Washington State Bar Association
Family Law Section

Family Law Newsletter

Chair's Column

- Ruth Edlund

The Family Law Section's year, as the Buddhists say, has been filled with ten thousand joys and ten thousand sorrows. This year marked the untimely passing of two leading lights of the Section: **Mary H. Wechsler**, recipient of a Special Lifetime Achievement Award from the Section, and **Mabry C. De Buys**. Their knowledge and vision will be sorely missed.

Although Mary and Mabry can never be replaced, the Section welcomes new members, particularly new admittees. One of the happier tasks of my term as Chair has been to promote the benefits of the Section to interested members of the Young Lawyers' Division. The Section participated in the Sections Night for WYLD in Seattle last fall, and hosted two well-attended social events this spring for your lawyers, one in Seattle and one in Spokane. Thanks to **Jenny M. Anderson** for her service as the Section's WYLD liaison this year for the first year of the liaison program.

Your Executive Committee, as it does every year, engaged in the unglamorous but necessary work of reviewing and commenting on proposed legislation that impacts our practice area. Most notably, the Section worked at some length with the other stakeholders on the wording of HB 1565 concerning the modification and termination of domestic violence protection orders, legislatively modifying the holding of *Marriage of Freeman*. The Section also provided substantial input into HB 1267, which amended the Washington's version of the "Uniform" Parentage Act to address some Section concerns. Thanks in particular to **Rick Bartholemew** for his work on the legislative beat. Speaking of unglamorous but necessary work, Newsletter Editor **Kathleen Schmidt** has returned to the 2011 iteration of the Child Support Schedule Work Group, where she labors as a member of the Economic Table subcommittee and Note Taker for the Post-Secondary Education Subcommittee. Similarly, **Shelley Brandt** provides input on the mandatory forms for the Pattern

In this Issue:

Chair's Column (Continued)

Forms Committee, which in addition to being unglamorous is certainly thankless. The Section's interests on the state's Civil Legal Needs Workgroup will be represented by yours truly commencing this summer. Expect news of spirited debates on the issue of legal techs.

This year, after years of Executive Committee discussion about the pros and cons of such a move, the Section's newsletter has gone digital. In these difficult economic times, the savings in postage and paper to the Section is significant, as well as reducing the environmental impact that we family lawyers have. In other digital news, the Section's new website has gone live. Most people are aware that the Section has an active and well-managed listserv (thanks to the ongoing efforts of **Doug Becker**), but may not focus on the fact that the listserv is managed independently of the bar association. The Section has now adopted that model for the website, which may be seen at http://www.familylawwsba.org/ thanks to the work of **Danni Liebman.**

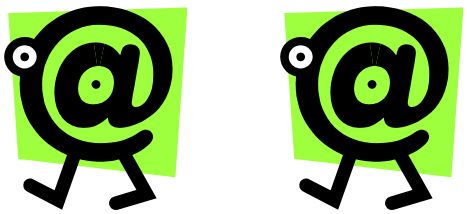
I am happy to report that, despite the times, the Section is firmly in the black. A significant amount of Section revenue is earned annually by our quality CLEs, including our blockbuster Midyear, held this year at the lovely Davenport Hotel in Spokane, and a CLE cosponsored with the Adoption section in the fall. It's not too early to put June 22-24, 2012 on your calendar for the Midyear in Ocean Shores. Bucking a recent trend, the Section was able to avoid the ironic scheduling of the meeting over the Father's Day weekend, which, given the size of the meeting and the limited number of venues that can accommodate it, is more difficult than it sounds.

We wish to thank **Kathy Royer** and **Cynthia First**, both completing their terms on the Executive Committee, for their service. Finally, at its June 16, 2011 business meeting, the Executive Committee approved new officers for the 2011-2012 term as follows. Chair, **Ben Winkelman**; Chair-Elect: **Shelley L. Brandt**; Secretary: **Nancy Koptur**; and Treasurer: **Jean Cotton**. I hand the reins of the Section over happily to Ben's capable hands.

Editor's Note: *When Ruth wrote the Chair's Column, the outcome of the 2011 Executive Committee elections were not yet available. Congratulations to returning members, Dayann M. Liebman and Ruth Edlund and new members, Patrick F. Connelly, Larry J. Couture and John D. Wickham.*

Website Launched!

www.familylawwsba.org



The Family Law Section of the WSBA is pleased to announce that it has launched its own website, at familylawwsba.org. Please take a few minutes to visit and explore the website—even though we just launched, the new site is already offering content and features that haven't been possible before.

Although most of the new website is open to the public, it also includes some Member Pages accessible only to Section members. (If you're a current section member, you will have received an email from the Family Law Section with your username and password.) Among other things, we'll be hosting this new e-published Newsletter and out Hotsheet there, and have already uploaded some past issues into the archives. We've got a few other Member Pages ready and loaded, with more in the works, but you'll have to visit the website to see what else we're offering so far.

After you've checked out the new website, feel free to let us know if there's something you'd like to see there. We want the website to be a resource for our members, and a good face for the Section to the public, so we're open to suggestions.

Relocation Issues in Child Custody—Book Review

By Kathy McCann

Here is a good book for lawyers handling relocation litigation. The book is good reference material, affordable and readable. It is called Relocation Issues in Child Custody Cases, Edited by Philip M. Stahl and Leslie M. Drozd. New York: The Haworth Press, Inc., 2006. $45.95 in paperback. This book can provide direction and inspiration in developing an approach to individual relocation cases that goes beyond the facts offered in our limited Washington case law on the topic. The various authors are specialist in the law and in psychology and child development. The book's editors stated that they aimed at achieving a book for a multi-disciplinary audience. Many of the authors are well recognized experts. The book can provide reference material and assistance to lawyers in developing their direct or cross exam of parenting experts and includes references to accepted research and expert treatises. By discussion of child development studies in relocation and its impact, the articles alert you to various arguments to the court and types of evidence to produce in support cases both for and against relocation. The book offers a national perspective on a wide variety of relocations statutes with and without presumptions. A helpful summary chart of each state's relocation statutes, including whether the state has a presumption for or against the relocating parent is included in one of the essays.

This book is made up of a collection of six essays. The essays in the book were first published as separate articles in the 2006 *Journal of Child Custody*. The essays include:

1. *Relocation, Parent Conflict and Domestic Violence; Independent Risk Factors for Children of Divorce*. William V. Fabricus and Sandford Braver.

2. *A Move in the Right Direction? Best Interests of the Child Emerging as the Standard for Relocation Cases.* Linda D. Elrod

3. *Exploring Three Functions in Child Custody Evaluation for the Relocation Case: Prediction, Investigation, and Making Recommendations for a Long-Distance Parenting Plan*. William G. Austin and Jonathan W. Gould.

4. *Avoiding Bias in Relocation Cases. Philip M. Stahl*

5. *Relocation Cases: Analyzing Relevant Evidence.* Martha Ann Lott

6. *The Problem with Presumptions-A Review and Commentary.* Lyn Greenberg, Dianna Gould-Saltman, Honorable Robert Schnider.

The authors of the essays are lawyers, judges and psychologists. The articles were assembled and edited by two psychologists: Leslie M. Drozd, Editor in Chief of the *Journal of Child C*ustody and Philip M. Stahl, PhD. Dr. Stahl testified as a parenting evaluation expert in the landmark California case in parental relocation, *In re Marriage of LaMusga*. 88 P.3d 81 (Cal. 2004)

Relocation cases are complex and especially pressured cases for family law lawyers. The relocation case represents a very difficult win-lose drama in court. If you have been practicing for over twenty years, you will remember that "relocation cases" were rare to non-existent in the "old days". Fathers did not assert their rights to time with their children in the same numbers or with the same vigor. In contrast to the usual family law case where parties win on some issues, lose on others; in a relocation case there usually is a winner and a loser.

Survivorship Benefits in Retirement Plans: Are they Available to Divide and Who is Entitled?

By Dru Horenstein

A court order dividing/ awarding retirement assets is problematic if the parties do not understand what they received or if the plan administrator says it cannot be done. Survivorship benefits in pensions are the most misunderstood. Sometimes the parties, their legal counsel and the courts make assumptions regarding the nature of survivor benefits. The only way to avoid the cost of re-opening divorce cases because of these assumptions is to have all the information before reaching agreements.

The most critical information for a defined benefit pension is to know if the member or plan participant is already retired, if he/she has already elected a survivor annuity for his spouse, and if that designation is irrevocable upon divorce, and if he/she did not elect a survivor annuity when he retired, can it be elected as part of the divorce decree. In addition, it is important to know if the election of a survivor annuity is automatically revoked upon divorce such as in the Civil Service and Federal Service pensions.

The most important information for a defined contribution account is to understand the impact of beneficiary designations: are they revoked upon divorce or not. Make sure the parties understand that the designation should be updated/changed once the decree is final no matter what the divorce decree states.

Four cases demonstrate the problems that can occur when the parties do not fully understand what is there to divide and how to make sure it is divided as intended.

1. Former spouse survivor annuity already elected is revoked upon divorce in federal and civil service pensions unless you award it in the first order dividing property in the divorce or the retiree elects the survivor annuity within two years of decree.

See McKenzie v. Office of Personnel Management (OPM) and Leonard W. McKenzie, 113 M.S. P.R. 240, (2010). The Office of Personnel Management administers civil and federal service pensions. (CSRS and FERS) When a party disagrees with an OPM decision regarding one of those pensions, they can appeal to the Merit Systems Protection Board. In this decision, the administrative law judge held that OPM was wrong when it denied a former spouse survivor annuity to the former spouse. OPM denied the application because the **first order** dividing marital property (decree of dissolution) did not have any language referencing the former spouse survivor annuity and the member had retired. (See 5 U.S.C. Section 8341 (h) (4) and 5 C.F.R.Section 838.806)

The ALJ agreed that the language needed to be in the first order. However, the member in the plan can elect a former spouse survivor annuity if he does so within two years of the entry of the decree. The ALJ decided that the member had elected the former spouse annuity post dissolution when his attorney prepared and presented to the Court a Retirement Benefits Order awarding the former spouse the survivor annuity.

2. Survivor Benefits Belong to a Spouse, not children of spouse. These benefits could not be awarded to children.

See Hamilton V. Washington State Plumbing & Pipefitting Industry Pension Plan, 433 F.3d.1091, 2006. This case involves a dispute between a surviving spouse and a former spouse's children over the survivor benefits of the participant after he had died before he retired. The participant divorced his first wife Linda in 1996. In their decree, the parties agreed that he would name their children as beneficiaries under the pension in lieu of life insurance, which he was presently unable to obtain. However, he remarried and then died at age 49. His current wife Mary received the survivor benefits. The still minor children did not because spouses or former spouses (if awarded via QDRO) are eligible for the pre-retirement surviving spouse annuities. Linda

Survivorship Benefits in Retirement Plans
(Continued)

should have protected the children by using a QDRO naming her as alternate payee and awarding her a pre-retirement surviving spouse annuity.

3. The plan participant or member of an ERISA pension has retired and elected a survivor annuity for his wife prior to the divorce.

See Carmona v Carmona, 603 F.3d. 1041 C.A.9 (Nev.) 2010. This is a 29-page opinion and is the result of the parties spending over $300,000 in attorney fees. However, in short, it stands for the following: the right to a survivor annuity in an ERISA pension plan vests in the current spouse at retirement and it is irrevocable even if a divorce later occurs. In this case, the husband retired in 1992 during the marriage and elected a survivor annuity for his wife (Janis) in two pensions. The parties later divorced and the parties believed she had waived her right to the survivor annuities in both pensions in the divorce decree. In fact, they agreed each would keep their own pensions and the husband paid her $1500 to equalize what they believed to be the values of the pension benefits. Lupe remarried and believed his current wife, Judy, would receive the survivor benefits if he died. However, Janis decided she should receive the benefits after he died.

The Court of Appeals 9th District's 29 page opinion painstakingly analyzes ERISA provisions regarding surviving spouses and and concluded that Janis was correct: the divorce decree was not a valid waiver of the plan participant's right to the surviving spouse benefits under a qualified joint and survivor annuity (QJSA). If they intended to waive it, both Lupe and Janis needed to waive the rights to the survivor annuity prior to Lupe retiring. Nothing in the plan documents required the plan administrator to redirect surviving spouse benefits to participant's current wife, who was not at time of retirement a current spouse.

ERISA permits a transfer of a surviving spouse benefits only if a QDRO expressly assigns the benefits to a former spouse prior to retirement. ERISA does not authorize the reassignment of surviving spouse benefits to a future or subsequent spouse.

4. Beneficiary designations associated with defined contribution account must be updated post –divorce in order to effectuate the terms of the divorce decree.

See Kennedy v. Plan Adm'r for Dupont Saving and Investment Plan, 555 U.S.285, 129 S. Ct. 865 U.S. (2009). This U.S. Supreme Court opinion is a warning about dividing defined contribution accounts: remind your client to update and change beneficiary designations. The parties, William and Liv, divorced in 1994 and the decree contained language that Liv was divested of all rights to all of William's retirement accounts. William did not, however, execute any plan documents removing Liv as the beneficiary of his 401k type savings plan account (DuPont Savings Investment Plan), However, under the "the terms of the plan," § 1132(a)(1)(B), Liv is the named beneficiary and is entitled to the proceeds in spite of her waiver of the benefits. While the language of the decree may have been a federal common law waiver, the rule that plan administrators should be able to rely on plan documents is central to ERISA.

"Learn from the mistakes of others.

You can't live long enough to make them all yourself."

~ Eleanor Roosevelt ~

Washington Joins the Ranks of AFCC State Chapters

by Daniel J. Rybicki, Psy.D., Founding President WA AFCC www.wa-afcc.net

For those professionals who work in the family law field, there are few finer resources for education, training and professional standards than those offered by the Association of Family and Conciliation Courts. The AFCC is recognized as one of the pre-eminent organizations in the family law field. The AFCC is an international and interdisciplinary professional association that publishes the *Family Court Review*, one of the primary journals in the field. This publication is read by thousands of subscribers around the world in countries from Argentia to Australia, Canada to Chile, and Sweden to Spain. It has a membership of over 4,000 professionals with a very large network of dedicated judicial officers, psychologists, court administrators and attorneys here in the United States. Membership in the AFCC brings access online to over 35 years of the journal and an outstanding collection of articles on parenting evaluation, collaborative law, alternative dispute resolution and other crucial topics.

In the nearly five decades since its inception in 1963, AFCC has worked to improve professional standards, provide important networking and educational opportunities, and stimulate innovations in the provision of services to families involved in conflict. The AFCC sponsors continuing education for legal professionals, mental health practitioners, and court administrative personnel through a series of annual meetings and regional conferences. Several states have developed local state chapters of AFCC to bring home those concepts and address localized needs for training, task force study groups, and professional collaboration to improve the quality of evaluation and intervention for family law matters.

Washington State has recently joined the ranks of other states and provinces having local state chapters. Through the hard work of the original steering committee (consisting of Hon. Comm. Les Ponomarchuk, Hon. Comm. Stephen Gaddis (Ret.), Debora Bianco, Camille Schaefer, Dr. Daniel Rybicki, Dr. Ellie Sternquist, Kathleen Kennelly and Carol Bailey), Washington received approval in June 2010 as a provisional chapter. There had been several professionals in various areas in the state that had attended AFCC conferences over the years and expressed their hopes to one day establish a local chapter. Enthusiasm for the project was further enhanced when AFCC held their 42nd Annual Conference in Seattle in May, 2005. Three years later, the 45th Annual Conference in Vancouver, BC, prompted an interdisciplinary group to pull together to form a steering committee to get the process started for attaining provisional status. With the kind assistance of the Collaborative Professionals of Washington and some donations of funds from the offices of Carol Bailey and Associates, Felicia Malsby, and Dr. Daniel Rybicki, the fledgling WA AFCC chapter held an initial "kick-off" event in Gig Harbor in November 2010. Elections were held for officers and directors and work began on establishing the WA AFCC Chapter as a Not-For-Profit organization with a 501(3)(c) Charitable status. The Washington Chapter is one of thirteen other chapters that include Arizona, California, Colorado, Florida, Louisiana, Massachusetts, Minnesota, Missouri, New Jersey, New York, Texas, and Ontario.

In the past several months, the membership rolls of WA AFCC have grown as word has spread about the training and resource material available through the organization. With the leadership of the officers (Dr. Daniel Rybicki, President; Ms. Margo Waldroup, VP/Treasurer; Dr. Ellie Sternquist, Secretary) and Board Mem-

Washington Joins AFCC (Continued)

bers (Camille Schaefer, Dr. Jennifer Wheeler, Dana Dean Doering, and Dr. Natalie Novick Brown), the chapter has established their website (www.wa-afcc.net) and made arrangements for their First Annual WA AFCC Conference. This event will provide 5.75 hours of CLE credit and up to 6.5 hours of continuing education credit for mental health professionals and psychologists. The Conference will be held at the SeaTac Holiday Inn on Friday, November 21st from 8:30 a.m. to 5:00 p.m. and include presentations by notable professionals such as Dr. Marsha Hedrick, Dr. G. Andrew Benjamin, Dr. Daniel Rybicki, Dr. Landon Poppleton, Ms. Frances Kevetter, Ms. Karin Ballantyne, Judge Paula Casey, Judge James Orlando, and Hon. Comm. Les Ponomarchuk among others. More details are available on the WA AFCC website.

The Chapter is making plans now for their Second Annual Conference to be held in mid-2012. Call for presenters will be announced soon. The WA AFCC is also joining with other groups in WSBA and elsewhere to develop task force study groups addressing such special innovative programs such as Family Law Special Master and Parenting Coordinator training and professional standards. The WA AFCC is dedicated to developing outstanding training programs and opportunities for other devoted professionals throughout the state to join together to improve the quality of care, assessment, and guidance that is available to our court system and families in crisis. As the group expands, local regional groups will be developed in other parts of the state. We welcome your questions and encourage you to please consider joining this group to help chart the course for the future.

2011 Child Support Workgroup Report-Summary of Recommendations

By Kathleen E. Schmidt, FLEC Workgroup Member

Pursuant to RCW 26.19.025 the quadrennial review of the child support guidelines is to be conducted by a workgroup and a report is to be submitted to the Legislature by October 1, 2011 and every 4 years thereafter. The statute provides that a representative from the Family Law Executive Committee is to be a member of the workgroup and I have been participating in the workgroup throughout 2011. Excerpts from the report's executive summary are set forth below. The complete report is available at http://www.dshs.wa.gov/pdf/esa/dcs/finalreportofworkgroup2011.pdf.

Executive Summary-2011 Workgroup Recommendations

The 2011 Workgroup's main concern was that whatever child support schedule is ultimately adopted, it must:

- Be clear and easy to understand.
- Be easy to implement.
- Provide certainty and consistency while allowing flexibility to deal with unjust or inappropriate outcomes.
- Cover the greatest possible number of families.
- Provide specific guidelines.

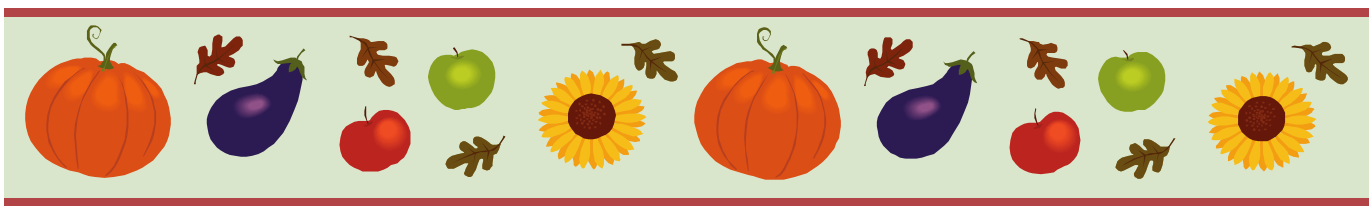
2011 Child Support Workgroup Report-Summary of Recommendations

By Kathleen E. Schmidt, FLEC Workgroup Member

(Continued)

The 2011 Workgroup agreed by consensus to the following recommendations, which are described here in summary:

- The legislature should adopt a new Economic Table, which:
  - Is based on more current data
  - Is presumptive to at least $12,000 combined monthly net income
  - Does not differentiate between age groups of children
- There should be a presumptive adjustment of support, not just a deviation, when a parent has children not before the court.
  - The adjustment should be calculated using the Whole Family Formula.
  - The court may not grant the adjustment if doing so would leave "insufficient funds" in the household of the custodial parent.
- There should be a residential schedule credit adjustment, not just a deviation, based on the number of overnights a child spends with each parent.
  - The residential schedule credit *should* be:
    - Available in both the superior courts and the administrative forum
    - Adjusted when the child's time with the parents varies from that set out in the child support order granting the credit
  - The residential schedule credit *should not* be:
    - Considered a deviation
    - Available if:
      - The adjustment would result in insufficient funds in the custodial parent's household
      - The CP's net income before receiving the support transfer payment is at or below 125% of the federal poverty level guidelines for one person; or
      - The child is receiving TANF.
- The statute regarding postsecondary educational support should be amended to provide more guidance on
  - When to order postsecondary educational support,
  - How to set the amounts,
  - How/when it may be suspended and then reinstated, and
  - When/how it may be terminated.
- The statutory references to the self-support reserve should be clarified to provide that the self-support reserve is 125% of the federal poverty level for a one-person family.



Ask Nancy

NANCY KOPTUR is getting ready to start her sixth year as a member of the Family Law Executive Committee. Those of you who keep score know that FLEC members can only serve two consecutive three-year terms. Nancy serves on the Board of Directors of two community organizations that mean a lot to her: SafePlace (the only advocacy agency and confidential shelter for survivors of domestic violence and sexual assault in Thurston County) and Family Education and Support Services (an organization that serves families of all kinds in many different ways). Even though she recently celebrated her twenty-first anniversary at her day job as a staff attorney with the DSHS Division of Child Support, please remember that any opinions expressed in this column are strictly those of the author and are in no way intended as an official statement of policy by DSHS or DCS.

Dear Nancy:

I have a client who wants to negotiate a settlement regarding a judgment owed to the state for child support on three paternity cases. Is there a mechanism to do that? If so, where do I find the information?

Signed, I'd Rather Not Litigate This

Dear IRDLT:

I assume that your client has a big debt which has been assigned to the state due to the receipt of welfare by his child(ren). If that's the case, yes, DCS would be willing to review the case(s) to see if the specific circumstances of the individual noncustodial parent's life support some kind of compromise of the debt. This is done through the DCS Conference Board process, as described in WAC 388-14A-6400 through 388-14A-6415. You can find DCS rules online at http://apps.leg.wa.gov/wac/default.aspx?cite=388-14A.

The noncustodial parent (NCP) must convince DCS that it would create a hardship on him to make him pay the debt in full. We are usually more willing to compromise a debt for a partial payoff instead of a complete write-off, but the resolution depends on each NCP's circumstances. In order to determine the NCP's circumstances, DCS usually asks for a completed DSHS 18-097, *Statement of Resources*. You can find that form *wa-a-a-a-a-ay* down at the bottom of the page on the DCS website at http://www.dshs.wa.gov/dcs/Resources/Forms.asp, or you can ask DCS to mail one out. You can also find the form on the DSHS internet site at http://www.dshs.wa.gov/forms/eforms.shtml (and those forms are in numerical order, unlike on the DCS site).

Here's the most important point about the conference board write-off process:

DCS can only write off or compromise debt that is *owed to the state of Washington*. Our first inquiry will be to see how much of the debt is owed to the other parent or to another state. While we can't write those amounts off, sometimes we can assist by forwarding a settlement offer, so don't give up completely just because it's nonassistance debt.

I would first have your client find how much he owes in total, and for which kids. Then he (or you on his behalf) can talk to the support enforcement officer (SEO) about the possibility of a write-off or compromise. You can make an oral request for conference board under WAC 388-14A-6100 (http://apps.leg.wa.gov/WAC/default.aspx?cite=388-14A-6100), or you can make a written request. We even have a form for that purpose: the DSHS 09-520, *Request for Conference Board*, which is available on the websites previously listed.

As indicated above, one of the things we'll ask the NCP to do is complete a *Statement of Resources* so we can see what kind of financial situation he is in. (Think about it: if he can afford cigarettes, premium cable TV and a high truck payment, why can't he pay his child support?). Depending on the facts of the particular case and the circumstances of the individual NCP, the request is reviewed by the field office and may be referred to DCS HQ where one of our conference board chairs reviews the case. They will either issue an *ex parte* decision or schedule a conference board where the NCP (or you on his behalf) will get to explain why DCS should reduce or write off the debt.

Ask Nancy (Continued)

Dear Nancy:

I have a client who just got a "License Suspension Warning Letter" from another state. I told him not to worry, since he now lives here in Washington. I figured that the other state was probably just blowing smoke and nothing would happen. However, for the last few nights I haven't been able to sleep, wondering if I gave the right advice. What do you think?

Signed, Smoke Gets in Your Eyes

Dear Smokey:

I don't mean to be alarmist, but as they say on the Family Law listserv, you might want to have your malpractice carrier on speed dial!

Every state that has a federally-funded child support program (that would be all fifty states and a few territories) is required as part of its state plan under Title IV-D of the federal Social Security Act to have a provision for suspension of licenses for those noncustodial parents who are not in compliance with their child support orders. The Washington statutes on license suspension are found in RCW 74.20A.320 through 74.20A.350. The regulations are in WAC 388-14A-4500 through 388-14A-4540.

Under RCW 74.20A.320, "The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order." WAC 388-14A-4500(5) provides that "DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity." WAC 388-14A-4500(5) provides that "DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program."

There is no requirement under Washington law that the NCP be a resident of the state of Washington, only that the Division of Child Support must have jurisdiction to enforce the support obligation, that the NCP must meet the criteria for certification for license suspension, and that the NCP holds some kind of license issued by a Washington licensing agency. It is likely that the other state (which you did not name) has similar laws.

It sounds like the other state has jurisdiction over the NCP. This could be because the NCP used to live there and that state was enforcing the support obligations, or maybe that state exerted long-arm jurisdiction under the Uniform Interstate Family Support Act (UIFSA, which was adopted in Washington as Chapter 26.21A RCW). Maybe when the NCP moved to Washington he kept his former driver's license, or he has some kind of professional license from that state? You can't assume that just because he lives in Washington that no other state is still trying to collect support. It would be in the NCP's best interests to contact the state that sent him the warning letter and find out what he can do to avoid suspension of his license.

I have no way of knowing what another unidentified state's procedures for license suspension are, but let's look at what would happen if the NCP had received a "License Suspension Warning Letter" from DCS:

Before DCS serves a *Notice of Noncompliance and Intent to Suspend Licenses*, we first send out a form called the *License Suspension Warning Letter*. The letter advises the NCP that he/she appears to meet the criteria for DCS to ask various licensing entities in the state of Washington to suspend or not renew the NCP's license. In most cases, this means that (1) the NCP's child support debt exceeds six months of payments, or (2) the NCP's child support debt exceeds six months of payments, the NCP previously signed an agreement with DCS to make payments on the debt, *and* the NCP did not pay as agreed. The letter warns the NCP that if he/she does not pay the support debt, DCS may take action to certify the NCP for noncompliance and may ask the licensing authorities to take action.

What kind of response are we expecting? What we really want to happen is that the NCP will send payment in full, and as a matter of fact, we do get many payments in response to the warning letter. This makes us very happy, because *we really do not want to suspend anyone's license, we want them to pay their child support!*

Ask Nancy (Continued)

The warning letter also asks the NCP to contact DCS to see if we can work something out. If the NCP contacts DCS, we can discuss whether the reason NCP is not paying is because the order is too high, or the NCP is incarcerated, or on public assistance – we can give the NCP information on whether DCS can help facilitate a modification of the support order.

If 30 days go by and we haven't heard from the NCP and the case still qualifies for license suspension, DCS serves a notice called the *Notice of Noncompliance and Intent to Suspend Licenses*. This notice tells the NCP that because s/he owes more than six months worth of support payments, federal and state law allows DCS to ask licensing authorities to suspend or not renew the NCP's driver's, hunting, fishing, recreational, professional, business, and occupational licenses. And, the notice invites the NCP to contact DCS to discuss ways to stop the license suspension process.

To prevent DCS from certifying the NCP to the Department of Licensing (DOL) or any other licensing entity, the NCP must contact DCS within 20 days (if the notice was served in Washington) or within 60 days (if the notice was served outside the state). There may be circumstances that require DCS to suspend its suspension process: for instance, if the NCP is in jail, in prison, or receives cash public assistance, DCS stays any license suspension action until 30 days after the date the NCP is released or the public assistance grant terminates.

To stop the license suspension process, the NCP must do one of the following four things, as listed in WAC 388-14A-4515:

1. Pay the past-due support amount in full.
2. Negotiate a payment agreement with DCS.
    a. If the NCP and the SEO reach an agreement, DCS will not certify the NCP so long as the NCP complies with the agreement. By signing a payment agreement, the NCP agrees to waive his/her right to hearings on any ***Notice of Noncompliance and Intent to Suspend Licenses*** the NCP may have received as of the date of signing.
    b. If the NCP and the SEO cannot reach an agreement, DCS will schedule a hearing so an Administrative Law Judge (ALJ) can issue a decision, as described in WAC 388-14A-4530.
        i. If the ALJ finds that the NCP **has not** made a good faith effort to pay support, the ALJ enters an order allowing DCS to certify the NCP.
        ii. If the ALJ finds that the NCP **has** made a good faith effort to pay support, the ALJ enters a payment schedule specifically tailored to the NCP's circumstances. If the NCP fails to pay as required, DCS may certify the NCP.
3. Ask for an administrative hearing.
    c. The NCP's right to hearing at this time is on the notice. The Office of Administrative Hearings (OAH) holds the hearing.
    d. The NCP can complete the objection form enclosed with the ***Notice of Noncompliance and Intent to Suspend Licenses*** or may make an oral request for hearing (see WAC 388-14A-6100).
4. File an action to modify the support order.
    e. If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.
    f. The stay for modification action may not exceed six months unless DCS finds good cause to extend it.
    g. The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification.

Ask Nancy (Continued)

So, what happens if the NCP just ignores the ***Notice of Noncompliance and Intent to Suspend Licenses***??? Then DCS will certify the NCP as being in noncompliance with a support order and may request the department of licensing (DOL) or any other licensing entity to suspend the NCP's license. See WAC 388-14A-4512.

Once DCS has certified the NCP, whether for failure to respond to the Notice or for failure to comply with a payment agreement or failure to comply with an ALJ-ordered payment schedule, and someone actually suspended a license, there is still hope: at any time, the NCP can contact DCS an negotiate a (replacement) payment agreement. Once we get the agreement, we can release the certification. Unless the license has also been suspended for non-child support reasons, the NCP should be able to get the license back fairly quickly.

Dear Nancy:

When my darling son was a mere teenager, his hussy of a girlfriend got herself pregnant, and he signed the paternity affidavit against my advice. Someone told me that the rules regarding minors signing paternity acknowledgments have changed. Is there any hope for my poor, misled boy? He thinks he is a grownup now, but he's still my baby.

Signed, Is My One Regret Over Now?

Dear I-MORON:

The legislature made various amendments to the Washington Uniform Parentage Act (Chapter 26.26 RCW) in 2011 by enacting Engrossed Second Substitute House Bill 1267 (E2SHB 1267, Chapter 283, Laws of 2011). That act, which took effect on July 22, 2011, did indeed make changes to the rules about the acknowledgment of paternity.

Section 16 of E2SHB 1267 amended RCW 26.26.330 to provide as follows:

Sec. 16. RCW 26.26.330 and 2004 c 111 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a signatory may rescind an acknowledgment or denial of paternity by commencing a court proceeding to rescind before the earlier of:

(((1))) (a) Sixty days after the effective date of the acknowledgment or denial, as provided in RCW 26.26.315; or

(((2))) (b) The date of the first hearing in a proceeding to which the signatory is a party before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

(2) If the signatory to an acknowledgment or denial of paternity was a minor when he signed the acknowledgment or denial, the signatory may rescind the acknowledgment or denial of paternity by commencing a court proceeding to rescind on or before the signatory's nineteenth birthday.

As to whether the changes in E2SHB 1267 will be of benefit to your son, I can't tell based on the limited fact you have provided. However, I call your attention to Section 58 of the bill, which may help you figure that out:

NEW SECTION. **Sec. 58.** This act applies to causes of action filed on or after the effective date of this section.

Dear Nancy:

I have been in a state registered domestic partnership for the past year. I did not realize when we registered that my partner was pregnant. She moved out last week, and has asked me for money since I've been the one with a job. Now she is telling me that if I don't give her enough, she will go on welfare *and* DCS will make me pay child support for the baby. This can't be right, can it?

Signed, Shocked

Dear Shocked:

Yes, it's true! Since the child was born during the course of your state registered domestic partnership, you are a presumed parent. As a presumed parent, you could have a support obligation for the child, which may be established in court or in an administrative proceeding.

As discussed in the prior response, the legislature made various amendments to the Washington Uniform Parentage

Ask Nancy (Continued)

Act (Chapter 26.26 RCW) in 2011 by enacting Engrossed Second Substitute House Bill 1267 (E2SHB 1267, Chapter 283, Laws of 2011). That act, which took effect on July 22, 2011, was entitled "AN ACT Relating to clarifying and expanding the rights and obligations of state registered domestic partners and other couples related to parentage."

In E2SHB 1267, there are several sections relevant to your inquiry. There are also relevant existing provisions in Chapter 26.09 RCW concerning dissolution proceedings, and in Chapter 74.20A RCW concerning the administrative establishment of support obligations. Let's look at E2SHB 1267 first, especially Sections 4, 6, 8 and 54:

Sec. 4. RCW 26.26.051 and 2002 c 302 s 106 are each amended to read as follows:

(1) The provisions relating to determination of ((paternity may be applied)) parentage apply to ((a)) determinations of maternity and paternity.

(2) The provisions in this chapter apply to persons in a domestic partnership to the same extent they apply to persons in a marriage, and apply to persons of the same sex who have children together to the same extent they apply to persons of the opposite sex who have children together.

Sec. 6. RCW 26.26.106 and 2002 c 302 s 202 are each amended to read as follows:

A child born to parents who are not married to each other or in a domestic partnership with each other has the same rights under the law as a child born to parents who are married to each other or who are in a domestic partnership with each other.

Sec. 8. RCW 26.26.116 and 2002 c 302 s 204 are each amended to read as follows:

(1) In the context of a marriage or a domestic partnership, a ((man)) person is presumed to be the ((father)) parent of a child if:

(a) ((He)) The person and the mother or father of the child are married to each other or in a domestic partnership with each other and the child is born during the marriage or domestic partnership;

(b) ((He)) The person and the mother or father of the child were married to each other or in a domestic partnership with each other and the child is born within three hundred days after the marriage or domestic partnership is terminated by death, annulment, dissolution ((of marriage)), legal separation, or declaration of invalidity;

(c) Before the birth of the child, ((he)) the person and the mother or father of the child married each other or entered into a domestic partnership with each other in apparent compliance with law, even if the attempted marriage or domestic partnership is, or could be, declared invalid and the child is born during the invalid marriage or invalid domestic partnership or within three hundred days after its termination by death, annulment, dissolution ((of marriage)), legal separation, or declaration of invalidity; or

(d) After the birth of the child, ((he)) the person and the mother or father of the child have married each other or entered into a domestic partnership with each other in apparent compliance with law, whether or not the marriage or domestic partnership is, or could be declared invalid, and ((he)) the person voluntarily asserted ((his paternity)) parentage of the child, and:

(i) The assertion is in a record filed with the state registrar of vital statistics;

(ii) The person agreed to be and is named as the child's ((father)) parent on the child's birth certificate; or

(iii) The person promised in a record to support the child as his or her own.

(2) A person is presumed to be the parent of a child if, for the first two years of the child's life, the person resided in the same household with the child and openly held out the child as his or her own.

(3) A presumption of ((paternity)) parentage established under this section may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630.

Sec. 54. RCW 26.26.903 and 2002 c 302 s 709 are each amended to read as follows:

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it and to the intent that the act apply to persons of the same sex who have children together to the same extent the act applies to persons of the opposite sex who have children together.

Ask Nancy (Continued)

Having considered these sections from E2SHB 1267, let's also look at Chapter 26.09 RCW, which deals with the dissolution of a marriage or a domestic partnership. Several sections in this chapter were amended in 2009 and 2008, based on the legislation regarding state registered domestic partnerships. RCW 26.09.020(1) provides that the petition for dissolution must contain allegations concerning the names and ages of any child dependent upon either or both spouses or either or both domestic partners and whether the wife or domestic partner is pregnant; and whether any arrangements as to the residential schedule of, decision making for, dispute resolution for, and support of the children and the maintenance of a spouse or domestic partner.

Similarly, since DCS serves administrative support establishment notices under RCW 74.20A.055 on the husband of a mother based on the marital presumption of the UPA, DCS will carry out the intent of E2SHB 1267 and serve an administrative support establishment notice under RCW 74.20A.055 on the state registered domestic partner of a parent when the child was born during the course of the state registered domestic partnership (or within 300 days of the end of it).

Finally, remember that both the husband (in the case of the marital presumption) and the domestic partner (in the case of an SRDP presumption) have the opportunity to have a court determine whether to rebut the presumption, either in the dissolution proceeding or in a disestablishment proceeding.