VOLUME 22, NUMBER 2 **SUMMER 2002**

Editor's Message 1

Submitting Articles and News 1

When is A Deal a Deal in a Divorce Case?
By David Ginsberg 3

How Therapists Threaten Marriages
By William J. Doherty, Ph.D. 8

Custody To Third Parties: Is Virginia's Rule Constitutional? Does Anybody Care?
By Richard E. Crouch 18

News Notes 23

New Law Barring Mental Health Testimony Delayed, Pronounced Moot 23

ABA Annual Meeting In D.C. Packs High-Octane Family Law CLE 23

Liability For Advice To Third Parties 23

CLE Calendar 24

Notes on Recent Appellate Cases 25

Legal Quotation of the Quarter 35

Board of Governors Roster 36

Editor: Richard E. Crouch

EDITOR'S MESSAGE

Notwithstanding the dreadful events of our time, the past year has been made a much more bearable one for your Family Law Section by the extraordinary qualities of your outgoing chairperson, Torrence Harman. The Section's board of governors is grateful for meetings that are scheduled at the beginning of the year, are well attended and efficiently run and begin and end on time. And the whole Section benefits from excellent CLE presentations, easygoing collegiality, and a minimum of Sectional politics. For these things all Family Law Section members should personally thank Torrence Harman and wish her well with a new and probably more righteous career among the ordained clergy. Thanks to her we will remember this organizational year not only sadly, but fondly as well.

This Quarter's newsletter should be of great interest to family law practitioners, containing as it does an article by David Ginsberg on the perennially absorbing subject of separation agreement set-aside, and a truly thought-provoking look by marriage counselor Bill Doherty at a class of professionals dear to our hearts as one of our most reliable sources of business: marriage counselors who make things worse. Mr. Doherty's irreverent treatment of the influence of fads and fallacies in his own profession should make us think twice about the kinds of people we send troubled spouses off to when we are not sure that they are ready for our own services just yet.

There is also a practice note about just what you have been waiting for, malpractice liability to non-clients, and another on the statutory and case law in our state regarding custody awards to third parties over parents' objection. And for those interested there is also a note about the American Bar Association Family Law Section's Annual Meeting, happening this time in nearby Washington, D.C.

SUBMITTING ARTICLES AND NEWS

Family Law News encourages Section members to submit articles, information of a newsworthy nature, etc. for this newsletter. Articles should be typed, double-spaced, and of a length comparable to what you have seen in this newsletter in the past. If you can, send a computer disc, which identifies the computer format and word processing program used. Save as WP 5.1 or MSW 5.0 if using more advanced versions. Contents should be sent to the Editor, **Richard E. Crouch, 2111 Wilson Boulevard, Suite 550, Arlington, Virginia 22201**

We print four newsletters per year. We have have to move up the deadlines for all issues so that the Summer issue can be distributed at the Annual Meeting. Until further notice the deadlines for submission of copy are as follows:

Fall — August 10 | Winter — November 10 | Spring — February 10 | Summer — April 20

Please remember that contents should be submitted well before the deadline to allow time for our working with the author on any needed revisions. Articles which come in nearest the deadline are subject to more arbitrary editing, or run more chance of being overset to the next issue. The Editor also actively solicits comments from Section members on what they would like to see in the newsletter, would rather see less of, etc. Do not expect to see these comments in print, however, as we do not have a letters column.

WHEN IS A DEAL A DEAL IN A DIVORCE CASE?

By David Ginsberg, Fairfax

Most divorcing husbands and wives in Virginia eventually resolve their differences by agreement rather than litigation. Inevitably, one party realizes that he or she is unhappy with the compromises reached, and some of these disgruntled parties ask the courts to overturn their agreements. This article discusses Virginia's attitude toward agreements in divorce cases and reviews the arguments litigants have used in an attempt to invalidate signed agreements.

VIRGINIA'S ACCEPTANCE OF AGREEMENTS

Virginia Courts have made it very clear to divorcing parties that they favor marital property settlements. *See Parra v. Parra*, 1 Va. App. 118, 128, 336 S.E.2d 157, 162 (1985); *Cooley v. Cooley*, 220 Va. 749, 752, 263 S.E.2d 49, 52 (1980). The Virginia legislature supports this position by granting the courts the authority to incorporate, ratify, and affirm *valid* agreements between the parties. Virginia Code §20-109.1.

Virginia has not imposed many restrictions on the form or types of agreements that its courts will accept. Agreements may be executed in triplicate on bond paper with witnesses or handwritten on restaurant napkins as long as they are signed by the parties. The complexity, length, and amount of legalese included in an agreement has no bearing on its validity. When a marital agreement's validity is contested, the challenging party must prove that the agreement is invalid by clear and convincing evidence. *See e.g. Drewry v. Drewry*, 8 Va. App. 19, 25, 378 S.E.2d 12, 12 (1989); *Winn v. Aleda Constr. Co.*, 227 Va. 304, 308, 315 S.E.2d 193, 195 (1984); *Gill v. Gill*, 219 Va. 1101, 1106, 254 S.E.2d 122, 125 (1979).

BASIC REQUIREMENTS

The first step in determining the validity of a marital agreement is ensuring that it complies with Virginia Code §20-155. By incorporating the terms of Virginia Code §20-149, Virginia Code §20-155 requires all marital agreements to be in writing and signed by the parties.

The Supreme Court recently examined the validity of a marital agreement in *Flanary v. Milton*, 556 SE2d 767, 2002 WL 29355 (Va. January 11, 2002). In *Flanary*, the parties to a divorce case reached an oral agreement, which was recorded by a court reporter. Before the agreement could be reduced to a signed writing, the husband died. The Supreme Court held that agreements must be written and signed by both parties to be valid; otherwise they do not comply with the express language of Virginia Code §20-155.

Reviewing a marital agreement in the context of Virginia Code §20-109(C), the Court of Appeals found that the signature of a party's attorney may not be sufficient to bind the party. *Lane v. Lane*, 32 Va. App. 125, 129-30, 526 S.E.2d 773, 775-76 (2000). The ruling relied on the language of §20-109(C) which states "[i]n suits for divorce, . . . if a stipula-

tion or contract signed by the *party* to whom such relief might otherwise be awarded is filed . . . no decree or order . . . shall be entered except in accordance with that stipulation or contract." (Emphasis added). The Court of Appeals found that a Final Decree of Divorce, which had been signed only by the parties' counsel, did not establish a non-modifiable stipulation or contract as contemplated by §20-109(C) because the actual party seeking relief had not signed the Decree.

The Court of Appeals reached a similar conclusion in *Walson v. Walson*, 37 Va. App. 208, 556 S.E.2d 53 (2002), although the grounds for this ruling were quite different. *Walson v. Walson,*. In *Walson,* the Court held that an agreement signed by counsel for a wife was not enforceable because the attorney did not have the apparent authority to sign an agreement on the wife's behalf. Although the wife's attorney testified that he had received an e-mail from his client authorizing him to enter an agreement, the Court overturned the agreement. Based on the wife's previous involvement in all negotiations and insistence upon reviewing each proposal, the Court concluded that the attorney did not have the authority to sign an agreement for the wife, nor did the husband have the grounds to believe that the attorney had such authority.

The recent decisions in *Flanary, Lane, and Walson* effectively reverse *Richardson v. Richardson,* 10 Va. App. 391, 392 S.E.2d 688 (1990). For years many practitioners had followed the holding of *Richardson*, believing that agreements read into the record were valid and final. The Supreme Court has made it clear that this will no longer suffice, and the Court of Appeals has sent two very clear signals that agreements must be signed by the litigants themselves, not their attorneys. In response to these rulings, at least one Circuit Court permits litigants to read their agreements into the record, and then requires the parties to sign a statement confirming that the record accurately reflects their agreement.

UNCONSCIONABILITY

An unconscionability claim asserts that an agreement is so one-sided that it should not be enforced in a court of equity because it does not lead to an equitable result. When faced with this argument, Virginia courts have adhered to a two-pronged standard set forth by the Court of Appeals in *Derby v. Derby,* 8 Va. App. 19 (1989). First, the court must analyze the value received by the parties to determine whether there is a gross disparity. Second, if the court finds a gross disparity, it must then ascertain whether one party overreached or used oppressive behavior to obtain the agreement. If a gross disparity *and* overreaching or oppressive behavior exist, the parties' agreement will be declared invalid and unenforceable.

Practitioners must beware that gross disparity does not mean that one party got a better deal than the other. The difference between what the parties received pursuant to the agreement must be substantial. Virginia courts are not in the business of protecting competent parties from entering into agreements, even if they are ill-reasoned, ill-advised, or inequitable. *Drewry v. Drewry*, 8 Va. App. 469, 383 S.E.2d 16 (1989). "Courts cannot relieve . . . the consequences

of a contract merely because it was unwise" . . . [or] "rewrite a contract simply because the contract may appear to reach an unfair result." *Pelfrey v. Pelfrey*, 25 Va. App. 239, 245, 487 S.E.2d 281, 284 (1997), quoting *Rogers v. Yourshaw*, 18 Va. App. 816, 823, 448 S.E.2d 884, 888 (1994). Following this reasoning, Virginia courts have repeatedly refused to find a gross disparity in agreements that favor one party, but do not shock the conscience of the court. *See, e.g., Jennings v. Jennings*, 12 Va. App. 1187, 409 S.E.2d 8 (1991); *Pillow v. Pillow*, 13 Va. App. 271, 410 S.E.2d 407 (1991); *Grow v. Grow*, 2000 WL 84438 (Va. App. January 27, 2000).

A gross disparity will be found when one party waives his or her right to essentially all of the marital property. *See, e.g., Derby v. Derby*, 8 Va. App. 19 (1989); *Rahnema v. Rahnema*, 2000 WL 251679 (Va. App. March 7, 2000); *Plogger v. Plogger*, 1997 WL 191303 (Va. App. April 22, 1997). In *Derby*, the parties' only significant asset was real estate which became the sole property of the wife under the terms of the parties' agreement. The *Rahnema* court found a gross disparity when wife received all of husband's property, including everything he had earned in thirty years of professional life, even though the parties were only married for four years. *Rahnema v. Rahnema*, 2000 WL 251679 (Va. App. March 7, 2000). In *Plogger*, the court also found a gross disparity because the husband was required to pay $1,200 per month in spousal support when he only earned $1,386 per month.

If only a gross disparity exists and there are no attendant oppressive influences, the case must be extreme to justify equitable relief. *Derby* (citing *Smith Bros. v. Beresford*, 128 Va. 137, 169-70, 104 S.E. 371, 381-82 (1920)). In a Fairfax County Circuit Court case, *Blosser v. Blosser*, Judge Annunziata determined that an agreement was unconscionable on its face without examining the circumstances under which the agreement was reached. *Blosser v. Blosser*, 1992 WL 884599 (Va.Cir.Ct. March 22, 1992). The *Blosser* agreement required the husband to transfer virtually every marital asset to wife, and to pay her monthly support and a substantial lump sum.

If no gross disparity exists, the court is not required to reach the second prong of the *Derby* test. *See, e.g., Grow v.* Grow, 2000 WL 84438 (Va.App.); *Pelfrey v. Pelfrey*, 25 Va.App. 239, 487 S.E.2d 281 (1997), stating "Because he did not prove by clear and convincing evidence a great disparity in value, Mr. Pelfrey failed to satisfy the initial threshold required for further judicial scrutiny. Thus, we need not examine the circumstances surrounding the adoption of the agreement to determine whether there existed 'oppressive influences.'"

In *Drewry v. Drewry*, the Court of Appeals refused to find that a gross disparity existed when the parties reached an agreement based at least in part on an agreed-upon value for an unimproved lot. Two weeks after executing the agreement, the husband sold the unimproved lot for significantly more than the parties thought it was worth when negotiating the agreement. The husband stated that there was no sale in the works when he signed the agreement, and the court had no evidence that either party thought the property had a higher value. Basing its decision on the parties' knowledge when the agreement was signed, the Court of Appeals did not find a gross disparity. *Drewry v. Drewry*, 8 Va. App. 469, 383 S.E.2d 16 (1989).

When there is a gross disparity, but it does not reach a level as shocking as in *Blosser v. Blosser*, the court must find that overreaching or oppressive behavior was evident in order to overturn the agreement on the grounds of unconscionability. The *Derby* court identified numerous factors that

should be considered when it stated, "[w]hen the accompanying incidents are inequitable and show bad faith, such as concealments, misrepresentations, undue advantage, oppression on the part of the one who obtains the benefit, or ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other, these circumstances, combined with inadequacy of price, may easily induce a court to grant relief, defensive or affirmative." *Derby*, citing *Pomeroy, Equity Jurisprudence* §928 (5th ed. 1941).

In *Derby*, the court specifically noted the wife's misrepresentations regarding a possible reconciliation. Simultaneously, she misled her husband by telling him that she was not having an adulterous affair, she presented the agreement to her husband when she knew he could not consult with his attorney, and the court believed that the wife took advantage of the husband's willingness to do anything for his wife. The husband also proclaimed that he had undergone a religious experience that convinced him to sign the agreement. The court in *O'Bryan v. O'Bryan*, 1992 WL 441907 (Va.App. July 28, 1992) declared an agreement unconscionable when the husband testified that he signed it without an attorney and that "his wife had suffered 'several ... nervous breakdowns,' and he had acquiesced only to avoid a 'fight' and 'make the way ... smooth' for her." In *Plogger*, the court noted that the agreement was drafted by the wife's attorney and the husband did not read the agreement before signing it. The court further noted that the parties did not negotiate the terms of the agreement; the wife simply presented the agreement. Knowing the husband's financial situation, she prepared the agreement in a manner that left him virtually penniless. *Plogger v. Plogger*, 1997 WL 191303 (Va.App. April 22, 1997).

Even though the *Drewry* and *Pillow* courts did not find a gross disparity, and therefore did not reach the second prong of the *Derby* test, both opinions shed light on what behavior would not be sufficient to support a finding of oppressive influences or overreaching. The *Drewry* and *Pillow* cases, and *Jennings v. Jennings*, 12 Va. App. 1187, 409 S.E.2d 8 (1991), all stated that the lack of an attorney was not sufficient grounds to constitute overreaching. They cited active negotiation by the parties and the professional acumen of the party seeking to overturn the agreement as important factors.

The *Drewry* and *Jennings* courts faced situations in which a party claimed incompetence at the time the agreement was signed. The wife in *Drewry* claimed that she suffered from a mental illness, and the husband in *Jennings* claimed that he was drunk. Both decisions rejected these claims on the basis of testimony by lay witnesses who observed the parties' behavior at or about the time the agreement was signed. In *Drewry*, the testimony of lay witnesses as to the wife's lucidity overcame the testimony of the wife's treating psychiatrist, who had previously hospitalized the wife.

FRAUD

Fraud requires actual misrepresentation, concealment, or deceit, as well as a "breach of legal or equitable duty which, irrespective of moral guilt, is declared by law to be fraudulent because of its tendency to deceive others or violate confidence." *Wells v.*

Weston, 229 Va. 72, 77, 326 S.E.2d 672, 675-76 (1985), quoting *Nuckols v. Nuckols*, 228 Va. 25, 38, 320 S.E.2d 734, 741 (1984). The elements for constructive fraud are less stringent, thereby making it a more common claim. "To establish constructive fraud one must prove the following by clear, cogent and convincing evidence: that there was a material false representation, that the hearer believed it to be true, that it was meant to be acted on, that it was acted on, and that damage was sustained." *Webb v. Webb*, 16 Va. App. 486, 431 S.E.2d 55 (1993), quoting *Nationwide Ins. Co. v. Patterson*, 229 Va. 627, 629, 331 S.E.2d 490, 492 (1985). For constructive fraud to exist, the party seeking to avoid a contract need not show that there was an actual "intent to deceive" by the other party, but it is necessary to prove that "there has been a material misrepresentation." *Drewry*, citing *Moore v. Gregory*, 146 Va. 504, 523, 131 S.E. 692, 697 (1925).

The mere fact that the parties are husband and wife does not mean that one has a fiduciary duty toward the other. *See, e.g.*, *Grow v. Grow*, 2000 WL 84438 (Va.App.); *Barnes v. Barnes*, 231 Va. 39, 340 S.E.2d 803 (1986). However, as explained below, the *Webb* court found that there was a "special relationship" between parties when one spouse was an attorney. That spouse's failure to fully disclose the value of certain material assets made it impossible for his wife to enter the agreement knowingly and voluntarily.

In *Webb*, the Court of Appeals overturned an agreement on the grounds that the husband had procured it through constructive fraud. The husband, an attorney, offered his wife advice on their divorce, and discouraged her from retaining independent counsel. He had handled the major financial transactions during the marriage, which gave him a superior knowledge of the parties' finances. The wife testified that she relied on the husband to "do the right thing." On top of all this, the husband and wife were living together and sleeping in the same room for much of the negotiations.

The Court of Appeals distinguished *Webb* in *Fields v. Fields*, 1996 WL 79674 (Va.App. February 27, 1996). As in *Webb*, the husband in *Fields* did not disclose the value of his retirement accounts. However, unlike in *Webb*, it was clear that the wife in *Fields* knew that such accounts existed, and her husband was not an attorney. The Court of Appeals held that without a finding that the parties had a "special relationship," there was no fraud. "The duty by which conduct is measured to determine fraud is established by the relationship and circumstances which exist between parties." *Drewry v. Drewry*, 8 Va. App. 460, 469, 383 S.E.2d 12, 16 (1989), citing *Blum v. Blum*, 59 Md. App. 584, 594, 477 A.2d 289, 294 (1984).

"Fraud is generally determined by reviewing the conduct of the parties in relation to their legal and equitable duties to one another; unconscionability is more concerned with the intrinsic fairness of the terms of the agreement in relation to all attendant circumstances, including the relationship and duties between the parties." *Derby v. Derby* 8 Va. App. 19, at 28 (1989). The Court of Appeals has refused to characterize behavior by a party that misled the other party into believing that a reconciliation was possible as fraudulent, but will review this behavior when considering potential attendant circumstances. *See, e.g.*, *Derby*, *Id.*; *Grow v. Grow*, 2000 WL 84438 (Va. App. January 27, 2000). While the circumstances may not rise to the level of fraud, they may be important factors in an unconscionabilty argument.

DURESS

In *Pelfrey*, the Court of Appeals stated, "Duress may exist whether or not the threat is sufficient to overcome the mind of a man

of ordinary courage, it being sufficient to constitute duress that one party to the transaction is prevented from exercising his free will by reason of threats made by the other and that the contract is obtained by reason of such fact. Unless these elements are present, however, duress does not exist. . . . Authorities are in accord that the threatened act must be wrongful to constitute duress." *Pelfrey v. Pelfrey*, 25 Va.App. 239, 487 S.E.2d 281 (1997) (citing *Norfolk Division of Social Services v. Unknown Father*, 2 Va.App. 420, 435, 345 S.E.2d 533, 541 (1986) (quoting 6B Michie's Jurisprudence *Duress and Undue Influence* §§ 2-3 (Repl.Vol.1985))). Thus "threats" of custody litigation or attorney withdrawal, for example, do not make for duress.

This author was unable to locate a single reported case in Virginia in which a marital agreement was overturned because it had been procured by duress. Although the Court in *Pelfrey* did not find that the husband signed the agreement under duress, the Court appears to outline one scenario that might merit consideration. The wife threatened to kill herself if the husband did not sign the property agreement, and there is also some indication that the husband had been under a doctor's care when the suicide threats were made. *Pelfrey* did not find that the husband signed the agreement under duress, since he signed the agreement nine months after the threats, at a time when he was not under a doctor's care and was living with his girl friend. The opinion does seem to suggest that perhaps the outcome might have been different if the husband had signed the agreement under those conditions.

In *Grow*, the Court of Appeals rejected the wife's claim that she signed an agreement under duress. The wife argued that the husband informed her that the matter would have to be settled in court and he would raise his allegations that she had abused the children if she did not sign the agreement. The husband's statement that he would pursue his claims in court did not amount to duress.

CONCLUSION

Virginia courts strongly favor agreements that resolve marital issues. In general, litigants have found it very difficult to convince courts to overturn agreements. The courts require complaining parties to meet a high burden. Proof that the agreement is not a good deal for one side is nowhere near enough to persuade a court to overturn an agreement. A deal is almost always a deal in divorce cases.

HOW THERAPISTS THREATEN MARRIAGES

By William J. Doherty, Ph.D.[*]

I take no joy in being a whistle blower, but it's time.

I am a committed marriage and family therapist, having practiced this form of therapy since 1977. I train marriage and family therapists. I believe that marriage therapy can be very helpful in the hands of therapists who are committed to the profession and the practice. But there are a lot of problems out there with the practice of marital therapy.

I used to think that the best thing we could do for couples to improve their relationship and solve their problems was to send them to a therapist. I since have come to believe that people first need support people, mentors, other couples in their lives, and then they need marriage educators, and then they need therapists — in that order. But the fact is that most people in this country, if they do seek help for their marriage problems, still turn to a professional counselor or therapist, or a pastoral counselor.

My critique is not only about therapists who work with couples, because that's a small minority. Individual psychotherapists, many pastors and pastoral counselors also practice in the way I describe in this article. In my view, there is nowhere that I know of, not any category of counselor, that it's safe to send a distressed married person to for therapy. It all depends on the particular counselor or therapist, many of whom are ill-prepared to help people with their marriage problems. It is dangerous, in America today, to talk about your marriage problems with therapists. You don't know what their attitude is.

Let me begin with the story of Marsha and Paul. Soon after her wedding Marsha felt something was terribly wrong with her marriage. She was obsessed with fears that she had made a big mistake in marrying Paul. She focused on Paul's ambivalence about religion, his avoidance of personal topics of communication, and his tendency to criticize her when she expressed her worries and fears. Marsha sought help at the university student counseling center where she and Paul were graduate students. The counselor worked with her alone for a few sessions and then invited Paul in for marital therapy. Paul, who was frustrated and angry about how distant and fretful Marsha had become, was a reluctant participant in the counseling. In addition to the marital problems, Marsha was suffering from clinical depression: she couldn't sleep or con-

---

[*] William J. Doherty is a Professor of Family Social Science and Director of the Marriage and Family Therapy Program at the University of Minnesota. He is author of *Soul Searching: Why Psychotherapy Must Promote Moral Responsibility*; *The Intentional Family: Simple Rituals to Strengthen Family Ties; Take Back Your Kids: Confident Parenting in Turbulent Times; Take Back Your Marriage*; and *Putting Family First: Successful Strategies for Reclaiming Family Life in a Hurry-Up World.* He may be reached at Department of Family Social Science, University of Minnesota, 290 McNeal Hall, St. Paul, MN 55108. bdoherty@che.umn.edu. This article originally appeared in slightly different form in Vol. 7, pp. 31-42 of *The Responsive Community*, published by the Center for Policy Research, 703 Gelman Library, George Washington University, Washington, D.C. 20052; www.gwu.edu/~ccps. Reprinted by permission of the author and *The Responsive Community.* Copyright William J. Doherty 1997. Some material from a 1999 speech by the author has been added.

centrate, she felt sad all the time, and she felt like a failure. Medication began to relieve some of these symptoms, but she was still upset about the state of her marriage. After a highly charged session with this distressed wife and angry, reluctant husband, the counselor met with Marsha separately the next week. She told Marsha that she would not recover fully from her depression until she started to "trust her feelings" about the marriage. Following is how Marsha later recounted the conversation with the counselor:

Marsha: "What do you mean, trust my feelings?"

Counselor: "You know you are not happy in your marriage."

Marsha: "Yes, that's true."

Counselor: "Perhaps you need a separation in order to figure out whether you really want this marriage."

Marsha: "But I love Paul and I am committed to him."

This counselor was not as direct as most are: in fact she was downright coy. She said "The choice is yours, but I doubt that you will begin to feel better until you start to trust your feelings and pay attention to your unhappiness."

Marsha: "Are you saying I should get a divorce?"

Counselor: "I'm just urging you to trust your feelings of unhappiness."

Marsha decided to not return to that counselor, a decision the counselor no doubt perceived as reflecting Marsha's unwillingness to take responsibility for her own happiness.

Two aspects of Marsha and Paul's case stand out. First, the couple saw a counselor who was not well trained in marital therapy. Any licensed mental health professional can dabble in marital therapy, but most therapists are far more comfortable working with individuals. When marriage problems are formidable or the course of treatment difficult, these therapists pull the plug on the conjoint sessions in favor of separate individual therapy sessions. Often they refer one of the spouses to a colleague for separate individual therapy, with this rationale: "You both have too many individual problems to be able to work on your relationship at this point." Of course, they are living together in this relationship seven days per week and have no choice but to "work on it" continually.

The unspoken reason for this shift in treatment, especially if it occurs early in the marital therapy, is generally that the therapist feels incompetent with the case, especially in dealing with a reluctant husband who is not therapy-savvy and says he is there only to salvage his marriage. This husband lacks a personal, psychological agenda. When he gets turfed off to another therapist to do his "individual" work, he balks, thereby confirming to his wife and her therapist that he is unwilling to work on his own "issues" — whatever that means — and thereby do his part to save the marriage. The marriage is often doomed at this point, an iatrogenic effect of poor marital therapy.

The second noteworthy feature of Marsha and Paul's case is the strong individualistic and anti-commitment orientation of the therapist. Like most psychotherapists, she viewed only the individual as her client. She had no responsibilities beyond promoting what she perceived as this individual's immediate needs and agenda, no obligations to other stakeholders in the client's life. No doubt the therapist also viewed herself as "neutral" on the issue of marital commitment. But, as I pointed out in my book *Soul Searching: Why Psychotherapy Must Promote Moral Responsibility,* claiming neutrality on commitment and other moral issues in American society means that the therapist likely embraces the

reigning ethic of individual self-interest. There is nothing neutral about asking a newly married, depressed woman, "Are you happy in your marriage?" and then urging her to trust her frightened and confused feelings. No self-respecting therapist would urge a suicidal patient to "trust your feelings about how worthless your life is," but many well-regarded therapists play cheerleader for a divorce even when the couple have not yet made a serious effort to understand their problems and restore the health of their marriage. Therapist-assisted marital suicide has become part of the standard menu of contemporary psychotherapy.

Some marriages, of course, are dead on arrival in the therapist's office, in which case the therapist's job is to help with the healthiest possible untangling for all involved parties, especially the children. Some marriages are emotionally and physically abusive, with little chance for recovery. Some marriages appear salvageable, but one of the parties has already made up his or her mind to leave. I am not suggesting that the therapist harangue the reluctant spouse or urge an abused wife to keep her commitment in the face of debilitating abuse. My critique focuses on the practice of therapists, many of whom lack good skills in helping couples, who philosophically view marriage as a venue for personal fulfillment stripped of ethical obligation, and divorce as a strictly private, self-interested choice with no important stakeholders other than the individual adult client.

There are four ways that therapists undermine marital commitment: we have incompetent therapists, “neutral” hyper-individualist therapists, pathologizing therapists, and overtly undermining therapists.

Incompetent therapists

The biggest problem I see in this area is that most therapists are not trained to work with couples, and they see working with couples as an extension of individual psychotherapy. It is not. In individual therapy, depending on your model, you can be fairly laid back. You can be empathic and clarifying, you can even be fairly passive if you want. People will tell their story, they will feel heard, they will be helped to think through their concerns and their options. If you take that approach in marital therapy, you will fail. If you have a warring couple in your office, and you do not create a structure for that session, they will overwhelm you. They will repeat in the office that which they do at home. A lot of therapists end a stormy session with, "Well, we’ve clarified some of the issues, haven’t we?" Which means they've merely put in psychological terms the stuff that the couple knew they were doing, without telling them anything they don’t know. And these therapists offer no direction, no structure, no guidelines — under the pretense that this is being helpful. This may be helpful to some individuals in therapy, but it is not helpful to couples.

Another thing that incompetent therapists do is to beat up on one of the partners. Although women sometimes get more than their fair share of the therapist's negative attention, an under-recognized problem is that men also get seriously disadvantaged in some couples therapy. Men often come to save their marriage, not to seek insight into themselves. The light bulbs have gone on: “I could lose this woman, I could lose these children. I’ve got to shape up”. When they come to a therapist who is only used to dealing with individuals, they are in trouble. The therapist begins with "And how do you feel about being here, Joe?" And Joe says "Well, I’m just here to save my marriage." "No, Joe, that’s not a feeling." "Well, I think it’s important that we …" "No, no, that’s a thought, Joe, that’s not a feeling." And so Joe is not cooperating with individual psychotherapy, which to the therapist means "he’s got big time problems." The therapist and the wife decide that both spouses need a lot of individual help. And so

you try to trot each of them off to an individual therapist. Joe doesn't go, because he's there to save his marriage, not to understand his psyche — which proves that he is not serious about change.

Another time that therapists turf couples off to individual therapists is when the therapist can't handle the in-session conflict, and feels overwhelmed by it. This work is not easy. Jay Haley, one of the founders of family therapy, says that marital therapy is the most difficult form of therapy. The pulls, the triangles, the hot conflict that is right in the room makes it very difficult. The problem isn't that some therapists can't handle it, the problem is they don't know they can't handle it, and so they assume that there is a lot of individual pathology going on. So they turf the spouses off to their individual therapists, or keep one of the spouses in individual therapy and send the other to a colleague. I have seen a lot of unnecessary divorces because of this scenario.

The wife can lose out in this scenario if she happens to say that she has "issues." She'll say that she's depressed a lot, that she's read a lot of self-help books and knows she is co-dependent or something worse. So the therapist and the husband become co-therapists to help her with her problems. And it goes nowhere.

The first problem in marital therapy, then, is incompetence, and therapists not knowing they're not competent. According to a national survey, 80 percent of all private practice therapists in the United States say they do marital therapy. And only 12 percent of them are in a category that is subject to any requirements for even one course, or any supervised experience, in that field.

Therapists who pathologize

This is really an insidious one. You go to individual therapy, you criticize your spouse, and your therapist is likely to come up with a diagnosis for your spouse. I'm afraid you're married to a narcissistic personality disorder. When you get a therapist giving you labels to pathologize your partner, it leads to hopelessness. Sometimes the therapist pathologizes the reason you got married. For any marriage, we can get together and figure out what pathology led you to get married. This can lead to a sense of fatalism and hopelessness. You should never have bought that car to begin with.

Another version is pathologizing the current relationship, telling the couple that this is a sick relationship, that you are of questionnable psychological health if you stay. Let's say you see an individual therapist after your spouse has an affair, and you're thinking of taking your spouse back. You can be pathologized for your very commitment to keep trying. What's wrong with you that you are hanging in there? The therapist can highlight a one-sided sense of victimization. Now there is a lot of marital abuse out there, genuine abuse, but this word gets thrown around a lot. You can take ordinary unhappiness and conflict and transform them into the sense of being abused. You are a victim, and this then propels you.

A new form of pathology, by the way, is clients saying that they're "bored" in their marriages. I've seen therapists get very exercised about how awful it is to be in a boring marriage. In a consumer culture, where we want stimulation and satisfaction all the time, boring is the new pathology.

Overt undermining

The most common form of this is provocative questions and challenges. "If you are not happy, why do you stay?" is a directly undermining question. It says, "You are an idiot if you stay." I have a student who had post-partum depressions after both of her children. She went to counselors to get help,

in the process complaining about her husband for being insensitive to her emotional distress but not saying that she was doubting her commitment. Each time, at the end of the first session, the therapist said some version of this statement: "I can't believe you're still married." Most patients hear this as a statement that "your spouse is an insufferable ogre and lunatic," but to be fair, this is usually just an assertion of the therapist's belief that the couple are fundamentally incompatible and that an intelligent client should run, not walk, out of the marriage. You'd be amazed at how many therapists say this kind of thing after a session or two. What they're really saying is not that the couple are fundamentally incompatible, but that "I am fundamentally unable to help you."

Then there is undermining by direct advice. It's against the code of ethics of the American Association for Marriage and Family Therapy to directly tell people what they should do, either to stay married or get divorced, but a lot of therapists do it. They say, "I think you should break up," "I think you may need a separation," or "For your own health you need to move out" — or "You need to move on." In one case, a woman with a husband and ten children relapsed from her alcoholism. Her individual therapist admitted telling her that she needed to move out and have no contact with her husband or kids, for the sake of her recovery. The family therapist who told me about the case was trying to pick up the pieces with the husband and children.

Neutral, hyper-individualist therapists

My own work has offered a communitarian critique of the individualist ethic of psychotherapy in the United States. Although the focus of this article is on marital therapy, I believe that all psychotherapy for individuals who are married is, in part, marital therapy. Even if only one spouse participates, issues of personal need versus marital bonds and obligations are inevitably present in individual therapy. Furthermore, I am convinced that there is widespread harm done to marriages by many individually-oriented psychotherapists. Consider the following example:

Monica was stunned when Rob, her husband of 18 years, announced that he was having an affair with her best friend and wanted an "open marriage." When Monica declined this invitation, Rob freaked out and spent two weeks in a mental hospital for an acute, psychotic depression.

This couple and their children had been through huge stresses in the past year, including a temporary job loss and wife's contracting an incurable illness, and relocation to a different city where they had no support systems in place. Rob was acting in a completely uncharacteristic way for a former straight-arrow man with strong religious and moral values. Monica was depressed, agitated, and confused. She sought out recommendations to find the best psychotherapist available in her city. He turned out to be a highly regarded clinical psychologist.

As Monica later recounted the story to me, her therapist, after two sessions of assessment and crisis intervention, suggested that she pursue the divorce that Rob said he wanted. She resisted, pointing out that this was a long term marriage with young children, and that she was hoping that the real Rob would re-emerge from his mid-life crisis. She suspected that the affair with her friend would be short-lived (which it was). She was angry and terribly hurt, she said, but determined to not give up on an 18-year marriage after only one month of hell. The therapist, according to Monica, interpreted her resistance to "moving on with her life" as stemming from her inability to "grieve" the end of her marriage. He then connected this inability to grieve to the loss of her mother when Monica was a small child; Monica's difficulty in letting go of a failed marriage stemmed

from unfinished mourning from the death of her mother.

Fortunately, Monica had the strength to fire the therapist. Not many clients would be able to do that, especially in the face of such expert pathologizing of their moral commitment. And equally fortunately, she and Rob found a good marital therapist who saw them through their crisis and onward to a recovered and ultimately healthier marriage.

This kind of appalling therapist behavior occurs every day in clinical practice. A depressed wife whose husband was not dealing well with his Parkinson's Disease, and was being verbally abusive, was told at the end of the first, and only, therapy session available through her HMO that her husband would never change and that she would have to either live with the abuse or get out. She was grievously offended that this young therapist was so cavalier about her commitment to a man she had loved for 40 years, and who was now infirm with Parkinson's Disease. She came to me to find a way to salvage a committed but currently abusive marriage. When I invited her husband to join us, he turned out to be more flexible than the other therapist had imagined. He too was committed to his marriage, and he needed his wife immensely.

As divorce lawyers who see them constantly know, these illustrations should not be dismissed as isolated instances of random bad therapy or incompetent therapists. They stem from a pervasive bias among individually-oriented therapists against sustaining marital commitment. From this perspective, abandoning a bad marriage is akin to selling a mutual fund that, although once thought to be good for you, is now a money loser. The main techniques of this kind of therapy are two-fold: (a) walk clients through a cost-benefit analysis — what is in it for me to stay or leave? — and (b) ask clients if they are happy, and if not, then why are they staying married? If those questions yield what appears to be an irrational commitment in the face of marital pathology, as the therapist believed to be true for Monica, then the therapist falls back on pathologizing the reasons for this commitment. It takes extraordinary conviction to weather such "help" from a therapist.

These therapists' questions and observations are value-laden wolves in neutral sheep's clothing. The cost-benefit questions in particular brook no consideration of the needs of anyone else in this decision. I was trained in the 1970s to dismiss clients' spontaneous moral language ("I don't know if a divorce would be fair to the children") by telling them that if parents take care of themselves, the children will do fine. And then I would move the conversation back to the safer ground of self-interest. That's how most of us learned to do therapy years ago, and it's still widespread in practice.

Therapists, like all of us, are far more absorbed in the culture than we are observing of the culture. Most of us like to think we're counter-cultural, but we're not — we're just swimming along in the mainstream. So I began to pay attention to the language I am hearing from therapists and in the self-help books that therapists write. This is the language that I hear from therapists now, in places like case consultation groups.

• "The marriage wasn't working anymore." This is like saying your car is not working anymore, and is it worth it after a period of time to put more money into repairs? If it's not working, get another one.

• "It was time to move on." That's what we say about a job. I invested in the job, I've lost my creative edge, and it's time to move on.

• "You deserve better." This is a very consumerist saying, and friends, not just therapists, will say this to each other about a marriage. You complain about your marriage and

your friend or your therapist says, "You deserve better." That is a market-driven attitude lifted straight out of narcissistic, infantilizing television commercials.

How Did We Get Here?

Marriage counseling (now termed "marital therapy" in the profession) was born in the 1930s and 1940s in an era of worry about the viability of modern "companionate" marriages. The early marriage counselors were mostly gynecologists, educators, and clergy. Of course, psychiatrists treated many distressed married people, but did not see their primary responsibility as assisting the marriage. It was not until the 1950s that marriage counselors began to work with both spouses together in one session. Prior to then, it was considered inappropriate treatment, and even unethical, to have both partners in the sessions, because this would destroy the powerful one-to-one psychological transference dynamics deemed necessary for successful treatment of the individual problems that were feeding the marital problems.

During the 1950s and early 1960s, "conjoint" marriage counseling became more widespread as therapists began to appreciate the power of working on relationship patterns directly in the session. The American Association of Marriage Counselors grew in numbers as credentialed psychotherapists joined clergy who specialized in marriage counseling. Interestingly, marriage counseling as a professional activity developed independently of "family therapy," which grew out of psychiatry's experiments with family treatment for mental health disorders. (Only in the 1970s did the associations of marriage counselors and family therapists merge into the American Association for Marriage and Family Therapy.)

Prior to the cultural revolution of the late 1960s and 1970s, many marital therapists saw their task as saving marriages. Divorce was seen as a treatment failure. There was little recognition of spouse abuse and the ways in which a stable but destructive marriage can undermine spouses' emotional health and create domestic hell for children. The individual tended to get lost in the marriage. Early feminist critics of marital therapy were quick to point out how this treatment approach could be dangerous to a woman's health. Women were often held responsible for the problems, since family relationships were supposed to be their forte. Parents were encouraged to stay together for the sake of the children. In addition, some clergy counselors unsurprisingly added a religious rationale to the support of stable marriages, to the dismay of critics who saw this as making people feel guilty before God for salvaging their individual mental and physical health from a really bad marriage.

What we do in this country is, of course, swing from one model to another. Research and professional literature on marital therapy burgeoned during the 1970s during the era of skyrocketing divorce rates. Sobered by feminist critics and enamored of the 1970s cult of individual fulfillment, marital therapists largely rejected the "marriage saver" image. The 1980s brought a wealth of research studies on marital communication, marital distress, and effective treatment techniques. Marital therapists who were trained in these new techniques viewed themselves as performing a form of mental health treatment that helped not only marriages but also the individual well-being of the spouses. But on the value of preserving marital commitment if possible, the field was mostly "neutral" — which means embracing at first a contractual, and then just an individualist idea of commitment. A decision about divorce became just like any other life style decision such as changing jobs. The therapist's job was not to influence the outcome of the decision but to help people sort out their needs and priorities.

As therapists during the 1970s and 1980s experienced their own divorces and those of

colleagues, they increasingly saw divorce as a bona fide life style option and a potential pathway to personal growth. The self-help books written by therapists reflected this. As explained by Barbara Dafoe Whitehead in her book *The Divorce Culture*, therapists followed the popular culture in embracing the "expressive divorce" as an enlightened way to express your feelings and start a new life when the old marriage was in disrepair. Although they were concerned for the children, most therapists believed that the children would do fine if their parents did what was best for themselves. I term this "trickle-down psychological economics," which works for the children just as well as the other trickle-down theory has worked for the poor in American society.

In a short time therapists moved from an era in which a prominent psychiatrist in the 1950s said that he never supported a couple's decision to get a divorce, to an era where the therapist was supposed to be neutral. A recent survey of clinical members of the American Association for Marriage and Family Therapy found that nearly two-thirds said that they are "neutral" on the subject of divorce. As a colleague said in the press just a few years ago, "The good marriage, the good divorce, it matters not." This was where neutrality has led us.

The other stance emerging during the 1970s went beyond neutrality (because neutrality is not really possible anyway), to therapists seeing themselves as liberationists to help people out of unhappy marriages and other unfortunate commitments in their lives. So we had the introduction of the idea of liberation from marriage, particularly when somebody sees an individual therapist. If you describe your marriage as painful for you, the therapist wants to liberate you from this toxic influence. This stance is still with us. If someone raises a concern about the fate of their children, many of us were trained to say that kids will do fine if their parents do what they need to do for themselves. What nonsense, but I used to say it.

Where We Are Today

The 1990s saw marital therapy become mainstream as more professionals practiced it. The 1990s also saw a movement back towards espousing the value of marital commitment and the therapist's role in promoting it. This was first seen in Michele Weiner-Davis's work on solution-oriented therapy for highly distressed couples, *Divorce Busting*. She and others began to take a deliberately pro-marriage stance, much to the dismay of established leaders in the field. Having come to a "middle" point of encouraging neither divorce nor staying together, many leaders in marital therapy saw this new pro-marriage stance as a conservative backlash against feminism and emancipated individualism. If marriage and divorce are primarily life style choices, and if a marriage in which a spouse is dissatisfied is destructive for all involved, they reasoned, why should therapists be in the business of saving marriages?

In the 1990s, a decade of backlashes and counter-backlashes, was also an assault on the use of the term "marriage" among scholars and practitioners. The critique is that "marriage" marginalizes cohabiting couples and especially gay couples. Most marital therapists, when advertising their services or giving professional presentations, use the term "couples therapy" or "couples counseling." The list of presentations at national conferences of marriage and family therapists contains multiple references to "couples" and scant references to "marriage." "Family" is still O.K., as long as a variety of family structures are included in the definition, but "marriage" is out because it is not inclusive of non-marriage.

This trend is unfortunate, because the term "couple" carries no connotations of moral commitment and lifetime covenant. My

daughter and her boy friend were a "couple" during their summer after high school, but the relationship did not survive their going to different colleges. Is this relationship morally equivalent to Marsha and Paul's, or to that of a long-married couple with children? Even if we use the term "committed couple" or "committed relationship," we beg the question of how deep and permanent the commitment.

A Communitarian Approach

The first plank in a communitarian platform for marital therapy would be for therapists, both those who work only with individuals and those who work with couples, to recognize and affirm the moral nature of marital commitment. This stance moves therapists beyond the guise of neutrality, which conceals an implicit contractual and self-interested approach to marital commitment.

The second plank affirms that personal health and psychological well-being are indeed central dimensions of marriage and important goals of therapy. There is no inherent contradiction between emphasizing the moral nature of marital commitment and promoting the value of personal satisfaction and autonomy within the marital relationship. These moral and personal elements together define the unique power of marriage in contemporary life.

Third: It is a fundamental moral obligation to seek marital therapy when marital distress is serious enough to threaten the marriage. We need a cultural ethic that would make it just as irresponsible to terminate a marriage without seeking professional help as it would be to let someone die without seeing a physician.

Fourth: Promoting marital health should be seen as an important part of health care, because we now know the medical and psychological ravages of failed marriages for most adults and children. And the health care system should support this kind of treatment as an essential part of health care, instead of regarding marital therapy as a marginalized "uncovered benefit."

The fifth plank concerns the importance of education for marriage and early intervention to prevent serious marital problems. We need a public health campaign to monitor the health of the nation's marriages and to promote community efforts to help couples enhance the knowledge, attitudes, values and skills needed to make caring, collaborative, and committed marriage possible. There are many well-tested courses and programs in marriage education across the country that can fill this need. And we need grass roots efforts among couples without direct reliance on professional leadership.

Sixth: Therapists should help spouses hold each other accountable for treating their spouse in a fair and caring way in the marriage. Although commitment is the linchpin of marriage, justice and caring are essential moral elements as well. A communitarian approach to marital therapy would incorporate feminist insights into gender-based inequality in contemporary marriages. It would be sensitive to how women are often expected to assume major responsibility for the marriage and the children, and then are criticized for being over-responsible. When a husband declines to do his fair share of family work, the therapist should see this as a copout from his moral responsibilities, not just as a self-interested bargaining position with his wife. We should promote more than marital stability: we should work for caring, collaborative, and equitable marital unions that are good for the well-being of the spouses as individuals.

Seventh: Recognition of the prevalence of therapist-assisted marital suicide. We need a consumer awareness movement about the potential hazards of individual or marital ther-

apy to the well-being of a marriage. Consumers should be given guidelines about how to interview a potential therapist on the phone, with questions such as, "What are your values when it comes to the importance of keeping a marriage together when there are problems?" If the therapist responds only with the rhetoric of individual self-determination ("I try to help both parties decide what they need to do for themselves"), the consumer can ask if the therapist has any personal values as to the importance of marital commitment. If the therapist hedges, then call another therapist. (Look elsewhere too if the therapist says that marriages should be held together no matter what the consequences.) Consumers also should be aware that many therapists who primarily work with individuals are not competent in marital therapy and thus are likely to give up prematurely on the marital therapy and the marriage itself. It is best to see a therapist who has had special training in working with couples.

I do not believe we can or should go back to the 1950s. I believe that some divorces are necessary. All major religions recognize that some people cannot live together. Not all religions say that you can get a divorce and remarry, but every major religion knows that some relationships break down, and that it is unwise for some people to continue to live together. Divorce is a necessary safety valve for terminally ill marriages. I have a friend who discovered her husband and co-parent was a pedophile, and he would not get help. The moral thing to do was to send him packing. It's important to understand that there is a dark, tragic side to marriage. But divorce ought to be the tragic exception, not the norm.

Particularly in the presence of minor children, divorce is like amputating a limb: to be avoided if at all possible by sustained alternative treatments, because it brings about permanent disability, but pursued if necessary to save the person's life.

I also believe we can reduce the divorce rate substantially, without increasing the number of truly miserable, conflicted marriages. We have to do both.

Generals fighting the last war

The cultural tide is shifting. We're shifting toward what I believe is a better balance between individual satisfaction and moral commitment, and toward the creation of new opportunities for people to learn how to have lifelong, successful marriages. But I believe that most therapists are still behind the times. Like generals, they are still fighting the last war, the one that freed individuals to leave unhappy marriages. They still see themselves as liberation fighters for individual fulfillment against oppressive moral codes and family structures. That's how I started my career as a therapist. But in the meantime the culture has shifted. The old war has been largely won. Most of us are now free to walk away from our marital commitments more easily than from any other contract in our lives. And we suffer relatively little if any social stigma for doing so. But now we face the prospect of losing our ability to sustain any commitment at all.

Many therapists are now reconsidering their approach to marital commitment. They have been entranced by a cultural mirage about what constitutes the good life in the late twentieth century, but they are beginning to rethink their ill-begotten moral neutrality in the face of disturbing levels of family and community breakdown. A communitarian critique and reformulation of marital therapy can point the way to a new kind of marriage covenant that views moral responsibility, sustained commitments, and personal fulfillment

as a garment seamlessly sewn, not a piece of Velcro designed for ease of separation.

CUSTODY TO THIRD PARTIES: IS VIRGINIA'S RULE CONSTITUTIONAL? DOES ANYBODY CARE?

By Richard E. Crouch, editor

The statutory law in Virginia is now clear that custody of a child can be awarded to not just a father or a mother, but anybody with a "legitimate interest," and that custody of the child is awarded according to the best interests of the child. And many people, including many lawyers, think that it's just exactly that simple. After all, what could possibly be more important than doing the absolute best that we (society, the state, that is) can possibly do for any child? Why shouldn't the law undertake to give every child (including yours) the best possible "placement" rather than the not-so-great one that nature gave him by the crude, haphazard non-method of birth? And if that means the social workers can reach down into your home, pluck out your child, decide what is best for your child and "place" him or her with the yuppies next door — or more likely, the affluent couple in the much nicer neighborhood on the other side of the tracks — that is after all what achieving the best interests of the child means.

Well it isn't quite that simple, because Virginia law has to conform to the requirements of the U.S. Constitution, as articulated by the U.S. Supreme Court, and that Court has said repeatedly that the state just can't do that. The right to raise your own children, meaning the ones "allocated" to you by the grossly unscientific and discriminatory method of live childbirth, "assigned" to you by Nature or Nature's God, if you will, is a big, important constitutional right. The Supreme Court has been saying this for a long, long time, but it has had some trouble taxonomizing this right because it predates the Constitution. It is at once older and more fundamental than the Constitution, and thus was simply assumed when the Constitution and the Fifth Amendment and the Fourteenth Amendment were penned. In other words, back in those naive times, no one had ever suggested that the government had a right, much less a duty, to reach into homes and "re-place" children with better parents, and anyone who argued "How dare we leave a child with non-best parents, and *discriminate against* the best parents, on the basis of mere natural childbirth?" would have been bundled off to the loony bin. However, by the time of *Smith v. OFFER*, 431 U.S. 816 (1977) ; *Quilloin v. Walcott*, 484 U.S. 246 (1978); and *MLB v. SLJ*, 519 U.S. 102 (1996), the U.S. Supreme Court had firmly placed this right within the "liberty" guarantees of the Due Process Clauses of the Fifth and Fourteenth Amendments. The Supreme Court emphasized it again in *Santosky v. Kramer*, 455 U.S. 745, (1982); *Lassiter v. DSS of Durham County*, 452 U.S. 18 (1981); and *Troxel v. Granville*, 530 U.S. 57 (2000). The Court held in *Santosky*, unanimously, that the "interests of parents in their relationship with their children is sufficiently fundamental to come within the finite class of liberty interests protected by the Fourteenth Amendment" (at 774).

What all these cases have said is that the state can take a person's child away only in

cases of parental unfitness, abandonment, or "extraordinary circumstances" making it necessary in order to prevent very serious harm to the child. The unfitness / abandonment / extraordinary-circumstances test first began to be carefully formulated, or at least formulated and extensively publicized, in *Bennett v. Jeffries*, 40 NY 2d 543, 387 NYS 2d 821, 356 N.E.2d 277 at 281 (1976). One might wish that last clause to be more careful and specific, but as of now it is not.

Some states applying and construing this right have tried to give the extraordinary circumstances further and longer definition, and some of them have done so by listing a number of circumstances that are really pretty ordinary in the bizarre world of social work, parental rights terminations, foster care and other things that feed the ever-hungering adoption market. (Some formulators of an acceptable standard have shifted from "harm" to "detriment," which means sort of the same thing, but is probably a bit easier for fact-finders to find. It's a three-syllable Latinate word that's more impersonal and adaptable to the use of the irresponsible, blame-shifting, bureaucratic passive voice than a harsh four-letter Anglo-Saxon word like *harm* or *hurt*. Definitely a softer and more civilized term, which after all implies including even the smallest degree of worsening condition, particularly as a prediction of the child's future).

Nevada has a statute (NRS 125.500(1)) that requires that before any custody award to a non-parent without parental consent, the court must make a finding that custody to the parent would be detrimental to the child, and that third-party custody is "required in order to serve the best interest of the child." It says that is its "parental-preference presumption." In *Litze v. Bennum*, 111 Nev. 35, 38; 888 P.2d 438, 440 (1995), it held that the fact that the third parties had had custody for an extended period (eight years) does not supply the necessary "extraordinary circumstances." *Locklin v. Duke*, 929 P.2d 930 (Nev. 1996), followed *Litze* and (at 934) reviewed the statutory standards of quite a few different states, finding, for instance, that Maryland has a terrible rule which Nevada definitively rejects.

So just what has Virginia done about all of this? Well Virginia has a statute providing for adoption over parental objection (§63.1-225.1), which really states that your child can be taken for unfitness or abandonment or on grounds of best interest, but which then goes on to make clear that "best interest" in these particular cases will have to include a whole lot more (i.e., one of those lists of extraordinary and not-so-extraordinary circumstances, which of course includes long-time attachment to the claiming would-be adopters, niceness of *their* home, etc.). The Virginia Court of Appeals in *FE v. GFM*, 32 Va. App. 846, 531 S.E.2d 50 (2000), upheld en banc at 35 Va. App. 648, 547 S.E.2d 531 (2001), stated that the right to raise your child is a Fourteenth Amendment liberty interest, and that therefore the third-party custody statutes affect a fundamental right, and are therefore subject to the strict scrutiny test. (Headnotes 15 — 21). The parental rights termination laws have some fairly substantial constitutional protections built in (See §16.1-283), and they have a number of pre-termination requirements for positive, affirmative help to the parent before the government gives up on her and abandons all theories about the possibility of improving and getting her child back.

But the custody laws. Ah, yes, the custody laws.

In the custody area, the statute allowing third-party custody awards, 20-124.2B plus § §20-124.3, and the case law construing it,

proudly take the position that anybody with a legitimate interest can be a third-party claimant and all such claimants are equal. And then, supposedly to protect the undeniable constitutional rights of natural parents to have their own children, the interpretative case law does two things. Neither of these is exactly what the U.S. Supreme Court has said it wants, but they are touted as alternative routes to the same goal. With the ultimate standard remaining nothing but "award according to the best interest of the child" Virginia case law requires that there be a rebuttable presumption that the "best interest" candidate for custody is the natural parent. Then, once that presumption is overcome, the third-party claimant has to be shown to be best by "clear and convincing evidence" — but what has to be proved with that strong evidence is still nothing but "best interest."

As Mr. Justice Hassell pointed out in the concurrence and dissent in *Williams & Williams v. Williams & Williams*, 256 Va. 19, 501 S.E.2d 417 (1998), at 423, this doesn't begin to meet the U.S. Supreme Court's test: it just does something else — something nice, perhaps, but not very effective. The *Williams* case, being a visitation controversy, didn't actually force that issue, but it is clear from the Hassell opinion that he thinks the case will come along some day that does so, and that will be a day of reckoning.

The problem is that all these words are pretty abstract in the kind of trial-decision and appellate-review context involved here. It's after all just words, and a lot of subjective interpretation of data, usually without the supposedly protective filter of the jury system. Ultimately, it is not so hard for a judge to look at the same kind of evidence as wouldn't even begin to convince another judge, and say that the presumption that the natural parent is best has been rebutted. Going on from that, with all of our glorious rhetoric about how equal everybody is, and how important absolute best, best interest is, it isn't very hard to find that the evidence which convinced one is "clear and convincing."

The standard just relates to degrees of proof, and not to the hard substance of what has to be shown against a natural parent to take his or her kids away. Even if you have to show it by clear evidence and convincing evidence, as a judge announcing a decision all you ultimately have to show is that you think the natural parent isn't the best parent. Now think about that one for a minute, because, truth be told, finding that you, or I, or whatever parent nature unscientifically gave that kid is not the absolute, star-quality, state of the art, gold-medal all-time Best is not really all that difficult.

So the problem with these custody statutes in the custody area is that they allow the courts to slide around the whole body of law that imposes stringent substantive requirements on taking your kids away, the more-elaborate and fine-tuned criteria of the adoption statute, and the government-help requirements of the parental rights termination statutes, by allowing a custody award of your child to any person with a legitimate interest upon a showing of mere best interest. (Of course these long-list criteria often includes things like has been away from the natural parent for a long time and has gotten attached to the third-party custodians, etc., no matter how much it might be the fault of social workers who disobey their own rules or due to third-party claimants' aggressively dilatory legal representation).

You don't think so? Let's take a closer look at *Williams v. Williams*. *Williams and Williams v. Williams and Williams* was a grandparent visitation dispute, in which two fit natural parents objected to an order giving the grandparents visitation rights, and there,

in the context of protecting a child against the evils of visitation, the appellate courts felt free to get all concerned about state interference with the natural right of parents to raise their children and make decisions about what people they get to see.

Concurring and dissenting Justice Hassell, joined by Justice Kinser, beginning with Section V of his opinion, said that the U.S. Supreme Court, in such cases as *Wisconsin v. Yoder*, made it clear that a state can interfere with a parent's rights to raise his or her own children only when the state acts within its police power to protect the health or safety of that child. The parents' fundamental rights being at issue, a compelling state interest was required to override them. As the Justice pointed out, the standard "best interests of the child" does not require the state to exercise its police power to protect the health or safety of a child. Rather, this comparative standard requires a court to make quite different determinations about what may be most beneficial to a child. (501 S.E.2d at 423). He found §20-124.2 unconstitutional, because it permits government to impose its views about child raising on the parents, and override their fundamental Fourteenth Amendment rights *without* requiring that a court in awarding visitation to third parties determine that that visitation is necessary to protect the child's health or safety.

The problem with the plurality's theory, that the General Assembly must have intended a requirement that harm or detriment to the welfare of the child be found is, Justice Hassell explained, not at all supported by the language "in support." A requirement of detriment or harm is certainly not imposed by the language from §20-124.2(B) saying that a court "shall give due regard to the primacy of the parent-child relationship." It simply does not say what they say it says, nor do what they say it does. The quoted language of §20-124.2(B) is plain enough, and has no words requiring a harm finding. It "simply is not equivalent to the constitutional requirement that a court make a finding of compelling state interest before interfering with a parent's fundamental right to raise a child." (*Id.* at 424)

Lest there be any mistake about what this means, let's quote Justice Hassell, again at page 424:

> For these reasons, I would hold that Code § 20-124.2(B) is unconstitutional as applied because the statute permits the Commonwealth to interfere with the parents' fundamental rights to raise their child even though the statute does not require the court to make a finding that the failure to award visitation over the parents' objections would be detrimental to the health or safety of the child.

But this isn't going to change soon, and probably not ever, even if some indignant appellate judges who remember there's a Constitution occasionally rail about it. For natural parents are one oppressed group that has no lobby. Numerous as they are, their cause lacks cachet, money, and sex. The politics of the law reformers and the do-gooders who look for oppressed victims, the legal aid lawyers, the ABA, the ACLU, etc., are such that it's easier for them to make the necessary leap of faith and see the children — those poor, poor darlings who shockingly aren't being given the very best home and parents the law can give them — as the oppressed.

After all, these ideas that nobody but the government knows enough about children to see that they are raised properly have been around for a long time. Plato was appalled by the randomness of laissez-faire childbirth and child raising, and he didn't think most parents were worth a damn. He said that the

government should take all children away from all parents and raise them in communal nurseries — not so much because of the child's inherent right to have what's absolutely best, but so that children could get the best upbringing according to Plato's own theories and thus become model citizens, so that ultimately the human race would progress. The early Soviet Union also believed in raising children in communal Komsomol camps away from the baneful influence of parents so they could all be indoctrinated from birth with communist theory and would love and trust only the state. It knew that you can't trust parents and that in the privacy of the home you can't properly supervise them to see that they are not teaching children subversive and heretical doctrines. That government encouraged little children to rat on their parents for espousing — or at least seeming, to little children's eyes and ears, to be espousing — politically incorrect and forbidden ideologies. The Nazi social planners with their Hitler Youth camps got into the same kind of thing. So today’s do-gooders, who know so well what’s best for kids, have plenty of historical precedent.

NEWS NOTES

NEW LAW BARRING MENTAL HEALTH TESTIMONY DELAYED, PRONOUNCED MOOT

HB 1001, which makes parents' mental health and therapy records confidential and privileged in family law cases, and bans subpoenas of mental health providers, now will not go into effect until summer 2003. After this year's legislative session adjourned, Governor Warner used his veto powers to amend the bill to delay its implementation, and the legislature concurred. According to Alexandria practitioner Carolyn Grimes, this means the new law will be preempted by medical privacy provisions of the federal Health Insurance Portability and Accountability Act (HIPAA), and thus will be moot. She adds, "The sponsor apparently only wanted to shield marriage counseling records and did not mean to preclude evidence of mental illness in custody cases."

ABA ANNUAL MEETING IN D.C. PACKS HIGH-OCTANE FAMILY LAW CLE

The American Bar Association's Annual Meeting will once again be held in Washington, D.C. in early August. The Family Law Section meeting runs from Friday August 9 to Sunday August 11 at the Shoreham and the Marriott Wardman Park (formerly the Sheraton, just up the street from the Shoreham). The CLE programs are: "Representing Children in Custody Cases," Fri., 2-5; "Collaborative Law" with Pauline Tessler, Sat. 9:30-11:30 (*not* the Collaborative Law *training* mentioned in our last issue); "Razor's Edge: How to Keep the Cutting Edge of Family Law Away from Your Throat," Sat.2;15-4, "Hot Tips from the Experts," Sun. 10-11:45. Other activities include receptions at Union Station and the Air and Space Museum, an awards luncheon for Texan family law pioneer Louise Raggio and the late Dave Thomas, meetings of the Section's governing Council, which are open to all members, and contested elections. To register or for more information visit www.abanet.org/annual/2002 or use the form recently mailed to Section members. The meeting registration fee is very low, and members pay a la carte for only the CLE programs, luncheons, receptions etc. they want to attend.

LIABILITY FOR ADVICE TO THIRD PARTIES

It is a received and comforting truism in the world of family law practice that at least you don't have to worry about malpractice liability to persons who are not your clients. Or do you? Just to keep us worried, an item in the most recent issue of the American Bar Association's *Litigation News* makes a big, hand-wringing deal over a recent Ohio intermediate appellate case which it links up with a 1995 Missouri case to ratchet up the paranoia quotient. Observing by the by that a non-client has longer to sue you than a client would have, the article sets out the basic proposition that if you give a legal opinion to your client knowing that it will be shared with a third party, and that third party imprudently acts on your

wrong opinion, no privity requirement obtains, and you can be liable in malpractice to somebody you never met. The cases cited, *Mark Twain Kansas City Bank v. Jackson Brouillette, Pohl & Kirley*, 912 S.W.2d 536 (Mo. App. 1995), and *Orshoski v. Krieger,* Ohio Court of Appeals, 11/9/01, had nothing to do with family law, but they do raise some disturbing implications. If you try to save time and cut down on the repetition of client questions by means of a client handout which includes some legal advice in it, you had better be absolutely sure that it is up-to-date, given the way these things end up being handed around at cocktail parties, at Women's Center consciousness-raisings, father's rights group meetings, etc. Also, if you were cheerfully told by a prospective client in an initial interview something like "I'm going to pass on that great advice to my cousin: she's thinking of dumping her husband too," you would not be the first lawyer to hear such things. The legal advice you give, often greatly misunderstood, does get passed around in the community, and we all know how the first thing anyone looks around for today, whenever disaster or disappointment strikes, is someone else to blame. See item at 27/3 *Litigation News* 7 (March 2002).

C.L.E. CALENDAR

Practical Legal Ethics in Virginia: Issues and Answers. Arlington, May 29. John Coffey and Stephen Ratliff. Sponsored by NBI, 1-800-930-6182, www.nbi-sems.com.

VTLA Annual Family Law Seminar. Military issues, working with the DCSE, evidence, malpractice, alimony and cohabitation. The Hon. Vincent Conway, Jr., The Hon. Winship Tower, The Hon. Lydia Taylor, The Hon. Thomas Hoover, The Hon. Randall Johnson, The Hon. Gary Hicks, The Hon. Lynn Bryce, The Hon. Timothy Hauler, The Hon. Joanne Alper, The Hon Gaylord Finch, The Hon. Teena Grodner, The Hon. Richard Potter, The Hon. Dennis Smith, The Hon. William Alexander, The Hon. David Williams, The Hon. James Swanson, DeRonda Short, Edward Barnes, Kelly Sweeney Hite, David Weaver, Glenn Lewis, Lawrence Diehl, George Christie, Sandra Havrilak, Wendy Inge, Brooks Patten EcElwain, Beth Bittel, Stacy Moreau, Betsy Jenks, Craig Burshem, Nancy Crawford, Alice Burlinson, Karen Keyes, Ronald Tweel, and William Scott, IV. Norfolk June 4, Richmond June 20, Fairfax June 25, Roanoke June 27. 7 credit hours. To register call 800-267-VTLA, or 804-343-1143.

A.B.A. 10th Annual Children and the Law Conference. June 6-8, Washington. Includes the following day-long training programs on June 6, in addition to many shorter sessions June 7-8: (1) Basic and Advanced Trial Skills Training for Child Welfare Attorneys (2) Best Practices to Implement the Adoption and Safe Families Act; (3) Improving Child Questioning and Testimony: Latest Lessons from Practice and Research (with Anne Graffam Walker, Ph.D., Sharon Elstein, and Barbara Smith, Ph.D.); (4) Interdisciplinary Training Program for Children's Representatives in Custody Proceedings. Sponsored by the A.B.A. Center on Children and the Law, 202-662-1720, http://www.abanet.org/child/2002conference.html.

Fairfax Circuit Court Manual Update Seminar. Tuesday, June 21, 3-7 p.m., Fairfax Court House Cafeteria. Sponsored by the Fairfax County Bar Association, 703-246-2740.

Business Valuation. Manassas Court House, June 21. (Tentative) Sponsored by the Prince William Bar Association. To register or for more information call Alissa Hudson, 703-393-2306. $35 Members/$45 Non-Members.

Four Hot Topics for Family Law Attorneys. The UCCJEA, Expert Testimony, Tax Issues, and Helping Children Deal With Divorce. Larry Deal, Edward Barnes, Benjamin Schutz, Ph.D., Terry Batzli, and Robert Raymond. Video Replays: Chantilly, Charlottesville, Virginia Beach, Winchester July 10. Abingdon, Fredericksburg, Hampton, Richmond, Roanoke, Tysons July 11. Sponsored by VCLE, 1-800-979-8253 (979-VCLE) or on the web at http://www.vacle.org.

American Bar Association Annual Meeting, Washington, D.C. Family Law Section programs Aug. 9-11: "Representing Children in Custody Cases," Fri., 2-5; "Collaborative Law" with Pauline Tessler, Sat. 9:30-11:30 (*not* the Collaborative Law *training* mentioned in our last issue); "Razor's Edge: How to Keep the Cutting Edge of Family Law Away from Your Throat," Sat.2;15-4, "Hot Tips from the Experts," Sun. 10-11:45. To register or for more information visit www.abanet.org/annual/2002 or use the form recently mailed to Section members. The meeting registration fee is very low, and members pay a la carte for only the CLE programs they want to attend.

NOTES ON RECENT APPELLATE CASES

5/21/02

TAX LIABILITY — JOINT PROPERTY — ENTIRETIES PROPERTY — TAX LIEN. The U.S. Supreme Court recently held that a federal tax lien under 26 U.S.C. §6321 can be lodged against tenancy by the entireties property. Specifically, the Court held that "property or rights to property" under the statute, to which the federal tax lien may attach, includes rights which the husband has in property held in tenancy by the entirety, and it does not matter if the wife has done nothing to incur liability. *U.S. v. Craft*, No. 00-1831, ___ U.S. ___ (4/17/02).

SUPPORT — INCOME DEDUCTION ORDERS — VERY SMALL CORPORATION — REHEARING. The Court of Appeals at 38 Va. App. 10, 560 S.E.2d 924 granted a rehearing en banc of its decision in *M. Morgan Cherry & Assocs. Ltd. v. Cherry,* 37 Va. App. 329, 558 S.E.2d 534 (1/22/02), which held that the business in which husband was an employee and majority shareholder had to make payments to the wife under an income deduction order.

CHILD SUPPORT — PARENTAL RIGHTS TERMINATION. The basic principle that once a parent's parental rights are terminated, she cannot be made to pay child support (to the DSS or anyone else) is something of which the welfare department apparently has to be periodically reminded. The Court of Appeals does this in *DSS v. Fletcher,* ___ Va. App. ___, ___ S.E.2d ___, 16 VLW 1170 (4/16/02). The DSS theorized that a mother who had lost her children should have to pay for the costs of keeping them in foster care, and it argued as its authority a Maryland case (in which a father whose parental rights had been terminated nevertheless agreed to pay the welfare department for the money his children had received,

which Maryland judges held to be a binding contract.) The Court of Appeals could not see how that precedent could possibly apply here, where the mother had made no such agreement.

ALIMONY — REHABILITATIVE — RETIREMENT AND ALIMONY — PENSION DIVISION — VALUATION — EVIDENCE — OVERALL EQUITABLE DISTRIBUTION. The rigidly dogmatic views of the Court of Appeals on the relationship between alimony and retirement appear to have been qualified somewhat in a case which also approves a term-of-years alimony award as not an abuse of discretion. The trial judge gave a wife in this 26-year marriage a seven-year alimony award, along with an allocation of half the payouts of husband's 457 deferred compensation plan, and the judge explained that this combination would give her enough income until she qualifies by age to withdraw the $300,000 benefits she has in an IRA. The judge appears to have taken into account all the proper factors, and the defined-duration alimony award was thus not "speculative." Interestingly, the Court of Appeals tolerates the trial judge's thinking about alimony and receipt of pension-division benefits at the same time, a heretical practice severely condemned in earlier cases. (Contrast this with the doctrinaire approach in such cases as *Moreno v. Moreno,* 24 Va. App 190, 480 SE 2d 792 (1997), and *Zipf v. Zipf*, 8 Va. App. 387, 382 S.E.2d 263 (1989), which would never have tolerated a judge who refused to make a present offset award likewise refusing to make an if/as/when award of a husband's pension.) The appellate court not only approves the judge's refusal to share between husband and wife a Virginia Retirement System pension of husband's (of which wife had failed to submit proper evidence of value), but in fact affirms the trial court's allocating it entirely to husband on the ground that this would provide sufficient income for the husband both to live on and to pay the wife her seven years of spousal support. Things may be changing slightly in the pension-division world. On the valuation-proof question, this is one of those cases in which a party submitted "uncontradicted" testimony, but that still wasn't good enough. The testimony was wife's own statement that "we paid somebody to tell me the value of his account," and that that value was $180,374. Whoever this expert was, he or she never appeared. That being all the evidence of present value, the trial court properly disregarded it, and went on the husband's evidence that he was 66 years old and could not find employment, while wife at age 52 could work. (On appeal, the wife argued that with no evidence of present value, the court was required to come up with one using the §55-269 annuity tables, evidence of the husband's age, and the fact that the pension was in pay status, to determine a present value, as in *Holmes v. Holmes*, 7 Va. App. 472, 375 S.E.2d 387 (1989). The problem was that wife was raising this argument for the first time on appeal.) Husband had already agreed to share the deferred compensation plan with the wife, and pointed out that she had her own $370,665 IRA. There was some confusion over the trial court's preliminary ruling approving the agreement by the parties to split all marital property equally. The problem was that husband did not wish to split the VRS straight pension. (The husband had essentially argued that he should get to keep his straight pension, wife should get to keep her IRA, and there should be no alimony.) Since the trial court itself gave a mathematical breakdown showing an even split which did not include that pension, there was nothing wrong with the court correcting its earlier ruling and it seems to have retained its authority to do so. (Husband's statement that he desired an even division of the assets was taken out of context, and the "law of the case" doctrine did not apply, because that applies only to final rulings or rulings not objected to.) And the trial court did not have to make a finding of present value with the inadequate evidence it had. Wife, who came out of the ED with ample assets, raised the traditional Virginia doctrine that

she should not be forced to draw upon such assets for support, being entitled by law to support from a husband. The Court of Appeals does not say anything about abandoning this principle, which it has reiterated even in recent years, but it still finds no abuse of discretion. The wife did make the clever argument that any award for less than a lifetime of alimony under the new rehabilitative alimony statute is reversible error because it is "speculative," since courts cannot divine what the circumstances will be seven years in the future at the end of the defined term. The Court of Appeals nevertheless resists the temptation to override the Legislature on this one. *Torian v. Torian,* ___ Va. App. ___, ___ S.E.2d ___, 16 VLW 1199 (4/23/02).

ADOPTION — SOCIAL AGENCY HOME VISITATION REPORTS. An adoption that took place over the objection of the mother was overruled by the Court of Appeals as the appellate court agreed with her counsel that violation of the rules requiring that the social workers visit the intended adopting home and file the statutory reports required under §63.1-219.19 had to be complied with and the non-compliance was fatal to the adoption. Nor did it matter that this mother had been in prison most of the time since the birth of the child and the would-be adopting parents had had her since she was four months old. In fact there was some kind of report filed with the circuit court, but neither it nor any other evidence indicates that the visits were in fact made. *Crockett v. McCray,* 38 Va. App. 1, 560 S.E.2d 920 (3/26/02).

APPEALS — FINALITY AND REVISION OF DECREES — "CLERICAL ERROR" EXCEPTION — 21-DAY RULE — SECRETLY ENTERED DECREE — MALPRACTICE TRAPS. A "clerical error" allowing a judge to correct a wrong final decree under §8.01-428(B) after the 21 days has run, and to suspend the running of the 30-day appeal deadline, thus averting the absolute effect of Rules 1:1 and 5A:5, does not include a court clerk's error or non-feasance in not bothering to tell counsel on either side that the judge's decree had been entered. The Court of Appeals explains fairly fully what a "clerical error" under §8.01-428(B) is and is not, in a divorce case that turned out very, very unluckily for the husband who had hoped to appeal. Clerical errors, the court says, are ones in the record which can be demonstrated to be contradicted by all the other documents of record, and which cause the record or the final decree not to "speak the truth." This is just not that kind of situation. Now it is true that subsection B gives judges the authority to correct errors in the record that "arise from oversight or from an inadvertent omission," but the unfortunate husband did not show the Court of Appeals any case law that would explain to them how a court clerk's failing to tell anybody that the decree had been signed and the deadline was running is an inadvertent omission, an oversight or a clerical error. Moral: walk, ride or drive over to the court house every day and check the file — and charge your client. *Zhou v. Zhou,* ___ Va. App. ___, ___ S.E.2d ___, 16 VLW 1170 (4/16/02).

PROCEDURE — REQUIREMENT TO PLEAD (*BOYD* RULE) — PROPERTY DIVISION "REQUEST" — BIFURCATION — MALPRACTICE TRAP. How much do you have to plead for equitable distribution? Fond as the Court of Appeals has been of rubbing lawyers' and clients' noses in the *Boyd v. Boyd* rule that you can't get it if you didn't formally ask for it, they resisted the temptation in *Smith v. Smith,* ___ Va. App. ___, ___ S.E.2d ___, 16 VLW 1170 (4/16/02). In a case of §20-107.3 equitable distribution, the Court of Appeals explains, the statutory requirement is that the party make a "request" for it, and neither the form nor the substance of that request is prescribed. Thus, all a party has to do to "request"

is to make known his or her desire. The court does say that the jurisdiction of trial courts to make ED awards is dependent on a timely "request" having been made. And apparently, each side has to do it. The wife in this case is said to have made an inartful request, but it was enough to protect her interests. Perhaps the Court of Appeals could have been a whole lot meaner to the wife, but it deemed sufficient her Answer's Paragraph 3, which stated only that "the parties hold joint title to the property, the division of which will ultimately be a necessary part of these proceedings." The judge made a "final" decree bifurcating the case and "deferring" equitable distribution for "further adjudication." After about three years of litigation, trial preparation, discovery, etc., the husband at the ED hearing filed a motion essentially stating that the court had no jurisdiction to distribute property because neither party had asked for it. The judge granted that motion and wife appealed. The trial court recognized that ED was on the agenda, and properly reserved its jurisdiction to do it, and — the Court of Appeals points out to the husband — the bifurcation decree was endorsed "I Ask For This" by husband's counsel.

SEPARATION AGREEMENTS — MERGER WITH DECREE OR JUDGMENT. One time when a separation agreement will "merge" with a court decree and lose its independent identity and force, the Court of Appeals explains, is in the unusual circumstances of a certain 1973 agreement that was involved in *Bazzle v. Bazzle*, 37 Va. App.737, 561 S.E.2d 50, 16 VLW 1095 (3/26/02). Just one of the unusual things about this case is that this agreement was not affirmed, ratified or incorporated, but just "filed with the papers" in the long-ago divorce. Of course §§20-109.1 and 109 still require the court in that situation to enter no order contrary to the agreement. When wife sued for anticipatory breach of the support obligation to her in 1982, she quantified the obligation as $429,565 for a lifetime of alimony, and apparently the 1982 default judgment she got awarded her exactly that. There was a 1994 order enjoining enforcement, but the wife argued now that that order was a modification of the $429,565 judgment because it did not expressly say that the husband's spousal support obligation would end upon full payment of the judgment — but the Court of Appeals does not buy that argument. Wife elected to pursue strictly her contractual remedies and got the judgment, and that merged any obligations under the agreement as an agreement, so that she cannot now sue for additional amounts of support after the whole obligation had been reduced to judgment and docketed as a judgment. She cannot now pursue a contract claim again, and the Court of Appeals does not believe that the 1984 order created an additional obligation to pay ongoing support. Husband in fact claimed overpayments, but the Court of Appeals agrees with the trial court's discetionary that laches bars his claim to get that money back. It would be just unthinkable to make a wife pay back thousands of dollars for prior years when husband prejudiced her by his inaction on a claim for all that time.

SEPARATION AGREEMENTS — FORMALITY AND VALIDITY — ORAL — DICTATED INTO RECORD — UNIFORM PREMARITAL AGREEMENTS ACT — DECEDENTS' ESTATES — MALPRACTICE TRAPS. Those who have kicked around the interesting question of whether the misleadingly-named Uniform Premarital Agreements Act, when it reached out and took in post-marital agreements, rendered oral separation agreements settling divorce cases invalid now have an answer. The Virginia Supreme Court in *Flanary v. Milton*, ___Va. ___, 556 SE 2d 767 (2002), a lawsuit against an estate, definitively held that all oral separation agreements are void. That would not be that much of a surprise, given the somewhat ambiguous requirement of Code § 20-109 C that a "stipulation or contract" be "signed by the party," (§20-109.1, on the other hand, speaks of "any valid

agreement between the parties"), except for one thing: the agreement in the *Flanary* case was not what most lawyers would consider an unwritten agreement. It was, rather, an agreement dictated into the record and transcribed by a court reporter. The news that such agreements — long used in the settlement of divorce cases that get to trial or almost get to trial — are invalid will cause some major changes in how Virginia family law is practiced, and no doubt cause some embarrassment in many cases where lawyers thought they had settled law as well as settled practice to rely on. In this case, it was during a deposition in contested fault divorce proceedings that the husband and wife, decided to agree on everything and had their lawyers recite the agreement into the record. The wife released all her marital rights in exchange for a $45,000 lump-sum payment. The husband died the next day, and the wife filed a widow's petition to take against the will for her elective share of augmented estate, and everything else, under Code § 64.1-151.1. The executor took the position that the wife was estopped, having contracted away all marital rights in and against the estate. Reversing the trial court, the Supreme Court held that Code §20-155, extending the Uniform Premarital Agreements Act (§§20-147--20-154) to agreements between married persons, made this dictated agreement worthless. In the Premarital Agreements Act, Code §20-149 requires that an agreement be in writing and signed by the parties. The Supreme Court decided that writing done by the court reporter is not enough. Those who remember the Court of Appeals opinion in *Richardson v. Richardson*, 10 Va. App. 391, 392 SE 2d 688 (1990), holding the exact opposite as to oral agreements dictated into the record and transcribed, making an exception to Uniform Premarital Agreements Act requirements for agreements which compromise and settle pending litigation, should forget it. That case is for all practical purposes reversed. Now the Virginia Supreme Court did hold in *Snyder-Falkinham v. Stockburger*, 249 Va. 376, 457 SE 2d 36 (1995), that agreements which settle pending litigation can be enforced even though not reduced to writing, but the Supreme Court, which never reverses itself, says about that subject that "nothing in the language of Code §20-155 exempts from its application a property or spousal support agreement made in contemplation of resolving a pending divorce action." And there is no room for an argument that agreements settling divorce actions are not "marital agreements" under the Uniform Premarital Agreements Act, since one of its sections, §20-150(3), specifically refers to agreements for disposition of property upon "marital dissolution." (*FLN* cannot blame anything like a paper-eating pooch, even though we have a couple, but it somehow appears that the *Flanary* digest that was prepared for the Spring Issue unaccountably disappeared and its absence was not noted until far too late for inclusion, when the Spring Issue was already at press. The "editorial staff" regrets this error.)

RIGHT TO BURY RELATIVE — VIRGINIA LAW. Who has the right to "dispose of" your spouse's body under Virginia law was recently decided in a closely and carefully reasoned case by the U.S. District Court for the Eastern District of Virginia. The husband and children of a woman who died in Virginia sued her brother and the Virginia funeral home because the brother had directed burial in Virginia, while the husband wanted her buried in New Jersey. The husband argued that Virginia common law not only gives relatives a sort of property right over corpses, but sets up a hierarchy of relatives who can make these decisions. Thus, the husband argued that the brother and the funeral home had a duty to find out his wishes in the matter. No, the federal court's Newport News Division says, funeral home duties are all governed by Virginia Code Title 54.1. And §54.1-2807(B) says that no funeral home can do anything without first inquiring of the next of kin and persons liable for the funeral expenses. But the Code makes it clear that any next of kin can make these decisions,

and §2800 defines next of kin for these purposes, without setting up any hierarchy, and the statutory definition includes adult siblings. The funeral home acted according to law, and there is no extra-statutory common law duty that overrides the statute. Likewise under the Code, "disposal" of dead bodies includes burial, and the husband's argument otherwise was rejected. A motion to dismiss the funeral home as a defendant was granted. As to the brother, no cause of action can exist among the equal members of the statutorily defined class for withholding a dead body from other class members. The district court went on to find a violation of Rule 11 here, on the ground that the claims against the brother were frivolous. It was not inclined to be indulgent with the New Jersey husband, because he had already got the equitable relief he sought when the brother voluntarily signed a consent decree allowing removal of the body to New Jersey, and this suit was designed and maintained only to hurt an innocent party. While the motion for sanctions was granted, no money was awarded. *Mazur v. Woodson,* ___ F.Supp. 2d ___, 16 VLW 1094 (EDVA, 3/20/02).

PROPERTY DIVISION — VALUATION — PROPORTIONS AND PERCENTAGES OF AWARD — ONE SPOUSE'S BUSINESS. An **unpublished** case from the Court of Appeals, *Diamond v. Diamond,* 16 VLW 1173 (3/19/02) demonstrates a couple of things. The first is that it is still all right for a trial judge to award 90% of the marital interest in a business to the spouse who built it up and maintained it. The second is that a judge who hears expert testimony for each of the spouses valuing the business at $450,000 and $100,000, respectively, can get away with valuing it at $232,000, supposing that there is some kind of evidence in the record to support this. In this case it was the wife's translation, interpretation and fine language training business, and there was something in the record from husband's ($450,000) expert that $232,000 represented the value of its net tangible assets. Valuing the marital part of that figure at $206,000, the judge awarded 90% of that number to the wife. Husband's testimony that he had provided monetary and non-monetary support to the business and to its creation and development is discounted. The $20,000 attorney's fee award to wife is upheld on appeal although wife attacked it as an abuse of discretion. What the opinion does not seem to reveal is what the rest of the equitable distribution (if any) was, and whether wife was getting 90% of all the marital property, or 90% of just a minor part of it.

PROPERTY DIVISION — VALUATION DATE. There was nothing wrong with a trial court's valuing a husband's business as of 1998 rather than the 2001 date of the trial, the Court of Appeals held in an **unpublished** opinion in *Carr v. Carr,* 16 VLW 1294 (5/7/02), since the husband had not supplied wife's expert with any kind of information on the finances of the business beyond 1998. He then had the nerve to come to trial and argue that his business was worth a lot less in 2001 and the presumptive statutory valuation date, the date of trial, should have been used. There was nothing plainly wrong, the appellate court said, in accepting the wife's expert's amply supported valuation.

PROPERTY DIVISION — FACTORS — ADULTERY AS FACTOR — DISSIPATION — ATTORNEYS' FEES. Apparently, from the way the Court of Appeals puts it in its **unpublished** opinion in *Saxton v. Saxton,* 16 VLW 1293 (4/30/02), there would have been something wrong with a judge dividing the property 80-20 if it was "punitive," but there was nothing wrong with using a husband's pre-separation adultery as the reason for dividing the marital property 80% to wife, since marital misconduct is a §20-107.3(E) factor in equitable distribution. This was supported by the evidence, not plainly wrong, and not an abuse of discretion. The husband was also guilty of some dissipations of funds. He admittedly signed

wife's name without express or implied authorization to a second mortgage, and was unable to account for the use of the proceeds of this loan. Likewise, some accounts that he had liquidated were never proved to be spent for marital purposes, so both these dissipations were remediable waste. The Commissioner had also used the husband's adultery as the reason for making him pay wife's attorneys fees, but just incidentally, she happens to make what the court decided was probably less money than the husband, because of the Commissioner's belief that the husband was making a lot more money in his restaurant business than he reported to IRS.

PROPERTY DIVISION — MARITAL & SEPARATE — KEEPING SEPARATE — MARITAL CONTRIBUTIONS (MONEY AND EFFORT). It looks like spouses who don't plan for divorce and make massive contributions to their marital partner's separate property will never learn. Once again the "increase in value" proof requirement trips up a naive or uncounseled husband in *Biviano v. Kenny,* **unpublished**, 16 VLW 1172 (3/12/02). The Court of Appeals holds that the wife kept her separate property separate since funds from a mobile home park business her parents owned were gifts to her, deposited in her IRA accounts, and kept untainted. The fact that the husband managed the trailer park, spent more than $16,000 in marital funds to keep the trailers rentable, and poured considerable effort into the business, makes no difference. That is because he did not demonstrate that this increased the value of the trailers, which wife had owned since before marriage. As for a North Carolina lake house, husband showed that he made 33 mortgage payments, and his testimony and personal records indicated that some of that had reduced principal. Nevertheless, the trial court held that he did not carry his burden of showing the tracing of the increase of value, and that ruling is upheld. Apparently what he was trying to prove was not a marital interest in it, but a separate-property interest. On the other hand, the trial court decision that three of the trailers were wife's separate property was reversed. She said she had paid for them with a loan secured by her separate-property horse farm, but evidence showed that the mortgage on that farm had been paid down with marital funds.

SEPARATION AGREEMENTS — CONTRACT LAW — MUTUALITY — PART PERFORMANCE. In the **unpublished** Court of Appeals opinion, *Law v. Law*, 16 VLW 1269 (3/19/02), each party signed a piece of paper amounting to a draft separation agreement. The Court of Appeals opinion quotes a great deal of case law concerning the contract requirement of meeting of the minds, but it never discloses whether they both signed the same piece of paper. Eventually the court goes off on the legal question of part performance, and although the wife argued on appeal that the separation agreement should be thrown out because there was no "meeting of the minds," the Court of Appeals disagrees with her and sustains the agreement and the trial court for several reasons. The first seems to be that the drafting started when the wife obtained a form agreement from somewhere and modified it some before passing it on to the husband, who showed it to his lawyer. Husband objected that there was no financial disclosure in the text of the agreement, and wife then added some. He signed something, and she signed something, possibly the same document. Also, husband later gave the wife financial disclosure and made payments under the agreement. The wife accepted those payments, and (second reason) that constitutes a ratification by partial performance and its acceptance. This shows her intent to be bound by the contract.

CONTEMPT — WILLFULNESS — SEPARATION AGREEMENTS — INSURANCE REQUIREMENT. An insight into how the Court of Appeals thinks about the willfulness requirement in contempt matters is provided by a recent **unpublished** case, *Metcalf v. Metcalf,* 16 VLW 1269 (4/2/02). The Fairfax Circuit Court had held a husband in contempt because the decree-incorporated separation agreement said that he "shall continue to maintain wife as the primary beneficiary of $100,000 of his existing life insurance" for the length of his alimony obligation or until the death of either party or remarriage of wife. When husband retired, the employer-provided $100,000 policy ended with the employment. The Court of Appeals said that it was *possible* that the parties had intended by this provision that upon losing that coverage husband would go out and procure another $100,000 policy for the wife's benefit, so that the policy which had existed would be replaced by a new policy so that the $100,000 level of coverage would continue to exist — but that certainly it was also possible that they did not. So even if the agreement did require the husband to acquire additional coverage, that was not "expressed in definite terms" in the incorporated agreement or the decree, so husband did not violate a clearly defined duty. Thus there was no willful contempt. The Court of Appeals reversed the finding of contempt and the fee award to wife, and remanded the matter to the trial court for entry of proper orders, which would be specific enough to ensure that any attorneys' fees husband had paid under the appealed order would be returned to him, and it dismissed the case from the docket as reversed.

ALIMONY — REHABILITATIVE — LENGTH OF RESERVATION — NO TRIAL COURT DISCRETION. In case trial courts do not understand the requirements placed on them by the new rehabilitative alimony statute with its presumptive alimony reservation period, the Court of Appeals offers some instruction in the **unpublished** case of *Mabie v. Mabie*, 16 VLW 1269 (3/19/02). A trial court did grant the wife a reservation of alimony, but it was concurrent with the six years the court was giving her alimony for. Because it finds no evidence to rebut the presumption that the reservation should have lasted for the period of time specified by the statute (i.e., half the length of the marriage), the appellate court remands for the trial court to do its duty under the statute, §20-107.1(D).

ALIMONY AND CHILD SUPPORT — PAYEE IMPUTATION. The ever-popular subject of income imputation is revisited by the Court of Appeals in an **unpublished** opinion, *Peverell v. Eskew,* 16 VLW 1293 (4/23/02). First, the judge, in calculating the mother's gross income for purposes of this dispute with the father of the child or children in question, should not have left out the payment of her household and living expenses by her estranged current husband, without making findings and explaining its decision to omit this. There was no error, though, in the trial court's refusal to impute income to this mother who had gone from full-time to part-time work. She's not voluntarily underemployed because she carried her evidentiary burden and gave the judge credible evidence to support the underemployment. The reasons, to which one can well imagine the response if they had been offered by a person of the male persuasion, include staying home to oversee the son's recovery from a car accident, the time needed to make all the arrangements for counseling for the daughter because someone is accusing this mother's current husband of sexually abusing that child, and then dealing with the multiple Child Protective Services investigations each time the father in this case files an abuse complaint. Also, the mother had her own medical problems to deal with.

ADULTERY — LEVEL OF PROOF — FIVE-YEAR RULE — FIFTH AMENDMENT. An **unpublished** opinion from the Court of Appeals serves as a reminder of the statutory provision that an adultery, to be a ground of divorce, has to have happened within the past five years. The wife had admitted adulteries in 1992 or '93, and when the boy friend was asked whether he had had intercourse with the wife after March 26 of 1999, he took the Fifth Amendment. That, and the fact that he had admitted to the husband's counsel that he had had sex with the wife, but without admitting any particular date, do not add up to the required proof of current adultery. Nor does a photograph that he took of the wife in her underwear in 1994 make any difference, so the trial court's award of an adultery divorce and its denial of alimony are reversed. *Fickett v. Fickett,* 16 VLW 1100 (2/26/02).

ADULTERY — PROOF — CIRCUMSTANTIAL. What will satisfactorily prove adultery may forever remain a mystery, but in an unpublished opinion the Court of Appeals upholds the trial court's adultery finding that was based on strong circumstantial evidence, no admissions, and no surveillance of an overnight. The case, *Pilkinton v. Pilkinton,* **unpublished**, 16 VLW 1174 (4/2/02), bears a close resemblance to others in which such proof has been held insufficient, but here the proof was certainly what any reasonable person would consider strong. The combination of highly compromising photographs of the wife, letters (including one of the wife's draft letters) establishing fairly clearly the sexual nature of the relationship between wife and the photographer and another boy friend, plus her incredible explanations and the reasonable inferences one can fairly draw from all this, describe, the Court of Appeals said, "more than suspicious circumstances." Quoting from *Higgins v. Higgins,* 205 Va. 324, 328; 136 S.E.2d 793, 796 (1964), the court said it "cannot escape the conclusion," of adultery and added that "common sense and the common experience of men are used as our guide," and "credulity must not be stretched to the breaking point." (Husband testified that wife, when confronted, admitted having had numerous affairs, but she did not admit that at trial). The 10 sets of photographs showed the wife posing provocatively in various stages of undress. And although wife said that she had these pictures taken for husband, he testified that she never showed or gave or mentioned them to him. Also, in all of them she was not wearing her wedding ring, although she was wearing all her other rings.

CUSTODY — VISITATION — FACTORS — IMMINENT DEATH AS FACTOR. A mother who had been diagnosed with and treated for brain cancer appealed a trial court's decision to let the father have unsupervised visitation on the ground that this irresponsible decision must have been influenced by the judge's improperly and discriminatorily taking into account her likely early death as a custody factor. The Court of Appeals in *Attard v. Attard,* **unpublished**, 16 VLW 1172 (3/12/02), held that if the judge did take her possible short predictable life span into account, there was nothing wrong with it. Such things are indeed factors, since a court has to take into account all things which may have any bearing on a child's best interests when it makes a custody or visitation decision.

CUSTODY — VISITATION — SUPERVISED — CHILD SEX ABUSE ALLEGATIONS. In *Attard v. Attard,* **unpublished**, 16 VLW 1172 (3/12/02), the mother also appealed the trial court's decision to finally restore the father to unsupervised visitation. The court notes that the mother had been in treatment for brain cancer ever since her pregnancy, and it affirms the trial court's decision. After the mother made her allegations, which were never supported by anything but her own testimony to a statement the child supposedly made, from which she

deduced sex abuse, the court had required supervised visitation. The psychologist the mother brought in to testify that there must be some child abuse here admitted that after conducting 30 sessions with the child, the psychologist "was unable to recount a single direct statement of any abusive incident." Counselors and visitation supervisors praised the father's parenting of this child. Exhaustive psychological testing was said to have revealed that the father had an abnormal degree of interest in sexual matters or activities that went considerably beyond the missionary position, but no professional could say that any of this served to indicate that he would have any disposition toward sexual activity with his own or any other child. The trial court's decision to let the father have unsupervised visitation was not held an abuse of discretion.

PROCEDURE — NOTICE — REMEDIES. What goes into the calculation of what is "reasonable notice" under the Rules, and what you are expected to do about it if you don't get it, is helpfully and interestingly discoursed upon by the Court of Appeals in an **unpublished** per curiam opinion, *Wilson v. Wilson*, 16 VLW 1292 (4/16/02). The judge did not err in entering a final decree despite a wife's exceptions to the commissioner's report, the Appellate Court holds, since the wife got five day's notice of the exceptions hearing. Notice was adequate and reasonable the court says, especially given the trial court's observance that wife's counsel throughout the whole litigation had been uncooperative with husband's counsel about giving the later available dates for hearings.

PROCEDURE — PROHIBITION AGAINST FILING ANYTHING — PRE-FILING JUDICIAL REVIEW REQUIREMENT — ACCESS TO COURTS — BASIC CONSTITUTIONAL RIGHTS. The Court of Appeals in the **unpublished** *Peverell v. Eskew* opinion (4/23/02), at 16 VLW 1293, reversed and vacated a trial judge's order that required the parties to get judicial permission by pre-docketing review before they could file any more pleadings, motions, etc. The Court of Appeals found nothing in the record to support that: no abuse of process, no frivolous pleadings, etc.. To be precise, the appellate court could not find evidence in the record to support the trial court's sua sponte order which it says denies the parties the constitutional due process right of full access to the courts. It is careful to say that the evidence might be there to justify the imposition of a pre-docketing review requirement, but (A) it can't find the evidence and (B) imposition of such a requirement requires the basic due process rights of notice and opportunity to be heard first.

LEGAL QUOTATION OF THE QUARTER

> "A clone produced by the Dolly-the-sheep method of blasting out the DNA from an unfertilised egg and putting in a new cell's nucleus has not truly undergone 'fertilisation', said the judge; rather waspishly adding that he could not rewrite [The Human Fertilisation and Embrylology Act] to mean what the Government had intended it to. It is not the first time that bad drafting has sabotaged the intention of a Bill in this country. Indeed it is a source of constant wonder to innocent outsiders how a chamber packed full of spare lawyers gets it wrong so often. …
>
> "The Human Cloning Foundation (HCF) … wants not just embryos but babies. It offers several scenarios: rich infertile invalids funding the hap-

pier future of their clone — giving it 'the life that was meant to be theirs;' affluent elderly people giving young, poor couples their own clone child and endowing it with a trust fund. Worse, they say that cloning would 'improve the parent-child relationship … like having a child with an instruction manual,' rather than risking all those unpredictable roughneck genes from your sexual partner. One almost hopes that some fool woman does this, only to find that her own genes play a trick on her and the perfect child turns out just like ghastly Uncle Sid (Of Whom We Never Speak.)

"The HCF arguments run on, a monstrous ballooning of Me-Generation claptrap. It claims that a clone child would 'have a better sense of identity… .' It daydreams creepily about parent and child having 'the special relationship that twins have.' … It announces that 'Some childless people feel that being cloned by their later-born twin would help them or their DNA to live on.'

"In other words, the technology appeals to the most repulsive forms of selfishness available to our species. … Therefore I am almost sure that it will be used. Selfish technologies always are. Although human cloning is in its very early stages now, the techniques will improve. Someone, somewhere, will achieve the first one-parent baby before the century is much older, and the poor brat will find itself genetically identical to a stupid and self-obsessed person."

— Libby Purves, "We Have Already Lost the Battle Against Human Cloning", *The London Times*, November 27, 2001.

2001-2002 BOARD OF GOVERNORS
FAMILY LAW SECTION, VIRGINIA STATE BAR

Torrence M. Harman, Chair
611 West Cary Street
Richmond, Virginia 23220

Susan Massie Hicks, Vice-Chair
10560 Main Street, Suite PH-10
Fairfax, Virginia 22030-7182

J. Patrick McConnell, Secretary
9302 Lee Highway, No. 1100
Fairfax, Virginia 22031

Terrence R. Batzli, Past Chair
4701 Cox Road, Suite 320
Glen Allen, Virginia 23060

Franklin R. Blatt, Esquire
71 East Market St.
Harrisonburg, Virginia 22801

Cheshire I'Anson Eveleigh, Esquire
1 Columbus Center, Suite 1100
Virginia Beach, Virginia 23462-6765

Mona Flax, Esquire
900 19th Street, Suite 101
Virginia Beach, Virginia 23451

The Hon. Robert P. Frank
1 Old Oyster Point Road, Suite 230
Newport News, Virginia 23602

Annie Lee Jacobs, Esquire
P. O. Box 6186
Charlottesville, Virginia 22906

Professor Lynne M. Kohm
1000 Regent University Drive
Virginia Beach, Virginia 23464-9880

Kenneth B. Murov, Esquire
690 J. Clyde Morris Blvd., Suite D
Newport News, Virginia 23601

Paul F. Nichols, Esquire
12660 Lake Ridge Drive
Woodbridge, Virginia 22192

The Hon. Anne Bonwill Shockley
2305 Judicial Blvd.
Virginia Beach, Virginia 23456-9017

The Hon. Richard D. Taylor, Jr.
1600 N. 17th St.
Richmond, Virginia 23219-1214

Ellen Shelton Weinman, Esquire
111 East Main St.
Salem, Virginia 24153

William C. Wood, Esquire
P. O. Box 31455
Richmond, Virginia 23294

Patricia Sliger, VSB Liaison
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803

Richard E. Crouch, Newsletter Editor
2111 Wilson Boulevard, Suite 550
Arlington, Virginia 22201

PLEASE NOTE: Membership information for the Family Law Section of the Virginia State Bar, and any changes in your mailing address for the newsletter, should be directed to the Virginia State Bar, rather than to the Newsletter Editor. Write:

Virginia State Bar
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

DISCLAIMER

Statements of opinion, comments, and everything that appears in these pages constitute self-expression of the Editor and contributors and cannot be attributed to the Family Law Section or the Virginia State Bar.