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Ethics Issue

Chairman's Column

An Example of the Family Law Section's Excellence—Focus on the Family Committee

by Frank A. Louis



One of the more positive accomplishments this year has been the Section's ability to take the initiative in developing concepts as opposed to simply reacting, frequently in haste, to initiatives advanced by others. We have taken the lead in numerous areas suggesting proposals for change that will, in years to come, improve not only the practice but the quality of justice as well. A number of the Section's committees are functioning extremely well and I compliment Toby Solomon (Adoption), Jane Altman and Irene Rosenberg (Rules), Howard Danzig (Guardian Ad Litem), Sandy Zeller (Pro Se) and Katherine Sweeney and Mark Sobel (Specialization) for the work done to date. Since all committee reports should be completed in final form within the next few months, there should be concrete recommendations that will become public in a short period of time.

The best example of the Section's new aggressiveness is the *Focus on the Family Committee*, chaired by Lynne Strober (West Orange). Because of the extraordinary scope of this committee, the Section realized that we would need specific authorization from the State Bar Association before proceeding any further. In late January, Lynn Strober and I appeared before the Officers and Trustees of the State Bar Association to review the *Focus on the Family*. There are some who criticize the State Bar for being unduly conservative; however, their extremely favorable

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Ethics: A Family Law Perspective

by William J. Thompson

The current issue of the *New Jersey Family Lawyer* is devoted to issues which, far too often, attorneys do not wish to squarely address—ethics grievances and fee arbitrations. Unquestionably, family law practice is highly stressful. Clients are emotional and demanding; the time constraints that a professional practice places upon the individual attorney frequently seem burdensome and unreasonable. To a busy matrimonial practitioner, often compliance with the rules—whether responding to a last-minute cross-motion or completing a case information statement—seems almost Herculean. At no point is the stress level higher nor the resentment greater than when, instead of gratitude for his or her efforts, the attorney receives notice of the filing of an ethics grievance or the initiation of a fee arbitration.

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How to Avoid Ethics Grievances in Family Law Cases

by David E. Johnson, Jr. and Edward S. Snyder*

The Facts about Ethics Grievances

During 1985, 921 ethics grievances were filed against 720 attorneys, representing only 2.6 percent of New Jersey's 27,514 active practitioners. Thus, 97.4 percent of all New Jersey practicing lawyers were not subject to the stress of an ethics grievance. While these figures reflect extremely well on the legal profession as a whole, the fact is that hundreds of lawyers do become the subject of ethics grievances annually. Some lawyers often react to ethics charges in a manner that is self-defeating. They can become emotional, sometimes resentful and, occasionally, even belligerent and non-cooperative.

Grievances as a Business Risk—The first thing that every lawyer needs to do is to realize that ethics

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from existing funding. Focus has already been requested by at least one Presiding Judge to develop a program, which should be shortly implemented. The Committee will specifically focus on issues relating to children and, in particular, how children are treated in the court system in an attempt to develop model procedures.

Where appropriate, the subcommittees will be reviewing existing substantive law to see whether modifications may be socially beneficial. For example, the Child Abuse Subcommittee may well analyze whether present legislation, and case law, incorporate the most appropriate definition for child abuse. Focus may also help in developing standards for courts to follow in removing children from their home, examine new approaches for rehabilitating children traumatized by abuse, and assist in the determination as to how and when relationships should continue between child and the abusing parent. Of course, any recommendations of the Committee will ultimately be reviewed by the Officers and Trustees before becoming formal State Bar policy. We are, nevertheless, confident that, given the available expertise and the extraordinary favorable response already received, no problems will exist between the Section and State Bar. Moreover, given the effective partnership between the Courts, the Administrative Office of the Courts, and the Bar in the Family Law, effective, efficient programs advancing the best interests of children developed by Focus will, we are confident, be favorably received by the Supreme Court and the Administrative Office of the Courts. Programs like Focus emphasize the importance of maintaining that partnership so there can always be effective interchanges of ideas and, ultimately, implementation of new programs advancing the quality of justice.

Lynne Strober, in her excellent report to the State Bar, summarized how valuable Focus can be:

As the structure of the nuclear family unit continues to undergo dynamic change, the demand for expert assistance increases. Focus on the Family provides a new avenue for family lawyers and social scientists to join forces. New Jersey has the opportunity to take a leadership position in establishing a pro-active methodology employing the bar and social science experts in a unified effort to address this problematic environment. Focus on the Family is a model concept.

Candidly, there were many members of the Executive Committee who did not believe that Focus could be organized and implemented. The Section, the overall Bar and, most importantly, the children in New Jersey are indebted to Lynne Strober for her efforts. (Those interested in working with Lynne in implementing this program should contact her directly.) The foresight and confidence that State Bar demonstrated in approving Focus reflects not only the respect the Family Law Section has obtained, but further supports the view that the New Jersey Bar Association is the most progressive in the country. We appreciate their vote of confidence and will not disappoint them or New Jersey's children. □

Case Management Conferences

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Although the term "clearing the calendar" is read by some lawyers to mean that quantity, rather than quality, justice has become the system's objective; in fact, clearing the calendar is a laudatory aim. Simply put, it means that the system has disposed of as many cases as were filed in a given reporting year. And who can object to that? Dockets should not steadily increase. Litigants should not be forced to wait inordinate periods of time to receive justice. An uncomplicated albeit contested matter should not languish for a period of time that to a litigant seems like an eternity. Case Management Orders serve to assure that cases are "moving along."

Second, Case Management Conferences afford the system an opportunity to treat different cases differently. A non-complex case should be on a faster track than a complex case. Indeed, at the optimum, non-complex cases should be resolved in no more than six to eight months of the filing date. Such conferences assist the Court in discerning which cases are complex and which are not.

Third, such conferences serve to assure that cases are fully prepared. How frustrating it must be for a judge while hearing a matter to learn that a critical asset has not been appraised or that important documents have not been produced. Case Management Conferences offer an opportunity to make certain that all necessary steps have been taken and nothing has been left undone by the time a matter actually comes to court.

The calendaring of Case Management Conferences in many instances has produced the salutary effect of stimulating early settlement. Indeed, diligent counsel will, when receiving notice of a Case Management Conference, utilize the notice as a stimulus for renewing or commencing settlement efforts. The plain fact is that many cases can be resolved on little more than the exchange of Case Information Statements.

Fourth, even when full settlements cannot be reached, counsel very frequently are able to agree on at least the entry of an appropriate Case Management Order and that is certainly something to be encouraged.

Fifth, whether such conferences actually take place or whether an Order is agreed upon by counsel, they may also produce stipulations limiting the issues which will eventually have to be adversarially adjudicated. The end result is that the system moves smoothly without unnecessarily burdening the Court or counsel.

Some suggestions, however, seem appropriate as to how the conferences should be conducted and what types of Orders should be entered. Most importantly, Case Management Orders must be realistic. Counsel should be accorded reasonable amounts of time to perform the tasks to be accomplished. It is worse than meaningless to enter a Case Management Order that cannot possibly be adhered to. By the same token, counsel should be expected to adhere to