NFLR NEVADA FAMILY LAW REPORT

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# A NEW PARADIGM FOR FAMILY COURT

*By Thomas L. Leeds, Esq.*

This article's thesis is that the paradigm presently used to view Family Court has become flawed over time. The solution to many problems encountered by Family Court are created, exacerbated and unable to be solved due not to the institution or the persons staffing it, but to the way in which the subject is fundamentally approached. Family Court cannot solve pressing problems because they are addressed from the now-flawed paradigm's perspective. This article proposes a fundamentally new and different paradigm which is better able to address today's needs. It will (1) describe the existing paradigm and its flaws, (2) explain a new paradigm, (3) describe the role of courts, judges and lawyers under the new paradigm, and (4) suggest changes needed to assist the court from the new paradigm's perspective.

Briefly, the existing paradigm views Family Court from the perspective of the traditional divorce case, where one parent leaves the family home of an intact nuclear family. The Family Court judge determines the primary custodian, set visitation, child support and alimony, and apportion family property and debt. Child support, access to the children and restraining orders are components of the Family Court action.

The new paradigm views Family Court from the perspective of the child however a case comes to the court house door. Under this paradigm, a child is entitled to, (1) the establishment of parentage, (2) the establishment of a means of financial support, and (3) the establishment of a defined relationship with each parent, including time sharing. The Family Court decisionmaker (the new paradigm recognizes that many cases do not have judges) insures these three entitlements are addressed at any time a case enters the system and are established before the case leaves the docket.

## THE FAILED PARADIGM

Over time, the paradigm of Family Court as a divorce case has become invalid because it fails to incorporate non-traditional cases, new technologies and processes, and new societal attitudes. Like

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# FROM THE CHAIR

It is with a certain degree of trepidation that I take over as Chair of the Executive Council of the Family Law Section. It is difficult, if not impossible, to bring the same energy, commitment and passion to the position as my predecessor, Marshal Willick, did. This is, however, an exciting and challenging time for the Family Law section. Six of the fourteen members are new to the Executive Council, having been elected at the annual meeting in Tonopah in March. None of the current Council members have served for more than two years. Three of the four officers are also newly elected. These changes will bring new energy, ideas and experience to the Council and Section as a whole.

I believe that the goals of the Family Law Section should be to promote and advance professionalism within the Family Law Bar, to provide quality and entertaining continuing legal education, including the annual Tonopah seminar, to continue promoting the adoption of a meaningful and realistic certification program for family law specialists and to continue exploration of the viability and appropriateness of an alimony formula. As we embark on planning to accomplish these goal, if you have any ideas, comments or suggestions please contact me or any of the other Council members. The Council generally meets four times each year, in June, September, January and in March at the annual meeting in Tonopah. Council members are happy to address any issues or concerns relating to the Section or the practice of Family Law. If you come across a case or issue that you believe would be of interest to the members of the Section, please consider writing an article for publication in the Family Law Reporter.

In addition to the Council's membership changes, MaryAnne Decaria has decided to give someone else the opportunity to organize the annual Tonopah "Spring Fling" seminar. We will miss her unyielding commitment and unmatched organizational skills. We owe her tremendous gratitude for her hard work over the years. The continued growth and success of the Tonopah seminar is due, in large part, to MaryAnne's hard work and dedication. Israel Kunin, who has been in charge of entertainment in Tonopah for the past several years has also decided to pass the baton. Those of us who have attended the annual Tonopah seminars have greatly enjoyed the talents and hard work of Ishy and her crew and I'm sure join me in thanking her.

Kathryn Stryker-Wirth, with the assistance of Muriel Skelly, will organize the 1998 Tonopah seminar which will be held on March 26th through 28th. Mark your calendars now and make plans to attend. Ann Price McCarthy will take charge of the entertainment. Please contact Kathryn or Muriel with your ideas for seminar topics and speakers. Better yet, if you would like to present a Round Table program at Tonopah next year please let us know. Although preparing for and presenting a Round Table can be a lot of work, it can also be a lot of fun and personally and professionally rewarding. We all benefit from a diversity of views, opinions and experiences. Those of you with talent should call Ann and get signed up to entertain us!

As those of you who attended Tonopah this year know, the Executive Council is exploring the propriety of an alimony formula to bring some certainty, predictability and uniformity to alimony awards throughout the state. Council members Todd Torvinen and Roger Wirth head up this effort. In Tonopah, the Section conducted an informal poll regarding the proposed alimony formula. It was my impression that members generally believe that some method for fostering pre-

## From the Chair con't

dictability and uniformity in alimony awards would be helpful and appropriate. There was, however, no general consensus about whether the specific formula discussed was the most appropriate.

As many of you know, a bill advancing the proposed alimony formula was introduced in the Legislature early this year before the annual meeting in Tonopah. Apparently through some miscommunication, some members of the Section, the judiciary and perhaps the Legislature, were under the impression that the Family Law Section was promoting and advancing passage of the alimony formula bill. That, however, is not the case. The Council planned and intended to discuss the issue at Tonopah and then take a position on the proposed formula based upon the results of those discussions. In light of our discussions in Tonopah, I testified briefly before the Assembly Judiciary Committee on April 3rd and explained that the Family Law Section had not taken a position on the bill and that the Section believes further study is in order.

I believe that some guidance in the area of alimony would be helpful. I am concerned that the uncertainty that now exists, and the anecdotal evidence of wide disparity in alimony awards, unreasonably increases clients' stress levels, decreases their confidence in their lawyers and the judicial system and needlessly creates conflict and litigation rather than resolution. On the other hand, I believe it is important for us to focus on finding a formula or system that affords our courts broad judicial discretion and encourages good lawyering and thoughtful evaluation of the circumstances rather than "knee jerk" application of a rigid and unyielding formula.

I ask that you give thought to this issue each time you have an alimony case. Apply the proposed formula and compare the result with your own reasoned judgment regarding what an appropriate alimony award would be. Experiment with modifying the various factors and percentages in the proposed formula to see if another formula may be more appropriate. Compare the alimony awarded by courts in your cases with the alimony that would be awarded under the proposed formula. Then, come to Tonopah next year prepared to discuss whether or not an alimony formula is warranted and, if so, the most appropriate formula.

I look forward to serving as Chair of the Executive Council and working with all of you to advance the goals of the Family Law Section. I encourage all of you to get involved and to share your ideas, thoughts and concerns with me or any of the other members of the Council. This will maximize our effectiveness on your behalf.

### ARTICLES, CASE SUMMARIES WANTED FOR NFLR

The Nevada Family Law Report seeks to provide interesting and substantive family law material to educate both the bench and the bar. NFLR needs articles for upcoming issues. If you are interested in writing critiques of pertinent cases, reports/opinions of family law legislation or discussions of family law trends and issues, please request authors guidelines from Editor Mary Rose Zingale, 528 Commercial St., Elko, NV 89801.

Articles published in the NFLR are eligible for continuing legal education credits. Contact the MCLE Board, 329-4443, for applications.

The Section's publication needs your input and contributions. Please contact an editor to discuss any article topic, critique or book review.

**More photos on pages 10-11**

## Paradigm con't

the windows which overlay on a computer screen, three related phenomena have increased the frustration of litigants, attorneys and judges because solutions are impossible when derived under the old paradigm.

First, the old paradigm does not recognize that there are now different types of cases coming to court. In Clark County, for example, divorce cases constituted 56% of all "Family Filings" in 1983. In 1996, divorce cases constituted less than 30% of family filings. In contrast, child support and domestic violence cases constituted 20% of all filings in 1983; in 1996 these cases constituted more than 35% To view cases from the paradigm of the divorcing nuclear family in which custody, visitation and support are "preliminary issues" simply ignores two entirely new classes of cases.

While not a different class of case, the traditional divorce court also includes parents already divorced who return to court for modification and unmarried parents who sometimes file a "Complaint for Custody". The number and impact of these cases has not been measured.

The solution offered under the old paradigm is to create new — albeit inferior — courts for the non-divorce, family case. We now have Child Support Enforcement and Temporary Protective Order courts designed for those who have such needs but who are not in a current, active divorce action.

A second phenomenon is the development of new resources in the areas of custody and child support which do not fit under the traditional paradigm. Since 1988, support enforcement laws have strengthened; as a result of the Professional Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform), enforcement powers will expand further and increasingly affect and integrate with the traditional divorce action. Mediation as a tool for resolving custody issues has also increasingly been recognized as effective in appropriate cases.

The response to the child support court order under the old paradigm has been to treat it as an inferior order subject to override by the Family Court. The proper role of — and response to — mediation is still very unsettled in the traditional Family Court.

The third phenomenon is the crisis resulting from the massive increase of people representing themselves in Family Court, the "pro per" population. The traditional solution was private attorneys representing indigent litigants pro bono. This response is inadequate due to sheer numbers and the fact that many parents now choose to represent themselves even though not indigent. Bench and bar debate whether making Family court "user friendly" by simplifying forms and pleading rules helps or hurts children involved in a case. Significantly, the debate only involves the traditional divorce action. No voice has been raised over the fact that litigants in Child Support Court rarely have lawyers. TPO court, by statute and court rule, is intended to be used by people without lawyers.

The results of dealing with the issues of today under the traditional paradigm are many and unfortunate. Oftentimes, the same parents have as many as three cases pending in different courts, at the same time, with competing orders, court dates and areas of jurisdiction. For example, a family may obtain a low-cost divorce with, "reasonable visitation," and "twenty-five per cent child support." Since support is not meaningfully addressed, the custodian may later apply for welfare and/or seek a specific support order through the child support enforcement program creating a case in child support enforcement court. Since time sharing has not been defined, domestic violence may result from a dispute over access to the child creating a case in TPO court.

Attorneys and litigants are frustrated because one court issues rulings beyond its stated area of jurisdiction, or another court denies relief because of its lack of authority. A parent may get an award of child support in one court but not be able to access a court for months to enforce it; another parent may diligently obey a child support order but not be able to obtain access to the children for whom support is paid. Another court may set out complex visitation orders but not have jurisdiction to legally establish that the person before it is the child's father.

This will only continue and increase if Family Court is viewed under the old paradigm. If support and protection from violence are viewed as outside or ancillary to the "real" Family Court divorce case, confusion and frustration will result from the ad hoc remedies attempted. Simply adding more judges and hearing masters will not address the real root cause of the failure.

By using a new paradigm, from the perspective of the child no matter what the family situation, these issues can be rationally and efficiently addressed. Some problems will actually disappear simply by application of the paradigm.

## THE NEW PARADIGM

The new paradigm encompasses all situations encountered by the Family Court, including the dissolving, nuclear family, the family which previously dissolved but requires modified orders, and the family which is not formally established at all, i.e., the "family" in which the only connecting factor is the fact that two people have a child together. The new paradigm views every case from the perspective of a child's three fundamental entitlements as follows:

1. **Every child is entitled to establishment of parentage**. For children whose parents are not married, parentage should be established at the time of birth in the hospital, or, if not, at the beginning of any case in which the child is affected.

2. **Every child is entitled to establishment of a means of financial support**. Non-intact families should provide for support through a support order entered into a centralized state registry.

3. **Every child is entitled to establishment of a relationship with each parent, including time sharing**. Non-intact families should be required to either (a) agree to a parenting plan (b) both execute a formal written waiver, © attempt mediation or (d) resolve differences in court through litigation;

As explained by the Hon. Richard FitzGerald, there are "ports of entry" where parents and children enter the family court system. Increasingly, the ports of entry are the child support court, the court which protects against domestic violence, and the court which handles parental abuse and neglect of children.

Under the new paradigm, regardless of the port of entry, the tribunal involved would address all three entitlements. In this way, whether the case comes to court as a traditional divorce complaint, as a child support petition brought by a welfare agency, or as a request for protection from domestic violence, the child's comprehensive needs will be addressed and the parents' access assured at the outset.

If the point of entry is the traditional divorce court, parents would first be referred to the state child support agency for determination of support and to a mediation center for custody issues. The Family Court Judge would still hear emergency motions such as those for exclusive possession and temporary spousal support. The Judge would also hear objections to the support determination and resolve legitimate custody disputes. The Judge would also preside over the divorce trial. The difference would be that support would be determined consistently with all other cases (and with all other children) and the routine support determination would be done in a lower court or administrative setting thus freeing time for the Judge and court to spend on more appropriate issues.

Referrals would be mandatory for requests to modify support and/or custody. That is, once an order has been issued as part of a divorce, or other Family Court case, parents would have to access the court through the child support enforcement agency for support and the mediation center for custody modification with the Family court Judge hearing only objections to support, mediation deadlocks and emergency requests.

This is not as revolutionary as it sounds; analogies already exist in civil, criminal and domestic law. All civil cases are now referred to a discovery commissioner for discovery plans and motions. Administrative hearing officers from the Department of Motor Vehicles determine whether a person arrested for driving under the influence should have a license suspended. Employment Security Division employees and hearing officers determine eligibility and hear appeals even when a civil action is filed for wrongful termination. In Family Court, parents who have been divorced commonly obtain from Child Support hearing officers modification of divorce decree child support orders.

If the point of entry is the child support petition, the non-custodian could obtain referral to mediation for custody issues. This would satisfy a common complaint by non-custodians that they are required to pay support in a court which provides services to the custodian while they are denied access to the children. The welfare reform act acknowledges that parents who see their children are more likely to pay child support; money has even been appropriated for child access programs for non-custodial parents.

If the point of entry is the case involving abuse and neglect of a child or domestic violence upon a parent, all three entitlements would be addressed by referrals to appropriate forums. It is here that the new paradigm has the greatest impact, where the most dramatic improvement to children can be achieved and where the traditional paradigm of family court is most lacking.

Under the new paradigm, parents would be referred to the child support enforcement agency to establish parentage and a support order, and referred to mediation (tailored to the needs of a domestic violence case) for determination of custody issues.

Anecdotal evidence strongly suggests that child access issues are involved in many disputes ending in domestic violence. Many battered spouses are unable to leave violent situation because they are financially unable to do so. Under the new paradigm, access and support issues, including enforcement would occur immediately in the forum intended for such issue determination.

Presently, critics complain that issues of child support and custody should not be summarily decided in TPO court where the decisionmaker lacks the necessary time and information. Under the existing paradigm, however, totally new cases must be filed and processed to otherwise grant relief with long and potentially damaging delays.

Under the new paradigm, not only are the three entitlements addressed at the outset of all cases no matter how they enter the system, the entitlements are also all handled in the same way. All children would receive the same consideration by the same tribunals regardless of the port of entry to the system. The only difference would be that the divorce judge would hear appeals of child support in divorce actions and modifications, the presiding judge would hear appeals in the child support or domestic violence action. Viewing the process from the paradigm perspective of the child rather than that of a divorcing nuclear family, yields a more consistent, orderly result.

## THE ROLE OF JUDGES, ATTORNEYS AND ANCILLARY TRIBUNALS

The purpose of courts is to fairly and expeditiously resolve disputes. Under the old paradigm, this purpose has become increasingly difficult to achieve and the roles of judges and attorneys have become increasingly uncertain. Under the new paradigm, attorneys and judges will actually be better able to perform their traditional function.

Under the theory of the old paradigm, there is a hierarchy of courts and orders depending upon the relationship to the traditional divorce case. Child support and domestic protective orders are inferior to and superseded by the Family Court in its comprehensive divorce decree. In practice, as described above, all manner of cases are in all the courts at the same time.

Pursuant to the theory of a hierarchy among courts, pro pers in divorce court are viewed as a crisis; conversely, pro pers in other courts pass unnoticed. To the untrained litigant, however, the different forums appear identical. A parent may go to the same courthouse, in front of a decisionmaker wearing the same robe without any mention of the need for or help from an attorney in TPO and child support court. The same parent may then be thoroughly humiliated and prejudiced for failing to obtain an attorney in a Family Court considering the same issues.

Under the new paradigm, the hierarchy of decision making is based upon the level of the dispute. Support is first addressed in the child support arena, custody issues, especially those raised by parties who already have a custody order are first addressed through mediation. Good faith, legitimate disputes or objections to the result can be appealed to the

Family Court Judge, preferably with each side represented by attorneys under a strict standard of judicial review.

Under the new paradigm, the majority of issues now clogging the courts would be settled outside the traditional courtroom and the possibility of multiple orders involving the same parties in different courts would be dramatically reduced. Hearing masters and mediators rather than usurping the autonomy of the judge and impairing the adversarial justice system would become tools to remove the simple, uncontested or bad faith claims from otherwise crowded court calendars. The formal Family Court would return to being the place where judges resolve legitimate disputes based upon the evidence presented by trained attorneys.

## CHANGES REQUIRED AND SUGGESTED BY THE NEW PARADIGM

For the new paradigm to truly serve the needs of parents, two changes are necessary, a third is strongly suggested. First, the child support formula should change to one which includes adjustments for multiple families, time and income share, and day care costs within the guidelines. Under such a formula presence of these factors would not require a subjective deviation thus reducing the need for a judicial decisionmaker and the importance of an attorney to obtain an equitable support amount.

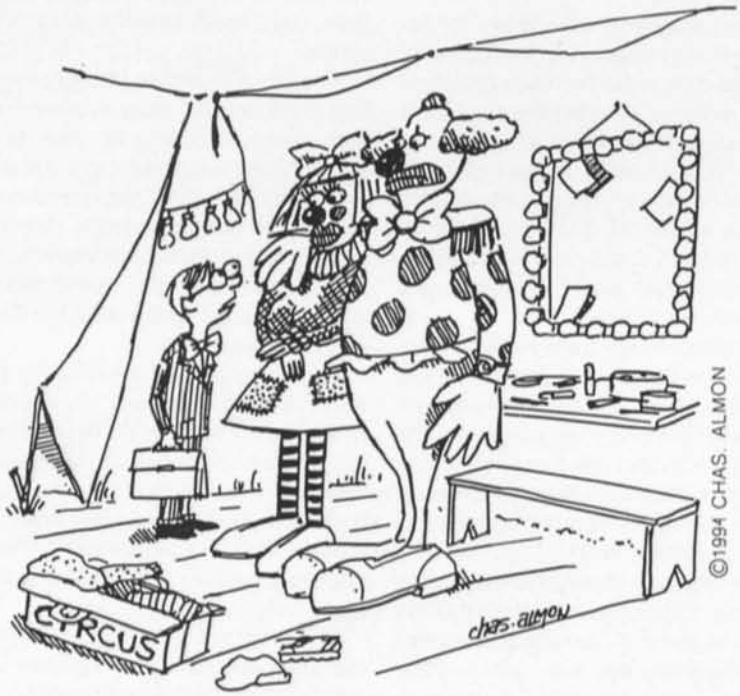
Second, once such a formula is adopted, child support should be set as part of an expedited administrative process designed to handle cases quickly and on a mass basis. In this way, a child's entitlement to financial support would be secured quickly and the support agency could handle the increased case load efficiently

Third, for cases involving legitimate custody disputes, the court should provide publicly financed lawyers at reduced or no cost for those who financially qualify. Presently, Nevada law allows for publicly financed attorneys to all custodial parents seeking child support in URESA court and for indigent putative fathers in formal paternity actions. Court appointed counsel has long been granted criminal defendants; the important affect custody issues have on children are no less important than the rights of a criminal defendant. The State Industrial Insurance System also provides attorneys paid by the taxpayer to claimants appealing adverse determinations.

By providing attorneys to those who cannot afford them, the court could also deal effectively with parents who can afford lawyers but choose to represent themselves. That is, by guaranteeing access to the assistance of counsel, court rules and procedures could be more strictly enforced; judges would not have to worry that penalizing the pro per would prejudice the child. Under the system suggested by this paradigm with first mediation, then litigation for legitimate disputes with appointed counsel for those unable to pay, the stubborn pro per would have no one but him or herself to blame.

## CONCLUSION

The new paradigm proposed in this article is not original but is, rather, taken from the opinions, research and policies of others. It is the perspective offered that is new, a perspective which by its nature simplifies and suggests resolution to issues confronting and confounding Family Court. The paradigm is not so fully developed that answers have been developed for all relevant problems and questions. As a valid paradigm, however, answers will tend to flow naturally. Laws and forums are already largely in place. Under the new paradigm, only methods of referral and some modification of rules and statutes governing standards of judicial review are required. The time has come to adopt the new paradigm.




*"I'm running away and joining an investment banking firm."*

# INITIAL INQUIRIES FOR A NEW CLIENT IN DIVORCE CONCERNING PENSIONS

by Marvin Snyder

This paper sets forth a series of questions that a family attorney may wish to use in an initial or subsequent interview with a new divorce client concerning pensions. The questions and requests for information are intended to elicit sufficient responses so that the lawyer will have some insight on how to proceed with this aspect of the case. These questions and requests may be used to determine how much discovery to pursue and whether to proceed by correspondence, telephone, interrogatories, subpoena, etc.

The items are intended for use for a divorce client whether the individual is the one covered by a pension plan or whether it is the spouse, or whether both are participants in benefit plans at their respective employments.

Not all items will apply in every case, and the attorneyis expected to exercise some degree of judgement and discretion in which questions to pursue, and in how aggressively to pursue them.

1. What is the full name, home address, Social Security Number and date of birth of the (potential) client and of the spouse.

2. Is there a former spouse (living or dead) of either the client or the spouse? If so, does this former spouse, if living, or if deceased by the estate, have any claim on the pension or other benefits - by settlement agreement, divorce decree, qualified domestic relations order (QDRO), or any other means?

3. Is there an antenuptial agreement? If so, does it mention or imply any consideration of pension interests?

4. Prior to this marriage, were these parties living together in an arrangement that could be open to question as a common-law marriage? If so, what is its commencement date?

5. What is the actual date of marriage?

6. In what State and County were the parties married?

7. What is the date of marital separation?

8. What are the dates of filing of the divorce complaint (or the intended future filing possible date), or the date of divorce already occurred, or possible future date of divorce, and/or what is to be considered as the cut-off date for acquisition of marital property?

9. Does either spouse have a mental or physical handicap?

10. What is the employment status of each spouse: active, on leave of absence or layoff, on temporary or permanent disability, retired, terminated with deferred vested rights to a future pension, etc. of each spouse?

11. What is the job title, position, class, department, division, location, etc. of each employed spouse? What is the job classification for each employed spouse: "salaried", "hourly", "management", etc.?

12. What is the official name of the employer, and the address, and telephone number? Is the employer a subsidiary, branch or division of a parent company?

13. Does the employer have a personnel department, or a human resources, benefits, or compensation department?

14. What is the individual's date of hire? Was there a temporary or probationary period of service?

15. Have there been any breaks in service? layoffs? leaves of absence? termination and re-hire? 16. Is the individual covered by a collective bargaining agreement? If so, what is the full name of the union and its local number or other identification? Is the individual an officer or holder of any union position? Is the individual covered by benefit plans of both the local and the national union?

17. What is the current annual rate of pay? Is there overtime pay? bonus? commissions? What were the priorcalendar years' IRS W-2 pay for the past three or five years?

18. What benefit plans is the individual participating in?

19. What are the formal name(s) of the plan(s)?

20. What kinds or types of plans are they: defined benefit pension plan, defined contribution pension plan, profit sharing plan, thrift plan, savings plan, 401(k) plan, "SEP", TIAA-CREF, etc.

21. Does the employee contribute to the plan? If not now, have there been employee contributions in the past?

22. If the employee contributes, is it pre- or post-tax dollars, or both?

23. Is it possible for the client to obtain a copy of: Plan booklet (summary plan description); Summary annual report of the plan; Summary of material modifications of the plan; Routine annual benefit/account statement for the person; Beneficiary forms on file with the plan

24. Is there life insurance in the plan? If so, obtain details.

25. Has the individual purchased service, or does the opportunity exist to buyback service which has not yet been exercised?

26. If applicable, obtain copy of notice of plan amendment and/or plan termination, or other pertinent plan announcements to employees.

27. Ask for information concerning the plan(s) that may have been published as company newsletters, bulletins, memos, letters, notices, etc.

28. Is the individual an employee of a governmental organization? If so, civilian or uniformed? law enforcement? fire fighter?

29. Is the individual now (or with previous service) in the military or its equivalent? If so, now on active duty or in the reserves, or National Guard? What branch of service, enlisted or officer, rate or rank, date of enlistment or induction?

30. Is the individual a terminated, deferred vested participant with rights to a future benefit? If so, obtain details.

31. Is the individual retired, in pay status? Was a lump sum distribution received: when and how much? Is there a monthly annuity pension being received? If so, gross and net amount, form or type, option, starting date, beneficiary if any?

32. Is there an insurance annuity policy in effect? If so, obtain a copy.

33. Has there been a withdrawal of employee contributions? 34. Has there been a loan from the plan, or is there an application pending?

35. Has there been a hardship or any other type of withdrawal of funds from the plan?

36. What is (are) the formal name(s) of the plan(s)?

37. What is (are) the plan(s) identification numbers ("PN")?

38. What is (are) the plan(s) effective date(s)?

39. What is the most recent amendment(s) to the plan(s)?

*"Last week I'm running an electonics plant in Ohio -- today I'm a holy man in Kashmir. What won't my tax lawyer think of next?"*

40. Are any amendments pending?

41. Is (are) the plan(s) in the process of terminating?

42. Who is the Plan Administrator of each plan?

43. Who is the designated agent for service of legal process for each plan?

44. What are the written QDRO procedures for the plan(s)?

45. What is the employer fiscal year?

46. What is the plan year of each plan?

47. For each plan, is it subject to the Employee Retirement Income Security Act? Is it covered by the Pension Benefit Guaranty Corporation?

48. Are annual benefit/account statements furnished routinely, or available upon request?

49. Will the plan furnish an estimate of the plan administrator's opinion of the present value of the pension in question?

50. For each spouse in a benefits plan, what is: Normal retirement age for this individual?

Normal form of benefit payment provided by the plan?

51. For defined benefit pension plan: what is the individual's accrued pension benefit for most recent service to date, excluding any future pay or service, payable at normal retirement age. What would the pension benefit be at normal retirement age, if pay remained level?

52. For a defined contribution plan: What is the most recently available account balance? Are there any contributions pending, not yet posted to the individual's account?

53. If a choice becomes available, would the client prefer a current offset of the present value of the pension if other marital property is sufficient to arrange it, or prefer to wait until eligible for early or normal retirement to then receive pension payments from the plan by court order?

54. If the client's spouse has benefit accumulations or rights in two plans, as for example, a pension in a defined benefit pension plan as well as an account in a defined contribution plan, is the client willing to consider either one alone as opposed to both plans?

55. If both spouses have benefit rights in their respective plans, is the client willing to have a reasonable "trade-off" if the values of the plans are reasonably

similar?

56. Is the client aware of the time frames that generally prevail when pensions are marital assets, such as the time to gather information and data and then to have the benefits valued by an actuary? If there is to be a court order, such as a QDRO or its equivalent, the client needs to understand that a great deal of time is generally taken by the plan in processing the court order before the plan gives its approval to the form and content of the pension order.

57. Is the client aware of the possible expenses that may be incurred in order to establish and acquire the client's fair portion of the spouse's pension benefits?

58. Does the case involve spousal or child support, potential, current, or in arrears? If so, it may be possible to utilized pension benefits to pay these items.

59. Does the case involve alimony, temporary or permanent? It may be possible to use pension benefits for alimony.

60. In the matter of death benefits, is there life insurancethat will be maintained, or is it vital for the plan's death benefits to be available?

In summary, the listed items should be sufficient to cover all but the most extraordinary cases. It is not expected that the client will be able to answer all of the listed questions nor to obtain all of the listed informational items, but the list provides the attorney with a practical overview and the details of what could be involved. It also may serve to acquaint the prospective client with the complications that arise when there is a pension benefit of any kind as marital property.

The difficulties in obtaining information and the complexities in coordinating and comprehending the alternatives in present value and deferred distribution should not stand in the way of providing the best legal services for a client in marital dissolution. The values or benefit payouts obtained at the conclusion of the matter will be seen to have been worth the time and effort.

The pension as property has many faces in Nevada, as illustrated by recent State legislation in NRS 125.155 which established guidelines for the valuation of marital property pensions of public employees of the State, including school teachers.

The Nevada Supreme Court in Sertic v. Sertic,111 Nev. 1192, 901 P.2d 148 (1995), handed down requirements for the valuation of a pension of a civilian employee of the federal government.

Consideration should be given to explaining and interpreting the prevailing Nevada law to the client, and if so, when it would be appropriate to discuss it with the client or prospective client without generating undue confusion. Consequently, the legal advice given to a new client when there may be a pension as community property, must be cautious with respect to what kind of benefit plan is involved, and as to what potential values and benefits may be derived. The more details and information that the client is able to obtain saves time and legal fees as well as getting the client involved in doing something productive for the client's own welfare.

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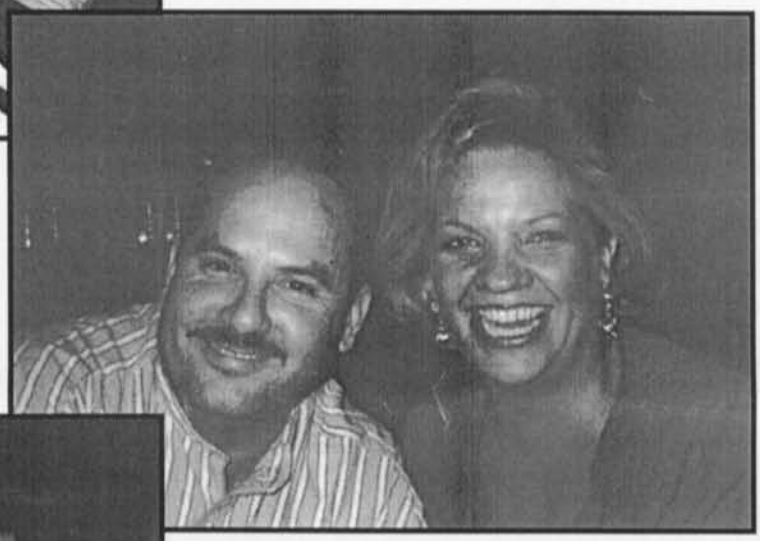
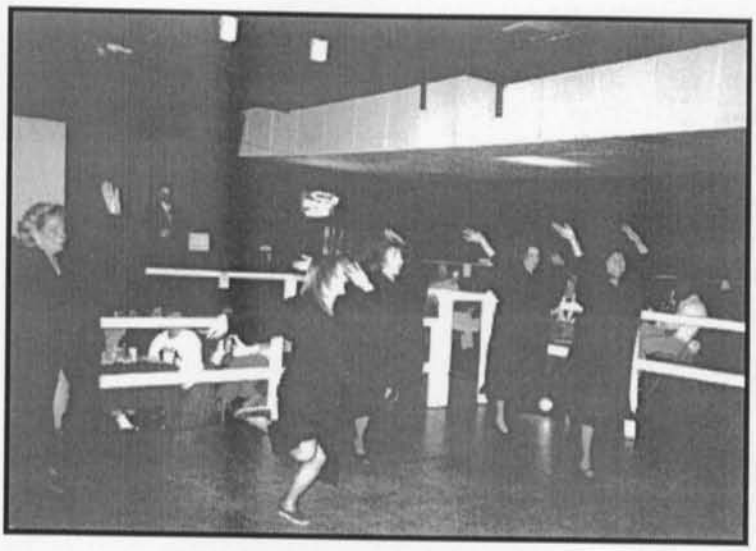
*Mr. Snyder spoke at the Clark County Bar Association in February, 1994 and was a speaker at Tonopah in March, 1997.*

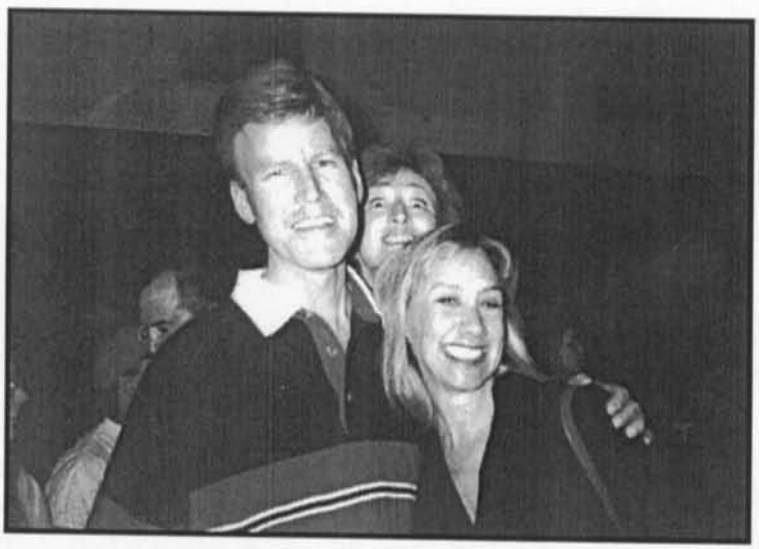
*His designations include Enrolled Actuary, Member of the American Society of Pension Actuaries, Member of the American Academy of Actuaries, and Certified Pension Consultant.*

*"All this -- the house, the grounds, the lake -- instills a feeling of wonder in me. I wonder how I manage to pay for it all."*

# Tonopah 1997







MISSION AND GOALS OF THE STATE BAR OF NEVADA
FAMILY LAW SECTION

The mission statement:
THE MISSION OF THE STATE BAR OF NEVADA FAMILY LAW SECTION IS TO SERVE AS THE LEADING FORCE IN THIS STATE FOR THE PROFESSIONAL AND ETHICAL ADVANCEMENT OF POLICIES, PROCEDURES, AND ACTIONS IN THE FIELD OF MARITAL AND FAMILY LAW.
To accomplish its mission, the Council has adopted the following six goals for the Section:

I. TO PROMOTE AND IMPROVE THE FAMILY.
II. TO BE THE PRE-EMINENT LEGAL VOICE IN THE STATE ON MARITAL AND FAMILY ISSUES.
III. TO SERVE OUR MEMBERS.
IV. TO IMPROVE PUBLIC AND PROFESSIONAL UNDERSTANDING ABOUT MARITAL AND FAMILY LAW ISSUES AND PRACTITIONERS.
V. TO INCREASE THE DIVERSITY AND PARTICIPATION OF OUR MEMBERSHIP.
VI. TO IMPROVE PROFESSIONALISM OF ALL PARTICIPANTS IN THE ADMINISTRATION AND PRACTICE OF MARITAL AND FAMILY LAW.

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**State Bar of Nevada Family Law Section**
**1325 Airmotive Way, Ste. 140**
**Reno, NV 89502**