
Family Law



Spring 2008

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

Chair's Column

by Jean A. Cotton

So far, this has been a very busy year for your Executive Committee (FLEC).

Our goals for the 2007-8 fiscal year were provided to you in the last newsletter. To date, great strides have been made in our efforts to have legislation ready to submit to the WSBA Legislative Committee before June 2008 with regard to improving child support laws in Washington. We anticipate to have the final product ready for submission within the new few weeks.

On the legislative front, we worked in concert with the WSBA to support bills designed to improve access to our courts and protect family law litigants as well as to prevent passage of laws and rules that would negatively impact family law litigants and practitioners in the state. Our legislative liaison, Rick Bartholomew, has provided updates to you through our Hotsheet publication to detail what has reached the Governor's desk this year. We anticipate that the 2009 Legislative Session will be as challenging and busy as those in the past, and we are already beginning preparations for the tasks that lie ahead in this regard.

With regard to seminars and outreach to family law practitioners, FLEC's meeting schedule this year, in an effort to reach more of our membership in a more 'up close and personal' way has included venues not only in SeaTac, but also in Spokane, Kennewick and Vancouver. We sponsored an excellent CLE program on Qualified Domestic Relations Orders in October 2007. Our section was a nominal co-sponsor of a WSBA CLE entitled "Alternative Dispute Resolution Skills for Family Law Cases" that occurred in December 2007. At present, FLEC is getting ready for the presentation of our annual Family Law Skills Training Institute in Kennewick on April 18th and 19th, 2008. This program is designed for young lawyers and those new to family law practice. In June 2008, our highly regarded Midyear Conference and Annual Meeting will take place at the Hilton in Vancouver, Washington. By all appearances, it will be another outstanding program providing great benefit to all of our members.

Through membership on numerous statewide committees, task forces, and commissions, your

representatives on FLEC have had the opportunity to maintain and expand relationships with key legislators, members of the judiciary and other stakeholders in order to effectively promote the interests of family law litigants and practitioners. Among the many groups on which your representatives have served are the Supreme Court Dissolution Task Force, the WSBA Local Court Rules Task Force, the WSBA Pattern Forms Committee, Legislative Child Support Task Force, and the Unified Family Court Committee. In addition, FLEC members have regularly attended meetings of the WSBA Board of Governors and the Access to Justice Board. Finally, your chair-elect, Kathleen Schmidt, is scheduled to present the family law case law update to the Superior Court Judges at their Spring Conference later this month. All in all, your representatives have been working extremely hard to provide your voice to those who affect our area of practice and the issues facing families in the state of Washington.

As most of you now know, the Practice of Law Board presented its proposal for approval of a rule to authorize

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Report from FLEC's Liaison to the Access to Justice Board

by Teresa Neudorfer

In January 2008, the Access to Justice (ATJ) Board heard a presentation from the Practice of Law Board (POLB) regarding its proposed rule on legal technicians. The Honorable Paul Bastine gave the presentation on behalf of the POLB to solicit the ATJ Board's support for the GR 25 proposition. At the conclusion of the presentation, the Family Law Executive Committee (FLEC) was given an opportunity to present its position on the proposed rule. Because this had not been expected, I gave only a brief overview of our concerns and asked for additional time to prepare a more comprehensive formal presentation. FLEC was invited back to a subsequent ATJ meeting in February to provide the opposing viewpoint.

At the February meeting, Jean Cotton, Family Law Section chair, joined me in providing a formal presentation of the Family Law Section's concerns. In addition, Mark O'Halloran, president of the Washington Young Lawyers Division (WYLD), also spoke in opposition to the proposed rule. We have serious unanswered questions regarding continuing education, financial responsibility and ethics as the rule is currently written. In addition, a sampling of the likely consequences to family law litigants was provided that included the potential for loss of custody or contact

with one's children, erroneous child support calculations, and inequitable or inaccurate identification or allocation of assets and liabilities. Finally, both Mr. O'Halloran and your FLEC representatives urged the ATJ Board to consider that there are more cost-effective avenues or alternatives available to meet the needs of those citizens who cannot afford private attorneys; namely, more funding for low-income services through Northwest Justice Project offices, GAAP and similar programs; expansion and further education of courthouse facilitators programs; and incentive programs for pro bono services by private attorneys, such as loan forgiveness or CLE credit.

Interestingly, even after hearing the presentation of both sides of this issue, certain members of the ATJ Board clearly did not fully understand the breadth or limitations of the rule, as was demonstrated by one such person's reference to the usefulness of such legal technicians for family law matters in tribal court, or another member's reference to their use in immigration issues – both of which are strictly forbidden by the rule.

The ATJ Board has been asked to submit its position to the Supreme Court by August 1, 2008.

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non-lawyer legal technicians to practice in the area of family law to the Supreme Court in January 2008 without seeking further input from the WSBA Board of Governors. Current WSBA President Stan Bastian and the Board of Governors have taken great interest in this issue and plan on taking it up for discussion at their September 2008 meeting. In the meantime, however, they are soliciting input from all WSBA members. The Board of Governors would very much like to hear from you on this very important issue and encourage you and your organization to send written comments prior to August 1, 2008. All comments should be addressed as follows:

Stanley A. Bastian, President
Washington State Bar Association
Re: Legal Technician Rule
1325 Fourth Ave., Ste. 600
Seattle, WA 98101-2539

It is also my understanding that at least one upcoming issue of the *Bar News* will be devoted to addressing this important topic. As your chair, I will be providing one of the articles for that issue, which we hope also to be allowed to publish in this newsletter. I too would therefore appreciate receiving your comments on the legal technician proposal. In the meantime, we have made and will continue to make presentations to various stakeholder groups to urge them not to support the legal technician proposal. Further information on the legal technician proposal can be found on the Family Law Section website as well as the WSBA website.

Your Executive Committee and I continue to encourage you to communicate your thoughts, ideas, suggestions, and concerns to us on any issues affecting the practice of family law so that we can better serve you.

Hague Convention on Child Support Collector

by Paul Cornelius

If you have ever tried to collect child support across international borders, you will appreciate the undertaking of The Twenty-First Session of the Hague Conference on Private International Law. After 4 years of meetings and negotiation, involving delegates from 55 Hague member countries, 15 observer countries, and 17 non-governmental organizations, a Convention on the International Recovery of Child Support and Other Forms of Family Maintenance has been forged. The Convention was adopted at The Hague on November 23, 2007. The U.S. has signed the Convention and is moving toward ratification. When ratified by two countries, the Convention will become effective.

The Convention was the focus of the National Child Support Enforcement Association, 2nd International Child Support Conference, held March 9 - 12, 2008, in downtown Vancouver, B.C. Representative from the Hague were on hand, as were delegates to the Convention from the U.S., Canada and other countries. Attendees came from as far away as Israel, New Zealand, Germany, Guam, Norway, and Brazil. The conference was a great way to get information about the Convention into circulation and generate excitement about it in other countries. At the invitation of the Division of Child Support, I was able to attend the conference and participate in a panel presentation. It was an experience that I will not be soon forgetting.

The goals of the Convention included prompt and efficient recognition and enforcement of support obligations internationally through simplified and uniform procedures and forms. The Convention allows for paternity establishment, and establishment and modification of support obligations. Countries (or subdivisions thereof) will designate one or more 'Central Authority' which will act to transmit and receive applications, and initiate or facilitate institution of proceedings. Locating parties, assets, important information and other tasks may also be

undertaken by the Central Authority. The Convention seeks to minimize the language barriers among countries and gain efficiency through the use of standard forms and electronic communications. A 'Country Profile' may be used by a nation that has enacted the Convention to provide addresses and compulsory information regarding law and procedure in that jurisdiction. The profile will be available electronically, and updated promptly.

In the U.S., the Office of Child Support Enforcement (OCSE) will likely undertake a clearing-house role of directing applications to appropriate states or agencies. State child support agencies will be doing the actual casework. For collection in other nations, the local child support office will eventually be able to process request, and send it to the Central Authority in the responding nation.

Many of the concepts and procedures addressing recognition and enforcement of existing orders are not unlike the provisions of the Uniform Reciprocal Enforcement of Support Act (UIFSA). By federal mandate, a version of UIFSA has been enacted in each of the United States. Washington state has enacted UIFSA 2001, which includes provisions addressing some international support issues. To implement the mandates of the Convention, amendments to UIFSA will be necessary. Already, the National Conference of Commissioners on Uniform State Laws, whose task it is to draft uniform laws, have proposed draft amendments to UIFSA incorporating provisions of the Convention.

The text of the Convention may be found at: http://www.hcch.net/index_en.php?act=conventions.text&cid=131.

The long-term impact of the Convention is unclear at this time. Its effect will depend upon how many foreign countries adopt the Convention, and how quickly and completely the country implements its provisions. The Convention holds great hope for the future of support collection across international borders.

Court Facilitators

by Paul Cornelius

Family Law Courthouse Facilitators are on the front line in the battle for access to justice, providing self-represented family law litigants essential information and direction on court procedures, rules and forms, and referrals to other resources. Thirty of thirty-nine Washington counties have facilitator programs, some overseen by the court, while others are under the purview of the clerk's office. Some charge a fee for service and others are free of charge. Despite these differences, all serve the ever-increasing number of low-income, self-represented parties to family law actions.

This year's Access to Justice Board (ATJ) Conference will include a one-day training sessions, for Superior Court facilitators, conducted by the Family Law Executive Committee (FLEC). Training will occur on Friday, June 6, 2008, during the first day of the ATJ Conference at the Vancouver, WA Red Lion.

The Administrative Office of the Courts (AOC) and the Family Law Courthouse Facilitator Advisory Committee first asked FLEC to conduct training for family law court facilitators in January, 2007. Members of FLEC provided materials and instruction on a variety of family law topics to the assembled facilitators, advisory committee members and AOC personnel. The training was very well received, and FLEC was invited to provide additional training to facilitators this year.

For the upcoming training, the facilitators were polled to identify topics they felt required additional training. Topics suggested by the facilitators include: modifications of parenting plans, adjustments, relocation cases in

dissolutions, paternity actions, and non-parental custody actions, child support deviations and post-secondary educational support, an overview of paternity procedures and forms, non-parental custody decrees – forms and procedures, and habeas corpus procedures and forms. In addition to these topics, opportunity for facilitators to discuss common issues and share solutions will be provided. Members of FLEC have volunteered their time to conduct the training and provide instruction on these topics.

Standards for Family Law Courthouse Facilitator training and the qualifications for facilitators are at the core of proposed amendments to GR 27. The Family Courthouse Facilitator Advisory Committee has proposed education and experience levels for facilitators and encouraged hiring entities to conduct competency testing for potential hires. Facilitators would be required to attend at least two trainings per year, and standardized facilitator curriculum would be developed by the facilitator advisory committee. FLEC has written the Honorable Justice Charles W. Johnson, chair of the Supreme Court Rules Committee, voicing strong support for the proposed amendments. This emerging emphasis on comprehensive facilitator training and competency makes FLEC's role in facilitator training additionally important.

We hope that FLEC can continue to be involved in facilitator training. There is a strong common interest between family law practitioners and family law courthouse facilitators in assuring that family law litigants are able access courts in a meaningful and productive way.

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 Pam Inglesby at 206-727-8226 or pami@wsba.org.



Diversity in the Bar

by Tracy Flood

The WSBA Leadership Institute was created as a tool to recruit, train and retain young lawyers in traditionally under-represented groups for leadership positions. The Leadership Institute is organized over eight months. The classroom time emphasizes subjects relevant to enhancing our skills as young leaders.

As a fellow in the Inaugural Class of the WSBA Leadership Institute, my experience is immeasurable. I shared classroom time with twelve of the most talented young lawyers in Washington with subjects that benefit all attorneys from the private practitioner to the government lawyer. Thanks to David Savage, Ron Ward, James Williams, and all of the advisors for rising to the challenge of bringing a program to the Washington State Bar Association that acknowledges the need for diversity in the Bar and developing quality leaders throughout the state. The program has received national recognition and was honored by the American Bar Association in 2005 with the ABA Partnership Award. There was a featured article in the *Bar Leaders* magazine March/April 2008 edition entitled *Voice of Experience: Bar Leadership Program Founder Shares Blueprint*.

Beyond the Leadership Institute are the Minority Bar Associations in which many past and present Fellows hold leadership roles. This year will mark the Third Annual Minority Bar Associations Statewide Diversity Conference, "Getting Ahead and Giving Back: Diversity in the Legal Community." This conference is chaired by Micheal Heath and Kim Tran. The conference will be a full-day CLE at Seattle University School of Law on May 30, 2008. There is

an opening reception on the evening of May 29, 2008. The Minority Bar Associations of Washington include:

- Asian Bar Association of Washington (ABAW)
- GLBT Bar Association – Q Law
- Filipino American Legal Society
- Korean American Bar Association (KABA)
- Latina/o Bar Association of Washington (LBAW)
- Loren Miller Bar Association
- Mother Attorneys Mentoring Association of Seattle (MAMAS)
- Northwest Indian Bar Association (NIBA)
- Pierce County Minority Bar Association (PCMBA)
- South Asian Bar Association (SABA)
- Vietnamese American Bar Association of Washington (VABAW)
- Washington Women Lawyers (WWL)

The WSBA Diversity Committee provides a calendar of events for many of the activities of the associations, and the WSBA website also has a link to many of their websites.

With the assistance of Marijean Moschetto, a WSBA Leadership Institute advisor, I became involved with the Family Law Section and I am currently serving on the Executive Committee. The WSBA has made substantial strides by developing the Leadership Institute, and this has advanced the diversity in many of the sections and committees of the Bar.

Tracy S. Flood – Attorney at Law, Law Office of Tracy Flood

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Please send letters and other editorial contributions, preferably in Word format, to:

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2007-2008 Governor's Child Support Commission

by Kathleen E. Schmidt – FLEC Representative

The 2007 Legislature enacted a statute that required the Division of Child Support (DCS) by August 1, 2007, to convene a work group to prepare a report due to the Legislature no later than December 30, 2008. By statute, the work group membership consists of two members of the House of Representatives: James Moeller and Larry Haler, two members of the Senate: Jim Kastama and Mike Carrell; and Governor Gregoire appointed the following members: David Stillman, director of DCS; Dr. Deirdre Bowen, law professor; Kathleen E. Schmidt, WSBA/FLEC, Dr. David Betson, economist; Sharon Curley, tribal community; Superior Court Judge Christine Pomeroy; Court Commissioner Rich Gallaher; ALJ Robert Krabill Office of Administrative Hearings; Merrie Gough, Administrator of the Courts (AOC); Angela Cuevas, deputy prosecuting attorney; Michelle Maddox, legal services; Jason Doudt, David Spring and Alvin Hartley, non-custodial parents; and Kristie Dimak and Colleen Sachs, custodial parents. One vacancy was created on the work group with the resignation of custodial parent Traci Black, which occurred many months ago; the Governor has not replaced the custodial parent representative, although there appears to be at least one applicant for the position.

The charge of the commission is to review the current laws, administrative rules and practices regarding child support. The work group is directed by the enacting legislation to continue the work of the 2005 child support guidelines workgroup, and at a minimum the following issues are to be included in the recommendations of the group in a report due December 2008:

- (a) How the support schedule and guidelines shall treat children from other relationships, including whether the whole family formula should be applied presumptively;
- (b) Whether the economic table for calculating child support should include combined income greater than five thousand dollars;
- (c) Whether the economic table should start at one hundred twenty-five percent of the federal poverty guidelines, and move upward in one hundred dollar increments;
- (d) Whether the economic table should distinguish between children under twelve years of age and over twelve years of age;
- (e) Whether child care costs and ordinary medical costs should be included in the economic table, or treated separately;
- (f) Whether the estimated cost of child rearing, as reflected in the economic table, should be based on the Rothbarth estimate, the Engle estimator, or some other basis for calculating the cost of child rearing;
- (g) Whether the self-support reserve should be tied to the federal poverty level;
- (h) How to treat imputation of income for purposes of calculating the child support obligation, including whether minimum wage should be imputed in the absence of adequate information regarding income;
- (i) How extraordinary medical expenses should be addressed, either through the basic child support obligation or independently;
- (j) Whether the amount of the presumptive minimum order should be adjusted;
- (k) Whether gross or net income should be used for purposes of calculating the child support obligation;
- (l) How to treat overtime income or income from a second job for purposes of calculating the child support obligation;
- (m) Whether the non custodial parent's current child support obligation should be limited to forty-five percent of net income; and
- (n) Whether the residential schedule should affect the amount of the child support obligation.

Washington is among 33 states that use the "income shares" model for our child support guidelines. The income shares model utilizes the application of the pro rata share of the net incomes of both parents to a child support economic table which in Washington is based on economic data that was reflective of the cost of child rearing in the late 1980s when it was adopted in the early 1990s. Despite federal law that requires the State of Washington to review the adequacy of our child support guidelines every four years, Washington has not had a meaningful review of the statute in many years, and the economic data on which our economic table is based is clearly out of date. Policy Studies Inc. was hired in 2005 by DCS to prepare a comprehensive review of Washington's Child Support Schedule compared to the current measurements of child rearing costs. The Policy Studies' reports and the 2005 workgroup report are available on the DCS web site at <http://www.dshs.wa.gov/dcs/resources/reports.asp>. The report is quite lengthy but well worth the time if you have questions about the under-

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lying economic data that is the basis for current costs of child rearing.

In order to participate in the process that has been undertaken by the present child support work group, lawyers, parents and any other interested persons are encouraged to post their comments to the website established for the current work group at <http://www.dshs.wa.gov/dcs/resources/workgroup.asp>. Dr. David Betson, economist and professor at Notre Dame, has provided a number of postings to the site which are quite informative. One of the non-custodial parents, David Spring, has been quite prolific in his writings and postings and it is important to read with a critical eye the information submitted by Mr. Spring, who has taken it upon himself to challenge Dr. Betson and other economists who are proponents of the more common methodologies for determining the current costs of child rearing. The site also includes a schedule of meetings of the work group, which will include three public meetings throughout the State, with the first to occur at the Ramada Inn at the airport in Spokane, on Saturday, May 31, 2008, from 2-4 p.m. In September there will be two more public meetings, one in Vancouver and one in Seattle. The dates and times for the September meetings have not been finalized.

In order to influence the review process and the recommendations to be made by the workgroup in their report to the Legislature on the various issues that have

been identified in the statute, Family Law Section members are strongly urged to attend the public meetings and / or to post their comments on the website. Section members also have the option to communicate your comments to the WSBA/FLEC representative member of the group, Kathleen E. Schmidt, by sending your comments to kes@kathleeneschmidt.com.

The Family Law Executive Committee has been hard at work for many months working on draft legislation that would address the 14 issues identified in the statute that established the current child support workgroup, including extension of the economic table to a combined net income that is more reflective of the combined net incomes of parents today at a level that will not become inadequate during the 4 years before the next review is scheduled to take place. The intent of FLEC is to present the proposed legislation to the WSBA Legislative Committee in the summer of 2008 in order to be able to have a child support bill for the 2009 legislative session.

The time has come for a change in the economic table, and it is important to address the other areas of concern identified by the 2005 workgroup. FLEC is very interested in the comments and concerns of section members on very important work that is being done by the Governor's commissioner and the executive committee as it drafts proposed legislation.

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:

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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.

WSBA Local Court Rules Task Force

by Jean A. Cotton

After receiving a request from the Litigation Section early last year to abolish local court rules, the WSBA established a Local Court Rules Task Force to take a closer look at the ever-growing and widely diverse local court rules that have evolved over the last several years.

The task force is composed of approximately twenty-five members from across the state who represent the judiciary, court clerks, practitioners from various Bar sections, and the WSBA. The Task Force is co-chaired by attorney Lish Whitson and Justice Charles Johnson.

Former FLEC member Gail Nunn, along with current FLEC members Lisa Hayden and me, are among those who have been appointed to this task force. In addition, long-time past FLEC member and current Governor, Peter Karademos, is assigned to this task force.

Co-chair Whitson initially divided the Task Force into subcommittees. The subcommittees were tasked to look at the rules from various perspectives. The preliminary results of the subcommittees' efforts have revealed a major discrepancy with regard to how the various counties have numbered their local rules in a manner that is inconsistent with state civil rules.

The Family Law Subcommittee has been directed to address only those local rules specifically affecting family law. Gail Nunn is our subcommittee chair. Having now identified those local rules throughout the 39 counties that are family law specific, it has been suggested that perhaps family law rules should be placed in a separate section of the rules book similar to that now provided as SPRs. In other words, perhaps a section called FLRs (family law rules). Our next task is to attempt to craft a set of generic family law court rules for use statewide to reduce the overall number of local court rules and to provide more consistency where possible. This would not necessarily preclude individual counties from having specific county rules but, if this process is successful, counties would have guidance as to how to number rules and any local rules would have to conform with the state counterparts.

There is much left to be done prior to the Task Force presenting its final report and recommendations to the WSBA Board of Governors. The final report is due in December 2008.

Forms Changes

by Shelley Brandt

The Family Law Forms Subcommittee has met for one of its scheduled meetings for the Spring drafting meetings after the legislative session. The second meeting is scheduled for May 1, 2008, to review the Domestic Relations forms. There are a few bills that have an impact on the forms, most notably the domestic-partnership bill, 2 SHB 3104. The bill was delivered to the Governor on March 8th.

The subcommittee has made some initial changes to the forms at the April 7, 2008, meeting which have been put out for comment. The draft domestic relations forms are posted for comment and are available at:

www.courts.wa.gov/forms?fa=forms.static&staticID=14

Further revisions will be considered and if you have any comments or questions, please contact me at Shelley@CordesBrandt.com. The subcommittee will meet at least one more time to address not only those revisions necessary as a result of the legislative changes, but those suggestions made by practitioners and those parties using the forms. The goal of the subcommittee is to modify the forms in a manner that is user-friendly, consistent with the law and in plain English.

After the subcommittees have created draft forms, the Pattern Forms Committee meets to review and approve draft changes to the forms. This meeting will be held on May 30, 2008.

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800-945-WSBA or 206-443-WSBA
questions@wsba.org

We're here to serve you!
The mission of the WSBA Service Center
is to respond promptly to questions and
requests for information from
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Call us Monday through Friday,
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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.

For further information contact Sharlene Steele, WSBA access to justice liaison, at 206-727-8262 or *sharlene@wsba.org*.

Family Law ... membership form

The officers and Executive Committee of the Family Law Section urge you to become an active member of this important section. Educational programs, current newsletter reports on the law, and research materials are part of the benefits available to section members.

- Please enroll me as an active member of the Family Law Section. My \$30 dues are included.
- I am not a member of the Washington State Bar, but I want to receive your informational newsletter. My \$30 is enclosed.

Current Year: Oct. 1, 2007 - Sept. 30, 2008

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