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2018 FOCUS ON TAX

ABA Addresses Women Lawyers at Vancouver Midyear Meeting

By Scott M. Karson

At the Midyear Meeting of the American Bar Association, held in rainy Vancouver, British Columbia from January 31, 2018 to February 5, 2018, the Association's governing body, the 590-member House of Delegates, focused on issues involving women lawyers.

The ABA House adopted the following resolution, sponsored by the New York State Bar Association and presented by NYSBA President Sharon Stern Gerstman:

- RESOLVED, That the American Bar Association encourages law firms to develop initiatives to provide women lawyers with opportunities to gain trial and courtroom experience;
- FURTHER RESOLVED, That the American Bar Association encourages members of the judiciary to take steps to ensure that women lawyers have equal opportunities to participate in the courtroom;
- FURTHER RESOLVED, That the American Bar Association encourages corporate clients to work with outside counsel to ensure that women lawyers have equal opportunities to participate in all aspects of litigation; and
- FURTHER RESOLVED, That the American Bar Association encourages corporate counsel, together with outside counsel, to work with alternative dispute resolution providers and professionals to encourage the selection of women lawyers as neutrals.

The report on which this resolution was based originated from a task force of the NYSBA Commercial and Federal Litigation Section, and was adopted by the NYSBA House of Delegates on November 4, 2017. The report demonstrates the disparity between the number of men and women lawyers appearing in court in New York State. Briefly, the report found that women lawyers represented just 25.2 per-

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Photo courtesy Suffolk County Courts

Suffolk County Courts Mark Black History Month

Congratulations to Acting County Court Judge Derrick J. Robinson, who was presented with the fourth annual Marquette L. Floyd Award at the Black History Month Celebration by the Suffolk County Court Family. His wife, Dr. Pamela Allen Anderson accompanied him to the event. See story on page 3.

PRESIDENT'S MESSAGE

Thoughts on Professionalism

Pat Meisenheimer

A lawyer pursues the learned art of law by service to clients and by public service, engaging in these pursuits as part of a common calling to promote justice. The theme for my presidency has been "The Tradition of Professionalism and Civility." These are the core values of our profession, that are so vital to our system of justice. I stated at my installation that professionalism is not a destination, but rather a journey. The path changes constantly and as we continue on this path, we will be challenging and defining what professionalism is in our daily lives, in our Association and in our system of justice.

We often hear of professionalism as an aspiration, but what does it mean? To me the fundamental premise begins with the core values of competency, civility, integrity and commitment to the rule of law and the administration of justice. Credibility with the court and with opposing counsel is earned by zealously advocating for your client, while treating all in the court system with respect, politeness and courtesy.

Justice Sandra Day O'Connor set forth a description of professionalism which embodies the meaning of the professional lawyer:

"… the essence of professionalism is a commitment to develop one's skills to the fullest and to apply that responsibly to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a will-

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BAR EVENTS

Peter Sweisgood Dinner

Thursday, April 5, at 6 pm
The Watermill, in Smithtown

The Lawyers Helping Lawyers Committee will hold it 30th annual award dinner in memory of Rev. Peter Sweisgood. The evening will feature a number of distinguished guest speakers, including Michael Marran and Touro Law School graduate George Pammer, and will honor SCBA member Elaine Turley, the past co-chair of Lawyers Helping Lawyers Committee. All members are invited to attend. $75 per person. For further information call the bar.

FOCUS ON TAX

SPECIAL EDITION

What's in a Name?

By Jeffrey L. Catterson

New York has three typical designations for custody determinations: sole, joint and, the more recent creation, shared. These designations refer to the legal decision-making and physical custody of the child. Traditionally, sole custody would connote one parent has physical custody of the child, the other visitation (now parenting time) and the custodial parent makes all the major decisions for the child. Joint custody would still delineate one parent as having physical custody of the child, the other visitation (now parenting time), but the parties would jointly make all the major decisions for the child. Shared custody also has the parties jointly making all the major decisions for the child but with equal, or close thereto, parenting time with the child.

For the longest time, a custody dispute was an all or nothing proposition. If the parties could not reach a resolution on their own, the unenviable task of determining what was in their own child's best interests was left to a stranger — the judge. At trial, the court was then called upon to determine who would have physical custody of the child and who would have the ultimate decision-making authority regarding major decisions affecting the growth and development of the child (i.e. choice of schools, medical treatment, religious issues). Oftentimes, this resulted in the non-custodial parent being practically omitted from the decision-making process for his/her child. On the other hand, if the parties could agree and continue to co-parent their child as if the marriage was not dissolved, the parties would enter in a joint custodial arrangement with the parties equally making major decisions for their child.

Jeffrey L. Catterson

The Court of Appeals, in *Braman v. Braman* 44 N.Y.2d 584, 407 N.Y.S.2d 449, 378 N.E.2d 1019 (1978), determined that joint custody would only be appropriate in "the rare case" and as something to "be encouraged primarily as a voluntary alternative for relatively stable, amicable parents behaving in mature civilized fashion" (*id* @ 589-590). In *Eschbach*, the Court of Appeals later distilled the standard for determining who the proper custodial parent should be with the essential considerations in making an award of custody being defined as "the best interests of the child." *See Eschbach v. Eschbach*, 56 N.Y.2d 167, 171 (1982).

In interpreting the *Eschbach* Court's standard, the Appellate Divisions traditionally held that an award of joint custody is the anomaly given that if the parties could not agree on this most significant major decision for their child, they would likely not be able to agree on major decisions for their child in the future.

In stark contrast, a great number of other jurisdictions favor joint custody designations (Alabama, Arizona, Colorado, Connecticut, Kansas, Nevada, Wisconsin), some jurisdictions going as far as creating a statutory presumption that joint custody is in the best interest of the child (Florida, Idaho, Iowa, Louisiana, Minnesota, New Hampshire, New Mexico, Texas, Utah Wisconsin and D.C.). In fact, in 2017, legislatures in more than 20 states considered bills that would encourage shared parenting or make it a legal presumption — even when the parents disagree.

Recently, we have seen a trend in the Appellate Divisions towards affirming trial level awards of joint custody, despite the parties' inability to agree to same, determining that same would be in the best interests of the child. *See Batista v. Falcon*, 48 N.Y.S.3d 716, 148 A.D.3d 698 (2nd Dept. 2017); *Tatum v. Simmons*, 21 N.Y.S.3d 208, 133 A.D.3d 550 (1st Dept. 2015); *Johanysm v. Eddeya*, 982 N.Y.S.2d 30, 115 A.D.3d 460 (1st Dept. 2014).

Taking the concept of awarding joint custody one step further, the courts have now divided the decision-making process into spheres of decision-making to maximize each parent's strengths in furtherance of the child's bests interest. *See, Tatum v. Simmons*, 21 N.Y.S.3d 208, 133 A.D.3d 550 (1st Dept. 2015); *Matter of Ann D. v. David S.*, 128 A.D.3d 520, 9 N.Y.S.3d 251 (1st Dept. 2015); *Rubin v. Della Salla*, 107 A.D.3d 60, 964 N.Y.S.2d 41 (1st Dept. 2013); *Wideman v. Wideman*, 38 A.D.3d 318, 834 N.Y.S.2d 405 (4th Dept. 2007). The Appellate Division has recently even affirmed an award of joint legal custody and "spheres of influence" despite the fact the parties had an "acrimonious relationship." *Elizabeth S. v. Edgard N.*, 56 N.Y.S.3d 51, 52, 150 A.D.3d 585, 586 (1st Dept. 2017); *see also, Matter of E.D. v. D.T.*, 58 N.Y.S.3d 527, 152 A.D.3d 583 (2nd Dept. 2017).

In a recent Third Department case, where the parties testified that they were normally able to communicate for the benefit of the child, the court not only awarded the parties' joint legal custody but also direct a shared physical custody of the child. *See, Matter of Paluba v. Paluba*, 58 N.Y.S.3d 719, 152 A.D.3d 887 (3rd Dept. 2017).

Clearly, we are seeing a trend by the courts favoring custody determinations promoting the involvement of both parents, not only in the decision-making process for their child, but equally in the amount of parenting time the child will enjoy with both parents.

Note: Jeffrey L. Catterson is a partner at Barnes, Catterson, LoFrumento & Barnes, LLP, with offices in Garden City, Melville and Manhattan and practices primarily in matrimonial and family law. He can be reached at JLC@BCLBLawGroup.com and (516)222-6500.