended.

Minn. Stat. § 484.76 subd. 2 provides that statewide alternative dispute resolution methods must include consensual special magistrates "including retired judges and qualified attorneys to serve as special magistrates for binding proceedings with a right of appeal." Minn. Stat. § 484 only applies to the second and fourth judicial districts. The Court of Appeals has held, however, that "to avoid any unintended consequences of failing to properly classify a consensual special magistrate, parties and courts may find it useful to look to Minn. Stat. § 484.74 for guidance." Buller v. Minnesota Lawyers Mutual, 648 N.W.2d 704, 708 (Minn. Ct. App. 2002). That statute provides that the trial court may adopt the ruling and the findings of the consensual special magistrate without modification and that both sides are free to appeal directly to the Court of Appeals. Id.

Arbitrators

Arbitration is defined as a "forum in which a neutral third party renders a specific award after presiding over an adversarial hearing at which each party and its counsel present its position." Minn. R. Gen. Prac. 114.02(a)(1). "If the parties stipulate in writing that the arbitration will be binding, then the proceeding will be conducted pursuant to the Uniform Arbitration Act (Minn. Stat. §§ 572.08 - .30)." Id. "If the parties do not stipulate that the arbitration will be binding, then the award is non-binding and will be conducted pursuant to rule 114.09." Id. Minn. R. Gen. Prac. 114.09(e) provides that a party may request a trial within 20 days after the arbitrator files the decision with the court,

but the 20-day period shall not be extended. If the trial is not requested in a timely manner, the judgment is not subject to appeal. Id. But as stated earlier, the parties can agree that the decision is not subject to appeal regardless of the 20-day period, if they so choose.

Arbitrators must conduct a hearing on the disputed issues presented to them unless otherwise provided by agreement. Minn. Stat. § 572.12(a). At that hearing, the parties must be allowed to present evidence and cross-examine witnesses. Minn. Stat. § 572.12(b). In the case of Volkmann v. Volkmann, 688 N.W.2d 347, 348 (Minn. Ct. App. 2004), the parties, through counsel, agreed to submit two remaining unresolved issues incident to their marriage dissolution to binding arbitration and agreed to arbitrate "unrepresented." There was no waiver of the right to a hearing. The arbitrator chose to meet with each party separately prior to issuing his award but never met with the parties together. The Court of Appeals vacated the award because the arbitrator did not conduct an adversarial hearing where a party is allowed "to hear, respond to, or cross-examine the other." Id. at 349. In light of the fact that we often see agreements to arbitrate issues such as personal property in an attempt to minimize the cost associated with "minor" issues, we should be mindful of whether we want to include a waiver of the hearing, or specify the procedure for the arbitration, as well as whether the parties will participate with or without counsel.

As is generally understood, the decision of the arbitrator is virtually impossible to alter or vacate. The party seeking to vacate an arbitration award has the burden of proof. In addition, *every reasonable presumption* is exercised in favor of the finality and validity of the award. National Indem. Co. v. Farm Bureau Mut. Ins. Co., 348 N.W.2d 748, 750 (Minn. 1984). (emphasis added) Whether it is due to this finality accorded to the parties or some other reason, arbitration is a proceeding favored in the law. Ehlert v. W. Nat'l Mut. Ins. Co., 296 Minn. 195, 199, 207 N.W.2d 334, 336 (1973). "[A]n arbitrator, in the absence of any agreement limiting his authority, is the final judge of both law and fact, including the interpretation of the terms of any contract, and his award will not be reviewed or set aside for mistake of either law of fact in the absence of fraud, mistake in applying his own theory, misconduct, or other disregard of duty." Cournoyer v. Am. Television Radio Co., 249 Minn. 577, 580, 83 N.W.2d 409, 411 (1957). The standard is set forth in the statute discussed below, and a party must meet one of the listed conditions absent an agreement to another standard.

An arbitration award may also be vacated under a 'public policy exception' in limited circumstances, such as a cause of action founded upon an immoral or illegal act. City of Minneapolis v. Police Officers' Fed'n, 566 N.W.2d 83, 89 (Minn. Ct. App. 1997). Outside of the family law context, but which may be applicable, is the case of City of Brooklyn Center v. Law Enforcement Labor Services, Inc., 635 N.W.2d 236, 244 (Minn. Ct. App. 2001) review denied, which is the only recent Minnesota case clearly applying the exception. That case found a public policy exception and vacated an arbitrator's award reinstating a police officer to duty following a lengthy and egregious history of sexual harassment. "Recognizing the strong and clear public policy against sexual harassment, the affirmative duty of employers to implement that policy, and the unique opportunity of a police officer with a lengthy history of violations of that policy to continue to commit similar violations, we hold that the arbitrator's decision under the extreme facts of this case violated public policy and must be vacated." Id. The Court disagreed with the respondent's "dire prediction that the vacation of the arbitrator's award will undermine the arbitration process and will 'open the floodgates' to litigation challenging arbitration awards. '[T]his is an exceptional case, involving protracted outrageous behavior by a person granted special powers and who is held out by his

employer as a person whom the public can trust…. Our decision does not threaten the general rule regarding arbitration awards …[b]ut the proper discharge of the court's duty requires that it avoid a merely perfunctory approach to appeals of orders confirming arbitration awards." Id.

Absent "exceptional circumstances" such as in City of Brooklyn Ctr., supra, such a finding is extremely unlikely. To benefit from the public-policy exception, appellants must identify a policy that is " 'well defined and dominant' "; such a policy " 'is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.' " Id. at 241 (quoting W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber Workers, 461 U.S. 757, 766, 103 S.Ct. 2177, 2183 (1983)). "The public policy exception is ... narrowly defined, and a court may set aside an arbitration award only if (1) the [ ] agreement contains terms which violate public policy, or (2) the arbitration award creates an explicit conflict with other laws and legal precedents." Id.

An example of the Court of Appeals refusing to find a 'public policy exception' in the family law context is a recent unpublished opinion where the parties agreed to have the issues incident to their divorce, including custody and property division, arbitrated by a panel according to Hmong culture and tradition. Vue v. Vue, No. A05-728, 2006 WL 279070 (Minn. Ct. App. Feb 7, 2006). There was no provision that the trial court would have any authority to ensure that the arbitrators' decision was "just and equitable" according to Minnesota statutes.

An arbitration award "will be vacated only upon proof of one or more of the grounds stated in Minn. Stat. § 572.19 … and not because the court disagrees with the decision on the merits." AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd., 356 N.W.2d 295, 299-300 (Minn. 1984). Minn. Stat. § 572.19 subd. 1 provides that an arbitration award may be vacated on the following grounds: (1) corruption, fraud, or other undue means, (2) evident partiality by an arbitrator, corruption, or misconduct which prejudices a party, (3) arbitrators exceeded powers, (4) arbitrators refused to postpone hearing, to hear material evidence, or otherwise conducted the hearing in a manner as to substantially prejudice the party's rights, or (5) there was no arbitration agreement and the issue was not determined after adversarial hearing. When a party seeks to vacate an arbitration award on the ground that the arbitrator exceeded the scope of the arbitration agreement, the Court reviews that issue *de novo*. State v. Berthiame, 259 N.W.2d 904, 909 (Minn. 1977).

As with all of these ADR options, the parties can modify the statutory requirements via their agreement. In Vue, supra, at *4, the parties agreed that their right to an adversarial hearing "may be modified and even nullified by Hmong traditions and the accepted practices of the Hmong 18 Council Mediation Center." "Consequently, appellant's right to a complete hearing was expressly limited by the agreement, which is valid and enforceable absent grounds for revocation of the contract. Minn. Stat. § 572.08 (2004); Peggy Rose Revocable Trust v. Eppich, 640 N.W.2d 601, 606 (Minn. 2002)." Id. Again, the Court will hold parties to their "contract" rather than apply than statutory standard even if one party request that the Court do so at a later date based upon a dissatisfaction with the terms of the contract. "Arbitration, by its very nature, frequently and necessarily entails that the parties forfeit certain rights normally afforded to them in state court." Id.

Assessment

When considering one of these ADR options, what are some of the benefits associated with these options rather than utilizing the Court system? The parties could agree to utilize a retired Judge or experienced practitioner with

considerably more expertise on a complicated subject than the assigned Judicial Officer. The Special Master may be far better equipped to handle subject matter of a particularly specialized nature if your case involves subject matter which would involve substantial education for the Judicial Officer. Also, a Special Master typically does not have the caseload of the vast majority of Judicial Officers and can therefore offer a more efficient and flexible timeline for scheduling hearings and issuing decisions. Use of Special Masters helps us to ease the burden on Judicial Officers, whose calendars are only increasing while funding for state courts decreases. Lastly, parties may also desire privacy and confidentiality, which can only be obtained in the Court system in the very unusual case where a Judicial Officer seals a file. Through these other processes, parties can stipulate as to what documents will constitute the record and thereby preclude public viewing of private information.

When bringing a complicated matter before a Judicial Officer, what types of cases are generally referred to special masters without agreement? Typically, these would involve cases with complex discovery issues or *in camera* review of extensive documentation, as but two examples of cases that could potentially take up an enormous amount of the Court's time and which could be handled by a neutral third party charged with that specific task. In my experience, matters which are referred to a special master without agreement of the parties are so overly burdensome to the court that one of the purposes of the referral is to strongly encourage the parties to settle their dispute or pay the fees of the special master to decide it for them. If the amount in controversy is not worth paying the fees of the special master to sort through the complexities, then the trial court should not have to waste its scarce resources so that the parties can continue to litigate over the issue.

What about the drawbacks associated with these ADR options? Generally, one cites the expense involved with hiring someone to decide issues that a Judicial Officer could decide without additional cost. A party may also be "stuck with" a consensual special magistrate if the order appointing the consensual special magistrate is not drafted narrowly enough to avoid having the trial court refer any post-decree issues to that consensual special magistrate when the parties' may no longer wish to incur that expense due to the limited issues involved. The other consideration is one that is always taken into account when appointing neutrals. While neutral valuations may tend to skew toward the middle to satisfy both of the parties who are cooperating with the valuation and are equally footing the bill, and that is encouraged to facilitate settlement, the question remains whether a special master, consensual special magistrate, or arbitrator also feels the same pressure to please (or equally displease) both of his/her paying clients despite the fact that settlement is no longer an option for either of them once the decision is being made.

Amy L. Helsene is an attorney at Larkin Hoffman Daly & Lindgren, Ltd., where she is a member of the firm's Family Law Department. Amy has practiced exclusively in the field of family law since graduating from the University of Minnesota Law School in 1998.
She can be reached at (952) 896-3326 or ahelsene@larkinhoffman.com.

When Should You Use Publication in a Dissolution?

By: Bruce D. Kennedy

Almost never.

I was chatting with an experienced practitioner the other day, and he complained that he had to pay $300 to publish a summons for a dissolution. As he told me more about the situation, I realized that he did not have to publish the summons at all–in fact, he shouldn't have. It occurred to me that if this knowledgeable attorney didn't know about Service by Alternate Means that there may be plenty of other attorneys and judges who don't either.

If you represent a petitioner who claims not to know the location of the spouse, read §518.11 (c) very carefully. This section was substantially revised by the Legislature in 1994 upon the recommendation of the Family Law Section.

Our Constitution requires due process of law. Among other things, this means that if you are involved in a legal action, you have the right to know about it. Specifically, the Supreme Court has stated that notice should be "reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank and Trust Co., 339 US 306 (1950) cited in Mennonite Board of Missions v. Richard C. Adams, 462 U.S. 791 (1983).

There is nothing sillier than trying to notify a respondent you believe is living in Zanzibar by publishing a summons in the St. Paul Legal Ledger. It is a token act, and a costly one.

Section 518.11 (c) requires that you probe with your client to obtain addresses where someone might live or work who knows where the respondent is. All you have to do is present this list of addresses to the court to get permission to serve the summons and petition by first-class mail. (See the application form on www.practicelaw.org). Nothing tricky like certified or registered mail, but you must write "Forwarding Address Requested" on the envelope. If your client doesn't know a single friend or relative or former employer of the respondent, then you can mail to the respondent's last known address.

I had a client who didn't know exactly where his wife lived, but he knew she hung out in a bar in San Francisco. I got permission from the court to mail to the bar's address, and I threw an MTA and a self-addressed stamped envelope in there. A week later I got the signed MTA back with a mailing address for the respondent. My client got his divorce much quicker, and the respondent got the peace of mind of knowing she was divorced.

Publication is discouraged under the statute, unless it has a reasonably good chance of success. There may be some small towns where everybody knows each other, and someone would read a published notice and pass the information on.

Also, in 1997, the Legislature added a requirement that if there is real estate involved, you must publish in the county where the real estate is located.

But otherwise, you should never publish. Save your client $300, and increase the chance of a quicker and more legally secure dissolution.

Bruce D. Kennedy is former chair and legislative vice chair of the Family Law Section. He has been a sole practitioner for 29 years. He is a qualified neutral and Financial Early Neutral Evaluator.

Division of a Business in a Marriage Dissolution

By: Laurie A. Mack & Lymari J. Santana

Often clients ask us what happens to their closely held business in a divorce. Understanding what happens involves not only understanding Minnesota law with respect to how closely held businesses are valued in a divorce, but also understanding the behind the scenes strategy lawyers may use to ensure accurate results with the business valuation.

A spouse's interest in a closely held business is subject to division in a marriage dissolution if it is marital property. *Minn. Stat. § 518.58*. A court will generally award the business to the spouse who has been actively involved in or managing the business to ensure that company operations continue unaffected by the dissolution (this spouse is sometimes referred to as the inside spouse.) *Redding v. Redding*, 372 N.W.2d 31 (Minn. Ct. App. 1985). The inside spouse who holds an interest in the business will maintain his or her interest/shares in the business. The outside spouse would then be paid an equitable share of the value of the business in cash or other assets. *Rogers v. Rogers*, 296 N.W.2d 849 (Minn. 1980). (The spouse making the payment may be ordered to do so in a lump-sum or in periodic payments.) For these reasons, valuation of the business is a key process in the dissolution to which both parties must pay close attention.

The Minnesota Supreme Court has identified three core methods for dividing a closely-held business in a marriage dissolution:[1]

1. After determining the value of the business, the Court may award the entire asset to one spouse and order the recipient to pay a just and equitable portion of the value to the other spouse.
2. The court can divide the asset and order an in-kind distribution (this method would likely not be used if the asset is a closely held business.)
3. The court can order a sale or liquidation of the business and equitably divide the proceeds from the sale between the parties.

In order to properly divide the parties' interest in the business the court must first determine the value of the business. The court has broad discretion in determining the value of the closely held business. However, there are essentially three well accepted valuation methods:

1. Cost Approach;
2. Income Approach; and
3. Market Approach.

The courts have not set a specific formula or valuation method for determining the value of a closely held business. *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987). However, the Minnesota Supreme Court has held that for determining the value of a closely held business the factors used by the Internal Revenue Service should be considered.[2] *Id.* Accordingly, due to the complex and detailed analysis required, determining the value of the business regularly requires hiring a business valuation expert.

Another critical component of the analysis is determining whether the business is a marital asset, a nonmarital asset, or an asset which has both marital and nonmarital components. Under Minnesota law, "[a]ll property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property." *Minn. Stat. § 518.54*, *subd.*

5. The presumption that property is marital property may be overcome by proving that the property is nonmarital. Nonmarital property is defined as: "... property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse; (b) is acquired before the marriage; (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e); (d) is acquired by a spouse after the valuation date; or (e) is excluded by a valid antenuptial contract." *Minn. Stat. § 518.54, subd. 5*. If a spouse has a nonmarital interest in a closely held business, any increase in value during the marriage may be considered marital or nonmarital depending on whether the increase in value is active or passive. *Gottsacker v. Gottsacker*, 664 N.W.2d 848 (Minn. 2003). "[I] ncreases in value during marriage attributable to efforts of the spouses whether by financial investment, labor, or entrepreneurial decision-making, are marital property." *White v. White*, 521 N.W.2d 874, 878 (Minn. App. 1994). An increase in value of nonmarital property remains nonmarital if the party can show that it is attributable "solely to market forces or conditions, such as simple appreciation in value of an asset." *White*, 521 N.W.2d at 878.

Once clients understand that there may be some marital interest in the business, clients want to know what they can do to ensure that the business is valued fairly. As a practical matter, to save time and money, the parties in a dissolution typically agree to use a neutral expert to value the business. The risk with using a neutral business valuation expert is that this witness will typically walk into the courtroom carrying more weight and credibility than an independent expert a party may bring to trial to challenge the neutral expert's valuation. However, as set forth above, the courts have the discretion to use different valuation methods, and there are times when an expert could legitimately take two different approaches to the valuation. Similarly, there are times where key valuation issues turn on factual and legal determinations. For example, minority discounts may be thrown out with minority shareholders under Minnesota law when the minority shareholder exercises certain types of control under certain circumstances. Thus, it is important that you know your client's neutral business valuation expert and understand where the decisions in the valuation process could go more than one way. If enough money is at stake, one strategy we recommend is to hire a business valuation expert at the outset of the case to work with your client during the neutral valuation process, preferably an expert who is familiar with the neutral expert's work. This expert then educates you and your client as to what to expect from the valuation process, where the debatable points lie, and how to present the best evidence to that expert to advocate your client's position. Also, the neutral expert may prepare a "Draft" valuation report and ask for feedback from both sides before putting it in final form. At that point, you should have your own expert review the report and give you and your client feedback on the report. If there is something that needs to be reviewed, revised, added or there are certain facts that were not considered, the individual expert can provide advice to you and your client on the best way to present the issues.

We have found that neutral business experts consider what both sides have to say and treat both sides fairly with respect to the business valuation process. These experts appreciate both sides raising their concerns and presenting information throughout the process in a timely manner rather than saving it for cross-examination at trial. The parties to the dissolution should remain involved in the business valuation process and provide the expert the information necessary to ensure an accurate valuation of the closely held business. This is not a circumstance where you should sit back and watch the process unfold. Even more importantly, your chance of getting an expert to change an entrenched position at trial is very unlikely. Early intervention is key.[3]

Notes

[1] *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987).

[2] The factors set forth by the Internal Revenue Service are:

1. the nature of the business and the history of the enterprise since its inception;
2. the economic outlook in general and the condition and the outlook of the specific industry in particular;
3. the book value of the stock and the financial condition of the business;
4. the earning capacity of the company;
5. the dividend-paying capacity;
6. whether the enterprise has goodwill or other intangible value;
7. sales of stock and the size of the block of stock to be valued; and
8. the market price of stocks or businesses engaged in the same or a similar line of business having their stocks traded in a free and open market.

Revenue Ruling 59-60, 19591-1 C.B. 237.

[3] This article is intended to be a brief overview of the division of business in a dissolution. There are other legal principles and facts that a Court may consider in the valuation and division of a closely held business that would require a more extensive analysis.

Laurie A. Mack is a founding shareholder of Mack & Santana Law Offices, P.C. where she practices solely in the areas of family law, litigation and appeals. Laurie is a member of the Minnesota Bar Association, the Florida Bar Association, the Hennepin County Bar Association and the Eighth District Bar Association. Laurie received her J.D. in 1994 from Florida State University College of Law with Highest Honors in the top 5% of her class and her B.A. Degree from Minnesota State University Mankato graduating summa cum laude. Laurie has also been named Who's Who in Minnesota Family Law in 2005 and 2006 and works as a lawyer-volunteer for the law clinics at Chrysalis, a non-profit organization. Since 1994, Laurie has been practicing in complex litigation primarily in family law and related causes of action.

Lymari J. Santana is a founding shareholder of Mack & Santana Law Offices, P.C. where she practices solely in the areas of family law, litigation and appeals. Lymari is a member of the Minnesota Bar Association, the Michigan State Bar Association, the Hennepin County Bar Association, the Minnesota Hispanic Bar Association and the National Hispanic Bar Association. Lymari received her J.D. in 1994, from Detroit College of Law, Michigan State University graduating with honors and her B.A. Degree from the University of Puerto Rico, Rio Piedras with honors. Lymari served in the United States Army JAG Corps from 1995-2000. Lymari has been named one of Minnesota's 25 On the Rise by the Hispanic Chamber of Commerce and has been selected as a Minnesota Rising Star for 2005, 2006, and 2007 by Minnesota Law and Politics and has also been named Who's Who in Minnesota Family Law in 2005 and 2006.

The Ties that Don't Bind

By: Danielle Shelton

In the Styles section of the Sunday, October 15, 2006 *New York Times*, ran an article written by Sam Roberts, entitled "To Be Married Means to be Outnumbered."[1] Two short paragraphs into the article, it sought to explain the justification for its title. Citing an October 2006 American Community Survey, conducted by the Census Bureau, the article stated that 49.7 percent of households in 2005 were made up of married couples, in contrast to 52 percent five years earlier.[2] Then, towards the article's conclusion, it stated that the proportion of married couples has been shrinking for decades. It cited that in 1930 married couples accounted for 84 percent of households, in sharp contrast to 56 percent in 1990. These facts then necessitated the article's conclusion that "Ozzie and Harriet live no more." [3]

Our laws, arguably, are and continue to be reflective of the changing mores of society, thus taking into account Ozzie and Harriet's marital status or lack thereof. As any first year law student would venture to tell you, the laws and the courts' interpretation of them seek to create clarity, and continuity in application and expectation. However, what is known as the Anti-palimony statutes here in Minnesota, and their subsequent interpretation by Minnesota courts beg the question as to whether the latter two statements are true. Do the anti-palimony statutes currently reflect societies' moral fiber? Does the courts' interpretation of the anti-palimony statutes create continuity in application and expectation? If the answers are "No", then how does the practitioner properly advise a soon to be cohabitating client on how to protect their financial interests? Or conversely, how does the practitioner properly advise a previously cohabitating claimant regarding the expectation of a property division in court?

Minnesota, a Very Brief Societal History

Statistics and articles tell us that marriage is a slightly less popular institution than in decades past, and co-habitation is all the rage. Interestingly enough though, prior to 1941 common-law marriage was recognized in Minnesota, when marriage arguably was all the rage.[4] Why? Formalizing marriage was a difficult prospect, given the expenses of getting married and the limited number of persons available to perform marriage ceremonies.[5] It was not enough for a couple to have the general reputation of being "married" to meet their common-law marital status.[6] Rather, a couple proved their common-law status by a show of cohabitation, or that either party took on marital obligations and duties for a sufficient period of time.[7] Therefore, if a couple had a common-law marriage in the eyes of the law, then upon the couple's break-up there was a division of "the parties' individual property rights." [8]

However, by the late nineteenth century common-law marriages became morally questionable to the general public.[9] As a reaction to the growing disdain of common-law marriage by its constituents, states began to abolish the recognition of the practice altogether, and Minnesota was no exception.[10] It declared common-law marriage void after April 26, 1941.[11] However, as the Minnesota Supreme Court in Carlson v. Olson, indicated some thirty years later, "The elimination of common-law marriage obviously did not eliminate the institution, but only the rules which must be applied to it."[12] Thus began the confusion.

The First in a Series of Unanswered Questions

The Minnesota Supreme Court has spoken on the issue of cohabitation after the abolition of common-law marriage on three separate

occasions. The first of which was a decision rendered on June 21, 1946 in the case of Baker v. Baker.[13]

In short, Lilyan Blocker Baker began cohabitating in 1933 with Fred Baker.[14] Mr. Baker was legally married prior to the start of his relationship with Lilyan Baker, and did not divorce his wife until 1942.[15] Eventually, Lilyan Baker and Mr. Baker's relationship dissolved.[16] Lilyan Baker requested a division of the couple's accumulated property pursuant to a "divorce" by common-law.[17] However, the Court stated that the parties did not have a common-law marriage due to the fact that Mr. Baker was already legally married, to another, and Lilyan Baker knew this.[18] Moreover, any cohabitation claiming to be a common-law marriage was void after April 26, 1941.[19] Therefore, the Court held that where the parties live together under a "meretricious"[20] arrangement the court would grant no relief.[21] The Court decided that because of the meretricious nature of the relationship there was no implied obligation by Mr. Baker to compensate the Lilyan Baker for her household services.[22]

Thus, ultimately what Baker proved to be, was a blanket prohibition of property rights to the suing financially dependent cohabitant. But, what the Baker Court did not clarify was whether the outcome would have changed had Lilyan Baker not known of Fred Baker's obvious philandering. If the Court had decided that there was a valid common-law marriage did the pre-1941 division of the parties' individual property rights still apply? Ultimately, it will never be known because Minnesota appellate courts went surprisingly silent on this issue of co-habitation for thirty years, until 1977 right after California invaded the Midwest.

The Effect of Marvin v. Marvin

Marvin v. Marvin[23] was a California case in which Michelle Marvin sued her cohabitating partner Lee Marvin, the famous movie actor, seeking declaratory relief regarding her contrct and property rights, and for a constructive trust to be imposed upon half the property the couple acquired during their relationship.[24]

Michelle and Lee Marvin had a five and half year relationship.[25] Unfortunately for Michelle Marvin, all the accumulated property was placed in Lee Marvin's name only.[26] However, Michelle Marvin alleged that despite the latter fact, she and Lee Marvin entered into an oral agreement indicting that while they lived together they would combine their efforts and earnings and share equally in any and all property resulting from their combined or individual efforts and earnings.[27] Michelle Marvin stated she agreed to give up her career as a singer and actress, in exchange for being a homemaker.[28] And, they also each agreed to hold themselves out as a married couple to the general public.[29]

The California Supreme Court, in a not at all surprising decision in retrospect, held contracts between cohabitating individuals were enforceable (even absent a writing as was the case in Marvin), so long as the consideration for the contract was independent of sexual services.[30] Moreover, contracts between cohabitating individuals could be implied by the evidence of the conduct of the cohabitating couple.[31] Therefore, if a contract, either express or implied, could exist between cohabitating individuals, then remedies based in equity were available for enforcement of those contacts.[32]

The Marvin decision single handedly revived the concept of an equitable division of property rights to unmarried individuals. Arguably two things happened in Minnesota as a result of the Marvin decision. Firstly, the Minnesota Supreme Court took the case of Carlson v. Olson.[33] Secondly, the Minnesota State Legislature enacted what is currently known as the state's Anti-palimony law.[34]

The Second in a Series of Unanswered Questions

While it is this author's opinion that the Carlson case was heard by the Minnesota Supreme Court as a response to Marvin, more importantly it was the Court's attempt to definitively answer where Minnesota stood on the issue of property rights and cohabitating individuals.

Carson v. Olson, involved the break-up and ultimate division of real and personal property of an unmarried couple, who held themselves out to be married for a total of twenty-one years.[35] Both Laura Carlson and Oral Olson owned their real property as joint tenants.[36] However, Mr. Olson provided all the financial resources, because Ms. Carlson never worked during the course of their relationship. Rather, she helped raise their son to adulthood and contributed to the care of the home.[37] Nonetheless, Ms. Carlson brought a partition action for the division of personal and real property accumulated by the parties.[38]

The Carlson Court cites the Marvin case extensively, along with a number of secondary source case law and legal journals. More than likely, the Carlson Court's heavy reliance on secondary sources was due to the fact that the last case the Minnesota Supreme Court discussed the property rights of unmarried individuals post common-law marriage was Baker. Carlson appears to recognize Marvin's tripartite conclusion: (1) dissolution statutes do not cover the distribution of property of cohabitating individuals;[39] (2) courts should enforce express contacts between cohabitating individuals so long as the consideration for the contract is not based in sexual services;[40] and (3) courts should inquire whether there is an implied contact between cohabitating individuals (absent an express agreement) evidenced by the couples conduct.[41] If so, courts can employ the legal principles of Quantum Meruit,[42] or equitable remedies such as constructive or resulting trusts when necessary.[43] Therefore, the Carlson Court held that a partition action was the appropriate remedy in which to divide Ms. Carlson and Mr. Olson's property.[44] Moreover, it found that equitable principles can supplement the partition statute.[45] The Court concluded that Ms. Carlson and Mr. Olson intended for their property to be divided equally based on the "theory of an irrevocable gift from Mr. Olson to respondent of those assets purchased solely with his earnings and that the contribution of respondent to the remodeling of the home was to be treated in the same manner."[46]

Therefore, the Minnesota Supreme Court for the first time post common-law marriage, accorded property rights to cohabitating individuals. It did so, by averring that remedies based in equity were available to cohabitating individuals seeking to pursue property rights. However, what the Minnesota Supreme Court did not do, was define exactly what equitable remedies were available to cohabitating partners, besides partition. While it acknowledged the Marvin Court's remedies of Quantum Meruit, and constructive or resulting trusts, the Carlson Court stopped short of clear adoption of those remedies, leaving Minnesota attorneys and their clients to wade through the ambiguousness of the Court's decision as to what equitable remedies cohabitating individuals could pursue.

An Attempt to Create Clarity

Also as a response to Marvin the Minnesota Legislature drafted what is commonly known as Minnesota's Anti-palimony statutes.[47] The statues' purposes are thought to be two-fold. First, the statutes implementation sought to avoid "acrimonious lawsuits such as Marvin."[48] Second, to "promote certainty of expectation"[49] regarding claims based on cohabitation.

Statute sections 513.075 and 513.076 went into effect on June 1, 1980,[50] and bear no resemblance to the reasoning and decision made by the Minnesota Supreme Court in Carlson. Minnesota Statute section 513.075 states:

> If sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if: (1) the contract is written and signed by the parties, and (2) enforcement is sought after termination of the relationship.[51]

Minnesota statute section 513.076 piggy backs on the previous section by indicating:

> Unless the individuals have executed a contract complying with the provisions of section 513.075 the courts of this state are without jurisdiction to hear and shall dismiss as contrary to public policy any claim by an individual to the earnings or property of another individual if the claim is based on the fact that the individuals lived together in contemplation of sexual relations and out of wedlock within or without this state.[52]

To put it succinctly, absent a writing regarding the financial intricacies and property rights regarding the parties, the Court has no jurisdiction to hear any property or financial dispute regarding cohabitating individuals. However, in modern day relationships involving either married individuals or cohabitating parties, written contracts reflecting agreements regarding financial and property divisions in the face of unsuccessful relationships still fail to be the norm. The majority of the States understand this, with the exception of Minnesota and Texas which are the only two states that require written contracts for cohabitating individuals in order for them to assert property rights in court.[53] What stands out the most however, is that in absence of any ante or postnuptial agreement regarding divorcing couples, the divorcing parties still get their day in court and an opportunity to argue the merits of their property claims. However, cohabitating individuals are precluded from such opportunities by virtue of statue section 513.076, which necessitates a writing.

It's easy to conclude that the codification of the Anti-palimony statutes was not an accurate reflection nor a realistic expectation of societal behavior. Nor did it create a continuity of expectation regarding property disputes of cohabitating individuals or avoid acrimonious litigation. Why? Because, the Carlson Court clearly created property rights for cohabitating individuals absent any express written agreement. Therefore it now became arguable that either the statues or the case law could apply to any one cohabitating individual's case.

The Third in a Series of Unanswered Questions

In re Estate of Erickson[54] was the first case to take into consideration and address the Anti-palimony statutes. The case involved Pamela Potvin and Jorgen Ericksen, a couple who began living together in June of 1977 in a rental property to which each contributed equally for a two year period.[55] In March of 1979 the couple decided to purchase a home with joint funds.[56] However, it was decided that the mortgage would only be executed in Mr. Ericksen's name, due to the fact that Ms. Potvin was still married and she believed she would lose some of her AFDC benefits if she had a cognizable interest in the home.[57] Despite Mr. Ericksen's "sole ownership," the couple equally shared in all the expenses related to the home.[58] Unfortunately in May of 1981, shortly after Ms. Potvin's divorce, Mr. Ericksen died and Ms. Potvin pursued a claim against Mr. Ericksen's estate for her interest in the property.[59] The probate court held that Mr. Ericksen's estate would be unjustly enriched if it were granted sole title to the property.[60]

Therefore, Ms. Potvin was granted a one-half interest in the property through constructive trust.[61] The Ericksen estate appealed, relying on the Anti-palimony statutes.

However, the Minnesota Supreme Court rejected the Anti-palimony statutes' application to the facts outright, stating that the statutes:

> [W]ere not intended to apply to the facts of this case where the claimant does not seek to assert any rights in the property of a cohabitant but to preserve and protect her own property, which she acquired for cash consideration wholly independent of any service contract related to cohabitation.[62]

Rather the statutes' application was subject to facts where the "*sole* consideration for a contract…" is contemplation of sexual relations out of wedlock.[63] Because this was not the case in Ericksen, the Court found that implementation of a constructive trust for Ms. Potvin's one-half share of the property was appropriate.[64]

While the Ericksen case appears to keep in lock step with Carlson by providing another opportunity for cohabitants to assert their property rights, now under the guise of constructive trusts, the Court created additional confusion also.

Firstly, the decision, like in Carlson gave no additional guidance as to what claims in equity could be asserted for cohabitating parties. Secondly, the Ericksen Court was explicit in saying that the Anti-palimony statutes did not apply if the property the cohabitant was seeking to preserve was *wholly independent* of a sexual relationship. However, the Court never defined what wholly independent meant leaving open whether there had to be equal financial contributions of the cohabitating individuals to meet the wholly independent threshold? Thirdly, and more importantly, the Anti-palimony statutes created a total jurisdictional bar on any claim regarding a cohabitant absent a writing. What Ericksen essentially did was intimate that there first needed to be an inquiry into whether the asserted property right was wholly independent of the sexual relationship. If not, then, if there were no writing there was a total jurisdictional bar on hearing the claim. This reasoning was wholly contrary to the plain meaning of the Anti-palimony statutes indicating that the condition precedent to any claim be a writing, and not an inquiry into whether the asserted property right was independent of a sexual relationship.

The Aftermath of Ericksen

After In re Estate of Ericksen the Court of Appeals applied a strict interpretation of the Anti-palimony statutes.[65] It's unclear as to why. Clearly the Ericksen Court held open the possibility for the Court of Appeals and the lower courts to move away from the Anti-palimony statutes' strict jurisdictional bar absent a writing. However, quite possibly the Ericksen decision created too much uncertainty, as to what "wholly independent" meant for any court to confidently follow in its footsteps. Thus to remedy these situations, it's easy to conclude that the Court had to decide the case of In re Estate of Palmen.[66]

The Last Stand

Palmen involved a cohabitating couple, Deborah Schneider and John Palmen, who lived together for ten years, nine of those years in a cabin they built on property belonging to Mr. Palmen.[67] There was no written agreement that Ms. Schneider had any property rights to the cabin.[68] However, she claimed that Mr. Palmen had indicated that if the relationship ended he would reimburse her for the labor as well as the material and supplies she contributed.[69] The couple's relationship did end in August of 1996.[70] Mr. Palmen then killed himself one month later.[71]

Ms. Schneider brought a claim against Mr. Palmen's estate for a share of the cabin. The Palmen estate motioned the lower court for summary judgment, which it granted. Ms. Schneider then appealed. The Court of Appeals sustained the lower court's decision based on the Minnesota's Anti-palimony statutes.[72] The Minnesota Supreme Court then decided to hear the case for the limited purpose of determining whether the Anti-palimony statutes barred Ms. Schneider's claim.[73]

For the first time, the Minnesota Supreme Court attempted to clarify to the utmost, its interpretation of the Anti-palimony statutes and the rights of cohabitating individuals. The Court stated that the plain meaning of the statutes provide that absent a written contract between cohabitating parties in contemplation of sexual relations, property rights are unenforceable.[74] However, the Court went on to say that:

> a claim by an individual to recover, preserve, or protect his or her own property, which he or she acquired "independent of any service contract related to cohabitation" is enforceable in this state. Indeed, in *In re Ericksen*, we explicitly held that the jurisdictional bar imposed by sections 513.075 and 513.076 applies only when the "sole consideration for a contract between cohabitating parties is their contemplation of sexual relations…out of wedlock. We also made it clear that the statutory bar does not apply where one party is merely seeking to "preserve and protect [his or] her own property" and is not "seek [ing] to assert any rights in the property of the cohabitant."[75]

The Court went to clarify that the Anti-palimony statutes do not mean "that as a matter of law, enforcement of all unwritten agreements between individuals living together in contemplation of sexual relations out of wedlock are barred."[76] Rather the statutes do not bar a claim if the claimant is seeking to preserve his or her own property.[77] Therefore, Ms. Schneider's claim was not barred because she was seeking to recover the value of her contributions.[78]

Thus, what the Palmen Court did was to unequivocally take away the Anti-palimony statutes' condition precedent of a writing as a condition for a claim to be heard. Rather, the Court demanded of its lower courts to first make an inquiry into whether any claimant was seeking to recover, or preserve, their independent property. Or was the claimant simply seeking an interest in the other cohabitant's individual property? If the latter is the case, then a writing is needed, and the Anti-palimony statutes go into effect.

The Palmen decision, unlike the statutes, sought to establish rules that accurately reflected the modern day relationship. People live together out of wedlock. Very few couples in the midst of love execute contracts. Nonetheless, these very same couples make cognizable individual contributions to the relationship, just like married couples. Therefore, these individuals should be able to recover for those contributions.

The Anti-palimony Statutes, Case Law, and their Practical Applications.

As a practitioner, how does one accurately advise a soon to be or currently cohabitating individual? It's safe to say that any attorney should advise the soon to be cohabitating individual to err on the safe side and have a written contract drafted outlining the parties' intentions regarding their real and personal property rights, regardless of whether it is a contract based on sexual relations or wholly independent of the relationship.

More difficultly, how does the practitioner hypothesize to a cohabitating claimant the possible outcome of a real or personal property division in court? Despite the myriad of confusion over the rights of cohabitating individuals over the past sixty years, the Palmen Court made it clear. If it's the claimant's individual property she or he contributed, and is seeking to recover, preserve or protect and it can be proven through witnesses and/or documents, then at a minimum the Claimant will have a cognizable claim that can be heard by a court, and probably will be awarded her or his interest in their individual property, even absent a written contract. However, if the Claimant is seeking to receive an interest in the other cohabitant's individual property absent any contribution from the Claimant the claim is jurisdictionally barred by the Anti-palimony statutes without a written contract. However, the real complexity for the practitioner comes in when deciding what remedies based in equity are available to their cohabitating client if they are seeking to recover, preserve or protect their interests. The Minnesota Supreme Court has clearly accepted partition and constructive trusts as equitable remedies available to cohabitating claimants, but that is it. So it is up to the practitioner to zealously argue for any other remedies based in equity, and await the court's decision.

Danielle Shelton is an attorney and founder of Shelton Family Law, LLC located in Bloomington where she practices exclusively in the area of marital dissolutions and civil mediations. She can be reached at (612) 851-0996 or ds@sheltonfamilylaw.com.

Notes

[1] *See* Roberts, Sam, "To Be Married Means to be Outnumbered," *The New York Times* Oct. 15, 2006.

[2] *See* id.

[3] *See* id.

[4] *See Baker v. Baker*, 222 Minn. 169, 171, 23 N.W.2d 582, 583 (Minn. 1946).

[5] Kantorowicz, Kim, "Contracts-Cohabitation in Minnesota: From Love To Contract-Public Policy Gone Awry in Re Estate Palmen, 588 N.W.2d 493 (Minn. 1999)." 26 Wm. Mitchell L. Rev. 213, 218 (2000).

[6] *See* id.

[7] *See* id.

[8] *See* id. at 220.

[9] *See* id. at 219.

[10] *See* id.

[11] *See* Carlson v. Olson, 256 N.W.2d 249, 251 (Minn. 1977).

[12] *See* id.

[13] *See* Baker v. Baker, 222 Minn. 169, 171, 23 N.W.2d 582 (Minn. 1946).

[14] It's unknown whether Lilyan Blocker Baker's maiden surname was Baker or she adopted Fred Baker's surname as her own informally.

[15] *See* Baker, 23 N.W.2d at 583.

[16] *See* id.

[17] *See* id.

[18] *See* id.

[19] *See* Id.

[20] (Of a romantic relationship) involving either unlawful sexual connection or lack of capacity on the part of one party. *See* BLACK'S LAW DICTIONARY (8th ed. 2004).

[21] *See* Baker, 23 N.W.2d at 584.

[22] *See* id.

[23] 557 P.2d 106 (Cal. 1976).

[24] *See* Carlson v. Olson, 256 N.W.2d 249, 252 (Minn. 1977).

[25] *See* id.

[26] *See* Kantorowicz, Kim, "Contracts-Cohabitation in Minnesota: From Love To Contract-Public Policy Gone Awry in Re Estate Palmen, 588 N.W.2d 493 (Minn. 1999)." 26 Wm. Mitchell L. Rev. 213, 222. (2000).

[27] *See* Carlson, 256 N.W.2d at 252.

[28] *See* id.

[29] *See* id.

[30] *See* Marvin v. Marvin, 557 P.2d 106, 122 (Cal. 1976).

[31] *See* id.

[32] *See* id. at 122-123.

[33] 256 N.W.2d 249 (Minn. 1997).

[34] *See* Kantorowicz, at 224-225.
[35] *See* Carlson, 256 N.W.2d at 250.
[36] *See* id.
[37] *See* id.
[38] *See* id. at 255.
[39] *See* id.
[40] *See* Carlson, 256 N.W.2.d at 255.
[41] *See* Id.
[42] "Quantum Meruit" is defined as an equitable doctrine that one who benefits from the labor or material of another should not be unjustly enriched, thus it implies a promise to pay for the benefits of services rendered. *See* BLACK'S LAW DICTIONARY 1243 (6th ed. 1990).
[43] *See* Carlson, 256 N.W.2d at 255. "Constructive Trust" is a trust arising out of law against one, who by fraud, has obtained or holds the right to property she should not in equity and good conscious. *See* BLACK'S LAW DICTIONARY 1513 (6th ed. 1990); "Resulting Trust" arises by implication of law, or by operation and construction of equity, and which establishes as consonant to the presumed intention of the parties gathered from the nature of the transaction. *See* Id. at 1512.
[44] *See* id.
[45] *See* id.
[46] *See* Id.
[47] It is unknown whether the drafting and implementation of the anti-palimony statutes were also a response to Carlson v. Olson.
[48] *See* Kantorowicz, Kim, "Contracts-Cohabitation in Minnesota: From Love To Contract-Public Policy Gone Awry in Re Estate Palmen, 588 N.W.2d 493 (Minn. 1999)." 26 Wm. Mitchell L. Rev. 213, 225. (2000).
[49] *See* id.
[50] *See* Cummings v. Cummings, 376 N.W.2d 726, 729 (Minn. Ct. App. 1985).
[51] *See* Minn. Stat. § 513.075 (2006).
[52] *See* Minn. Stat. § 513.076 (2006).
[53] *See* Kantorowicz, at 225.
[54] 337 N.W.2d 671 (Minn. 1983).
[55] *See* id. at 672.
[56] *See* id.
[57] *See* id.
[58] *See* id.
[59] *See* *Erickson*, 337 N.W.2d at 672-673.
[60] *See* id. at 673.
[61] *See* id.
[62] *See* id. at 674.
[63] *See* id.
[64] *See* id (stating also that fraud need not be found for implementation of a constructive trust).
[65] *See* Tourville v. Kowarsch, 365 N.w.2d 298 (Minn. Ct. App 1985) (denying claim for constructive trust based on unjust enrichment because cohabitating individuals failed to execute a writing); *See also* Cummings v. Cummings, 376 N.W.2d 726 (Minn. Ct. App. 1985) (finding that district court's denial of property rights to cohabitating party correct for lack of writing and holding out to community as "husband" and" wife"), Mechura v. McQuillan, 419 N.W.2d 855 (Minn. Ct. App. 1988)(deciding that real estate document indicating property held in joint tenancy insufficient to meet writing requirement of Anti-palimony statutes), Roatch v. Puera, 534 N.W.2d 560 (Minn. Ct. App. 1995)(determining no understanding between parties that property was jointly owned and no written contract in conformity with the Anti-palimony statutes), Otto v. Otto, N.W.2d 1988 WL 268047 (Minn. Ct. App. 1998)(finding Anti-palimony statutes a bar on wife's claim to husband's home and business interest); *Cf* Moore v. Sordahl, 389 N.W.2d 748 (Minn. Ct. App. 1986)(finding no express or implied agreement between parties therefore constructive trust unnecessary because no unjust enrichment); *Contra* Obert v. Dahl, 574. N.W.2d 747 (Minn. Ct. App. 1998)(denying summary judgment on basis that there was a question of material fact was as to whether the parties sexual relationship the sole consideration for the contract between them).
[66] 588 N.W.2d 493 (Minn. 1999).
[67] *See* id. at 494.
[68] *See* id. at 495.
[69] *See* id.
[70] *See* id.
[71] *See* Palmen, 588 N.W.2d at 495.
[72] *See* id.
[73] *See* id.
[74] *See* id.
[75] *See* id. (citations omitted)
[76] *See* Palmen, 588 N.W.2d at 496
[77] *See* id.
[78] *See* id.

A View From the Bench

By: Honorable Stephen C. Aldrich

Editor's Note:
After twenty-two years of family law practice, the Honorable Stephen C. Aldrich served on the family court bench in Hennepin County for nine years until he transferred to the civil and criminal divisions in January 2007. What follows are the remarks made by Judge Aldrich at the Hennepin County Family Law Roundtable on November 30, 2006, during which he was recognized for his public service in the family law area. Although Judge Aldrich's remarks will be most meaningful to those who have had the opportunity to appear before him in Hennepin County, they reflect a perspective which may be appreciated by family law practioners throughout Minnesota.

Anytime people are acknowledging your past -- and especially when you get to be 65 years old -- there is temptation to look back, tell stories, and gloss over anything unhappy.
I'm sorry, but I have succumbed to the temptation, at least at bit. Before doing so, however, let me be clear -- the "Good Old Days" never were Good, only Old.

While I have great regard and professional affection for the people in the family court system when I arrived in 1975, I would never go back to what we experienced then as "normal."

--We had a system that rewarded adversary behavior even as the best family lawyers encouraged settlement.

--We had a delayed process that bifurcated custody trials to have them heard within the first year.

--We were all tempted to cross-examine parents in ways to leave permanent scar tissue between the parties – and often did so.

--We lawyers routinely wrote nastygrams – letters accusing the other client or attorney of graphically awful behavior – and then were surprised when they got mad.

--Psychologists, custody evaluators, and other experts lived in a world of separation and suspicion.

--There were no Orders for Protection, no shelters, and little therapy available.

--We had a court system that provided grossly inadequate resources to family cases.

As to the last point,

--Bill Haugh showed 25 years ago that family court had money issues at stake equal to those in civil cases. At that time, there were 4 Referees and 2 Judges assigned in Hennepin family court. Several times more judge time was assigned to civil cases.

-- At that time the Family Court Assignment office was 1 – three people.

All of that -- at least in the Hennepin County family bar and court – has changed, and for the better.

I want to acknowledge and thank the people I remember to have led the process of humanization of family law in Minnesota.

-- The Minnesota legislators who gave us no-fault divorce, presumed joint legal custody, parenting plans, and child support guidelines. We have a good family law in Minnesota, and should thank those who lobbied for these changes as well, especially the HCBA and MSBA Family Law Sections.

-- All the Family Court Referees, judges, clerks, and lawyers who endured and tried to improve a fundamentally flawed system of non-management of family cases. I particularly thank James Rorris, Bill Haugh, Jack Daly, Bob Henson, and all the other lawyers who mentored us and proved that a full time family court practice was honorable and financially possible. And thanks to Louis Reidenberg and Jack Jaycox for training so many lawyers here in how – and sometimes how not – to conduct a specialty family practice.

-- Judge Susanne Sedgewick for bifurcating custody trials and for inspiring Minnesota CLE to sponsor the first day long family law seminars in the mid-70's.

-- Paul Casperson, now retired from FCS, for his many ideas that benefited children, including the now common oral presentation of custody studies to lawyers and clients before the bad facts had to be written down.

-- Jim Mattocks, Tim Erlander, Karen Irvin, and Mindy Mitnick and others who joined with frustrated lawyers in the late 1970's in CLE courses that began to cross the great divide between human service and legal professionals.

-- Judge Gary Crippen for his scholarly and helpful CLE presentations on matters of import to children. That includes his seminal paper on "Selection of Evidence in Custody Cases."

-- Frank Harris, James Moffat, and Tim Morrow of Minnesota CLE for repeatedly bringing in national and local experts on the best interests of children, including many Ph.D. psychologists.

-- The Minnesota AAML and its many fellows who have sponsored and taught at multiple CLE events each year, thereby improving the practice for all of us.

-- Stu Webb and Chris Leick for leading us to Collaborative Law, Mary Davidson for her experiment with Divorce with Dignity, and Ron Ouskey for expanding Collaborative family law techniques.

-- Dr. John Reardon, Susan Rhode, Gary Weissman, Susan Lach, Andrea Niemi, Tom Tuft, and the rest of our AAML cohorts who have helped crystallize and expand our learning about what good family practice is.

-- Chief Judge Kevin Burke who gave family court enough resources to do its job, and protected those resources thereafter.

-- Judge Charles Porter for leading us to full-fledged blocking of cases, early case management, and assigning whole cases to judicial officers, both referees and judges.

-- Judge James Swenson for consolidating those reforms, helping create and expand the use of Early Neutral Evaluations, and reminding us of two things: that the Rules of Evidence and Civil Procedure apply to family cases, and that those Rules give substantial discretion in Judge-managed cases to permit efficiency and better results for children.

-- Judge Bruce Peterson who acknowledged early on that family cases have intellectual

difficulty worthy of our best talent and who has returned to family court to continue its humanization, particularly as to pro se parties.

-- Last, I want to acknowledge two people and a group who may have escaped sufficient notice:

1. The first is Catherine (Katy) Brey who has been the manager of Family Court through all the recent transitions. She has provided and insured the graceful staff support that permitted those improvements to happen.
2. The second is all of my law clerks and reporters, whom many of you know consistently have made me a better judge by their suggestions and criticism of both your work and mine.
3. The third is Mary Gagne. She was the One in the Family Court Assignment Office in 1975. And she was the reason that many of us could stand the work when the system made so little sense. And she helped created the family court settlement program, the OFP process, and the Domestic Abuse Service Center. Her retirement party was today. We all owe her several debts of gratitude.

This is a good time for us to get some relief from each other. I look forward to expanding my work and learning in criminal and civil matters. Perhaps when the stars align differently, I'll be able to come back to a family practice and court that has become even more humane and civilized.

In the meantime, I will continue to edit the Trials Chapter of the new Custody and Support Deskbook and likely will have more time to appear at CLE sessions as needed. Keep me posted on future meetings.

When Jack Gill retired, he said that many of us could have done this job as well or better than he and that becoming a judge is largely a matter of chance. He is right as to all of us on the bench. I feel so fortunate to have been so lucky to have a job that so suits my nature.

Thank you for the kind words – and the free suppers.

Thanks to all of you for helping me get here. Thank you even more for helping me every day to do the best possible job that is so important for our children and families.

From the Incoming Editor

By: Linda Wold

Greetings to you all!

I'd like to take this opportunity to introduce myself to you and to acquaint you with my vision for the Family Law Forum during my term of office.

I have been a solo family law practitioner since 1994. As a longtime member of the MSBA, I only recently held office as the Family Law Section Secretary. My experience in that capacity allowed me to grow and to appreciate all that section membership has to offer. One of those "perks" was receiving the "Family Law Forum" publication. I have found it to be a valuable publication and one I have looked forward to reading. The opportunity arose where I could take on the position of chair of publications and I was elected to serve in that capacity at the 2007 Family Law Institute. My plans for the publication are to have each issue cover one topic.

The first issue topic is to be Domestic Abuse. Several writers are currently being asked or have consented to offer their insights. Additional writers are needed and I encourage you to share your knowledge, viewpoint and expertise with us all by consenting to writing an article. Contact me so we can discuss your ideas and the possibility of bringing you on board this first issue of my term.

The topic for the second issue will be solo practice, be it articles about your experiences, how to practice, tips and strategies, resources, technology needs for solos, networking, etc. This field is certainly a broad one but likely will be of interest to many. Start thinking about how you can contribute to this issue on solo practice.

The third topic for the 2007-08 year will be pro bono work: programs that need your service, ways you can better serve your pro bono clients, the importance of doing pro bono work, issues surrounding pro bono work, etc. I hope to include not only family law attorneys who do pro bono work, but also program directors and personnel who know and see the importance and value of the pro bono work that is provided.

It is my aim to have the 3 issues published by the following dates:

November 1, 2007	Domestic Abuse
February 1, 2008	Solo Practice
May 1, 2008	Pro Bono

Individual article submission target dates (deadlines) will be set prior to those publishing deadlines so there will be time to edit, (but only if necessary), and to complete the publishing process.

We are also looking for additional people to join the publishing committee. Our work will consist of selecting topics, soliciting writers, setting deadlines, reviewing articles, maintaining contact with the writers, and some minor editing if necessary. It is anticipated that most of the work will be accomplished by email and/or telephone but some face-to-face meetings may occur as necessary.

As always, your suggestions for topics and requests for information, your participation in any way are encouraged and appreciated. I hope to hear from many of you and to work with you during my term of office.

Linda Wold
763-425-4217
lwold@usfamily.net