

May 2008

Family Law Newsletter  
for members of the Colorado Bar Association Family Law Section  
-----

**In this issue:**

Chair Report

FLS Officers & Members

Hot Websites for Family Law Practitioners

Meet a Magistrate

Marital Agreements 101

The Lawyer's Duty to Promote Peace

Family Case Law Update

FLS Luncheon

**FLS Newsletter Article Submission**

Editors: Ellen Weston Squires & Katie Hays

The editor will happily accept submission of articles for publication, letters to the Editor, or other items of interest. The editor retains the right to edit any and all submissions. Please e-mail articles to [ellen@SquiresFamilyLaw.com](mailto:ellen@SquiresFamilyLaw.com) or [katie@silvermanlawoffices.com](mailto:katie@silvermanlawoffices.com) in MS Word format only.

---

**Chair Report**

Letter from the Chair  
Kathryn Beck  
Beck, Jonson & Nolan, P.C.  
Golden, Colorado

Happy Spring to each of you! Having just returned from some much needed rest and relaxation in the California and Arizona sun, I remind you all of the importance of taking care of yourselves. During my time in San Diego, I got to take a college tour with my youngest son as the tour guide (this did my ol' heart proud)! I also got to play a lot of golf and tennis, attended the Pacific Life Tennis Open in the California desert (to cheer on my secret crush, Rafael Nadal), and spent an hour just watching the San Diego zoo polar bears. A break from our work is critical; our business is truly challenging. In my opinion, family practitioners serve the most difficult client population around and we need to take time for mental health breaks. Of course, it is never much fun playing catch up when we come back; but, the time away from our desks is well worth it!

The Section has been plugging along in a never ending attempt to represent the interests of our family law practitioners. We have very much enjoyed our lunches with the judicial officers around the metro area and beyond. Most recently, we visited with the First Judicial District. We learned that Jefferson County will be filing a new District Court judge's position in July. This is the good news; the bad news is that because of limited resources, the Public Defender's Office, District Attorney's Office, and Sheriff's Department do not have the resources to staff a P.D., D.A., and designated sheriff to that new courtroom. Therefore, the 1<sup>st</sup> JD has decided that they will establish one District Court division specifically devoted to family law matters! This change

should be effective in July, 2008. Thereafter, the jurisdiction will continue to explore ideas to address their space issues. Apparently, the Taj Mahal is bursting at the seams. We also learned that while e-filing in Jefferson County is not mandated in domestic cases, the judges there are developing a strong preference for e-filing.

The Officers will visit with the Denver bench and with the Boulder judges this spring. I will share any major information with you as it is received. Also feel free to review the website for summaries of these meetings. We really appreciate the time taken by all of the judicial officers to share their thoughts with us.

Our luncheon programs continue to be a success. The Case Law Update in January is always one of our best attended luncheons. Ron Litvak and Steve Epstein gave us their usual informative and witty presentation regarding all of the new family law cases. On behalf of the Section, I thank Ron, Steve, and everyone at the Litvak firm for their unceasing dedication to the Section. Just think, without them, we might have to read these cases ourselves! In February, we had an equally entertaining presentation from John Baker, of John T. Baker, P.C., and Fran Fontana, our past Chair. These talented presenters gave us great insights into how the principles of professionalism affect our day to day work. The Principles were last amended in May of 2007. I urge you all to review them, and to seek to adhere to them in your work with your fellow attorneys. Remember too, that the Metropolitan Conciliation Panel (303-860-1115) offers free, one-on-one intervention to assist attorneys in working through their problems or allowing you to brainstorm about how to deal with a difficult opposing counsel. Thanks to all of the members of the Panel, who offer their time to help resolve professionalism disputes. In March, Denise Mills, author of *Playing by the Rules, Winning with Evidence in Colorado Family Law Cases*, provided great information on evidence to our members. As stated above, I was off on holiday while Denise shared her experience with us, but I checked, and she was great! Please join us for the (almost) monthly luncheons at the Pepsi Center; just mark your calendar for the third Friday of the month.

One of the benefits of being the Section's Chair is that I am able to attend the Association of Family and Conciliation Court's summer conference. This year's AFCC program, *Fitting the Forum to the Family: Emerging Challenges for Family Courts*, promises to be informative and thought provoking. I will be attending: Attachment in Child Custody, Listening to the Children's Views in Disputed Custody and Access Cases, Advances in Child Development Research Applied to Scientifically Informed Parenting Plans, Working with High Conflict Parents and Angry Children, and others! The conference is May 29<sup>th</sup> through May 31<sup>st</sup> in Vancouver. Joan McWilliams, a long time member of our Council, will also be attending on behalf of the Section. I hope to see other members of the section in Canada this spring.

Speaking of great programs, David Littman and Brenda Storey are hard at work, planning the Family Law Institute for 2008. Do not forget to mark your calendars for August 8 through 10<sup>th</sup>! David has shared much of the program information with me, and it is clear that there will be something of interest for everyone (and not just the CBA's great wine tasting party.)

---

## FLS Officers & Members

Family Law Section Executive Council Officers 2007-2008

CHAIR: Kathryn Beck, Esq.

(303) 278-3078 or barristerbeck@msn.com

CHAIR-ELECT: David Littman, Esq.

(303) 832-4200 or dlittman@aol.com

SECRETARY: Marie Avery Moses, Esq.

(303) 623-1130 or marie@ccmfamilylaw.com

TREASURER: Richard I. Zuber, Esq.

(303) 753-1515 or zuberlaw@msn.com

IMMEDIATE PAST-CHAIR: David M. Johnson, Esq.

(719) 471-1650 or dmj@kdjpc.com

Family Law Section Executive Council Members

#### TERMS ENDING 7/1/08

Deborah Anderson, Esq.  
(970) 259-1211 or da@andersonbaker.com  
John Eckleberry, Esq.  
(303) 839-1770 or jeckleberry@willoughbylaw.com  
Jordan Fox, Esq. (303) 295-0202 or jfox@cagewilliams.com  
Terri Harrington, Esq.  
(303) 831-0808 or th@hbc-law.net  
(Katherine) Katie Hays, Esq.  
(970) 945-1000 or katie@silvermanlawoffices.com  
Elizabeth Henson, Esq.  
(303) 346-3700 or hensonmediation@yahoo.com  
Joan H. McWilliams, Esq.  
(303) 830-0171 or joanmcwilliams@qwest.net  
Ellen Weston Squires, Esq.  
(303) 733-1500 or ellen@squiresfamilylaw.com  
Brenda Storey, Esq.  
(303) 691-9600 or bls@mcguanehogan.com  
Marc Chapleau  
(303) 331-1700 or mchapleau@blochchapleau.com

#### TERMS ENDING 7/1/09

Denise Cook, Esq.  
(303) 623-1130 or denise@ccmfamilylaw.com  
Meredith Cord, Esq.  
(719) 471-4034 or mpc@johnsoncord.com  
Steven B. Epstein, Esq.  
(303) 837-0757 or sepstein@familyatty.com  
Jennifer G. Feingold, Esq.  
(303) 333-9810 or Jennifer@fostergraham.com  
Robert T. Hinds, III, Esq.  
(303) 224-9000 or robhinds@rthinds.com  
Mark Kaplan, Esq.  
(303) 458-5500 or marc@kaplan-law.com  
Robert L. Malman, Esq.  
(303) 753-6111 or rlm@rmalman.com  
Richard J. Rotole, Esq.  
(303) 399-1600 or rjblattys@aol.com; rjrotole@rjbl.net  
Kevin Sidel  
(303) 646-3422 or sideladr@earthlink.net  
Jacqueline St. Joan, Esq.  
(720) 932-8192 or jackiestjoan@earthlink.net

---

---

### Hot Websites for Family Law Practitioners

List Compiled by Reba J. Nance  
Colorado Bar Association  
Director, Law Practice Management

#### General Blogs:

ABA's "Blawg" Directory  
[www.abajournal.com/blawgs](http://www.abajournal.com/blawgs)  
Listed by area of law, type of author, region and law school

Home Office Lawyer - Grant D. Griffiths in Kansas  
[gdgriffaw.typepad.com/home\\_office\\_lawyer/](http://gdgriffaw.typepad.com/home_office_lawyer/)  
All things home office related.

Build a Solo Practice - Susan Cartier Liebel  
[susancartierliebel.typepad.com/build\\_a\\_solo\\_practice/2007/08/](http://susancartierliebel.typepad.com/build_a_solo_practice/2007/08/)

#### Family Law Blogs

ABA's Family Law "Blawg" Directory (37 different blawgs)  
[www.abajournal.com/blawgs/family+law](http://www.abajournal.com/blawgs/family+law)

Family Law Prof Blog  
[lawprofessors.typepad.com/family\\_law/](http://lawprofessors.typepad.com/family_law/)

Divorce News Blog - Daily Stories on Family Law  
[www.divorcenet.com/Members/divorcenews/weblog](http://www.divorcenet.com/Members/divorcenews/weblog)  
Part of the DivorceNet website. Links to recent articles of interest to the family law practitioner.

AdoptionBlogs.Com  
[www.adoptionblogs.com/](http://www.adoptionblogs.com/)

My Colorado Divorce Lawyer - Peter Mullison  
[www.abajournal.com/blawgs/my\\_colorado\\_divorce\\_lawyer/](http://www.abajournal.com/blawgs/my_colorado_divorce_lawyer/)

#### Associations

American Bar Association - Family Law Section  
[www.abanet.org/family/home.html](http://www.abanet.org/family/home.html)  
Includes online member resource center

American Bar Association - Family Law FAQs  
[www.abanet.org/family/resources/faqs.shtml](http://www.abanet.org/family/resources/faqs.shtml)

ABA's Family Law Quarterly  
[www.abanet.org/family/familylaw/tables.html](http://www.abanet.org/family/familylaw/tables.html)  
Family Law in the Fifty States (no charge)

ABA Discussion Boards and E-mail Lists - Master List  
[www.abanet.org/discussions/home.html](http://www.abanet.org/discussions/home.html)  
ABA E-mail Lists - Family Law (48 lists)  
Family Law - ABA Book Publishing Announcements (27435 Subscribers)  
Family Law Committee (375 Subscribers)  
Alimony Committee (203 Subscribers)  
ABA Family Law Section (629 subscribers)  
Family Advocate Magazine discussion (18 subscribers)  
Family Law Alternative Families (89 subscribers)  
Family Law Bankruptcy Committee (43 subscribers)  
Family Law Alternative Dispute Resolution (199 subscribers)

American Academy of Matrimonial Lawyers  
[www.aaml.org/i4a/pages/index.cfm?pageid=1](http://www.aaml.org/i4a/pages/index.cfm?pageid=1)

American Academy of Matrimonial Lawyers  
[www.aaml.org/i4a/pages/index.cfm?pageid=3311](http://www.aaml.org/i4a/pages/index.cfm?pageid=3311)

#### Family Law Resources - Great List!

Journal of the American Academy of Matrimonial Lawyers  
[www.aaml.org/i4a/pages/index.cfm?pageid=3315](http://www.aaml.org/i4a/pages/index.cfm?pageid=3315)  
Articles available at no charge

Journal of the American Academy of Matrimonial Lawyers  
Articles - Arranged by Topic  
[www.aaml.org/i4a/pages/index.cfm?pageid=3280](http://www.aaml.org/i4a/pages/index.cfm?pageid=3280)

International Academy of Matrimonial Lawyers

[www.iaml.org/](http://www.iaml.org/)

Rich in international links

Colorado

Virtual Gumshoe - Colorado

[www.virtualgumshoe.com/resources/index.asp?STATE\\_ID=6&CATEGORY\\_ID=](http://www.virtualgumshoe.com/resources/index.asp?STATE_ID=6&CATEGORY_ID=)

Colorado Judicial - Child Support Worksheets

[www.courts.state.co.us/chs/court/forms/domestic/childsupportguidelines.htm](http://www.courts.state.co.us/chs/court/forms/domestic/childsupportguidelines.htm)

Child Support Guidelines - Electronic Worksheet

[www.courts.state.co.us/chs/court/forms/domestic/electronicworksheets.htm](http://www.courts.state.co.us/chs/court/forms/domestic/electronicworksheets.htm)

Colorado Department of Human Services - Child Support Enforcement

[www.childsupport.state.co.us/do/home/index](http://www.childsupport.state.co.us/do/home/index)

Colorado Department of Public Health and Environment Certificates and Vital Records

[www.cdphe.state.co.us/certs/](http://www.cdphe.state.co.us/certs/)

Official Birth, Death, Marriage and Divorce Records

Colorado Bureau of Investigation - Convicted Sex Offender Site

[sor.state.co.us/](http://sor.state.co.us/)

Divorce Resolutions LLC

[www.coloradodivorcemediation.com/tools](http://www.coloradodivorcemediation.com/tools)

Contains checklists, forms and more

General

Megalaw.com - Family Law Center

[www.megalaw.com/top/family.php](http://www.megalaw.com/top/family.php)

Adoption.Org

[www.adoption.org/](http://www.adoption.org/)

Portal to 400,000 + adoption web pages

DivorceNet

[www.divorcenet.com/](http://www.divorcenet.com/)

Links to state-specific resources

Virtual Gumshoe

[www.virtualgumshoe.com/](http://www.virtualgumshoe.com/)

Free public records

Support Guidelines.Com

[www.supportguidelines.com/links.html](http://www.supportguidelines.com/links.html)

Cornell University Law School - Family Law Resources materials

[www.law.cornell.edu/topics/state\\_statutes2.html#family](http://www.law.cornell.edu/topics/state_statutes2.html#family)

Includes links to all state statutes re family law; divorce law; emancipation of children; and marriage law

Findlaw - Family Law Center

[family.findlaw.com/](http://family.findlaw.com/)

Great links to many areas - divorce; child support; child custody; adoption; same-sex couples, and more

Heiros Gamos - International Association of Law Firms

[www.hg.org/family.html](http://www.hg.org/family.html)

## Great International links

Cornell - "Law About" Articles

[www.law.cornell.edu/wex/index.php/Category:Overview](http://www.law.cornell.edu/wex/index.php/Category:Overview)

Cornell LII: Law about...Divorce

[www.law.cornell.edu/wex/index.php/Divorce](http://www.law.cornell.edu/wex/index.php/Divorce)

Cornell LII: Law about...Marriage

[www.law.cornell.edu/wex/index.php/Marriage](http://www.law.cornell.edu/wex/index.php/Marriage)

Cornell LII: Law about...Adoption

[www.law.cornell.edu/wex/index.php/Adoption](http://www.law.cornell.edu/wex/index.php/Adoption)

Cornell LII: Law about...Child Custody

[www.law.cornell.edu/wex/index.php/Child\\_custody](http://www.law.cornell.edu/wex/index.php/Child_custody)

Divorce Legal Survival

[www.legalsurvival.com/divorce.html](http://www.legalsurvival.com/divorce.html)

Catalaw - Family and Juvenile Law

[www.catalaw.com/topics/Family.shtml](http://www.catalaw.com/topics/Family.shtml)

## Federal

U.S. Department of Justice - Sex Offender Public Website

[www.nsopr.gov/](http://www.nsopr.gov/)

US Supreme Court Decisions - Regarding Divorce

[www.law.cornell.edu/supct/search/index.html?query=divorce](http://www.law.cornell.edu/supct/search/index.html?query=divorce)

Cornell Legal Information Institute - Preview/analyses of Supreme Court Cases re Divorce

[www.law.cornell.edu/supct/cert/search/index.html?query=divorce](http://www.law.cornell.edu/supct/cert/search/index.html?query=divorce)

OYEZ - US Supreme Court Cases - Oral Arguments

[www.oyez.org/](http://www.oyez.org/)

Can be searched by topic

---

---

## Meet a Magistrate - Kara Martin

Compiled By: Katie Hays

Thomas D. Silverman, P.C.

Glenwood Springs, Colorado

NAME: KARA MARTIN

DISTRICT: 18<sup>th</sup>

DATE APPOINTED: December 8, 2006

LAW SCHOOL: Indiana University, Bloomington

OTHER DEGREES: BA from U of Texas at Austin in 1992

DOCKET: IV-D Child Support 7/07 to current for Arapahoe, Douglas and Elbert Counties;  
Domestic Relations 12/06 through 6/07 in Douglas County

### PREVIOUS LEGAL EXPERIENCE:

My first eight years of practice were in New Mexico. As a staff attorney for Indian Pueblo Legal Services, I handled family and consumer law cases for low income members of 19 Pueblos, including representation in tribal courts. I then served as Special Assistant Attorney General for

Child Support Enforcement in Santa Fe, NM. Upon moving to Denver, I practiced with a boutique elder law firm and handled probate, estate planning and public benefit matters. I worked for the Presiding Disciplinary Judge of the Colorado Supreme Court immediately prior to my appointment.

**JOB(S) BEFORE LAW SCHOOL:**

Gymnastics coach, K-Mart shoe seller, inbound telemarketing sales rep, pizza sauce maker, receptionist, cashier/coffee maker

**ACTIVITIES:**

Member of the Colorado, Arapahoe and Douglas/Elbert County bar associations  
Member of the National Council of Juvenile and Family Court Judges  
Member of the American Judicature Society  
Volunteer mock trial judge for high school and law school competitions  
Former level 10 Junior Olympic gymnastics judge and NM Chapter Chairperson for the National Association of Women's Gymnastics Judges  
Former Board Member and Secretary of the Colorado Fund for People with Disabilities  
Former volunteer for the Santa Fe Animal Shelter and Humane Society, Big Brothers Big Sisters of Santa Fe, and the NM First Judicial District Court Pro Se Project

**HOBBIES:**

Books, walks, German Shepherd dogs, gym workouts, intermittent study of Spanish, salsa dancing, and cooking

**FAVORITE MOVIE:**

Smoke, Buffalo 66

**FAVORITE MUSIC:**

Neil Young, Tom Waits and Bonnie Raitt

**PET PEEVE:**

Failure to appear for hearings and non-compliance with CRCP 121 §1-1(2)(b)

**% OF HEARINGS WHERE AT LEAST 1 PARTY IS PRO SE:**

Probably 99%

**CRCP 16.2 IMPLEMENTATION:**

My current assignment is restricted to IV-D child support cases handled by the Child Support Enforcement Unit via assistant county attorneys. Most cases are exempt from 16.2 unless otherwise ordered.

---

---

## **Marital Agreements 101**

By: Christine Nierenz  
The Harris Law Firm, P.C.  
Denver, Colorado

With nearly 50% of all marriages now ending in divorce, it is not unusual for couples to sign a prenuptial agreement, otherwise known as a marital agreement under C.R.S. § 14-2-301 et seq. While it is important for couples to be optimistic about their future together, it is also imperative, as it is in the formation of any legal partnership, to discuss the financial concerns that will arise in the unfortunate event that the partnership fails.

For couples who do not have a prenuptial agreement, Colorado law will determine who owns the property that was acquired during the marriage, as well as what happens to that property in the event of death or divorce.

In the absence of a prenuptial agreement, a spouse generally has the right to:

- Share ownership of assets acquired during marriage, including income and retirement benefits
- Share in the increase in value of separate property, and also share in the income produced by separate assets
- Share responsibility of all debts incurred during marriage
- Request spousal support from the other, assuming conditions set by statute are met
- Inherit in the estate of the deceased spouse, regardless of what their will may provide (i.e., spouse dies intestate or will leaves estate to someone other than surviving spouse)

However, a validly executed prenuptial agreement (or postnuptial agreement, if executed after the marriage) may modify or eliminate these rights a spouse acquires as the result of marriage. The parties are free to contract to however many items they like, or they can enter into an agreement that covers only one item (such as waiving rights upon death). Agreements regarding care and custody of children, as well as agreements that limit or restrict rights to child support will be unenforceable, as the court will retain jurisdiction over those matters in the event of divorce. Any other agreement which violates public policy is also likely to be unenforceable.

When drafting a marital agreement, it is common for the parties to designate that the titling designation of an asset determines whether it is separate property or marital property. Without such an agreement, there are often disputes in divorce over the intent of an asset acquired during marriage which is titled in one person's name only. Another frequent area of dispute in divorce is tracing investments made during the marriage or prior to the marriage which were made from separate property. Again, the marital agreement can eliminate this type of argument by specifying that property will only be considered marital if it is jointly titled, and similarly that only purchases made from joint property (such as a checking account) are marital property. The parties may also specify how marital property is to be divided in the event of a divorce - for example, will they be divided equally, in proportion to financial contribution, or some other basis?

The parties may also set forth their wishes concerning spousal support and attorney fees. The parties can elect to waive maintenance from the other, or specify either the amount of maintenance to be paid, or the conditions under which an obligation to pay maintenance will arise. Additionally the parties could agree to a graduated plan of maintenance which depends on the length of marriage or tie maintenance to a percentage of the income earned by a spouse or a specific formula. The parties can also specify that only certain factors will be used in determining maintenance (for example, eliminating the factor regarding the standard of living enjoyed during the marriage). Another option is specifying conditions under which maintenance will not be paid, such as if the spouse has a certain amount of liquid assets available to him or her. However, even in an otherwise valid marital agreement, the court can review the maintenance provisions at the time they are to be enforced to determine if they are unconscionable, in which case the maintenance provision will be thrown out, but the rest of the agreement will still be enforceable.

Particularly in second marriages or where the parties have children from a prior relationship, the parties may agree to waive all rights upon death. This waiver is necessary to ensure that the deceased party's property passes to the intended recipient if it is not the surviving spouse.

A marital agreement may call for a severely one-sided property division, and as unfair as the property division may seem, the Court will uphold the agreement as long as both parties made full and reasonable financial disclosures to the other prior to signing the agreement, as well as both parties knowingly and voluntarily signing the agreement. Whether a party knowingly and voluntarily signed an agreement will largely focus on whether the party understood the agreement, understood how it altered his or her rights under Colorado law, and had sufficient time to contemplate the agreement and have the opportunity to have it reviewed by an attorney.

---

## The Lawyer's Duty to Promote Peace [1]

By: Joan McWilliams  
McWilliams Mediation Group  
Denver, Colorado

### Introduction.

In our daily preoccupation with deadlines, discovery, billable hours, and the bottom line, the Oath of Admission, which we took when we were admitted to the Colorado Bar, may rarely rise to the level of our conscious thoughts. However, in these war-filled and uncertain times, the Oath takes on greater meaning; it succinctly sets forth the duty that we have to all persons whom we encounter through our legal practices. It is a guide for the way in which we treat others, and it supports our participation in the peace-building process.

As part of our admission to the Bar, we swore, *inter alia*, that we would act with truth and honor. We affirmed that we would treat all persons encountered through the practice of law with fairness, courtesy, respect, and honesty. We promised that we would use our knowledge of the law for the betterment of society and that we would never reject the cause of the defenseless or oppressed. These are precisely the attributes that are needed to literally change the world. It is time to actively apply them in our practices and in our lives.

### Peaceful Legal Practices.

Lawyers can and should be instruments of peace. It starts with the way we practice law.

Have you ever monitored the human destruction that occurs in a high conflict protracted litigation case? Simple observation reveals that many stress-related problems, including divorce, cancer, heart attacks, and death, occur during the course of a complex and emotionally-charged litigation case. In the end, the conflict may reach judicial resolution, but the parties carry the scars of the process for the rest of their lives. This may be one reason why we have seen the design and acceptance of alternative methods of dispute resolution ("ADR").

While ADR was initiated by the United States Supreme Court to address Court backlog, some viewed it as the institutionalization of the way law was practiced in simpler times. That is, the lawyers actually talked to each other, communicated their client's interests, and resolved the case in a creative and satisfactory way.

Today, when direct communication is not productive, we use mediation, settlement conferences, and arbitration. These methods of dispute resolution are usually less expensive and less stressful than litigation. They give us an opportunity to better society by teaching people how to take responsibility for and resolve their corporate and individual problems. This is a challenging task when all your client wants is "war."

Lawyers are also using other forms of peaceful dispute resolution. Preventive Law, for example, emphasizes the importance of pre-conflict consultation and planning rather than reliance on litigation as the primary method of resolution. Collaborative law requires that the parties and their attorneys agree in advance not to litigate. If either party engages in litigation, the attorneys and other team members (experts, coaches, and mediators) are required to resign.

Restorative justice is used in criminal cases and requires that offenders repair the harm that they have caused. Efforts are made to restore victims and offenders to contributing members of society. Reconciliation, in its simplest form, involves acceptance of moral and political responsibility by the perpetrator and forgiveness by the victim.

There are many other ways that attorneys can influence peaceful resolution of cases. First, speak out for peace and stand by that position. Educate your clients and discourage the client's adoption of the "kill the bastard" mentality. We cannot afford to support anger and violence, even if it means refusing to represent a party.

Second, recommend that clients see a mental health professional-if only for a brief period of time. Legal problems are often caused by or result in emotional problems-even among the

most sophisticated of parties. A good counselor or therapist will help the client understand the problem and learn to cope. This will make the case go more smoothly, and it can benefit both the client and society.

Third, look at the big picture. Discuss the ramifications of certain actions with your clients. If you take a narrow view of the case, how will it affect the children, employees, partners, or shareholders who are peripherally involved? Is the price of a small victory worth losing the confidence and faith of any of the stakeholders?

Fourth, discuss your client's social responsibility. If you represent a corporation, does that entity have a duty that extends beyond the corporate headquarters? Does the corporation have some responsibility to the community that buys its products or supports its causes? Should the corporation take a stand on world peace and global preservation? You, as the lawyer, can influence the basic philosophy of the corporation.

Finally, remind yourself of the Oath of Admission. Be truthful and honorable. Treat all persons with fairness, courtesy, respect and honesty. Work for the betterment of society. You will be respected and, on an individual level, you will be contributing to world peace.

### Peaceful Life Practices.

An attorney's responsibility for peace building does not stop at the end of the work day. Like other parts of the Oath, the duty to better society is a 24/7 obligation. If we consciously incorporate that obligation into our lives, we can truly make a difference for peace.

Perhaps the first step in this process is to be open to the idea that world peace can be achieved. It is absolutely within our grasp if enough people insist on it. Remember *The Tipping Point* by Malcolm Gladwell? The principle Gladwell describes in his book applies to the establishment of world peace. That is, when enough people insist on the peaceful resolution of disputes, the concept will become part of the global social fabric. When the idea "tips," peace will become the rule rather than the exception.

The second step involves some self-evaluation. Take a look at your life scripts-the stories that you have told yourself or that others have told you. They influence the decisions you make everyday. Ask yourself if your life scripts serve you and serve society. Do they need to be changed?

Anwar Sadat is an example of a man who changed his life script. As reported in his autobiography, *In Search of Identity*, Sadat grew up in a society that hated the Israelis. Sadat himself was filled with hate. As a young man, he was imprisoned for many years in Cairo. While in prison, he examined his values and the way he conducted his life. He concluded that a community that was built on hate could not survive. He literally replaced his hate with love and, after he became President of Egypt, drafted a Peace Initiative and delivered it at the Knesset in Jerusalem. It was an unprecedented gesture that ultimately led to the Camp David Accord. Anwar Sadat changed his life script, and so can we. Replace the scripts that are based on hate with new ones that are premised on love. Change your view of the world.

Third, use the power of your mind and heart to define your expectations of peace. Be clear about your intention and focus on that intention. Your thoughts are your voice for peace. Your thoughts will create your reality.

Consciousness studies demonstrate that our thoughts can be in different places at the same time. Some believe that there is a vast energy source that exists in the universe and that all energy, including our thoughts, is connected by waves that spread out to infinity and tie all parts of the universe together. If this is true, it would explain why we get results from our thoughts. If it is not true, our thoughts will, nevertheless, guide our actions. So, use your voice for peace...use your thoughts.

Fourth, live a peaceful life that will be admired and copied by others. We are our own best example.

Finally, be a peace participant. You can choose to participate in individual activities, such as mentoring a child or teaching people how to reject violence. Or, you can lead community projects, such as creating a peace park or contributing to a peace organization. Nongovernmental organizations are active change agents and welcome new members.

The significant point is this: attorneys have strength in their numbers. We truly can make a difference, and we have a responsibility to do so. Nothing will be corrected in this world-not global warming, or environmental depletion, or eradication of disease and poverty-until we have world peace.

We have no choice. Our very survival is predicated on our willingness to stand up and speak out for peace. We can do that through the way we practice law and the way we live. We have the power to make a difference.

[1] Reprinted with special permission by University of Denver Sturm College of Law, Alumni Magazine.

---

---

## Family Case Law Update

Published cases 10/5/07 - 3/10/08

By: Ronald D. Litvak, Esq. & Courtney J. Leathers, Esq.  
Litvak Litvak Mehrrens & Epstein P.C.  
Denver, CO

### PROPERTY VALUATION

In re the Marriage of Green, 169 P.3d 202 (Colo. App. April 5, 2007) cert. denied Oct. 9, 2007.

Trial Court: Judge Rice, Arapahoe County; Opinion by Judge Jones (Vogt and Carparelli concur)

### DEFINING PROPERTY

In re the Marriage of Schmedeman, No. 06CA0550, 2008 WL 451743 (Colo. App. Feb. 21, 2008).

Trial Court: Judge Arkin, Douglas County; Opinion by Judge Furman (Rothenberg and Jones concur)

Husband, his business partner, some friends, his father, and Wife built the shell of the cabin. Husband gave the shell to his parents, who installed it on leased land, paid \$65,000 to complete construction, paid the utilities, property taxes and insurance on the cabin. Title was taken in the name of Husband's father. Husband's father testified in the divorce that his son's labor was a gift to his parents, and that he intended that all of his children, including the son, would inherit the cabin.

During the marriage, Husband's business partner sued Husband and Wife, claiming an interest in the cabin. In that law suit, husband stated, "[T]he cabin was never referred to as anything but my cabin." The cabin was used as a vacation home for family members, and used by Husband in brochures to solicit business.

The trial court found that Wife had never consented to the gift of the cabin to Husband's parents, found the value of the cabin (other than the \$65,000 contributed by Husband's parents) to be marital property, and made an equitable division of assets to Wife to offset the award of this asset to the Husband.

The appellate court reverses, citing the long-standing principle that either marital partner could dispose of property during the marriage, and the other spouse's disapproval does not affect the validity of the transfer, unless there is evidence the property was given away in contemplation of divorce. As a result, the cabin should have been considered property owned by Husband's parents. Since the court reversed the finding that the cabin was marital property, the court must remand to determine a new division of marital property.

The appellate court also addressed the trial court's consideration that, since Husband's father intended for his children to inherit the property, this property would become his anyway and it should therefore be considered marital property. The appellate court concluded that, to qualify as a gift, there must be "a simultaneous intention to make a gift, delivery of the gift and acceptance of the gift." Though Husband's father testified that he orally promised to leave the cabin to all of his children, including Husband, this intent did not actually gift any ownership interest back to Husband and Wife. Moreover, a future interest in property does not exist where it is based on a donative third party instrument that is amendable or revocable, such as a will. Moreover, pursuant to the statute of frauds, a conveyance of title to property or to devise land must be in writing.

On another issue, Husband filed a motion to modify child support retroactive to the date his eldest child turned nineteen. Under the former C.R.S. §14-10-115(1.6), "child support terminated without either party filing a motion when the child attains nineteen years of age." The trial court held that there is no authority to enter a retroactive modification without a motion where the child support obligation includes support for other younger children in the family; "only an outright termination of the support obligation affecting all children is permitted without a motion." (emphasis added).

In August 2006, C.R.S. 14-10-115(1.6) was amended and now states "emancipation occurs and child support terminates without either party filing a motion when the last or only child attains nineteen years of age." C.R.S. §14-10-115(13)(a). Thus a motion to modify child support is unnecessary if the last or only child reached nineteen; if there is more than one child, a motion to modify child support must be filed when each child reaches the age of emancipation, and modification is effective as of the date of filing the motion, not the earlier date of attaining the age of nineteen. C.R.S. 14-10-115(1)(a)(d).

#### ATTORNEY FEES

People In the Interest of J.W., a Child, Upon the Petition of D.D. and Concerning P.W. And Frankl and Tasker, P.C., 174 P.3d 315 (Colo. App. November 1, 2007).

Trial Court: Judge Rafferty, Arapahoe County; Opinion by Judge Román (Loeb and Plank, JJ. concur)

People of the State of Colorado appeal the trial court's decision that an attorney's lien on a personal injury settlement had priority over a child support judgment.

The court issued an Entry of Judgment for child support arrearages against Father. Subsequently, the People filed a writ of garnishment, serving both Father and his Counsel. Counsel had just obtained a personal injury settlement for Father. Counsel for Father disbursed a portion of the personal injury settlement to the Child Support Enforcement Services, but withheld the remainder of the settlement to cover attorney fees and costs, and to cover a medical lien. People then filed a Motion for Entry of Default against Counsel for removing funds from the personal injury settlement funds to cover attorney fees and costs. The trial court determined the law firm had a statutory charging lien and therefore was entitled to disperse a portion of the settlement funds to cover its attorney fees prior to disbursing the garnished funds to the People.

An attorney's lien begins to accrue when the attorney's services commence and will attach automatically to any monies owing to the client that the attorney obtains. The court found that a judgment creditor cannot garnish money that the judgment debtor himself cannot recover from the garnishee. In this case Father only had an interest in the net personal injury

settlement proceeds, after the attorney fees were deducted. But for the attorney's work, Father would never have received the settlement proceeds. Finally, if there should be priority given to child support arrearages, the General Assembly and not the courts must be the body to determine so.

In re the Marriage of Naekel, No. 07CA0359, 2008 WL 323833 (Colo. App. February 7, 2008)

Trial Court: Judge Steinhardt, Douglas County; Opinion by Judge Hawthorne (Taubman and Loeb, JJ. concur)

Wife appeals from the district court order that affirmed the magistrate's ruling that ordered Husband to pay a portion of Wife's attorney fees, but failed to address Wife's request for additional fees for defending against Husband's motion for review. In this case, the court found Husband in remedial contempt for violating the parties' separation agreement and awarded fees of \$12,000 to Wife for prosecuting the contempt. Husband filed a motion to review the attorney fees award only. Wife responded to Husband's motion and asked for attorney fees incurred in defending against Husband's motion for review. The district court upheld the order of contempt, but failed to rule on Wife's additional request for attorney fees, therefore Wife appealed.

The court found that it was an error for the district court not to have ruled on Wife's request for additional attorney fees, therefore the case must be remanded to the district court to make such a ruling. Pursuant to C.R.C.P. 107(d)(2) the court has discretion to award costs and reasonable attorney fees in remedial contempt situations. Pursuant to C.R.S. 113-17-102, the court shall award attorney fees if claims are substantially frivolous, groundless, or vexatious. C.R.S. 113-17-102 applies to every type of civil action, including contempt. The rule and the statute provide authority for the court to order attorney fees in conjunction with a review of a magistrate's order of contempt, despite the lack of an express grant of authority in the Colorado Rules for Magistrates to award attorney fees on review. The court is not required to award attorney fees merely because they ordered them for prosecuting the contempt, (as Wife contended) and the court's silence does should not be implied as a denial of attorney fees (as Husband contended).

#### ALLOCATION OF PARENTAL RESPONSIBILITIES

In re the Marriage of Rodrick, No. 06CA0306, 2007 WL 1839803 (Colo. App. June 28, 2007); cert. denied (Colo. Feb. 4, 2008).

Trial Court: Judge Popovich, Adams County; Opinion by Judge Bernard (Russel and Sternberg, JJ. concur)

In re the Marriage of DePalma, No. 06CA1478, 2007 WL 2128198 (Colo. App. July 26, 2007); cert. denied (Colo. Feb. 19, 2008)

Trial Court: Judge Hall, El Paso County; Opinion by Judge Graham (Vogt and Hawthorne, JJ. concur)

In re the Marriage of Tai, f/k/a Gingras v. Gingras, No. 06CA0800, 2008 WL 115528 (Colo. January 14, 2008)

Petition for certiorari was denied, en banc, but Justice Bender would grant certiorari as to the following issues:

Whether the balancing test for relocation set forth in In re the Marriage of Ciesluk, 113 P.3d 135 (Colo. 2005), applies when a primary residential parent with sole decision-making authority requests modification of a prior custody order in advance of relocation but does not propose any change to the existing parenting time.

Whether an order, which denies a parent with sole decision-making the right to relocate with a child, and therefore restricts that parent's constitutional right to travel, is reviewed under a strict scrutiny standard or an abuse of discretion.

Trial Court: Judge Wasserman, Adams County; Opinion by Judge Roy (Taubman and Terry concur)

Father appeals from, among other issues, orders restricting his parenting time. Mother filed a Motion to Restrict Father's Parenting Time under C.R.S. §14-10-129(4), alleging that the children were emotionally endangered by Father's disparaging behavior towards Mother. Eleven days later, on June 14, 2004, the trial court, without a hearing, ordered that Father's parenting time be supervised under C.R.S. §14-10-129(4) and the matter will be set for a "forthwith" hearing. The court held several hearings from July 1, 2004 through October 11, 2004, during which Father had supervised parenting time only. On October 14, 2004, the Court granted Father unsupervised parenting time every other Saturday.

The court of appeals noted that the trial court had subsequently addressed the issues on appeal, thus making the issues moot, but the court may still consider "moot questions involving great public importance and issues capable of repetition but evading review."

C.R.S. §14-10-129(4) provides that a motion to restrict parenting time that alleges that a child is in imminent physical or emotional danger due to parenting time "shall be heard and ruled upon by the court not later than seven days after the day of filing the motion. Any parenting time which occurs during such seven-day period...shall be supervised." The immediate restriction protects the child, while the seven-day time limit protects a parent's constitutional right to the care, custody and control of their children.

In sum, the court held that upon the filing of the motion pursuant to C.R.S. §14-10-129(4), supervised parenting time takes immediate effect and continues until the hearing, which is required to occur within seven days. If the hearing does not occur within seven days, supervised parenting time terminates under §14-10-129(4), though the Court may still proceed under C.R.S. §14-10-129(1)(b)(I).

Here, Father had also filed a motion to restrict Mother's parenting time, alleging a severe alcohol problem and resultant physical endangerment and emotional harm to the children. The trial court dismissed Husband's motion without hearing. The Appellate Court held a hearing is required unless the allegations within the motion are "facially insufficient," meaning that if all the allegations were true, the circumstances could not give rise to the conclusion that the children are in imminent danger of physical or emotional injury.

A C.R.S. §14-10-129(4) motion does not require any third party verification. A party's own verification is sufficient. If a C.R.S. §14-10-129(4) motion is substantially frivolous, groundless or vexatious, the court is required to impose attorney fees pursuant to §14-10-129(5). Before imposing sanctions under C.R.S. §14-10-129(5), the court must hold a hearing and the hearing must be based upon a verified motion.

A failure to adhere to the requirements of C.R.S. §14-10-129(4), as in this case, is a statutory violation, and the court must use a two-part test to determine whether such violation constitutes reversible error. Here, the seven-day limitation is an essential condition of the statute and Father's constitutional right to parent his children was restricted without the benefit of a hearing so due process implications arose. Several months of supervised parenting time prejudiced Father.

#### PROCEDURAL AND EVIDENTIARY

Trial Court: Judge Munch, Jefferson County; Opinion by Judge Román (Loeb and Nieto, JJ. concur)

Husband appeals from the property division in this annulment proceeding. After three months of marriage, Wife files for an annulment based upon her mental incapacity due to heavy doses of pain and depression medicine following major surgery. The court granted the annulment and found that Wife did not gift \$30,000 and a Lexus to Husband, and that since Husband was last in possession of Wife's jewelry, that he should be responsible for its loss.

To be a gift between spouses, a transfer of property must involve a "simultaneous intention to make a gift, delivery of a gift, and acceptance of the gift." Though the court did not find that Husband had forced Wife to act, as Wife argued, the Court did not find that Wife intended to make these gifts.

While on a police-assisted fifteen-minute access visit, Wife found a note underneath a phone in Husband's home, where Wife no longer lived. The note was in Husband's handwriting and referred to a conversation he had with his criminal attorney in which Husband stated that he was keeping Wife's jewelry. The trial court admitted the note, despite Husband's objection that the note was privileged attorney-client communication. Colorado courts follow the "ad hoc" approach; it is within the court's discretion to determine "whether an inadvertent disclosure of privileged documents by an attorney or client constitutes a waiver of privilege." The court found that Husband's efforts to protect the confidentiality of the note were reasonable; therefore the trial court abused its discretion by admitting the note containing privileged attorney-client communication.

With regard to Wife's lost jewelry, the Court of Appeals found that the trial court did not err in applying the law of bailments, rather than C.R.S. §14-10-113, to determine that Husband was responsible for the lost jewelry. A bailment is a "delivery of personal property by one person to another with an express or implied contract that the property will be returned or accounted for when the bailor reclaims the property," otherwise a presumption of negligence arises on the part of the bailee. The Court of Appeals stated that C.R.S. §14-10-113(1) does not prohibit the court from "assigning liability to one spouse for the loss of separate property belonging to the other spouse." Husband was last in possession of the jewelry, his possession was in the nature of a bailment, and as bailee he was responsible for the loss. But this only created the presumption of negligence, not proof of negligence. Therefore the case is remanded to make findings as to whether Husband was in fact negligent, and then whether Husband should be liable.

In re the Marriage of Cyr and Kay, 06CA1444, 2008 WL 191482 (Colo. App. January 24, 2008).

Trial Court: Judge D.D. Mallard, Boulder County; Opinion by: Judge Furman (Davidson and Metzger, J.J., concur)

Husband (Cyr) appeals from the district court's order finding him in contempt for violating the parties' separation agreement, arguing he did not willfully violate a court order. The parties' partial separation agreement stated that Husband "shall be solely responsible for all 1997, 1998, or 1999 income tax not yet paid and penalties and interest now known or that may be assessed in the future as a result of an audit or review by taxing authorities." When the IRS audited Wife's 1998 taxes, she sought and was granted innocent spouse relief. Husband successfully appealed the relief and Wife was required to pay one-half of the tax debt to the IRS, totaling \$16,245. Subsequently, Wife filed a motion for a contempt citation against Husband for violating the tax provision in their separation agreement. The trial court found remedial contempt because Husband had the present ability to comply, and awarded Wife attorney fees.

First, though Husband purged the contempt by reimbursing Wife for her half of the tax debt, the case is not moot because the court's order also included an award of attorney fees. Under C.R.C.P. 107, amended and effective in 1995, there are two types of contempt. Punitive contempt is criminal in nature and meant to punish "by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court." C.R.C.P. 107(a)(4). To prove punitive contempt, the findings of fact must establish beyond a reasonable doubt (1) existence of a lawful court order; (2) the contemnor knew of the

order; (3) the contemnor had the ability to comply with the order; and (4) the contemnor willfully refused to comply with the order. An act is willful if it is performed "voluntarily, knowingly, and with conscious regard for the consequences of [one's] conduct."

Remedial contempt is civil in nature, and meant "to force compliance" with a lawful order "within the person's power or present ability to perform." C.R.C.P. 107(a)(5). To prove remedial contempt, the findings of fact must establish the contemnor (1) did not comply with a lawful court order; (2) knew of the order; and (3) has the present ability to comply with the order. A finding of remedial contempt must include the means by which the contemnor may purge the contempt. Willfulness is not required for remedial contempt sanctions; this was the main focus of this case.

The court found that the trial court acted within its discretion by finding remedial contempt and awarding attorney fees because Husband had the present ability to comply with the agreement due this is annual earnings and other assets available to pay Wife's half of the tax shortage.

---

### Next FLS Luncheon

May 16, 2008, Legislative Update

CBA Family Law Section Executive Council will meet before the luncheon at 10:00 AM at the Pepsi Center.

Any questions can be directed to Melissa Nicoletti at [melissan@cohar.org](mailto:melissan@cohar.org)

[www.cohar.org/lists/signup.cfm?unsubscribe](http://www.cohar.org/lists/signup.cfm?unsubscribe) Once you are there, click on "Logon" in the upper left-hand corner using your CBA member number and last name as a password. You will then be able to unsubscribe yourself from any CBA listserv. \*\*Remember, it is important that you log on.\*\*