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Chairman's Column

The Family Law Section: Update and Appraisal

by Frank A. Louis

In reviewing the first six months of my term and what I hoped to accomplish, I realize how much there is yet to do (and so little time in which to do it), but I am pleased that we have implemented certain changes in governance of the Section that I hope future officers will adopt as permanent policy. Perhaps most importantly, the fundamental nature of the Executive Committee and its relationship to Section members has changed, hopefully, forever. We are presently reviewing bylaw provisions which, if adopted, will virtually insure that membership on the Executive Committee will be open to all Section members. While, in theory, this has always been true, the reality has been somewhat different. It is particularly difficult to replace committed, hardworking and longstanding members of the committee, particularly when personal relationships have developed. Yet, membership on the Executive Committee can never be viewed as a vested right, and if the Section is to remain open to new ideas and vibrant in its approach, there must be some form of rotational membership.

This year the Executive Committee is almost one-third different than in prior years. This was an attempt not only to send a message that the Committee is open and, hopefully, more responsive to its membership, but that those active Family Law practitioners willing to devote time on committee work will always be candidates for membership on the Executive Committee.

While there may be disputes as to the form of this rotation, all members of the Executive Committee, including ex-Chairs (and those who will shortly be) must understand that the time will come when they will no longer be members of the Committee. That does not mean individuals

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New Case Information Statement Form and Other Rule Changes Approved

Appearing as a special supplement to the December 4, 1986, issue of the *New Jersey Law Journal* were multiple rule amendments, a limited number of which have a direct bearing upon matrimonial practice. Among the rule changes to which special attention must be paid is the revised language contained in R. 4:49-2 which, for the first time, specifically recognizes motions for reconsideration. Also amended is R. 5:5-2(b) which deletes the prior requirement that Case Information Statement forms be served with the filing of the initial pleading, substituting in its place the requirement that same be filed within 20 days after the filing of an Answer or Entry of Appearance.

Additionally, and perhaps of more immediate practical effect, a new Case Information Statement form has been approved and appears within the new rule book. Copies of this form are now available from Allstate Legal Supply Co.

Among the other amendments approved is a rule change which now mandates that all vicinages establish Early Settlement Programs in conjunction with their local Bar Association, and specifies that failure of a party to participate in the program or provide a Case Information Statement or such other information as might be required may result in the assessment of counsel fees and/or dismissal of the non-cooperating party's pleadings.

Yet an additional rule change appears in the new R. 5:5-6 which dictates that Case Management Conferences be held in all Family Part matters either at the request of a party or upon the Court's own motion.

Additional rule changes dealing with juvenile matters have also been adopted. □

While Judge Krafte's decision certainly makes sense in not permitting a responding party a procedural advantage bacause of a loop hole in the Rules, and is welcome, other trial courts are not bound to follow that decision and, even if they do, the above-stated problems in motion practice still exist. The time limitations for motion practice contained in the Rules were designated for civil motions and simply do not meet the situation created by matrimonial motion practice in all but the most routine one-issue motions, and there should be rules regarding matrimonial motions that are appropriate to family law practice.)

Bell v. Bell M-21645-86 (Chan. Div., Decided December 2, 1986) (Bergen County; Krafte, J.S.C.) (tentatively approved for publication).

***PATERNITY ACTION*—Decision in County Board of Social Services Action for Paternity was *Res Judicata* as to Mother's Later Suit for Paternity**
(*Moore v. Hafeeza*, 212 N.J. Super. 399)

In 1969 the plaintiff gave birth to a daughter and applied for support through the Department of Welfare. The Board of Social Services filed a complaint in Municipal Court against the punitive father who denied paternity. A trial was held, blood tests were introduced into evidence and the disposition of the case was "No Filiation." A judgment of no filiation was signed by the Municipal Court in 1971 and no appeal was taken. In 1986, plaintiff-mother, who was not named as a party in the 1971 proceeding, filed suit in the Chancery Division-Family Part alleging that the defendant was the father of her daughter, now 16 years old, and requested support. Defendant again denied paternity and asserted that plaintiff's claim was barred under the doctrines of double jeopardy, *res judicata*, equitable estoppel and laches. The plaintiff argued that she was not barred from bringing the action because she was not a litigant in the 1971 trial. She also argued that the HLA test, which was not available in 1971, was now available and that because such was not available at the time of the original trial she "never had her day in court to prove paternity . . . ."

As to the defendant's claim of double jeopardy, the Court ruled that a filiation suit was civil in nature, not criminal, and the defense of double jeopardy was not available. As to the arguments of *res judicata* and collateral estoppel, the Court noted that the concept of privity has shifted

> the emphasis from a narrow technical rule based on a succession of property interest to a broader standard which asks which the rights of the litigants were substantially protected or adequately represented in the prior action.

Thus, the rule of privity should be applied when the claim of the non-party is based on the same transaction or occurrence; the interest of both claimants are similar and no adverse interests exist; the non-party had notice of the earlier action; and the non-party did or had an opportunity to participate or intervene in the earlier action.

The Court held that all of those factors existed in the case before it, that plaintiff fully participated in the earlier action, and that there was nothing to suggest that the County Board of Social Services had not diligently and arduously pursued the 1971 paternity suit. Holding that the plaintiff's claim was barred by the doctrine of privity, given the 15 years that had elapsed from the 1971 action to the 1986 action, the plaintiff was guilty of laches.

The Complaint was dismissed and judgment was entered in favor of the defendant.

Moore v. Hafeeza, 212 N.J. Super. 399 (Chan. Div. 1986) (Somerset: Imbriani, J.S.C.). □

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who are particularly familiar with how the system operates and have a demonstrated ability in successfully representing the Section may not be reconsidered, after a brief hiatus, for further membership. Yet, fundamental fairness demands that those Section members volunteering their time and doing so capably must, at some point, be rewarded by becoming members of the Executive Committee. Not only is this fair, it is necessary to insure that there always is a fresh approach to new problems that develop. Past Section positions should always be subject to constructive criticism by those new members who were uninvolved in formulation of prior policy.

The extraordinary response received from the solicitation for Committee membership is perhaps the best evidence that there will always be a ready and available source of volunteers and that Family lawyers, perhaps more than any other practitioners, recognize a responsibility to improve their profession and are willing to devote time and effort to achieve that goal. In a similar vein, I strongly support the concept recommended by the Supreme Court respecting rotational membership on Supreme Court committees. Bar members must recognize that despite the significant contribution a particular member may have made to any Supreme Court committee's success, membership must be rotated among qualified Bar members.

It is also my view that it is a mistake for all officers to be members of the Family Part Practice Committee since that detracts from their ability to devote time to the responsibilities they have in administering Section business and that as long as there is adequate representation by officers, the Supreme Court's commitment to the Bar is more than fulfilled. Bar membership and assignments on the Practice Committee have been extremely satisfactory from the Bar view and that extends to other Supreme Court committees as well. Judge Schaeffer, who Chairs the Family Automated Case Tracking System (FACTS), was not only astute but sensitive enough to recognize the importance of having lawyer involvement in this dramatic computerized conversion of the entire Family Court.

The Supreme Court has recently appointed a committee to examine, across the board, the question of

appointment of counsel and experts, and I am pleased to announce that with the assistance of Judge Serpentelli, the Court and the State Bar Association, Bar membership was increased fivefold. Lawyer involvement on this particular committee is essential as it inevitably will deal with issues directly affecting a lawyer's day-to-day practice and establish a uniform policy as to when and under what circumstances attorneys can or should be appointed to pro bono and fee generating cases. As a member of that committee, I solicit the views of Section members and your input is invited.

Specialization

The question of whether there should be Family Law specialists is presently the topic of study not only by the Family Part Practice Committee but a subcommittee of the Section. Those lawyers having views on the topic should communicate their positions to either Jeff Weinstein, who Chairs the Bench/Bar Subcommittee of the Practice Committee, or Katharine Sweeney, the Chair of the Section's Committee. I anticipate the Section taking a position for presentation to the State Bar within the next two months and your immediate comment would be appreciated.

Vested Child Support

There is about to be a dramatic change in our law respecting arrearages and while the timing is somewhat up in the air, it appears that the concept of vested child support will shortly be adopted in New Jersey. It raises interesting questions about the federalization of Family Law since a bill *mandating* vesting of child support arrears was adopted by Congress requiring the states, upon pain of losing federal aid, to adopt similar statutes. In essence, unless notice is provided by the payor as to why child support arrears should not vest, they shall accrue and become final and binding and thus be entitled to full faith and credit. The Court will lose the ability to vacate arrears thus requiring counsel to carefully advise clients about this change. It is not clear as to the precise procedure that will be adopted but one of the things I would like to accomplish in this column is to keep members advised as to new developments, and this is clearly an important and dramatic one.

These issues are only some of the important questions your Section is presently addressing, and this year, perhaps more than any other, Section positions will be taken by committees whose membership was made available to all members of the Section. In fact, the response to my invitation to join our various sections was so extraordinary that only now are the volunteers being assimilated into the various committees. There is no better evidence of the integrity of Family lawyers than the vast number of people willing to volunteer their time to improve the system, demonstrating clearly not only commitment, but professionalism. It may be impossible, because of the sheer number of volunteers, to involve everyone but we will attempt to do just that keeping in mind our commitment to democratize the Section and insure that future appointments to the Executive Committee and, thereafter, as officers, be predicated on merit as opposed to personal relationships. □

The 1987 Rule Changes

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lines should be applied?

Less obvious are the changes in the C.I.S. budget section, but changes there are. Some prior line items have been combined; deletions of some items have been made; and supplemental items have been added, to accurately reflect how the litigants spend their money.

When originally considered, the new form was constructed with "plain language" revisions. Some of the language may not be terribly plain, but although not perfect the form represents a move forward. This is not to suggest that the form should be static; indeed, additional revisions may be warranted for inclusion in the years ahead.

At no time, however, should those using the form lose sight of the three original purposes of the form. First, it is designed as a tool to encourage litigants and counsel, particularly in cases involving modest assets, to review their facts early to encourage prompt compromise.

Second, the form is designed to assist the Court in differential case management. More complex cases deserve greater judicial attention. More complex cases deserve aggressive case management, a theme echoed in other rule changes adopted this year.

A procedural rule change adopted this year concerning the C.I.S. form is of as much importance as the form itself. No longer will a C.I.S. be required at the time of filing the initial pleading. The truth is, few complied with that rule. A more realistic rule has been adopted, requiring the filing of a C.I.S. within 20 days after filing an Answer or Entry of Appearance (R.5:52(b)).

Beyond the C.I.S., however, significant other rule changes are now in effect. We will focus upon four of these at this time:

1. **Participation in Early Settlement Programs**

Amended R. 5:5-5, had it been adopted five or seven years ago, would have caused great resentment. The rule now mandates the establishment of Early Settlement Panels in all vicinages. Had that rule been adopted at an earlier time, Bar representatives would have protested that the judiciary was attempting to mandate that which the Bar had voluntarily established. But, no outcry is now heard; for Early Settlement Panels have so become a part of the fabric of current matrimonial practice that no one could possibly protest. Indeed, the Early Settlement Program process represents the most responsible contribution the matrimonial Bar has made to the administration of justice. Our hope, however, remains that this program will never be viewed as the Bar's burden nor as the Bar's duty, but instead as the Bar's commitment to serve the system, and thereby the public.

2. **Motions for Reconsideration**

Little attention has been placed by matrimonial lawyers upon the dramatic change incorporated within R 4:49-2. The former rule merely permitted motions to alter or amend judgments within ten days