



THE SUFFOLK LAWYER

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Presiding Justice Alan D. Scheinkman Spends the Day in Suffolk County

Presiding Justice Alan D. Scheinkman toured our Suffolk County Courthouses in Riverhead and Central Islip with District Administrative Judge C. Randall Hinrichs, on April 20, visiting with the members of our Judiciary. Following a busy morning and afternoon, the SCBA's Appellate Law Committee hosted a special reception for the PJ at Bar Headquarters.

Presiding Justice Scheinkman of the Appellate Division, Second Department, was appointed by the governor on New Year's Day to one of the largest appellate departments. He replaced Randall Eng, who reached the mandatory retirement in

Photo by Barry Smolowitz



Suffolk County Bar Association President Patricia M. Meisenheimer, and Hon. Hector D. LaSalle, Associate Justice, NYS Supreme Court, Appellate Division, Second Judicial Dept, right, welcomed Hon. Alan D. Scheinkman, Presiding Justice, NYS Supreme Court, Appellate Division, Second Judicial Dept. For more photos, see page 19.

At Peter Sweisgood Dinner Elaine Turley Honored

Elaine Turley, described as someone dedicated to the lives of others, was the honoree at the Peter Sweisgood Dinner on May 5. She said that the Lawyers Helping Lawyers Committee is important and must be available to help the attorneys when they have a problem with addiction. See story and photos, Page 17.



Photo by Laura Lane

2017. We were honored to have Associate Justice Hector LaSalle introduce Justice Scheinkman to the assembly, saying he has played a key role in the Commercial Division's efforts to transform business litigation in New York State. His experience has been as a Supreme Court Justice and administrative judge, in addition to commercial matters.

He was so gracious chatting with all of the attendees and answering questions at the end of his address. President Patricia Meisenheimer thanked Judge Scheinkman for his wonderful collegiality and told him how much the SCBA members appreciate and value his friendship and professionalism. She presented him with a memento of the special occasion.

– LaCova

PRESIDENT'S MESSAGE

'Who can say where the road goes, where the day flows, only time'

By Patricia Meisenheimer

This quote from Enya epitomizes the journey I have had this past year, a year that has flown by in what seemed to be a matter of moments. Time has shown that the road has been a marvelous journey. It has been my greatest professional honor to have served as the 109th president of this wonderful bar association and it is with a sense of fulfillment that the torch is passed to Justin Block, an attorney of great integrity whose wisdom I have valued.

At my installation, I spoke about the tradition of professionalism and civility handed down by our past presidents. Recognizing this heritage, it has been my vision to follow in this tradition and keep the past precedent of professionalism and civility strong and vibrant for our future generations. In embracing these elements, our incredible Executive Committee and Board of Directors have had a busy year, achieving success in several initiatives. Together with the Nassau County Bar As-

sociation, the SCBA has formed a "Joint Task Force to Study and Promote a Fifth Appellate Division." The creation of the Joint Task Force was prompted by, among other things: (i) significant demographic changes since the establishment of the Second Department in 1894; (ii) marked increases in the overall number of appeals in the Second Department (accounting for nearly 65 percent of the state's appellate caseload), increases in filed motions and lawyer disciplinary matters; and (iii) the resulting protracted period of time from filing of the notice of appeal to decision. Co-chaired by Harvey B. Besunder of SCBA and William Savino of NCBA, with Hon. A. Gail Prudenti as chair emeritus, the Task Force will study reform measures so that the burden of our state's appellate caseload can be shared more efficiently, impacting con-

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Pat Meisenheimer



BAR EVENTS

See "A Chorus Line"

Thursday, May 17

Gateway Playhouse, Bellport

SCBA Charity Foundation fundraiser at the Gateway Playhouse presents "A Chorus Line." Tickets \$100/includes dinner. For information call the bar.

Installation Dinner

Friday, June 15, at 6 p.m.

The 109th Installation Dinner Dance will be held at the East Wind, Wading River, N.Y. For information call the bar.

Access to Justice Pro Bono Project: Pathway to Citizenship Training Program

Thursday, May 17, 1:30 – 4:30 p.m. Bar center

CLE program for attorneys who represent or want to represent non-citizens to become naturalized citizens. Learn practice tips from two very experienced immigration experts. Tuition will be waived for those attorneys who participate in this Pro Bono project by taking on one case, which will be limited to the preparation of the Form N-400 Application for Citizenship and either the Form I-912 Request for Fee Waiver or the Form I-942 Request for Reduced Fee. For more information, contact Aniella Russo – Aniella.russo@gmail.com

FOCUS ON
COMMERCIAL
DIVISION UPDATE
SPECIAL EDITION

ENVIRONMENTAL

New Solid Waste Regulations Seek to Curb Illegal Dumping and Add Controls

By Lilia Factor

One of the goals of the new solid waste management regulations that went into effect in 2017¹ was to combat illegal dumping of construction and demolition (C & D) debris and toxic waste. The building boom in New York City has created a lucrative business for solid waste transporters hired to remove excavation materials including “historic fill” containing ash, sediments, and other waste, as well as C & D debris. Dumping often occurs to avoid paying tipping fees for properly disposing of these materials at permitted solid waste management facilities.

On Long Island, the problem made headlines in 2014 when officials discovered that over 40,000 tons of debris containing asbestos, banned pesticides, PCBs, petroleum-based products and heavy metals were dumped in Roberto Clementi Park in Brentwood. Soon thereafter three more dumping sites were identified, including a private lot in Deer Park, a veterans’ development, and another site in Central Islip. In all, five people, including Thomas Datre, Jr., were found guilty in the criminal case brought in state Supreme Court. In ad-

dition, the Town of Islip’s action in federal court against some of the same defendants and additional parties is still pending.² Last year, a judge in another federal lawsuit brought by the New York State Attorney General on behalf of the New York State Department of Environmental Conservation (“DEC”) appointed an environmental expert as a “special master” to oversee the pre-trial phase of the litigation. The actual cleanups have carried over into 2018, with the last being the Central Islip site, which was found to contain tons of contaminated C & D debris. Another dumping site in West Hills County Park in Melville will only reopen to the public this year.

The new rules seek to create tighter controls by imposing a manifest system that tracks solid waste materials from the point of generation to their final destination. They are part of a comprehensive overhaul of solid waste management and materials recovery regulations that has been in the works for many years. The old Part 360 of the New York Codes, Rules and Regulations (NYCRR) has been replaced by Parts 360 – 369



Lilia Factor

which cover recycling, transfer stations, landfills, waste transporters, regulated medical waste, solid waste management planning and state assistance projects.

Although the regulations became effective on Nov. 4, 2017, they contain a transition period for obtaining new permits. Thus, the deadline for registered facilities to submit a new registration application was May 3, 2018 and the deadline for C & D facilities to file for a new permit is May 3, 2019. In addition, in response to pressure from the regulated community, the DEC has issued an Enforcement Discretion letter staying enforcement of some of the rules.³ However, both DEC Region 1, which is responsible for enforcement on Long Island and the main DEC office in Albany stress that companies should get ahead of the process as soon as possible. Once a complete application is submitted, a facility can continue to operate under the old regulations while its permit is being processed.⁴ Unlike in the past, renewal of the registration is now required every five years.⁵

One entirely new requirement is that

transporters of most kinds of non-residential waste obtain a registration, which is valid for one year.⁶ This is in addition to the continuing permitting requirement for Part 364 waste transporters. Exceptions apply to the transport of less than 10 cubic yards of C & D debris, less than 2,000 lbs. of regulated waste, less than 2,000 lbs. of commercial solid waste (unless it originates in New York City) and some other categories.⁷ In addition to displaying the registration, a transporter must also carry a tracking document for the waste, detailing the source of the material, the name of the transporter, and the name and address of the receiving facility. The latter is required to sign off on the tracking form. The purpose, as stated above, is to prevent illegal dumping.

It is important to remember that a material is only subject to regulation if it is considered a waste. The DEC issues Beneficial Use Determinations (“BUDs”) for certain kinds of materials, which means that they are no longer treated as waste, but rather as useful material that can be effectively managed as a commodity and re-used. Certain predetermined BUDs are specified in the

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FAMILY

Is Shared Custody About the Children or the Money?

By Jeffrey L. Catterson

Calculating a non-custodial parent’s child support obligation in a traditional sole or joint custodial arrangement is fairly straight forward. The parties would utilize the percentage provided for in the Child Support Standards Act (“CSSA”) and apply those percentages to the income of the parties without regard to the amount of time either party spends with the children. However, when the parties enjoy a shared custodial arrangement, or close to a 50-50 parenting time with their children, should this almost equal parenting time be reflected in the parties’ child support obligations?

Some jurisdictions utilized a “proportional offset formula” when addressing shared custodial arrangements to take into consideration and reduce the non-custodial parent’s support obligations based upon the additional parenting time he/she was exercising. Under the “proportional offset formula,” each parent’s pro-rata share of the basic child support obligation is multiplied by the percentage of time the child spends with the other parent. The two resulting amounts are then offset against each other and “net” is paid to the parent with the lower amount. However, the New York Court of Appeals in *Bast v. Rossoff*, 697 N.E. 2d 1009, 675 N.Y.S.2d 19 (1998) specifically rejected a “pro-

portional offset formula.” In doing so, the Court of Appeals held that a trial court is bound to apply the CSSA “three-step method” to calculate child support, even in shared custody arrangements, and then must order the noncustodial parent (the parent with less time with the child) to pay a pro rata share of the basic child support obligation, unless it finds that amount to be “unjust or inappropriate” based on a consideration of the [DRL§240[1-b]] “paragraph (f)” factors. (*Id.* @ 1010-1011).

In true 50-50 shared parenting time arrangements, where neither parent can be said to have physical custody of the child for the majority of the time, one party must still be deemed the non-custodial party to determine the parties’ respective child support obligations. *Baraby v. Baraby*, 250 A.D.2d 201, 681 N.Y.S.2d 826 (1998). In such situations, the parent with the greater pro rata share of the child support obligation as calculated pursuant to the CSSA (i.e. the greater income) would be deemed the non-custodial party for child support purposes. (*Id.* at 204; *Conway v. Gartmond*, 144 A.D.3d 795, 41 N.Y.S.3d 90 (2nd Dept. 2016); *Ball v. Ball*, 150, A.D.3d. 1566, 56 N.Y.S.3d 583 (3rd Dept. 2017). The courts have gone on to hold that the additional costs a parent in-



Jeffrey L. Catterson

curs exercising a shared parenting schedule, (i.e. clothing, housing, activities), are not extraordinary expenses sufficient to warrant deviation from the basic CSSA award. *See, Conway v. Gartmond*, 144 A.D.3d 795, 41 N.Y.S.3d 90 (2nd Dept. 2016); and *Mitchell v. Mitchell*, 134 A.D.3d 1213, 21 N.Y.S.3d 438 (3rd Dept. 2015).

While some practitioners have attempted to bridge the gap in this strict application of CSSA support obligations to merely applying the CSSA percentages to the difference in the incomes between the parties, the courts consistently held that this was likewise inappropriate. (*See, Ryan v. Ryan*, 110 A.D.3d 1176, 973 N.Y.S.2d 377 (3rd Dept. 2013). The court’s rationale has been that the CSSA was enacted “in large measure to ensure that children do not unfairly bear the economic burden of [parental] separation” and applying the CSSA guidelines in shared custody cases assures “that children realize the maximum benefit of their parents’ resources and continue, as near as possible, their pre-separation standard of living, in each household.” *Bast v. Rossoff*, *supra*, *Barr v. Cannata*, 57 A.D.3d 813, 870 N.Y.S.2d 120, 122 (2nd Dept. 2008).

Unfortunately, given the all or nothing

approach to support obligations maintained by the courts, this forces many parents to engage in custody litigation, which is not entirely based upon the best interests of the child. These parents might have settled the case with a shared parenting schedule, but, rather than having to pay their full CSSA child support obligation, they litigate custody instead.

It is our hope that with the expansion of the New York courts recognizing both parties’ rights to have equal parenting time with their children that they will likewise take into account the financial impact on both parties and their ability to provide a support payment to the other. Being able to advise our clients that the court will take into consideration the shared parenting schedule and not blindly apply the CSSA percentages to the total income of the parties will enable the litigants to achieve more settlements and reduce the acrimony and litigation between the parties. Clearly, this will also allow the parties to better co-parent their children and focus their energies and resources on facilitating this co-parenting relationship.

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@BCLBLaw-Group.com and (516)222-6500.