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LEE M. HYMERLING
Section Chairman

Chairman's Report

The recently released Pashman Committee Report contains numerous recommendations which will affect our Section's membership. The Report represents a true landmark in the administration of matrimonial justice in New Jersey. Of course, the Report must be read alongside the earlier recommendations issued by the original Supreme Court Committee on Matrimonial Litigation which consisted of Justices Pashman, Schreiber and Mountain. Both reports deserve careful attention, not only from matrimonial lawyers, but also from the bar at large.

This special issue contains commentaries by Committee members on each of the five sections of the Pashman Committee Report as well as other articles of importance in Family Law.

Some years ago, a major decision was made by the then leadership of our Section. Recognizing the evident importance of the Supreme Court's increased interest in the matrimonial field, then Section Chairman Hyman Isaac had the foresight to arrange a meeting with the Pashman I Committee. In a true sense, the dialogue that Hy fostered was a precursor of the eventual role that members of the organized bar were to play in the work of the Phase II Committee.

Lest there be any doubts, there was enormous lawyer participation in the Pashman II Committee. No fewer than six past or current chairpersons of our Section served on the Pashman Committee. Ten current members of our Section's Executive

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Regional Dinners Set

Pashman Report To Be Explained

The New Jersey State Bar Association Family Law Section will sponsor four regional dinner meetings for the purpose of acquainting its members with the procedural and substantive recommendations made by the Pashman Committee. Section Chairman Lee Hymerling will preside over each session and will discuss the pretrial reforms proposed by the Pashman Committee. Hymerling, who served on the Pashman Committee, will be joined by fellow Pashman Committee members at each of the four sites.

The first session will take place on September 14, 1981 at the Saddle Brook Marriott. Speakers will be Past Section Chairman Gary Skoloff, as well as Barry Croland. They will be joined by the Honorable Harvey Sorkow.

The second session will take place on September 22 at the Sheraton Gardens, Freehold. Speakers will be David Ansell, president of the Monmouth County Bar Association, and David Wildstein, Section legislative cochairman, as well as the Honorable Julia Ashbey.

The third session will take place on September 24 at The Manor, West Orange. Speakers will be Section Past Chairpersons Anne Elwell and Edward Snyder, who will be joined by the Honorable Robert Mooney.

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Hon. Morris Pashman

The Hon. Morris Pashman served as chairman of the New Jersey Supreme Court Committee on Matrimonial Litigation.

Chairman's Report

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Committee were members of the Pashman group. In all, the Pashman Committee counted thirteen lawyers among its twenty-three members. The remaining membership consisted of the three justices, six trial judges and one member of the appellate bench.

This is not to suggest that the lawyer members of the Pashman Committee adopted a parochial view with regard to their responsibilities. Indeed, all members of the Committee were mindful of their responsibility to the public at large. Nonetheless, as never before, the Pashman Committee accorded to members of the practicing matrimonial bar a forum in which to influence the direction of matrimonial practice in our state.

The Pashman Committee was not a "closed forum." It was not a "company shop." It was not "rigged." Attorneys and judges served as equal partners in the broad-ranging debates that occurred with regard to virtually every issue. The Committee did not proceed with the assumption of a foretold result; indeed, minds were frequently changed as discussion progressed.

Additionally, the Committee liberally reached beyond its membership for input. Numerous letters from bar groups, interested lawyers, and individuals and groups beyond the profession were received, circulated and carefully considered.

Undoubtedly, some members of the bar and, in fact, some members of our Section, will be upset by portions of the Report. The Report does recommend the immediate implementation of a number of rather dramatic rule changes which will affect matrimonial practitioners. The most tangible rule change will relate to the requirement that in all cases in which issue is joined, counsel will be required to file an extremely comprehensive Preliminary Disclosure Statement. That statement will include the mandatory submission of full copies of federal income tax returns. Some practitioners will be upset by the additional work these new requirements will impose. However, when the requirements are considered in the light of the good they will produce, the additional work generated pales into insignificance. The statement will encourage attorneys to promptly evaluate the merits of their cases and will furnish judges with data so urgently needed in order to consider *pendente lite* applications, the submission of individual cases to early settlement programs, as well as judicial conferences.

The Report also heralds major changes in custody practice—changes which have already begun to be implemented by the Supreme Court's recent opinion in the *Beck* case. However, in dealing with custody matters, the Report does not abandon the adversary system. It does, however, call for some tempering of the system. Again, certain attorneys may view this aspect of the Report as threatening. I do not share that concern.

The Report also calls for major changes with regard to discovery. For years, most matrimonial practitioners have urged a liberalization of the discovery rules to permit depositions of the parties without having to apply for leave of court. The Pashman Committee recommends this important reform.

Since the issuance of the Report, some Section members have urged the Section to adopt a neutral position with regard to the Report. The vast majority of comment received by our Section officers, however, has been overwhelmingly favorable. Responsibly, attorneys have viewed the Report as the milestone that in fact it is. It is a recognition of what we have known all along—matrimonial practice is vitally important. Matrimonial courts are among the most visible to members of the public. The visibility of our matrimonial courts highlights the importance of what we as matrimonial lawyers do. It is in that visible forum that matrimonial lawyers and judges deal with issues as complex as any dealt with in other areas of the law. It would not be an overstatement to suggest that the matrimonial courts of this state, on a regular daily basis, deal with far more complex economic issues and factual patterns than do any other courts in the system. The Pashman Report goes a long way toward acknowledging that simple truth.

The Pashman Report presages the appointment of yet another committee, this time a Standing Supreme Court Committee on Matrimonial Litigation. The importance of this new committee cannot be gainsaid. The importance of the fact that the Supreme Court will probably implement this recommendation is obvious. Hopefully, the Supreme Court, following the precedent set by the Pashman II Committee, will include significant representation from the practicing bar on the new panel.

It is my hope for the Section that it will have significant input into the work of the anticipated Standing Committee. It is my personal hope that that input will go beyond the individuals who may be appointed. As indicated in my previous report, I have appointed numerous committees dealing with substantive areas of matrimonial practice. Their work will be geared to the eventual presentation of their findings to whatever committee the Supreme Court eventually appoints. I am firmly convinced that it is through constructive input that lawyers can best serve themselves and the public. I view that task as the primary responsibility of those who lead our Section and also view it as my commitment to our Section's membership.

I. Custody by Anne Elwell

Most sections of the Pashman Report can be easily analyzed in terms of their impact on matrimonial practice since the Report is, on the whole, aimed at improving the way we do what we do. The Custody Section of the Report, however, is not particularly concerned with how we do what we do, but rather with the nature of what we do. Therefore it is difficult to predict the actual impact of the most significant sections of the Custody Section on the practice, even though we can anticipate that that impact will be massive.

The Custody Section does make a few suggestions which will have a relatively predictable impact on practice:

(1) The Committee reiterates prior Supreme Court directives that speed in the determination of custody matters is critical and takes the further step of setting time guidelines. The Committee recommends 45 days for the completion of Probation Department Reports (p. 45, Recommendation [II] [A] [4]) and three months after issue is joined for determination of the custody issue (p. 43, Recommendation [II] [A] [2]). This acceleration of the custody determination will obviously require bifurcation of that issue, and will find ourselves preparing for two separate hearings at perhaps very distant points in time.

(2) Probation Department Reports are no longer required but rather left to the decretion of the trial judge (p. 46, Recommendation [II] [A] [4] [b]) who will order one, presumably, when counsel has convinced him or her of the usefulness of such a report. Where granted, the information will be standardized, as the Committee establishes guidelines for the contents of the report (p. 46, [II] [A] [6]). These guidelines reject much of the less relevant, less reliable information often appearing in present Probation Department Reports, such as: family history, hearsay comments of loyal family members, etc. They stress factual information specifically relevant to custody, such as living accommodations, time availability, past involvement in child raising, etc. and observation of the child's thoughts and feelings, as well as observation of the interaction between parents and children. With standardization of reports we shall be in a position to anticipate what information will be sought by a Probation Officer and will be able to help our clients gather the required data. A further aid will be the requirement that the Report be prepared by the county of venue regardless of the residence of the parties (p. 46, Recomendation [II] [A] [5]).

The real winds of change, however, are read clearly at page 40 where the Committee discusses the need for tempering the adversarial approach and states its approval of a transition to the "mediation" or "conciliation" approach to the resolution of child custody issues. The recommendation of the Committee (p. 42, [II] [A] [1]) is for judges to utilize mental health professionals to mediate rather than simply evaluate. This expanded role for the mental health professional and this changed emphasis from an adversarial approach to a conciliatory approach requires tremendous changes in the approach and importance of attorneys in the resolution of custody matters. If a mental health professional is to mediate, he or she becomes a center figure and we as attorneys slip into the background, functioning at the request and direction of the mediator. Only if mediation fails, do we emerge in a traditional role.

The most significant impact of the Report, however, will be that resulting from the profound change in custody philosophy; namely, the recognition that the very notion of a "custodial" parent and a "non-custodial" parent is counterproductive of the paramount goal of maintaining the integrity of the relationship between parent and child when the relationship between husband and wife has been profoundly altered if not destroyed.

The recommendation of the Committee is that the notion of custodial parent and visiting parent be replaced by the recogniton that both are full parents. The judicial task is no longer to place the child, but to allocate time with the child and decision-making with regard to the child. Each family's solution will vary as each family presents a different pattern. The allocation of time and decision-making in a traditional family where the father has shared in little except recreation will differ from the allocation in a family where child care has been evenly divided. The trial judges will be called upon to exercise great sensitivity and creativity in establishing the individual allocations. Our role will be changed from pointing out all the bad things about our client's spouse (so as to deprive him or her of the controlling voice) to presenting to the Court the facts concerning our client's past and present participation in child raising so that the time and decision-making will preserve his or her relationship with the child.

We see in the recent decision of *Beck v. Beck* the first implementation by the Supreme Court of the Pashman Committee's revision in philosophy. Without elaborating on the facts of the case due to the constraints of space, it should be noted that the Supreme Court in *Beck* specifically endorsed joint custody, stating that it is appropriate in families where

1. both parents are fit;
2. both parents have a secure, living relationship with the child;
3. both parents must be willing to care for the child;
4. there is a potential of cooperation.

The Court accurately describes joint custody as the equal right to make major decisions and the right of each parent to make decisions while the child resides with him or her. The allocation of time is a separate issue to be determined after appropriate consideration of practical factors.

II. Pendente Lite Motions

by Gary N. Skoloff

The Pashman Committee realized that in the substantive decisions of trial judges on *pendente lite* motions is a goal that is probably unattainable. The Committee has recommended that the Supreme Court approve certain guidelines for *optional* use by matrimonial judges that will serve as a rule of thumb so that the Bar will be better able to predict the outcome of such motions; thereby fostering the settling of disputes and clearing calendar congestion. The guidelines call for complete financial disclosure of both parties. In the area of alimony and child support *pendente lite,* the guidelines impose an obligation on the dependent spouse to mitigate their economic dependence on the other spouse. Judges are directed to take into consideration the length of time, cost and availability involved in taking those measures.

A sample *pendente lite* order is provided in the appendix to the Pashman Committee report. It was recommended that the Supreme Court urge matrimonial judges to consider the uniform use of this form in order to eliminate repetitive work by judges and attorneys.

In the area of excluding a spouse from the marital residence, the Committee has recommended criteria to be used by judges in determining *Roberts* applications. The movant spouse is to provide a showing of imminent physical danger. However, it is recommended that a judge be allowed to base his or her determination on other exceptional circumstances. Other factors permitted in basing a determination include the parties' financial circumstances, fear suffered by movant, availability of alternative housing, time between the acts alleged and the application to the court, and the best interests of the children.

The Committee enunciated a public policy that attorneys use their professional skills to prevent spousal abuse without prejudicing their clients; and that attorneys be educated as to the ethical obligation owed where their client is seriously mistreating his or her spouse. The Committee recommended that judges be allowed to order payment for marital debts incurred prior to trial; and that judges consider restraining creditors from obtaining execution on judgments incurred prior to final judgment, where appropriate. Factors to be considered in ordering payment include the nature of the debt, the parties' standard of living, financial ability of the parties, the amount of arms length between debtor and creditor, and the relative participation of the parties in incurring the debt.

By concluding that the *Grange* case, 160 N.J. Super. 153 (App. Div. 1978), is unduly restrictive and contrary to the discretionary powers of a Court of Equity, the Committee recommended that trial courts be vested in a proper case with the authority to order the sale of any marital asset and impose a protective order to preserve the proceeds. The Committee recommended that judges retain discretionary power to permit utilization of the proceeds or a portion thereof under certain guidelines for other good and emergent cause.

III. Trial Practice

by Thomas P. Zampino

In the past, emphasis had been heavily placed on "trying" our way out of backlog by forcing judicial "benchtime" to dispose of quotas, and the "numbers" game caused the public to perceive that the system dispensed with justice rather than dispensing justice to the litigants.

The Phase Two Report shifts that emphasis from the present system of "trial" to early access to a "settlement process" without judicial intervention and through escalating stages in the negotiation process. The emphasis extends past the trial to a greater use of the existing tools of enforcement of the Court's Orders and Judgments.

It was the strong consensus of the Committee that providing financial disclosure at an early stage would fill the information void that has existed in the past before trial. By structuring the time period before trial to require disclosure of financial information and to require the attorneys to attempt settlement by utilization of four-way conference and use of early settlement panels, the aimlessness of time and attorneys before the filing of a trial date will be eliminated.

The lack of preparation has been a serious problem which has necessitated adjournment of many trial dates because of the absence of appraisals, tax returns, or bank books. The report recommendations will eliminate the possibility that attorneys for the husband and the wife will meet each other for the first time on the day of trial.

At the time of trial, the attorneys and litigants will find that their past efforts at settlement, and compliance with disclosure in the early stages will now result in a final settlement that has been aided by judicial management.

The members of the committee felt that since ninety percent (90%) of the matrimonial cases *settle,* then ninety percent (90%) of the system should *not* be geared to *trying* the case. Early monitoring of a case's progress before trial will avoid delay at the time of the trial. Settlement, with or without the assistance of the Court, should be the goal of the process.

The tempering of the adversarial system does not mean its elimination, and lawyers should not feel their roles as gladiators threatened. Rather, attorneys should realize that to go to "war" should not be the first and only choice.

The recommendation of the committee seeks to require that all matrimonial calendars be managed on an individual calendar basis, whereby the judge who is assigned a case when the complaint is filed hears all motions, conducts all settlement conferences, and, if necessary, presides at the trial. This avoids the past anonymity a case suffered when it was assigned to a "county" and lay dormant until the first trial date could be secured. In the present system, the first trial date often serves as an informal conference with the judge, an adjournment is granted, and a case which could never have been tried that day (due both to lack of financial information and the unavailability

of a judge) is rescheduled.

The goal of the structured settlement approach from the early stages of the case allows the fixed trial date to be a real date, if it is necessary to try the case.

With a lack of money available for projects or additional supportive staff in the system, we have overloaded our judicial resources and the demands of the numerical and emotional workload in matrimonial litigation, and can cause judicial turnout and calendar backlog. It was the recommendation of the Committee that the Chief Justice should monitor the increasing matrimonial case load in order to assign additional judges where necessary.

It should be noted that litigants find error in trial and the entire system, including adversaries, are better served by trying to reach settlement.

The trial practice will be affected not only by these pretrial requirements but also by post-judgment enforcement. The court's strict use of sanctions towards recalcitrant litigants will cause the caption "Final Judgement" to cease being a misnomer. Settlements which have been negotiated over a period of time and not forced down a litigant's throat for the first time on the day of trial are more likely to be complied with for the future, since the parties have participated in the early stages of its development. The litigant must be made aware the Court will use incarceration to compel observance of both Court ordered decrees and structured settlement. The term "doing justice," as noted by Justice Pashman, must not lose its meaning.

IV. Pretrial Reforms

by Lee M. Hymerling

The Pashman Report envisages a number of reforms in the area of pretrial practice. These reforms include: (1) the filing of a preliminary disclosure statement; (2) reforms dealing with settlement procedures; (3) reforms dealing with motions, as well as (4) reforms in discovery procedures. Each of these four areas of reform will be discussed in this article.

The Pashman Report recommends the adoption of a rule requiring the filing of a preliminary disclosure statement in a specified form. The proposed rule would require the filing of such a statement within 45 days after the filing of an Answer or Appearance, or not later than eight days prior to the return date of any *pendente lite* motion. The proposed rule further contemplates the filing of periodic amendments to the initial preliminary disclosure statement as material facts change, with the final amendment due not later than 20 days prior to trial. The required preliminary disclosure statement would include detailed information pertaining to the issues of alimony, child support and equitable distribution. On the support front, the statement would require the filing of a copy of the latest federal income tax return filed, as well as a statement in a prescribed form setting forth a litigant's year-to-date income. Litigants will also be required to attach the last pay stub received prior to filing the statement, as well as a statement setting forth all prerequisites of employment, including expense accounts, bonuses, deferred compensation or increments, and pension and profit-sharing plans. A prescribed budget form is also required, thereby eliminating the multiplicity of budget forms that have been prepared by practitioners throughout the state. Similarly, a balance sheet of all family assets and liabilities has been required.

The rule provides that the statement shall be certified with a traditional certification that all of the information provided is true, with the understanding that if any of the information provided is wilfully false the litigant will be subject to punishment.

At some length, the Report explains the rule contemplated for the preliminary disclosure statement. Thus, the Report observes:

> If full disclosure of assets and income is made early in the controversy, it will be less difficult for experienced attorneys to bring the matter to settlement. . . .
>
> There are several advantages to this approach to disclosure. First, the preparation of a disclosure statement will prompt counsel to focus upon issues at an early stage. By reviewing the opposing preliminary statements, counsel will be able to determine the scope of any factual disputes. Thus, the use of preliminary statements will often encourage prompt settlement. Second, preliminary statements will supply the court with information required for all *pendente lite* applications. Third, they will assist the court in deciding which cases should be referred to an early settlement program. Fourth, the preliminary statement can be used by the court to determine the propriety of a counsel fee award. For example, when a comparison of preliminary statements suggests that the litigants are not far apart, that fact would be relevant in passing upon an application for counsel fees.

Obviously, it is anticipated that the preliminary disclosure statement will play a very important role. Clearly, in connection with almost all *pendente lite* applications, be they dealing with support or discovery, trial judges will rely upon the preliminary disclosure statement as a guide. As time passes, experienced counsel will undoubtedly begin to collect the data required to complete a preliminary disclosure statement at the very first meeting with a prospective client. In order to complete the statement, information and documentary evidence will have to be obtained from the client. To a degree, the gamesmanship which has marked many matrimonial matters will be reduced. Counsel will no longer be able to shelter an income tax return or a prospective balance sheet. Although the preparation of the preliminary disclosure statement undoubtedly will be viewed by some as an onerous burden, on balance the requirement should have a salutory effect upon the practice.

Second, the Pashman Report heralds modifications in settlement procedures. Thus, the Re-

Pretrial Reforms (cont'd)

port makes selectively mandatory participation in early settlement programs. As is well known, early settlement programs have been created by the Family Law Sections of many County Bar Associations. The Pashman Report encourages the creation of additional early settlement programs and authorizes judges to direct litigants to submit their controversies to such programs. The Pashman Report suggests that such programs will be particularly useful in attempting to resolve cases of moderate difficulty.

The Pashman Report also specifically defines a three-fold function for early settlement programs. First, wherever possible, the panel should attempt to effectuate a full settlement of the controversy. If a panel fully resolves all issues, the case should proceed expeditiously to a final uncontested hearing and judgment, even before judges not normally assigned to hear matrimonial matters. Second, where a full resolution is not practicable, the panel is directed to narrow the issues in dispute as much as possible and to recommend that the parties enter into stipulations of record. Third, panels are encouraged to mediate discussions in order to obtain reasonable stipulations as to discovery. Panels are specifically encouraged to recommend an appropriate discovery order to the Court which will then be submitted to the matrimonial judge for consideration and, where appropriate, entry, thereby avoiding the necessity for a formal motion.

Running hand in hand with the expanded role of early settlement programs is an even more expanded role for judicial conferences. Judges are encouraged to manage their matrimonial calendars more aggressively, adopting settlement procedures designed to facilitate the early resolution of matrimonial disputes. Says the Report, "the goal of an official settlement process is the direct involvement of the court from the filing of the complaint to the day of trial, to avoid delay, conserve resources and encourage settlement whenever possible." What this will mean in practical terms is that judges, on a statewide basis, will attempt more aggressively to achieve settlements of matrimonial disputes. The Report suggests that the parties and their attorneys should be directed to assure the Court that they have met within two months after issue is joined and made a good faith attempt to either settle or narrow the issues in dispute. Similarly, the Report requires that within six months after issue is joined a mandatory judicial settlement conference should take place. The Report finally states that each judge should conduct not less than 20 settlement conferences on a designated day each week. The latter recommendation will be implemented initially in pilot projects in Bergen, Essex and Ocean Counties. Matrimonial judges in other counties may also participate in the program and in all likelihood will do so.

The message of both the recommendation dealing with early settlement programs and the recommendation concerning judicial conferences quite simply is that matrimonial matters will not be permitted to languish indefinitely on contested calendars. Instead, attorneys will be encouraged —and, indeed, required—to have their cases prepared sufficiently to participate in meaningful settlement discussions.

Third, the Report contemplates reforms in motion practice. In this regard, the Report draws a significant distinction between matrimonal motions and other motions. As is well known, roughly two years ago the Chief Justice issued a directive authorizing matrimonial judges to sharply limit oral argument. As is also well known, concurrent with the examination of the issue by the Pashman Committee has been a similar examination by the Supreme Court's Civil Practice Committee. Paralleling the recommendation of the Civil Practice Committee, the Pashman Committee recommends that all calendar motions in matrimonial cases be determined on the papers without oral argument, except for good cause shown. Similarly, no oral argument will be permitted on substantive motions from any attorney who has not filed opposing papers. In this regard, it is assumed that opposing papers may include a letter Brief, although as a general matter, if oral argument is desired, a responsive pleading should be submitted.

The Civil Practice Committee had recommended that discovery motions should not be argued orally. In this regard, the Pashman Committee deviated from the Civil Practice Committee's recommendation. The Civil Practice Committee had suggested that a rebuttable presumption against oral argument apply to all discovery. The Pashman Report, however, distinguished matrimonial discovery motions. Thus, the Report observed:

> . . . discovery motions play a unique role in matrimonial litigation, unlike that in other civil cases. The fruits of discovery form the primary basis for decisions concerning equitable distribution, which is typically the most vigorously contested issue in a matrimonial action. Thus, discovery motions on these issues are often more important than substantive motions. They frequently deal with the hiring of professionals such as accountants or appraisers, often at considerable expense. Another common subject is the inspection of books and records of closely held corporations, professional partnerships and other businesses.

Accordingly, the Pashman Committee recommended that the non-argument rule should apply only to "routine" discovery matters. The Report specifically mentions a number of examples of such routine matters including applications for more specific answers to interrogatories, extension of time for discovery and the inspection of the marital home by appraisers. The Report also gives examples of what are to be considered non-

Pretrial Reforms (cont'd)

routine discovery applications—applications for which oral argument will still be permitted: applications for production of corporate books and records, for the appointment of accountants and appraisers, and in more complex cases for the inventory of business property.

Although at first blush the distinction drawn by the Committee between routine and non-routine discovery applications would seem insignificant, in fact the distinction is of vital importance. The Committee's Report stands as a significant tempering of the trend away from oral advocacy. It is significant that a Supreme Court Committee has concluded that "oral argument thus plays an important role in the administration of matrimonial justice." It is significant that such a Committee concludes that there is " . . . a clear and unmistakable distinction between discovery in matrimonial and other types of cases." Thus, the Committee recommends that the Chief Justice issue a directive clarifying his prior memorandum on the general use of oral argument.

Nonetheless, even when oral argument occurs, matrimonial judges have been encouraged by the Report to limit oral argument by exercising greater control over counsel's presentations and by focusing attention on those issues which are truly important. The Report therefore places a heavy responsibility upon counsel not to abuse the privilege of oral argument for, indeed, oral argument has become a privilege—a privilege which could very easily be taken away if abuse continues.

Finally, in the pretrial area, the Report heralds a liberalization of the discovery rules applicable to matrimonial litigation. Specifically, the Report recommends an amendment to R. 4:79-5 which would permit counsel to take the depositions of parties to a matrimonial action without specific leave of Court. The amendment, however, limits the scope of such depositions to the collateral issues raised in matrimonial matters. Accordingly, depositions dealing with cause of action issues and depositions of non-parties remain matters for separate applications.

It is significant to note that the expansion of the discovery rule to permit as of right the depositions of parties as to non-cause of action issues has been discussed for many years within the Civil Practice Committee. Time and time again, proposals were made to permit such depositions as of right. Over the years, each such proprosal has been rejected. The Pashman Committee, however, regarded this liberalization as having considerable merit. Thus, the Pashman Committee noted that the "adoption of this rule would eliminate the necessity of reviewing numerous meritorious motions for discovery which are routinely granted" and that "it will also save considerable time and expense on the part of attorneys and litigants."

A review of the above should convince the experienced matrimonial practitioner that the Pashman Report envisages major changes in pretrial practice. From the filing of the preliminary disclosure statement through discovery and motion practice, and onward to settlement procedures, the Court calls upon counsel to diligently prosecute their cases. Recognizing that the Report sets one year as the outside time limit for all matrimonial matters, the Report enjoins the Bar to expeditiously handle matrimonial matters, recognizing that multi-year matrimonial litigation will soon be a thing of the past.

V. Post-Judgment Relief

by Laurence J. Cutler

The Post-Judgment Subcommittee was concerned primarily with enforcement of matrimonial orders and judgments inasmuch as lack of enforcement continues to be a major subject of criticism of the system.

The Committee stressed that the "single most important ingredient of effective enforcement is the assurance by the Court at the time when the judgment is rendered that it will not hesitate to enforce its decisions vigorously. The committee considered all of the tools of enforcement and made the following recommendations:

1. **Incarceration.** Encourage in appropriate circumstances—probation departments to take a more active investigative role in developing meaningful information as to whether this relief is appropriate.
2. **Garnishments.** To be liberally employed. See also legislation pending since the rendering of the report.
3. **Late payments.** Subject late payments to automatic interest charges—more immediate attention to be given by the probation departments to delinquent accounts.
4. **Self-Executing Orders.** Encourage the use of such orders for automatic warrants to be issued in the event of non-payment.
5. **Scheduling of Enforcement Hearings.** To be scheduled at more frequent intervals.
6. **Counsel Fees.** To be used as a tool against the noncomplying spouse to minimize financial inconvenience to a litigant seeking enforcement.
7. **Withholding of Support Payments to Enforce Visitation.** Support should be predicated upon visitation rights where there is a demonstrated strong resistance to compliance.
8. **Compensatory Time.** Should be liberally granted in cases in which one parent repeatedly denies visitation to the other.

The Committee further recommended that Rule 2:9-1 should provide that enforcement proceedings pursuant to R. 4:79-9 be heard in the trial court absent and explicit stay from the Appellate Division. This would clarify the Rule as well as answer the widespread concern that a groundless appeal of a support order may effectively deprive dependents of their entitlement.

With regard to removal of a child from the custodial environment, the Committee believes that the offense charged should be made a high misdemeanor so as to permit extradition of the offender and to deter such unconscionable action.

The Committee also recommended that the intake enforcement procedures commonly employed by the Juvenile and Domestic Relations Courts should be adopted throughout the matrimonial system.

Finally, the Committee urged that matrimonial judges continually meet and discuss their respective approaches to enforcement. Sharing of information will result in each judge improving his enforcement efforts.

Ruscick Elected President, NJ Chapter, American Academy of Matrimonial Lawyers

R. M. James Ruscick, a Fort Lee attorney, has been elected president of the New Jersey Chapter of the American Academy of Matrimonial Lawyers at the group's annual meeting at the Ramada Inn, East Brunswick.

Mr. Ruscick, a former judge of the Westwood Municipal Court, is a member of the Family Law Sections of the American Bar Association and of the New Jersey State Bar Association.

The American Academy of Matrimonial Lawyers was founded nearly two decades ago by a group of leading matrimonial lawyers. Fellowship in the Academy is by invitation only to select matrimonial specialist lawyers from across the country, who have submitted evidence of their integrity, competence and contributions to matrimonial law prior to examination and certification by the Academy Board of Examiners.

Other officers elected were: Alan M. Grosman of the Short Hills firm of Grosman & Grosman, president-elect; Laurence J. Cutler of Morristown, secretary; and Bernard H. Hoffman of the Red Bank firm of Hoffman & Schreiber, treasurer.

Mr. Ruscick is a graduate of Roanoke College and received his J.D. degree from Washington & Lee University. His wife, Carolus Ruscick, a member of the New Jersey and New York bars, is a member of his firm. Mr. Ruscick also belongs to both the Bergen County and Hudson County Bar Associations and is a member of the American Trial Lawyers Association.

Elected to the nine-member Chapter Board of Managers were: Donald P. Gaydos of Mount Holly; Daniel L. Golden of South River; Lee M. Hymerling, present chairman of the New Jersey State Bar Association Family Law Section, of Haddonfield; Joseph Klein of Union; Gardner B. Miller of Upper Montclair; Harold M. Savage of Bloomfield; Vincent D. Segal of Cherry Hill; Gary N. Skoloff of Newark; and Edward S. Snyder of Union.

There are 42 New Jersey Fellows of the American Academy of Matrimonial Lawyers. The Academy has headquarters in Chicago, certified fellows in 38 states and chapters in 13 states, of which New Jersey is the most recent.

The purpose of the Academy is: "To encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be preserved."

Legislative Report

by Jeffrey P. Weinstein

As discussed in my last report, a compromise position was offered in reference to Senate Bill 1508 known as the Automatic Income Assignment Act. The Executive Committee of the Family Law Section unanimously supported the compromised position. The Act shall be known as the Support and Enforcement Act. It provides, in part, that every court order for alimony or child support shall, upon application made, include a written notice to the payor stating that the order may be enforced by an income execution. The income execution shall include the payments set forth in the order and may, upon court order, include payments towards arrears due at the time the execution takes effect. The execution will not take effect until the payor has failed to make a required alimony or support payment within 25 days of its due date. The payee is to apply to the County Probation Office in which the payor resides for an income execution after the payor fails to make required payments within 25 days of its due date. The County Probation Department would then notify the payor of the execution application no later than 10 days after the date in which the application made by the payee was filed. The notice shall inform the payor that the assignment shall take effect 20 days after the postmarked date of the notice unless the payor requested a court hearing. At the hearing the burden would be on the payor to demonstrate good cause why the income execution should not take effect. It is specifically provided that payment of arrears after the due date shall not be good cause. An execution made under this act shall continue in full force and effect until such time as a court order to the contrary is entered, upon a showing of good cause. The Income Assignment Act would include payments not presently made, or not provided in a judgment, to be made to the County Probation Office upon application of the payee. The Executive Committee of the Family Law Section believes that the Support Enforcement Act, as discussed herein, is necessary and in the best interests of the public.

There has been recently introduced legislation which may be of interest to our Section. This recently introduced legislation includes the following bills: S-3176 which requires health insurance providers to extend a conversion privilege from a group to individual or family coverage and, most importantly, A-3428 which seeks to abolish the

Juvenile & Domestic Relations Courts and the County District Courts and establishes a Family Court in the Superior Court.

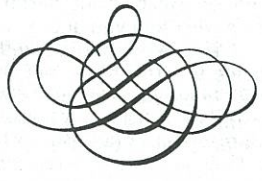
Lee Hymerling, our Section chairperson, and I had the opportunity of appearing before the Assembly Judiciary Committee with respect to A-3428. Neither Lee nor myself spoke on behalf of the Family Law Section. Both Lee and I spoke in favor of the intention of the bill, to wit: establishing a Family Court. We attempted to caution the Legislature about moving too swiftly in this direction. In order for a Family Court to be effective it must have proper support and consequently it must be properly funded. There is no question, in my mind, at least, that a Family Court which has jurisdiction over any dispute involving members of the same family is an ideal and consequently desirable approach to the practice of family law. A Family Court, however, must have a proper support system behind it. The establishment of a Family Law Court will eliminate the splintering of family controversies among the different levels of our present court system. Obviously, it would also eliminate duplication and eventually, as a consequence, reduce the cost necessary in properly maintaining the judicial system to the taxpayers.

Perhaps most importantly, Family Court Judges would have the ability to handle not only matrimonial litigation but also juvenile matters, domestic relations matters, incidents involving child abuse and incidents involving spousal abuse. The establishment of a Family Court would lead, by its very nature, to family justice administered by a judge who is sensitive to the emotional and sociological ramifications entered by the court in the decision-making process involving the family. A judge would quickly develop expertise in juvenile, domestic and matrimonial matters.

Nevertheless, a Family Court, if it is to be effective, must be properly funded so it could be adequately staffed with consulting services. The consulting services would assist the court. Counseling is important for a Family Court to be effective.

The jurisdiction of the Family Court should also include adoption and "palimony" matters. The Assembly Bill 3428 does not provide for any of the support services necessary as set forth herein.

Once again, both David M. Wildstein, my Legislative Committee co-chairperson, and I would appreciate hearing your thoughts concerning Senate Bill 1508 and Assembly Bill 3428.



The Uniform Marital Property Act by Alan M. Grosman

A preliminary draft of a "Marital Property Act" was prepared by a committee of the National Conference of Commissioners on Uniform State Laws early this year. If adopted by the Commissioners and then by New Jersey, this proposed Act will have as profound an effect upon Family Law as the Uniform Marriage & Divorce Act, promulgated in the early 'seventies.

This preliminary version of the Uniform Marital Property Act will be on the agenda and will be discussed on August 7, 1981 at the American Bar Association Family Law Section meeting in New Orleans.

The proposed Act would, in effect, bring the concepts of community property to ongoing marriages, whereas at present in the 39 common law equitable distribution states these concepts are only applicable upon divorce.

The Uniform Marital Property Act would establish the principle of "present, shared, equal, undivided ownership as the fundamental economic characteristic of property acquired during a marriage." [§2(a)]. It would, however, permit spouses to vary their interests in property by agreement. [§2(c)].

The Act would classify all property owned by spouses during marriage as either the individual property of one of the spouses or marital property. [§5]. "Individual property" and "marital property" appear essentially to be what has been known in community property jurisdictions as "separate property" and "community property." Though the nomenclature has been changed, the concepts as defined in the property Uniform Act appear to be much the same.

The Act also defines "commingled individual and marital property" going into substantial detail. It sets forth special characterization rules, including the following: (1) income from individual property is marital property; (2) compensation from a personal injury to a spouse, except interspousal personal injury, other than for pain and suffering is marital property; and (3) an interest in an employee benefit plan attributable to the earnings of personal effort of a spouse during the marriage is marital property. [§7].

The Uniform Marital Property Act also sets forth a number of presumptions, all of which derive from the community rules regarding separate and community property. [§8].

When it comes to management of marital property, the Act takes the "equal management" approach of recent community property legislation. It provides generally that either spouse alone has full power to manage and control all marital property. [§9]. However, it provides alternatives, one based on the Wisconsin model and the other based on the Texas law.

An important provision of the Uniform Marital Property Act is its provision for "contracting out" of the system by marital property agreements. [§ 16]. This has been a traditional characteristic of

the community property laws in most community property states, as well as in civil law countries. By such marital property agreements spouses under the proposed act would be free to make whatever characterization they chose of any of their property, although otherwise at variance with the act. In addition, they could agree upon the economic and property incidents of marital termination and intestacy. Thus, a marital property agreement which, in certain regards, was in contemplation of divorce, would not be against public policy, a question with regard to which there is considerable uncertainty in many common law states, including New Jersey.

With regard to division of property on divorce, referred to in the proposed Act as marital termination, the property to be divided would include both the marital property and the individual property of each spouse. Both the marital property and the individual property would be divided without regard to marital misconduct. The marital property would be divided equally unless the court finds that there are unusual circumstances which would cause an equal division to be repugnant to justice. The individual property of both spouses would be subject to equitable division. The draft notes two varying approaches, one taken by Arkansas and Wisconsin in which there would be a presumption that equitable meant equal, unless the court after considering factors similar to those of New Jersey finds it unequal, and the other approach, designated as that of the Uniform Marriage & Divorce Act, which would have no presumption, but would consider the laundry list of factors. [§19].

Adoption of the divorce property division provisions would certainly be at great variance with the present New Jersey law.

The proposed Act contains many other detailed provisions. Some of these relate to protection of creditors in certain transactions, debts of spouses during marriage, transmutation of marital property by agreement or decree and in certain marital terminations, the effect of living separate and apart, disposition of marital and individual property at death, treatment of the proceeds of life insurance and marital property disposition agreements.

As indicated earlier, the proposed Uniform Marital Property Act is presently at a relatively early preliminary draft stage. However, it has been moving along actively under the energetic leadership of William P. Cantwell, a prominent Denver attorney, who serves as Reporter. New Jersey family lawyers should examine the proposed Uniform law extremely carefully as it develops into final form in the next year or so, because it is likely to have great significance for all, when, and if adopted.

Regional Dinners Set

(continued from page one)

The fourth session will take place on October 1 at the Sheraton Poste, Cherry Hill. Speakers will be Thomas Zampino and Edward Snyder, past Section chairmen, together with the Honorable Eugene Serpentelli.

The format at each site will include an open bar, followed by a dinner with choice of entrees. The program will immediately follow dinner. The formal program will last roughly one hour, followed by a question and answer session.

The Section is also pleased to announce reprints of the Pashman Report as they have appeared in the *New Jersey Law Journal* will be available to those attending the dinner sessions.

These dinner meetings represent the Section's first foray into the field of regional sessions. If successful, the Section will sponsor additional seminar dinners throughout the year. The Section views these dinners as an important service to its membership.

The membership should be aware that the entire Matrimonial Bench has been invited to attend the dinners gratis. Accordingly, it is anticipated that most of the Bench will be in attendance. Obviously, the Section is very hopeful that there will be a great deal of membership participation. Additionally, the Section is hopeful that the dinners will be a ready vehicle to expand Section membership. Clearly, non-Section members will be most welcome.

The cost of the dinners, as well as additional details, can be found on the registration form which appears on page 11 of this newsletter. Since most of the publicity to date has been forwarded solely to Section members, it is suggested that if you know any non-members who might be interested in the dinners you should pass the form along.

Editors' Note

A chairman's report will appear in each issue of our Section publication, "The New Jersey Family Lawyer." Responses to the opinions expressed in his reports, as well as comments with regard to all articles which will appear in "The New Jersey Family Lawyer" are most welcome. Selected letters to the editors will be printed from time to time.

The editors wish to invite and encourage members of the New Jersey bench and bar to contribute articles to "The New Jersey Family Lawyer." Those interested in contributing should please communicate with the editors about their ideas in writing to the State Bar or directly.