
Family Law



Fall 2006

Published by the Family Law Section of the Washington State Bar Association

Chair's Column

by Sara Ainsworth

Washington Supreme Court Upholds Law that Denies Same Sex Couples and their Families the Protections and Benefits of Marriage

Among those disappointed by the Washington Supreme Court's decision in the consolidated cases *Andersen v. King County* and *Castle v. State* were many family law practitioners. As lawyers working to help clients through child custody struggles and the impact of entering and leaving relationships on property, finances, estate planning and retirement, we are all too aware that unmarried couples face unique and significant legal hurdles. To highlight these disparities to the Washington Supreme Court, a group of family law lawyers and organizations filed an *amicus* brief in these consolidated cases, detailing the over 400 legal benefits that inure to married couples and are either difficult to access or plainly denied for those who cannot marry.

Regardless of one's personal views on the subject of marriage, no one can deny that being excluded from legal

marriage will force certain couples to either forego critical protections for their families, or turn instead to lawyers and the courts for help. In contrast to the reasoning of the concurring justices in *Andersen* and *Castle* that the legislature might "rationally" decide that limiting marriage to opposite-sex couples protects its interest in procreation and two-parent families, family law practitioners are keenly aware that many unmarried families of all varieties have and raise children. And those families, too, need truly rational laws to help them address the concerns shared by all families – protecting their children, maximizing financial and emotional resources, and, when necessary, ending their relationships with less anguish and conflict.

Perhaps a logical step toward addressing this disparity – in addition to making civil marriage available to those who want to undertake it – is to focus on redesigning our family law so as to reduce the difficulty in protecting those couples who do not marry, by choice or by prohibition. Frankly, while we're looking at it, family law may need some revising in other areas as well. Practitioners regularly hear complaints that family law is not well-designed to meet the needs of families. We hear that it pushes people into litigation where it should not, that it does not fairly consider the roles of parents in their children's lives, that it pits gender against gender. We know from the Family Law Section's involvement in reviewing the child support schedule that this woefully outdated tool is failing to ensure adequate child support for many Washington children.

In response to these concerns, some positive steps have been taken. More family law lawyers are learning about collaborative law, a method of working together to maximize both parties' interests within the legal framework for ending relationships. On their own, with or without lawyers, many litigants resolve their divorce and custody disputes by agreement. Practitioners around the state have

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utilized the common law rules providing for the recognition of *de facto* parents and the division of nonmarital property to help their clients whose lives do not fit within the framework of the traditional family law system. And as for child support, at least we've started a dialogue about what's wrong with the current structure.

Yet these positive steps are insufficient and perhaps futile when it comes to addressing the disparities created by denying marriage to same-sex couples. After all, how can a system that excludes a whole class of people – whether or not the Supreme Court believes that class is suspect – be well-designed to meet the needs of all families? The state, regardless of its claimed interests, cannot – and should not – dictate the contours and structure of what is most personal to us. Rather, it is the proper function of the legal system to ensure that unfairness and injustice do not hold sway. Practitioners understand that in attempting to ensure justice in the context of family law, the system faces a monumental and nigh impossible task. It is not very often that the law can lend a sense of justice and fairness to a situation fraught with hard feelings and made additionally complex by the need to protect children. But to make that difficult, imperfect system at least equally accessible to all Washington families – that should be an obvious and easy place to begin our evolution.

Sara Ainsworth is the current Family Law Executive Committee Chair. She works for the Northwest Women's Law Center in Seattle, Washington.

When Death and Divorce Collide: Cross-over Issues in Estate Planning and Family Law

Washington State
Convention & Trade Center – Seattle
November 29, 2007 8:30 a.m. to 4:30 p.m.

The Family Law Section is co-sponsoring with the Real Property, Probate and Trust Section a continuing education program developed to assist the family law practitioner in dealing with estate planning during the dissolution process, the use of community and separate property agreements, how to deal with second-family financial considerations, non-traditional family issues, and retirement plan allocations. For more information contact program chairs, Marijean Moschetto or Mary Anne Vance or the Washington State Bar Association CLE Department.

2006-2007 Family Law Executive Committee Election Results

Danni Liebman, Vancouver, Kathleen E. Schmidt, Wenatchee, and Lisa Hayden, Seattle were re-elected to three-year terms on the Family Law Executive Committee. Nancy Koptur, Olympia and Paul G. Cornelius, Spokane were also elected to three-year terms on the Committee. Congratulations to everyone.

Editorial Contributions

Please send letters and other editorial contributions (preferably in Word 6.0 format on 3.5 inch disk) to:

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GR 22 – “Access to Family Law Court Records”

by J. Mark Weiss

This is an excerpt from a Family Law Deskbook Chapter authored by J. Mark Weiss relating to recent changes in General Rule 22.

(1) Changes from prior practice

The Supreme Court initially adopted GR 22 in 2001, and made substantial revisions in 2006. GR 22 is believed to be the first court rule in the nation to have dealt directly with the issue of identity theft from family law court files. The adoption of GR 22 in 2001 was accompanied by legislation that eliminated the statutory requirements to include identifying information in petitions for dissolution of marriage and some other public documents. At the time of its adoption, GR 22 was concerned only with the possibility of using family law court files to facilitate identity theft. Revisions adopted in 2006 expand the scope of GR 22 to address additional privacy concerns and to afford protections to guardianship proceedings.

(2) Protections of GR 22

GR 22 provides for the automatic sealing of some documents and the discretionary sealing of other documents that are routinely filed in family law cases. In both cases, however, the practitioner must follow specific procedures or the protection offered by GR 22 will be lost.

(a) Certain documents automatically sealed

Certain documents are automatically sealed by virtue of GR 22. Those documents are the Confidential Information Form, Domestic Violence Information Form, Notice of Intent to Relocate, and any Personal Information Sheet necessary for Judicial Information System purposes (e.g., Law Enforcement Information Form and Foreign Protection Order Form). GR 22(c)(2). Parties and counsel do not have access to documents that are sealed under GR 22(c)(2), unless all parties stipulate in writing or obtain a court order upon a motion showing good cause. GR 22(h)(1) & GR 22(h)(2).

(b) Financial source documents protected

Financial source documents filed with an appropriate cover sheet are automatically sealed. GR 22(f). Financial source documents, as defined by GR 22(b)(8), include income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, check registers, checks, loan applications, and “retirement plan orders.” GR 22(b)(8). No other documents may be attached behind the cover sheet as a “financial source document.”

GR 22(f). Documents not meeting the definition of “Sealed Financial Source Documents” or that otherwise meet the definition but have not been submitted in accordance with GR 22(f)(1) are not automatically sealed. See Comment following GR 22(d).

“Retirement Plan Orders” are automatically sealed and should be placed behind the appropriate cover sheet. A retirement plan order may not contain any substantive provision that is not set forth in an order that is in the public record, such as a decree of dissolution of marriage. The provision for retirement plan orders was adopted in 2006 to address identity theft concerns. The purpose of the provision is to provide sealing of documents that merely implement the substantive provisions. This was deemed necessary because plan administrators often require sealed identifying information (dates of birth, social security numbers, etc.) in order to implement them. The term “retirement plan order” is broad, and encompasses Qualified Domestic Relations Orders as well as orders affecting non-qualified plans, insurance benefits, and other employment (including military) benefits.

Practice Tip: Placing documents other than those specifically authorized by court rule behind the cover sheet risks having the documents unsealed. It also risks the imposition of sanctions by the court. GR 22(f)(4). The responsibility for attaching documents properly under the cover sheet rests with the attorney or party who files the document.

Practice Tip: GR 22 contains specific requirements for redacting specific information and placing documents behind cover sheets to ensure they will be sealed. Given the risks of liability if a party’s identity is “stolen” from the court file, the prudent practitioner should ensure that he or she and office staff scrupulously abide by all requirements.

(c) Financial source documents containing restricted personal identifiers may be sealed

Financial source documents containing restricted personal identifiers that are not automatically sealed may be sealed pursuant to GR 22(f)(3). The rule defines “restricted personal identifiers” as a party’s Social Security number, driver’s license number, or telephone number, financial account number, and a child’s Social Security number and date of birth. GR 22(b)(6).

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(d) Personal health care records protected

New with the 2006 amendments, “personal health care records” are sealed when filed behind an appropriate cover sheet. GR 22(c)(2). The definition of a “personal health care record” is extremely broad. It includes “any record or correspondence that contains health information that: (1) relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care; or (2) involves genetic parentage testing.” GR 22(b)(3). Some of the documents that may fall within the definition of GR 22(b)(3) that may not be obvious include:

- Medical bills;
- Independent medical evaluations;
- Certain worker’s compensation and social security disability records;
- Medical insurance explanations of benefits;
- Medical insurance records;
- Affidavits and letters from health care providers, including pediatricians and counselors;
- Dental and orthodontia records, including treatment plans and cost estimates;
- Chiropractic and massage therapy records;
- Cosmetic surgery records.

(e) Portions of evaluations and GAL reports protected

With the 2006 amendments, portions of reports to the court must be prepared differently, and portions will be sealed when properly submitted. The reports which must be so submitted include:

- Parenting evaluations
- Domestic violence assessment reports
- Risk assessment reports
- CPS summary reports
- Sexual abuse evaluations
- Guardian *ad litem* and CASA reports.

GR 22(e)(1).

Reports must be prepared and filed in two distinct parts. One part is the “public document” and the other part is the “private document.” GR 22(e)(2). The purpose for the public document is to summarize portions of the private document, without any of the details or discussion. The “public document” should contain only a “simple listing” of:

- a. The materials and information that were reviewed by the GAL, evaluator, or expert;
- b. The individuals contacted;

c. The tests that were conducted or reviewed (not the test results); and

d. The conclusions and recommendations.

The substance of the report should be in the “private document,” would be filed behind a cover sheet entitled “sealed confidential report,” and contains the detailed discussion and analysis. GR 22(e)(2)(B). The private document may only be filed or submitted to the court under seal. The private document may also not be attached as an exhibit to a document that is not filed under seal. GR 22(e)(3).

Practice Tip: Because the listing of reports at GR 22(e)(1) is expressly not limited to the reports specifically listed, consider having all expert reports prepared in accordance with the requirements of GR 22(e).

(3) Access to automatically sealed records

GR 22 provides for different levels of access depending on who is seeking access, and to which information access is sought. Judges, commissioners, and courthouse personnel carrying out the business of the court, the Commission on Judicial Conduct, the Certified Professional Guardian Board, and certain divisions of the Department of Social and Health Services have full access to all case records. GR 22(g)(1). No others are given such extensive access.

(a) Access by parties and attorneys

Parties and the attorneys of record have access to most documents that are filed in a family law case, including documents that are automatically sealed. However, parties and their attorneys will not ordinarily be granted access to the following records: the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and the Foreign Protection Order Form. GR 22(g)(2).

(b) Access by the public

The public has access to all documents that are not sealed. The public also has access to documents when all parties to a case have so stipulated in writing. GR 22(h)(1). Members of the public may file a motion for access to sealed court records. To prevail, a showing of good cause needs to be made on the basis of affidavits submitted. A motion can ask for access to court records with certain items redacted. The court applies a balancing test. If the court finds that the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interest of the parties or dependent children,

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Family Law Section Tribute to Peter J. Karademos

15 Years of Service on the Executive Committee

During the annual Family Law Section Business Meeting Saturday June 24, 2006, Peter J. Karademos was honored for his 15 years of service to the Family Law Executive Committee. Former FLEC members, colleagues, friends and judicial officers were asked to contribute to a memory book that was presented to Pete. During his years of service, Pete has been the able chair of multiple Spokane mid-year meetings, was always an entertaining presenter at numerous section and non-section CLEs, often wrote for the section newsletter and for the young lawyer publication *De Novo*, and filled the Chair position on the executive committee more than once. Pete has been the “go-to guy” for so many years he will be truly missed by his friends and colleagues on the executive committee. As the recently elected 5th District member on the Board of Governors, Pete will continue his unwavering, dedicated support and service to the Family Law Section.

A few of the excerpts from the many contributions to Pete’s tribute follow:

I had the pleasure of meeting Pete for the first time approximately 12 years ago when we served on the Family Law Executive Committee together. Although I loved working with all the members of the committee together, discussions sometimes became heated as we discussed the Parenting Act, child support, domestic violence and hot button issues of the day, and how to address those. Pete’s

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access is allowed. GR 22(h)(3). Notice of any motion for access to sealed files must be given to all parties, unless notice is waived if a party cannot be found. GR 22(h)(2).

J. Mark Weiss has practiced law in Seattle since 1987, and is a Fellow of the American Academy of Matrimonial Lawyers. Mr. Weiss was a member of the WSBA Family Law Section Executive Committee from 1997 to 2005, and Chair of the Family Law Section in 2003-04. He has worked on drafting committees on GR 22 (including the 2006 amendments), GR 30, GR 31, and the 2006 amendments to GR 15. Mr. Weiss served on drafting committees for the King County Superior Court’s family law local rules, and was a member of the King County Superior Court’s Electronic Court Records Executive Sponsor Committee. In 2005-06, he was Secretary of the KCBA, and is currently Trustee of the KCBA.

irreverence and quick wit not only had the result of keeping everyone in stitches but at creating a more convivial and positive atmosphere.

– Kimberly Prochnau,
King County Court Commissioner

I’ve known Pete since I came to Spokane in 1994 from almost 20 years of law practice in Montana. He rented me my first Spokane office space. He’s been a great help to me in many ways, including his nomination of me for FLEC in 1998, which led to my five enjoyable years serving with that great group. FLEC will miss Pete’s tireless work on behalf of its constituency - the practicing family law lawyers of Washington. However, our loss is the BOG’s gain. BOG will now be treated to Pete’s relentless harassment in the name of logic and common sense.

– Pete Lineberger, Spokane Attorney

Pete has been a shining beacon with the Family Law Executive Committee for years. I served on this committee twelve years ago. During my three years, I always looked forward to hearing Pete’s reports, especially about legislation. I listened to his insight. Not only was he always clear about what the issues were, but he had tremendous insight about how to address issues and the future impact of those issues. Family law in the state of Washington has been enhanced and has grown because of Pete’s involvement. I wish him the best in his endeavors.

– Patricia Chvatal, Tri-Cities Attorney

When I was elected to the FLEC in 1997, Pete was one of the first members to welcome me to the group and to guide me in the process of contributing to the important work of the Family Law Section, which is accomplished by FLEC. During my eight years of service on the committee, Pete has been tireless, doggedly determined, and often passionate in his efforts to champion the causes of family law practitioners. He was always ready with a quip – which more often than not might be at his own expense – yet he was willing to be serious when necessary, including rolling up his sleeves and working on some of the less-than-glamorous jobs that come with service on the FLEC.

– Kathleen E. Schmidt, Wenatchee Attorney

2006 Family Law Midyear

Marcus Whitman Hotel & Conference Center
Walla Walla June 23-25, 2006

The 2006 Family Law Midyear meeting occurred June 23-25, 2006 at the Marcus Whitman Hotel & Conference Center in Walla Walla. The Marcus Whitman is a historic hotel that was originally constructed in 1928 and has been fully restored to include a state-of-the-art conference and convention center. Attendance was excellent with more than 210+ registrants. With perfect summer weather, Walla Walla afforded everyone the opportunity to play in the sun, golf, ride a bike, visit the local wineries, or see the historic sites of this lovely community. The Section provided each section member attending the seminar with a complimentary copper vacuum bottle imprinted with the section logo.

Following the lively presentation of a number of interesting topics Friday afternoon, most attendees had hors d'oeuvres and listened to live music provided by a local group, Walla Walla Vintage. Saturday morning events kicked off with the first-timers' breakfast at 7:00 a.m. hosted by the Executive Committee. Any first-time attendee of a mid-year meeting is invited to breakfast with the executive committee and we were glad to welcome the newcomers.



Peter J. Karademos, Attorney of the Year



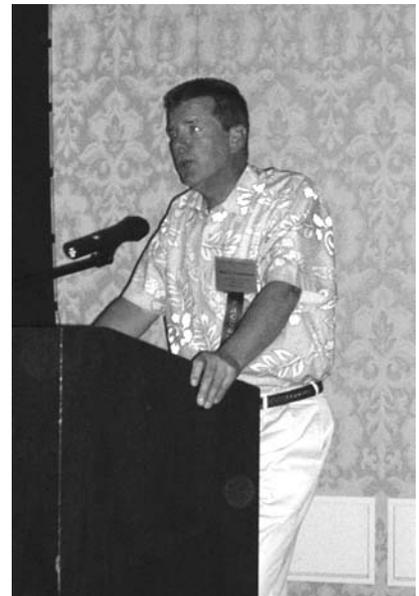
Nancy Koptur, Professional of the Year

The Saturday Annual Business Meeting and Awards Ceremony Luncheon included the presentation of annual awards given by the Section to recognize outstanding contributions to the membership and the legal system. Jurist of the Year, The Honorable Kitty-Ann van Doorninck was unable to attend the presentation but Marc Christianson spoke highly of her many contributions as a Pierce County Superior Court Judge. Jean Cotton presented the Professional of the Year to Nancy Koptur with the Division of Child Support. Nancy has been tireless in her work with the Division and for those of you who regularly participate on the list serve you are familiar with Nancy's important contributions to all questions related to child support. Peter J. Karademos received the Attorney of the Year award from Julie M. McKay and Pete was also honored and recognized for his 15 years of service on the Family Law Executive Committee.

The business meeting also included nominations for the five vacancies on the Family Law Executive Committee



Jean Cotton presenting Professional of the Year



Marc T. Christianson, presenting Jurist of the Year

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(Mis)Remembering the Past

By Joseph A. Shaub

How many of us have heard this parting (or opening) shot from a client, "I never loved her/him anyway." While *sharing* that sentiment with the soon-to-be-ex-spouse is usually a gratuitously cruel blow, we may hear that from our clients as they sort out their emotional experiences during divorce. Although these people may genuinely believe what they say, Harvard psychologist Daniel Gilbert throws some cold water on the accuracy of this honestly held belief – and others like it.

In his recently published *Stumbling on Happiness*, Gilbert explores our universal inability to accurately recount our past emotional states or predict our future happiness with those things, people, or circumstances for which we ardently strive. He buttresses his argument with an encyclopedic citation to the psychological literature. Yet our own experience suffices. My mother always used to say, "Don't go to the market when you're hungry." Try this experiment: Shop for food when you have eaten a huge lunch. Do the same after having skipped a couple meals. Now compare your marketing receipts. Your food shopping is a prediction of your future hunger or need. That prediction is deeply influenced by your present state. This is but one example of how our present feeling state influences our prediction of our *future* feeling state.

Gilbert's discussion of future prediction is particularly charming. He recounts the books and magazines of the '50s that predict a Jetsons' space-age future, with highways of levitating vehicles and kitchens full of futuristic nuclear powered gadgets unheard of in the time of Ike. Yet, Gilbert

notes, the pictures of the future are devoid of ... men with babies in diapers and women with briefcases; African-Mexican- or Asian-Americans, and young people tattooed and pierced for posterity. As Gilbert notes, we imagine our futures through the lens of the present. That is why our predictions of our future appreciation are governed by our present state. In one study, a group of people predicted how they would enjoy a bag of luscious Tim's Cascade-like potato chips the next day (not now or in an hour but *the next day*). One group hadn't eaten much recently and the other had gorged themselves on high level nachos-type food. The heavy feeders thought that tomorrow they would not particularly enjoy the chips – a prediction which proved quite false, of course, when their engorgement had traveled the full alimentary canal and they were ready for more the next day.

As our view of the future is warped by the prism of the present, so is our past shaped by our current state of mind. As Gilbert notes, "The tendency to fill in the holes in our memories of the past with material from the present is especially powerful when it comes to remembering our emotions." Gilbert cites myriad studies that suggest that one's memory of past headache pain is influenced by present pain; of the grief that widows or widowers felt five years previously is influenced by the grief they presently experience; feelings about romantic partners two months previously is influenced by their present feelings.

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and a comprehensive report on the activities and accomplishments of the Section during the past year. Jean Cotton presented plaques recognizing the expiration of three year terms on the executive committee to Kathleen E. Schmidt, Danni Liebman, Lisa Hayden, and Rodi O'Loane. Chuck Szurszewski was unable to attend the business meeting and had previously been presented with his plaque during the FLEC meeting on Friday.

Saturday afternoon Jean Cotton organized the golf tournament and Ralph Mouldar led the intrepid bikers who braved record warm temperatures. Sunday morning Judge John Nichols quipped his way through two hours of the annual case law review and the seminar concluded at noon.

The Family Law Section Mid-Year 2007 will be held in Spokane at The Davenport Hotel June 22-24, 2007. This is the weekend *before* Hoopfest but it is still a good idea to

book your room at the hotel as soon as possible. (thedavenportotel.com or call 1-800-899-1482) FLEC members Julie McKay and Tim Harkins will co-chair the event, and Peter J. Karademos (he just can't stay away) will be organizing a dinner cruise on Lake Coeur d'Alene for Saturday evening, June 23. In order to book the cruise, there must be 100 advance registrants who have paid \$100 per person for the event. Pete is accepting pre-paid registrations at this time and they should be sent to

Peter J. Karademos
U.S. Bank Building
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509-624-5338

(Mis)REMEMBERING THE PAST from previous page

A sitting with Gilbert convinces you that there is no way you can avoid remembering the past free of your present state of mind. Divorcing people have an even greater incentive to embrace negative memories. After all, they are trying to distance themselves from their spouses emotionally. This can be a very trying exercise, however, because divorcing people are often quite naturally ambivalent about this seismic change in their lives. Even when they are committed to emotional disengagement, the sheer intensity of the connection renders this process an inner challenge that may take great (negative) fortitude.

Ambivalence issues aside, we are all quite familiar with the rampant negativity which permeates the atmosphere of divorce. John Gottman employs Gilbert's insight in assessing couples who come in for marital therapy. He engages in a pretty comprehensive intake and one of the items he explores is the memory of each person of their first impressions of the other. Since we often are quite attracted to the person *we end up marrying* (!), the question will often break the chill in the room and generate some positive affect. However, Gottman notes that there are red flags when either or both people cannot dredge up a positive, ameliorative, memory of their first meeting. Among other things, this suggests that the negativity is so deeply ingrained that it even contaminates what would usually be a pleasant, often sweet, memory.

When colored by present dark emotions, the past is filtered in an altogether bleak fashion. Again, the

ambivalence will tend to make the divorcing individual shy away from positive memories, so as not to be confused. Yet on an entirely different level, the anger simply filters out the positive and accentuates the negative.

Why is that important for us to understand? Well, for one, we ought to take protestations of long-standing antipathy and unhappiness with more than a grain of salt. The spouse may not be the creep our client says he is - she may not be the unrelenting bitch recounted in lore in our office. If we feel our goal is in any way to assist our client in disengaging in a reasonable and humane fashion, so that they don't harbor anger and spend valuable emotional energy licking the wounds inflicted by the divorce, Gilbert's research may assist us in our counseling function. Additionally, our clients will usually have to interact with their ex-spouses for years to come. Helping foster a more balanced view of the other, and the marriage, will help lay the groundwork for effective problem-solving and conflict resolution in the future - when they have to do it on their own for free.

Joseph A. Shaub of the Law & Counseling Office of Joseph Shaub practices collaborative family law representation and mediation in Seattle, Washington. He edited the revised Chapter on the Psychological Aspects of Divorce in the Washington Family Law Deskbook which will soon be available from the Washington State Bar Association. Joe writes for the King County Bar Bulletin and has authored several articles for the Washington State Bar News.

Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

Alternatives to Court	Elder Law	Probate
Bankruptcy	Landlord/Tenant	Real Estate
Communicating with Your Lawyer	Lawyers' Fund for Client Protection	Revocable Living Trust
Consulting a Lawyer	Legal Fees	Signing Documents
Criminal Law	Marriage	Trusts
Dissolution of Marriage (Divorce)	The Parenting Act	Wills

Each topic is sold separately. Pamphlets are \$9 for 25, \$15 for 50, \$20 for 75, and \$25 for 100. Pricing for larger quantities is available on request.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.

Ask Nancy

By Nancy Koptur

Dear Nancy:

My client is unable to accompany her new husband on a romantic honeymoon in Europe because she is unable to get a passport due to unpaid child support. How can this happen? What if she needed a passport in order to return to the country of her birth to visit a dying parent? Is there anything that can be done?

One of the many collection remedies available to a state child support enforcement agency is the Federal Offset Program. This program assists states with the collection of delinquent support debt by enforcing four remedies: (1) the Federal Income Tax Refund Offset, (2) Administrative Offset, (3) the Passport Denial Program, and (4) Multistate Financial Institution Data Match (MSFIDM). The DSHS Division of Child Support (DCS) automatically certifies qualifying cases for the Federal Offset Program.

To qualify for certification, a case must be a DCS full collection case. We must have a correct name and social security number for the Noncustodial Parent (NCP). If the case is a non-assistance case, the debt must be at least \$500, there must be current support owing under the support order, and the debt must be owed for a child(ren) under 18 as of December 31 of the tax year.¹ For a TANF case, the debt must be at least \$150 and be past due for at least 30 days.

When a case is certified, the IRS will intercept any tax refund owing to the NCP, even on a joint return. If the NCP is a federal employee, the administrative offset will work to intercept payments like travel reimbursements. MSFIDM helps track down an NCP's bank accounts and other financial assets.

When an NCP owes at least \$2,500 in back support, the Department of State (DOS) may deny the issuance or renewal of a noncustodial parent's (NCP's) passport. And, DOS may go even further: in some cases, they may refuse to issue visas or other travel documents. One well-traveled NCP went to the DOS to get extra pages for his passport, and had his passport confiscated due to unpaid child support debt.

This can affect an NCP who wants to leave the US to go on vacation, or who wants to travel to another country for employment, education, or military deployment. It can

also affect an NCP who wants to come home, if the passport expired while the NCP was out of the country.

Normally, once an NCP is certified, DOS will not release the hold on the passport until the debt is paid in full. The NCP who is getting ready for her honeymoon may need to come up with the money before she can get her passport. However, under certain circumstances, DCS may be willing to release the certification, such as for the NCP whose parent is dying in another country. An NCP who needs the passport for employment purposes, or for military deployment, *may* qualify for release, but it's not guaranteed.

DCS will ask the NCP to provide documentation supporting his or her claim that the passport should be released without full payment of the debt. Contact the support enforcement officer to discuss release. DCS will consider the reason given, the NCP's past payment history, and the type of documentation provided. If you are unable to convince the support enforcement officer to release the passport, you can request a conference board under WAC 388-14A-6400.

Bear in mind that if DCS releases the hold on the passport, that does not mean that the debt is forgiven. The NCP still owes the back support. If the debt remains above \$2,500, the debt will be certified for federal offset once again. The next time NCP tries to obtain or renew the passport, it will be denied.

Finally, I recently found out that the DOS can supply a one-day "return home" passport to a US citizen who is stuck overseas without a passport. You can't get this through DCS, you'll have to contact a passport office. So, if you can't negotiate with the SEO, and the conference board turns you down, you can still try to get your client home.

NANCY KOPTUR, a staff attorney with the DSHS Division of Child Support (DCS), is a member of the Family Law Executive Committee. If you have general questions about support enforcement in Washington State, please send them to her at nkoptur@dshs.wa.gov and she'll answer them in future issues of the Newsletter.

¹ Under 45 CFR 301.1, we can also certify a case when the child is no longer a minor, but was determined to be disabled while still a minor so that current support is still owed.

Writers Wanted for Articles in the Newsletter

We are always looking for articles to publish in the Section's newsletters. Articles need to be well-written and of interest to family law lawyers. Length should be no more than 1,500 words. Submit your articles to Kathleen E. Schmidt at kes@kathleeneschmidt.com.

Speak Out!

Wanted: Lawyers to volunteer to speak to schools and community groups on a variety of topics. For more information about the WSBA speakers bureau contact Dené Canter at 206-727-8213 or denec@wsba.org.



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or an e-mail away.

CLE Credits for Pro Bono Work? Limited License to Practice with No MCLE Requirements?

Yes, it's possible!

Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing pro bono direct representation under the auspices of a qualified legal services provider.

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law, to practice pro bono legal services through a qualified legal services organization.

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