Upcoming Events

Insight to Understanding Tax Returns and Financial Statements in Domestic Relations Cases
Tuesday, December 14, 2010 5:30 PM
This program is designed to provide attorneys with useful tools and basic knowledge of how to read, interpret and understand tax returns and financial statements. We will walk through a corporate tax return, and explain differences and similarities of tax returns and financial statements. We will incorporate and discuss terms such as distributions, pass-through entities, dividends, and depreciation. This program will provide an overview of different type of business entities and various types of financial statements.

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Panelists:
Marc Bello, Edelstein & Company LLP

Resources

Legal Advocacy & Resource Center, Inc. (LARC) a special project of the Boston Bar Foundation with additional financial support provided by the Massachusetts Bar Foundation.

The LARC Intake Update is a monthly newsletter that lists current intake information for major legal services programs throughout the state of Massachusetts. The first section lists general civil legal programs, and the second section lists programs that handle specific legal topics.

A link to this newsletter can be found here: http://www.bostonbar.org/sc/fl/Intake_Update_May_2010.pdf.
Past Events

September 14, 2010: Family Law Section Welcoming Reception
Help us kick off the new 2010-2011 year! Bring a friend along to enjoy some light refreshments, share some new ideas, join the BBA Family Law Section, and explore new ways you can become more involved!

October 7, 2010: Representation of Transgender Clients Across Practice Areas
You are about to meet with a transgender client for the first time. Could you answer the following questions?

What sorts of challenges has this person faced, and how will they shape the way you interact? What preconceptions might you be bringing with you, consciously or unconsciously? How will the client’s gender identity or expression affect the case? Is his or her transgender status even relevant? If so, how is it relevant, and what questions should you ask? How do you decide?

These are just some of the issues that will be discussed when you attend this workshop and take an important step towards becoming a sensitive and effective advocate for transgender people.

October 12, 2010: When the Criminal Justice System and Family Law Intersect: Strategies for Representing “Alleged” Perpetrators and “Alleged” Victims

Domestic relations attorneys often have a myopic view on how to handle an incident giving rise to a 209A Order and a criminal charge. Prosecutors and defense attorneys approach the same situation from a very different perspective. This panel, comprised of a defense attorney, a former prosecutor, a former GBLS staff attorney specializing in domestic violence and an experienced family law attorney, will present options and strategies for representing either the “alleged” perpetrator or the “alleged” victim. The panel will be moderated by an experienced family law attorney who has had opportunity to represent parties on both sides of this issue in domestic relations cases.

October 20, 2010: CLE - Advanced Topics in Asylum Law: Standards and Recent Trades for Particular Social Group

The Board of Immigration Appeals has defined particular social group as a group that shares “a common, immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership . . . It must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” Matter of Acosta, 19 I&N Dec. 211 (BIA 1985).

The case law that has developed around the question of what actually constitutes a “particular social group” for asylum purposes, as the definition suggests, is complex, varied, and largely driven by the specific facts of a given case. Determinations of whether or not the social group, as defined by the asylum applicant, exists frequently turn on its recognizability or social visibility. Some emerging trends in the law are attempts to use the concept of social group to establish a basis for asylum in the areas of persecution based on gender or sexual orientation, domestic violence as persecution, and persecution based on refusal to participate in gang activities.

After this seminar, attendees will know more about defining membership in a particular social group, determining when membership in a particular social group can be the basis for a claim to asylum and knowing how to present such a claim to adjudicators in a compelling way.

October 21, 2010: CLE - Drafting and Litigating: Prenuptial and Postnuptial Agreements

The Supreme Judicial Court has ruled that postnuptial agreements are enforceable in Massachusetts, but not under the same standard as prenuptial agreements. Hear from the attorneys who represented the parties in the Ansin case at the SJC, who will provide both drafting and litigation pointers for prenuptial and postnuptial agreements. Learn how to protect your client’s interest, whether at the time of drafting or when a prenuptial or postnuptial agreement is an issue in a pending divorce / estate action.

After this seminar, attendees will know how to draft an enforceable postnuptial agreement given the guidelines in the Ansin decision, as well as receive a refresher on prenuptial agreements. Learn how to challenge prenuptial and postnuptial agreements and get pointers on litigation techniques when prenuptial or postnuptial agreements are challenged.

November 9, 2010: Allocating College Education Expenses in Divorced and Divorcing Families

College education expenses are often one of the largest expenditures that a family will make. Given the current economic crisis, the burden of financing college education expenses has become increasingly pronounced. This is especially true for families in the midst of a divorce or who are already divorced.

Mark J. Warner of Witmer, Karp, Warner & Ryan LLP will provide practitioners with perspective on how the courts are addressing the issue of college education expenses in these difficult financial times. The program will include a historical analysis of several appellate decisions, such as Mandel v. Mandel, which provides an extensive discussion of the numerous equitable factors to be considered by the trial judge in the exercise of his or her discretion.

Past Events (cont.)

Mark J. Warner of Witmer, Karp, Warner & Ryan LLP will provide practitioners with perspective on how the courts are addressing the issue of college education expenses in these difficult financial times. The program will include a historical analysis of several appellate decisions, such as Mandel v. Mandel, which provides an extensive discussion of the numerous equitable factors to be considered by the trial judge in the exercise of his or her discretion.
**Norma BANNA v. Jeffrey BANNA**  
**Decided Oct. 7, 2010**  
78 Mass. App. Ct. 34

The plaintiff sought and obtained, in the District Court, an ex parte abuse prevention order against her brother pursuant to G.L. c. 209A. Approximately two weeks later, at a hearing at which both parties were present, the District Court judge simply asked the plaintiff whether she wanted to extend the order, to which she responded “yes”. The defendant’s counsel argued that the allegations set forth in the plaintiff’s affidavit, filed at the time the ex parte order entered, were insufficient to sustain a 209A. The judge thereafter extended the order for one year.

The order was vacated on appeal, as the Appeals Court noted that to extend an abuse prevention order, a plaintiff must demonstrate a reasonable fear of imminent serious physical harm at the time the extension is sought. The Appeals Court found that the District Court judge failed to ascertain the current state of affairs at the time of the hearing, and that asking the plaintiff whether she wanted to extend the order did not constitute a basis on which the judge could determine whether the extension of the restraining order should be granted.

**Natasha CORMIER v. Jonathan C. QUIST**  
**Decided September 30, 2010**  
77 Mass. App. Ct. 914

This is a case involving never married parents. Soon after the mother learned she was pregnant in 2002, she informed the defendant, Jonathan Quist, that she believed him to be the child’s father. Subsequently, she told the defendant’s counsel she wanted to extend the order, to which she responded “yes”. The defendant’s counsel briefly argued that the allegations set forth in the plaintiff’s affidavit, filed at the time the ex parte order entered, were insufficient to sustain a 209A. The judge thereafter extended the order for one year.

The mother thereafter appealed the probate judge’s conclusion that it was in the best interests of the child to change it to Quist while the mother sought to change it to Cormier.

The parties entered into an agreement for judgment on the mother’s complaint for paternity which provided for the mother to have sole legal and physical custody of the child. The agreement failed to address which party would be entitled to claim the child as a dependent for tax purposes.

A trial was held on the parties’ respective petitions to change the child’s name, after which the judge dismissed the mother’s petition and entered a decree on the father’s petition changing the child’s surname from Boulay to Quist; the father sought to change it to Quist while the mother sought to change it to Cormier.

The parties entered into an agreement for judgment on the mother’s complaint for paternity which provided for the mother to have sole legal and physical custody of the child. The agreement failed to address which party would be entitled to claim the child as a dependent for tax purposes.

With respect to the tax dependency issue, the Appeals Court held that the ‘best interests’ of the child standard is applicable to controversies concerning the surnames of children. The court noted that when parents are unable to resolve differences, the “allocation of custodial responsibility” is a factor to be considered by the court in allocating significant life decision-making responsibility regarding the child. The court held that the probate judge’s conclusion that it was in the child’s best interests to change his surname to Cormier-Quist, a hyphenated name neither party sought, was without basis in the evidence, and did not adequately consider the mother’s responsibility as custodian. The judge’s decision therefore could not stand and the order was remanded for further proceedings consistent with the opinion.

**Linda Marie LOEBEL v. Andrew J. LOEBEL**  
**Decided Sept. 20, 2010**  
77 Mass. App. Ct. 740

The primary issue at hand in this case involved whether a probate court judge abused his discretion in denying the wife the opportunity to present additional evidence regarding child custody on remand.

After a marriage of two years during which one child was born, the wife, who was pregnant with the parties’ second child at the time, filed a complaint for divorce and was temporarily granted sole legal and physical custody of the children. After a brief reconciliation, the wife obtained an abuse prevention order pursuant to G.L. c. 209A which was extended three times by the probate judge during the pendency of the proceedings. After a two day trial, the probate judge entered a judgment of divorce nisi and awarded sole legal and physical custody to the husband.

The portion of the judgment changing custody was stayed by a single justice of the Appeals Court and the Court, pursuant to Appeals Court rule 1:28, thereafter vacated and remanded the custody order for “further proceedings,” concluding that it was “not entirely clear from the findings how the judge balanced the positive and negative findings of both the mother and father in determining the best interests of the children.”

After the case was remanded, the probate judge refused the wife’s request to expand the record to provide evidence of what had occurred during the intervening one and one-half years since the trial. The judge further denied, without explanation, the wife’s motion to relocate to Franklin, despite the fact that the town was closer to the husband and his parents than her current residence.

The wife thereafter filed a complaint for modification, listing eight changes in circumstances, and seeking joint legal and physical custody. The judge issued an amended judgment of divorce nisi and additional findings to support the sole legal and physical custody award to the husband; the “additional findings” consisted solely of facts from the original Guardian ad litem’s report (though two and one-half years had passed since the original investigation). The judge further allowed the husband’s motion to dismiss the complaint for
modification on the grounds that, at the time the complaint for modification was filed, the original judgment had been vacated by the Appeals Court; thus, there was no outstanding judgment to modify.

On appeal, the wife argued that the denial of her motion to expand the record, and the affirmation of the award of custody to the husband, was an abuse of discretion. Additionally, she argued that the judge’s dismissal of her complaint for modification absent an evidentiary hearing was erroneous. A single justice of the Appeals Court denied her second request to stay the custody order.

With respect to the issue of child custody, the Appeals Court found that it was an abuse of discretion to deny the wife the opportunity to present new evidence on remand in order for the judge to address adequately the best interests of the children two years after the original order. Although the Court did not explicitly order a new hearing, the judge was charged with assessing the best interests of the children, and in order to do so, he had the responsibility “to consider the widest range of permissible evidence” available at the time he was making the renewed determination.

Further, despite repeatedly extending an abuse prevention order against the husband, the judge reported in his findings in support of the divorce judgment that the wife’s reports of abuse were not credible. In addition, both the GAL’s evaluations for both parents, yet nothing in the judge’s findings indicated whether these evaluations were performed or what their results were. The contradictory findings relating to the presence of domestic violence and what, if any, affect it had on the children also supported the Court’s reversal of the custody order and remand for an evidentiary hearing.

The Appeals Court thereby vacated the custody order and remanded same for a new hearing, focusing on the children’s then-current best interests. Pending such further proceedings, custody was to remain with the husband, subject to the current visitation schedule.

With respect to the complaint for modification, the Appeals Court upheld the dismissal of same as there was no “final judgment” to modify at the time that the modification complaint was filed as it was filed after the Court had vacated the original custody order and before the trial judge issued an amended judgment.

Justice Kantowitz filed a dissent, arguing that given the wife’s complaint for modification and motion to expand the record, the probate judge had to be well aware of what the expanded record would have looked like, and was within his discretion to refuse to reopen the evidence, absent instructions from the Appeals Court to do otherwise.

In Re ADOPTION OF MARIANO
Decided Sept. 14, 2010
77 Mass. App. Ct. 656

While their divorce action remained pending, the wife petitioned for a single parent adoption of the parties’ infant son and the husband executed an adoption surrender form for submission with the wife’s petition. The parties resided together for eight months prior to their separation, and each resided with their respective parents at the time of the petition. At the time of the petition, the husband was twenty-three years old and unemployed and the wife twenty-four years old and employed as a hairdresser. They had a strained relationship and the husband did not have any substantial relationship with the child. If the wife’s petition were allowed, the husband would relinquish all parental rights and duties towards their infant son and the wife would assume the role of sole parent.

Following an evidentiary hearing, the probate judge dismissed the wife’s petition, observing that the best interests of the child, and not the wishes of the parents, determine adoption. He further concluded that in this case, the preservation of a connection between the child and his father served the best interests of the child and maintained a link to his biological identity. The wife appealed on three grounds: (1) that the judge incorrectly calculated the best interests of the child because no relationship linked him to his father and a successful relationship bound him to his mother; (2) that the father’s intelligent and voluntary surrender preserved the relationship; and (3) that the judge’s reliance upon the child’s long-term interests in a relationship with his biological father lacked proper evidentiary support. The husband joined in submission of the wife’s brief.

On appeal, the Appeals Court held that granting the petition was not in the child’s financial best interests; that granting the petition was not in the child’s best interests in terms of his filial ties; and that the argument that the father’s choice was deliberate was immaterial. The Court opined that the present case illustrated a firm principle in Massachusetts family law that “[i]n negotiation of their disengagement, divorcing parents may not bargain away the best interests of their children in general, and the children’s right to support, financial or otherwise, from either one of them in particular.”

Patricia Marie ALTOMARE v. John Nicholas ALTOMARE
Decided Sept. 8, 2010
77 Mass. App. Ct. 601

After a twenty-year marriage that produced three children, the wife filed a complaint for divorce. The wife also filed a pretrial motion seeking permission to move with the children from West Boylston, Massachusetts to Scituate, Massachusetts, a distance of approximately 75 miles. The wife’s primary reason for seeking the relocation was to avoid the frequent (weekly) and painful encounters with the woman with whom her husband had been having an affair, and that moving to Scituate would provide her a support network which could help restore her emotional health.

The probate judge applied G.L. c. 208 § 30, governing removal, to the wife’s petition and denied her request to relocate at a trial solely addressing custody matters. The probate judge found, in sum, that the wife’s goal of avoiding contact with her husband’s lover was not a “real advantage” to her where she had no particular personal, family or professional roots in Scituate (despite the fact that individuals lived there who would provide the wife emotional and child support); that relocation would significantly disrupt the children’s relationships with their friends and paternal relatives, and that relocation would significantly disrupt the husband’s visitation rights. Approximately eight months later, the probate judge entered a judgment on all divorce matters, awarding the parties shared legal and physical custody, ordering that the children reside with the wife subject to visitation by the husband “at reasonable times” and ordering the husband to pay to the wife child support and alimony. The judge divided the marital estate equally.

The wife appealed the denial of her request to move with the parties’ children to another part of the Commonwealth and challenged the equal distribution of the marital estate in the judgment, as well as the award of “shared legal and physical custody” of the children.

The Appeals Court vacated and remand the portions of the judgment regarding relocation, but affirmed the distribution of the marital estate.

With respect to the relocation issue, the Court found that as a preliminary matter, out-of-state considerations informing G.L. c. 208, § 26 also apply to situations such as the present case in that the relocation would evidently involve significant disruption of the noncustodial parent’s visitation rights.

The court held that although the judge characterized the custody arrangement as “shared legal and physical custody,” the
substance of the order placed the children under the primary responsibility of the wife, and as a functional matter the wife had “unquestionably been more of a traditional ‘custodian’ in terms of the supervision of the children and all that entails”. Therefore, the Appeals Court concluded that the wife had sole physical custody.

However, the Appeals Court noted that because the probate judge found that the wife and husband “shared” physical custody, he had erroneously applied the “best interests of the child” standard (as opposed to the “real advantage” standard applicable to cases where one parent has primary physical custody) in denying the wife’s petition to relocate within the Commonwealth.

The Court further held that as a matter of law, the wife’s request to relocate in order to avoid painful emotional encounters and develop emotional support was a “real advantage” to her, and the probate judge’s findings to the contrary were erroneous. As such, the Court held that it “cannot conclude that this erroneous treatment did not influence [the judge’s] findings regarding the children’s best interest”, and that the probate judge’s findings “reflect a Mason-like approach to removal,” to the diminution of “the mother’s [effective] role as sole physical custodian.” Accordingly, the Appeals Court ordered that the portion of the judgment relevant to relocation be remanded for a redetermination of the best interests of the children.

With respect to the property division issues, the wife argued that the probate judge erred in failing to consider cash distributions from her family as contributions to the marital estate and that he abused his discretion by giving the husband a disproportionate amount of the marital estate. The Appeals Court held that the wife’s claims regarding her family’s contributions were not proven and that pursuant to G.L. c. 208, § 34, the judge acted within his discretion in dividing the marital estate, including premarital assets, equally. For the foregoing reasons, the provisions of the judgment relating to the division of assets were affirmed, but the provisions relating to custody and visitation, as well as the order on the wife’s request for relocation, were remanded for further proceedings.

Anna KATZMAN v. Timothy HEALY
Decided Sept. 7, 2010
77 Mass. App. Ct. 589

This is a modification action involving issues of removal as well as child support. At the time of divorce, the parties agreed to share joint legal custody of their two children and for the mother to retain sole physical custody and act as the primary child care provider. The children were to be with the mother except for alternating weekends and dinner-type visits on Tuesday and Thursday nights. The father, who earned $150,000 per year, was to pay the mother the sum of $2,903.33 per month as child support; said amount was based upon the father’s weekly income at the time, “exclusive of bonuses,” as set forth in his financial statement. The separation agreement further provided, “[i]n the event that he receives a cash bonus during any year then he shall pay to the wife within 45 days from the receipt of said bonus a sum equal to 20% of the net bonus amount as additional child support.” The mother was employed as a clinical nurse specialist earning $42,000 per year.

Approximately one year after the divorce, the mother filed a modification complaint seeking an increase in child support as the father’s base salary had increased to $325,000 per year. The father filed a cross-complaint that sought an increase in parenting time. Several months thereafter, the mother amended her complaint to request permission to relocate with the children to New York or Connecticut in order to reside with her new spouse, whom she married thereafter and shortly prior to the trial, and with whom she was expecting a child. The father had remarried and had a child with his second wife by the time of trial. A Guardian Ad Litem was appointed to report to the court on the issues of custody, visitation and removal, and recommended a “5/2” split wherein the children would be with the mother Tuesdays and Wednesdays, with the father Thursdays and Fridays and the parents would alternate weekends. The GAL, as well as the judge, considered this to be a “continuation of approximately equal time with the parents” based upon a scrutiny of the time the children had spent asleep, awake and at school/camp under the prior parenting plan; the GAL focused on the “awake” time to arrive at the conclusion that the prior parenting plan had been “approximately equal”.

After a twenty-three day trial, the probate judge adopted the GAL’s recommendation regarding parenting time, denied the mother’s request for removal and ordered that the father’s support obligation be increased to $6,028.33 per month.

On appeal, the Appeals Court held that the law does not “neatly divide custodial parenthood into waking, sleeping and schooling categories” and that under the prior arrangement, the mother clearly had primary responsibility for parenting the children. As such, the probate judge erred in transforming the wife’s sole physical custody into an unofficial form of joint physical custody in the absence of the requisite findings reflecting substantial and material changed circumstances supported by the evidence. As such, the trial court’s decision was reversed.

With respect to the issue of removal, the Appeals Court found that despite the fact that the probate judge expressly cited reliance on the Yannas (real advantage) test, applicable where one parent had sole physical custody of the children, and not the Mason (best interest) test, where physical custody is shared, his actual application of the Yannas test was uncertain, and his handling of the parenting issue cast doubt on his removal analysis.

In sum, the Appeals Court held that although the probate judge properly found that the mother had met the first prong of the real advantage test in that she had a sound and sincere wish to live with her new husband, the child they were expecting together, and her two older children, and further was not seeking to deprive the father of his relationship with the children, there was concern regarding how he analyzed and weighted the respective interests of the mother and the father in evaluating the best interests of the children pursuant to the second part of the inquiry. Namely, the Court found that “the judge’s decision, colored in large part by its focus on the children’s “full integration” into two parenting relationships he considered essentially equal, seems to have diminished the importance of the mother’s role as sole physical custodian.” Consequently, the judge’s decision appeared actually to apply a Mason-like approach to removal. Given the judge’s substantial discounting of the significance of sole legal custody and apparent blurring of the Yannas and Mason tests, the Appeals Court concluded that a remand as to removal was necessary.

With respect to the issue of child support, the Appeals Court found that the probate judge was justified in ordering a modification given the provision in the separation agreement contemplating adjustment in child support, the substantial increase in the father’s income since the divorce and the children’s entitlement to share in the lifestyle of the parents.

Francesca CERUTTI-O’BRIEN v. Donna-Marie CERUTTI-O’BRIEN
Decided July 1, 2010
77 Mass. App. Ct. 166

This matter involved a question of subject-matter jurisdiction in the context of a same-sex divorce action. At the time of the parties’ marriage, the defendant lived in Florida and the plaintiff in Massachusetts. The parties were married in Massachusetts and “lived here” four days after their wedding before moving to Florida, where they purchased a home in both their names. Approximately six months later, the marriage broke down and the plaintiff was granted a divorce in Massachusetts, alleging in the complaint that an irretrievable breakdown had occurred in Florida.
She moved back to Massachusetts approximately two months later.

Because the cause for divorce occurred while the parties were living in Florida, the plaintiff must either have been “continuously domiciled” in Massachusetts for at least one year prior to the commencement of the action, or, alternatively, determined to be domiciled in Massachusetts at the time the marriage broke down, in order to satisfy the jurisdictional requirements of § 4 or § 5 of G.L. c. 208 at the time she filed the complaint for divorce.¹

At the time of trial, the defendant, appearing pro se, called into question the court’s ability to raise the case, holding the existence of the plaintiff’s domicile at the time she filed the complaint. The judge treated the matter as an oral motion to dismiss for lack of subject matter jurisdiction and subsequently held an evidentiary hearing on the issue.

The judge determined that the credible evidence supported a finding that the plaintiff changed her domicile to Florida when the parties moved there after the divorce, thus she could neither be considered domiciled in Massachusetts for one year prior to filing the complaint nor domiciled in Massachusetts at the time the marriage broke down. The probate judge thus dismissed the plaintiff’s complaint. The plaintiff filed a second complaint thereafter which was likewise subsequently dismissed.

On appeal, the Appeals Court affirmed the trial court judgments, holding that the plaintiff’s domicile was Florida, not Massachusetts. The Appeals Court noted, it is clear that one’s domicile shall, except as provided in [G.L. c. 208, § 5], be adjudged, if the parties have never lived together as husband and wife in this Commonwealth, or, for a cause which occurred in another jurisdiction, unless before such cause occurred the parties have lived together in this Commonwealth, and, if one of these live, in this Commonwealth, at the time when the cause occurred, it being evident, upon the evidence and the evidence that were supported by the evidence and that findings were supported did not establish that the plaintiff changed her domicile from Massachusetts to Florida.


In an opinion filed June 30, 2010, Chief Justice Margaret Marshall stated as follows:

“ar for many years the judges of the Hampden Division of the probate and Family Court Department (Hampden) have employed certain “protocols” or “procedures” (the terms are used by that court) in child-related litigation that are intended to assist them in making decisions concerning a child’s best interests, often in emergency circumstances.

Pursuant to these protocols, judges, with the assistance of probation officers assigned to the court, orally obtain confidential information about litigants from the Department of Children and Families (department) that judges are permitted to consider as substantive evidence, even in cases where the parties did not authorize the release of that material. We were informed at oral argument that Hampden is the only division of the probate and Family Court to employ these “protocols,” which are at the core of the petitioner’s appeal from portions of the judgment of a single justice in the county court.

Two petitioners filed an amended complaint in the county court seeking relief under G.L. c. 211, § 3, as well as declaratory and injunctive relief, to halt the respondents’ use of the protocols on the ground that they infringed the petitioners’ rights of due process under the Federal and Massachusetts Constitutions. They further asserted that the implementation of the protocols violated the statutory duties of the department under G.L. c. 119, §§ 51E and 51F, and the Fair Information Practices Act, G.L. c. 66A. The petitioners also sought class certification. After the case was filed, Hampden substantively revised its protocols several times.

The single justice concluded that the protocols employed in the petitioners’ cases deprived them of an adequate opportunity to rebut hearsay adverse allegations against them, in violation of their rights of due process. He ordered that Hampden “make available to litigants at ex parte hearings the reports of the probation officers containing information obtained orally from [the department] and presented to the judge, and afford the respondents the opportunity to rebut such information.” The respondents have not appealed from this aspect of the single justice’s decision, and it is not before us.

The single justice also concluded that the petitioners lacked standing to challenge the protocols in effect after the date they filed their complaint in the county court; declined to certify a class; and ordered entry of a declaratory judgment that the department did not violate any of its statutory duties or regulations in acting pursuant to the protocols. The petitioner appeals from the judgment on the issues of standing, class certification, and the statutory claims. She seeks declaratory and injunctive relief on the merits of the revised protocols.

We agree with the single justice that the petitioner has not demonstrated that she has been or will be harmed by the current protocols and affirm his ruling on standing. We also affirm the judgment of the single justice denying class certification and declaring the evidence insufficient to show that the department violated any of its statutory obligations or its regulations. Turning to the protocols currently in effect, we recognize the often daunting task of probate and Family Court judges as they attempt to discern a child’s best interests when parents are engaged in adversary litigation. We recognize that confidential department information concerning a parent or a family may be highly relevant in a legal dispute over a child’s care or custody. Balancing the best interests of children with the rights of their parents or between adversary parents is always a delicate undertaking, not amenable to the drawing of bright lines. When these interests are balanced in the present case, certain aspects of Hampden’s unique protocols do not withstand scrutiny. Specifically, we are concerned that the current protocols systemically may deny litigants in Hampden a meaningful opportunity to be heard on matters concerning the care and custody of their children. Because in the singular circumstances of this case dismissal would work a manifest injustice to nonparties, we exercise our broad discretion pursuant to G.L. c. 211, § 3, to direct Hampden to stay application of its current protocols or any revisions to those protocols. The Chief Justice of the probate and Family Court may, if she chooses, promulgate a department-wide standing order concerning use of confidential department information to replace the current protocols in accordance with the Procedure Regulating the

Within days of the entry of a judgment of divorce nisi, the mother filed a complaint for modification in which she sought to remove the parties’ four minor children to New Hampshire. The trial court granted the requested relief and the judgment was affirmed on appeal.

At the time of divorce, the parties entered into a separation agreement by which they agreed to share legal custody of their four minor children and for the mother to have physical custody; said agreement, which was incorporated into a judgment of divorce nisi dated June 15, 2005, also set forth a comprehensive parenting plan.

Within days of entry of said judgment, the mother, on June 21, 2005, filed a complaint for modification seeking permission to remove the children from Massachusetts to New Hampshire. The employer and the former husband each filed motions to dismiss under, inter alia, Rule 12(b)(10) of the Massachusetts Rules of Civil Procedure for failure to satisfy the amount in controversy required to proceed in the Superior Court, “the District Court had the power to exercise ancillary jurisdiction over damages claims for less than the statutory threshold amount, the court had discretion in determining whether or not to retain the action and exercise its ancillary jurisdiction as an alternative to dismissing the action for refiling in the District Court.

In the case at hand, the Supreme Judicial Court held that the Superior Court judge had acted within his discretion in declining to retain the action as against the former husband’s employer and employer’s principal as defendants, concluding that the action was one where the contract claim for damages was paramount, the amount at issue small, and that although he might exercise his discretion to retain the action in the Superior Court, “the District Court is better equipped than the Superior Court to handle such a matter on a time-and-cost-efficient basis.” Although the former husband’s motion to dismiss under rule 12(b)(10) was not timely, the SJC further held that with respect to the action against the former husband as the defendant, the Superior Court judge could properly raise
the issue of the damage limitation amount in connection with a civil action that includes a claim for material support whether or not an equitable claim is included, even in the absence of a timely motion to dismiss on such ground.

The order of the single justice of the Appeals Court was reversed, and the matter remanded to the Appeals Court for entry of an order affirming the Superior Court judgment of dismissal.


Court may order that custody be given to a person who is not the biological parent only in two situations: either when it is in the child’s best interests and the child’s surviving parent consents; or when it is the child’s best interests and the parents or surviving parent is determined to be unfit. In this case the father’s complaint to establish paternity came six years after the birth of the child but he was found to be fully fit.


Denial of husband’s request for reduction in undifferentiated alimony and child support obligations was not an abuse of discretion. For purposes of separation agreement, husband deemed to have an annual income of $400,000.00. Agreement explicitly said that “by reason of adjustments solely for the purpose of resolving disagreements between the parties in arriving at a settlement of this matter, an income figure of $400,000 annually for the husband has been utilized. When he filed complaint for modification, his income was $347,000. At time of divorce, his income on his financial statement was $348,000. Thus, no material change in circumstances. Trial judge rejected husband’s argument that he should have established the theoretical $400,000 annual income specified in the separation agreement as the baseline of his income for purposes of the modification. Nothing in the separation agreement indicated any intention that the compromise figure of $400,000 had any utility following the divorce; not an abuse of discretion to not attribute any continuing effect as a baseline for modification purposes.


Wife appealed judgment of divorce claiming that the judgment was wrong and excessive and that she should recover a share of the equity in the home because she made a significant investment of time and financial resources into the marital enterprise. Trial judge properly considered the Section 34 factors. Husband purchased the home six years before the marriage. Affirmed.


Husband appealed judgment of divorce. Husband and wife were married in India in 2004 and subsequently moved to Massachusetts. Their son was born in 2006. Husband earned $95,000 a year exclusive of bonuses and sent undetermined amounts of money from his earnings to accounts and to family in India. Wife earned 70% of the husband’s salary. She was solely responsible for the care of the child and the household. Husband was abusive toward the wife during the marriage. On same day as she filed for divorce, the wife obtained a restraining order against the husband. Three months after the wife filed for divorce, the husband went to India and did not return. Trial judge granted the wife legal and physical custody of the child and ordered husband to pay $350 per week in child support and arrears were established at $22,475. Judge made property division orders. Husband’s argument that the Probate Court lacked jurisdiction because the parties were married in India failed. Husband’s claim that he did not have the opportunity to “defend his case” failed because he voluntarily left Massachusetts, chose to remain in India and had the opportunity to be represented by counsel and to participate in proceedings in writing and by phone. Husband’s claim that judge erred in denying his motion to reduce support failed because he voluntarily resigned his job in the U.S., enjoys an upper class lifestyle in India, is working on plans to develop a company he employs and has a $75,000 earning capacity. Husband’s suggestion that assets in India were not part of the marital estate failed because the term “estate” encompasses all property to which a party holds title, whenever and however acquired.


Plaintiff appealed from an Order of the Probate & Family Court judge dismissing an earlier appeal for failure to docket an appeal within ten days pursuant to Mass.R.A.P. 10(a)(1). Plaintiff filed a timely notice of appeal from the judgment but failed to perfect the appeal. Trial records was not assembled until two years after the notice of appeal and plaintiff did not pay the docketing fee within ten days after notice of assembly. Probate and Family Court judge allowed defendant’s motion to dismiss for failure to timely docket an appeal. Plaintiff’s position on appeal that his neglect in failing to docket the appeal was excusable because a clerk of the Probate and Family Court sent the formal notice of the assembly of the record to the plaintiff’s former counsel was unreasonable. Plaintiff should have followed up by docketing the appeal.


Parties were married in 1977 and had one child in 1977. They were divorced in 1979 on grounds of cruel and abusive treatment by the father. Mother granted custody and father was ordered to pay child support of $50 per week and arrears of $2,750. On June 2, 1982, mother filed a complaint for contempt pro se alleging the father failed to pay any child support. Two attempts at service of the summons failed as the sheriff’s office could not locate the father. In 2001, the mother tried unsuccessfully to collect the child support arrears through a private company. In 2006, the father and son made contact with each other after many years. In 2007, the mother filed a new complaint for contempt alleging non-payment of support and the father was served. Father filed a motion to dismiss, arguing the Probate and Family Court judge instructed the parties to make additional written submission. In the memorandum of decision, the judge denied the father’s motion to dismiss and found him in contempt. Arrears were established at $41,965 plus interest. Father argued on appeal that the judge erred in not holding an evidentiary hearing on the contempt complaint. Argument failed because the father asserted to proceeding on written submissions and he did not request an evidentiary hearing until after the issuance of the judgment. Father also argued that mother’s delay in bringing the contempt complaint constituted latches. Father’s unpaid child support obligation became vested as judgments by operation of law and the defense of latches was not available to him.


Husband appealed judge of probate ordering him to pay $900 a week as child support subject to an annual cost of living adjustment, 30% of his gross bonus as additional child support, alimony in the amount of $500 per week subject to a cost of living increase and division of property. Judgment affirmed. Husband’s claim of possible future hardship arising from the cost of living increase was unpersuasive in light of the trial judge’s findings that he has been able to develop a successful and lucrative law practice that should continue to provide him with a comfortable income. The husband’s child support obligations will cease in the near future and a cost of living increase on his modest alimony order will not likely have a significant impact on his lifestyle. Judge did not abuse her
discretion by failing to order that child support be reduced upon emancipation of the older child who will be emancipated three years before the younger child. Husband’s own proposed judgment contains no provision for automatic adjustment of child support. Judge did not abuse her discretion in awarding the wife 60% of certain marital assets and 80% of the sale proceeds of the marital home. Judge found that the wife did not stand on equal ground with the husband in terms of her ability to earn income and her education. She had been out of the workforce since 1992. In addition, the judge awarded the husband his law practice which was indicated in his rationale regarding the property awarded to the wife.


Post divorce the wife filed an action in the probate and family court to confirm her right to live in the marital home based on a written postdivorce agreement by the parties. Following trial, the judge ruled in wife’s favor and the husband appealed. Parties were married for 30 years. They were divorced by agreement with the husband represented by counsel and the wife pro se. Under the agreement the marital home which was the only piece of real estate was given entirely to the husband. In exchange, the husband agreed to pay $6,000 in joint credit card debt. The agreement said the wife waived her interest in the house because the husband owned the land prior to the marriage. The agreement was approved by the judge as fair and reasonable. Wife filed a motion to set aside the division of assets alleging the husband had purchased the property during the marriage and that he had defrauded her into agreeing to give him the house. It was unclear whether the wife’s motion was ever heard and judgment entered incorporating the separation agreement. Both parties continued to live in the house after the divorce. They later signed a piece of paper that the husband was to receive twenty percent of the value of the trust as of the date of divorce but did not conduct an evidentiary hearing. The case was remanded again because the judge had made no findings as to the present value of those distributions measured at the time of trial. The appeals court stated that an evidentiary hearing was necessary to determine, based on expert testimony, the present value of the husband’s share of the distributions at the time of the initial divorce trial.

Rule 1:28 Decision Case Summaries

By Rosanne Klovee, Esq.

Benoit v. Benoit, 09-P-692 (August 18, 2010)
The husband’s increased parenting time for a four year period since the divorce judgment of a three and one-half hour visit every other week was not a material change in circumstances, particularly since the husband failed to demonstrate that his request for equal parenting time with the child was in the child’s best interests.

Lambert-Huber v. Huber, 09-P-1793 (August 30, 2010)
In this case, the trial judge found that the wife contributed significantly more to the acquisition, preservation, and appreciation of the marital estate. The wife had worked throughout the marriage, even when she was a student and caring for a newborn. In contrast, the husband was an undependable financial and emotional partner during most of the marriage. The wife was also suffering from health issues which limited her opportunity for future acquisition of assets and future income. The wife was awarded fifty-six percent of the marital estate while the husband was awarded forty-four percent. The judgment was upheld. (Commentary: Unfortunately, the court fell short of referring to the wife as a “super contributor.”)

Dunkless v. Ginsberg, 09-P-1194 (August 31, 2010)
At the time of the divorce judgment and at the time of the modification trial, the court properly found that the husband’s income from his parents was part of his income for support purposes. The husband had been dependent on his parents’ financial contributions for many years and the trial judge did not credit the husband’s testimony that his parents’ contributions were loans.

Krintzman v. Honig, 09-P-1976 (September 1, 2010)
In this case, the divorce judgment provided that the husband was to receive twenty percent of all distributions the wife would receive in the future from a family trust on an “if, as, and when” basis. In the first 1:28 opinion, the Appeals Court found that the “if and when received” method was beyond the scope of judicial discretion and noted that a better course would have been for the judge to award the husband a dollar amount equal to the value of his share of the trust assets. The case was remanded for determination of what the trial court thought the wife would receive as an annual distribution. On remand, the trial judge awarded the husband twenty percent of the value of the trust as of the date of divorce but did not conduct an evidentiary hearing. The case was remanded again because the judge had made no findings as to the present value of those distributions measured at the time of trial. The appeals court stated that an evidentiary hearing was necessary to determine, based on expert testimony, the present value of the husband’s share of the distributions at the time of the initial divorce trial.

MacLeod v. Gugger, 09-P-1675 (September 14, 2010)
The trial judge did not abuse his discretion when he valued the husband’s 401K plan on the date of the judgment of divorce nisi and not the judgment absolute. By the date of the judgment absolute, the husband’s 401K plan had decreased by over $45,000.00 and had further declined by an additional
$6,000.00 by the time the QDRO was signed by the judge. This resulted in the wife receiving fifty percent of the high value of the plan on the date of judgment nisi but eighty-two percent of the value of the plan at the time of the judgment absolute. The Husband was left with only eighteen percent of the value as of the date of the judgment absolute.

Long v. Long, 09-P-1280 (September 21, 2010)

Husband’s claim that the wife was precluded from recovering uninsured dental and educational expenses because she did not raise them as they occurred lacked merit due to language in the parties’ separation agreement that “failure of the Husband or the Wife to insist in any instance upon the strict performance of any of the terms hereof shall not be construed as a waiver of such term or terms in the future, and such terms shall nevertheless continue in full force and effect.” With regard to an increase in the husband’s pension payments post divorce and due to renegotiation of contract agreements between the husband’s employer and his union, the trial judge did not err in finding that the wife was entitled to an adjustment in the amount she received from the husband’s pension to reflect its increase. The separation agreement was ambiguous as to the parties’ intent and had two conflicting provisions as to the addition of future cost of living adjustments.

The Lawyer As Abider

By John A. Fiske, Esq.

The lawyer whose client is in mediation is an advisor, not a zealous advocate. To quote the rule,

“As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client’s legal rights and obligations and explains their practical implications.” Preamble, A Lawyer’s Responsibilities, SJC Rule 3:07 Professional Conduct.

This short article arises from several recent encounters with experienced family lawyers who are understandably confused and upset by trying to advocate zealously for their client in mediation. The lawyer has difficulty allowing the client to do what the clients thinks is best for him or her under the circumstances. The lawyer may even tell the client to stop talking to the other party or to the mediator for fear that the client may agree to something the lawyer does not think is appropriate. Some of these lawyers tell me they fear accusations of malpractice if they are not a zealous advocate. I tell them, “Read the rule.”

The rule is even more helpful in addressing the circumstance when the client, having been fully informed of his legal rights and obligations, and understanding their practical implications, tells his lawyer to accept a settlement offer which the lawyer feels is woefully inadequate and certainly less than what a court is likely to do under established applications of existing law and well short of what the lawyer has been consistently demanding on behalf of his client. Guess what: it’s not the lawyer’s decision, I tell them, “Read the rule.”

“A lawyer shall abide by a client’s decision whether to accept an offer of settlement of a matter.” Rule 1.2, Scope of Representation, Rule 3:07.

It’s hard to be more clear than that. Webster’s New International Dictionary Second Edition defines “abide” as, among other things, “to acquiesce in, to conform to, to accept as valid and take the consequences of; as, to abide by a decision.”

The lawyer for a client in mediation is in the most difficult position of anyone in the case, torn between gladiator and rubber stamp. For example: lawyers who have carefully analyzed the unanimous opinion and remarkable footnotes of the SJC in their July, 2010 decision in Ansin v. Craven-Ansin see many complex criteria for defining what sort of marital agreement between spouses may or may not be enforceable later on. The lawyer needs to make sure the client is informed of the practical implications of signing a proposed marital agreement, and may disagree with what the client insists upon or accepts. Thus many experienced family lawyers make sure they write a letter to the client explaining his or her choices and the recommendation of the lawyer; some lawyers keep a copy of that letter signed by the client to acknowledge receipt and understanding of the advice.

The role of the lawyer is so complex that the American Bar Association is now sponsoring Moot Court competitions in law schools for lawyers in mediation and gives an award annually to the team that best represents their clients in mediation. In addressing this challenge, I hope that lawyers representing clients in mediation can find guidance and comfort by going back to what they do best: when in doubt, read the rule.

John A. Fiske is a partner of Healy, Fiske, Richmond and Matthew, a Cambridge law firm concentrating in family law and mediation.
Long Awaited Guidance on Post Nuptial Agreements in Massachusetts: A Dissection of Ansin v. Craven-Ansin

By Wendy O. Hickey, Esq.

The Massachusetts Family Law bar has been waiting for the answer to whether or not Massachusetts will recognize a post nuptial agreement since 1991 when the SJC left “to another day” the question of whether martial agreements were valid in Massachusetts. Fogg v. Fogg, 409 Mass. 531, 532 (1991). Since then, some practitioners have shied away from clients seeking post nuptial or marital agreements out of fear of the unknown and the potential for a malpractice claim.

On July 10, 2010 the SJC upheld the Worcester Probate and Family Court’s decision to enforce a marital agreement entered into by Kenneth Ansin and Cheryl Craven-Ansin after both parties petitioned the SJC for direct appellate review. See, Ansin v. Craven-Ansin, MA SJC 10-548, July 16, 2010. The decision provided some much needed practical guidance for practitioners while at the same time raising new questions which remain for another day.

The Ansins executed their marital agreement in July, 2004 after nineteen years of marriage. Mr. Ansin requested the marital agreement after the parties experienced a difficult patch in their marriage, mainly for the purpose of protecting his minority interest in family owned and operated real estate in Florida. At first Mrs. Craven-Ansin rejected Mr. Ansin’s request and the parties separated for six weeks. However, they continued to talk and Mrs. Craven-Ansin eventually agreed to the marital agreement. Both parties were represented by independent counsel while the agreement was being negotiated. Both parties had the opportunity to and did make changes to the agreement before it was signed. Both parties had free access to the parties’ long time financial consultant at RINET during the course of their negotiations. The parties disclosed their assets to each other, albeit the number obtained by asking Mr. Ansin’s uncle who was the financial consultant at RINET was a mere “placeholder” – a number used by Mr. Ansin for his interest in the Florida property for purposes of letting the SJC know what his interest was.

On enforcement, the court rejected the standards in setting the standard of fair and reasonable at the time of execution with the burden of proving these factors. Id. The court chose not to follow the lead of other states, some of whom chose to increase the burden of proof to a standard of clear and convincing evidence (See, for example, Matter of Estate of Haber, 104 Anz. 79, 88 (1989)).

In a sense, the final factor for determining whether a post-nuptial agreement should be enforced brings us back to the old days of arguing for the enforcement of pre-marital agreements before DeMatteo. In DeMatteo we saw a shift in the scrutiny of a pre marital agreement from one of fair and reasonable at the time of execution with a second look to see if the agreement remained fair and reasonable at the time of enforcement, to a fair and conscionable standard at the time of enforcement. Id. In setting the standard of fair and reasonable on execution and fair and reasonable on enforcement, the court rejected the standards proposed by Mr. Ansin.

Mr. Ansin argued the standard for enforcing pre nuptial agreements ought to apply to marital agreements. The problem with that idea is that a marital agreement is an entirely different animal than a pre marital agreement. If the parties to a pre nuptial agreement cannot agree on terms, either party can go to court and not marry. With a marital agreement, the parties are already married, the stakes are necessarily higher and, as a result, the parties owe each other statutory obligations born out of their marriage. As soon as a couple marries, they acquire rights under M.G.L. c. 208, §34 – rights that they will have to be made aware of and specifically relinquish in their marital agreement if it is to be enforceable. In this sense, a marital agreement is more akin to a separation agreement. However, the court observed “parties to a marital agreement do not bargain as freely as separating spouses do … because a marital agreement is executed when the parties do not contemplate divorce and when they owe absolute fidelity to each other…” Ansin v. Craven-Ansin, p. 4 of 7.

Nevertheless, in evaluating whether a marital agreement is fair and reasonable at the time of divorce, the trial judge can satisfy the inquiry required by the SJC by examining the same factors required by the SJC by examining the same factors required by the SJC by examining the same factors required by the SJC by examining the same factors required by the SJC by examining the same factors.

In upholding the trial court, the SJC set forth some clear and specific guidelines which will help practitioners navigate their way through drafting enforceable marital agreements and in litigating poorly drafted agreements. They were even helpful enough to suggest that if there had been a material change in circumstances since the time a marital agreement is executed and the time one side seeks to enforce it, that might make a difference in enforceability. So, now we can sit back and wait to see what kinds of case-specific “material” changes come down the pike which might be considered material enough so that the otherwise fair agreement will not be enforced. And, we have to consider if it is possible to draft around such future contingencies much the way many of us attempt to do so in our separation agreements.
As of February 12, 2010, Massachusetts had issued marriage licenses to at least 15,214 same-sex couples. But, as Section 3 of DOMA bars federal recognition of these marriages, Attorney General Martha Coakley argued in Commonwealth of Massachusetts v. Health and Human Services, DOMA has denied federal benefits to these couples. For example, the Department of Veterans Affairs informed the Commonwealth that the federal government is entitled to “recapture” almost $19 million in federal grants if and when the Commonwealth opts to bury the same-sex spouse of a veteran in one of the state veterans’ cemeteries in Agawam or Winchendon. Here, DOMA is inducing the Commonwealth to violate the equal protection rights of its citizens. As DOMA imposes an unconstitutional condition on the receipt of federal funding, the court found that DOMA contravenes a well-established restriction on the exercise of Congress’ spending power.

DOMA also penalizes the state and its citizens in the context of healthcare. Under the MassHealth Equality Act, the Commonwealth is required to afford same-sex spouses the same benefits as heterosexual spouses. Yet the Health and Human Services Centers for Medicare & Medicaid Services states that the federal government will not provide federal funding participation for same-sex spouses because DOMA does not recognize the marriage of same-sex couples. Consequently, the Commonwealth has incurred over $640,000 in additional costs and over $2 million in lost federal funding. Additionally, the Commonwealth has incurred additional tax liability because the health benefits afforded to same-sex spouses of Commonwealth employees must be considered taxable income and the Commonwealth is required to pay Medicare tax for each employee hired after April 1, 1986, in the amount of 1.45% of each employee’s taxable income.

In the companion case to Commonwealth of Massachusetts v. Health and Human Services, GLAD asked Judge Tauro to consider whether DOMA violates the right of seven married same-sex couples and three widowers from Massachusetts to equal protection of the law in Gill v. Office of Personnel Management. The Gill case was filed by individual Massachusetts plaintiffs who sought to end the federal government’s discriminatory refusal to acknowledge their existing marriages. Some have been denied social security protections, or job protections, typically available to married couples. They have also been forbidden from filing their federal income taxes jointly. GLAD argued that the federal government’s different treatment of married heterosexual couples violates the plaintiffs’ equal protection rights under the 5th Amendment. 2

Rather than declare homosexuals to be a “suspect class” and therefore subject DOMA to strict scrutiny review, the ruling said that was unnecessary because DOMA fails to even pass the more lenient “rational basis” test.


Proposition 8 Overturned in California

Proposition 8, also known as California’s Marriage Protection Act, was a ballot proposition and constitutional amendment passed in November 2008 which provided that California only recognize marriage as between one man and one woman.

On August 4, 2010 U.S. District Court Judge Vaughn Walker in California concluded that Proposition 8 banning gay marriage violates both the Due Process Clause and the Equal Protection Clause of the 14th Amendment. 3

Judge Walker determined that “Proposition 8 both unconstitutionally burdens the exercise of the fundamental right to marry and creates an irrational classification on the basis of sexual orientation.” Because the plaintiffs in Perry v. Schwarzenegger sought to exercise the fundamental right to marry, their claim was subject to strict scrutiny. However, as Judge Tauro did in the Gill case, Judge Walker noted higher standard of “strict scrutiny” is unnecessary because Proposition 8 fails to pass the more lenient “rational basis” test. Therefore, Proposition 8 cannot withstand any level of scrutiny under the Equal Protection Clause, because excluding same-sex couples from marriage is not rationally related to a legitimate state interest.

Read Judge Walker’s decision here: http://www.scribd.com/doc/35374462/Prop-8-Ruling-FINAL

While the decisions from this summer symbolize great strides for gay marriage rights, many legal commentators foresee these cases being appealed to the U.S. Supreme Court. We will have to wait to see what the new season brings.

Endnotes
1 The 14th Amendment “requires that all persons subjected to...”
2 Under the Due Process Clause of the 5th Amendment, the federal government shall not make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law.
3 The Due Process Clause of the 14th Amendment provides that states shall not “make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law.”
Pro Bono Opportunity: KIND

Ann Cooper recently spoke at the Family Law Section Steering Committee meeting last spring on behalf of KIND. She is looking for family law attorneys to pair up with immigration law attorneys to help unrepresented immigrant children. The commitment can be anywhere from accepting a case to mentoring other lawyers on how to proceed in the probate and family court on certain actions like paternity or guardianship proceedings.

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and actress and humanitarian Angelina Jolie to create a pro bono movement of law attorneys to help unrepresented immigrant children. KIND was founded by the Microsoft Corporation and actress and humanitarian Angelina Jolie to create a pro bono movement of law attorneys to help unrepresented immigrant children. The commitment can be anywhere from accepting a case to mentoring other lawyers on how to proceed in the probate and family court on certain actions like paternity or guardianship proceedings.

More than 8,000 children come to the United States each year without a parent or legal guardian and are put into the custody of the U.S. government; numerous others enter alone but live “underground” in secrecy and deprivation in a desperate attempt to evade U.S. authorities. Many of these children are fleeing severe abuse or persecution, others are victims of trafficking for forced prostitution. The majority must face immigration court proceedings alone - without the help of a lawyer.

KIND works closely with the children by listening to their stories describing what drove them to leave their homes and make the desperate and dangerous journey to the United States alone. After evaluating their legal options, KIND places them with a pro bono attorney who will provide legal representation for their family law and immigration cases. KIND provides training and mentoring to pro bono attorneys who volunteer to represent these unaccompanied children.

KIND recently added an office in Boston. There are also field offices in Baltimore, Houston, Los Angeles, Newark, New York City, and Washington, DC. KIND also advocates for changes in policies to better protect the rights of unaccompanied children. If you would like more information on how you can get involved with KIND in Boston, please contact KIND’s Pro Bono Coordinator in Boston, Ann Cooper at acooper@supportkind.org or 617-470-8536 and visit the website at www.supportkind.org.

One year ago, on May 1, 2009, Limited Assistance Representation (LAR)—once a pilot program in Hampden, Norfolk, and Suffolk—was instituted in all divisions of the Probate and Family Court, yet many family law attorneys still are not familiar with the program and its benefits.

Family Law Section Joins in Support of Active Duty Military, Veterans, and Family

This past August, the BBA Council approved an initiative designed to serve active duty members of the military, veterans of recent wars and their respective family members. This initiative has resulted in the creation of the Committee on Active Duty Military, Veterans and Family Members within the Delivery of Legal Services Section (the “DLS Committee”) which is currently co-chaired by Sue Finegan and Lynn Girton.

Members of the Family Law section, together with members of the Bankruptcy, Trusts and Estates and Labor and Employment sections, are working with the DLS Committee to staff events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program. For over a year, members of our section have volunteered their time at “Yellow Ribbon” events organized by the military as part of the Yellow Ribbon Reintegration Program.

The DLS Committee has also been working to create and implement an infrastructure that will allow the identification of active duty military, veterans and their family members who need legal assistance and match those persons with an appropriate pro bono volunteer. The Pro-Bono Committee will be recruiting volunteers over the next few weeks to serve on this important and immensely rewarding panel. In order to educate “civilian” practitioners on the unique military issues that may arise in the context of such cases, staff from Shelter Legal Services and members of the Judge Advocate General’s Corps will be providing a special training for members of our section in January 2011. We hope that you will join us in supporting this effort.

For more information, please contact the Pro-Bono Committee Co-Chairs as follows: Kristine Ann Cummings: kac@sally-fitch.com Cynthia E. MacCausland: cynthia@maccauslandlaw.com
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ARTICLES WANTED
You are all invited and encouraged to contribute an article on any subject of interest. Please contact, Wendy Hickey, wendy@nissenbaumlaw.com, to pursue this further.