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Chairman's Report

by Lee M. Hymerling

This column will be devoted to three separate topics. First, I will discuss our Section's successful program conducted at the New Jersey State Bar Association Mid-Year Convention in Acapulco. Second, I will set forth my recommendations concerning specific amendments which I feel should be made to the matrimonial rules which became effective on September 14, 1981 as a result of the work of the Pashman Committee. Finally, I will express my preliminary thoughts concerning proposed Rule 1:27-7a which would "... require written retainer agreements in matrimonial actions as a means of clarifying the scope of the attorney/client relationship ..."

Mid-Year Session

Elsewhere in this issue appears an article reporting on the program held by our Section at the convention in Acapulco. Suffice it here to say that I feel our Section's meeting was a major success. The program was designed to fulfill two separate objectives. First, the program was designed to further clarify the reforms adopted as a result of the Pashman Committee. The speakers were accorded an opportunity not only to discuss the rules and reforms contained in the Pashman Report, but also to critically analyze how the rules are working. Second, and equally important, the meeting accorded to all who attended an op-

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Pashman Announces Proposed Rule Requiring Written Fee Agreements

At the conclusion of his remarks before our Section's mid-year meeting held during the State Bar Convention in Acapulco, Justice Morris Pashman of the New Jersey Supreme Court announced that the Court had propounded a proposed rule requiring written retainer agreements. Reading the text of the proposed rule, the Justice explained that the draft would require retainer agreements to include considerable detail, including an estimate of the total fee that would be involved in a given case. The Justice explained, however, that the rule has not been implemented but has merely been issued for comment. The Justice specifically solicited comment from the Family Law Section and further indicated that comments would be solicited from Bar leaders throughout New Jersey at both the state and county levels. A copy of the proposed rule and information concerning where comments are to be sent appear elsewhere in this issue.

Continued Reevaluation

The Justice's comments with regard to the rule, in the minds of many who attended the Acapulco meeting, overshadowed many other significant observations made by Justice Pashman and others. Thus, Justice Pashman stressed the need for continued reevaluation of the rule amendments which became effective on September 14. Specifically, he reported that he intended to urge re-

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MID-YEAR PROGRAM: Past Section Chairman Gary N. Skoloff discussed standards for the entry of pendente lite alimony as set forth within the Pashman Report during the Section's program in Acapulco. Panelists included Section Secretary David Wildstein; Justice Morris Pashman of the New Jersey Supreme Court; Judge Herbert Glickman of the Superior Court, Chancery Division—Matrimonial, Essex County; Section Vice-Chairman Jeffrey Weinstein; and Section Chairman Lee Hymerling.

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Pashman

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consideration of the requirements of R. 4:79-2, mandating the filing of Preliminary Disclosure Statements in default and settled cases. With regard to the P.D.S. form in general, the Justice observed, "The issue is no longer whether there will be a P.D.S. form; instead, the issue is how can we make a good form better." The Justice further commented that upon trial, litigants will be found by the facts contained in their P.D.S. forms unless amendments have been duly filed within the time prescribed by the rule.

Justice Pashman also urged trial judges to enforce their Orders. Dealing with a support situation, the Justice stated that it was preferable for a lower support Order to be entered and enforced, than a higher Order entered and not enforced.

Pashman Report: Comment and Reaction

Also addressing the convention were Judge Herbert Glickman of the Superior Court, Chancery Division-Matrimonial, Essex County; as well as Past Section Chairman Gary Skoloff; Section Vice-Chairman Jeffrey Weinstein; Section Secretary David Wildstein and Section Chairman Lee Hymerling.

Judge Glickman commented extensively about how the amendments to R. 4:79 have been received by trial judges and observed that by and large trial judges find the P.D.S. form an extremely useful tool. Judge Glickman also stressed the importance of settlement in matrimonial matters. The Judge reported that in Essex County early settlement panels have proven to be an extremely helpful method of promoting settlements. Thus, he observed that in approximately 50 percent of the cases referred to early settlement panels, agreements have been reached. Judge Glickman further noted that in almost all instances, the cases settled before a panel would be tried on the same day.

Mr. Skoloff focused his comments in large measure upon the standards for the entry of pendente lite alimony as set forth within the Pashman Report. He urged caution in dealing with rehabilitative alimony, noting that many lawyers and some judges have read into the Pashman Report the concept that rehabilitative alimony is to be regarded as the norm, rather than a tool to be used in appropriate cases. Mr. Skoloff further commented that serious consideration should be given by the Court as to whether R. 1:6-2 requiring the submission of a proposed form of Order on motions should be revised.

Mr. Weinstein discussed at some length custody reform and gave a whirlwind tour through the morasses of *Tevis* and *Lepis*. Commenting upon custody, Mr. Weinstein observed, to the surprise of many, that six county Probation Offices he had surveyed felt that they could comply with the 45-day requirement imposed by R. 4:79-8.

Mr. Hymerling's comments appear in his Chairman's Report which appears on page 1 of this issue.

Legislation and Election

Legislation Committee Chairman David Wildstein also reported during the Acapulco program. Thus, he commented upon the present status of the Family Court bill, Senate Bill 1508 and legislation dealing with rehabilitative alimony and pensions.

The Acapulco meeting also marked the election of Jeffrey Weinstein to serve as Section Vice-Chairman and of David Wildstein to serve as Section Secretary. Both will serve unexpired terms which run until May, 1983.

Comments on Proposed Rule Solicited

The Supreme Court has proposed the following rule which would require written retainer agreements for legal services by all attorneys in connection with matrimonial matters:

1:21-7A. Retainer Agreements In Matrimonial Actions

An agreement for legal services by an attorney or attorneys in connection with matrimonial actions shall be in writing. A "matrimonial action" shall be as defined in R. 4:75 whether contemplated or pending in the Superior Court, Chancery Division or the Juvenile and Domestic Relations Court. The agreement shall include an estimate of the total fee; the billing rate for the types of legal services (legal research, correspondence, telephone calls, drafting, court appearances, retention of experts, and other matters), and expenses incidental thereto; and when payment is to be made. The agreement shall also specifically state what services, if any, are not covered by the agreement; whether any initial retainer is to be applied against the rates established for services or is in addition thereto; whether or not there shall be a maximum rate established for services covered; and the effect of any application for counsel fees under R. 4:42-9(a). In cases of emergency, an attorney may first commence the legal services and complete the written fee arrangement as soon as practicable thereafter.

By notice dated November 17, 1981, Robert D. Lipscher, Administrative Director of the Courts of New Jersey, requested that all comments on the proposed rule be forwarded to the Administrative Office of the Courts, State House Annex, CN-037, Trenton, New Jersey 08625.

It is requested that all members of the Family Law Section who desire to do so should forward

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portunity to voice their comments. Indeed, in his remarks Justice Pashman characterized the meeting as a "gripe session." As if the subject matter of the Pashman Report itself was not enough to stimulate spirited debate, Justice Pashman's announcement relating to R. 1:21-7a signalled great controversy.

In my view, all of the objectives established by the steering group of our Executive Committee in mapping out the Acapulco program were achieved. In the mold of the New Orleans mid-year meeting of two years before, Acapulco accorded our membership a forum in which to be heard. I am certain that not only were our members heard, their comments will be considered carefully by our judicial guests.

Election

During the course of the Acapulco meeting, as announced in the October issue of the *Family Lawyer,* our Section conducted an election to fill the vacancy created by the recent resignation of Section Vice-Chairman Charles De Fuccio. I am pleased to report the election of our former Section Secretary Jeffrey Weinstein to fill the vice-chairmanship, as well as the election of David Wildstein to fill the vacancy created in the position of Section secretary by Jeff's elevation. I look forward to working with both Jeff and Dave in the months ahead and know that both will perform a commendable job. I know they share my commitment to preserve the pace of activity generated during the past six months and to further expand our Section's program in the interests of our membership.

Rule Amendments

Turning to my second topic, I feel it appropriate to voice my views concerning needed revisions to the rule amendments which became effective this fall. When the amendments to R. 4:79 were first announced, no one assumed—much less the Pashman Committee members themselves—that the amendments were perfect in every respect. All were aware that practical experience might indicate that revisions in time would have to be made. From the experience of many matrimonial attorneys throughout the state, a blueprint for change emerges. The suggestions contained in this column are not intended as criticisms of the rules as they now appear, but instead as constructive suggestions as to how to make good rules even better.

Please note that the suggestions that follow are my own and do not necessarily express the views of the members of our Section's Executive Committee. These proposals, as well as others, will be discussed by our Executive Committee at its December meeting. During that meeting, the Executive Committee will take positions with regard to all matters of concern. A report of the Executive Committee's actions will appear in the January issue of the *Family Lawyer.*

First, I will discuss the modifications I recommend as appropriate to R. 4:79-2, the Preliminary Disclosure Statement rule. In this regard, I agree entirely with Justice Pashman's remarks in Acapulco to the effect that the issue should no longer be whether there will be a requirement for a Preliminary Disclosure Statement, but instead, when the statement should be filed and what the statement should contain. Simply put, I feel that the rule should be modified so that it does not apply, as would now appear to be the case, in default or settled cases. Additionally, as expressed at great length in an article that I have co-authored, appearing in this issue, I feel that reconsideration is necessary concerning the requirement that income tax returns should not only be attached to the P.D.S. form, but should also be available for public inspection.

Default Cases

With regard to default cases, I am firmly convinced that the rule should be modified to indicate that the form need not be filed in matters in which a default has been taken. I am mindful that the reason why the rule was originally adopted to apply to default cases focused upon due process concerns. I am certain, however, that the concerns of due process can be satisfied in a fashion less onerous than requiring all litigants to complete a P.D.S. form. Specifically, what I propose is that in any default case involving equitable distribution, the Court on its own motion could require the filing of a P.D.S., rather than in blanket fashion requiring that a P.D.S. be filed in all cases, whether or not property distribution or collateral relief of any sort has been sought. A similar case by case requirement could be imposed in matters involving spousal and child support.

Settled Cases

Similarly, I am convinced that the Pashman Committee did not intend that the P.D.S. rule should apply to settled cases. I am mindful that many judges, as well as the Supreme Court, initially viewed the P.D.S. form as being useful in establishing a "base point" for *Lepis* post-judgment considerations. As Justice Pashman observed at the Acapulco meeting, matrimonial actions are like television series—reruns are frequent. The issue, however, is not whether a base point is needed, but whether the P.D.S. form is the most practical vehicle for preserving information vital to the consideration of post-judgment applications. The vast majority of the Bar feels that the salutory purpose of the P.D.S. form is counterbalanced by the unnecessary expense of having the statement prepared in settled cases. In settled cases, the trial judge does not really need all of the details mandated by the form. Instead, a trial judge in considering a *Lepis* application principally needs only income data. That could be done by providing, within the standardized pre-

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amble clause to all divorce judgments, specific findings of income levels at the time of divorce. What I propose is that in lieu of a P.D.S. form, judges include information similar to that required in the standard pendente lite form of Order incorporated within the appendices of the Pashman Report.

Further Study

The specific rule amendments proposed in this column are not intended to be exhaustive, but merely present my thoughts with regard to those matters which have generated the greatest amount of comment from both the Bench and the Bar. Clearly, additional consideration must be given to the stringencies of the custody rule which mandates that all custody matters be determined within 90 days and all Probation Office investigations completed within 45 days of the presentation of an Order. Time and experience will tell whether these requirements are practical in light of the exigencies of a contested custody proceeding.

Similarly, additional attention is warranted with regard to motion practice and the requirement that proposed forms of Order accompany applications in matrimonial causes.

These and other topics should properly be within the province of the permanent Supreme Court Committee on Matrimonial Litigation proposed by Justice Pashman during his remarks in Acapulco. The creation of such a permanent committee is long overdue. Justice Pashman deserves the thanks of our Section and of all matrimonial practitioners for recognizing how important is the need for such a standing committee.

Proposed Rule 1:21-7a

My comments with regard to proposed Rule 1:21-7a will perforce be more limited. As previously indicated, this proposed rule would require all matrimonial attorneys to have a written agreement for legal services. In my view, few experienced matrimonial practitioners would question the advisability of having some sort of written confirmation of the fee understanding between counsel and client. Whether or not such an understanding should be mandated by rule is an issue which deserves careful, balanced and unemotional debate.

If such a requirement is to be reduced to rule, even more debate is warranted with regard to the issue of what such agreements should contain. The draft rule proposed by the Supreme Court requires considerable detail. Thus, the Supreme Court has proposed that such agreements must contain an estimate of the total fee, the billing rate for various types of legal services, understandings concerning expenses and understandings concerning specifically what services are covered by the agreement. It is clear that some of this information should not be required. No competent matrimonial attorney can gauge with specificity how much time will be involved in a matrimonial representation. Each case is unique. Fact patterns vary widely. The unpredictable is frequently the rule. To mandate a specific "maximum fee" in a written agreement would be unfair to counsel and, in the long run, to clients.

Blue Ribbon Committee

Recognizing the importance of the proposed rule to matrimonial lawyers throughout New Jersey, I have appointed a Blue Ribbon Committee to be chaired by Gary Skoloff and consisting of Monmouth County State Bar Trustee Sidney Sawyer, Burlington County State Bar Trustee Don Gaydos, immediate Past Section Vice-Chairman Charles De Fuccio and myself to critically analyze the rule and report to our Section's Executive Committee at its February meeting. I have also directed correspondence to Justice Pashman requesting that the Supreme Court not implement the rule for a period of at least four months to permit careful study, and to further delay implementation until the issue can be considered not only by the Bar, but also by the permanent Supreme Court Committee after it has been appointed.

In undertaking debate concerning the rule, I urge members of the Bar to act responsibly. The Supreme Court did not unilaterally adopt the rule. The rule has merely been proposed. By the same token, the proposal of the rule reflects a grave concern the Court obviously has with regard to fee disputes in matrimonial causes. It is a concern that is real and will not soon go away. Rest assured that this topic will be very much on the minds of your officers and that you will be kept fully posted as developments occur.

Comments Solicited

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their comments to Director Lipscher. It is also requested that if they are so inclined, members should also forward copies of their letters to Gary N. Skoloff, Esq., Skoloff & Wolfe, P.C., 17 Academy Street, Newark, New Jersey 07012. Mr. Skoloff has been appointed to chair a Section committee which will draft the Section's comments with regard to the proposed rule.

It is also requested that practitioners forward to Mr. Skoloff copies of any retainer agreements now in use in their respective offices.

It should be noted that time is of the essence.

Equitable Distribution in New York

by William G. Mulligan

Effective July 19, 1980 the New York Legislature adopted a feature of marital dissolution that had been in practice for most of the preceding decade in New Jersey.[1] Indeed, the New Jersey case law had guided a devoted little band of New York County Lawyers' Association Committee members who had labored together for seven years to produce the legislation finally enacted. These included Julia Perles of the Nizer firm; Henry H. Foster, Jr., professor emeritus of family law at NYU Law School; and his long-time collaborator, Doris Jonas Freed.[2] Throughout 1980 and 1981 the new enactment has continued to baffle New York judges and practitioners of family law, spawning dozens of seminars, often addressed by experts from New Jersey including Gary Skoloff, Alan Grosman and Judges Griffin, Strelecki and Polow. For all their energetic study and debate, New York lawyers and judges remained chary of the new remedy.

Perplexing Concept

New York practitioners have not quite known what to do with the concept, and have spent much of the year since its birth litigating such questions as whether or not it applies to actions begun during its period of gestation (the statute explicitly provides that it does not) and what effect it has on pre-existing marital agreements.

One or two minor cases have gone to trial, but there has been only one major lawsuite testing virtually all the statutory criteria for equitable distribution of marital property. That is *Jolis* v. *Jolis*, decided October 30, 1981 at the trial level by the Supreme Court sitting in New York County.[3]

50/50 Property Division

In *Jolis* the parties had been married 41 years and there were four grown sons. The Court awarded the wife precisely 50 percent of all the property defined as marital. The interesting aspect of the decision relates to the way the Court dealt with the wife's loss of inheritance rights.

One of the most vexing criteria in the New York statute was not adapted from any New Jersey decision. It directs the Court in determining equitable distribution of property to consider:[4]

> The loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution; . . . .

No Right of Election

At the time Chapter 281 of the Laws of 1980 was being drafted New Jersey did not have a widow's right of election against the husband's will.[5] Under pre-existing New York law a surviving spouse would be the decedent's forced heir to the extent of a lifetime income interest in a testamentary trust equal to 1/3 of the other spouse's net estate, if there were surviving children.[6] If the husband executed a will between August 31, 1930 and September 1, 1966, his widow would be entitled to have $2,500 deducted from the principal of the testamentary trust for her benefit and paid to her outright.[7] Were the will executed after August 1, 1966 the surviving spouse would have the limited right to elect to take $10,000 absolutely as a deduction from the principal of the testamentary trust.[8]

Domicile Important

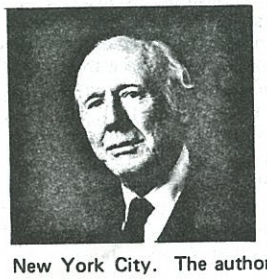
The New York right of election would apply against the estate of the decedent's spouse only if the decedent were domiciled in New York at the time of death or chose to have the disposition of his estate governed by New York law.[9] The estate against which the right of election can be asserted does not include real property outside the State of New York.[10]

How is a Court to apply the legislative criterion in light of the right of election? (New Jersey courts may face a similar problem in view of the adoption of an amendment patterned after the Uniform Probate Code, as is the New York right of election.[11]) What inheritance rights has the wife lost at a time when her husband is very much alive, when the mortality tables show different life expectancies for the spouses, and when (a) she must survive him to inherit, and (b) what she would inherit would depend on the state of his wealth at the future date of his death?

Legislative History

The New York criteria for equitable distribution can for the most part be related to published New Jersey decisions, but for criterion no. 4 quoted above there is absolutely no legislative history. The Courts which have grappled with the nebulous questions of evaluating pension benefits[12] and stockholdings in closely-held corporations[13] can well appreciate that the quest for evaluating future inheritance rights analogizes to shoveling smoke.

William G. Mulligan



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Equitable Distribution in NY *(continued)*

Restitution for Loss

In the *Jolis* case counsel for the husband invited the Trial Court to impose on their client the duty to assign his company's death benefits and his personal insurance policies to his wife and further to make such additional testamentary bequest as, taken all together, the Court would consider adequate restitution for her loss of inheritance rights. Pursuant to the husband's attorneys' stipulation, the Court ordered that the husband either increase his $65,000 face value life insurance policy to $200,000 and maintain his wife as exclusive beneficiary or, if for medical or other reasons the insurance could not be increased, that he leave the wife $135,000 in his will, payable to her only if she survived him unmarried.

The stipulation relieved the *Jolis* Court of the duty to compute precisely the present value of the loss of inheritance rights as of the date the marriage was dissolved, and thereby the Court got around the statutory requirement[14] that its reasoning be set forth—which could have exposed the result to the possibility of reversible error.

Footnotes

1. Laws of New York 1980, Chapter 231, amending the New York Domestic Relations Law; see Mulligan, "How Matrimonial Law Will Be Practiced If and When the Burrows Bill is Enacted," 11 Family Law Review 2, March, 1979.
2. Foster & Freed, Law and the Family, New York (Rev. Ed. 1972).
3. New York Law Journal, Nov. 4, 1981, p. 1. (Not officially reported as yet).
4. Domestic Relations Law § 236-5-d(4)
5. Rosemary Higgins Cass, "Reflections on Family Law," New Jersey Lawyer (August, 1979) p. 39
6. Estates, Powers & Trusts Law § 5-1.1[a][1][A][c][1][B]
7. EPTL § 5-1.1[a][1][B]
8. EPTL § 4-1.1[c][1][D]
9. EPTL § 5-1.1[d][7]
10. EPTL § 5-1.1[d][B]
11. N.J.S.A. 3A:38A-1, (1980)
12. *Kikkert v. Kikkert,* 177 N.J. Super. 471 (App. Div. 1981)
13. *Lavene v. Lavene,* 162 N.J. Super. 187 (Ch.D. 1978); *Borodinsky v. Borodinsky,* 162 N.J. Super 437 (App. Div. 1978); *Bowen v. Bowen* (Ch.D. October 7, 1981) Not yet officially reported decision of Imbriani, J.S.C. in Somerset County.
14. The New York statute requires (§ 236-5-g) that: "In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel."

Recent Cases

by Bonnie M.S. Reiss

ANNULMENT—EQUITY—UNCLEAN HANDS—Court in its discretion may grant a judgment of nullity even where the party seeking same approaches the court with unclean hands.

Plaintiff, a Haitian citizen in the United States on a visitor's visa, fearing that her visa would soon expire, participated in a ceremonial marriage to the defendant, who was employed by a company in the business of arranging sham marriages for people in fear of deportation. There was no marital relationship between the parties and the plaintiff acknowledged that the marriage was just for the purpose of securing for herself permanent resident status. She filed a complaint for annulment and defendant defaulted. However, the trial court declined to grant the judgment of nullity and the Appellate Division affirmed.

The Supreme Court, reversing, held that an annulment could be granted where, according to the statute, there was a "lack of mutual assent to the marriage relationship." Such a requirement would be met where, as here, there was never any intent to enter into a true marital relationship. The court then turned to the question of whether the plaintiff could be barred from such judgment because, by participating in the sham marriage, she approached the court with unclean hands. In an opinion by Justice Sullivan, the court concluded that the doctrine of unclean hands was not a *per se* bar to the granting of a judgment of nullity, had no statutory basis and was "unduly harsh." Rather, the decision leaves it in the discretion of the trial court to determine whether the parties' conduct, which constitutes unclean hands, is of such serious magnitude as to warrant denying the annulment. The court noted that where a marriage was ceremonialized for the sole purpose of obtaining a tax advantage, a court might be justified in denying a judgment of nullity. Such a situation was contrasted with the case at bar where the plaintiff was characterized as "the victim of unscrupulous persons who preyed on Haitian aliens and, for a price, offered them a means of permanent residence in this country."

Justice Pashman in dissent agreed with the majority holding that unclean hands should not be a *per se* bar to the granting of such a judgment and that the matter should be left to the court's discretion. However, he felt that the majority exercised its discretion improvidently as a result of its sympathy for the plaintiff. Rather, he stated that the judicial discretion should be guided by considering the interests of the parties in obtaining a judicial record of the marital status and dissolving the relationship with fairness to both parties, the interests of the public in a termination of dead marriages and the integrity of the courts. In the instant case he did not believe the interests of the

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Recent Cases *(continued)*

parties to be overriding since a no fault divorce would have been available to them. Rather he felt that the public interest in preserving the solemnity of the marriage relationship and the interests of the court in not furthering sham marriage schemes were overriding considerations and warranted denying a judgment of nullity based on the plaintiff's knowledge that she was participating in a scheme to defraud immigration authorities. *Faustin v. Lewis,* 85 *N.J.* 507 (1981).

CHILD SUPPORT—EMANCIPATION—Court may order payment of college expenses or continuing child support during attendance at college even after a previous court order has formally declared child emancipated.

Defendant mother made application to court for contribution towards college expenses for 22-year-old son formally emancipated by court order, who had been working, maintaining his own residence and earning $200.00 per week. The court found the standard set forth in *Ross v. Ross,* 167 N.J. Super. 441 applicable, to wit: "Had there not been a separation and divorce, would the parties, while living together, have sent their [child] to [school] and financed that schooling." Just as where there has been no formal decree of emancipation, the court should consider the amount of support sought, the ability of the non-custodial parent to pay in light of the type of schooling desired, the financial position of the custodial parent, the commitment and aptitude of the child and the relationship of the schooling to prior training and long-range goals.

Added factors where a child has been formally emancipated are the reasonableness of time between graduation from high school and the child's articulating a desire to attend college and the expectations of the parents.

The additional fact that the son had previously expressed no desire to go to college, and in reliance thereon, his father had given him funds with which to establish a business, led the court to conclude that under the circumstances of this case, it would be unreasonable to require contribution. *Sakovits v. Sakovits,* 178 *N.J. Super.* 623 (Ch. 1981).

Quaere: Where there is a hiatus between college and graduate school where a child works but no funds are advanced for the establishment of a business, should a court order a continuing duty to finance the child's education?

The same issue was presented to the Appellate Division in *Wanner v. Litvak,* 179 N.J. Super. 607 (App. Div. 1981). A divorce was granted in 1972, with each parent being given custody of one child. Pursuant to court permission, the mother moved to Kentucky with her daughter and thereafter a New Jersey court deemed the child to be formally emancipated, based on affidavits that the child was working. Notwithstanding the emancipation, the father agreed to pay one-half of the child's books, tuition and activity expenses. The wife applied for additional funds to finance the child's living away at school even though the school was in the same town as her mother's residence.

Kruvant v. Kruvant, 100 N.J. Super. 107 (App. Div. 1968) which required parents to pay medical bills of an emancipated child only where the condition existed at the time of emancipation, did not foreclose a court from ordering support during attendance at college after the child has been emancipated. The court remanded the matter directing a plenary hearing on whether payment of such expenses should be ordered, suggesting that the court consider the reasoning of *Sakovits, supra.*

Wife may levy on corpus of husband's individual retirement account to satisfy judgment for alimony and child support arrearages.

Plaintiff wife, having received a judgment for alimony and child support arrearages, sought to levy upon husband's individual retirement account, his only asset. The attempt was opposed by defendant husband who argued that the supremacy clause of the United States Constitution prohibited a state court from permitting a levy on the subject of federal legislation. Opposition was also opposed by the bank which complained that to permit such a levy would result in unanticipated increased administrative costs to banks.

Judge Krafte rejected both of these contentions stating that to hold the fund unattachable "would result in sanctioning a self-created, totally controllable vehicle for the contrived avoidance of family support responsibilites." The argument that to transfer the fund from husband to wife would result in harsh tax consequences to the husband was also rejected. The strong interest in for the support of one's spouse and children was deemed to be more significant than tax or administrative considerations. Moreover, the supremacy clause does not bar attachment because the New Jersey statutory scheme does not present an obstacle to accomplishing the objectives of the federal legislation. Indeed, stated Judge Krafte, the object of the ERISA legislation is to protect an individual and his family during their retirement years. To allow a man to escape these responsibilities by insulating the retirement fund would create a result which is inamicable to the purposes of the statute. *Mallory v. Mallory,* 108 N.J. Law Journal 299 (October 1, 1981, p. 7).

SHOULD PENSIONS BE ELIMINATED FROM EQUITABLE DISTRIBUTION?

There is presently pending in the New Jersey State Legislature Bill A1948, which would eliminate pensions from equitable distribution. Richard H. Singer, Jr., chairman of the Equitable Distribution Committee of the Family Law Section, is anxious to hear from Section members regarding their viewpoints on this proposed legislation and the position that they feel the Section should take on the bill. All replies should be sent to Mr. Singer, c/o Skoloff & Wolfe, P.A., 17 Academy Street, Newark, NJ 07102.

R.4:79-2: The Supreme Court vs. the Supremacy Clause

by Robert A. Vort

R.4:79-2(a) requires that each matrimonial litigant file a preliminary disclosure statement in the form set forth in Appendix V to the court rules. That form requires the litigant to attach a complete copy of the preceding year's federal and state income tax returns. R.4:79-2(b) provides that the preliminary disclosure statement be filed with the clerk of the county of venue. This is reiterated by R.4:79-2(d).

Contravention of Laws

However salutary the purpose of this requirement may be, the rule violates federal law because it requires public filing of the federal income tax return and of the state tax return which incorporates portions of the federal return. Further, the rule also violates New Jersey statutes which protect the privacy of state income tax returns. In contravening federal and state legislation, the Supreme Court exceeded its power.

Code Provisions

To support the preceding conclusion, statutory analysis is necessary. Section 6103 of the Internal Revenue Code prohibits disclosure of federal tax returns and of tax return information except under very limited circumstances. Section 7213(a) (2) of the Code prohibits disclosure of such information by state employees—specifically including child support enforcement agencies—from disclosing this information, and punishes disclosure as a felony.

Section 6103(e) (1) (A) limits disclosure to such an extent that one spouse cannot even inspect the individual tax return of his or her spouse. Even § 6103 (*1*) (6), which permits disclosure of tax return information to child support enforcement agencies, does not allow disclosure of the full return. Rather it permits disclosure of only certain return information. Disclosure of the gross income and sources of a taxpayer's income is permitted if and only if it is not reasonably available from any other source.

Section 6103(*1*) (6) (B) authorizes disclosure to child support enforcement agencies only for the purpose of and to the extent necessary to establish and collect child support obligations.

Federal Law Paramount

Because R.4:79-2(b) and (d) requires that the complete tax return be filed as a public document, it contravenes the foregoing provisions of the Internal Revenue Code. Even if the Supreme Court of New Jersey made a good policy decision, it had no power to do so since federal law is paramount and federal law has made a contrary determination of public policy.

This conclusion is not circumvented by modification of the rule to require attachment only of the New Jersey income tax return to the preliminary disclosure statement. Section 6103(p) (8) permits states, such as New Jersey, which incorporate federal income tax return information into the state tax return, to verify the taxpayer's reference to the federal return. Such permission is conditioned upon the enactment of state laws which protect the confidentiality of the federal tax return and of the information contained in it.

Disclosure Illegal

N.J.S.A.54:50-8(b) was enacted to comply with this requirement of the Internal Revenue Code. It punishes as a misdemeanor disclosure by any state official of any information from or any copy of a federal or state income tax return. The power of the Supreme Court to promulgate rules of procedure does not permit it the right to override state statutes on the subject. *Cf., Winberry v. Salisbury,* 5 N.J. 240, 247-48 (1950). *Quaere* whether the clerk of the county of venue is a state official within this statute. *Quaere* whether a judge who orders filing of a tax return in accordance with R.4:79-2 is subject to criminal sanctions. *Quaere* whether disclosure by the county clerk to the matrimonial judge or to the public will subject the clerk to federal or state prosecution.

The policy underlying disclosure of income tax returns is to permit the matrimonial judge the ability to verify the financial information provided by each litigant. This protection is superfluous in our adversary system. The judge will already have a financial statement and, pursuant to interrogatories, each counsel should have tax returns of the opposing litigant.

Must Show Good Cause

Prior New Jersey law has permitted disclosure of income tax returns to the adverse party, not to the public, and then only upon a showing of good cause. *Lepis v. Lepis,* 83 N.J. 139, 155 n.10 (1980), *Ullmann v. Hartford Fire Insurance Co.,* 87 N.J. Super. 409, 415 (App. Div. 1965). Notwithstanding, even *Lepis,* did not permit disclosure to the opposing litigant as broad as that now required by rule to the public at large. In approving disclosure post-judgment in accordance with *DeGraaff v. DeGraaff,* 163 N.J. Super. 578, 583 (App. Div. 1978), the Supreme Court directed the trial judge to excise data not material to the pending application. R.4:79-2 permits no excision.

Federal cases permit disclosure of income tax returns if and only if a litigant has placed his income in issue. *See,* generally, Annotation, "Discovery and Inspection of Income Tax Returns in Actions Between Private Individuals," 70 A.L. R.2d

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R.4:79-2 *(continued)*

240 (1981). If income or ability to pay is not in issue as, for example, in an action in which the parties have already resolved the financial issues, disclosure is not warranted.

Rule Should Be Challenged

There are certain cases in which counsel should challenge this rule. A primary example is that of a divorcing litigant who pays or receives alimony or child support pursuant to a prior judgment of divorce. Should this litigant have reason to expect, sooner or later, a motion to modify payments, he or she should resist disclosure of his tax returns.

Under *Lepis v. Lepis, supra* at 155, the former spouse is not entitled to inspect this litigant's tax returns until after he or she has proven changed circumstances. This is true even though *Lepis,* at 148, recognizes that a change in the income of the paying or receiving spouse may constitute a changed circumstance warranting modification. Public filing of a tax return in the second divorce file gives the prior spouse a free look, may invite a motion to modify and may be admissible on the moving party's initial attempt to prove changed circumstances.

One can argue in opposition that affidavit testimony may likewise invite such a motion. This is not as likely. R.4:79-2 imposes a continuing duty to supplement the preliminary disclosure statement; in contrast, an affidavit on a *pendente lite* motion is likely the last document filed in a case regarding income. Moreover, an income tax return is considered more credible than an affidavit. The taxpayer is subject to criminal sanctions if he files a false return; the understating affiant is subject only to disbelief.

A Reply to Mr. Vort

by Lee M. Hymerling and William J. Thompson

This article will offer a reply to the thoughtful column prepared by Robert A. Vort, Esquire dealing with R. 4:79-2(a) which requires that each matrimonial litigant file a Preliminary Disclosure Statement in the form set forth in Appendix V to the Rules Governing the Courts of New Jersey. The specific portion of the Preliminary Disclosure Statement to which Mr. Vort takes exception is that portion of the rule which requires a litigant to attach copies of his or her federal and state tax return. Thus, the instructions mandate that attached to the Preliminary Disclosure Statement form shall be, "A complete copy of last federal and state income tax returns filed. . ." The rule also requires that "For any prior year in which a federal or state income tax return has not been filed, copies of all W-2 forms and 1099 forms . . ." should also be attached. The rule mandates that the completed Preliminary Disclosure Statement form is to be filed with the clerk of the county of venue. R. 4:79-2(d). The thesis of Mr. Vort's article is that R. 4:79-2(a) contravenes state and federal statutory law. This reply will assert that although no violation of state or federal law has occurred, some reconsideration of the public filing of tax returns is warranted.

Consider Genesis of Idea

At the outset, it is important to consider the reasons why the Supreme Court adopted the Preliminary Disclosure Statement rule. The genesis of the Preliminary Disclosure Statement came from the Final Report of the Supreme Court Committee on Matrimonial Litigation: Thus, the Pashman Report observed, "Accurate, complete and current information is essential at every stage of a litigated matrimonial matter. The quality of every judicial decision depends heavily on the information presented by the Court. Thus, counsel's obligation and the obligation of the parties to cooperate and produce pertinent financial information should be no different at the commencement of the action than it is at other times prior to the actual trial."

Advantages Outlined

The report proceeded to discuss the specific advantages which would inure to the matrimonial justice system if a Preliminary Disclosure Statement rule were to be adopted:

> First, the preparation of a Disclosure Statement will prompt counsel to focus on 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.

Clearly, the attachment of tax returns was viewed as an important component of the overall rule.

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A Reply to Mr. Vort *(continued)*

Tax returns are among the most basic documents needed at "every stage of a litigated matrimonial matter." Clearly, tax returns accord "pertinent financial information." It will be recalled that in *Rothman v. Rothman,* the Supreme Court specifically referred to a review of tax returns as an essential component of discovery in matrimonial matters.[1] Indeed, in virtually all matrimonial causes, the issue of income plays a significant role either on the question of spousal and child support or on the issue of equitable distribution of property. Obviously, income information as revealed in tax returns plays a vital role in determining what constitutes "fit, reasonable and just"[2] alimony and child support. No less obvious is the relevance of income to a determination of equitable distribution. Specifically, it will be recalled that in *Painter v. Painter,* the Supreme Court expressly noted that "the probability of continuing present employment at present earnings or better in the future" as well as the "earning ability of the parties" constitute appropriate considerations in determining what constitutes an equitable distribution of property.[3]

Individuals Can Disclose

Mr. Vort would suggest that the mandatory filing of tax return contravenes Section 6103 of the Internal Revenue Code as well as N.J.S.A. 54:50-8(b). Mr. Vort's review of both statutes is erroneous. Neither of these statutes has any application to the mandatory disclosure of a tax return by a party to State Court litigation. On the contrary, both Section 6103 of the Internal Revenue Code as well as N.J.S.A. 54:50-8(b) restrict only disclosure or dissemination of tax return information by the Internal Revenue Service or any other governmental entity or employee who obtains that information through the respective federal and state tax agencies. Section 6103 generally provides that the tax returns and return information shall not be disclosed by any officer or employee of the United States, or any other individual who obtains this information by or through the Internal Revenue Service. This Section does not in any manner govern the disclosure by an individual of his own tax return.

Government Can't Disclose

Similarly, N.J.S.A. 54:50-8(a) only precludes disclosure by: (a) the State Tax Commissioner; (b) any employee of the state engaged in tax administration or charged with the custody of any such records or files; (c) any former officer or employee of the state; or (d) any other person who may have secured information therefrom. Again, this section does not apply to the disclosure of tax return information by an individual. What has evidently occurred is that Mr. Vort has confused to a certain degree the nature of the tax return and the treatment of that tax return by the government. Both the federal government and the state government treat the tax returns as confidential and privileged. Accordingly, both Section 6103 and N.J.S.A. 54:50-8 preclude disclosure by the government of tax returns or tax return information without specific authority. However, both New Jersey and federal law clearly establish that, although the government views these returns as confidential, there is no absolute privilege with regard to the returns. Thus, see *Mitsui and Co. v. Puerto Rico Water Resources*[4] where the United States District Court for the District of Puerto Rico discussed at length the applicable federal law. In that case, plaintiff's accountant had moved for a protective Order as a response to defendant's Motion to compel plaintiff to produce its tax returns. The Court observed:

> Tax returns and related documents do not enjoy an absolute privilege from discovery. (Citations omitted). . . However, due to the sensitive information contained therein and the public interest in encouraging the filing by taxpayers of complete and accurate returns, their production should not be routinely required. (Citations omitted.) And despite the fact that a showing of good cause for the production of a federal tax return is no longer required, (Citations omitted) . . ., Federal Courts have been cautious in ordering the disclosure of tax returns insisting, at the very least, that it reasonably appear that they are relevant and material to the matters at issue. In some cases, it has been held that production of a tax return should not be ordered unless there appears to be a compelling need for the information it contains such as is not otherwise readily obtainable. (Citations omitted)[5]

Similarly, in *Houlihan v. Anderson-Stokes, Inc.,* the United States District Court for the District of Columbia clarified the nature of the "privilege" associated with the federal statute.[6] As expressly noted in *Houlihan,* the statute restricts disclosure of tax returns only by the government. The Court in *Houlihan* rejected plaintiff's argument that the Tax Reform Act of 1976 reflected a "public policy" against disclosure of income tax returns:

> In support of their public policy plaintiffs rely heavily upon the Tax Reform Act of 1976, P.L. 94-455, which, plaintiffs contend, indicates a strengthening of the public policy against disclosure of income tax returns. The Court is not persuaded by this argument. First, the cited law only restricts the dissemination of tax returns by the government.[7]

The purpose behind the federal statute was also defined in *Kingsley v. Delaware, Lackawanna and Western R. Co.*[8] There Judge Bryan observed:

> The purpose of this statute is to prevent the disclosure of confidential information to those who do not have a legitimate interest in it. But once a person has made the amount of

A Reply to Mr. Vort *(continued)*

> his income an issue in litigation it becomes a legitimate subject of inquiry and he can no longer claim that the information contained in his returns is confidential. If the returns were in his own possession he could be compelled to produce them, and there is no good reason why he should not obtain copies from the government at defendant's expense or permit the defendant to do so.

It would thus appear that Judge Bryan seemed to indicate that once tax return information becomes a legitimate subject of inquiry, tax returns become discoverable and indeed production could be compelled from even the federal taxing authority.[9]

New Jersey case law is in accord with the above principles. See *Finnegan v. Coll,*[10] wherein the Court expressly held that copies of income tax returns are not privileged under New Jersey law. See also *DeGraff v. DeGraff.*[11]

No Law Violated

The conclusion that must be reached from the above is that no federal or state statutory law was violated by promulgating R. 4:79-2. Nonetheless, Mr. Vort may very well have hit upon an extremely important public policy problem. As has been noted by both federal and New Jersey Courts, there is a strong public policy against disclosure of tax returns, and both state and federal law impose significant limitations upon disclosure even where disclosure is appropriate.[12] No stronger advocate for this proposition can be found than Justice Pashman himself. In *Lepis v. Lepis,* Justice Pashman specifically noted as follows, "We recognize that individuals have a legitimate interest in the confidentiality of their income tax returns."[13]

Law Revision Appropriate

In the light of this public policy and the above case law, it may very well be appropriate to limit or prohibit public access to tax returns filed pursuant to R. 4:79-2.

In considering this question, it must be recognized that the primary reason for requiring incorporation of tax returns was that the parties to a matrimonial dispute, as well as the Court, would have immediately available at an early stage of the litigation the information that would appear within the return. There was a recognition of the fact that many parties procrastinated in furnishing tax return information, notwithstanding interrogatories which solicited this information. Clearly, the salutary purposes behind this portion of the Preliminary Disclosure Statement rule do not mandate public access to tax return information. Although it is essential that the tax returns be incorporated within the Preliminary Disclosure Statement itself, there is no good reason why the returns or indeed, necessarily, the Preliminary Disclosure Statement itself should be available for public scrutiny. Instead, the documents should be available solely to the Court and to the litigants but should not be available for public view.

Solutions Outlined

There are several ways that this broad outline could be accomplished. First, the P.D.S. form could be filed with the County Clerk's office, but those files could be sealed. Following litigation and after the expiration of the requisite appeal period, the forms could either be destroyed or returned to counsel. In this regard, the forms could either be automatically returned to counsel or upon specific request.

Second, the forms could be submitted to the matrimonial judge sitting in a given vicinage and the judge could retain the P.D.S. form. This procedure has certain inherent problems. Specifically, many of our matrimonial judges simply do not have the file facilities to maintain any files other than those immediately in use. It should be noted, however, that at the present time, in sensitive cases some matrimonial judges are retaining the P.D.S. form or the tax returns alone in their private file cabinets rather than having the documents stored by the County Clerk.

Third, a directive could issue that, upon application of a party a protective Order would be entered sealing the P.D.S. form filed in a given matter. This proposal would suggest that there would not be an automatic sealing of a given file but instead a file would be sealed only upon request.

Fourth, the tax returns could be segregated from the rest of the Preliminary Disclosure form. The remainder of the form would be subject to public scrutiny. This proposal is not favored simply because it probably would not work. The problem is that if the County Clerk's office is forced to maintain separate files for tax returns and the remainder of the Disclosure form, there is a double chance of the forms being lost. The system in practice would probably be too cumbersome.

A Post-Judgment Device?

The tax return problem has already stimulated controversy. Mr. Vort's concern has been voiced by many. In reply, some matrimonial judges have insisted that public filing of the tax returns is essential for post-judgment consideration. It is suggested, however, that that position also lacks merit. It is not necessary to have a tax return on file to assure post-judgment fairness or even to assure that a "base point" is available to a reviewing judge in determining whether the modification of a spousal or child support Order is warranted. Addressing the *Lepis* concerns, it is believed that the thoughtful attorney and litigant will retain past filed Preliminary Disclosure forms for further consideration. Thus, if and when the matter comes back to Court, the parties will have available the forms in their files. At such point as a matter is

A Reply to Mr. Vort *(continued)*

brought back to court on a post-judgment application, a requirement could be made that the P.D.S. filed in connection with the previous proceedings should be included as a part of the post-judgment application.

It must be recognized, however, that upon post-judgment application a reviewing court will consider as essential primarily those facts which deal with income. Thus, a trial judge will first and foremost look to income levels at the time of the original judgment, as contrasted to income levels at the time of the post-judgment application. A rule could be adopted requiring the incorporation of base point income information within all judgments of divorce. Thus, judgments could follow a form comparable to that proposed for pendente lite Orders within the preamble portion of the proposed pendente lite Order contained in Appendix G of the Pashman Report. That proposed Order requires that a trial court enter specific findings with regard to income levels. Were this to be required on a mandatory level, the necessity of relying on P.D.S. forms in post-judgment applications will be sharply reduced.

Clearly, the P.D.S. form was not intended as a post-judgment device; instead, its utilization was intended to focus primarily upon pre-judgment phases of litigation.

Summary

In summary, Mr. Vort is to be commended for having focused upon a highly significant controversy. This column, although challenging Mr. Vort's basic premise that requiring tax returns to be filed as a portion of the P.D.S. violates state and federal law, does agree that our state's tradition of regarding tax returns as sensitive should be continued. The suggestions contained herein accord what is believed to be an imaginative approach in addressing not only Mr. Vort's public policy concern, but also preservation of the integrity of what has already become a valuable tool in the process of the administration of matrimonial justice—the requirement of a comprehensive preliminary disclosure.

Footnotes

1. 65 N.J. 219,233 (1974)
2. See N.J.S.A. 2A:34-23
3. *Painter v. Painter*, 65 N.J. 196 (1974)
4. 79 F.R.D. 72 (D.P.R. 1978)
5. Id. at 80-81
6. 78 F.R.D. 232 (D.D.C. 1978)
7. Id. at 233-234
8. 20 F.R.D. 156 (S.D.N.Y. 1957)
9. *Accord: Star v. Rogalny*, 22 F.R.D. 256 (E.D.Ill.)
10. 59 N.J. Super 353 (Law Div. 1960)
11. 163 N.J. Super 578 (App. Div. 1978)
12. See e.g. *Ullmann v. Hartford Fire Ins. Co.*, 87 N.J. Super 409, 415-416 (App. Div. 1965); *DeGraff v. DeGraff*, supra at 582; *Mitsui & Co.*, supra at 80-81; Annot. *"Discovery and Inspection of Income Tax Returns in Actions Between Private Individuals,"* 70 A.L.R. 2d. 240 (1960).
13. 83 N.J. 139, 157 (1980)

Valuation of a Homemaker's Services

by Alan M. Grosman and Kathleen H. Casey

Valuation of a homemaker's services is perhaps the most important and at the same time the least understood among the criteria that courts must consider in arriving at an equitable distribution of marital property upon divorce.[1] By ascribing a value to these services, courts have been able to reach the conclusion that the wife has contributed to the acquisition of martial property and thus will transfer to her, as an incident of divorce, that portion which represents her contribution.

There is no readily ascertainable formula for calculating the monetary value of these services, for they are fundamentally non-monetary. While courts emphasize "resonableness and fairness" in their decisions, the presence of certain factors appears to weigh heavily in favor of the homemaker. These will be discussed hereinafter.

Early Common Law

Recognition of the economic value of a homemaker's services represents a radical development in the divorce law of common law title jurisdictions. From the eleventh century to the mid-nineteenth century married women had virtually no economic rights in England or in the United States. Under the hallowed doctrine that a husband and wife were one (and that he was that one), virtually all of the pre-martial and marital property came under the complete dominion and control of the husband.[2] The corollary of the husband's right to control marital assets was his duty to support his wife. In return for this support, the wife had the obligation to make a home for the husband and to render household services. This duty on the part of the husband to support the wife was conditioned upon the performance by the wife of her duty to live with him and to make a home for him.[3]

Although these obligations were reciprocal, the wife alone was able to compel performance. The common law states provided no legal remedy for the husband whose wife refused to render homemaker's services.[4] Similarly, the common law provided no economic remedy except alimony for wives. This remedy was a continuation of the historic common law duty of the husband to provide support.

Married Women's Property Acts

Dissatisfaction with the traditional common law economic disabilities of married women led, by the end of the nineteenth century, to the adoption in every state of a Married Women's Property Act.[5]

The New Jersey Supreme Court recently commented upon the significance of that state's Married Women's Property Act, which took effect in 1874, as follows:

> It also provided for the first time that the wages and earnings of a married woman acquired in any employment "which she carries on separately from her husband" were her sole and separate property. This abrogated the common law rule that a husband was entitled to his wife's earnings. The act further provided that a married woman could sue and be sued in her own name, without joining her husband, thereby repealing [earlier laws], which had required joinder. A married woman was also given the right to contract in her own name apart from her husband. The Married Women's Property Act thus accomplished sweeping reforms on behalf of married women.[6]

However, the enactment of the Married Women's Property Acts did not alter the wife's obligation to perform household services and, further, prevented her from receiving any compensation for them.[7] As Marshall J. Auerbach, one of the authors of the 1977 Illinois Marriage and Dissolution of Marriage Act, observed:

> The Married Women's Property Act of 1874 maintained that "neither husband nor wife shall be entitled to recover any compensation for any labor performed or services rendered for the other, whether in the management of property or otherwise." Illinois case law consistently held that a wife was not entitled to any credit for her domestic services as a basis for claiming special equities in her husband's property.[8]

Because this obligation was a duty imposed by law, any contract entered into by husband and wife regarding her services was considered void for failure of consideration. Women did not silently acquiesce to this arrangement. Over sixty years ago one woman commented that:

> The assumption that women, however hard they work in a household . . . do not support themselves but are supported by their husbands . . . that they earn nothing and own nothing . . . that assumption on which all of our property laws are based, is so abominable that I cannot find words to express my opinion of it.[9]

In 1963 the President's Commission on the Status of Women published a report suggesting that marriage be viewed as a partnership, wherein

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Valuation of Homemaker's Services *(continued)*

each spouse makes a different but equally important contribution, and proposed that the wife's contribution as a homemaker and mother should constitute a financial contribution to the marriage.[10]

This position was incorporated in the Uniform Marriage and Divorce Act of 1970, which gave full recognition to the concept, new to common law jurisdictions, of marriage as a partnership of coequals.[11] The former obligation of the wife to furnish household services in exchange for support now has been fashioned into a powerful economic tool. It enables her, upon divorce, and in some states upon legal separation or annulment, to acquire a share of property, title to which may be solely in the name of the husband. Although the Uniform Marriage and Divorce Act has been adopted only in Arizona, Colorado, Illinois, Kentucky, Maine and Montana, it has had a great impact nationwide.

The concept that a homemaker's services have value is designed to permit the court on dissolution to provide the wife with sufficient assets to make her economically independent of her husband and to reduce or eliminate the traditional dependence of the woman upon alimony.

Courts have fashioned a number of theories to support this result. Among these are: (1) dissolution of partnership; (2) breach of contract; and (3) compensation for lost opportunity.

Marriage as a Partnership

This approach is most clearly reflected in the leading 1970 Wisconsin case of *Lacey v. Lacey,*[12] where the court held that, "Whatever is earned or gained by one marital partner during the existence of the marital partnership must accrue to the benefit of both marital partners." The Wisconsin equitable distribution law was amended in 1977 to reflect this judicial approach. There is now a statutory presumption in Wisconsin that there should be an equal division of marital property on divorce.[13]

The partnership approach reflects concepts familiar to community property jurisdictions.[14] William A. Reppy, Jr., a leading community property scholar, has described the fundamental nature of the community property system in these terms:

> The crux of the community property system—and what makes it different from the common law marital property system used in most American states—is shared ownership by husband and wife of acquisitions earned by either or both during the marriage. . . . Community property thus extends the notion of marriage as a partnership to property rights of the spouses.[15]

While it is true that in common law equitable distribution jurisdictions title governs in an ongoing marriage, and there is no such thing as marital property, the community property concept of marriage as a partnership becomes operative on divorce. It is then that marital property becomes an important factor and the valuation of a homemaker's services becomes a crucial issue.

Compensation for Breach of Implied Contract

Another method of valuing a homemaker's services on divorce is in terms of compensation for breach of implied contract. This approach takes into account the traditional expectation and reliance of brides that, upon marriage, they will be financially secure without having to work outside the home. This reasoning is predicated upon the assumption that had the wife not relied upon the implied promise of support by the husband, she would have prepared herself to be economically independent. This approach is reflected in *Matter of Marriage of Grove,*[16] where the Oregon court stated:

> We will not ignore the fact that, at least until recent years, young women entering marriage were led to believe—if not expressly by their husbands to be, certainly implicitly by the entire culture in which they had come to maturity—that they need not develop any special skills or abilities beyond those necessary to homemaking and child care because their husbands if they married would provide their financial support and security.

Compensation for Lost Opportunity

A third principal method for valuing a homemaker's services is that of taking into account the circumstance that for many women the performance of their homemaker's duties as wife and mother is often at the expense of their developing skills and abilities necessary to get a job and requires them to forego employment opportunities that would otherwise make them self-supporting.[17] In addition, the decision by a woman to be a full-time homemaker prevents her from advancing in a career that she might have entered at the time she became a homemaker.

Factors Influencing Courts

The above-mentioned theories have been applied by courts without so labeling them to buttress their decisions awarding equitable distribution of property to homemakers. The courts often mention the presence of certain factors which influence their estimation of the value of a particular homemaker's services. Almost uniformly, courts refuse to ascribe a monetary value to the services rendered by a homemaker during the marriage, relating them instead to such factors as: age of the parties, length of the marriage, disparity in earning capacity, lack of education of the homemaker in relation to the breadwinner, sacrifices of the homemaker, health of the parties, and, to a limited degree, the presence or absence of children during the marriage. Case analysis indicates that the quality and quantity of a home-

Valuation of Homemaker's Services *(continued)*

maker's services appear to be of less importance than her age, the length of the marriage, the presence of children and the husband's behavior. Unquestionably, the single most important criterion affecting the weight given to the homemaker's contribution is the length of the marriage. A lengthy marriage implies some balance of contribution between the parties.[18] Of course, the wife in the older marriage has a more difficult, if not impossible, employment problem.[19]

When a court relies on the proposition that the primary purpose of a property division is to provide for the future support of an economically dependent spouse, rather than distributing property in which she has a vested interest, the opinion will emphasize the disparity in age, health and earning capacity between the husband and wife. Such decisions often refer to the wife as being without essential employment skills,[20] lacking aptitude to even balance a checkbook,[21] having no training,[22] and possessing limited capabilities as a breadwinner.[23] These limitations are attributed to the wife's spending all of her married life caring for her husband and children.

At times, if the wife is employed in a low income job, as a nurse's aide, for example, and the husband, often a doctor or lawyer, has a thriving practice, the court will emphasize the wife's limited opportunity for advancement in her job and her lack of opportunity to acquire capital.[24] This tack was taken by the Wisconsin Supreme Court in *Johnson v. Johnson,*[25] in which the court stated, "It is unacceptable to treat all women upon divorce as per se self-sufficient breadwinners in an open full-time employment job market."

It seems clear from the decisional law in the equitable distribution jurisdictions that have commented upon the value of a homemaker's services that these services are not considered as an isolated factor in determining the award, but rather are considered in conjunctin with other nonmonetary aspects of the marriage. Recently, the Illinois Supreme Court considered valuation of a homemaker's services in *In re Marriage of Aschwanden,*[26] stating:

> We note that the Act expressly directs the court to consider the contributions of a spouse as homemaker or to the family. The evidence reveals that, although at times the couple employed domestic help, defendant [wife] contributed substantial services as a homemaker over the long duration of the couple's marriage. Moreover, she also helped to entertain ADM executives and customers. As noted by the appellate court, the marital property awarded to defendant represents only about 22% of the couple's net worth. Plaintiff's occupation and his long-standing employment with ADM afford him both a very high and steady income and the prospect of continuing high income in the future . . . *While we perceive some difficulties in assessing the value to be placed on the different forms of contribution, we caution against placing too much emphasis on monetary contributions over nonmonetary contributions.* (Emphasis added)

It has been suggested that attorneys should prepare proofs similar to those employed in wrongful death cases in order to prove the value of a homemaker's services for purposes of equitable distribution. This method purports to enable one to place a dollar value upon homemaker's services. This method has also been described as the replacement cost approach.[27] Some of the limitations of this approach are readily apparent when a given replacement cost for the wife's homemaker services turns out, at one extreme, to be double the amount of her husband's income, and, at the other extreme, to amount to less than 20 percent of a husband's income.

A review of the appellate decisions in the 38 equitable distribution jurisdictions fails to establish that such proofs play a role in the courts' adjudications. This is because the replacement cost approach confuses monetary with nonmonetary contributions to the marriage. The Iowa Supreme Court, in *In re Briggs,*[28] held that the law did not contemplate a division of property predicated upon a price-per-hour basis. Similarly, in *Scherzer v. Scherzer,*[29] the New Jersey Appellate Division stated, "The theory is that a homemaker's contribution cannot be given a monetary worth and its value may be gleaned from the earnings of the employed spouse."

Since the value that can be ascribed to a homemaker's services is often limited by and dependent upon the earnings and acquisitions of the employed spouse, there is wide latitude to the discretion of the court. An effective way to limit this discretion is to obtain from the homemaker a detailed and descriptive statement of the nature and extent of her services during the marriage, so that this evidence can then be fully and convincingly presented to the court in testimony by the wife and other knowledgeable witnesses and through such other demonstrative evidence as may be available.

Wives Employed Outside the Home

The wife employed outside the home contributes not only her income, but also her domestic labor to the marriage. Studies of such women conclude that the "working wife" receives little assistance with household chores from either husband or children.[30] Courts, however, often ignore this dual contribution, as evidenced by the decision of an Indiana appellate court that a working wife was entitled to no more than 50 percent of the marital property. It held that the homemaker contribution provisions applied only to a wife who does not work outside the home.[31] Such reluctance to fully value the contribution of a

Valuation of Homemaker's Services *(continued)*

working wife is further evidenced by the Wisconsin Supreme Court's comment that "The contribution of a full-time homemaker-housewife to the marriage may well be greater or at least as great as those of the wife required by circumstance or electing by preference to seek and secure outside employment."[32]

Missouri courts, however, have recognized that an employed wife who does all of the housework may be entitled to more than half of the marital assets.[33] In addition, the husband's financial misconduct may enlarge the share of a working wife.[34]

The Role of Fault

Fault, either marital or economic, assumes an important role in those states, like Missouri and Alabama, in which the statutes specify that the conduct of the parties may be considered when dividing marital property.[35] The recently enacted New York equitable distribution law, in its enumeration of factors for the court to take into consideration with regard to equitable distribution, lists "any other factor which the court shall expressly find to be just and proper."[36] Raymond J. Pauley, chairman of the Family Law Section of the New York State Bar Association, has expressed the view that the New York courts may therefore take fault into consideration with regard to equitable distribution.[37]

New Jersey, which does not permit fault to be a factor with regard to equitable distribution, has considered the question of the nagging wife, as this bears upon the valuation of a homemaker's services. The court stated:

> Even if it should be determined that [the wife] was responsible in considerable part for the antagonistic marriage relationship, that factor alone should not bar her from sharing in the marital assets. Even a sparring partner can be said to contribute in some measure to the success of an adversary."[38]

Wife's Sacrifices

A wife's sacrifices during the marriage will frequently influence the court's award. In response to a Montana husband's assertion that his wife contributed very little labor to improvement of their home, the court found, "Mere living on property where substantial improvements were being made required considerable sacrifice of personal comfort.[39]

Other sacrifices by homemakers which courts have considered as contributions to the marriage include: moving to be near the husband and changing or giving up her job;[40] abandoning her education;[41] forfeiting an interest in a business;[42] foregoing an opportunity to work;[43] and, last but not least, performing domestic chores for in-laws.[44]

A wife's frugality was rewarded by the Nebraska Supreme Court in a case in which, while she was employed part-time as a nurse, her lawyer husband accumulated close to $500,000 in his name. The court concluded that the contributions of the wife, who also was the mother of two children and a full-time homemaker for eleven years, were significant. The court found that these contributions "are not minimized simply because her efforts were not directly involved with the acquisition of property. She contributed income and cooperated to live frugally so that funds could be invested."[45]

Children

Generally, the presence or absence of children does not appear to greatly affect the weight given to homemaker services.[46] A desire not to have children may be an "insubstantial" factor in determining an award.[47] However, the physical or mental disability of a child, which makes the mother's job "more onerous than usual," will influence the award.[48] Also, the presence of children from a prior marriage can affect the award.[49] The support a husband provides for the wife's children of a prior marriage, however, may be offset in determining her award.[50]

If, in addition to contributing to the family income and performing domestic chores, a woman cares for the husband's children of a prior marriage, the wife may recover more than 50 percent of the marital property.[51]

Ill Health

Ill health of a wife is a factor that may or may not reduce the value of her services, depending upon the circumstances. In *Marriage of Hebel,*[52] where the wife had a heart condition that the husband knew of prior to their 18-month marriage, which precluded strenuous activity and limited her employability and earning capacity, the Montana Supreme Court included in her award a sum representing the value of her homemaker's services and an additional award representing the disparity in health, age and earning capacity between her and her spouse. Because the wife established that the husband was aware of her physical limitations prior to the marriage, the court did not reduce the award on that account.

The Oregon Court of Appeals, however, awarded a wife no property by way of equitable distribution, where she had been repeatedly hospitalized for mental disorders during a nine-year marriage and where her longshoreman husband had assumed the care of his son by a prior marriage, the house and his wife.[53]

McCall v. McCall[54] involved a 21-year marriage in which the wife performed homemaker services though 68 years of age and in ill health. The Missouri court awarded 45 percent of the assets subject to equitable distribution.

In *Haberstoh v. Haberstoh*[55] the North Dakota Supreme Court awarded a wife with a history of alcoholism and schizophrenia only $12,000 of

marital assets totalling $450,000, despite the fact that she had borne five children and proven that her husband had beaten her some thirty times during the course of their 15-year marriage. The dissent sharply criticized this decision, stating that the majority had improperly penalized the wife because of her drinking problems.

The House-Husband

There are few reported cases regarding awards to men who claim to be homemakers, although more can be anticipated as a result of shifting roles in contemporary marriages. The Wisconsin Supreme Court awarded a husband a share of the house his wife had purchased from her separate funds, based on his claim that for 13 years of their 18-year marriage, he had performed most of the household chores.[56]

Wife's Contribution to Husband's Education

Courts have generally refused to permit the wife a share of her husband's future professional earnings by way of equitable distribution, when she has worked to put him through school.[57] However, some courts have held to the contrary.[58] Courts have especially agonized over situations in which no marital property existed to recompense such contributions, but no satisfactory, generally accepted rule has yet emerged. Generally, the wife's contribution to her husband's education has been recognized as yet another factor which increases the value of her homemaker's services. Similarly, uncompensated work in a family business will often be recognized as a homemaker's contribution, as distinguished from a contribution to the value of the business. This is especially true for work done on a farm or a ranch.[59]

Conclusion

The concept of valuing a homemaker's services must be understood within the framework of the developing law of equitable distribution of property upon divorce. The common law has moved from inequality to equality with regard to the rights of married women during marriage and upon divorce. The marriage that is being dissolved is viewed as a partnership of co-equals. The concept of valuaton of a homemaker's services enables the courts to provide homemakers with a just share of the marital assets. This philosophy was eloquently expressed in the New Jersey decision of *Gibbons v. Gibbons,*[60] as follows:

> As we understand the concept of equitable distribution, it is a corollary of the principal concept that marriage is a joint enterprise whose vitality, success and endurance is dependent upon the conjunction of multiple components, only one of which is financial. The nonremunerated efforts of raising children, making a home, performing a myriad of personal services and providing physical and emotional support are, among other non-economic ingredients of the marital relationship, at least as essential to its nature and maintenance as are the economic factors, and their worth is consequently entitled to substantial recognition.

In most equitable distribution states, where there is no statutory presumption as to what property division is equitable, the attorney representing the wife faces the problem of how to convince the court that his client is entitled to a substantial share of the marital assets. There is no mathematical formula to resolve this problem. Rather, the approach that should be taken is to learn in detail the marital history and the wife's specific contributions to the marriage as a homemaker. The factors listed in this article are the ones that courts have most often referred to in deciding what a homemaker's contribution is worth. These factors should be exhaustively explored by way of pre-trial preparation. Often relatives and friends, as well as the wife, may have much to contribute in this regard.

Footnotes

1. The states that by statute or case law development specifically include the value of a homemaker's services as a factor in equitable distribution are: Arkansas, Colorado, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island and Wisconsin. *See* Grosman, *Identification and Valuation of Assets Subject to Equitable Distribution,* 56 N.D.L.Rev. 210 (1980).
2. Blackstone, COMMENTARIES, Vol. 2, 433 (Chitty ed. 1826).
3. Coleman v. Burr, 93 N.Y. 17 (1883); Sturm v. Sturm, 141 N.Y. Supp. 61 (1913); Brown, *The Duty of the Husband to Support the Wife,* 18 Va. L.Rev. 823 (1932); Havighurst, *Services in the Home,* 41 Yale L.J. 386 (1932).
4. 41 Am. Jr. 2d § 339.
5. Cantwell, *Man* + Woman + Property = ?, The Probate Lawyer (Summer 1980), 24-25.
6. Romeo v. Romeo, 84 N.J. 289, 295 (1980).
7. Hardy v. Hardy, 235 F. Supp. 208 (D.D.C. 1964); Clark, LAW OF DOMESTIC RELATIONS, West Publishing Co., St. Paul (1968), Ch. 6.
8. Auerbach, *An Introduction to the New Illinois Marriage and Dissolution of Marriage Act,* 66 Ill. Bar. J. 132, 136 (1979).
9. National Commission on the Observance of International Women's Year, LEGAL STATUS OF HOMEMAKERS, U.S. Govt. Printing Office, Washington (1977), 1.
10. Presidential Commission on the Status of Women, AMERICAN WOMEN, U.S. Department of Labor, Washington (1963), 47. Mr. Justice Douglas, in a dissenting opinion in *Fernandez v. Weimer,* 66 S. Ct. 178, 190 (1945), noted: "Much may be said for the community property theory that the accumulations of property during marriage are as much the product of the activities of the wife as those of the titular breadwinner." *See also* Sayre, *A Reconsideration of a Husband's Duty to Support and a*

Valuation of Homemaker's Services *(continued)*

Wife's Duty to Render Services, 29 Va. L. Rev. 857 (1943).

11. *See* 9A U.L.A., Commissioner's Prefatory Note, 93. *See also Economic Effects of Divorce,* 7 Fam. Law Quarterly 275 *et seq.* (1973).
12. 173 N.W.2d 142 (Wis. 1970). *See also* Rothman v. Rothman, 320 A.2d 495, 496 (N.J. 1974).
13. W.S.A. §767.255. *See also* Ark. Stat. Ann. §34-1214 (1979 Cum. Supp.) In 1979 Arkansas amended its divorce law to provide, like Wisconsin, that equitable distribution was to be based upon a presumption of an equal division. Under both statutes if the court finds that the presumption should not be applied, then the value of a homemaker's services is a factor to be considered. *See* Ford v. Ford, 605 S.W. 2d 756, 759(Ark. 1980).
14. *See* De Funiak and Vaughn, PRINCIPLES OF COMMUNITY PROPERTY, 2d ed., Univ. Of Arizona Press, Tucson (1971).
15. Reppy, COMMUNITY PROPERTY IN CALIFORNIA, Michie, Bobbs-Merrill, Inc. (1980), 1.
16. 571 P.2d 477 (Ore. 1977).
17. Marriage of Browning, 559 P.2d 1314 (Ore. 1977).
18. Posey v. Posey, 597 S.W.2d 834 (Ark. 1980); Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980); Herron v. Herron, 573 S.W.2d 342 (Ky. 1978); Marriage of Jacobson, 600 P.2d 1183 (Mont. 1979); Forsythe v. Forsythe, 558 S.W.2d 675 (Mo. 1977); Marriage of Cornell, 500 S.W.2d 823 (Mo. 1977); Marriage of Strelow, 581 S.W.2d 426 (Mo. 1979); Marriage of Badalamente, 566 S.W.2d 229 (Mo. 1978).
19. May v. May, 596 P.2d 536 (Okla. 1979); Matter of Monoghan, 609 P.2d 822 (Ore. 1980).
20. Forsythe v. Forsythe, fn. 18 *supra.*
21. Marriage of Cornell, fn. 18, *supra.*
22. Matter of Monoghan, fn. 19, *supra.*
23. Libunao v. Libunao, 388 N.E.2d 574 (Ind. 1979).
24. Marriage of Carmoch, 550 S.W.2d 815 (Mo. 1977); Schuppe v. Schuppe, 387 N.E.2d 346 (Ill. 1978).
25. 254 N.W.2d 198 (Wis. 1977).
26. 411 N.E.2d 238, 241-242 (Ill. 1980).
27. *See* Bruch, *Property Rights of De Facto Spouses Including Thoughts on the Value of Homemaker's Services,* 10 Fam. Law Quarterly 101 (1976), reprinted in 3 Comm. Prop. J. 211 (Fall 1976); Hauserman and Fethke, *Valuation of a Homemaker's Services,* 22 Trial Lawyers Guide 249 (1978); Lombard, 2A MASS. PRACTICE (1979 Pocket Part), 256; Minton, *Use of Experts in Matrimonial Cases,* 2 Ill. FAMILY LAW, Ill. Institute for Continuing Legal Education, Ch. 19; Minton, *Valuing the Homemaker's Services,* WORKSHOP MATERIALS FOR PROVING THE VALUE OF THE HOMEMAKER'S CONTRIBUTION FOR PURPOSES OF EQUITABLE DISTRIBUTION AND ALIMONY, N.J. Institute for Continuing Legal Education, Newark (1980), 161; Kiker, *Evaluating Household Services,* 16 TRIAL No. 2 (February 1980), p. 34; Kiker, *Divorce Litigation; Valuing the Spouses' Contributions to the Marriage,* 16 TRIAL No. 12 (December 1980), p. 48.
28. 225 N.W.2d 911 (Ia. 1975).
29. 346 A.2d 434 (NJ 1975).
30. Gauger and Walker, THE DOLLAR VALUE OF HOUSEHOLD WORK, Cornell University, Ithaca (1980). This study found that working wives do three times more housework than working husbands.
31. Patus v. Patus, 372 N.E.2d 493 (Ind. 1978).
32. Lacey v. Lacey, *supra,* fn. 12.
33. Marriage of Kueber, 599 S.W.2d 259 (Mo. 1980); Daus v. Daus, 595 S.W.2d 19 (Mo. 1979).
34. Marriage of Strelow, *supra,* fn. 18.
35. *See* Foreman v. Foreman, 379 So.2d 89 (Ala. 1980); Robinson v. Robinson, 381 So.2d So.2d 637 (Ala. 1980); Marriage of Stallings, 393 N.E.2d 1065 (Ill. 1979); Schultz v. Schultz, 613 P.2d 403 (Mont. 1980), Arp v. Arp, 572 S.W.2d 232 (Mo. 1978); Doyle v. Doyle, 577 S.W.2d 64 (Mo. 1977); and Hegge v. Hegge, 236 N.W.2d 910 (N.D. 1975).
36. D.R.L. §236(B)(5)(d)(10).
37. Pauley, *A First Look at the Modern Day Robin Hood (a/k/a A Gallop Through Sherwood Forest),* EQUITABLE DISTRIBUTION UNDER THE NEW LAW IN NEW YORK STATE, Panel Publishers, Greenvale (1980), 33, 55.
38. Scherzer v. Scherzer, 346 A.2d 434 (NJ 1975).
39. Schultz v. Schultz, 613 P.2d 403 (Mont. 1980).
40. Marriage of Hebel, 578 P.2d 305 (Mont. 1978); Arp v. Arp, *supra,* fn. 35.
41. Schuppe v. Schuppe, *supra,* fn. 24; Smith v. Smith, 561 S.W.2d 714 (Mo. 1978).
42. Johnson v. Johnson, *supra,* fn. 25.
43. Marriage of Browning, *supra,* fn. 17; Palmer v. Palmer, 416 A.2d 143 (Vt. 1980).
44. Marriage of Brown, 587 P.2d 361 (Mont. 1978).
45. Weber v. Weber, 265 N.W.2d 436 (Neb. 1978). The court's substantial award to the wife may have been influenced by the conduct of her lawyer-husband, who prepared and prevailed upon her to sign without independent counsel an unconscionable separation agreement prior to obtaining a Dominican divorce, which was also held to be invalid.
46. Johnson v. Johnson, 389 N.E.2d 719 (Ind. 1979); Libunao v. Libunao, *supra,* fn. 23; Kruse v. Kruse, 586 P.2d 294 (Mont. 1978).
47. Doyle v. Doyle, *supra,* fn. 35.
48. Herron v. Herron, *supra,* fn. 18; Marriage of Jacobson, *supra,* fn. 18; Smith v. Smith, *supra,* fn. 41; and Johnson v. Johnson, *supra,* fn. 25; and Marriage of Jorgensen, 500 P.2d 606 (Mont. 1979).
49. Dreflach v. Dreflach, 393 N.E.2d 777 (Ind. 1979); Brice v. Brice, 411 A.2d 340 (D.C. 1980).
50. Brice v. Brice, *supra,* fn. 49.
51. Marriage of Stallings, *supra,* fn. 35.
52. *Supra,* fn. 40.
53. Millstein v. Millstein, 598 P.2d 1268 (Ore. 1979).
54. 574 S.W.2d 496 (Mo. 1978).
55. 258 N.W.2d 669 (N.D. 1977).
56. Wilberscheid v. Wilberscheid, 252 N.W.2d 76 (Wis. 1977).
57. In re Marriage of Graham, 574 P.2d 75 (Colo. 1978).
58. In re Marriage of Horstmann, 263 N.E.2d 885 (Ia. 1978); Inman v. Inman, 578 S.W.2d 266 (Ky. 1979); Mahoney v. Mahoney, 175 N.J. Super. 443, 419 A.2d 1149 (NJ 1980).
59. Cromwell v. Cromwell, 570 P.2d 1129 (Mont. 1977); Marriage of Cornell, *supra,* fn. 18.
60. 174 N.J. Super. 107, 112, (App. Div. 1980), reversed on other grounds, 86 N.J. 515 (1981).

Highlights of AAML Annual Meeting

by John S. Eory

I recently had the pleasure of attending the American Academy of Matrimonial Lawyers' Annual Meeting in Chicago, which took place on November 6 and 7, 1981. The annual session on November 6 and the six workshops which occurred the following day were held in most comfortable accommodations at the Continental Plaza Hotel in the heart of Chicago. Approximately 150 persons from at least a dozen states or more attended the annual meeting. The following other members of the New Jersey Chapter of the Academy were present: James Ruscick, from Fort Lee (president of the New Jersey Chapter), Alan Grosman from Short Hills, (president-elect), Edward Snyder from Union and Joseph Weinberg from Haddonfield.

Permanent Charter

Of particular significance to New Jersey fellows, our chapter, which heretofore had been designated as a provisional chapter, was presented with a permanent charter on November 6, 1981.

March Program

Other matters of importance were the election of Owen L. Doss of Chicago as president and Edward Schaeffer of New York City as new president-elect of the Academy, and announcement of the Academy's upcoming Institute of Matrimonial Law, which will consist of a week-long program beginning on March 12, 1982 in Houston, Texas. Further details regarding the Institute's program will be announced by the Academy in the weeks ahead.

Dinner-Dance

Following the meetings on Friday, the Illinois Chapter held its annual dinner-dance at the ballroom of the Ritz-Carlton Hotel. This "black tie" affair was a great success and might well be the sort of social function the New Jersey Chapter should consider in the coming months.

Timely workshops

The following day consisted of three morning and three afternoon workshops on a variety of meaningful and timely topics. The program, which was chaired by James M. Forkins, past president of the Academy, was uniformly excellent in format, quality of speakers and the lively discussion which characterized each session.

Some highlights of the workshop program consisted of a spirited exchange of ideas with regard to tax consequences and planning in the tax workshop chaired by John F. Nichols of Houston, including an open discussion with regard to the ever present *Davis* "problem" as well as the potential applicability and extension of the *Collins* and *Imel* cases to New Jersey and other common law jurisdictions.

Another morning workshop, entitled "Negotiating and Drafting of Settlement Agreements," was headed by Allen Koritzinsky from Madison, Wisconsin. Your attention is invited to an extremely informative book by Mr. Koritzinsky entitled *Marital and Non-marital Agreements Handbook* which contains prototype clauses, law annotations and strategy comments in a practical "how to do it" format. The cost of the book (in three-ring binder) is $45.00 plus shipping and is available from ATS-CLE, 402 West Wilson Street, P.O. Box 715A, Madison, Wisconsin 53707.

The third morning workshop, entitled "Trial Practice and Evidence Including Discovery," was headed by Albert Momjian of Philadelphia. Mr. Momjian indicated the importance of "discovering" your own client and your opponent as well as emphasizing the need for thorough expert discovery and the importance of preparing your client for trial. The workshop concluded with an examination of ways to avoid pretrial malpractice and ethical considerations involving dishonest clients, surveillance techniques and conflicts of interest.

The noon luncheon provided the setting for Joseph N. DuCanto from Chicago who discussed recent tax law changes and developments of importance to all matrimonial lawyers.

The afternoon of November 7 was occupied by three excellent and varied workshops. These were a discussion of child custody and the UCCJA headed by Sanford Dranoff of Pearl River, New York and James T. Friedman, of Chicago; a seminar on law office management and the marketing of legal services, chaired by Stewart B. Walzer of Los Angeles and a multi-faceted program headed by Alan Grosman and Elaine Rudnick Sheps of New York City concerning equitable distribution and property valuation.

Alan Grosman's workshop was uniformly excellent and consisted of six finely tuned presentations by Arthur Balbirer from Westport, Connecticut, who discussed and analyzed cross-examination of expert witnesses, Mirian M. Robinson, of New York City, who spoke on the valuation of closely held businesses; Michael B. Atkins of Garden City, New York, whose topic was "Is Equitable Distribution Equitable?"; Paul Ivan Birzon from Buffalo, who outlined the numerous issues and problems inherent in the valuation of professional practices and corporations; Stanley F. Kaplan from Chicago, who discussed equitable distribution criteria; and Mr. Grosman, who concluded the program with a discussion concerning the division of spousal interests in business en-

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Highlights of AAML Annual Meeting *(continued)*

terprises and professional practices, including a number of suggestions concerning protections that can be provided to the non-owner spouse and various "contingency considerations" which deserve careful attention and advance planning in such circumstances.

President's Dinner

The concluding social event of the meeting was the annual President's Dinner, which was held at the Art Institute of Chicago. Following a reception and cocktails, Academy members and their guests were treated to a private tour of the Institute's collection of paintings by Edward Hopper. The tour was followed by a full-course dinner at the Art Institute and the evening concluded with closing comments by Owen Doss and outgoing president Harry Fain of Beverly Hills.

Based on my own observations and discussions with other Academy fellows from New Jersey and other states, the consensus appears that the Chicago meeting was a notable educational and social success. I urge all New Jersey fellows to mark their calendars for the Academy's Institute of Matrimonial Law program next March in Houston.